

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable R. Knox McMahon, Circuit Court Judge

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SC Court of Appeals

THE STATE,

V.

RESPONDENT,

NATHAN DANIEL MARTINEZ

APPELLANT

APPELLATE CASE NO 2016-002494

RECORD ON APPEAL

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 APPELLANT

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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Colin D. Bailey - Direct Examination by Ms. Walker

1 Q And what's your role over at CPD?

2 A Currently my role is -- just recently promoted to
3 Sergeant of the internal affairs unit. However, in 2014 I
4 was an investigator with the Columbia Police Special
5 Victims Unit.

6 Q Did you become involved in the investigation into
7 the abduction and rape of Elexia Tucker?

8 A I did.

9 Q Tell me how you became involved in that.

10 A After officers initially responded to [REDACTED]
11 [REDACTED] back on March 28, 2014. I was called to the scene, as
12 is normal in a response to a sexual assault. I was -- I
13 drove my city car out there to the scene and met with
14 Ms. Elexia Tucker, as well as her girlfriend, Ms. -- at the
15 time, Ms. Brittany Stevens, and Elexia's father,
16 Christopher Tucker.

17 Q And at that point did you know when the actual
18 assault and kidnapping had taken place?

19 A I didn't -- on my way, no I did not.

20 Q After you got there did you become aware?

21 A I did. I became aware that it had occurred several
22 days earlier.

23 Q At this point had you had any experience and
24 involvement with the investigation of criminal sexual
25 conduct?

Colin D. Bailey - Direct Examination by Ms. Walker

1 A I have.

2 Q Was it odd to you that there be a delay of
3 disclosure?

4 A No, we've learned in my line of work that victims
5 disclose on their own time. And, yes -- so, whenever
6 they're ready they just disclose to law enforcement.

7 Q And once you got into the Tucker residence, can you
8 please tell me what happened?

9 A Yeah, I met with the various parties that I
10 mentioned earlier and also one of our crime scene officers
11 was there as well. And after a brief discussion about a
12 general outline of the crime and what had occurred and that
13 it occurred in Elexia's room in the house, and in the car
14 that was owned by her father. It was then decided that we
15 -- that the crime scene officer would then process the
16 scene and would dust for prints and collect any DNA -- and
17 any evidence. And that myself and Ms. Elexia would go back
18 to my office where would solicit a statement from her.

19 So -- as I was saying I had a brief outline before
20 we left her house of what had occurred and she had
21 explained that she had been abducted from her room --

22 Q Okay. Well, don't tell me exactly what she said?

23 A Of course, of course.

24 Q But did she give you a statement? About what --

25 A She gave me a verbal statement about what had

Colin D. Bailey - Direct Examination by Ms. Walker

1 occurred.

2 Q And did you at that point know what prompted her to
3 call law enforcement?

4 A Yes. It was my understanding that -- that there
5 had been a discussion amongst her family that now was the
6 time for her to disclose to law enforcement based on a --
7 something they had seen in the media, a sketch.

8 Q After speaking with Elexia, did you then observe
9 her cell phone to corroborate communication that she said
10 she had with her girlfriend Brittany?

11 A Yeah, it had been indicated to me that even though
12 Elexia was only telling law enforcement at that time, it
13 had been -- I have had been told that she had told other
14 people prior to law enforcement. And I did ask could I
15 look at your phone just to confirm that that's accurate.
16 She agreed. In fact, I had her sign a document saying that
17 she agreed for me to look at her cell phone. I did look
18 at her phone. I did not seize her phone. I did not take
19 any cell phone records from her phone. I barely looked at
20 her phone and confirmed that in fact in the previous day --
21 in the previous day or so she had communicated with her
22 family that something had happened and --

23 Q At this point did you also show her a photo lineup?

24 A Yes, when we got back to my office, I showed her a
25 photo lineup.

Colin D. Bailey - Direct Examination by Ms. Walker

1 Q And I want to show you State's Exhibit Number 1
2 and ask you if this was the photo lineup you showed her.

3 A It is.

4 Q And did you influence her as to who to pick?

5 A I did not.

6 Q Did you suggest to her in any way?

7 A I did not.

8 Q And did she circle this of her on volition?

9 A She did.

10 Q Did she ask you any corroborating information once
11 she made that photo about the identity of the person in the
12 picture?

13 A Yeah, it was -- when we looked at the lineup, she
14 immediately selected Mr. -- the defendant, Martinez and she
15 had asked me, is his name -- she asked me about the guys
16 name.

17 Q Okay. And were you able to confirm a portion of
18 that?

19 A I actually indicated to her that I could not
20 remember his name right off because the investigation was
21 just starting and then she suggested a name and it reminded
22 me, yes. I said, in fact, I believe that's him. And then
23 information was relayed to me as to how she would have
24 known the person's name.

25 Q And that was on March 28th?

Colin D. Bailey - Direct Examination by Ms. Walker

1 A It was.

2 Q Don't tell me what you did, but did your
3 investigation continue on March 29th?

4 A It did.

5 Q And going to the end of March, did you continue to
6 make contact with different people in terms of furthering
7 your investigation?

8 A I did.

9 Q I want to turn your attention to April 2nd. Was
10 there a significant break in the case on April 2nd?

11 A There was. At that point I had -- I had issued
12 warrants for the arrest of Nathan Martinez and I was
13 notified by Investigator Cavanaugh that Martinez had been
14 apprehended and that he was being brought to the Forest
15 Acres Police Department Headquarters.

16 Q Did you make your way to Forest Acres?

17 A I did. This was about 1:30 in the morning. So I
18 was awoken by this news. Thankfully the Forest Acres
19 Police Department is not far away from where I live. I
20 immediately drove down there to continue the investigation.

21 Q And were you present during the entirety of Mr.
22 Martinez's staying at the Forest Acres Police Department?

23 A I was -- I was when he was brought up to the second
24 floor, yes.

25 MS. WALKER: Beg the Court's indulgence, Your

Colin D. Bailey - Direct Examination by Ms. Walker.

1 Honor.

2 THE COURT: Yes, ma'am.

3 (There was a pause in the proceedings.)

4 BY MS. WALKER:

5 Q Was Mr. Martinez advised of his rights?

6 A He was.

7 Q And at that point had y'all threatened him in any
8 way?

9 A We had not.

10 Q Coerced him in any way?

11 A We had not.

12 Q Made any promises to him regarding anything in
13 exchange for his statement?

14 A No.

15 Q Did Mr. Martinez appear to understand your
16 questions?

17 A He did.

18 Q Did he answer them willingly?

19 A He did.

20 Q I want to show you what's marked as 107 and ask if
21 you recognize this?

22 A I do.

23 Q And how do you recognize this?

24 A Half of it is my handwriting and it is a question
25 and answer statement form between myself and the defendant,

Colin D. Bailey - Direct Examination by Ms. Walker

1 Martinez.

2 MS. WALKER: Your Honor, the State -- at this time,
3 the State seeks to move Exhibit Number 107 into evidence.

4 MR. MARTINEZ: I object, Your Honor. 403, as well
5 as my 14th Amendment, due process, right to fair trial.
6 Mr. Colin D. Bailey took that without reading me rights.

7 THE COURT: Step out, please, ladies and gentlemen.
8 Do not discuss the case during this recess.

9 (The jury left the courtroom at 3:39 p.m.)

10 THE COURT: All right. Solicitor, tell me the
11 purpose of this.

12 MS. WALKER: Of the statement, Your Honor?

13 THE COURT: Yes, ma'am.

14 MS. WALKER: Your Honor, Mr. Martinez -- the
15 questioning of Ms. Tucker and of the -- I think it was
16 maybe the DNA witness led -- insinuated that he wasn't
17 there, that it wasn't present, that his DNA wasn't there
18 and that there were certain questions he asked that
19 insinuated that he wasn't there.

20 In this statement, he admits to having been, to him
21 having a sexual encounter with Ms. Tucker.

22 THE COURT: If I'm tracking correctly then, you
23 think the statement given to --

24 I'm just staring off, Mr. Martinez.

25 You think the statement given to Detective Bailey

Colin D. Bailey - Direct Examination by Ms. Walker

1 on the Tucker, Lyle case is admissible because the DNA
2 expert's testimony that Mr. Martinez is excluded from any
3 DNA analysis in the Tucker, Lyle case?

4 MS. WALKER: Your Honor, that in conjunction with
5 -- under Dunlap, I think, in his opening statement when he
6 said there's no evidence that I did that, there's no
7 evidence that I was there. They don't have any evidence.
8 I think he would have opened the door to that. In Dunlap,
9 Your Honor, there was -- I know you're familiar with it --

10 THE COURT: There was what?

11 MS. WALKER: In Dunlap, the defense attorney, who
12 in his opening statement said that the accused was nothing
13 more than a drug addict and not a drug dealer, the Court,
14 the Supreme Court held that that opened the door to use of
15 prior drug convictions to show that he was a drug dealer.
16 I think Mr. Martinez's opening statement saying -- in
17 conjunction with questions that he's asked the witnesses
18 and I guess his theory of the case have opened the door to
19 his statement in which he admits to being there.

20 In his opening statement, he said he wasn't there,
21 there was no -- that they didn't have -- I think the quote
22 was that they don't have no evidence connecting me to that.
23 I'll get Ms. Godwin to pull exactly what she wrote. It's
24 under Dunlap. And the course of his questioning of
25 Ms. Tucker and the DNA expert, Your Honor, I think he's

Colin D. Bailey - Direct Examination by Ms. Walker

1 opened the door to that.

2 THE COURT: I disagree. Under 403 analysis and
3 under State versus Gillian -- and I'm not familiar -- I'm
4 not familiar with a case -- and there may be one, I've been
5 trying to rummage around in my mind to find one, where
6 you've got a Lyle's case that's coming in for common plan
7 and scheme, you've got similarities -- my ruling on the
8 evidence outweighs the dissimilarities. You've got the
9 connection, you've got that chart and you've got the
10 connection with Ms. Tucker with the sketch. You've got a
11 sketch by victim three, I guess, Ms. Hurshman is; that that
12 is identified by victim two and all that adds up to the
13 admissibility, but I don't think he's opened the door. And
14 I think -- I'm trying to think of a Lyle's case where focus
15 becomes on a statement given in the Lyle's case. If it
16 wasn't already clear and convincing, I wouldn't have let it
17 in and I'll read -- I wouldn't have let it into evidence to
18 start with.

19 He, of course, I think is -- and Sergeant Bailey
20 testified in-camera, and testified in-camera among other
21 things to the photographic lineup, but I can't think of a
22 Lyle case where a statement given by a defendant also goes
23 into evidence.

24 MS. WALKER: Okay.

25 THE COURT: There may be one -- Bell may have been

Colin D. Bailey - Direct Examination by Ms. Walker

1 one, but Bell was making phone calls to the same person so
2 all those phone calls came in, but it was like, if you've
3 never read it, you can read it over the weekend, Nathaniel
4 Hawthorne's the birthmark, you couldn't extract one from
5 the other. I don't think the statement would be -- I'm
6 ruling the statement he gave is not necessary under State
7 versus Gilliam, which is -- let me get back to the site --
8 373, South Carolina 601, 2007 and in that case, although
9 there were -- there were prior bad acts presented, the
10 Court ruled that the trial judge allowed too much in on the
11 Lyle case.

12 MS. WALKER: I can move on.

13 THE COURT: All right. So I would sustain the
14 objection.

15 All right.

16 (The bailiff brought a note up to the court
17 reporter.)

18 THE COURT REPORTER: Judge, we have a note from the
19 jury up there.

20 THE COURT: A new one?

21 (The judge was reading the note from the jurors.)

22 THE COURT: Two jurors want to discuss their
23 schedules for next week. We'll do that at the end of the
24 day.

25 All right. Thank you, thank, you very much.

Colin D. Bailey - Direct Examination by Ms. Walker

1 Ready? Ready, Mr. Martinez?

2 MR. MARTINEZ: Yes, sir.

3 (The jury entered the courtroom at 3:48 p.m.)

4 THE COURT: All right. Our jury is back.

5 I received your note Madame Forelady and we'll
6 discuss with those jurors numbered therein at the end of
7 the day.

8 Thank you. Thank you very much, all right.

9 Thank you, Mr. Martinez.

10 Solicitor, you may continue.

11 MS. WALKER: Thank you, sir.

12 BY MS. WALKER:

13 Q The entirety of your conversation with Mr.
14 Martinez, was he mistreated by law enforcement in any way?

15 A He was not.

16 Q Okay. After your conversation with Mr. Martinez on
17 April 2nd -- on April 8th did your investigation continue?

18 A It did.

19 Q Did you make contact with Mike Moore?

20 A I did not make contact with Mike Moore.

21 Q And who is Mike Moore?

22 A During the investigation, it was learned that
23 Christopher Tucker, at the time of the incident, that he
24 had a man staying at his house, a man who subsequently
25 moved to California. That individual's name was Mike

Colin D. Bailey - Direct Examination by Ms. Walker

1 Moore. I was provided with Mr. Moore's telephone number
2 and I have no idea where in California he moved or if, in
3 fact, he did move to California. I did call the number
4 several times and I did not get a call back from Mr. Moore.

5 Q And Chris Tucker is Elexia's father?

6 A Chris Tucker is Elexia's father, correct.

7 Q And on April 16th, did you make contact with Elexia
8 again?

9 A I did.

10 Q And what was the purpose of that?

11 A There were two reasons. One, we actually -- we --
12 I think the reason you're --

13 Q Did you drive with her somewhere?

14 A Yeah.

15 Q Tell the jury about that.

16 A So Elexia and I -- it was -- at that point in the
17 investigation, Elexia was still unclear about where she was
18 taken after she was taken from her house. We did drive
19 around Hopkins, South Carolina, and -- attempting the find
20 the location where she'd been assaulted. Luckily while we
21 were -- we drove down several roads in Hopkins trying to --
22 for her memory to try to come back. She'd indicated maybe
23 a church parking lot, something like that. And we ended up
24 at 6862 Lower Richland Boulevard, which is in Hopkins.
25 It's a business that appeared to be closed that was a

Colin D. Bailey - Cross-Examination by Mr. Martinez

1 daycare.

2 We walked to the rear of the business, eventually
3 we stopped at an isolated grassy field behind there and
4 Elexia had indicated to me that -- she said it was possible
5 that this was the place that the assault had occurred at
6 the location that the defendant, Mr. Martinez had taken --
7 had taken her.

8 We didn't find -- there were no cameras, there was
9 no evidence that we could find on the ground, so -- yes.

10 Q And at that point, did you know how Ms. Tucker had
11 been restrained by Mr. Martinez?

12 A Yes, Ms. Tucker had -- we collected from her --
13 with her guidance we had collected a, sort of a cloth rope
14 and turned that into evidence. Also during the -- when we
15 were driving around Hopkins, we were also looking for a
16 hair-dryer cord, which had allegedly been used to tie her
17 up. That hair-dryer cord -- not only did I not find it
18 that day on the 16th, but I went back several days later
19 and on my own drove around various locations in Hopkins,
20 near where Mr. Martinez was arrested and once again I
21 couldn't find a hair-dryer cord.

22 Q Thank you, sir. I don't have anymore questions.

23 THE COURT: Mr. Martinez?

24 CROSS-EXAMINATION

25 BY MR. MARTINEZ:

Colin D. Bailey - Cross-Examination by Mr. Martinez

1 Q Mr. Bailey, in 2014, you said you was stationed
2 where? What department?

3 A The City of Columbia Police Department.

4 Q And was you issued a --

5 A I was issued a mini-recorder, yes, sir, I was.

6 Q -- an audio recorder; is that correct?

7 A I was.

8 Q And that was for use when you conduct interviews
9 and stuff like that, right?

10 A Correct.

11 Q And you also put out a bulletin that was -- for --
12 wanted for me, is that correct?

13 A Correct.

14 Q And in that bulletin you stated -- this was prior
15 to you even -- to meeting me or seeing me; is that correct?

16 A Yes.

17 Q In that bulletin did you put -- did you state, use
18 caution as Martinez has schizophrenia and possible other
19 mental disorders?

20 A I did.

21 Q And how was you aware of that?

22 A I had received information from some of the other
23 law enforcement who was involved in the case and there had
24 been some discussion that you may suffer from some of those
25 ailments. What I do when I put out a BOLD, I want to alert

Colin D. Bailey - Cross-Examination by Mr. Martinez

1 the officers who may encounter you as to any -- any mental
2 or physical disorders that they may encounter.

3 We often will put in the BOLO prior history,
4 criminal history, especially criminal history that includes
5 violence.

6 Q And you state -- you stated you was there for the
7 interview the whole time; is that correct?

8 A Correct.

9 Q And they called -- what time did they call you and
10 notify you?

11 A I believe it was approximately 1:30 is what I put
12 in my notes.

13 Q And they notified you before they arrested me; is
14 that correct?

15 A No. No, they notified me after you were arrested.

16 Q And do you remember who notified you?

17 A I believe it was Investigator Cavanaugh. He's with
18 the Richland County Sheriff's Department warrant team.

19 Q And did he tell you that I wanted to talk to you?
20 Or any law enforcement?

21 A We didn't have a discussion about that.

22 Q So when I -- when they took me to Forest Acres
23 headquarters, did I -- did I want to talk to you guys?

24 A Yes, sir.

25 Q When did -- when did I fill out the waiver form?

Colin D. Bailey - Cross-Examination by Mr. Martinez

1 A When you -- at some point, the Forest Acres police
2 had brought you up to the -- to the second floor. There's
3 a conference room. And the waiver form was presented to
4 you there. Is that what you were -- I'm sorry, is that
5 what you asked?

6 Q

7 A Okay.

8 Q So it was -- as soon as I got there, I got the
9 waiver form?

10 A Very soon after, yes, sir.

11 Q Was I notified as to why I was there?

12 A That, I do not know. That would have been up to
13 the Richland County warrant team. When you came up to the
14 room though, it was -- I'm sure it was made clear to you
15 that there were warrants for your arrest.

16 Q So I was -- was I notified before I signed the
17 waiver or after I signed the waiver?

18 A About what the charges were?

19 Q Yeah.

20 A I don't exactly recall what order the Forest Acres
21 investigators advised you, whether they advised you your
22 rights first or whether they advised you of the criminal
23 acts that you had -- advised you of the exact nature of the
24 warrants.

25 Q Did -- when did they introduce me to you?

Colin D. Bailey - Cross-Examination by Mr. Martinez

1 A I think we were all introduced when we first came
2 up there and then later on during the conversation,
3 Investigator Morrison pointed towards me and said,
4 Investigator Bailey would like to ask you a couple of
5 questions if that's all right.

6 Q And did you record this interview?

7 A Did not. Didn't make an audio recording of the
8 interview.

9 Q Why not?

10 A At the time it was our discretion, but in the
11 Columbia Police Department, I was at somebody else -- I'm
12 not even sure if I had my recorder with me, but I was at
13 someone else's police department, so I elected not to make
14 a recording at that time.

15 Q Do you usually wear it on your tie?

16 A I do.

17 Q With you being notified and aware of me having
18 mental issues, do you believe there would have been a good
19 discretion call to have used your audio recording device?

20 A Not necessarily.

21 Q What was the purpose of having your audio recording
22 device?

23 A The -- the audio recording devices were issued to
24 Columbia police investigators so if they wanted to they
25 could record conversations between them. Generally we only

Colin D. Bailey - Cross-Examination by Mr. Martinez

1 record conversations between us and suspects.

2 Q Was I a suspect?

3 A You were.

4 Q So -- okay. Was I -- you said that I --- what was
5 the topic of my conversation during this interview?

6 A So during the interview at Forest Acres on the 2nd
7 of April 2014, we discussed the Forest Acres case. We
8 discussed the Columbia police case. We discussed some
9 things about you including your family and you, sir,
10 discussed the chip that you said was inside of your head
11 and that you also discussed a series of -- you also
12 discussed that you sought help for having a chip removed.

13 Q And how many times was I talking about that?

14 A As the -- as that night went on and as the
15 interview went on, you brought it up more and more and more
16 as things went on, sir. I couldn't really give you an
17 exact time. It was several times, yes, sir.

18 Q But it was -- you guys were questioning me and I
19 would start talking about my problems and my issues; is
20 that correct?

21 A Ask that one more time.

22 Q When you guys were talking to me about certain
23 things that you -- I don't know, you guys were talking
24 about certain things together and I would just tell you I
25 have microchips in my head. I don't know, all I know is I

Colin D. Bailey - Cross-Examination by Mr. Martinez

1 need medical attention; things of that nature?

2 A What happened was that we would ask you questions
3 about -- the investigators would ask, obviously, asking
4 questions Forest Acres case, about your involvement in
5 that. In addition, you would also add in what you just
6 spoke of, about the chip inside your head. So you were
7 answering our questions and you were also talking about
8 what you just spoke of.

9 Q And was there any -- was there any cigarettes
10 bought for me?

11 A That, I don't know. I don't know if anyone gave
12 you cigarettes or if they went and bought you some or
13 whether or not some officer in the parking lot outside as
14 you were leaving gave you some. I don't know, sir.

15 Q You have your notes up there, correct?

16 A I do.

17 Q Would you please turn to -- let's see --

18 A You're referring to page 2 second to last
19 paragraph.

20 Q Yes, during the conversation with Martinez, he
21 advised investigators he smokes Newport Red 100's and asked
22 for some --

23 THE COURT: And remember when you read, our voices
24 all of us speed up and goes down towards the paper. So
25 read slowly and read loudly.

Colin D. Bailey - Cross-Examination by Mr. Martinez

1 THE WITNESS: Sir, would you like me to read that?

2 BY MR. MARTINEZ:

3 Q Yes.

4 A During the conversation with Martinez, he advises
5 investigators -- during the conversation with Martinez, he
6 advises investigators that he smokes Newport Red 100's and
7 then asks for some and arrangements are made for Martinez
8 to smoke. And that is from my investigative notes.

9 Q And also you wrote -- will you read page 3, the
10 third paragraph?

11 A Beginning with the record although?

12 Q Yes, please.

13 THE COURT: Let me -- before you do that officer,
14 let me see that, please, Sheriff, or a copy of it, please,
15 Madame Solicitor.

16 MS. WALKER: Your Honor, may Mr. Kata and I
17 approach?

18 THE COURT: Yes, ma'am.

19 (There was a bench conference out of the hearing of
20 the jury and the Court Reporter.)

21 (Mr. Kata conferred with the defendant.)

22 THE COURT: All right. You ready for your next
23 question, Mr. Martinez?

24 MR. MARTINEZ: Yes, sir.

25 THE COURT: All right. Thank you. You may ask

Colin D. Bailey - Cross-Examination by Mr. Martinez

1 your next question.

2 BY MR. MARTINEZ:

3 Q Mr. Colin D. Bailey, will you read, please read
4 that for me.

5 A Although all three investigators -- and this is
6 from my notes taken from the interview of the defendant,
7 Mr. Martinez -- although all three investigators tried to
8 keep Martinez on topic Martinez spent most of the time
9 talking about his problems, where he felt that the police
10 in Utah had implanted a tracking communication device in
11 his head near his ear and the police were telling him to do
12 things and commit crimes. Martinez had a visible injury
13 near his ear, on his head where he said he had tried to cut
14 out the device but was unsuccessful.

15 Martinez told me that he did not have mental
16 problems but when he heard voices, they were being
17 broadcast through said device.

18 Martinez reports he had sought professional help
19 and had been at Providence Hospital in September seeking
20 mental health solutions and was told he has paranoid
21 schizophrenia.

22 You want me to keep reading?

23 Q No, is that clear -- is that what happened?

24 A Say that --

25 Q Is that what happened in the interview?

Colin D. Bailey - Cross-Examination by Mr. Martinez

1 A Yes, correct, yes.

2 Q So is that consistent with me wanting to give my
3 testimony and giving testimony when --

4 A Yes, sir, yes.

5 Q So why would it take three officers to keep me on
6 topic?

7 A To do what? What do you mean?

8 Q Well, if -- if I'm so willing to give -- to talk to
9 the police about incidents, why would it take three
10 officers to keep me on topic?

11 A Sir, I can't answer that except to say that you
12 wanted to speak to us and you wanted to talk about the
13 issues that I just read about, the device being implanted
14 in your ear. You wanted to -- and at some point you would
15 talk extensively about it.

16 Q So --

17 A And we didn't have all the time in the world, so we
18 wanted to hear what you had to say regarding the device
19 implanted in your ear, but we also wanted to hear what you
20 had to say regarding the incidents at Forest Acres and in
21 Columbia.

22 Q So you say that I spent most of the time talking
23 about my problems?

24 A You did.

25 Q And you guys were talking to me about other issues?

Colin D. Bailey - Cross-Examination by Mr. Martinez

1 A At the other times urn talking and answering our
2 questions regarding -- or to just simply giving a statement
3 about the family, as well as you were talking about the
4 incidents in Columbia and Forest Acres. And that's quite
5 common for us to have interviews with witnesses, victims,
6 and suspects where we don't necessarily just talk about the
7 incidents, we'll also establish a rapport with them and let
8 them speak about whatever they like.

9 Q So we that being said, was everybody present --
10 there was you, Mr. Shumard, and then there was
11 Mr. Morrison; is that correct?

12 A Well, the people who were present was Lieutenant
13 Shumard, Investigator Morrison, and myself.

14 Q Was you guys all present at the same time?

15 A We were.

16 Q And you guys never left, like maybe going take a
17 break every now and then?

18 A Gosh, I don't think so, no.

19 Q And did you guys all talk to me at the same time?

20 A No, what had happened was -- and I'm very aware
21 that we're trying to avoid some confusion, so during the --
22 when we were talking to you about the incident in Forest
23 Acres, I did not speak and the only people who spoke at
24 that time was Lieutenant Shumard and Investigator Morrison.
25 When we spoke about the incident in Columbia, the only

Colin D. Bailey - Cross-Examination by Mr. Martinez

1 person who was talking at that point was me and you.

2 Q So when did it take all three investigators to keep
3 me on topic?

4 A During -- right, at different times, yes.

5 Q So at different times, you guys would all have to
6 come together and bring me back to topic?

7 A No. At different times during the interview, sir,
8 the different investigators would try to keep you on topic,
9 yes.

10 Q Did I -- so how was my presence? How was my
11 physical presence?

12 A I didn't notice anything out of the ordinary if
13 that's where you're getting at.

14 Q I was?

15 A You didn't look much different than -- than you do
16 today at this point.

17 Q I wasn't all dirty or nothing like that?

18 A I don't remember you being dirty.

19 Q Was I -- was I crying? Was I happy, was I sad?
20 What I tired?

21 A Gosh, I don't remember you being any of those three
22 emotions.

23 Q So I was just -- was I anxious?

24 A No, you seemed calm. You did want to talk and you
25 were -- I couldn't say you enjoyed talking with us, but you

Colin D. Bailey - Cross-Examination by Mr. Martinez

1 definitely wanted to talk. You wanted to talk to us, not
2 only about the incident, but like I said, about your family
3 and about the chip -- the chip inside your head.

4 Q So I wanted to talk?

5 MS. WALKER: Objection, Your Honor, asked and
6 answered.

7 THE COURT: Answer the question, Officer.

8 THE WITNESS: Yeah, you did.

9 BY MR. MARTINEZ:

10 Q And I didn't -- I didn't appear to be like nervous
11 or afraid of you guys?

12 A You did not appear to be nervous or afraid of us,
13 no, sir.

14 Q And you said you tried to get ahold of Mr. Mike
15 Moore?

16 A I did.

17 Q And you wasn't able to do that?

18 A I was not able to get in contact with him.

19 Q Did you talk to Ms. Tucker about it?

20 A I spoke to her father about it.

21 Q So you didn't talk to her about him?

22 A About Mike Moore?

23 Q Yes.

24 A No, I did not, no, sir.

25 Q What about my brother? Did you happen to call my

Colin D. Bailey - Cross-Examination by Mr. Martinez

1 brother?

2 A I did.

3 Q Did you make any threats to him?

4 A I did not make any threats to your brother.

5 Q You didn't threaten that you were going to take his
6 children away from him?

7 A His what?

8 Q Take his children?

9 A I did not make any threats that I was going to take
10 his children, no.

11 Q What about calling his PO if he didn't cooperate
12 with you?

13 THE COURT: What's a PO.

14 MR. MARTINEZ: Parole -- probation officer.

15 THE WITNESS: I had no -- I'm learning now, if in
16 fact that's true, that he's even on probation.

17 BY MR. MARTINEZ:

18 Q You never accused him of having anything to do with
19 me?

20 A I did not -- I did ask him though -- I was trying
21 to solicit a statement or a conversation with as many
22 people involved as possible. I thought your brother could
23 potentially be significant because my understanding, you
24 were arrested at or near his house, however, your brother
25 had expressed to me absolutely no interest in speaking with

Colin D. Bailey - Cross-Examination by Mr. Martinez

1 law enforcement. In fact, he was quite rude and hung up on
2 me on the phone.

3 Q You stated that you just looked at Elexia Tucker's
4 phone?

5 A Correct.

6 Q So there is -- there is no evidence of an exact
7 date; is that correct?

8 A I think what you're getting at is there's no --
9 there's no cell phone download report and there is --
10 there's none that I have. I didn't seize her phone. What
11 we normally do -- what we do in cases often when we seize a
12 suspect's phone is, we would take it and we would have our
13 forensic examiner download the contents of the phone
14 essentially to a data report and then it would stay in
15 evidence until the case -- until the trial.

16 Q So you did -- she did sign a consent for you to
17 search her phone?

18 A Correct, she did.

19 Q And how -- how important is corroborating evidence
20 that supports dates and times of specific incidents?

21 A It's very important.

22 Q So knowing that, why would you not gather
23 information to corroborate her story?

24 A None of the text messages on her phone, I felt
25 would -- were going to help the case.

Colin D. Bailey - Cross-Examination by Mr. Martinez

1 Q So why would you state that I looked at her phone
2 and it corroborated her story?

3 A It corroborated it in a sense that she had -- she
4 had told me that she had sent text messages to family
5 members -- or to her girlfriend, I believe, I can't
6 remember if she said a phone call to her dad or a text to
7 her dad, but to her girlfriend, sent a text indicating that
8 something had occurred, but she didn't -- she didn't say
9 any type of what had occurred.

10 Q So you're saying that there was nothing to
11 corroborate her story?

12 THE COURT: What was that question?

13 MR. MARTINEZ: There was nothing to corroborate her
14 story.

15 THE COURT: His opinion about that is irrelevant.
16 That's his -- that's on their opinion.

17 MR. MARTINEZ: He stated in his report that there
18 was corroborating evidence to verify a date.

19 THE COURT: His opinion about what evidence is or
20 is not corroborated is not relevant. It depends on the
21 jury's decision of the weight and credibility of the
22 testimony offered.

23 MR. MARTINEZ: I'm not asking for his opinion.

24 THE COURT: Well, you said -- ask your question,
25 let me hear it again then, Mr. Martinez.

Colin D. Bailey - Cross-Examination by Mr. Martinez

1 MR. MARTINEZ: So you're saying that the text
2 messages did not corroborate her story.

3 THE COURT: That -- all right. Answer the
4 question, Officer. If you can.

5 THE WITNESS: I am not saying that.

6 BY MR. MARTINEZ:

7 Q Okay. So there is no exact date set for the
8 allegations that she made? There's no proof of any set
9 date?

10 A There is a -- yes -- well, there's a report.
11 There's an incident report, police incident report
12 regarding a date. And that information came from the
13 victim in the case, Ms. Tucker.

14 Q And --

15 A In addition, there's a statement from her
16 girlfriend, a written statement and a written statement
17 from her dad, none of which dispute the date that this
18 allegedly occurred.

19 Q Are those statements from her dad --

20 A All -- in addition, sir, there's no -- up until --
21 there's no dispute from you regarding the day.

22 Q That's what I'm doing right now. I've always
23 disputed a date. Ineffective assistance of counsel
24 disputed that date --

25 THE COURT: Is that a question?

Colin D. Bailey - Cross-Examination by Mr. Martinez

1 BY MR. MARTINEZ:

2 Q Did I not dispute that date in pretrial hearing?

3 A No, I don't think -- I'm not familiar with you --
4 you certainly haven't -- you haven't communicated with me
5 that you dispute the date or that you dispute that you were
6 even there. You've never communicated to me that you're
7 disputing that you were there regarding the Tucker case,
8 the case that's the sexual assault, burglary, and
9 kidnapping that occurred in the City of Columbia.

10 Q So do you think me asking for Ms. Tucker's cell
11 phone records from March of 2014, that because you claim
12 that you searched her phone and that's how you got that
13 date and I asked the State to give me those -- that
14 information, that way I could determine and be able to
15 verify that that's the date that they claim it happened?

16 A Well, just to reiterate, I looked at the --
17 Ms. Tucker's phone and I elected at this time I would not
18 seize her phone, I would return the phone.

19 Q You collected her -- you observed her phone and the
20 date corroborated with what she said?

21 A Correct.

22 Q So --

23 A The -- no. The message -- what she told me and the
24 message I saw on her phone seem to be -- did not -- were
25 not disputing each other.

Colin D. Bailey - Cross-Examination by Mr. Martinez

1 Q You just said there was nothing in her phone that
2 would have corroborated her story?

3 A All right. Third time, that's not true, sir.

4 Q So there was something that corroborated her story
5 now?

6 A There was something -- it didn't necessarily
7 corroborate the story, it matched her statement.

8 Q What did it say?

9 A I don't recall what the message said. It indicated
10 that there had been -- that her message to her girlfriend
11 indicated that something had happen -- something bad had
12 happened.

13 Q Something bad like what?

14 A Like I said, sir, I don't remember the exact
15 verbiage.

16 Q So, again why did you not --

17 THE COURT: When you start a question with again,
18 that's got to be another time you're asking the same
19 question. So rephrase your questions and don't repeat a
20 prior asked and answered question.

21 BY MR. MARTINEZ:

22 Q Why did -- so there was a bunch of swabs and
23 fingerprints and all that stuff, latents -- you know what
24 I'm saying, latent prints, stuff like that, at the house;
25 is that correct?

Colin D. Bailey - Redirect Examination by Ms. Walker

1 A There was evidence collected at the house and then
2 the crime scene officer put it in his report that he -- he
3 had dusted certain locations for fingerprints.

4 Q And was there anything that was -- was anything
5 linking me to that house?

6 A No. As far as I know at this point, there is
7 nothing bringing you to the house that he had collected.

8 MR. MARTINEZ: Nothing further. Thank you.

9 THE COURT: Redirect, Solicitor?

10 **REDIRECT EXAMINATION**

11 BY MS. WALKER:

12 Q He asked you whether or not you audio recorded the
13 statement that he gave you. Did you reduce that statement
14 in some sort of recorded manner, to writing?

15 A Correct, yes.

16 Q He asked you about corroborating evidence for
17 Ms. Tucker's case.

18 MS. WALKER: Your Honor, may I approach before I
19 ask this question?

20 THE COURT: Yes, ma'am.

21 (There was a bench conference out of the hearing of
22 the jury and the Court Reporter.)

23 THE COURT: All right. Ladies and gentlemen of the
24 jury panel, I need to take up something in-camera that may
25 take a while. So I'm going to release you from your jury

1 service for the remainder of the day.

2 I will talk, before I begin the in-camera hearing,
3 to both Juror Number 171, I think it was, and 104.

4 So when I release y'all today, if y'all would just
5 remain in the jury room and I'll bring you out one at a
6 time and we'll discuss that issue.

7 All right. I must remind you during this weekend
8 recess, do not discuss the case with others, including your
9 fellow jurors, family, friends or anyone else. Do not
10 read, watch, or listen to any news accounts about the case.
11 Do not use your computer, cellular phone or any other
12 device with communication capabilities or any other methods
13 used to obtain or disclose information about the case when
14 you're not in court.

15 Information about the case which is prohibited
16 include, but is not limited to the following: Information
17 about party, witness, attorney, court officer, news
18 accounts about the case, past or present; information
19 collected through juror research on any topic raised or
20 testimony offered by any witness or information collected
21 through juror research on any other topic that the juror
22 might think would be helpful in deciding the case.

23 Remember to keep an open mind. Do not begin your
24 deliberations until you've heard all the evidence and
25 testimony, closing arguments by the attorneys and

1 instruction on the law by the Court.

2 I would ask you to be -- to please be back promptly
3 at 9:30 Monday morning, promptly at 9:30, Monday morning.

4 Any question?

5 (No one responded.)

6 THE COURT: I hope each and all of you have a very
7 pleasant rest of the evening and weekend; 9:30 Monday
8 morning.

9 Juror Number 104 and 171, if y'all would just
10 report to the jury room and I'll bring you out
11 individually. Thank you very much.

12 (The jury left the courtroom at 4:29 p.m.)

13 THE COURT: All right. Sergeant Bailey, you may
14 step down. Of course, you're released for the weekend,
15 obviously. Do not discuss your testimony with anyone
16 during this recess. Thank you, thank you very much,
17 Officer.

18 THE WITNESS: Yes, sir.

19 THE COURT: The note on the two jurors that would
20 like to discuss with me being released, Juror Number 171
21 and Juror Number 104, both are schoolteachers. The
22 gentleman, I think, teaches at a high school and the lady,
23 I think teaches at the grammar school and they're concerned
24 about not -- about missing potentially another week of
25 school. I'll bring them out and talk with them and make

1 the decision. I'll hear from each of the parties before I
2 make that decision.

3 We do have three alternates, so we'd still have
4 enough if I excuse one or both. If I excuse both, we'd
5 still have one alternate going into next week.

6 Bring me, please, Juror Number 104.

7 (The juror was brought into the courtroom. The
8 following colloquy took place:)

9 THE COURT: You may step around here.

10 Solicitor or Mr. Kata if y'all want to come up,
11 you're welcome to.

12 You're 204?

13 THE JUROR: I am.

14 THE COURT: And you're our alternate?

15 THE JUROR: I am.

16 THE COURT: All right. You were the first
17 alternate selected.

18 THE JUROR: Yes, sir.

19 THE COURT: All right. She was one of our -- our
20 first selected alternate, Juror Number 204.

21 MS. WALKER: Yes, sir.

22 THE COURT: And tell me -- tell me what you want to
23 tell me.

24 THE JUROR: I'm a schoolteacher concerned about
25 missing another week of school. We have MAPS testing next

1 Friday, which I'll take -- a certified teacher has to take
2 the class to MAPS testing, which, of course, counts towards
3 how they are doing for the year and how I'm judged.

4 THE COURT: Don't -- don't use that word.

5 (Laughter.)

6 THE COURT: You want the stay with us part of the
7 week?

8 THE JUROR: I can stay Monday and Tuesday. I have
9 that cleared.

10 THE COURT: And, of course, you could still -- if I
11 were to lose three -- well, I could lose the gentleman, but
12 you know, I could get into a numbers game.

13 THE JUROR: I'll be here.

14 THE COURT: All right. Okay. You'll stay with us
15 Monday and Tuesday.

16 THE JUROR: Yes, sir.

17 THE COURT: All right. I'll keep that in my mind.
18 Okay. Thank you very much, have a pleasant weekend.

19 THE JUROR: Thank you.

20 THE COURT: She may be excused for the weekend.
21 Thank you.

22 She'll be back with us on Monday.

23 And then will you bring me the gentleman.

24 THE BAILIFF: Yes, sir.

25 (The juror was brought into the courtroom. The

1 following colloquy took place:)

2 THE COURT: Good afternoon. And you're Juror 171.

3 THE JUROR: Yes, sir.

4 THE COURT: And tell me your situation.

5 THE JUROR: I teach AP Government, AP Econ; US
6 History Honors at Dreher. I was supposed to do jury duty
7 in October and my school district sent a letter asking for
8 an extension to the summer and they said I had to do it
9 before 2017 -- or 2016 was over with. They didn't give me
10 an option to extend to the summer and my AP students are
11 trying to earn college credit for their classes and every
12 day I miss is another day they're behind; and we've got
13 semester exams coming up week after -- not next week, but
14 the week after that and they won't have had me for two
15 weeks if I'm in here.

16 THE COURT: I didn't know the clerk sent out
17 letters like that.

18 THE JUROR: I called -- I had -- my school district
19 sent a letter.

20 THE COURT: I understand that.

21 THE JUROR: I called and said, did you get my
22 letter. You need to get -- you need to serve before -- we
23 won't extend you to the summer is what they said. They
24 said I had to go before 2016 was up. I didn't realize this
25 was going to be -- I mean, I understand your situation and

1 I apologize for asking.

2 THE COURT: 171 is excused.

3 THE JUROR: Thank you, Judge.

4 Solicitor, Mr. Kata, let me ask you --

5 You don't have to put this on the record.

6 (There was a bench conference out of the hearing of
7 the Court Reporter..)

8 THE COURT: All right. Solicitor, can you give me
9 the State's position as far as the redirect examination of
10 Sergeant Bailey?

11 MS. WALKER: Your Honor, there are a couple of
12 things that this defendant went into in terms of his
13 cross-examination of Investigator Bailey. He had
14 Investigator Bailey read a portion of his -- a portion of
15 his followup with -- involving this case. And I can hand
16 up --

17 THE COURT: Yes, ma'am.

18 (Handing the Court a document.)

19 MS. WALKER: Your Honor, he -- it was page 3 that
20 he started and it was Investigator Bailey's narrative about
21 the conversation he had with this defendant. But what he
22 failed to bring out are the parts -- the end of page 2,
23 Your Honor, when he talks about Martinez reported that he
24 did not know or remember why he burglarized the home of the
25 guy named Tucker. He said he found himself in the

1 neighborhood and decided to enter the residence through an
2 unlocked back door. He went into more details of it.

3 He found himself upstairs, looking into one room,
4 he encountered a teenage girl who he believed was his
5 daughter. He acknowledged brandishing a knife, but says
6 that she went willingly, that it was an unknown man
7 sleeping downstairs who woke up and observed the two of
8 them leaving and it goes on into that -- another paragraph.

9 Your Honor, with him asking Mr. -- or Investigator
10 Colin D Bailey to read out a portion of that narrative, I
11 think that he has opened the door, including allowing us to
12 go into all of it. So under -- of course, opening the
13 door, Your Honor, we'd have a right the get into everything
14 that Mr. Martinez said that day.

15 THE COURT: Mr. Martinez.

16 MR. MARTINEZ: Yes, sir, as Mr. Colin D. Bailey's
17 testified to, he did not read me my Miranda Rights. He did
18 not read me my rights, he did not notify me of my rights.
19 And as he also testified too, the statement that he wrote
20 for me, what he states does not -- doesn't go together. I
21 didn't tell him nothing like that. He wrote that on his
22 own. Those are his -- that's his wording, not mine. And
23 the stuff that he wrote and the stuff that I wrote don't
24 match up. It doesn't -- I told him I didn't do that. I
25 told him that didn't happen.

1 THE COURT: I'm trying to track. Are you saying
2 that portions of the document that you had Sergeant Bailey
3 read is not correct?

4 MR. MARTINEZ: Yes, sir.

5 THE COURT: So the portion you had read to the
6 Court had read in open court by the Sergeant is not
7 correct.

8 MR. MARTINEZ: The stuff that he read was correct.

9 THE COURT: I just wanted to make sure I was clear.
10 So the paragraph he read and the paragraph about -- the
11 sentence I guess about the cigarettes, that was correct.

12 MR. MARTINEZ: Yes, sir. Not the exact timing,
13 but, yes.

14 THE COURT: Okay. And of course, I called your
15 counsel up to the bench and advised him of the dangers of
16 going into that, the dangers to your defense. Is that
17 correct, Mr. Martinez?

18 MR. MARTINEZ: Yes, sir.

19 THE COURT: So your objection, Mr. Martinez, is
20 that the part which the State seeks to present is not true.

21 MR. MARTINEZ: It was also taken under -- he didn't
22 advise me of my Miranda Rights. He stated that -- so
23 anything he stated pertaining to the case was taken
24 illegally.

25 THE COURT: All right. Solicitor?

1 MS. WALKER: Your Honor, I think all the
2 investigators have -- all the investigators have -- well,
3 two of the investigators have testified, the third
4 investigator will testify, he testified during the Denno
5 hearing, that they were all together and present at the
6 initial time that he was advised of his rights; that he
7 agreed to waive those rights, the waiver of rights is in
8 evidence; that he then spoke to them about the Forest Acres
9 case; and then he did speak with him about the Columbia
10 Police Department case. So he was advised of his rights.

11 Investigator Bailey was present during the advise
12 of rights and then this defendant waived them.

13 THE COURT: Anything, further, Mr. Martinez?

14 MR. MARTINEZ: Yes, as Mr. Charles Morrison
15 testified to, I didn't know what I was waiving my rights to
16 and also under Miranda, I have to continually be made aware
17 of my rights; that way I know that I have -- that I have
18 rights to exercise and also --

19 THE COURT: Wait a minute, you said you have to be
20 continued to be notified.

21 MR. MARTINEZ: I have to be notified throughout the
22 process that I have rights.

23 THE COURT: And you get that as a reading from
24 Miranda versus Arizona?

25 MR. MARTINEZ: Yes, sir.

1 THE COURT: There is a continuing duty?

2 MR. MARTINEZ: They have to notify me of my rights
3 throughout the process of interrogation.

4 THE COURT: Well, I'll have to reread that over the
5 weekend. I don't recall that being the holding as far as
6 Miranda versus Arizona.

7 MR. MARTINEZ: Also, it's two different incidents
8 as they said and it doesn't -- there's no -- I wasn't
9 really aware of what I was waiving my rights to as
10 Mr. Morrison stated. They didn't tell me why I was there.
11 Now, I get their statement, they can tell me why I was
12 there. Mr. Shumard told me that I was there before, that I
13 knew I was there before so I'm writing this statement.
14 Mr. Morrison contradicted that, said that we didn't tell
15 you why you was there before. I think --

16 THE COURT: Well, I'm not concerned with the
17 decision I have to make now with the Forest Acres Police
18 Department statement. What I'm concerned about is that you
19 had Sergeant Bailey read certain portions of the report to
20 the jury from his records. And for example, a question
21 that you asked him, You didn't have any evidence, a
22 paraphrase; and he said, Yes, we had statements from the
23 victim, Ms. Tucker; statements from the girlfriend;
24 statements from the father; and a statement from you. That
25 was brought out by you during the questioning of Sergeant

1 Bailey.

2 And then if you put in portions of documents, Rule
3 106 and several cases says when a writing or recorded
4 statement or part thereof is introduced by a party an
5 adverse party may require the introduction at this time of
6 any other part or any other writing or recorded statement
7 which all in fairness to be considered contemporaneously.
8 It's called the rule of completeness. That's the focus at
9 this moment. You understand?

10 MR. MARTINEZ: Yes, sir.

11 THE COURT: And I never ruled on -- all I was asked
12 to rule on was the voluntariness of the statements from the
13 Columbia police officer. It may have come up during the
14 course of the testimony of the Jackson versus Denno
15 hearing. But that motion's never been before me. That
16 doesn't mean that motion -- that a motion can't be made,
17 but it's not -- it's never been before me and I've never
18 ruled on the admissibility -- well. I ruled on the
19 inadmissibility under Lyle because it was a Lyle's
20 testimony. The Tucker case was admitted under Lyle under
21 common plan and scheme; connected, similarities. But I
22 didn't allow the statement in because I felt it's not
23 necessary under Lyle.

24 Now, you've had part of a document introduced and
25 read before the jury with summation of the officer's

1 summary of what you said.

2 MR. MARTINEZ: Yeah, they also didn't say anything
3 with Isenhoward, Sergeant Isenhoward.

4 THE COURT: All right. And how so?

5 MR. MARTINEZ: Because he came in and told part of
6 the truth.

7 THE COURT: Do you want to recall Lieutenant
8 Isenhoward.

9 MR. MARTINEZ: I think he's on -- I don't see him.

10 THE COURT: Do you want to recall him?

11 MR. MARTINEZ: No, I wanted some of his statement
12 in there because I needed. I wanted some of it because the
13 first part of it's incriminating.

14 THE COURT: Those are decisions one has to make.
15 They either make them with one's lawyer or make them on
16 their own if they choose to represent themselves.

17 MR. MARTINEZ: Yeah, but that's the thing. I told
18 you this -- I said this before when I had -- when I filed
19 my motion to dismiss that other charge because as I was
20 stating then, they're going to be using that before me.
21 But they are -- I already knew they were going to come
22 before me at this time..

23 THE COURT: They came before me in an evidentiary
24 setting.

25 MR. MARTINEZ: And --

1 THE COURT: One -- I say -- the Tucker incident
2 came before me on 404(b).

3 MR. MARTINEZ: And that's why I was trying to get
4 -- trying to get that -- prevent that so I could get it
5 dismissed, so therefore, it wouldn't be part of this. It
6 wouldn't have been brought in here because it wouldn't have
7 been a conviction. It would have just been --

8 THE COURT: It is not a conviction.

9 MR. MARTINEZ: I know. It's just an allegation.
10 But it's pretty much --

11 THE COURT: It's an allegation that survives the
12 standard of clear and convincing and the 403 analysis.

13 Be that as it may, perhaps now would be a good time
14 to take our recess. I'll take it under advisement, both
15 Miranda's rule of completeness.

16 All right. Anything further before we take our
17 weekend recess, Solicitor?

18 MS. WALKER: Your Honor, the only other thing is
19 that Mr. Martinez asked us to have a SLED agent by the name
20 of Lauren Cziok. He said that he subpoenaed her. She
21 lives in Michigan. I don't know if he's done an
22 out-of-state subpoena for her or if he's made arrangements
23 for her to be flown in, but I can't --

24 THE COURT: Who is this?

25 MS. WALKER: She's a SLED agent.

1 THE COURT: And what's the name?

2 MS. WALKER: Lauren and the last name, Your Honor
3 is, C-Z-I-O-K.

4 THE COURT: All right.

5 MR. MARTINEZ: I just needed her because that's who
6 Mr. Shumard contacted to -- to conduct a photo lineup. I
7 just wanted her to come and testify to their policy and
8 procedures. Unless there's --

9 THE COURT: You would have to go through the
10 uniform act on the subpoena of out-of-state witnesses.

11 MR. MARTINEZ: I guess -- is there any way --

12 MR. KATA: I'll work on that, Your Honor.

13 THE COURT: All right. Well, the solicitor's
14 informing me they can't get her here. And they -- I order
15 them to do certain things to keep the case moving as far as
16 notifying law enforcement, local law enforcement officers,
17 the lab agents and such to be here because they have
18 contacts within those agencies. But I'm not going to order
19 them to get an out-of-state witness here that does not have
20 any previous notification. A witness has either got the
21 right to appear in court of the state, they live in to
22 contest the materiality that would require their testimony
23 as to whether or not they even have to go.

24 Will you work on that?

25 MR. KATA: I'll work on that. There may be a way

1 for me to accomplish that.

2 THE COURT: All right. Anything further, Mr.
3 Martinez.

4 MR. MARTINEZ: No, sir.

5 THE COURT: All right. Solicitor?

6 MS. CAMPBELL: Your Honor, one thing I'd just like
7 to put on the record, there was one juror that I noticed
8 and other people noticed as well that he was sleeping on
9 multiple occasions. Both in our questioning and the
10 defense questioning. He was the juror that was sitting
11 closest to us on the second row. And I would just note
12 that for the record today.

13 THE COURT: All right. Thank you. That same juror
14 I've noted has been taking notes --

15 MS. CAMPBELL: He does wake up sometimes.

16 THE COURT: -- many times during the course of the
17 trial. I didn't notice it one way or the other. I'll
18 certainly take your word for it as an officer of the Court.

19 Did you notice it, Mr. Kata?

20 MR. KATA: As to the sleeping? Your Honor, I
21 noticed a little bit towards the end. But I did notice him
22 taking a lot of notes too.

23 THE COURT: Yes. Any response to that, Mr.
24 Martinez?

25 MR. MARTINEZ: No, sir.

1 THE COURT: All right. Thank you. Thank you very
2 much.

3 All right. 9:30 Monday morning.

4 (There was a brief recess and then the Court called
5 order.)

6 THE COURT: Bring that young lady around, please,
7 around to the microphone.

8 THE OFFICER: Which one, sir?

9 THE COURT: Bring this young lady in the blue
10 around here.

11 (A lady came forward to the microphone.)

12 THE COURT: Okay. Madam Clerk, place her under
13 oath, please.

14 SHARON MARTINEZ;

15 having been duly sworn, testified as follows:

16 THE COURT: Tell me your name, please.

17 THE WITNESS: Sharon Martinez, Nathan Martinez's
18 mother.

19 THE COURT: Ms. Martinez, what was that exchange
20 just now?

21 THE WITNESS: I was sitting there and I was -- I
22 glanced back and she hollered at me, What is she looking
23 at.

24 THE COURT: Say this again, please.

25 THE WITNESS: She asked me what I was looking at.

1 THE COURT: Who said that?

2 THE WITNESS: The lady that went out after the girl
3 with the blond hair.

4 THE COURT: And what was -- who is that lady?

5 THE WITNESS: She was one of the ladies that was
6 sitting on the back row in the back.

7 THE COURT: Do you know who she was?

8 THE WITNESS: No. And I just asked her what she
9 was looking at. I'm not here to argue with anybody here.
10 I'm just here on behalf of my son.

11 THE COURT: I have no problem with that,
12 Ms. Martinez. If I was on trial for something, I would
13 want my mom here. I understand that. And I like when
14 defendants have family support. It's very important.

15 THE WITNESS: Yes, sir.

16 THE COURT: Support your children.

17 THE WITNESS: Yes, sir.

18 THE COURT: Well, Ms. Martinez, you know, generally
19 as I look out to the right side of the courtroom, most of
20 those individuals up there are either employees of the
21 State or the solicitor's office or friends, or family, or
22 victims. You understand that?

23 THE WITNESS: Yes.

24 THE COURT: And generally when you look out -- I
25 look out to my left, I guess you could call it upper

1 gallery and lower gallery, by the way the architecture is
2 used, I see the defendant. And you've been there.

3 THE WITNESS: Yes, sir.

4 THE COURT: And typically, it's best for those
5 parties not to intermingle or interact in any manner.

6 THE WITNESS: Yes.

7 THE COURT: You understand that?

8 THE WITNESS: Yes, I do. I do. It's just
9 reaction, that's all it was. I just reacted to her.

10 THE COURT: I know sometimes I react before I
11 think.

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: But I hope I do that less and less
14 unless it's something that causes that reaction.

15 THE WITNESS: Yes.

16 THE COURT: I'll be the -- if I identify them I'll
17 speak with the other young lady, but don't have any other
18 interaction with them.

19 THE WITNESS: No, sir.

20 THE COURT: Something innocent could be
21 misconstrued.

22 THE WITNESS: Yes, sir.

23 THE COURT: You understand?

24 THE WITNESS: Yes, sir, I understand.

25 THE COURT: Keep your focus on what your here to

1 focus on. It's very important, on your son.

2 THE WITNESS: Yes, sir.

3 THE COURT: Whether you agree or disagree with what
4 a witness says, don't show any body language or
5 disagreement or agreement. The jury's got a tough enough
6 job.

7 THE WITNESS: It's hard. It's hard. Because I
8 don't know what happened to my son. From day one, since he
9 got here to South Carolina and from when these incidents
10 happened and I'm just -- it's hard for me to -- why is this
11 happening? Why did it happen or if it happened.

12 THE COURT: You understand the jury has a very
13 difficult task?

14 THE WITNESS: Yes.

15 THE COURT: And sometime they look out there and
16 they see somebody nodding their head in a positive manner
17 or nodding their head in the negative manner, you don't
18 know how it affects them, you know, and it takes their
19 focus off the witnesses and that could be a critical piece
20 of testimony for, you don't know what side.

21 THE WITNESS: That's true. But I just hear so much
22 negative from the officers. The officer that took the
23 stand earlier on my son's behalf trying to think he was
24 helping my son and he wasn't. Because I remember the night
25 when all -- when he was arrested and the things that were

1 going on. Until he called me in the morning, he was just
2 hysterical.

3 THE COURT: Perhaps you should not discuss that in
4 open court right now. For other witnesses. Perhaps for no
5 other reason than you're not on the witness stand.

6 THE WITNESS: But I don't know whether they'll call
7 me as a witness.

8 THE COURT: I don't either. I would advise you
9 don't discuss that. Conform your conduct. Conform your
10 conduct.

11 THE WITNESS: I got it.

12 THE COURT: Okay.

13 THE WITNESS: I got it. Thank you.

14 THE COURT: Thank you, Ms. Martinez.

15 THE WITNESS: You're welcome.

16 THE COURT: All right. Court will be in recess
17 until 9:30 Monday morning. Thank you y'all very much.

18 MONDAY, DECEMBER 5, 2016

19 THE COURT: Anything from the defense before we
20 bring in our jury, Mr. Martinez?

21 MR. MARTINEZ: I wanted to discuss, you never gave
22 a curative on the neck -- on my neck tattoo about the --

23 THE COURT: All right. I was going to do that in
24 my closing charge to the jury, but if your question is I
25 do that now, I will do so.

1 Madam Clerk, would you hand me Exhibits 70, 71, and
2 72, please.

3 All right -- I think that's the right numbers.

4 (The exhibits were handed to the Court.)

5 THE COURT: All right. Next.

6 MR. MARTINEZ: Yes, I'd ask for -- I filed a motion
7 to have independent testing of the DNA done since the State
8 was allowed to retest theirs, I would also like the retest
9 the DNA to get my own numbers from the test as well.

10 THE COURT: Is your expert available.

11 MR. KATA: Your Honor, the expert is here in town.

12 THE COURT: All right. Solicitor, can that be
13 arranged?

14 MS. CAMPBELL: I can definitely arrange that they
15 can meet and talk about what can be done and I can make it
16 so they can meet with her.

17 THE COURT: And that was Ms. Grant.

18 MS. CAMPBELL: Ms. Grant and I believe Dr. Amick.

19 THE COURT: And you believe who.

20 MS. CAMPBELL: Dr. Amick actually heads up the
21 whole laboratory system.

22 THE COURT: All right. Let's see if we can get
23 that done, get that accomplished.

24 MS. CAMPBELL: If he can give me a phone number
25 where they can call her or -- to see -- I don't know what

1 she has access to as far as running numbers or anything,
2 but they can definitely inquire of her -- I mean they can't
3 use -- I don't think that they can use -- she can use their
4 laboratory, but we can definitely see what needs to be made
5 available if that can be done.

6 THE COURT: All right. Well, let's see if we can
7 -- give me a report back on that by midday.

8 MS. CAMPBELL: Can I get that information real
9 quick so I can put that in motion.

10 THE COURT: All right. Next, Mr. Martinez?

11 MR. MARTINEZ: That's it, Your Honor.

12 THE COURT: All right. Anything from the State
13 before we bring in our jury?

14 MS. WALKER: Your Honor, I think when we broke on
15 Friday, you were going to rule on whether or not
16 Investigator Bailey could get into the rest of the
17 statement under the rule of completeness.

18 THE COURT: Yes, ma'am, I reviewed -- I reviewed
19 the report and read a number of cases and the part that was
20 read was the third paragraph -- the third paragraph of the
21 third page. I don't think 106 trumps 401 in order to trump
22 403. So I would sustain the defense objection as to
23 testimony, as to that part of the Columbia police report
24 that refers to a statement as to the Lyle issue. So it's
25 not admissible.

1 All right. Anything before I bring in the jury?

2 MS. WALKER: No, sir.

3 THE COURT: Mr. Martinez?

4 MR. MARTINEZ: No, sir.

5 (The jury entered the courtroom at 9:53 a.m.)

6 THE BAILIFF: The jury is seated, Your Honor.

7 THE COURT: We have to have an election, Madam
8 Clerk. If you would put the numbers of our three alternate
9 jurors -- we're going to do this very scientifically, we're
10 going to put them into a cup and let's see who will be
11 promoted to the primary jury.

12 Any objection if the clerk selects our alternates
13 from the cup with the numbers on them, Solicitor?

14 MS. WALKER: No, sir.

15 THE COURT: Mr. Martinez?

16 MR. MARTINEZ: No, sir.

17 (The clerk drew a number out of the cup.)

18 THE COURT: All right. Number 304, if you would
19 please come on as a member of the primary jury. Thank you.
20 Thank you very much.

21 Good morning. I hope y'all had a pleasant weekend.
22 Before we get started, I would like to give you what is
23 known as a curative instruction on some photographs that
24 have been introduced into evidence previously. Photograph
25 Number 70, 71, and 72. This is not a comment on the facts.

Colin D. Bailey - Redirect Examination Continued by Ms. Walker

1 The photographs are photographs that appear to be Mr.
2 Martinez and what appears to be a tattoo on his neck area.
3 It is irrelevant whatever those letters spell. That is not
4 an issue for your consideration or your determination
5 during the deliberations of the guilt or innocence of Mr.
6 Martinez. You give it whatever -- you give the photographs
7 whatever weight and value you deem fit and appropriate.

8 Again, however, whatever word they may spell out,
9 is not relevant; should not even be discussed in the jury
10 room.

11 All right. Thank you. Let's see, we're continuing
12 the trial of the case.

13 I believe Detective Bailey was on the stand.

14 (Detective Bailey returned to the stand.)

15 THE COURT: You're still under oath, Detective
16 Bailey.

17 THE WITNESS: Yes, sir.

18 THE COURT: And I believe this is redirect by the
19 solicitor.

20 Is that right, Solicitor? Is that correct?

21 MS. WALKER: Yes, sir.

22 THE COURT: All right. Solicitor?

23 **REDIRECT EXAMINATION CONTINUED**

24 **BY MS. WALKER:**

25 Q Sir, during your conversation with the defendant,

Colin D. Bailey - Recross Examination by Mr. Martinez

1 did he appear to understand you?

2 A He did.

3 Q Did you have any concerns about speaking with him?

4 A I did not.

5 Q He asked you about corroborating evidence. Don't
6 -- you can't tell me exactly what was said, but did his --
7 did you find anything to refute Ms. Tucker's verbal
8 statement?

9 A I have not found anything to refute her verbal
10 statements.

11 MS. WALKER: Thank you, Your Honor, I have no
12 further questions.

13 THE COURT: Thank you. Thank you, Solicitor.

14 Recross examination, Mr. Martinez?

15 **RECROSS EXAMINATION**

16 BY MR. MARTINEZ:

17 Q You say you can't find anything to refute
18 Ms. Tucker's statement or her testimony; is that correct?

19 A Correct.

20 Q So -- so why is that?

21 MR. MARTINEZ: Well, beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 BY MR. MARTINEZ:

24 Q How -- what corroborates her story? What evidence
25 corroborates her story?

Colin D. Bailey - Recross Examination by Mr. Martinez

1 MS. WALKER: Your Honor, we may have a matter of
2 law.

3 THE COURT: All right, Solicitor.

4 Ladies and gentlemen, step out. Do not discuss the
5 case during this brief recess.

6 (The jury left the courtroom at 9:58 a.m.)

7 THE COURT: Yes, ma'am?

8 MS. WALKER: Your Honor, I think Investigator
9 Bailey is hesitant to answer because the question is, What
10 evidence corroborates Ms. Tucker's story. I think the
11 answer to that question is the defendant's statement and
12 the apology letter that he wrote. So at this point I think
13 that question has opened the door to both of those things
14 coming out before this jury.

15 MR. MARTINEZ: Your Honor, they have clearly
16 shifted the burden to me with their comments. They know
17 that asking him -- stating what -- asking him if there's
18 anything that corroborates or disputes what Ms. Tucker said
19 has clearly shifted the burden because now he's saying no,
20 which he knows is not true. The letter and my statement
21 doesn't even go with what he wrote. The letter doesn't --
22 the letter that I wrote apologized for something I did or
23 didn't do. It says I apologize for what happened. There's
24 no -- in the apology letter it says I did not do that.

25 THE COURT: You ever heard the term, Mr. Martinez,

Colin D. Bailey - Recross Examination by Mr. Martinez

1 pushing the envelope.

2 MR. MARTINEZ: Yes, sir, I have.

3 THE COURT: Do you know what field it comes from?

4 And I'm not trying to question you on your intelligence.

5 You're very intelligent, but do you know what field it
6 comes from.

7 MR. MARTINEZ: Legal?

8 THE COURT: No, sir. It comes from aviation
9 pushing the envelope is pushing the boundaries of space.
10 It's an aviation term and it's been adopted into many other
11 fields, whether it be medicine or scientific research or
12 what have you.

13 You're not only pushing, you're burning the
14 envelope. I allowed Ms. Tucker to testify because of the
15 clear and convincing evidence and the similarities
16 outweighed this similarity; and further the sketch by
17 Ms. Hurshman that appeared in the news media was identified
18 by Ms. Tucker and spurred her to report the incident to the
19 police. They're intertwined.

20 As I understand the testimony, perhaps as I
21 misunderstand the testimony, there's no physical evidence
22 placing you at the scene of the Tucker incident. There's
23 no witness testimony, but the sketch and photographic
24 lineup. If you want to ask this officer that question, you
25 can ask that question -- not now. You can ask it in front

Colin D. Bailey - Recross Examination by Mr. Martinez

1 of the jury. I'm not going to have an in-camera hearing on
2 it. The State objected before the officer responded. So
3 what do you want to do?

4 MR. MARTINEZ: I'm going to have to defend myself
5 against this. I'm going to have to show the jury what he's
6 saying is not the truth. As I said they clearly shifted
7 the burden to me. There's no clear and convincing evidence
8 other than her statement and --

9 THE COURT: It doesn't matter whether they've
10 proven it to you. I'm the gate keeper of the evidence.
11 Quite frankly that's of no moment. If you are to be found
12 guilty, that may be an issue -- that would be an issue for
13 the appellate courts. I mean, I tell the solicitor the
14 same thing. It's not that I'm saying that your opinions or
15 my ruling on the evidence, that you can't hold it. It's
16 not valid and they can hold their opinions on my ruling on
17 the evidence.

18 But that would be an issue for the appellate courts
19 if you were to be found guilty. I told you before I can
20 predict anything but the future. So this is the trial
21 tactic you want to take? And you don't have to discuss
22 your trial tactic with me.

23 MR. MARTINEZ: As I said, they shifted the burden
24 to me where I now have to --

25 THE COURT: No, sir, the burden's not been shifted.

Colin D. Bailey - Recross Examination by Mr. Martinez

1 I have repeatedly told this jury, the burden of proof is on
2 the State. The burden of proof remains on the State to
3 prove you guilty beyond a reasonable doubt. A criminal
4 defendant in South Carolina is never required to prove
5 himself or herself innocent, has no burden of proof
6 whatsoever. It never shifts. Never.

7 MR. MARTINEZ: I have to defend myself for two
8 different incidents in one trial; so therefore -- they can
9 just throw her on there and she can say whatever she wants,
10 and I have to defend myself from that and that's what I
11 have to do. I have to defend my statement. I've had to
12 defend his false statements that don't even match up that
13 he -- I have to defend myself against all that just to
14 show the jury that I'm not guilty of this one, I'm not
15 guilty of the other one as well.

16 THE COURT: Well, you understand the dangers of
17 asking that question?

18 MR. MARTINEZ: I have to ask him that question to
19 show them that my statement doesn't match up with what he's
20 stating.

21 THE COURT: You understand the dangers of asking
22 that question?

23 MR. MARTINEZ: That it's going -- they're going to
24 show my statement.

25 THE COURT: Sir?

Colin D. Bailey - Recross Examination by Mr. Martinez

1 MR. MARTINEZ: That my statement is going to come
2 into questioning. And like I said, I have to show that to
3 show that what he's saying and what she's saying and what I
4 said is not -- it doesn't match up.

5 THE COURT: All right. Anything before I bring the
6 jury back in, Mr. Martinez?

7 MR. MARTINEZ: No, sir.

8 THE COURT: Solicitor?

9 MS. WALKER: No, sir.

10 (The jury entered the courtroom at 10:06 a.m.)

11 THE BAILIFF: Jury is seated, Your Honor.

12 THE COURT: Thank you. Thank you, very much, Mr.
13 Bailiff.

14 All right. Mr. Martinez, you may ask your next
15 question.

16 BY MR. MARTINEZ:

17 Q All right. Mr. Bailey, when did -- when did the
18 Forest Acres police introduce you to me?

19 A The night of -- on April 2nd, 2014.

20 Q At what time did they introduce you to me?

21 A I was introduced to you kind of at the beginning of
22 everything when you first came in and then Investigator
23 Morrison, if you'll remember explained to you if, if you'll
24 remember, at the end of his interview that I had some
25 questions for you as well and I was from a different

Colin D. Bailey - Recross Examination by Mr. Martinez

1 department.

2 Q So you're saying that they introduced you as
3 Investigator Colin D. Bailey from the Columbia Police
4 Department when I first got there?

5 A I believe they introduced me as Investigator
6 Bailey.

7 Q And they didn't say that you was from the Columbia
8 Police Department with a different incident?

9 A I don't recall when we actually brought up the
10 other incident, that there was another incident.

11 Q And in your report --

12 A However, as a reminder, I had some active warrants
13 for you at that time, so it would have made sense that we
14 would explain -- that it would have been explained to you
15 that you had multiple warrants in Forest Acres and in
16 Columbia.

17 Q In your -- your notes, is it true that you state
18 when Forest Acres Police Department had completed their
19 interview they asked -- they asked, or they introduced you
20 and then you asked if you could speak to me about the other
21 incident?

22 A Correct.

23 Q And I said I don't want to speak with you?

24 A You did.

25 Q Did you read me my rights?

Colin D. Bailey - Recross Examination by Mr. Martinez

1 A No. Did I read your rights? No.

2 Q Being as it's an unrelated -- different incident,
3 than the Forest Acres issue, would you not have to read me
4 my rights for a different incident?

5 MS. WALKER: Your Honor, I would object to Mr.
6 Martinez misstating the law.

7 THE COURT: All right. Yes, sir, I would -- yes,
8 ma'am. I would sustain your objection.

9 BY MR. MARTINEZ:

10 Q You stated that there is evidence that supports
11 Ms. Tucker's testimony; is that true?

12 A Yes.

13 Q What would that -- what would that evidence be?

14 A Statements from you.

15 Q And the statements from me states that I -- that I
16 raped her?

17 A It does, yes, sir.

18 Q It does?

19 A It does.

20 Q Where at in my statement does it say that?

21 A You talking about your written or the verbal
22 statement you gave to me? Or are you talking about both?

23 Q The written statement. The -- as I --

24 A Sir, in your written statement, you acknowledged
25 that you did burglarize the home and you were armed with a

Colin D. Bailey - Recross Examination by Mr. Martinez

1 knife when you broke into the home, the Tucker's residence.
2 You also acknowledged that you had sex with the victim in
3 the case, Ms. Tucker.

4 Q Where does it -- okay.

5 MS. WALKER: Your Honor, under the best evidence
6 rule, we would just ask for the investigator to read the
7 entirety of the statement into evidence.

8 MR. MARTINEZ: Yeah.

9 THE COURT: Just a moment.

10 (There was a pause in the proceedings.)

11 THE COURT: That's overruled. You may continue,
12 Mr. Martinez.

13 BY MR. MARTINEZ:

14 Q Can you -- does it say -- at the end of the
15 statement, does it state, is any part of Elexia's statement
16 untrue? Is that correct?

17 A There is a statement in the statement that reads
18 that, yes.

19 Q And it says I don't know or I don't remember and I
20 don't know anything about tying her up or that I forced her
21 or made her leave or that I forced her to have sex with me.
22 I don't remember this.

23 MS. WALKER: Objection, Your Honor. Under the rule
24 of completeness, I would ask that the entirety of the
25 statement now be read.

Colin D. Bailey - Recross Examination by Mr. Martinez

1 THE COURT: The statement hasn't been offered into
2 evidence. If you read -- when a writing or a recorded
3 statement or part thereof is introduced by a party an
4 adverse party may require the introduction at that time of
5 any other part of any other writing of a recorded statement
6 which all in fairness would be considered a contemporaneous
7 witness. He hasn't offered a written statement.

8 Ask your next question, Mr. Martinez.

9 BY MR. MARTINEZ:

10 Q Now does that corroborate with the evidence and
11 with Ms. Tucker's statement and with also what you said?

12 A Well, that particular line you just had me read,
13 you say you don't remember, you don't remember, you don't
14 remember. So yes, that doesn't conflict and it doesn't
15 necessarily corroborate her statement, it's just -- your
16 stating here you don't remember whether or not you, as you
17 said, after reading it, you don't remember whether or not
18 you forced her to have sex with you.

19 Q I said I don't remember or I can't -- I don't know
20 anything about.

21 A Right.

22 Q Okay. And is it not true the reason why I was
23 saying all throughout both of these different statements is
24 that you guys kept asking me if I remember, if I know, do
25 you remember this; do you remember that; do you remember

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1 this. Is that true?

2 A Is what true? I'm sorry, what was that?

3 Q That you -- that your line of questioning, as well
4 as the Forest Acres line of questioning was repeatedly and
5 consistently telling me things that happened that I told
6 you I don't know and I don't remember and you guys kept
7 asking me if I remember this; do you remember that; do you
8 know about that; what do you know about this; do you know
9 that; you remember this; you remember that; you just said
10 you know that; you just told us you know that; you just
11 told us you know that --

12 THE COURT: Now, Mr. Martinez, I'm not tracking.
13 Ask the question. I apologize.

14 MR. MARTINEZ: I'm sorry. But that was the line of
15 questioning that they kept asking me and I told them I
16 don't know, I don't remember, I don't know anything about
17 that.

18 THE WITNESS: There were multiple times, sir, that
19 we would ask, do you remember this and do you remember
20 that. That's simply what we do in law enforcement when we
21 question someone about an incident. During the
22 conversation, sir, there was quite a number of things that
23 you remembered and yes, there were some things you said you
24 did remember.

25 BY MR. MARTINEZ:

Colin D. Bailey - Recross Examination by Mr. Martinez

1 Q Okay. So like I said, what you state in your
2 report and what is stated in the statement does not match
3 up; is that correct?

4 A That's not correct.

5 Q Where -- what's not correct about that?

6 A That the -- that what I have written and what you
7 wrote in the statement don't conflict.

8 Q Where does it say that I burglarized the house?

9 A In what part? My report or the statement?

10 Q In the statement.

11 A The first line that you wrote.

12 (There was a pause in the proceedings.)

13 THE WITNESS: The first line that you wrote.

14 BY MR. MARTINEZ:

15 Q That's not a burglary, sir. How was that a
16 burglary?

17 A Well, the question that I wrote was -- was
18 regarding into Mr. Tucker's house. That would be the
19 victim, Elexia Tucker's father. You referred to his house
20 as Mr. Tucker's house and you responded that you went there
21 to rob him.

22 Q You referred to his house?

23 A So you wrote -- yeah, so you wrote, I wrote house
24 and you wrote rob; hence a burglary.

25 Q Where at on that first line in your questioning

Colin D. Bailey - Recross Examination by Mr. Martinez

1 does it say house?

2 A At the very end where it says Q. At the very end
3 of the sentence it says house.

4 Q That says life. Can you understand why she was in
5 fare for her life?

6 A No, no, I'm -- sir, I'm on page 1.

7 Q Why did you go to Ms. Tucker's house. Okay. So
8 where does it say that I went there -- that I burglarized
9 his house for? There's no entry -- it didn't say that I
10 entered the house by unlocked means. It doesn't say I
11 forced my way into the house. It doesn't say that --

12 THE COURT: Step out, please, ladies and gentlemen.
13 Do not discuss the case.

14 (The jury left the courtroom at 10:24 a.m.)

15 THE COURT: Mr. Martinez, entering into a residence
16 without consent and with the intent to commit a crime
17 therein is burglary. There has to be no forcible entry.
18 An entry into a residence without consent with the intent
19 to commit a crime is burglary. Don't misstate the law
20 again.

21 MR. MARTINEZ: Your Honor --

22 THE COURT: Sir.

23 MR. MARTINEZ: I didn't enter the house. I know
24 the people. They let me in the house.

25 THE COURT: Well, how did you go, get transported

Colin D. Bailey - Recross Examination by Mr. Martinez

1 in there?

2 MR. MARTINEZ: They opened the door and let me in.
3 And then -- I never said that I went there -- I said that
4 the voices in my head told me to go rob him. I didn't say
5 that I went there to rob him. I said the voices told me to
6 go rob him.

7 THE COURT: You're not the one testifying.
8 Detective Bailey is.

9 MR. MARTINEZ: That's what I'm saying.. He's
10 misrepresenting the facts. He's misrepresenting what
11 happened and he's sitting here making his own version of it
12 just like he did in his report. And now he's trying to
13 misrepresent the facts.

14 THE COURT: Mark both his report --
15 You want his report and his statement in evidence,
16 Mr. Martinez?

17 MR. MARTINEZ: If I do that, it's got the first
18 incident in there.

19 THE COURT: Sir?

20 MR. MARTINEZ: It's got the first incident in
21 there. I can't do that.

22 THE COURT: Well you can't continue to question him
23 -- you can't continue the cherry pick the statement.

24 (There was a pause in the proceedings.)

25 THE COURT: All right. In a closer reading of 106

Colin D. Bailey - Recross Examination by Mr. Martinez

1 and State versus Jackson, 265 South Carolina 278, which
2 indicates if part of the conversation is put into evidence
3 an adverse party is entitled to prove the remainder of the
4 conversation.

5 The statement given to the Columbia Police
6 Department, based on the extended questioning by Mr.
7 Martinez is in evidence.

8 All right. Defense next number, 24?

9 THE COURT REPORTER: It's already marked for
10 State's 107, for --

11 THE COURT: It's already marked for what?

12 THE COURT REPORTER: State's 107.

13 THE COURT: All right. Mark it for State's 107 and
14 defense next.

15 THE COURT REPORTER: It's defense 24, Your Honor.

16 THE COURT: Bring us our jury, please.

17 (The jury entered the courtroom at 10:30 a.m.)

18 THE BAILIFF: Jury is seated, Your Honor.

19 THE COURT: Thank you. Thank you very much.

20 Mr. Martinez, you may ask your next question.

21 BY MR. MARTINEZ:

22 Q Did I not tell you about Mike -- it turned out
23 later to be Mike Moore, but there was individuals in the
24 living room?

25 A You did, yes, sir.

Colin D. Bailey - Recross Examination by Mr. Martinez

1 Q And what did -- did he call you back when you tried
2 to contact him?

3 A He did not, sir.

4 Q When you questioned me, did I not tell you that I
5 was let into the house? That I know them?

6 A No, you did say that you were familiar with them.
7 I honestly, in talking to you, I didn't completely -- I
8 don't think we completely hashed out what your relationship
9 was with the Tuckers and you never said anyone let you into
10 the house.

11 Q So you didn't already know beforehand that I knew
12 them?

13 A Oh, I did. I did know that there was -- that you
14 did know them, yes, sir. I'm just talking about your --
15 our conversation. So the information I gathered from you,
16 I never -- I never gathered from you what the relationship
17 was beyond knowing them.

18 Q And I never told you that I know them and that we
19 have like a friendship?

20 A No, I don't think so, no, sir.

21 MR. MARTINEZ: No further questions, Your Honor.

22 THE COURT: Thank you. Thank you very much.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: All right. Solicitor, you may call
25 your next witness.

Russell Shumard - Direct Examination by Ms. Walker

1 MS. WALKER: The State calls Investigator Shumard.

2 RUSSELL SHUMARD,

3 having been duly sworn, testified as follows:

4 THE CLERK: Please have a seat. State your full
5 name for the record.

6 THE WITNESS: Lieutenant Russell Shumard, Forest
7 Acres Police.

8 **DIRECT EXAMINATION**

9 BY MS. WALKER:

10 Q Sir, where are you currently employed?

11 A At the city of Forest Acres Police Department.

12 Q And how long have you been with Forest Acres?

13 A 23 years.

14 Q And how long have you been -- I guess, what are
15 your roles -- what's your role there now?

16 A My role there now is I'm the lieutenant of
17 investigations. I supervise the investigative unit and the
18 victim advocate at the Forest Acres Police Department.

19 Q And how long have you been in that role?

20 A Since Labor Day 2013.

21 Q And on March 27th, were you aware of a home
22 invasion that had taken place in Forest Acres?

23 A I was.

24 Q And how did you become aware of that?

25 A I can't remember if I was in my office or if was

Russell Shumard - Direct Examination by Ms. Walker

1 sitting there in dispatch when the call had gone out. And
2 knowing that I was the investigator on call, I knew it
3 would be my responsibility to respond, so I went ahead and
4 started to the location.

5 Q Tell me what you observed when you got to the
6 incident location?

7 A I was met by Officer Harrell, Ms. Hurshman, the
8 victim, her daughter L.H. , her daughter D.H. , and
9 Mr. Hurshman, the husband.

10 Q And the incident location was here in Richland
11 County?

12 A Yes, it was [REDACTED] in the City of
13 Forest Acres.

14 Q And when you got to the residence, did you speak
15 with Ms. Hurshman, Briona Hurshman?

16 A I did, yeah. She was -- she was very emotional,
17 distraught, crying.

18 Q And did you speak with L.H. ?

19 A I did, yes, ma'am.

20 Q What about D.H. , the youngest child?

21 A Just -- I didn't go into any real deep discussion
22 with her. I just made sure she was okay through verifying
23 with the parents that she is okay.

24 Q And why was it that you didn't have a more in-depth
25 conversation with D.H. ?

Russell Shumard - Direct Examination by Ms. Walker

1 A Because at the time she was 5 years old and when
2 you have a young child as a victim, we usually leave that
3 interview up to a forensic interview to conduct that
4 interview to get a statement.

5 Q And do you have any training, any specialized
6 training like a forensic -- like who -- if you were
7 specialized in speaking with children, do you have that
8 same type of training?

9 A I do not.

10 Q Did you feel it would be best for them to speak
11 with her than to you?

12 A Absolutely.

13 Q Was Investigator Morrison on the scene already when
14 you got there?

15 A He was not. I had -- once I learned the
16 circumstances, I knew that this would be, you know, at
17 least a two person to get started on this. I called him
18 and asked him to respond.

19 Q And did he do so?

20 A He did.

21 Q What was the purpose of you getting him to respond
22 to the scene?

23 A His primary roll was collecting the evidence at the
24 scene.

25 Q And once he was on the scene, did you make

Russell Shumard - Direct Examination by Ms. Walker

1 arrangements for Briona Hurshman to be transported to the
2 hospital?

3 A Yes.

4 Q What was the purpose of that?

5 A That was to get the forensic rape evidence
6 collection procedure done. I had asked -- I asked my
7 victim advocate to assist in that and she took her to the
8 hospital to get that done.

9 Q While she was at the hospital, what were you doing?

10 A While she was at the hospital, I was in the pro --
11 I collected a written statement from the daughter, L.H.
12 And I also started to reach out for some resources to give
13 us some assistance, mainly the forensic artist, Ms. Deborah
14 Goff.

15 Q And which agency is she with?

16 A She's with the South Carolina Law Enforcement
17 Division.

18 Q And were you able to get a written statement from
19 L.H. ?

20 A Yes, ma'am.

21 Q And were you able to have investigator Goff and
22 Briona Hurshman sit down to get the sketch?

23 A Yes, ma'am.

24 Q What -- why did you think it important to get a
25 sketch at this point?

Russell Shumard - Direct Examination by Ms. Walker

1 A Well, early on when speaking to Ms. Hurshman, she'd
2 indicated that she, of course, obviously, got a look at the
3 individual and I inquired of her, I said -- I inquired with
4 her if she could provide enough information to render a
5 composite drawing and she said that she believed that she
6 could. Arrangements were made with the artist to come at
7 an appropriate time when she was finished at the hospital.
8 And they met together for, I believe, 3 hours. At which
9 time it was just the artist and Ms. Hurshman and they came
10 up with the drawing.

11 Q And that's State's Exhibit Number 89?

12 A That's it, yes, ma'am.

13 Q And what, if anything did you do with this sketch?

14 A I got with my -- during this whole day I was
15 briefing the chief of police on this incident and once I
16 got the composite, I met with him and he compiled a news
17 release to send it out public and get some information.

18 I then e-mailed the composite and the news release
19 to the media and also to our partners at the different
20 agencies in the Columbia area.

21 Q At this point, did you know what was stolen from
22 Ms. Hurshman during this home invasion and rape?

23 A Yes. She knew that something was missing out of
24 her jewelry box or that he had reached into her jewelry
25 box. Her debit card, Bank of America, I believe, debit

Russell Shumard -- Direct Examination by Ms. Walker

1 card and a few dollars in cash.

2 Q Did you have any investigators contact Bank of
3 America so that they could monitor Ms. Hurshman's account?

4 A Actually, I did that myself. I reached out to Bank
5 of America to get them to watch the account to see if there
6 was any unauthorized transactions and we could use that to
7 help apprehend the suspect or identify the suspect.

8 Q And was there ever any activity on that Bank of
9 America account?

10 A There was not.

11 Q After Ms. Hurshman sat down and spoke with Agent
12 Goff with SLED to render that sketch, what happened?

13 A She met with Investigator Morrison and then at that
14 time I think we obtained a -- Investigator Morrison
15 obtained a written statement from her.

16 Q And at that point in time did you know the -- had
17 y'all been able to locate and identify the rings that were
18 taken from Ms. Hurshman?

19 A Not at that time, no. That was still -- we were
20 still on the evening, late afternoon, evening of the 27th
21 when all this is occurring, all this -- the processing and
22 going through what I just testified to.

23 Q On the evening of the 27th, while you were at home,
24 did you get a significant break in the case?

25 A Yes, ma'am.

Russell Shumard - Direct Examination by Ms. Walker

1 Q Tell me about that.

2 A Once I got the release sent out to the media,
3 e-mailed, there was no other followups available to us at
4 that time. When I did get home, I got a phone call from an
5 investigator at the sheriff's department at Richland County
6 and he gave me a name.

7 Q Is that Investigator Isenhoward?

8 A Kevin Isenhoward.

9 Q Don't tell me what he said, but did you have a name
10 at that point?

11 A Yes, ma'am. He -- yes, ma'am.

12 Q And were you able to look at photos of the name
13 that was given to you?

14 A Yes, I did some research there at home on the
15 internet and went back to the office to do additional and
16 found some additional photographs.

17 Q Okay. I want to take your attention to the morning
18 of March 28th of 2014. At that point in time, I guess, had
19 this sketch been released to the media?

20 A Yes, ma'am.

21 Q And did you begin to receive phone calls about that
22 sketch?

23 A Yes, we did.

24 Q Tell me who called you?

25 A Initially an Ashley Culpepper had reached out and

Russell Shumard - Direct Examination by Ms. Walker

1 called Crime Stoppers. Investigator Morrison had received
2 the Crime Stoppers tip. In addition to calling Crime
3 Stoppers, I believe Ms. Culpepper called the department and
4 we had made arrangements to get her to come to headquarters
5 as soon as she could to do additional followup on this.

6 Q And did Ms. McRae, Charlisa McRae also make contact
7 with the police department?

8 A Yes, but in what manner and who she spoke to
9 exactly, I can't remember. But I asked other investigators
10 to conduct that followup with Ms. McRae.

11 Q And Aleah Foster, who is Aleah Foster?

12 A Ms. Foster was a neighbor of --

13 MR. MARTINEZ: Objection, Your Honor, hearsay.

14 THE COURT: Overruled.

15 BY MS. WALKER:

16 Q You may answer the question.

17 A I believe Foster is a neighbor of Mr. Martinez.

18 THE COURT: Of whose?

19 THE WITNESS: Mr. Martinez.

20 THE COURT: All right. Thank you.

21 BY MS. WALKER:

22 Q And did she make contact with you after seeing the
23 sketch?

24 A She did.

25 Q Did you also make contact with SLED in terms of

Russell Shumard - Direct Examination by Ms. Walker

1 formulating a photo lineup?

2 A Yes, ma'am.

3 Q And was that done?

4 A It was. It was done via e-mail.

5 Q And did you show that photo lineup to both L.H.
6 and Briona Hurshman?

7 A I did, yes, ma'am.

8 Q And were they able to pick anyone out of that
9 lineup?

10 A They did not.

11 Q In your experience as an investigator, is it
12 uncommon for the actual victims of a crime not to be able
13 to pick someone out of a photo lineup?

14 A It happens from time to time. There's a lot of
15 variables that have to be considered to include the
16 magnitude of the -- the magnitude of the serious traumatic
17 event. Sometimes victims do successfully identify someone
18 in a lineup, sometimes they don't.

19 Q Did you -- were there -- did you become aware that
20 Ms. Hurshman had seen other pictures of Nathan Martinez and
21 was able to identify him that way?

22 A At some point, yes.

23 Q Was there another interview of Ms. Hurshman done?
24 At least another conversation you had with Ms. Hurshman,
25 was she able -- were you able to locate the rings that were

Russell Shumard - Direct Examination by Ms. Walker

1 stolen from her?

2 A Yeah. When -- initially that morning of the 28th
3 when the investigators came in, Investigator Morrison did
4 the research and found that Mr. Martinez had conducted a
5 transaction at the pawnshop. He went on that followup with
6 the pawnshop, did that followup and while I was speaking
7 with Ms. Hurshman -- the Hurshmans that next day on the
8 28th, I was still with her, with them and Mr. Morrison was
9 at the pawnshop. He subsequently -- I asked him to send me
10 pictures of the rings.

11 Q And did he do so?

12 A He did.

13 Q And did you show that picture to Mr. And
14 Ms. Hurshman?

15 A I did.

16 Q Tell me what happened?

17 A They immediately recognized them as belonging -- as
18 their items.

19 Q At that point had you been able to locate Nathan
20 Martinez yet?

21 A No.

22 Q Tell me what you did next, sir.

23 A Let's see by then, we had -- some time after that
24 met with Ms. Culpepper, showed her the lineup.

25 Q And was she able to identify someone?

Russell Shumard - Direct Examination by Ms. Walker

1 A She was able to identify the defendant, Mr.
2 Martinez, in the lineup. At -- prior, the day prior to
3 showing that lineup I had gathered a written statement from
4 her and at some point during this day we obtained a
5 warrant.

6 Q And that was on March 30th that you got warrants?

7 A Yes, ma'am, I believe so.

8 Q I'm sorry, if you've got -- the initial warrants on
9 March 28th and then additional warrants on March 30th; is
10 that correct?

11 A I believe that's correct.

12 Q Once you had the warrants on March 30th of 2014, on
13 March 31st of 2014, did your investigation continue?

14 A It did. Around that time on the 31st I had reached
15 out to the Fugitive Task Force, which is comprised of
16 Richland County Deputies, U.S. Marshals, State Law
17 Enforcement Division. I reached out for their assistance
18 to utilize them in an attempt to locate and apprehend Mr.
19 Martinez.

20 Q Before doing that, did you make contact with
21 Sparkleberry Hill Apartment Complex?

22 A Yes. That was a telephone call I believe in which
23 it was -- we were trying to determine had she seen Mr.
24 Martinez.

25 Q You can't tell me what she said, but what was the

Russell Shumard - Direct Examination by Ms. Walker

1 purpose of making contact with Sparkleberry Hill?

2 A To see, number one, does he still live there and
3 has he been seen in the area.

4 Q And then, you said you made contact with the
5 Fugitive Task Force to get them to help you locate Mr.
6 Martinez?

7 A Yes, ma'am.

8 Q And did you -- you can't tell me what Warren
9 Cavanaugh said, but did he assist you in locating Nathan
10 Martinez?

11 A He did.

12 Q On April 1st, was the search for Nathan Martinez
13 still ongoing?

14 A Yes, it was. It was still ongoing. Attempts were
15 being made to apprehend and approximately 1:30 that
16 morning --

17 Q The following morning? The morning of the 2nd?

18 A Yes. It was that morning I learned of his
19 apprehension by Mr. Cavanaugh.

20 Q Once you learned that Mr. Martinez had been
21 located, did you -- what did you do?

22 A I had instructed Cavanaugh, Mr. Cavanaugh to bring
23 Mr. Martinez to our headquarters where he could be properly
24 served with the warrants that we had and also so we could
25 conduct an initial followup and hopefully obtain a

Russell Shumard - Direct Examination by Ms. Walker

1 statement. We always want to try with a case of this
2 magnitude to get a statement and talk to the individual as
3 soon as we can. And that's part of the protocol, to serve
4 the warrants and to see, number one, is he willing to speak
5 with us; and number two, was he willing to cooperate in the
6 investigation.

7 Q And did you make contact with Nathan Martinez on
8 the morning of April 2nd?

9 A Yes, ma'am.

10 Q Before speaking to him, about what he'd done, did
11 you read him his rights?

12 A Mr. Morrison filled out an advise of rights form
13 and read the advisement to Mr. Martinez. I was present as
14 well as Investigator Bailey with the Columbia Police
15 Department.

16 Q While y'all were speaking to him, did anyone
17 threaten him?

18 A Not at all.

19 Q Did anyone tell him that he had to speak with law
20 enforcement?

21 A No.

22 Q Was he abused or neglected or in any way
23 mistreated?

24 A Not the least little bit, no.

25 Q And, in fact, on State's Exhibit Number 41, he was

Russell Shumard - Direct Examination by Ms. Walker

1 advised of his rights, initialed, and then waived them?

2 A That is correct.

3 Q When you were speaking to him did he seem to
4 understand the conversation that y'all were having?

5 A He did, he did.

6 Q And did he give a statement to law enforcement?

7 A Yes, ma'am, he did. A question and answer
8 statement.

9 Q And that's the statement that Investigator Morrison
10 read last week?

11 A That's correct.

12 Q In addition to giving that statement to law
13 enforcement, did he also, regarding the Forest Acres
14 incident, did he also give a statement regarding the
15 Columbia Police Department incident?

16 A Yes.

17 Q I want to show you what's been marked as State's
18 Exhibit Number 107.

19 MS. WALKER: Permission to publish, Your Honor.

20 THE COURT: Yes, ma'am.

21 THE WITNESS: Yes, ma'am, this is a statement, it
22 looks like a question, answer statement between
23 Investigator Bailey and Mr. Martinez.

24 MS. WALKER: And this was taken after y'all read
25 the --

Russell Shumard - Direct Examination by Ms. Walker

1 MR. MARTINEZ: Objection, Your Honor. Rule 403.

2 THE COURT: You have questioned extensively,

3 Detective Bailey on this particular statement, Mr.

4 Martinez. You can't have it both ways.

5 MR. MARTINEZ: All right.

6 THE COURT: I tried to warn you in that regard.

7 Thank you, Mr. Martinez.

8 You may continue, Investigator.

9 THE WITNESS: Yes, sir.

10 BY MS. WALKER:

11 Q This was after he'd been advised and waived his
12 rights?

13 A Correct. This is the statement that Mr. --
14 Investigator Bailey had taken.

15 Q Will you please read the statement to the jury?

16 THE COURT: Step out, please, momentarily, ladies
17 and gentlemen.

18 (The jury left the courtroom at 10:53 a.m.)

19 THE COURT: Although Mr. Martinez has not taken the
20 stand except in his -- except in in-camera on the Jackson
21 versus Denno as to the Forest Acres Police Department, I
22 have concerns that there has not yet been a Jackson versus
23 Denno as to this, although it's in evidence.

24 There's a case State versus Victor where the
25 defendant never questioned the voluntariness of the

Russell Shumard - Direct Examination In Camera by Ms. Walker

1 statement until such time as he took the stand.

2 So prior to publication, I think it would be
3 prudent for me to take up a Jackson versus Denno hearing as
4 to the Columbia Police Department statement.

5 MS. WALKER: Okay. May I proceed with that, Your
6 Honor.

7 THE COURT: Yes, ma'am, you may.

8 **JACKSON VERSUS DENNO HEARING**

9 **DIRECT EXAMINATION IN CAMERA**

10 BY MS. WALKER:

11 Q Were you present during the questioning of the
12 defendant on the early morning hours of April 2nd, 2014.

13 A Off and on, in and out of the office. That task
14 was basically left up to Investigator Bailey. That's the
15 Columbia Police Department case that we -- we really had
16 limited knowledge about --

17 Q Were you present when the defendant was read his
18 rights?

19 A Yes.

20 Q Can you please -- I think this has been entered
21 into evidence, it's State's Exhibit Number, I think it's
22 41. Is this a Forest Acres Police Department advise of
23 rights?

24 A Yes, it is.

25 Q Can you please publish that for the judge. Read it

Russell Shumard - Direct Examination In Camera by Ms. Walker

1 for the judge?

2 A Advisement -- Forest Acres Police Department advise
3 of rights. Name Nathan Daniel Martinez; Location, FAPD;
4 Address, [REDACTED] Charleston Drive; Date, 4/2/2014; Time 0220;
5 City of Columbia, South Carolina, Zip 29229. Mr.
6 Martinez, social security Number [REDACTED]; date of birth
7 [REDACTED]/79.

8 Q Slow down.

9 A I'm sorry. State of South Carolina Driver's
10 License Number [REDACTED] --

11 Q You don't -- did you -- was he read his rights?

12 A He was then read his rights after taking this
13 information -- after this information was filled out.

14 Before we ask you any questions, you must
15 understand your rights. You have the right to remain
16 silent.

17 Q And how did he indicate that he understood that
18 right?

19 A He put his initials beside each of these statements
20 on the line before the sentence.

21 Q And on State's Exhibit Number 41, the initials, are
22 those -- did Nathan Martinez write that or did y'all write
23 that?

24 A He put his initials on each statement, on each
25 line.

Russell Shumard - Direct Examination In Camera by Ms. Walker

1 Q Okay.

2 A Anything you say, can and will be used against you
3 in court, his initials. The next line: You have the right
4 to have a lawyer to consult with you before asked any
5 questions. He initialed that.

6 The next thing -- the next line: If you cannot
7 afford a lawyer, one will be provided for you before any
8 questioning if you wish, at no cost to you. It is
9 initialed then.

10 And the last line: If you decide to answer
11 questions now without a lawyer present, you will still have
12 the right to stop answering questions at any time. You
13 also have the right to stop answering questions at any time
14 until you talk to a lawyer and his initials again and at
15 the bottom his waiver. I have read this statement of my
16 rights and I completely understand my rights. I am willing
17 to make a statement and answer questions at this time
18 without a lawyer present. No promises have been made to
19 me, no threats, pressure, coercion of any kind has been
20 used against me. I know and understand what I am doing by
21 waiving my rights. Signed, Nathan Martinez with his
22 printed name underneath it; witnessed by Investigator
23 Morrison of the Forest Acres Police Department; and a note
24 here two years of college, 2004.

25 Q And did you guys force him to sign this waiver of

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 rights?

2 A We did not.

3 Q Did you coerce him to sign the waiver of rights?

4 A No, ma'am.

5 Q Did you make him any promises in exchange for
6 signing the waiver of rights?

7 A No.

8 Q And at that point he gave a statement to Forest
9 Acres concerning the Forest Acres accident?

10 A Correct.

11 Q And then later with you in and out of the room, he
12 gave a statement to the Columbia Police Department
13 regarding Columbia Police Department's incident?

14 A Yes, ma'am.

15 MS. WALKER: Your Honor, no other questions from
16 this witness.

17 THE COURT: Thank you, solicitor.

18 Mr. Martinez, do you have questions of Lieutenant
19 Shumard as to Jackson versus Denno, the voluntariness of
20 your statement given 2 April '14 to Detective Colin Bailey.

21 MR. MARTINEZ: Yes, Your Honor.

22 THE COURT: All right.

23 **CROSS-EXAMINATION IN CAMERA**

24 **BY MR. MARTINEZ:**

25 Q During the questioning from -- okay. You said that

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 I signed the waiver voluntarily, correct?

2 A Correct.

3 Q What was I signing the waiver for?

4 A To waive your rights.

5 Q Did you explain to me that I was there for a
6 specific reason?

7 A Well, you were there because you were under arrest
8 and we had warrants for you. And I believe that message
9 may have been conveyed to you that we needed to speak, but
10 that before we could speak with you regarding the incident
11 that you would have the right to sign and speak to us or
12 you could remain silent.

13 Q So I didn't -- I didn't agree to go to your police
14 station and talk to you; is that correct?

15 A Well, that's a matter of procedure. We had
16 warrants for you and properly -- to properly serve those
17 warrants, you have to be brought to headquarters. You were
18 under arrest. You were seized from any movement to go
19 anywhere you please. We had valid warrants for you and
20 that's why we brought you to headquarters.

21 Q I was supposed to be brought -- I was supposed to
22 be taken to jail and arrested and arraigned and all that
23 procedure right there, correct.

24 A You were already under arrest. Again, you were
25 brought to headquarters, to our headquarters so that we

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 could serve the warrants properly to you. By serving
2 warrants, it means that we read them and give you a copy
3 and also to speak to you about this incident.

4 Q And -- okay.. But I've never agreed to -- I never
5 voluntarily of my own free will wanted to go to your police
6 station to speak to you. I never said I want to talk to
7 you guys. I never wanted -- I never told the police I want
8 to come to your police station voluntarily, intelligently,
9 make a decision. You guys made that decision for me
10 beforehand; is that correct?

11 A No, you were -- you were -- we were -- you were
12 under arrest. When you're under arrest, you don't have a
13 right to go wherever you want to. We had asked them to
14 bring you to headquarters to serve the warrants, to see if
15 you wanted to cooperate and talk with us. Which after
16 advising you of your rights you did speak to us
17 voluntarily.

18 As far as the conversation with you and whoever
19 brought you to headquarters, I wasn't present for that.

20 Q Okay. Is it true that two days prior to me being
21 arrested, you'd already had it arranged for me to be
22 transported to your jail?

23 A Two days before?

24 Q Yeah.

25 A I'm not sure. Two days before the 2nd would be the

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 31st right? Is that what you're asking me?

2 Q That's when you contacted Warren Cavanaugh?

3 A Correct.

4 Q And you told him as soon as you -- as they had me
5 that you were going to send a car, day or night, to go and
6 get me?

7 A Either for them to bring you to headquarters or for
8 us to send one of our units to your location and bring you
9 in.

10 Q Okay. So does that sound voluntarily?

11 MS. WALKER: Your Honor, I would object. It's not
12 about whether he voluntarily was arrested, it's about
13 whether or not he voluntarily gave the statement.

14 MR. MARTINEZ: I didn't voluntarily make a
15 statement. Officers knew --

16 THE COURT: You may ask your next question.

17 BY MR. MARTINEZ:

18 Q You guys already had the paperwork filled out
19 before I ever got there; is that correct?

20 A Which paperwork?

21 Q The -- the waiver.

22 A I believe Investigator Morrison filled that out
23 just prior to interviewing you. Just prior to you waiving
24 it.

25 Q And you testified before that you told me why I was

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 there prior to me signing the waiver; is that correct?

2 A Repeat the question.

3 Q Before I signed that waiver, I knew what I was
4 signing the waiver for?

5 A We told you you were under arrest. This is kind of
6 -- I can't remember exactly the words I said, but it's
7 customary to tell someone that they're under arrest and
8 before we talk to you, we need to read this to you and if
9 you agree to speak with us, you have to sign.

10 Q And I just -- I just signed it?

11 A Yes, sir.

12 Q Okay. And at any time during the giving of this
13 statement, did it seem like I was suffering from mental
14 illness?

15 A You appeared to be tired. You appeared to be kind
16 of drained; however, eager to speak with us.

17 Q I was eager to speak with you guys about microchips
18 implanted inside my head?

19 A Yes, sir.

20 Q And as if your guy's statement when you're writing
21 stuff, you're writing stuff about, I guess whatever you
22 guys claimed to happen and when I would write something, it
23 would be about microchips being implanted inside my head?

24 A That's what you wrote, yes, sir.

25 Q Is it true that it took all three of you guys to

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 keep me on topic? All three officers to keep me on topic
2 because the only thing I wanted to speak about was
3 microchips being implanted inside my head?

4 A If I remember right, after we asked you the initial
5 questions on that form, we went through all that and then
6 at the end you went back and elaborated on specific
7 questions pertaining to these chips inside your head. As
8 far as having additional people present, being that this is
9 a major case of a violent nature, it's customary and pretty
10 much procedure to have additional investigators present to
11 conduct the interview and to -- so that that way when
12 things get refuted, we have additional investigators to
13 testify or to say that, yeah, I was there and -- it's just
14 additional people.

15 Q Why was you guys not recording it? Recording the
16 interrogation?

17 A Well, we don't have -- at the Forest Acres Police
18 Department, we don't necessarily have a procedure in place
19 or a policy in reference to recording statements so we
20 didn't do it.

21 Q You guys had an officer there that had a recording
22 device present.

23 A I don't know if he did or not.

24 Q Wouldn't it make sense -- okay. You had other
25 officers prior to you even meeting me, including the

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 officer that that gave you my name that same night. He
2 told you that I suffer from mental health issues, right?

3 A Which officer?

4 Q Kevin Isenhoward?

5 A Well, I didn't speak to Isenhoward that night that
6 we apprehended you.

7 Q No, you spoke with him the first night that this
8 alleged incident occurred?

9 A Correct.

10 Q And he told you that I suffered from mental health
11 issues. He told you I was crazy.

12 A He said something along those lines, yes, sir.

13 Q You told other officers the same thing?

14 A I'm sorry?

15 Q Other officers told you the same thing; is that
16 correct?

17 A Yes, other Richland County officers, yes. Said
18 kind of the same thing, that you had issues, that they --
19 yes, sir, that you had issues of some sort.

20 Q So you knew this, correct?

21 A That you had an issue or an alleged issue.

22 Q You knew that I suffered from mental illness or
23 even alleged mental illness directly bears along with the
24 -- directly is from the police.

25 A What is your question? I --

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 Q Was you aware that I suffer from a mental illness
2 that directly is related from -- and my symptoms come from
3 police -- police activity?

4 A The officers indicated, you know, he made these
5 statements, but at that time we had not seen any mental
6 health reports or doctor's reports about any kind of
7 specific diagnosis. Some doctors may have said that you
8 were diagnosed, but I never saw a report from any doctor in
9 reference to your mental health.

10 Q Okay. But you was aware because we discussed it
11 prior to me signing my waiver any way?

12 A I believe so. I believe you said something about
13 that, yes.

14 Q And you told me -- is it not true that you told me
15 that you and Mr. Morrison would help me get medical
16 attention?

17 A We did ask you if you wanted medical attention
18 right then and there and I believe you said no because we
19 didn't call anybody for you.

20 Q I said I needed medical attention to remove these
21 microchips and that's what I had been looking for, that I'd
22 been going to the hospital, I'd been going to the police,
23 I'd been looking for help to have these microchips removed.

24 A Okay.

25 Q And did you guys not tell me that you guys were

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 going to help me get the my -- help me get medical
2 attention to get this done?

3 A I believe when we met, what we had said is that we
4 would document what you said which was in your statement
5 and surely that would get somebody's attention whether it
6 was the solicitor's office or the probate court of whoever.

7 Q So you --

8 A Because you're the only one that can say to a
9 medical professional, I need some medical help. I'm just
10 -- I mean I can't force you to get help when you make those
11 statements. That's up to you to reach out and say I need
12 some medical help for this condition.

13 Q But I told you, I told all of you guys -- while all
14 of you were present, I told you I've already been through
15 that, that I had been going to the police, that I'd been
16 seeking help. And you and Mr. Morrison, did you guys not
17 tell me that if I speak with you that you guys would help
18 me get medical attention, that you guys would speak --

19 A That was not a condition of you waiving your
20 rights.

21 Q That was not an agreement that you guys made that
22 you guys would speak to the solicitor's office, you guys
23 would take pictures of behind my ear to corroborate what
24 I'm saying and to help me get assistance, medical
25 assistance?

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 A That was not part of the conversation. As far as
2 here, read this, sign this, give us a confession and we'll
3 give you help, no, that was not the process. That was not
4 any part of the conversation. In other words, we didn't
5 promise you, yes, we'll give you medical help if you give
6 us a statement. I mean that wasn't the conversation. You
7 said that -- we said that we would certainly send that
8 information along to the proper people.

9 Q So you never -- you never said that you would --
10 that you was going -- you and Investigator Morrison was
11 going to help me get medical attention?

12 A I believe the content was that we would be sure and
13 let somebody know that you had an issue.

14 Q And did you do that?

15 A No, sir. I didn't.

16 Q You stated that -- okay. What was -- what was the
17 topic of the conversation during the giving of this -- this
18 statement?

19 A Which one, sir.

20 Q Both of them?

21 A The topic of the conversation?

22 Q Yes, my topic. What was I talking about when you
23 guys were all three talking about whatever at the same
24 time?

25 A The talking was the incident.

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 Q So you're saying I was talking about an incident?

2 A Correct.

3 Q So how come all throughout these statements, all
4 I'm talking about is microchips and with the voices and all
5 this stuff they're telling know do?

6 A I believe in the Forest Acres statement you
7 elaborated on two questions --

8 Q And the --

9 A -- then after that, then everything was stuff
10 pertaining to the incident.

11 Q And all those are written by you?

12 A Correct.

13 Q And everything that was written by me was
14 pertaining to microchips being implanted, me needing
15 medical attention.

16 A I believe so.

17 Q So at that time, you guys were speaking about these
18 incidents and I'm speaking about microchips. You guys as
19 -- and it's taking all three of you guys -- all three
20 officers police officers to keep me on topic; is that
21 correct?

22 A Well, like I said, you elaborated -- the topic of
23 the conversation -- the first question was do you know why
24 you're hear. And so you already said yes, you knew why you
25 were there.

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 Q I believe you wrote --

2 A And that you knew -- I'm sorry?

3 Q I believe you wrote that; is that correct?

4 A Correct. I did and you said yes. And you put your
5 initial besides that, saying that you understood the answer
6 to that question. Then my question was why. And your
7 answer was, I'm here for the incident in Forest Acres, with
8 your initials beside it. So, I mean it was apparent from
9 the beginning that you knew why you were there and you know
10 once, you know a few of these answers, you did, you know,
11 put into your own words about these microchips towards the
12 end of page 3 and the end of page 4, but the rest of the
13 time we were speaking about the incidents.

14 And like I said, you appeared eager to give us your
15 side and to tell us this.

16 Q My side of the story?

17 A To get your statement.

18 Q My statements about microchips?

19 A Your statement was also about the questions that
20 were asked of you that you answered.

21 Q That was what you wrote?

22 A Correct. And you answered --

23 THE COURT: Mr. Martinez, that's been asked and
24 answered. Several times. I understand that's his writing.
25 He responds and writes down your answers and then you

Colin D. Bailey - Direct Examination In Camera by Mr. Walker

1 expound on it with whatever statements you give to him.

2 Ask your next question, please.

3 BY MR. MARTINEZ:

4 Q Did --

5 MR. MARTINEZ: Beg the Court's indulgence.

6 (There was a pause in the proceedings.)

7 BY MR. MARTINEZ:

8 Q Was you present the whole time?

9 THE COURT: That's been asked and answered.

10 MR. MARTINEZ: Was --

11 No further questions, Your Honor.

12 THE COURT: Redirect, Solicitor?

13 MS. WALKER: No, sir. I do have another witness to
14 call for the Jackson versus Denno.

15 THE COURT: All right. You may step down,
16 Lieutenant.

17 Call your next witness, Solicitor.

18 MS. WALKER: Your Honor, State calls Investigator
19 Colin Bailey.

20 **DIRECT EXAMINATION IN CAMERA**

21 BY MS. WALKER:

22 Q Sir, were you present for the advise of rights of
23 Nathan Martinez on April 3rd, 2014?

24 A I was.

25 Q I'm sorry April 2nd.

Colin D. Bailey - Direct Examination In Camera by Mr. Walker

- 1 A Right.
- 2 Q Was he advised of his rights?
- 3 A He was.
- 4 Q Did he waive those rights?
- 5 A He did.
- 6 Q Did y'all threaten him in any manner to make him
- 7 waive those rights?
- 8 A No.
- 9 Q Were you present for the entirety of the
- 10 conversation?
- 11 A I was present the entirety of the conversation.
- 12 Q And at any point did any officer make any threat or
- 13 promise in order to get Mr. Martinez to waive his rights
- 14 and make the statements?
- 15 A No.
- 16 Q Was he denied water or food or bathroom breaks?
- 17 A No.
- 18 Q And did he appear to understand the conversation
- 19 that you were having?
- 20 A He understood the conversation.
- 21 Q And did he answer questions that you asked about
- 22 the City of Columbia incident willingly?
- 23 A He did.
- 24 Q At any point did you personally threaten him?
- 25 A No.

Colin D. Bailey - Cross-Examination In Camera by Mr. Martinez

1 Q And he spoke to you voluntarily?

2 A He did.

3 Q And you were present during this conversation and
4 actually witnessed him waive his rights and agree to speak
5 with law enforcement?

6 A I did.

7 MS. WALKER: Thank you, Your Honor, I don't have
8 any further questions.

9 THE COURT: Mr. Martinez?

10 **CROSS-EXAMINATION IN CAMERA**

11 **BY MR. MARTINEZ:**

12 Q You said that you was present the whole time?

13 A I was.

14 Q And there with was no threats or promises?

15 A Correct.

16 Q And you was aware that I suffered from mental
17 health conditions; is that correct?

18 A I did -- at that point, sir, I didn't know what you
19 suffered from. I know there was talk of issues that you've
20 already brought up.

21 Q So how come in your BOLD report that you state that
22 I suffer from schizophrenia and multiple -- maybe other
23 mental health disorders?

24 A That information came from another agency. I can't
25 remember how I got it, but I obviously we know now that I

Colin D. Bailey - Cross-Examination In Camera by Mr. Martinez

1 probably got it from the Richland County Sheriff's
2 Department. But, you know, to be quite honest with you,
3 sir. That BOLO is not intended to be entirely correct.
4 It's intended to alert the officers when they encounter
5 you, to expect this possible situation. So just like if
6 someone were to be -- a perpetrator would be -- if I
7 thought there might be some information that they're deaf,
8 I would probably write in the BOLO, Hey, this person's
9 deaf, you know, to make sure they're aware of that. Or any
10 other kind of condition; whether or not I knew it or not I
11 would write it in just to make sure that we're all -- that
12 the officers who encounter you are prepared.

13 Q So why would you not be prepared? You was issued
14 an audio recording device --

15 A Right.

16 Q -- that you wear on your tie?

17 A Correct.

18 Q And you always wear a suit; is that correct?

19 A Not always. Most of the time.

20 Q You was wearing a suit that night though, correct?

21 A I don't recall if I was wearing a suit or not. I
22 probably was, but I came from home. I can't remember what
23 I grabbed and threw on before coming down to see you.

24 Q How would I know that you wear your little --

25 A I don't know, maybe you seen me here in the

Colin D. Bailey - Cross-Examination In Camera by Mr. Martinez

1 courtroom. I don't know.

2 Q You haven't worn it in the courtroom. I remember
3 it --

4 A Haven't worn it in the courtroom?

5 Q Not since I've been here.

6 THE COURT: Make that statement -- I don't care
7 what he wears in the courtroom. That's not relevant to the
8 totality of the circumstances of a free and voluntary
9 statement dated 2 April 2014. So ask relevant questions.

10 MR. MARTINEZ: It is relevant, Your Honor. He
11 never --

12 THE COURT: It's not relevant what he wears in the
13 courtroom.

14 BY MR. MARTINEZ:

15 Q Why did you not record -- why did you not -- why
16 did you abuse your discretion and not record with your
17 audio -- with your department issued recording device since
18 you know and you told other officers to show caution -- why
19 did you not record this incident?

20 A I see where you're going, sir, and I didn't -- I
21 did use my discretion and I did not record the
22 conversations with you.

23 Q And was -- was any promises given to me?

24 A As I told the solicitor's office, no promises were
25 made, sir.

Colin D. Bailey - Cross-Examination In Camera by Mr. Martinez

1 Q Did I ask for medical attention?

2 A You -- you did ask for long term -- some sort of
3 long-term medical assistance. You didn't ask for immediate
4 medical attention.

5 Q I asked for -- how -- I needed help with having
6 microchips removed from my head; is that correct?

7 A You did.

8 Q And throughout this -- throughout -- when -- when
9 you asked me if I wanted to give a statement, what was my
10 answer?

11 A You said yes, you did.

12 MR. MARTINEZ: I beg the Court's indulgence.

13 THE WITNESS: And -- and -- and, Your Honor, what
14 he's referring to and where he's going is that I asked him
15 if he wanted to give a written statement at one point. So
16 I asked him if he wanted to give a verbal statement, he
17 said yeah. I asked him if he wanted to give a written
18 statement, he said no. I said, Well, how about this, how
19 about I ask you a Q and A as the Forest Acres did, would
20 that be all right. Then he said yes.

21 THE COURT: All right. Thank you.

22 THE WITNESS: So whatever -- so just to clarify
23 what I mean by written statement is, just as we -- just as
24 the victims did today, without a Q and A section that they
25 would just simply write their statements or get them into

Colin D. Bailey - Cross-Examination In Camera by Mr. Martinez

1 the language here. But I asked him if he wanted to make a
2 verbal statement, if he wanted to talk to the police, he
3 said yes. I did later ask him if he wanted to give a
4 written statement and he said he did not. I asked him,
5 okay, how about would it be okay if we did a Q and A and he
6 was, yeah, that will be all right.

7 THE COURT: All right.

8 BY MR. MARTINEZ:

9 Q In your report, it says, I asked Martinez to write
10 a statement and he says he had already written one for
11 Forest Acres. He hesitated.

12 THE COURT: What page are you reading from?

13 MR. MARTINEZ: This is page 3, fourth paragraph
14 from the bottom.

15 THE COURT: All right. Go right ahead.

16 MR. MARTINEZ: He hesitated and instead I asked
17 questions in a statement form to which Martinez wrote his
18 answers. After two pages, Martinez was become increasingly
19 agitated and I ended my interview.

20 THE COURT: All right.

21 BY MR. MARTINEZ:

22 Q Now, from your own statement that you wrote right
23 here, it does not say anything about no other -- if I
24 wanted to give a verbal statement, if I wanted to give a
25 written statement, if I wanted to give an audio recorded

Colin D. Bailey - Cross-Examination In Camera by Mr. Martinez

1 statement. The only thing it says that --

2 A Incorrect. If you look at the bottom of page two,
3 sir --

4 THE WITNESS: Sorry, Your Honor.

5 THE COURT: No, you go right ahead.

6 THE WITNESS: I -- it says when Forest Acres had
7 completed the interview with Martinez, I asked him if I
8 could ask him about another incident, the one with the girl
9 in the car and Martinez agreed.

10 BY MR. MARTINEZ:

11 Q I did not agree.

12 THE COURT: That's argumentative.

13 MR. MARTINEZ: Okay. I'm sorry.

14 BY MR. MARTINEZ:

15 Q Okay. So how voluntary is it when you ask me if I
16 want to write a statement and I tell you that I don't want
17 to write a statement? Is that voluntarily?

18 A Just the way you framed that question, I can't
19 answer that. Just to repeat what I said earlier though, I
20 asked if you wanted to write a written statement. You
21 declined and you said you had already written one for
22 Forest Acres. It sort of hinted to me perhaps you didn't
23 want to write a -- several paragraphs, a written statement.
24 I then asked, okay, would it be okay if we did it question
25 and answer. And you agreed and said it was all right. And

Colin D. Bailey - Cross-Examination In Camera by Mr. Martinez

1 then you freely answered the questions that I wrote down.

2 Q And how come you didn't state that in your report?

3 A I did.

4 Q You never -- it doesn't state that I agreed to give
5 a statement. I never wanted to give a statement; is that
6 correct?

7 THE COURT: I think he read the last paragraph of
8 page two. When Forest Acres Police Department had
9 completed their interview with Martinez, I asked him if I
10 could ask him about another incident, the one with the girl
11 in the car and Martinez agreed.

12 MR. MARTINEZ: Yeah, I didn't agree though.

13 THE COURT: That's argumentative. You said how
14 come he didn't put it in the report. He put it in the
15 report.

16 MR. MARTINEZ: As I -- yeah, he --

17 THE COURT: Ask your next question, Mr. Martinez.

18 BY MR. MARTINEZ:

19 Q Okay. So how come your -- as we went over this --

20 THE COURT: And as you say, as we went over this
21 keys into me that it's already been asked, already been
22 answered.

23 MR. MARTINEZ: It's been asked for the previous
24 hearing.

25 THE COURT: Well, do you want me to take into

1 account all the questions and all the answers from the
2 previous questions -- from the previous in-camera hearing?
3 I will do so.

4 MR. MARTINEZ: All right. No further questions.

5 THE COURT: All right. We'll incorporate. Do you
6 have any objections if I incorporate the previous Jackson
7 versus Denno into this in-camera hearing?

8 MS. WALKER: No, sir, the State does not have an
9 objection to that.

10 THE COURT: Do you object to that, Mr. Martinez?

11 MR. MARTINEZ: No, sir.

12 THE COURT: All right. Thank you.

13 Thank you, Detective, you may step down.

14 Does the State have any other evidence or testimony
15 to present on this issue?

16 MS. WALKER: No, sir.

17 THE COURT: Mr. Martinez, I am taking into account
18 all the testimony from the previous hearing of those
19 witnesses which you called from the sheriff's department
20 and Dr. Sutton and yourself, your own testimony. All
21 right?

22 MR. MARTINEZ: All right. Thank you.

23 THE COURT: Did you want to present any additional
24 evidence or testimony in this hearing.

25 MR. MARTINEZ: I just want to state as I stated

1 before in my -- in the case law I gave you, the question
2 is --

3 THE COURT: You talking about State versus Allen.

4 MR. MARTINEZ: Yes. And State versus Rochester and
5 State versus Moultrie.

6 THE COURT: Rochester.

7 MR. MARTINEZ: Yes, sir, Rochester.

8 THE COURT: I was there when they tried him. Go
9 right ahead.

10 MR. MARTINEZ: The pertinent inquiry is whether the
11 defense was overborne during the questioning. That takes
12 away the voluntariness of the waiver.

13 THE COURT: All right. Thank you.

14 Court will be in recess 15 minutes.

15 (A brief recess was observed.)

16 THE COURT: All right. Anything further,
17 Solicitor?

18 MS. WALKER: No, sir, Your Honor.

19 THE COURT: All right. As to the statement of 2
20 April 2014 to Detective -- to Detective Colin Bailey, as an
21 initial matter, as far as the standard, as for the
22 procedural safeguards to be employed, unless other fully
23 effective means are devised to inform accused persons of
24 their right of silence and to assure a continuous
25 opportunity to exercise it, the following measures are

1 required. Prior to any questioning, the person must be
2 warned that he has a right to remain silent, that any
3 statement he does make may be used as evidence against him,
4 and that he has a right to the presence of an attorney,
5 either retained or appointed. The defendant may waive
6 effectuation of these rights, provided the waiver is made
7 voluntarily, knowingly and intelligently. If, however, he
8 indicates in any manner and at any stage of the process
9 that he wishes to consult with an attorney before speaking,
10 there can be no questioning.

11 Likewise, if the individual is alone and indicates
12 in any manner that he does not wish to be interrogated, the
13 police may not question him. The mere fact that he may
14 have answered some questions or volunteered some statements
15 on his own does not deprive him of the right to refrain
16 from answering any further inquiries until he has consulted
17 with an attorney and thereafter consents to be questioned.
18 That is from Miranda versus Arizona, 384 United States 436,
19 1966.

20 Further, State versus Parker, in determining where
21 a confession was given voluntarily, the Court must first
22 consider the totality of the circumstances surrounding the
23 defendant's giving a confession. As the United States
24 Supreme Court has instructed, the totality of the
25 circumstances includes "the youth of the accused, his lack

1 of education or his low intelligence, the lack of any
2 advice to the accused of his constitutional rights, the
3 length of detention, the repeated and prolonged nature of
4 the questioning, and the use of physical punishment and/or
5 psychological coercion, further such as the deprivation of
6 food or sleep. No one factor is determinate, but each case
7 requires careful scrutiny of all the surrounding
8 circumstances.

9 In looking at -- further, in looking at State
10 versus Franklin, 382 SE 2d 911, once a defendant has waived
11 his Miranda Rights, the waiver continues until the
12 defendant indicates that he wants to revoke waiver or
13 circumstances exist which indicate the defendant's will was
14 impaired.

15 Also citing State versus Rochester, 391 SE 2d 244,
16 Once voluntary waiver of Miranda is made by the defendant,
17 that waiver continues until the individual being questioned
18 indicates that he wants to revoke waiver and remain silent
19 or circumstances exist which establish that the defendant's
20 will has been overborne and his capacity for
21 self-determination critically impaired.

22 I take into account all the evidence and testimony
23 in the in-camera hearing as to the Forest Acres Police
24 Department statement. Further, the following testimony of
25 the individuals offered by the defendant, Investigator

1 Bailey, Dr. Sutton, Detective Morrison, Officer Wagner,
2 Officer Jackson, and Lieutenant Shumard, Dr. Chavez, the
3 defendant, and Warren Cavanaugh. I further take into
4 account as to Mr. Shumard's conversation with Mr. Cavanaugh
5 for the defendant upon arrest to be brought to -- or picked
6 up by the Forest Acres Police Department. I take into
7 account there was conversations by Mr. Martinez on numerous
8 occasions during the interview concerning any, quote,
9 mental illness, or chips implanted.

10 I take into account the conversation between
11 Lieutenant Shumard and Lieutenant Isenhoward. I further
12 take into account there were two agencies represented with
13 three officers, two officers with the Forest Acres Police
14 Department and one officer from the Columbia Police
15 Department. I take into account that the -- neither
16 statement was recorded. I further take into account the
17 testimony concerning medical attention. I further take
18 into account the writings of the statements, that would be
19 both the Forest Acres statement, Exhibit Number 92 and the
20 Columbia Police Department statement, State's Exhibit 107,
21 Defense Exhibit 24.

22 I take into account the BOLO indicates he has
23 schizophrenia. There's no audio recording device was used.
24 So as an initial matter, looking at State's Number 91, it
25 appears to be in two different writings. The top part is

1 no more than identifiable information as to the defendant
2 as Detective Morrison has testified to. Each and everyone
3 of his constitutional rights in compliance with Miranda
4 appear on that form. They also testified they advised him
5 of his rights and to the left of each right is the initials
6 NM. That's one, two, three, four, five rights, clearly and
7 completely in compliance with Miranda.

8 Thereafter, there is a waiver of rights: I have
9 read this statement of my rights and I completely
10 understand my rights. I am willing to make a statement and
11 answer questions at this time without a lawyer present. No
12 promises have been made to me, no threats, pressure, or
13 coercion of any kind has been used against me. I know and
14 understand what I am doing by waiving my rights. Signed by
15 Mr. Martinez, name printed thereunder witnessed by
16 Detective Morrison and thereafter notation, two years of
17 college, 2004.

18 Further, date of birth, 1978. So I take into
19 account that he is not a juvenile. He's a middle-aged
20 adult and he has a two-year college education. Looking at
21 State's Exhibit Number 92, it is a statement. At the
22 bottom of the statement is two -- Lieutenant Shumard and
23 Detective Morrison: This statement was made in the
24 presence of Lieutenant Shumard, an employee of the Forest
25 Acres Police Department. I make this statement of my own

1 free will and accord without reward or intimidation. All
2 of the above is the truth, the whole truth and nothing but
3 the truth so help me God. I received a copy of this
4 statement, signed by Mr. Martinez, witnessed by
5 Mr. Morrison, sworn.

6 Also on the first page of the statement, there's
7 one, two, three, four, five, six, seven initials of Mr.
8 Martinez appear.

9 On page 2 of the statement, again, that same
10 language at the bottom of page 2 signed by Mr. Martinez and
11 his initials appear one, two, three, four, five, six times
12 on page two.

13 On page 3, the statement is at the bottom again,
14 without reward or intimidation. Mr. Martinez's initials
15 appear one, two, three, four, five, six times, a signature
16 also, witnessed by Detective Morrison.

17 On page 4, that statement is at the bottom signed
18 by Mr. Martinez, witnessed by Mr. Morrison and Mr.
19 Martinez's initials appear one, two, three, four, five
20 times.

21 I also note with some high degree of interest that
22 the time of this statement is 0242 a.m. and I take into
23 account that Detective or Lieutenant Shumard testified that
24 Mr. Martinez appeared tired, drained, but eager to speak.

25 Going to State's Exhibit 107, Defendant's Exhibit

1 Number 24, the statement to Detective Bailey, I note the
2 time is 0300, 18 minutes later, so it was not lengthy
3 detention in the taking of the statements. Further, it is
4 signed by the defendant on both the first page and the
5 second page. Given the continuity, there was no invocation
6 of the right to remain silent, nor was there any request
7 for an attorney.

8 Further, I would find in reading what is -- came
9 out in the testimony, Detective Bailey says when Forest
10 Acres police has completed their interview with Martinez, I
11 asked him if I could speak to him about another incident,
12 the one with the girl in the car and Martinez agreed. And
13 this is all one continuing course of conversation on the
14 second floor at the Forest Acres Police Department
15 conference room.

16 Martinez reported he did not know, does not
17 remember. Further, the detective said I asked Martinez to
18 write a statement and as he had already written one for
19 Forest Acres, he hesitated and instead, I asked using a
20 statement form to which Martinez wrote his answers. A
21 hesitation is not an indication of one's right to remain
22 silent or to give a voluntary statement and waive
23 voluntarily knowingly and intelligently his rights.

24 Further, the officer says after two pages, Martinez
25 was becoming increasingly agitated. Agitation is not

1 invocation of one's rights. And the officer ended his
2 interview.

3 There's courts in other jurisdictions and I agree
4 based on the record before me, the interrogation was
5 conducted under circumstances and in a fashion which bore
6 not the slightest hint of improper compulsion by the
7 police.

8 So based on the standard I must apply by the
9 preponderance of the evidence, I find the statement was
10 given in compliance with the United States constitution
11 interpretation under Miranda and the state law following
12 that is free, voluntarily, knowingly and intelligently made
13 and a voluntary statement based on the preponderance of the
14 evidence.

15 Anything before I bring in the jury, Mr. Martinez?

16 MR. MARTINEZ: No, sir.

17 THE COURT: Solicitor?

18 MS. WALKER: No, sir. I just need to get the
19 exhibits.

20 THE COURT: Yes, ma'am.

21 MS. WALKER: Can the investigator get back on the
22 stand, Your Honor?

23 THE COURT: Yes, you can come back around, thank
24 you.

25 There's the exhibits there.

Russell Shumard - Direct Examination Continued by Ms. Walker

1 All right. Mr. Bailiff.

2 (The jury entered the courtroom at 12:08 p.m.)

3 THE BAILIFF: The jury is seated, Your Honor.

4 THE COURT: Thank you. Thank you very much.

5 Thank you very much, ladies and gentlemen for your
6 patience with the Court. We're continuing to trial and
7 direct testimony of Detective Shumard by to State. Please
8 continue to give to parties your complete and undivided
9 attention.

10 Solicitor?

11 MS. WALKER: Thank you, Your Honor.

12 **DIRECT EXAMINATION CONTINUED**

13 **BY MS. WALKER:**

14 Q You were stating that after he was advised of his
15 rights, he initialed each right?

16 A Yes, ma'am.

17 Q And then waived those rights?

18 A That's correct. At no point did he ever indicate
19 that he did not want to talk to us.

20 Q And after giving a statement to Forest Acres, he
21 gave to statement to the Columbia Police Department as
22 well?

23 A That's correct.

24 Q Would you please read that statement to the jury?

25 MR. MARTINEZ: Objection, Your Honor. Same as

Russell Shumard - Direct Examination Continued by Ms. Walker

1 before.

2 THE COURT: Subject to previous objection, I
3 reaffirm my previous rulings. Thank you, Mr. Martinez.

4 THE WITNESS: Yes, ma'am, this is a statement of
5 Columbia -- Columbia of South Carolina statement form.
6 It's got the time, the date, 4/2/2014; time three in the
7 morning. Place, Forest Acres headquarters. It says -- it
8 says -- I printed -- it's printed I am and then filled in
9 the blank, Nathan Martinez, and then printed, my date of
10 birth date is, and then fill in the blank, [REDACTED]/1978.

11 BY MS. WALKER:

12 Q And to Q and A part?

13 A Okay. First question by Investigator Bailey is,
14 Why did you go to Mr. Tucker's house. And the answer given
15 was: The voices in my head told me to rob him.

16 And the next question posed by Detective Bailey,
17 Did you have a steak knife when you went in and confronted,
18 I believe is the next word, his daughter.

19 MR. MARTINEZ: Objection, Your Honor. Mr. Bailey
20 should be reading this; not Mr. Shumard.

21 THE COURT: Excuse me?

22 MR. MARTINEZ: Mr. Bailey should be reading this,
23 not Mr. Shumard. He, he --

24 THE COURT: It's in evidence. Thank you, Mr.
25 Martinez.

Russell Shumard - Direct Examination Continued by Ms. Walker

1 Overruled.

2 THE WITNESS: To question was: Did you have a
3 steak knife when you went and confronted --

4 BY MS. WALKER:

5 Q Confronted his daughter?

6 A Confronted his daughter. The answer was: Yes.

7 The next question posed is did Elexia leave the
8 house with you. The answer: Yes, she talked me out of
9 robbing her dad and offered to give me a ride in her
10 father's car.

11 Next question: Where did Elexia sit in the car
12 after you left. Answer: She got in the backseat -- she
13 got into the back of the car on her own will.

14 The next question, did you still have the knife
15 while driving to car. The answer is: Yes, it was in my
16 pocket.

17 The next question posed was: Did you have sex with
18 Elexia, question mark, Why. Yes, we talked and she said it
19 was okay and was willing to.

20 The next question: Did you ask her to give you a
21 blow job. The answer: Yes, she did as she never -- yes,
22 she did -- I'm sorry. Yes, she said she was -- she had
23 never done that before.

24 Next question posed: Can you understand why she
25 was in fear for her life. The answer: I told her I was

Russell Shumard - Direct Examination Continued by Ms. Walker

1 there to rob her father.

2 The next question: Do you remember tying Elexia up
3 with a belt and a blow-dryer cord. The answer: No, I do
4 not remember this.

5 The next question: Do you regret this incident.
6 The answer: I do regret this incident because I do not
7 want to hurt no one, but the voices in my head tell me and
8 want me to hurt others and kill myself. I am not
9 responsible for any of this behavior. I am being
10 electronically harassed, tracked, and chipped by the Utah
11 police in my head and hear voices that tell me it wants me
12 to harm myself and others. I have -- I'm sorry I can't
13 read that next -- I tried help, I think is the word. I
14 tried help and have asked for -- asked for from mental
15 health and Richland County police, Lieutenant Heidi Jackson
16 and Holly Wagner.

17 The next question posed is: Is any part of
18 Elexia's statement untrue. The answer he posed: Yes, I
19 don't remember or know about tying -- tying her up or that
20 I forced or made her leave with me or that I forced her to
21 have sex with me. I don't remember this.

22 And that is the end of the statement.

23 Q In your experience as a law enforcement officer, is
24 it uncommon for people to makeup reasons as to their
25 criminal behavior?

Russell Shumard - Direct Examination Continued by Ms. Walker

1 A Yes.

2 Q It's uncommon?

3 A Is it --

4 Q Is it uncommon for people to make --

5 MR. MARTINEZ: Objection, Your Honor, speculation.

6 THE COURT: That's sustained.

7 THE WITNESS: The question again, I'm sorry?

8 BY MS. WALKER:

9 Q You can't answer that question.

10 A I'm sorry. Each form -- each page is signed by Mr.
11 Martinez, notarized I believe by Investigator Bailey and I
12 might point out that the handwriting is in two different --
13 the handwriting is in two different handwritings. It
14 appears that the form may have been given to Mr. Martinez
15 and he filled out the answer part.

16 Q And after getting both statements from him
17 regarding both victims, did y'all request a sample of his
18 DNA?

19 A Yes. Investigator Morrison conducted that.

20 Q And on State's Exhibit Number 108, is this that
21 consent?

22 A Yes, it is.

23 MS. WALKER: Your Honor, at this point the State
24 seeks to move 108 into evidence.

25 MR. MARTINEZ: Objection, Your Honor. 14th

Russell Shumard - Direct Examination Continued by Ms. Walker

1 Amendment, my 4th Amendment, illegal search and seizure and
2 due process.

3 THE COURT: May I see it?

4 MR. MARTINEZ: Right to a fair trial.

5 THE COURT: All right. 108 is in evidence subject
6 to defense objection.

7 (State's Exhibit Number 108 was entered into
8 evidence.)

9 BY MS. WALKER:

10 Q Will you please review that?

11 A Date 4/2/2014, location 5204 Trenholm Road, Forest
12 Acres.

13 Q You have to -- she's going to type down what you're
14 reading, so slow down.

15 A I'm sorry. Date 4/2/2014. Location 5205 Trenholm
16 Road, Forest Acres, South Carolina 29206.

17 THE COURT: She's a little quicker than that,
18 Lieutenant.

19 THE WITNESS: Sorry.

20 I, Nathan Martinez, do hereby consent to the search
21 of my person without any search warrant by R. W. Shumard,
22 an agent of the Forest Acres Police Department. This
23 investigator's authorized by me to take from my person
24 buccal swabs in an effort to obtain my DNA. I am aware
25 that any evidence obtained as a result of this search can

Russell Shumard - Direct Examination Continued by Ms. Walker

1 be used against me in a court of law. The written
2 permission -- this written permission is being given by me
3 to the above named investigator freely and voluntarily and
4 without threats or promises of any kind. Signed Nathan
5 Martinez, witnessed by Investigator Morrison and I believe
6 Investigator Bailey.

7 BY MS. WALKER:

8 Q Thank you. And at this point in time, did you have
9 information from Ms. Hurshman about the tattoo that was
10 located on the assailant's neck?

11 A At the beginning of this incident, that was one of
12 the main characteristics that Ms. Hurshman had indicated to
13 us was a very distinguishing, large tattoo on his neck.

14 Q And did you observe a large tattoo on the neck of
15 Mr. Martinez?

16 A I did.

17 Q I think the right side has large lettering?

18 A Yes, ma'am, it does.

19 Q As well as the left side?

20 A That's correct.

21 Q And you observed that during your interview?

22 A Yes, ma'am. It's not hard to miss.

23 Q The method that was used to locate Mr. Martinez was
24 what?

25 A The method to locate him?

Russell Shumard - Cross-Examination by Mr. Martinez

1 Q Yes.

2 A We utilized the Richland County Fugitive Task
3 Force.

4 Q And was there a court order obtained for that?

5 A There was. They obtained a court order for a phone
6 and said we'll get back with you.

7 Q And do you know whose phone that was?

8 A I believe that was the defendant's mother's phone.

9 Q The man that you interviewed that signed and gave
10 those two statements to law enforcement, do you see him in
11 the courtroom?

12 A Yes, ma'am, I do.

13 Q Can you point him out for me?

14 A Sitting at to defense table, light blue shirt with
15 a tie and glasses.

16 Q Thank you, sir. I don't have any further
17 questions.

18 THE COURT: Thank you, Solicitor.

19 Mr. Martinez?

20 **CROSS-EXAMINATION**

21 **BY MR. MARTINEZ:**

22 Q Yes, Mr. Shumard, you testified that the Court
23 order was obtained to track my mother's phone?

24 A That's what I was told, yes.

25 Q Who was you told that by?

Russell Shumard - Cross-Examination by Mr. Martinez

1 A The -- by Mr. Warren Cavanaugh.

2 Q When did he tell you that?

3 A I first reached out to him on the 31st and later
4 that day he advised that he had discovered -- in my notes I
5 have, discovered the suspects mother's -- he advised he had
6 discovered the suspect's phone number. It was a government
7 issue out of minutes; however the next day it should load
8 up again and once that took place they would start
9 monitoring, so I guess he got it that day or the day
10 before.

11 Q And that was the 31st, correct?

12 A Yes.

13 Q 31st of March?

14 A Yes, sir.

15 Q And did he give you any information on that phone?

16 A He simply said to me that he was tracking it and
17 would give me updates.

18 Q Did he tell you information pertaining to that
19 phone on the 29th? March 29th?

20 A Did he give me information on to 29th?

21 Q No --

22 A I never talked to him until to 31st.

23 Q Okay. Did he give you information pertaining to
24 the use of that phone that they was tracking on to 29th?

25 A He gave me something. I jotted down some

Russell Shumard - Cross-Examination by Mr. Martinez

1 information. As far as exactly what all it meant, they
2 were the ones doing the tracking and taking the Court
3 order. I simply was jotting down this information in the
4 hopes that it would assist with my investigation.

5 Q Okay. And this information, it's -- would you mind
6 reading what the information that they passed onto you,
7 please? From your notes?

8 A Bear with me, sir. Yes, I have the information I
9 jotted down.

10 Q Would you read that for me, please.

11 A What I wrote down, Cavanaugh M-I-N on G-O-V-T
12 Verizon Wireless government use 03/29th, 3:56 p.m., I-77
13 Killian Road. Mom 3:18 tried to call. Map last week to
14 see where he's been. Next brother four doors from victim
15 233 and 313 victim brother.

16 Q And you got this information -- do you know where
17 you got this information?

18 A It would have been after the 31st because I was --
19 that was the first time I spoke to Mr. Cavanaugh was on the
20 31st, so this information was taken sometime after that.
21 As to exactly what date I collected this information, I do
22 not know that.

23 Q Did they ever give you a map?

24 A No, sir.

25 Q But you and Cavanaugh discussed getting a map to

Russell Shumard - Cross-Examination by Mr. Martinez

1 see where -- where that phone had been, correct?

2 A Well, like I said, I jotted down, map last week to
3 see where he's been, and as I said a minute ago, I jotted
4 this information down in the hopes that it would assist and
5 aid in my investigation. As far as asking him for a map, I
6 did not ask for that.

7 Q You stated on the 1st that they was currently
8 tracking the pings; is that correct?

9 A I believe that's correct.

10 Q All right. Let's -- okay. On the 1st day this
11 incident alledgedly happened, you said that at 6 o'clock, 6
12 to 7 o'clock, you got a phone call from Kevin -- Sergeant
13 Kevin Isenhoward from the Richland County Sheriff's
14 Department, correct?

15 A Correct.

16 Q And he told you that I -- he told you that --
17 MS. WALKER: I would object to the hearsay, Your
18 Honor.

19 THE COURT: Let me hear the question.

20 BY MR. MARTINEZ:

21 Q He told you my name, correct?

22 THE COURT: Rephrase the question.

23 BY MR. MARTINEZ:

24 Q Did he tell you -- did he identify me from the
25 sketch?

Russell Shumard - Cross-Examination by Mr. Martinez

1 A He gave me your name and your date of birth.

2 Q And with no evidence I became the suspect?

3 A At that point you became the prime suspect in this
4 investigation, although we were still open to any further
5 leads that would come in.

6 Q So with that being said, you guys had multiple
7 Crime Stopper tips come in, correct?

8 A We did. We had, I think four, maybe five Crime
9 Stopper's tips, all of which Investigator Morrison was
10 tasked with looking at those and he eventually dismissed
11 those as any kind of information. They were of no use from
12 what I recollect.

13 Q They was never investigated, correct?

14 A They were looked into by Investigator Morrison.
15 However, they were dismissed because by that point we had
16 identified the rings that were taken to the pawnshop.

17 Q You identified -- okay. Let's go to the rings
18 then. You say -- okay. What did the -- the victim tell
19 you that she was missing?

20 A I'd have to go back and look at her statement to
21 see exactly what she said, but I believe she had indicated
22 -- I knew that -- I knew that she had said that her debit
23 card was stolen, and I believe her statement was that you
24 reached into her jewelry box but that she was unsure
25 exactly may have been missing from the jewelry box.

Russell Shumard - Cross-Examination by Mr. Martinez

1 Q You state -- you -- she never identified me; is
2 that correct?

3 A I'm sorry?

4 Q She never identified me?

5 A In the photo lineup, she did not identify you.

6 Q And you never took her those other photographs and
7 showed her -- any other photographs. In fact, you never
8 went and showed her the other people with tattoos on their
9 necks, you never showed her different photos, you never
10 tried to help her make identification; is that correct?

11 A We showed her no more photos.

12 Q But yet, you stated today that she came forward and
13 stated that she made an identification; is that correct?

14 A I believe Ms. Hurshman testified earlier in this
15 trial that she'd done her own research and found some
16 photographs after we had identified you, apprehended you,
17 got your confession and she had your name. And she did
18 that research on her own.

19 Q But she -- she never came to the police and made a
20 report. Her husband never came and made a report to the
21 police. There was no -- there was no further statement
22 saying -- stating that she made a positive identification?

23 A Not related to her investigation. By then we had
24 apprehended you and you became a suspect.

25 Q When -- okay. You stated that prior, two days

Russell Shumard - Cross-Examination by Mr. Martinez

1 prior to me being arrested, you had -- you had the -- you
2 hold the police, Warren Cavanaugh, the track force, that
3 you was -- that you wanted them to bring me to your
4 headquarters correct?

5 A Correct.

6 Q And that day or night, no matter when it was that
7 you wanted them to let you know so that if you had to you
8 could send a car to pick me up?

9 A My instruction to them was as soon as you were
10 apprehended to bring you to headquarters so that we could
11 serve you with the warrants we had and to question you
12 about this incident.

13 Q Why didn't you -- you guys could have served me the
14 warrants at the jail; is that correct?

15 A We could have. However, this was a serious and
16 major traumatic event and crime. As an investigator, we
17 want to try to get to the bottom of things as quickly as
18 possible, which was why I told them that it didn't matter
19 what time it was to alert me once -- to your apprehension
20 so we could bring you in and serve you with the warrants we
21 had against you, to read you your rights, and ask you about
22 the incident; and that's what happened.

23 Q Okay. Due to the seriousness as you say, and as to
24 our technology, why was -- why was this interview not
25 recorded?

Russell Shumard - Cross-Examination by Mr. Martinez

1 A We don't have a policy in place at Forest Acres
2 where we are required to record statements. However, I had
3 myself, Investigator Bailey, and Investigator Morrison were
4 all present. So, therefore, we didn't utilize that kind of
5 outlet of -- and we don't have a policy on it, so we
6 proceeded like we always do. We had the someone and we
7 questioned them and we did read them their rights and
8 question them in hopes of getting a statement from them.

9 Q And before I even got there, you guys already had
10 the waiver already filled out; is that correct?

11 A Mr. Morrison filled out the waiver and I believe
12 he's already testified as to when he filled that out.

13 Q Does that seem voluntary to you?

14 A Well, we were simply trying to save some time. We
15 knew that -- we had the warrants a few days before this, so
16 it's only natural to save time to prepare for a statement.
17 So we filled out -- the top of that out and handed it to
18 you. We read it to you. You signed off on it. Whether it
19 was filled out or not, you still could have just said --
20 slid it over and said, I don't want to talk.

21 Q I could have done that?

22 A Sure.

23 Q Just like I could have chose not to go to your
24 police station?

25 THE COURT: No, sir, that's not the law. No, sir.

Russell Shumard - Cross-Examination by Mr. Martinez

1 An arrest warrant is a court order.

2 Ask your next question.

3 BY MR. MARTINEZ:

4 Q So does it seem voluntary even if there's arrest
5 warrant, an arrest warrant is to arrest me and take me to
6 jail, correct?

7 A It is to take you into custody. It's a legal
8 document, a court order if you will, to take you into
9 custody and face charges.

10 Q And -- okay. When I signed over the waiver, was I
11 notified what I was signing my waiver for --

12 A I believe so. I believe you might have known what
13 was going on.

14 Q So did you tell me what was going on or did I
15 believe to know what was going on?

16 A When you showed up, when you arrived, we filled
17 this -- whether we filled out the form or had it filled
18 out, we asked, we need to talk to you about some things.
19 We need to advise you of your rights. If we needed -- if
20 you need to -- if you want to agree you can sign the waiver
21 and then the first question we posed to you was, did you
22 know why you're here. We asked that after you were advised
23 and you said yes. And you knew you were there -- knew why
24 you were there.

25 Q So you and two other officers notified me as to why

Russell Shumard - Cross-Examination by Mr. Martinez

1 I was there?

2 A Once you signed your -- once we filled out a waiver
3 and had you sign off on it, yes, sir.

4 Q Now, you just said that I signed over that I knew
5 why I was there. So did I know why I was there and why I
6 was signing this waiver or did I find out after I signed
7 this waiver that -- did you state a reason?

8 A I can't exactly remember, but typically we read two
9 advisement to you and ask do you know why you're here and
10 you said yes. And that was after you signed off on the
11 waiver. I'm pretty sure it was apparent to you that there
12 was warrants for your arrest and that's why you were
13 brought to headquarters so that we could serve these
14 warrants properly to you, so there wouldn't have been any
15 question in our mind as to why you wouldn't think why you
16 weren't there. So we seemed to -- we filled out the
17 waiver. You signed off on it and we went into the
18 conversation with you.

19 Q And during to conversation, as it -- how many
20 officers were talking to me?

21 A Myself and officer Bailey -- I'm sorry. Myself and
22 Investigator Morrison were speaking to you in regards to
23 the Forest Acres incident.

24 Q And Colin D. Bailey never questioned me during that
25 time?

Russell Shumard - Cross-Examination by Mr. Martinez

1 A No, sir. He was present. However, he knows
2 nothing about the Forest Acres case, but he was present
3 during the interview.

4 Q And when you guys introduced him to me prior to me
5 signing my waiver, correct?

6 A I believe so.

7 Q When -- you're the one who wrote to statement; is
8 that correct?

9 A Yes, sir. I wrote to questions on to statement.

10 Q And all of your questions -- you wrote, correct?

11 A Yes, sir, I posed all the questions on your written
12 confession.

13 Q And then when the questioning was going on, you
14 would slide it over to me and I would initial it, correct?

15 A We asked the question. You would answer it, I
16 would write your answer. And I don't recall if I slid the
17 form to you after each question or if I waited until the
18 end for you to initial each one. I can't recall the
19 specifics of -- of that part of the questioning process.

20 Q During the -- when I would write on both of those
21 statements, what was -- what was I talking about?

22 A When you wrote?

23 Q Yeah.

24 A Well, one of to questions that I posed to you was,
25 the third question was, what day was this. You had said

Russell Shumard - Cross-Examination by Mr. Martinez

1 Thursday and then later on you had elaborated on that
2 particular question because of news story about it --
3 because of news story about it with your initials beside
4 it.

5 Q I wrote that or you wrote that?

6 A You wrote that: Because of news story about it.

7 Third question, page 1.

8 Q And -- okay. And then -- and then what -- okay.

9 After that, what's the topic of my conversation?

10 A Towards the -- let's see towards the end --

11 Q Towards the middle.

12 A I'm sorry. I mean --

13 Q I think it's what, page 2, or page 3?

14 A Yes, sir. We had asked you a question, pretty open
15 ended, why did you do all this. And you wrote your answer,
16 seven lines.

17 Q What was that about?

18 A Why did you do all this?

19 Q Yes.

20 A And you elaborated on -- on that.

21 Q And was I elaborating in that manner during the
22 whole -- during the majority of the interrogation?

23 A You elaborated on that question and you elaborated
24 lengthy on the last question and then there's like maybe
25 some of the other questions you may have put about one

Russell Shumard - Cross-Examination by Mr. Martinez

1 sentence or so of an elaboration to each question posed.

2 Q And prior to me -- prior to me giving -- two day --
3 or I think from the 27th -- the incident occurred on to
4 27th; is that correct?

5 A Correct.

6 Q On the 27th, you testified that you got a call from
7 Sergeant Kevin Isenhoward and he stated that I suffer
8 from --

9 MS. WALKER: Objection, Your Honor, to Investigator
10 Isenhoward's -- Isenhoward's statement is hearsay.

11 THE COURT: All right. Give me just a moment.

12 (The Court was looking at one of the exhibits.)

13 THE COURT: Defendant's Exhibit Number 22 -- all
14 right. That objection's sustained.

15 You may ask your next question, Mr. Martinez.

16 BY MR. MARTINEZ:

17 Q Did you get e-mails and telephone calls stating --

18 MS. WALKER: Objection to what to e-mails and
19 telephone calls stated. That's hearsay, Your Honor.

20 MR. MARTINEZ: Your Honor, they've been testified
21 to by the officers previously.

22 THE COURT: So the question was did you get
23 e-mails?

24 MR. MARTINEZ: Yes, sir.

25 THE COURT: All right. You all right, Mr. Juror.

Russell Shumard - Cross-Examination by Mr. Martinez

1 THE JUROR: That was me.

2 THE COURT: All right. I just saw the movement.

3 Yes, ma'am, Madam Juror.

4 (The Court was handed a note.)

5 THE COURT: I know the answer to that question.

6 Let's take about a 10 minute recess.

7 (The jury left the courtroom at 12:44 p.m.)

8 THE COURT: All right. We'll take about a 10
9 minute recess.

10 Lieutenant, you may step down and refresh yourself.
11 Do not discuss your testimony.

12 THE WITNESS: Yes, sir.

13 (A brief recess was observed.)

14 THE COURT: All right. The objection was hearsay;
15 is that correct, Solicitor? On Lieutenant or Sergeant's
16 Isenhoward's e-mail?

17 MS. WALKER: Your Honor, he said did you receive
18 e-mails and two e-mails in here -- I guess it was a more
19 concrete definition -- question about e-mails, that that
20 may be one thing, but there are e-mails in here from Heidi
21 Jackson as well that references his, whatever he claims his
22 mental illness to be and at that point, we would ask for a
23 couple of things.

24 Number one, that two e-mail is hearsay because
25 Heidi Jackson has not testified in front of to jury yet.

Russell Shumard - Cross-Examination by Mr. Martinez

1 And two, if he wants to go into to part about he has
2 schizophrenia, I would want to go into to entirety of the
3 e-mail.

4 THE COURT: Let me see Defense 22.

5 MS. WALKER: I think it's dated March 27th, Your
6 Honor.

7 THE COURT: And what?

8 MS. WALKER: It's dated March 27. It's an e-mail
9 forwarded and both to Shumard, Heidi Jackson and Kevin
10 Isenhoward.

11 THE COURT: Defendant's 22, didn't -- Mr. Martinez,
12 did you ask -- did you or did you not ask Mr. Isenhoward
13 about this e-mail.

14 MR. MARTINEZ: Yes, sir, I did.

15 THE COURT: Then you -- I believe you had a
16 discussion with Mr. Kata about this e-mail.

17 MR. MARTINEZ: Yes.

18 THE COURT: And, of course, the -- it's a forwarded
19 e-mail from Lieutenant Isenhoward to Ms. Jackson,
20 Mr. Shumard, and I think the discussion was having to do
21 with -- well be that as it may, this is what you object to?

22 MS. WALKER: May I just look at that and make sure
23 that we're looking at the same e-mail?

24 THE COURT: Yes, ma'am.

25 MS. WALKER: Your Honor, my objection is to the

Russell Shumard - Cross-Examination by Mr. Martinez

1 part that Heidi Jackson wrote as she's not testified and it
2 would be hearsay.

3 THE COURT: What did you want to ask the
4 lieutenant, Mr. Martinez.

5 MR. MARTINEZ: Just that he -- I'm just trying to
6 clarify that he knew prior to meeting me that I suffer from
7 mental health conditions that are related to the police.

8 THE COURT: Do you know that, Lieutenant?

9 THE WITNESS: It was simply just discussed and
10 alleged that he suffered from something, but -- and I think
11 even one person had given a diagnosis, but I had not seen
12 any reports or spoken to any doctors about that, about his
13 mental conditions.

14 THE COURT: So you want to ask the lieutenant if he
15 had any knowledge whether or not you had any mental health
16 issues?

17 MR. MARTINEZ: Yes, sir.

18 THE COURT: Why wouldn't that be hearsay.

19 MR. MARTINEZ: It --

20 THE COURT: I'm sorry, ma'am, if you're going to
21 shuffle papers, you need to leave. You right there
22 (pointing.) You need to leave to courtroom.

23 (The court was speaking to an observer in the
24 gallery.)

25 THE OBSERVER: Me?

Russell Shumard - Cross-Examination by Mr. Martinez

1 THE COURT: Yes.

2 THE OBSERVER: If I'm going to what?

3 THE COURT: Shuffle -- you need to leave the
4 courtroom.

5 THE OBSERVER: Well, then I'll stop --

6 THE COURT: Sheriff --

7 THE OBSERVER: -- I'll stop shuffling.

8 THE COURT: Sheriff, she needs to leave to
9 courtroom.

10 THE OBSERVER: Your Honor, I just need to get my
11 stuff together.

12 THE COURT: I don't want to hear no more, ma'am,
13 you need to leave to courtroom.

14 I apologize, Mr. Martinez, my focus was -- I was
15 distracted.

16 Why wouldn't that be hearsay, Mr. Martinez?

17 MR. MARTINEZ: That is hearsay because as she
18 stated Ms. Jackson hasn't testified yet and although Mr.
19 Isenhoward has, he testified that he communicated with him
20 and notified him of that.

21 THE COURT: Well, you can ask -- you can certainly
22 ask the lieutenant did he receive an e-mail from Lieutenant
23 Isenhoward, but to -- in a close reading of the e-mail, the
24 lieutenant is just passing on information that was composed
25 by Ms. Jackson.

Russell Shumard - Cross-Examination by Mr. Martinez

1 Okay? So I think it would be hearsay through this
2 officer. Not that he -- not that he received an e-mail,
3 not that he received an e-mail from Lieutenant Isenhoward,
4 but the substance of it would be hearsay at this point.

5 Okay?

6 MR. MARTINEZ: All right.

7 THE COURT: All right. Anything further before we
8 bring in our jury?

9 MS. WALKER: No, sir, Your Honor.

10 THE COURT: And we'll go until their lunch gets
11 here. Maybe by the time they sit down, I don't know.

12 (The jury entered the courtroom at 1:03 p.m.)

13 THE BAILIFF: Jury is seated, Your Honor.

14 THE COURT: All right. Thank you. Ladies and
15 gentlemen, we'll press on until the clerk notifies us that
16 your lunch to ready. All right. Thank you very much.

17 Mr. Martinez.

18 BY MR. MARTINEZ:

19 Q Yes, Mr. Shumard, you stated that you was -- you
20 went to the scene of the crime; is that correct?

21 A Correct.

22 Q At what time was that?

23 A I arrived approximately 7:40 a.m.

24 Q And at that time where was the dogs? The K-9 unit
25 at?

Russell Shumard - Cross-Examination by Mr. Martinez

1 A I believe the K-9 unit was already out and about
2 the area.

3 Q So they gathered a scent from the suspect and was
4 out tracking; is that correct?

5 A According to the initial record, a tracking of the
6 suspect was conducted.

7 Q And you said that you -- that you're not qualified
8 to question children; is that correct?

9 A Depending on the circumstances.

10 Q So are you qualified to question children?

11 A Depends on the circumstances. Obviously, the first
12 question of that child was, are you hurt in any way. And
13 if need be summon medical attention. But as far as getting
14 into the -- her statement and getting into the interviewing
15 her, because of this traumatic event, we usually leave that
16 up to a person who's trained in that area of interviewing
17 children about traumatic events. I'm not qualified. I'm
18 qualified to ask her if she's okay and get maybe a general
19 description from her, but as far as getting into the real
20 meat and potatoes of what happened, that's left to someone
21 else.

22 Q So why did you get a statement from L.H. ?

23 A Because L.H. was -- L.H. at the time
24 was, I believe, 11 years old. D.H., the young one was 5,
25 I believe. So obviously L.H. is more advanced development

Russell Shumard - Cross-Examination by Mr. Martinez

1 than a 5 year old and I felt it pertinent to go ahead and
2 get a statement from her.

3 Q So why did she still have to go to a specialist
4 after that?

5 A Just as an additional tool and resource available
6 to us.

7 Q She stated that she -- that she was tied up; is
8 that correct?

9 A I believe that that was her testimony that she was
10 tied up, yes.

11 Q How come the article of -- the articles that were
12 used as she claimed to tie her up are not in evidence?

13 A I don't know to answer to that. That was
14 Investigator Morrison who collected the evidence at the
15 scene.

16 Q When -- when you guys -- when I first got there,
17 was there -- did you guys offer me any water or food or
18 cigarettes, or anything?

19 A When you first got where?

20 Q To Forest Acres Police Department?

21 A And the question is did we offer you food or
22 anything? I -- once you were read your Miranda, I believe
23 I asked you if you'd had anything to eat in the past few
24 days and you said no. I asked you if you had anything to
25 drink in a few days and you said no. We gave you a bottle

Russell Shumard - Cross-Examination by Mr. Martinez

1 of water. I think that somewhere during the process you
2 asked to have a smoke and that luxury was extended to you
3 towards the end -- after the interview was complete, but
4 was not offered as a promise that you give a statement.

5 Q Who went and got to cigarettes?

6 A I don't know.

7 Q Who paid for to cigarettes?

8 A Don't know.

9 MR. MARTINEZ: I beg the Court's indulgence.

10 THE COURT: Yes, of course.

11 BY MR. MARTINEZ:

12 Q What was the purpose of taking those pictures?

13 A To document the tattoos, marks about your body, and
14 your appearance on that particular day.

15 Q And did I give an explanation of why I was all
16 dirty and dusty?

17 A I don't believe you did.

18 Q Did -- did I give a reasoning as to why the back of
19 my -- the back of my ear was all cut up?

20 A I believe you said -- you may have said something
21 to Investigator Morrison about your ear.

22 Q And you don't know what that was about?

23 A No, sir.

24 Q When I -- when I was talking, did I tell you where
25 I lived at? Where I was staying at?

Russell Shumard - Cross-Examination by Mr. Martinez

1 A Did you tell us where you were staying at?

2 Q Yes.

3 A I don't recall the content of that conversation
4 about that.

5 Q You don't recall me saying that I was staying out
6 in The Landings right up the street?

7 A No, sir, I don't.

8 Q How come you never took notes or no narrative of
9 this statement?

10 A Because your statement and your words speak for
11 themselves.

12 Q Yet you took one for everyone else's statement that
13 you took?

14 A That's because of the lengthiness. Those other
15 statements were very lengthy and I thought it important to
16 sort of summarize in my notes what those statements said.
17 But yours was only four pages and I felt it was sufficient.

18 Q L.H. 's was only two pages?

19 A Okay.

20 Q And you did it with hers.

21 A Okay.

22 Q So during the giving of my -- during the taking of
23 to statement, you stated that I told you I haven't -- I'd
24 been up for a couple of days and I haven't aten for a
25 couple of days?

Russell Shumard - Redirect Examination by Ms. Walker

1 A Correct.

2 Q And did I appear that way?

3 A Like I said earlier, you appeared somewhat
4 fatigued, tired; however, eager to speak with us.

5 Q And when I was eager to speak with you guys, I was
6 eagerly speaking about my issues; is that correct?

7 A Your issues about what we documented in your
8 statement.

9 MR. MARTINEZ: No further questions, Your Honor.

10 THE COURT: Redirect?

11 **REDIRECT EXAMINATION**

12 BY MS. WALKER:

13 Q He asked you questions about why he appeared to be
14 dusty and dirty?

15 A (Witness nodded head.)

16 Q You have to speak so she can -- did he ask you --

17 A Yes, he did, I'm sorry.

18 Q And did you document his appearance that day?

19 A I can't recall. We took photographs.

20 Q Instead you took photographs. Is this how he
21 appeared?

22 A Yes, ma'am. Investigator Morrison took the
23 photographs.

24 Q Additionally, the handwriting on both statements,
25 when the handwriting goes to all capital letters, who is it

Russell Shumard - Redirect Examination by Ms. Walker

1 writing that?

2 A On the Forest Acres statement --

3 Q To all capital letters?

4 A Is my writing --

5 Q Right here.

6 A Oh.

7 Q The -- in addition to the questions, the answers
8 that are in all capital letters.

9 A Yes, the additional answers and the additional
10 information on the questions, that was Mr. Martinez wrote
11 that.

12 Q And was he allowed to elaborate or change or make
13 any alterations to the statement that he gave that he
14 wanted to?

15 A No. I mean yes, he did gave an elaboration on some
16 of the questions --

17 Q And --

18 A -- but not all of them.

19 Q Were there times, in fact, when he scribbled stuff
20 out and initialed it?

21 A Correct.

22 Q People who claim mental illness, are you still
23 allowed to speak to them after you advise them of this
24 rights?

25 A Yes. There's nothing that says we can't speak to

Russell Shumard - Recross-Examination by Mr. Martinez

1 someone who claims to have mental illness.

2 Q Thank you, sir. I don't have any other questions.

3 THE COURT: Mr. Martinez?

4 **RECROSS EXAMINATION**

5 BY MR. MARTINEZ:

6 Q Am I the only one that claimed that I had mental
7 illness?

8 A Yes.

9 Q Yes?

10 A As far as you saying that you have an issue, yes.
11 You said that on a number of times.

12 Q So --

13 A When someone says they've got voices in their head
14 speaking to them, then I think any reasonable person would
15 think that you have some sort of issue.

16 Q So you're telling me and the Court that I'm the
17 only one who claimed that I had -- that I have mental
18 issues?

19 A Well, other people had said some things if that's
20 what you're asking.

21 Q Okay. So other people told you that I suffer from
22 mental health issues?

23 A Yes, sir, yes, sir, they did.

24 Q Okay. And on to -- can you read the last part of
25 the statement that I gave?

Russell Shumard - Recross-Examination by Mr. Martinez

1 A Which one, sir?

2 Q The one to your agency?

3 MS. WALKER: I think, Your Honor, that's already
4 been done. That questions already been asked and answered.

5 THE COURT: He may answer it.

6 THE WITNESS: Okay. The last question?

7 BY MR. MARTINEZ:

8 Q Yes.

9 A On the Forest Acres statement, the question is: Is
10 there anything you wish to add. And you answered in your
11 own handwriting: I want to get to resolve the issues and
12 prove that what I have complained about with the chips
13 implanted inside of me to Mental Health and Richland County
14 Investigator Lieutenant Heidi Jackson and Holly Wagner are
15 the truth and I am not responsible for my actions; but I am
16 being electronically harassed by the U.S. -- U.S. police to
17 make me want to harm myself and others. And then your
18 initials at the end.

19 Q And how was me eagerly giving that statement going
20 to accomplish that?

21 A I'm not sure I quite understand your question.

22 Q How was I going to be able to prove and show that
23 what I was saying was the truth by giving that statement?

24 MS. WALKER: I would object to the speculative
25 nature of that question, Your Honor.

1 THE COURT: I would sustain the objection.

2 MR. MARTINEZ: No further questions, Your Honor.

3 THE COURT: Thank you, thank you very much,
4 Lieutenant. You may step down.

5 All right. Solicitor, you may call your next
6 witness.

7 MS. WALKER: Your Honor, at this point, the State
8 of South Carolina rests.

9 THE COURT: Thank you, thank you very much.
10 Madam Clerk.

11 (There was a bench conference with the clerk out of
12 to hearing of the jury and the court reporter.)

13 THE COURT: All right. Ladies and gentlemen,
14 perhaps now -- I'm not sure your lunch is here yet, but
15 perhaps now -- I don't know if that would be a good time to
16 take a luncheon recess or not if your lunch isn't here; but
17 be that as it may, we're going to take a recess and I'll
18 say until about 2:30, 2:30. You certainly may take a walk
19 about. You do not have to be held captive in your jury
20 room. Do not discuss the case with anyone. Do not read,
21 watch, listen to any news reports. Do not do any
22 independent research or research on the internet.

23 With that being said, we'll be in recess until
24 2:30. Thank you, thank you very much. Y'all have a
25 pleasant lunch.

1 All right. Mr. Martinez, would you come around,
2 please, to the microphone.

3 Madam Clerk, would you place Mr. Martinez under
4 oath.

5 THE CLERK: Yes, sir.

6 NATHAN MARTINEZ,
7 having been duly sworn, testified as follows:

8 THE COURT: Mr. Martinez, we have come to the point
9 in the trial where I need to go over some things with you.
10 I do this with everyone who is on trial and I need your
11 responses to be under oath, that's why I had the clerk
12 place you under oath.

13 We've reached to stage of the trial where to State
14 has rested and your side, the defense, now has the
15 opportunity to present evidence for the jury to consider.
16 You understand where we're at in the trial?

17 MR. MARTINEZ: Yes, sir.

18 THE COURT: In that regard, you may call witnesses
19 to testify on your behalf. If you choose to testify
20 yourself, you may do so. Do you understand?

21 MR. MARTINEZ: Yes, sir.

22 THE COURT: No one can force you to testify. You
23 have the absolute right to remain silent. And if you
24 choose not to testify, I will tell this jury that they
25 cannot hold your silence against you in any way. I will

1 tell them that they are not even to discuss that in the
2 jury room. Do you understand?

3 MR. MARTINEZ: Yes, sir.

4 THE COURT: If your side offers no evidence at all;
5 in other words, if neither you nor anyone on your behalf
6 testifies or offers any exhibits, although I believe there
7 are exhibits already introduced into evidence, with that
8 being said then the state will get to make the last
9 argument to the jury. Do you understand?

10 MR. MARTINEZ: Yes, sir.

11 THE COURT: Solicitor, or Mr. Martinez, does Mr.
12 Martinez have any record that would subject him to
13 impeachment under Rule 609?

14 MS. WALKER: None that we would offer, Your Honor.

15 THE COURT: All right. That would not be an issue.

16 The decision about whether you testify or not, Mr.
17 Martinez is yours and yours alone. Perhaps you have
18 conferred with individuals whose opinions you value on
19 important decisions, but the decision about whether you
20 testify or not is your call, your decision. You
21 understand?

22 MR. MARTINEZ: Yes, sir.

23 THE COURT: Has anyone exercised any undue
24 influence on you to get you to choose to testify or not to
25 testify.

1 MR. MARTINEZ: No, sir.

2 THE COURT: Today are you under the influence of
3 any drugs, alcohol, medication, or anything that majorly
4 affects your thinking ability.

5 MR. MARTINEZ: My mental health medication.

6 THE COURT: All right. And does it -- does that
7 negatively affect your ability.

8 MR. MARTINEZ: Not negatively.

9 THE COURT: All right. So you take mental health
10 medication, but it -- it helps you in a positive manner; is
11 that correct?

12 MR. MARTINEZ: It's supposed to, but it --

13 THE COURT: You understand what you're doing today?

14 MR. MARTINEZ: Yes, sir.

15 THE COURT: So it does not affect your thinking
16 ability in a negative manner?

17 MR. MARTINEZ: No, sir.

18 THE COURT: Do you suffer from any physical or
19 mental problems that affect your thinking today in a
20 negative manner?

21 MR. MARTINEZ: Yes, sir.

22 THE COURT: And what is that?

23 MR. MARTINEZ: I suffer from paranoid
24 schizophrenia.

25 THE COURT: You -- you what now?

1 MR. MARTINEZ: I suffer from paranoid
2 schizophrenia, major depression, and bipolar.

3 THE COURT: Do you not understand what you're doing
4 today?

5 MR. MARTINEZ: Yes, sir, I do.

6 THE COURT: Then explain to me then, what are you
7 doing today?

8 MR. MARTINEZ: My trial.

9 THE COURT: Sir?

10 MR. MARTINEZ: I'm in trial right now and you're
11 asking me if I wish to testify in my own behalf.

12 THE COURT: Based on your statement to the Court
13 under oath that you suffer from paranoid schizophrenia,
14 depression, and bipolar disorder, assuming that is
15 factually correct, do you understand what you're doing
16 today?

17 MR. MARTINEZ: Yes, sir.

18 THE COURT: Do those mental -- mental health issues
19 negatively affect your thinking ability today?

20 MR. MARTINEZ: No, sir.

21 THE COURT: Whatever decision you have made about
22 whether to testify or not to testify, is it your decision
23 made of your own free will and accord?

24 Let me ask you again.

25 Whatever -- well, have you made your decision? I

1 don't know what -- I don't even know what it is yet, but
2 have you made your decision about whether you're going to
3 testify or not?

4 MR. MARTINEZ: Yes, sir.

5 THE COURT: Do you have any questions that you
6 would like to ask me about your decision to testify or not
7 to testify?

8 MR. MARTINEZ: No, sir.

9 THE COURT: Do you need anymore time to think about
10 that decision about whether you're going to testify or not
11 testify?

12 MR. MARTINEZ: No, sir.

13 THE COURT: Has the decision you've made been made
14 freely, knowingly, and voluntarily.

15 MR. MARTINEZ: Yes, sir.

16 THE COURT: All right. I'm not going to ask you
17 your decision right now. I'll ask you upon our return to
18 court at 2:30. All right?

19 MR. MARTINEZ: All right.

20 THE COURT: Anything before we take our recess, Mr.
21 Martinez?

22 MID-TRIAL MOTIONS

23 MR. MARTINEZ: Yes, I'd like to motion the Court
24 for a directed verdict and renew all my previous --

25 THE COURT: I was going to hear that when I came

1 back, but go on and put it in to record now.

2 MR. MARTINEZ: -- my previous objections and my
3 directed verdict to all the charges.

4 THE COURT: All right. Thank you. Thank you, Mr.
5 Martinez. You may return to your seat.

6 All right. Solicitor?

7 MS. CAMPBELL: Your Honor, just to followup. I did
8 speak to the DNA people. As far as him doing independent
9 testing for statistics, all the information that we have
10 provided to them, she should be able to do that. The only
11 thing that we would ask would be the information we have
12 provided if she has done any independent testing, we would
13 just like to have it before she testifies. And we didn't
14 know if she has a CV, but I would like that.

15 MR. KATA: I e-mailed the CV earlier today.

16 MS. CAMPBELL: I just haven't checked my e-mail
17 today.

18 MR. KATA: You should have that. I'll be meeting
19 with her shortly. I don't believe any further testing was
20 done by her.

21 MS. CAMPBELL: Just if she's done it, I would like
22 to have it before she testifies.

23 MR. KATA: Sure.

24 THE COURT: All right. As to the directed verdict
25 motion, Solicitor?

1 MS. CAMPBELL: Your Honor, we feel like in the
2 light most favorable to the State, there's more than enough
3 evidence in the record to get past a directed verdict.

4 THE COURT: All right. I would find based on the
5 testimony of Ms. Hurshman, L.H. , Ms. Culpepper,
6 Ms. McRae, Mr. Decker, investigation by the officers up to
7 and including the statement given and in the light most
8 favorable to the nonmoving party, there is sufficient
9 direct and substantial circumstantial evidence for which
10 the case should move forward at this stage.

11 The motion for a directed verdict is respectfully
12 denied. Further, I would renew all my previous trial and
13 evidentiary rulings.

14 All right. Anything further before we take our
15 recess, Mr. Martinez?

16 MR. MARTINEZ: No, sir.

17 THE COURT: Solicitor?

18 MS. CAMPBELL: No, sir.

19 THE COURT: All right. 2:30.

20 MR. KATA: May I approach, Your Honor? One second.

21 THE COURT: You need to have your witnesses ready,
22 now, Mr. Martinez, at 2:30.

23 Yes, sir, you may approach.

24 MS. CAMPBELL: If he can let us know who he needs
25 here, we'll make sure they're here at 2:30.

1 THE COURT: If you want any officers here ---
2 (There was a bench conference with Mr. Kata out of
3 the hearing of the courtroom and the court reporter.)
4 THE COURT: Sheriff, can you get Mr. Martinez?
5 (The defendant entered the courtroom.)
6 (A recess was observed for lunch.)
7 THE COURT: All right. Mr. Martinez, would you
8 come back around to the microphone for me, please.
9 Consider yourself still under oath. Based on our
10 conversation before the luncheon recess, do you have any
11 questions at this time that you would like to ask me about
12 your right to testify or your right not to testify?
13 MR. MARTINEZ: No, sir.
14 THE COURT: Have you made your decision.
15 MR. MARTINEZ: Yes, sir.
16 THE COURT: Is it your decision.
17 MR. MARTINEZ: Yes, sir.
18 THE COURT: Is it made of your own free will and
19 accord?
20 MR. MARTINEZ: Yes, sir.
21 THE COURT: And what is your decision?
22 MR. MARTINEZ: I decided not to testify.
23 THE COURT: So you choose not to testify; is that
24 correct?
25 MR. MARTINEZ: Yes, sir.

1 THE COURT: All right. Thank you, Mr. Martinez.

2 All right. Anything from the State before we bring
3 in our jury, Solicitor.

4 MS. CAMPBELL: Your Honor, the only thing is I've
5 been provided over the lunch period a CV from their expert
6 on DNA. We have no problems with him going into the
7 qualifications, as far as that, we would just ask that the
8 CV not be offered until she's testified to it. That's
9 every expert witness.

10 THE COURT: All right. Anything from the defense
11 before we bring in our jury, Mr. Martinez?

12 MR. MARTINEZ: No, sir.

13 (The jury entered the courtroom at 2:38 p.m.)

14 THE BAILIFF: Jury is seated, Your Honor.

15 THE COURT: Thank you, thank you, Mr. Bailiff.

16 THE BAILIFF: Yes, sir.

17 THE COURT: Ladies and gentlemen, I hope y'all had
18 a pleasant lunch. As you heard before the luncheon recess,
19 the State has rested. You've heard all the evidence and
20 all of the testimony you're going to hear from the State in
21 its case in chief. The defense may now present evidence
22 and testimony if the defense chooses to do so.

23 In South Carolina, a criminal defendant, regardless
24 of the seriousness of whatever the charges may be, is never
25 required to prove himself or herself innocent. The burden

1 of proof remains on the State throughout the proceedings to
2 prove a criminal defendant guilty beyond a reasonable
3 doubt. A criminal defendant is always presumed to be
4 innocent and has no requirement whatsoever to present a
5 defense or to prove himself or herself innocent. However,
6 a criminal defendant may present evidence and testimony if
7 he or she chooses to do so.

8 So we now turn our attention to Mr. Martinez.

9 Mr. Martinez, does the defense intend to present
10 any evidence or testimony.

11 MR. MARTINEZ: Yes, sir, Your Honor.

12 THE COURT: All right. Would you call your first
13 witness, please.

14 MR. MARTINEZ: Yes, I call Ms. Charlotte J. Webb,
15 PhD.

16 THE COURT: All right. If you'd come around and be
17 sworn for us, please.

18 MR. MARTINEZ: Word, I'm sorry. Charlotte J. Word.
19 Word.

20 THE COURT: All right. Come forward, please.

21 CHARLOTTE J. WORD,
22 having been duly sworn, testified as follows:

23 THE CLERK: Please have a seat. State your full
24 name for the record.

25 THE WITNESS: Okay.

Charlotte J. Word - Direct Examination by Mr. Martinez

DIRECT EXAMINATION

1
2 BY MR. MARTINEZ:

3 Q Ms. Word, could you please state your
4 qualifications, please?

5 A Yes, I have a bachelor of science in biology from
6 the College of William and Mary, and I have a PhD in
7 microbiology with specialties in molecular biology and
8 immunology from the University of Virginia. After getting
9 my PhD, I did post doctoral work at University of Texas,
10 Southwestern in the areas of molecular biology and
11 immunology. After that, I was on the faculty of University
12 of New Mexico School of Medicine for approximately
13 5-and-a-half years where I taught and did research, again,
14 in areas of molecular biology and immunology.

15 MS. CAMPBELL: Your Honor, we have no problems with
16 qualifications. We'll stipulate to her as an expert.

17 THE COURT: All right. Thank you.

18 And she would be an expert in what field, Mr.
19 Martinez?

20 MR. MARTINEZ: Microbiology.

21 THE COURT: Any others?

22 MR. MARTINEZ: DNA.

23 THE COURT: All right. Again, ladies and
24 gentlemen, you've heard me say this on other occasions,
25 normally a person cannot give opinion testimony. Normally

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1 when a person testifies, they must testify as to either
2 what they saw, heard, or sensed by smell, or something of
3 that nature. However, there is an exception when someone
4 is qualified because of special education, knowledge,
5 training, or experience in a particular field, art,
6 science, or profession. They're permitted to give their
7 opinion and the basis for that opinion in certain areas if
8 the Court qualifies them that way.

9 This witness will be qualified in the area of
10 microbiology and DNA analysis to give opinions in that
11 area, the basis of those opinions also.

12 That does not mean that you must accept the
13 opinion, but it is evidence for you, the jury to use in any
14 way you deem fit and appropriate.

15 Thank you, Mr. Martinez. You may ask your next
16 question.

17 BY MR. MARTINEZ:

18 Q You're an OSAC member; is that correct?

19 A Yes. One of the qualifications that I have is I've
20 been recently -- two years ago -- appointed to a new
21 committee that's called -- the overarching group is called
22 OSAC, O-S-A-C, the Organization for Science Area
23 Committees. There was an analysis done in 2009 by the
24 National Academy of the Sciences that show that there are
25 some areas of forensic science, the various disciplines

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1 that have some problems and one of the ways to address this
2 was to put together these scientific committees to focus on
3 the particular different disciplines of forensic sciences
4 and work on improving those -- those areas.

5 And so committees of scientists have been put
6 together under the different disciplines and I'm on the DNA
7 biology subcommittee of the -- of OSAC and our mission, our
8 goal is the develop new standards and new guidelines in the
9 area of DNA testing and reporting of DNA testing and
10 specifically on the interpretation from reporting
11 subcommittee. There are very few standards in DNA for the
12 interpretation and reporting of difficult DNA samples,
13 difficult profiles, and so this committee is specifically
14 focused on trying to generate best practices, put new
15 standards in place, so that hopefully all the labs in the
16 country and in the world will come up to those standards
17 and improve their interpretation and reporting criteria
18 because with complicated samples with a number of
19 contributors and good guidelines for standards available in
20 the community, there's also no good standards or guidelines
21 available when there's a very small amount of DNA tested,
22 which has a lot of issues. It can generate results, but
23 cannot be totally relied upon.

24 And so I'm working on that committee to help
25 improve the field of biology, DNA testing as it's applied

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1 in criminal court cases.

2 Q And --

3 A Oh, I'm sorry, there's a second part of that too.
4 There's a second board that I'm also on that is responsible
5 for taking those standards and getting them out and
6 approved by standards, boards that actually accept those
7 and put them into practice so that laboratories will then
8 be mandated to follow those standards.

9 Q You went over multiple tests that was conducted by
10 Rachel Grant -- W Grant from the Richland County Sheriff's
11 Department; is that correct?

12 A I did receive some of the documentation from the
13 lab and have reviewed some of the data, yes.

14 MR. MARTINEZ: I'd like to admit this into
15 evidence, what was given to her so she can verify that
16 that's what she's based her opinion on.

17 MS. CAMPBELL: Your Honor, we have no problem with
18 it being marked for ID purposes.

19 THE COURT: Has this been marked previously?

20 THE COURT REPORTER: No, sir.

21 THE COURT: ID only, you're saying, Solicitor.

22 MS. CAMPBELL: I apologize. May I see it again? I
23 didn't see it before he gave it up.

24 THE COURT: All right.

25 MS. CAMPBELL: I apologize.

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1 (The solicitor was looking at the document.)

2 MS. CAMPBELL: We have no problem with these being
3 in.

4 THE COURT: All right. Defense 24 in evidence
5 without objection.

6 THE COURT REPORTER: Your Honor, it would be 25.

7 THE COURT: I'm just reading it like they handed it
8 up to me, Madam Court Reporter.

9 THE COURT REPORTER: We had already marked a 24.

10 THE COURT: So it's 25?

11 THE COURT REPORTER: Yes, sir.

12 THE COURT: All right. Defendant's 25 is in
13 evidence without objection.

14 (Defendant's Exhibit Number 25 was entered into
15 evidence.)

16 MR. MARTINEZ: Also --

17 THE COURT REPORTER: Wait a minute, please.

18 (There was a pause while the exhibit was marked
19 correctly.)

20 THE COURT: All right.

21 MR. MARTINEZ: These are all the testing that I was
22 given -- that was given to me from the State, from the DNA
23 analysis that we forwarded to Ms. Word and that she
24 reviewed and she makes her opinion off it.

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

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1 Any objection, Solicitor.

2 MS. CAMPBELL: No objection.

3 (Defendant's Exhibit Number 26, Number 27, and
4 Number 28 were marked for identification.)

5 THE COURT: All right. Mr. Martinez?

6 THE COURT REPORTER: Your Honor, these are 26, 27,
7 and 28, Defense.

8 (The documents were handed to the witness.)

9 THE COURT: All right. Mr. Martinez?

10 BY MR. MARTINEZ:

11 Q Ms. Word, is that the information that you gathered
12 and was able to base your opinion on?

13 A Some of it is. I did receive 25 and 27. And I
14 received pages 1 through 36 of Exhibit 28. The rest of the
15 materials, 37 through 57 I have not seen and do not have a
16 copy of. And Exhibit 26, I have not seen any of this
17 stuff. This was not provided to me. So I don't -- I don't
18 have any opinions specifically to these documents. I'm
19 presuming they're the foundation for some statements that
20 were made in a new report. And I have opinions on that,
21 but I haven't seen this material.

22 THE COURT: Doctor, let me make sure I'm tracking.
23 You just said you have not seen 25?

24 THE WITNESS: 26. I've not seen 26.

25 THE COURT: You have not seen any of 26.

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1 THE WITNESS: That's correct.

2 THE COURT: What about 25?

3 THE WITNESS: 25, I have seen. I got that last
4 night.

5 THE COURT: And what about 27?

6 THE WITNESS: I have seen that, yes, sir.

7 THE COURT: And then 28, you've seen pages 1
8 through 26, but not pages 37 through 57.

9 THE WITNESS: That's correct, yes, sir.

10 THE COURT: Do you need time to look at those?
11 Those that you have not yet seen.

12 THE WITNESS: It might be helpful. It depends on
13 where the questions are going to go.

14 THE COURT: Step out, please, ladies and gentlemen.
15 (The jury left the courtroom at 2:56 p.m.)

16 THE COURT: How much time you need, Doctor?

17 THE WITNESS: I could probably look at what's here
18 in 5 or 10 minutes.

19 THE COURT: All right. Well, let's take about --
20 ten minutes be sufficient? Doctor, I could look at them
21 for 10 years and it wouldn't be sufficient. Ten minutes be
22 sufficient for you, Doctor?

23 THE WITNESS: Perhaps yes.

24 MS. CAMPBELL: Your Honor, may we have an
25 opportunity -- Number 28, I think he said that he -- only

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1 certain pages were provided. We would just ask that we be
2 able to review what wasn't provided. He represented --
3 when he handed those items, this was everything she had
4 reviewed.

5 THE COURT: Yes, ma'am.

6 MS. CAMPBELL: So we didn't question it.

7 THE COURT: So you want a copy -- you want a full
8 and complete --

9 MS. CAMPBELL: I would like to get --

10 THE COURT: Both sides need full and complete
11 copies --

12 MS. CAMPBELL: Of those, just so I know what was
13 actually provided.

14 THE COURT: That's my only point. Make copies,
15 provide it all to the doctor. We'll take about a 10 minute
16 recess while the doctor has opportunity to review it.

17 MS. CAMPBELL: Thank you.

18 THE COURT: Mr. Martinez, any problems?

19 MR. MARTINEZ: No, sir, I was under -- it was my
20 understanding that she was -- after the new test was made,
21 I was under the impression that she was forwarded that
22 information, but I apologize to her and the Court.

23 THE COURT: No apology is necessary. If you think
24 there is, I'll accept it, Mr. Martinez. I just want to
25 make sure --- we have an expert witness on the witness

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1 stand. She's going to form her opinions. I want her to
2 have the opportunity to review all of this, that's all.

3 No apologies necessary. Doctor, you may step down.
4 If you would provide 28 to the State so she can make a
5 copy. And we'll take about a 10 minute recess to give the
6 doctor a chance to review the copies.

7 (A brief recess was observed.)

8 THE COURT: Have you had enough time, doctor?

9 THE WITNESS: Yes, sir.

10 THE COURT: All right. Thank you.

11 Anything before we bring in our jury from the
12 defense, Mr. Martinez?

13 MR. MARTINEZ: No, sir.

14 THE COURT: State, Solicitor?

15 MS. CAMPBELL: No, sir.

16 (The jury entered the courtroom at gin 3:14 p.m.)

17 THE COURT: Thank you, thank you very much,
18 Mr. Bailiff.

19 THE BAILIFF: Yes, sir.

20 THE COURT: All right. Our jury is back, Mr.
21 Martinez, you may ask your question.

22 MR. MARTINEZ: Okay.

23 BY MR. MARTINEZ:

24 Q Dr. Word, that's the -- the information that you
25 gathered, you was able to read it and determine your own

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1 opinion based off of the testing they done; is that
2 correct?

3 A Yes, sir, yes.

4 Q And did you find some issues that are incorrect or
5 inconsistent with their tests and what they state in their
6 report?

7 A I did, yes.

8 Q What were those issues that you found?

9 A So we can just walk through the report and go
10 through them individually.

11 The first result -- the first conclusions based on
12 the results regarding vaginal swab and a hair, I agree
13 with.

14 The Statement Number 2 in the report refers to
15 testing that was down on Item 3, which is the cell phone
16 face cover. The laboratory states that it's a mixture of
17 three individuals. I think that should be stated as at
18 least three individuals. When we have a small amount of
19 DNA that's been put through the testing system, we don't
20 know the number of contributors and a lot of studies have
21 been shown on these types of samples -- have been done on
22 these types of samples and have demonstrated that the clues
23 that we use to help determine the possible number of
24 contributors often fail when we have four, five, or six
25 contributors.

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1 So if we get a profile that looks like it might be
2 three contributors, oftentimes it's for four or five or
3 more. And when they're from unknown people, we can't know
4 absolutely how many contributors there are.

5 So I think this statement should be modified to say
6 at least three individuals and any analysis that's done on
7 that profile needs to be done considering the possibility
8 that three, or maybe even five, maybe even six contributors
9 exist on that simple.

10 The reason for that is, we all share some of our
11 DNA types, so if we mix two people's DNA together, we would
12 normally expect if we were all different to have two peaks
13 from one person and two peaks from the second person.
14 These are the types we got from our mother and father. But
15 what happens is most of the time, we only see three peaks
16 so we get this sort of thing. And that's because this no
17 peak happens to be shared between these two people.
18 Sometimes we only see two peaks and that would be because
19 both people have exactly the same types so they're right on
20 top of each other, or one person only has one type and the
21 other person only has one type and together they look like
22 two.

23 So we know on two person mixtures, these are two
24 peaks of mixtures, we can often have one only, two, mostly
25 two or three what are called alleles, those are the DNA

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1 types. It's uncommon to get all four types on both people.
2 If we then add a third person in, we would hope to see two
3 plus two plus two, six alleles at each locus. What we
4 often see are more alleles because of sharing in the
5 population. We don't often see five. We might. We rarely
6 see six.

7 When we move to four people, we would like to see
8 eight: Two plus two plus two plus two. We never see that
9 in a four person mixture. We may see only three or four or
10 maybe five alleles, maybe six, which suggests a three
11 person mixture and it just gets more complicated, the more
12 individuals we add in.

13 And at some point because while we're each unique,
14 if you look at our whole profile, when you put people
15 together, we have overlaps in our profile. So I think this
16 should be stated at least three individuals and this comes
17 into play with the second report and the analysis they did
18 with the probabilistic genotyping software.

19 That software requires that I have two hypotheses
20 get made, one on the top, one on the bottom. Those
21 hypotheses are not stated in the report, so it's not
22 entirely clear to me what those were, but I'm going to
23 guess based on their report that they started with the
24 assumption of only three contributors.

25 So the number that they calculated is based on

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1 that. They perhaps should have done it with four or five
2 contributors because we don't know how many individuals are
3 actually in the sample and I suspect if they did the power
4 of that number would come down significantly.

5 In the first report, they state that Mr. Martinez
6 cannot be excluded from the mixture and then they proceed
7 to give statistical calculations of 99.999 percent
8 population would be excluded. So as I just mentioned,
9 because we have allele shares that we don't know the number
10 of contributors, once we get up to a complex mixture and I
11 use that for three or more contributors. What we can have
12 happen is that you just have this table of alleles. We
13 can't pull out who the actual people are that are in there.
14 All we can simply do is look to see if someone's alleles
15 fit into that profile and that's what this -- the lab has
16 done and they stated he can't be excluded. And that's
17 because his types -- types consistent with him are showing
18 up in that profile. It does not mean that he's a
19 contributor or that we know that he is absolutely in that
20 profile.

21 It means that there's no information given the
22 complexity of the profile to exclude him as a possible
23 source. The testing that's being done today in any of the
24 labs has gotten down to such a low level of sensitivity,
25 that a common problem is we're missing a lot of the data

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1 when we get our DNA profile. So that complicates the
2 interpretation and it really complicates how the
3 statistical calculation is done.

4 So it's my opinion and it's the opinion of a lot of
5 other individuals and the research of an important work
6 that just came out that says this type of statistical
7 calculation that this laboratory used is not foundationally
8 valid and should not be used on complex mixtures. It
9 shouldn't be used if there's a high risk that data are
10 missing. And it shouldn't be used when there's a high
11 likelihood that individuals in that profile are related.
12 So those are all problems with this sample.

13 My opinion is that this sample should have been
14 reported as inconclusive. There's too complex a profile
15 with a high risk that data are missing and there's a high
16 risk then of false inclusions or false exclusions and this
17 statistical frequency is not supported for use on these
18 types of samples.

19 The statistical frequency used is fine because of
20 the really nice high quality profile and that's not what we
21 have here. So -- and they actually state in the report as
22 well that due to relatedness that complicates the
23 interpretation. So -- and that's a big problem with using
24 this category collation which is referred to as a CPE,
25 Combined Probability of Exclusion. There's a reverse

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1 calculation called a CPI, Combined Probability of
2 Inclusion. If we did the reverse of this number, it's
3 going to come out to one in 1000 individuals could be
4 included in this complicated profile. However, because
5 there's probably data missing, that number actually should
6 be lower. It should be one in some smaller number than a
7 hundred thousand in all likelihood.

8 So that clearly means that we cannot say that
9 there's a match with Mr. Martinez's profile to this. All
10 we can simply say is he cannot be excluded. But it's
11 required to give a good statistical calculation on that
12 statement and because we can't do that, it should be
13 reported as an inconclusive. This profile is too complex
14 in my opinion and in the opinion of many other individuals
15 in the field.

16 And that's supported by a recent report that has
17 come out of President Obama's Presidential Counsel Advisors
18 of Science and Technology.

19 Conclusion Number 3 regards Item 4, which is the
20 electrical cord. I agree with that. I think I agree with
21 that interpretation.

22 Also the lady on the jewelry swab so and of the
23 right breast swab, for those samples, it states mixture of
24 two individuals. Again, I think it should say at least
25 two, based on the poor quality of the data, we don't know

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1 the true number of contributors. We know it's at least
2 two, but we don't know whether it's three or more. The --
3 the wording is awkward, but I think what they're saying in
4 their second sentence is that there is a major contributor
5 to this profile and that that's consistent with the profile
6 of Briona Hurshman. I don't know if anyone explained to
7 you what a major profile means, but if we take my DNA and
8 mix it with someone else's DNA and there's a lot of mine
9 and just a little bit of the other person, we get the DNA
10 profile, my peaks are going to be sticking way up here and
11 the minor person that didn't have much is going to be very
12 small. So in a two person mixture, we can very easily go
13 across and pull my profile out because it's always bigger.

14 And it basically becomes a single source sample,
15 even though it's a mixture of two because the profiles are
16 so distinguishable. Similarly in that situation if there's
17 a minor contributor out, we can pull those pieces of DNA
18 data out and then interpret the minor contributor because
19 of those difference in peak heights on profiles.

20 So they use the terminology major, which means
21 major and minor, we should have distinguishable profiles.
22 And then they state that the minor contributor is too weak.
23 When I look at this profile, the few loci that did
24 indications of mixtures had three peaks that are very close
25 in height. I can't tell what they're calling major and

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1 what they're calling minor; and I can't tell from looking
2 at their procedure's manual how they made that distinction.

3 If we look at the labia majora swab, there are
4 actually two peaks, in that they are quite high. One is at
5 a locus all by itself and that peak does not match Briona
6 Hurshman, so I'm not sure if that's part of what they're
7 calling a major contributor. That does not meet with her
8 profile. I don't know where that statement's coming from.

9 At another location, there are two peaks present
10 that fit with her profile and then there's a third peak
11 that's very very tall, which would suggest the major
12 contributor and that doesn't fit with her. Those two peaks
13 don't fit with any of the individuals tested in this case.
14 So this data suggests that there's possibly DNA from
15 another person or there's some explanation, but I don't
16 know if the sample's contaminated or some problem with her
17 -- but based on the information I received, there are at
18 least two alleles in the labia majora swab that are not
19 accounted for by Briona Hurshman; they're not accounted for
20 by Robert Hurshman; they're not counted for by Mr.
21 Martinez.

22 Again, on the right breast swab, I can't tell what
23 they're calling a major versus minor contributor. I just
24 realized I left something out and we'll go back to that.

25 Let's step back to the cell phone for a minute as

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1 well. They state that it's a mixture of three people. I
2 think it should be at least three individuals. And they
3 say based on the relatedness they can't make any
4 determination of who might be a contributor other than they
5 can't exclude Mr. Martinez. However, when I look at the
6 profile, there are two alleles that show up in this complex
7 mixture that aren't accounted for by anyone that was
8 tested. So there should be an additional statement on the
9 sample that says there are at least two additional alleles
10 or there with two additional alleles that can't be
11 accounted for, any of the Hurshman's or Mr. Martinez. That
12 would indicate this DNA is from an additional unknown
13 person on the cell phone.

14 And that was back on conclusion two.

15 Moving onto conclusion four, this is the
16 conclusions based on the profile developed from the mans
17 pubis. They state that this is a mixture of at least two
18 individuals. So here they do use the correct language,
19 which generally means, I'm confident there are two and
20 there may be more, we don't know. They do exclude Mr.
21 Martinez as a contributor to the mixture, I agree with
22 that. And they say Briona Hurshman and Robert Hurshman
23 cannot be excluded as contributors to this mixture and I
24 agree with that statement. However, there's an additional
25 statement that should have been added onto this that says

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1 if Mr. Hurshman and Ms. Hurshman are both contributors
2 there has to be DNA from at least one other individual.
3 There are 9 alleles in this profile that cannot be
4 accounted for by Briona Hurshman or Robert Hurshman and
5 they do not match the profile for Mr. Martinez. So there's
6 DNA from some other individual in this profile.

7 Moving to conclusion Number 5, this is on Item 1,
8 which is the drill. They state it's a mixture of two
9 individuals. Again, I any it should say at least two
10 individuals that the profile has a poor quality that we
11 don't know for sure that it's only two. They do state that
12 Mr. Martinez is excluded as a contributor. I agree with
13 that statement. They state that Briona Hurshman and Robert
14 Hurshman cannot be excluded as contributors. I agree with
15 that statement. But there's an additional statement that
16 should be in this report that says if Briona Hurshman and
17 Robert Hurshman are contributors to this sample their's DNA
18 consistent with yet an additional person in that -- in
19 those results.

20 So sample -- I'm sorry. Conclusion Number 6 is for
21 Item 2 that no result was obtained and I agree with the
22 fact that that conclusion was correct.

23 Q And --

24 A I'm sorry. I can't remember the question, whether
25 you only asked about the first or both reports.

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1 Q Yeah, the second report is different that the first
2 report; is that correct?

3 A A little bit, yes.

4 Q And --

5 A At the one -- two particular places.

6 Q Could you explain that to the jury, please?

7 A Certainly. In the second report -- the second
8 report is referred to as a Supplemental Report Number One.
9 They made two changes. One is they modified -- the
10 modified statement to you; important to me is for
11 conclusion Number 2. They removed one of the loci from the
12 calculation that they did based on missing something in
13 their original interpretation. The numbers don't change,
14 but it's still my opinion that number should not have been
15 provided that that's the wrong approach to use to generate
16 that CPE 99 on the 999 point exclusion. So I still
17 disagree that that should have been provided and it should
18 have been, in my opinion, interpreted to something
19 conclusive.

20 They did a new calculation using software that has
21 recent -- well, has recently become more actively used.
22 Some of it's been around for a while. But it's becoming
23 more commonly considered at deferent laboratories and being
24 brought online in some labs. And that's where they
25 generated a new frequency, which I'm presuming you heard.

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1 It's called a likelihood ratio and it -- the
2 statement in their report is that the genetic results
3 obtained from Nathan Martinez is 344 trillion times more
4 likely to be a contributor to the mixture from Item 3 than
5 a random unrelated individual.

6 This is not the appropriate way to make this
7 statement and this the one of the cautions that people
8 starting to use this software are being trained not to use
9 this the statement. The statement should say, it's 344
10 trillion times -- if it's a correct statement, it should
11 say, X number of times more likely that we would see these
12 results if this person is a contributor. As opposed to
13 that person not being a contributor. But what goes into
14 this calculation are some numbered assumptions. So the
15 laboratory had to make assumptions and had to put that into
16 this equation. Those assumptions aren't provided in a
17 report. They're not entirely clear from the information
18 that I reviewed during the break. I think that assumption
19 is based on their being three contributors for sure. We
20 don't know that.

21 It looks like they did the analysis twice and got
22 two different numbers and then averaged those numbers.
23 That's not my understanding of how most laboratories are
24 doing that. If they do it twice and they get two very
25 different numbers, they generate a report with a lower

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1 number. So I think on -- there's some complications of how
2 that was done and how it was reported. The technical
3 manual that I was provided from the laboratory has no
4 information about how they do this; so I can't look up what
5 your procedure is and follow how they generated that
6 report.

7 So in addition to being reported incorrectly, I
8 don't have high confidence in this. Additionally, I
9 mentioned a lot of labs are starting to use this. It's a
10 very complex process against the software. The world,
11 country, everyone is trying to generate what's value
12 statistics. These are tests that are done in the
13 laboratory with known samples where you know what the right
14 result is and running it through the system to see if you
15 have this, what we get, how strong the mixture is and you
16 put it in, what kind of results does the software put out?
17 Is we not know with good quality DNA, very good quality
18 profiles with a small number of contributors. These
19 software packages can be quite accurate.

20 What we don't have a lot of studies on yet is where
21 we've got four quantity samples with -- with unsure numbers
22 of contributors let the limitations of this software is.
23 In the end, there are a number of laboratories evaluating
24 this. There are a number of experts who think it's fine,
25 another number experts that think it's not fine at this

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1 plane. And that same counsel, the president's counsel,
2 PCHAST, P-C-H-A-S-T President's Counsel of Advisory for
3 Science and Technology made a statement that it's too early
4 right now to know if this is the answer for addressing
5 complex mixtures, smaller number of DNA. And they think
6 more work needs to be done on them. So those are my
7 comments on the second report.

8 MR. MARTINEZ: I'd like to admit -- this is the
9 report that you're referring to; is that correct?

10 THE WITNESS: I believe so.

11 THE COURT: This is a research document? This was
12 what she's been referring to. The document itself is not
13 in evidence. The testimony is in evidence. The document
14 itself would not be admissible under State versus Gullege.

15 BY MR. MARTINEZ:

16 Q The testimony that you gave is corroborative with
17 new -- as you said, the new statistics by not just yourself
18 but the leading and the majority of the DNA community; is
19 that correct?

20 A I'm not quite sure I follow your question; but my
21 opinions, I know a lot of other leading experts who spent a
22 lot of time working with complex mixtures agree with.
23 There are a number of laboratories that are using this CPI,
24 CPE calculation. Laboratories are moving toward using the
25 probabilistic genotyping software. That's what it's

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1 referred to. The opinions that I quoted or mentioned are
2 in this what's called this PCHAST, PCHAST report. And they
3 state that the CPI, CPE calculation is not foundationally
4 valid for the types of samples that are currently -- that
5 it's currently being used for in the laboratories and they
6 do state that the probabilistic genotyping software may be
7 the answer. But we don't know that yet, but there's a lot
8 more work that needs to be done. It's not quite ready for
9 prime time, but more validation studies need to be done.

10 Q So this is a set of scientific advisors partially
11 out of the frozen arena who have evaluated the applications
12 to DNA testing based on their scientific review of the
13 literature and what's being used to clarify, in your -- in
14 your opinion from reading their report, it can't be -- it
15 can't be determined that I'm a contributor or any of
16 them are contributors; is that correct? Any of that family
17 that was tested or me. No one can be determined to be a
18 contributor now?

19 A That's my opinion that on a complex mixture with
20 the low quality of the DNA profile generated that is
21 impossible to state who the actual contributors are. At
22 best we can see who cannot be excluded, but if we do that,
23 we have to give a statistical frequency. We have to
24 say how many other people would also be possibly included.
25 And on those types of profiles, we don't have the methods

Charlotte J. Word - Direct Examination by Mr. Martinez

1 for doing that right now. So without being able to say
2 it's one in ten people, one in 100 people, one in a
3 million, one in a trillion, we can't put a correct number
4 on that. We don't know what that can't be excluded means.
5 And that's a problem in the field right now. That's why
6 the probabilistic genotyping is being developed to try to
7 help with that. But right now we haven't moved to
8 acceptance of those procedures by the scientific community
9 and there's a lot of issues with using it.

10 And it's been misused in a large number of labs.
11 There are a lot of laboratories that have shut down around
12 the country because of the misuse of these statistical
13 calculations. It's been all over the newspapers. I don't
14 know if you've seen that, but -- if you know -- if you've
15 seen that in the news because labs are using this
16 inappropriate, statistical calculation.

17 Q And also, there's the -- their report misstated
18 that -- they're claiming that Briona Hurshman is the
19 contributor to the DNA that's -- that was located on her
20 mans pubis but accurately, it was somebody else as well?
21 Somebody else that wasn't tested; is this correct?

22 A That's correct. There's mixture, yes. And they
23 said that Briona Hurshman cannot be excluded as
24 contributors. It's certainly reasonable to assume that
25 she's a contributor because that sample was taken from her

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 body. We generally see that individual's DNA. But if the
2 two of them together are contributors they don't account
3 for all the data that's seen. So if they're both
4 contributors, there has to be a third person whose DNA is
5 on that sample and that third person is not any of the
6 other Hurshman's who were tested or Mr. Martinez. It's
7 some unknown person.

8 Q Thank you, Doctor, I appreciate it.

9 THE COURT: Thank you, Mr. Martinez.

10 Solicitor?

11 MS. CAMPBELL: Yes, Your Honor.

12 **CROSS-EXAMINATION**

13 BY MS. CAMPBELL:

14 Q You're from the Washington D. C. area?

15 A Yes.

16 Q And I don't think -- have you ever been in this
17 courtroom before?

18 A I don't believe so, no.

19 Q I know we referred to -- or you referred to the
20 reports you've reviewed, some of them you just reviewed
21 five minutes ago, right? Ten minutes ago.

22 A No, I reviewed -- well, one report I reviewed last
23 night and one I reviewed in the past week.

24 Q The only thing new was the Defendant's Exhibit 26.
25 Where's your report?

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 A I provided a letter to Mr. Kata on November 27th.

2 Q Okay. And in that letter you provided on the 27th

3 -- what's today's date?

4 A I have no idea.

5 Q Is it December 5th?

6 A December something.

7 Q 6th maybe something like that? 5th maybe?

8 So a week ago, you provided a letter that included
9 all these conclusions you just testified to?

10 A Most of them, yes.

11 Q Really? You've made six different conclusions. In
12 that letter, you talk about two of them?

13 A That's correct.

14 Q So that's most of them? That's your opinion?

15 When were you first contacted on the case?

16 A I believe Monday or Tuesday before Thanksgiving.

17 Q Monday or Tuesday before Thanksgiving?

18 A Yes, ma'am.

19 Q So in the last two, two and a half weeks?

20 A Two weeks, yes.

21 Q And when you were provided all -- well, you weren't
22 provided all the reports. And just to be clear, is it our
23 job to give you the reports or the person that hired you?

24 A The person that hired me.

25 Q So initially when you got the reports, you got 36

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 pages of some data and a report; is that correct? And this
2 the based on your testimony?

3 A That's correct. The first report.

4 Q So that was something that they didn't provide you,
5 not that we didn't --

6 A I'm sorry?

7 Q We didn't provide -- we did not keep things from
8 you?

9 A I haven't had any interaction with you, so --

10 Q And that's another --

11 A That was what was provided by Mr. Martinez.

12 Q Okay. And we requested to talk to you, but you
13 chose not to talk to us?

14 A I have no information about talking to me.

15 Q Have you ever spoken to us?

16 A I have not.

17 Q And when you were retained on the case two weeks
18 ago, how long was it before you were provided the reports,
19 before you were retained?

20 A I'm sorry, I think you asked me how long did I
21 provide a report before I was --

22 Q How long was it until you were provided information
23 in this case to review?

24 A After I received -- after I was retained?

25 Q Yes, ma'am.

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 A I thought I heard you say before. I believe I got
2 the information on Tuesday or Wednesday before Thanksgiving
3 and I think I wrote this Sunday night.

4 Q That Sunday night after--

5 A Thanksgiving weekend.

6 Q Is this then officially the two original
7 conclusions, you've come to four more?

8 A I have, yes.

9 Q And then --

10 A Well, I'm sorry. I don't -- I have come to more
11 than two originally. I don't know how we break those out.
12 We -- there are more opinions, what it's for, I'm not sure.

13 Q And you haven't done a report in this case? Any
14 kind of initial report, you just provided a letter?

15 A Well, that is a type of report that we commonly
16 provided in sessions, court cases like this.

17 Q Well, the Richland County Sheriff's Department
18 provided an official report. You weren't asked to do that
19 if? Or you just don't do that?

20 A No, I provided a letter. It's common for me to --
21 I get asked to provide information in a number of different
22 ways. Sometimes I get asked to write a report. Sometimes
23 I get asked to provide a letter.

24 Actually, I misstated that. I almost never get
25 asked to give a report as such. My report is usually a

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 letter or an affidavit or declaration stating what I
2 reviewed and what my opinions are in this area.

3 Q Where are you currently employed?

4 A I'm self-employed as a consultant.

5 Q And as a consultant, you are then hired for people
6 to come to court and testify?

7 A Well, I'm initially hired to consult with attorneys
8 on the -- it varies from case to case and situation to
9 situation. In a situation similar to this, I'm hired by
10 attorneys to review the work from the laboratory. I can be
11 hired by the prosecution or the defense and I'm asked to
12 review the work that they did, review their conclusions in
13 the report that they glean and give my opinions regarding
14 that.

15 Q And do you bill by the hour? Is it a package deal?
16 Or how does that work?

17 A I bill by the hour.

18 Q Okay. And how much do you make per hour?

19 A I bill 250 per hour.

20 Q How many hours have you put into this case so far?

21 A Prior to yesterday when I left I believe it's 6
22 hours and then I will bill for my time from the time I left
23 Washington yesterday.

24 MR. MARTINEZ: Objection, Your Honor, relevance.

25 THE COURT: Overruled.

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 BY MS. CAMPBELL:

2 Q So prior to leaving Washington D.C. or wherever you
3 left from yesterday, you had billed 6 hours?

4 A Well, I haven't billed, but I will bill for that,
5 yes.

6 Q But then --

7 A I've spent 6 hours on the case.

8 Q If say you're hired by the defense, I mean you're
9 getting billed for every hour from when you leave to when
10 you get in court?

11 A That's true for every -- whether I testify for the
12 State or the defense, from door to door from the time I
13 leave.

14 Q So it's important for you to have something
15 additional or something that would be important enough for
16 you to get paid for -- what time did you leave yesterday?

17 A I'm sorry, I didn't understand the first part.

18 Q What time of day did you leave yesterday to come
19 here so that you could testify to these people in court?

20 A I left -- I can't remember. I think about 3
21 o'clock.

22 Q So, so far you've already put in 24 hours worth of
23 billing just by coming here to court and have this opinion.
24 Do you know what 24 times 250, and that may not be all?

25 A I bill \$2,000 a day for my testimony and travel,

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 any travel, whether I testify or not.

2 Q And you get paid for your travel as well?

3 A I do. Because I'm generally working on the
4 airplane, working in my hotel room most of that time.

5 Q So just yesterday and today would be 4,000 if you
6 just bill 2,000 a day?

7 A Well, it will be 2,000 because it's only 24 hours
8 at this point.

9 Q And when are you going back?

10 A Hopefully tonight.

11 Q Or tomorrow?

12 A When I'm done and released.

13 Q So it's got your time to come to court to testify
14 if you can? That's how you make your living, right?

15 A I make my living by providing helpful information,
16 scientific information to whoever hires me. I don't often
17 go to court and then we have cases that I work on, it's not
18 my decision whether I go to court or not because the person
19 that hires me makes that decision. So I think that it's
20 probably not an accurate statement. I go to court when I'm
21 requested to testify.

22 Q Well, if you don't have something to help him, he's
23 not going to bring you to court is he?

24 A I don't presume why different individuals ask me to
25 come to court or not. It varies from case to case. The

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 individual who's retained me makes that decision based on
2 what they need in their particular case.

3 Q Well, let me talk to you what you did before you
4 became a private person that worked for themselves.

5 Were you actually working in a lab called Cellmark?

6 A I was, yes.

7 Q And when is the last time you actually did any
8 laboratory work?

9 A I was -- I did not do actual hands on laboratory
10 work at my job at Cellmark. I was what was called a
11 technical reviewer, the analysis work, and then before the
12 data and the report to leave the lab, it had to go to
13 another individual in the laboratory to do what's called a
14 technical review, very similar to what I've done here,
15 review the computation, see that it fits the standard
16 operating procedure, see that the appropriate controls are
17 done independently examine those results, independently
18 interpret them and then independently check the review
19 sheets. So that was one of my many responsibilities at
20 Cellmark.

21 Q So ensure the quality of what y'all did?

22 A That's right.

23 Q And when you were at Cellmark, you did your best to
24 make that sure the results that y'all put out were good
25 results?

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 A That was the goal, yes.

2 Q That's the goal. It's important to have overview,
3 review people, and have certain accreditation. Were y'all
4 accredited?

5 A We were, yes.

6 Q Who accredited you?

7 A ASCLD Laboratory, A-S-C-L-D/L-A-B. The American
8 Society of Crime Laboratory Directors, Laboratory
9 Accreditation Board. We were the first private lab
10 accredited by that agency.

11 Q And become then the -- it was much easier to get
12 accrediting than it is now; would you agree with that?

13 A Well, I hope that's not true. I don't know. I
14 hope that's not true. Lab -- every lab in the United
15 States who wants funding from federal government or wants
16 to put samples into the CODIS data base, controlled by the
17 FBI, has to and certainly tries to be accredited.

18 Q Okay. And while you were there you did your best
19 -- in fact, I think you were one of the laboratory
20 graduates, weren't you?

21 A I was the last two years, yes.

22 Q Especially in 2004?

23 A I don't remember. I think it was in 2001. I don't
24 remember. It's on my curriculum.

25 Q On your curriculum vitae? That's what you provided

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 us. It says that from 2001 to 2005 when you were -- left
2 that you were the laboratory director?

3 A I was one of the laboratory directors. I'm sorry I
4 must have misheard. I thought you said 2004.

5 Q That's the year I'm getting ready to talk about.
6 2004 was when one of your analysts was fired for falsifying
7 test results, one that was under your purview?

8 A That's correct.

9 Q And you were the one that was responsible for
10 making sure his results were correct? His or her, I don't
11 know if it it's a his or her.

12 A It was a her. And everyone in the laboratory was
13 responsible for that because we had a number of quality
14 assurance procedures in place. We had a number of
15 technical reviewers. And so we were all responsible.

16 Q As was she. And then she was fired?

17 A That's correct. After an investigation of the work
18 that she did and seeing that she was also falsifying data,
19 not any of the samples, just on results.

20 Q And then y'all went back and retested them and said
21 that they were all good -- all samples; right?

22 A For the cases that we retested, we found that she
23 had not altered the work in the actual piece work samples,
24 what she had done is if she had a control that didn't --
25 that came up looking like there may be some contamination,

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 but it wasn't clear and she should have rerouted those
2 samples. She simply didn't do the testing for that. Those
3 all got rechecked. They were all fine, they were all
4 clean. She just was not taking the time to complete that
5 part of the process.

6 Q And that came out in the public in November of 2004
7 and shortly thereafter is when you left to go in private
8 practice?

9 A In Spring of 2005, we had recently been purchased
10 by another company and they chose to close the Cellmark
11 Laboratory and consolidate the two laboratories, so it was
12 not my choice to leave Cellmark, but the laboratory got
13 closed down.

14 Q When you were contacted right before Thanksgiving
15 on this case and you reviewed the initial report, you
16 underlined data that had been provided to you, however much
17 that was, and you came to some conclusion because you wrote
18 that letter not a report, on November 27th; right?

19 A That's correct.

20 Q And at that point, is that when you reached out to
21 the Richland County Sheriff's Department laboratory to ask
22 them some questions?

23 A I did not. That is not the usual procedure. But
24 the general procedure is when I'm retained by an attorney,
25 I work through that attorney and then they make whatever

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 contacts with additional individuals through the
2 appropriate process so it is not common practice for expert
3 responses to be contacting each other in a particular case.
4 That's not generally done. It can happen if the attorney's
5 request that to happen and it's certainly my choice to do
6 that when it can be done. Given the time frame, I've been
7 on the road for the last week. It wasn't even a situation
8 that got raised as court was already starting.

9 Q Because you were just notified about 10 days before
10 this started. And it's not your practice --

11 A Well, it's less than -- no, it's less than a week
12 before.

13 Q Okay. Less than a week. I'm sorry. So it's your
14 practice not to talk to the experts where you're going to
15 come in here and tell them all they did wrong.

16 A I think you're misstating what I just said. When
17 an individual is retained, that's a confidential retention
18 by an attorney. It's not appropriate or ethical for me to
19 step outside of that who's hired me to talk to other people
20 about a case. I'm -- I'd be delighted to talk to the
21 victims from the lab, but it's not -- I didn't pursue that
22 because it's ethically not allowed. It's like many other
23 situations like the doctor and the patient and attorney
24 client individual.

25 If I'm treated to talk then, I'm delighted to talk

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 to them not permitted unless that gets facilitated by
2 somebody else. It would be inappropriate for me to call a
3 lab directly.

4 Q So you didn't call the lab?

5 A I did not.

6 Q At any point did you request to do your own testing
7 in the case?

8 A Well, I can't do independent testing. I don't --
9 I'm not associated with a laboratory at this point.
10 Testing, if it were done would need to go to another
11 laboratory.

12 Q Did you do any of your own statistical analysis?
13 You have all that data?

14 A I did not because my opinion is that these profiles
15 are not suitable for the generation of statistical
16 calculations, so I did not.

17 Q And your testimony is pretty much, from the sounds
18 of it, if there's any kind of mixture, the two, three, or
19 more people in it, you're very guarded on reliability of
20 it?

21 A Absolutely.

22 Q So for -- when Cellmark did all that testing for
23 people that were killed in these mass 911, Oklahoma, that's
24 not reliable? Those families don't have any assurance that
25 those were good results?

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 A So our lab did not do the testing in those cases
2 and the field has changed substantially, so prior to about
3 10 years ago, the bulk of the samples that got tested in my
4 laboratory and in other laboratories were big visible
5 bloodstains for homicide cases, for instance; for
6 burglaries where someone cut themselves on glass. So at
7 that time, we usually had very nice visual, visible large
8 stain which often gave really beautiful result, high
9 quality results that are single source.

10 We also did a lot of sexual assault samples, which
11 if there were a lot of sperm deposited by a male, you would
12 get nice two person mixtures. Again high quality, lots of
13 DNA, fairly easy to interpret.

14 What happened about 10 or so years ago is -- so let
15 me just backtrack a second. At that time there were most
16 of the samples being accepted into the laboratory were from
17 homicide, sexual assaults, or samples, whatever's a nice,
18 visible biologic sample that would be tested. Around 10
19 years or so, 10 to 15 years or so, the studies have done
20 a -- showed profiles can be generated from samples we can't
21 see, called touch samples anything that's been handled.

22 So during that time and sense that time,
23 laboratories started accepting samples, they never touched
24 them, would never have accepted before. These were samples
25 with very small amounts of DNA and with often complex

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 mixtures, a large number of individuals. The individual --
2 that technology got improved. Some of the instrumentation
3 got changed and the -- well I'm not sure how much you got
4 told about the DNA process, but one of the steps in
5 generated DNA profile is to use what's called a kit that
6 allows us to look at those specific agents that they
7 test --

8 Q -- I'm sorry, I don't mean the interrupt --

9 A -- and sensitivity --

10 MS. CAMPBELL: Your Honor, could you ask her to be
11 responsive to the question?

12 THE COURT: Restate your question, Solicitor.

13 BY MS. CAMPBELL:

14 Q I can move on.

15 A I can finish my answer too.

16 Q It's got to be responsive to my question.

17 A It is. I think you asked me what's changed.

18 THE COURT: All right. Don't be argumentative --

19 THE WITNESS: And what was different with the
20 samples --

21 THE COURT: Don't be argumentative --

22 THE WITNESS: That's what I was explaining.

23 THE COURT: Stop. Don't be argumentative. Don't
24 be argumentative. You may continue your answer. Thank
25 you.

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 THE WITNESS: Thank you. So the kits change that
2 instead of needing a lot of DNA they now allow a very small
3 amount of DNA to go in. So what's called sensitivity has
4 improved. So before we could only do nice quality large
5 amount of DNA which gave evenly one or two -- one single
6 source profiles or two person mixture. Now, what we're
7 getting in a lot of cases are three and four and five
8 person mixtures and because of the increased sensitivity,
9 we're down to tiny amounts of DNA and what we have found is
10 that the results aren't reproducible when we are at this
11 small amount of DNA.

12 We've reached the limit of the technology. So
13 those were also not as reliable as what was used before.
14 So in situations that you referred to where we've got body
15 parts or bloodstains, those give -- if it's -- the DNA, is
16 in good shape, a very good high quality, very easy to
17 interpret and very reliable results that still today we can
18 rely on. And that's actually when -- in the PCHAST report
19 as well. It states single source samples and good quality
20 two person mixtures are great in doing experiments with
21 those. There's no problem with them.

22 THE COURT: Thank you, Doctor.

23 Solicitor, ask your next question, please.

24 MS. CAMPBELL: Thank you.

25 BY MS. CAMPBELL:

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 Q And in fact, you don't even have any training as
2 far as the newer technology that's used now?

3 A I certainly do, yes.

4 Q And when you referred to PCHAST, are you aware that
5 the attorney general repudiated that report?

6 A I am.

7 Q Are you aware that the FBI has repudiated that
8 report?

9 A I don't believe I've seen that.

10 Q Are you aware that when that report was done there
11 wasn't a single forensic scientist that was involved in
12 that evaluation?

13 A On the actual science and technology committee
14 that's correct. The goal WAS to have scientists outside of
15 the field of forensic science look at the information.
16 They did call in individuals from the forensic science
17 field to provide information to them.

18 Q Actually, Doctor, there were defense attorneys,
19 lawyers, law school professors on that committee?

20 A I don't recall who was on the original committee.
21 I would have to look at that. I knower Rick Lander was in
22 charge of that. He's a scientist that was actually in my
23 field. Originally he's been around for a very long time, a
24 very prominent scientist.

25 Q Now, he heads up the innocence project?

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 A Pardon me?

2 Q Now he's the founder or chairman of the innocence
3 project?

4 A Oh, not at all. He's a professor at MIT.

5 Q You talked about touch DNA. Does every person
6 leave DNA when they touch something?

7 A Probably.

8 Q Really?

9 A Probably. Whether it's a detectable amount or not,
10 we don't know. But pretty much when any time we touch
11 something we're leaving a little bit of us behind.

12 Q And how is touch DNA transmitted? If I touch this,
13 why do I leave DNA?

14 A Because you have cells and free DNA on your hands
15 and when you touch that, some is being deposited.

16 Q You've heard the term sloughing as in skin cells?

17 A Yes.

18 Q And is that one of the ways to get it?

19 A It can be, yes.

20 Q And with touch DNA when you get a sample, say from
21 a crime scene, which you've never gotten one have you?

22 A The laboratory I worked in got thousands per year,
23 yes.

24 Q But you didn't --

25 A I didn't individually test those.

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 Q Can you tell how long the DNA's been there?

2 A You cannot.

3 Q Can you tell how the DNA got there?

4 A You cannot.

5 Q And you aren't sitting here telling this jury that
6 a person's properly trained and reviewed can't come to
7 conclusions when there's a mixture?

8 A I'm not saying that. I'm saying that some mixtures
9 can be nicely and easily interpreted and there are others
10 that are outside the limitation of the field as it
11 currently exists and those are the ones that I questioned
12 the reliability of the testing and the report.

13 Q What is an artifact?

14 A An artifact is a thing that shows up in our DNA
15 profile that may look like a true allele, but it is a -- a
16 thing that happens during the testing. There are common
17 artifacts in our testing that we know to look for and then
18 there are -- there can be some random information that we
19 can't tell whether it's an artifact or a true allele.

20 Q And as part of the training when someone 's working
21 in a DNA lab where they're doing analysis, they're trained
22 to look for artifacts; is that correct?

23 A Absolutely, yes.

24 Q And what is a shadow peak?

25 A Shadow peak usually refers to RFLP testing, which

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 is an old kind of testing no longer used. So I'm not sure
2 how that applies to this testimony.

3 Q But an artifact is what again, did you say?

4 A It is a result in peaks that shows up on the DNA
5 profile that could look like a true result. One of the
6 most common artifacts is called a stutter peak. I don't
7 know how much you went into the testing we do. We're
8 looking at regions that have repeated sequence, sequences,
9 and sometimes during the copying or most of the time during
10 the copying of that enzyme copying it makes a little
11 (witness made sound) and it makes a little peak. One
12 repeat smaller. So it's very common for us to see a very
13 tall peak and right in front of it a very short peak. And
14 that short peak is called a stutter artifact. And when we
15 have a nice single source sample we know that's an
16 artifact. We can cross that off and say that's not part of
17 this profile. We expect this to happen. It's sort of a --
18 in the system that we know is an artifact.

19 Q So artifacts occur whether it be a single source, a
20 double source, a triple source, whatever?

21 A That's right.

22 Q And you expect to find those in your testing?

23 A Absolutely.

24 Q And people that actually do the testing are trained
25 to look for those?

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 A That's correct.

2 Q And you also mentioned something about the type of
3 statistical analysis that was used in this, that this
4 program, that this committee you referred to -- what did
5 you call it P --

6 A I don't know --

7 Q A report from the committee?

8 A The PCHAST report?

9 Q The PCHAST report. That it criticized the CE or CI
10 method of doing the stochastics?

11 A That's correct. The CPI and the CPE, there -- one
12 is inclusion, one is exclusion. They're just one minus the
13 other calculations that are essentially the same, same
14 procedure.

15 Q Where in the report does it ever say CPE, which is
16 the original statistical analysis that was used in the
17 case? In that report?

18 A I don't believe it states CPE, but CPI is exactly
19 -- it's just a reverse of the CPE. So they're the same
20 calculations done within the same information, one is just
21 reported one way and one is reported the other. So it's
22 most common in the U.S. for labs to report a CPI so that's
23 why that term gets used more. Some laboratories report the
24 CPE but they're the same calculation done using the same
25 program.

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 Q But CPE is never mentioned in that report that you
2 quoted several times here today?

3 A I haven't looked specifically. It's not in the
4 summary statement. It just does say the combined
5 probability information.

6 Q So you just read the summary statement?

7 A No, I read the entire DNA portion.

8 Q And are you aware that in that record it talks
9 about the most widely used methods to do more complicated
10 analysis with multiple sources?

11 A I think I need a little more information.

12 Q When it's talking about the mixture types with
13 respect to the total amount of DNA, the two most widely
14 used methods are STR mix and true allele appear to be
15 reliable?

16 A Those are two of the probabilistic genotyping
17 software programs that are currently being evaluated in the
18 United States. I don't believe it states that they are
19 absolutely reliable. The second opinion on that is my --
20 my recollection is that it states that they -- they're
21 still being evaluated and the opinion of the PCHAST
22 advisors that those software packs can need more evaluation
23 before they get widely used and accepted.

24 Q That report you're relying on says they're
25 reliable. That's in the report. Is it not?

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 A That is not my understanding, no.

2 Q And true allele?

3 A That's not my understanding, no.

4 Q Are you currently in the use of any kit like the
5 PowerPlex Fusion Kit?

6 A I don't work in a laboratory, so I don't have
7 ability of doing proficiency testing.

8 Q Are you --

9 A But I should point out that proficiency tests
10 available to laboratories never have three and four
11 person --

12 Q Are you --

13 A -- or --

14 Q Are you proficient in using true allele, which does
15 talk about multiple contributors?

16 A I am not.

17 Q And when's the last time that you even performed
18 proficiency tests?

19 A I believe about five years ago.

20 Q And you've talked about recommendations of that
21 report and everything. Are you familiar that there is
22 certainly a controlling school about how DNA should be
23 done? School of thought? An existing committee for the
24 recommendation of the best practices for DNA.

25 A That would be the OSAC committee that's working on

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 that.

2 Q What about the SW GDM Committee or the SW GDM
3 Report?

4 A So SW GDM stands for the Scientific Working Group
5 of DNA Analysis Methods. That is an organization under the
6 guidance of the FBI to make recommendations on DNA testing
7 in the United States. And they currently have no approved
8 recommendations or standards for complex mixtures, for
9 small amounts of DNA testing. They have guidance that came
10 out in 2010, that's for single source and two person
11 mixtures, specifically states it's not more complex
12 mixtures or for what's termed low template DNA, which is a
13 small amount of DNA.

14 Q Really? Are you familiar with this report?

15 A I sure am.

16 Q And are you familiar with the subsection called
17 suitable statistical analysis for DNA typing results?

18 A If it's in that report, yes, I am.

19 Q Are you familiar with it says multiple major
20 contributors for a mixture, what is appropriate?

21 A If it's in the report, yes, I would be.

22 Q Multiple minor contributors to a mixture. You
23 remember that?

24 A If it's in a report I am, yes.

25 Q And an indistinguishable mixture. What do they

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 recommend?

2 A For the indistinguishable?

3 Q Or any of those? They're all the same?

4 A Well, they're actually quite different, but there
5 are three different types of statistical calculations that
6 can be done and for the category she mentioned, they
7 recommended what's called an RMP a random match
8 probability. Those are generally used for a single source
9 situation or if you remember when I talked about the major
10 and the minor we could do that random match on a single
11 source and a minor. The indistinguishable mixture is a
12 situation where we've got peaks that are similar heights,
13 we can't tell the two or three people apart and that's
14 where the CPE or the CPI calculation is used. But it
15 requires that all data from all individuals be present. If
16 you're missing any of the data, that calculation cannot be
17 used.

18 Q And specifically what does it say about CPE being
19 used to do those tests?

20 A It's checked as an --

21 Q --Appropriate?

22 A -- a method that can be used. What you're not
23 pointing out is that on the first page I believe it is, I
24 would need a minute to find this again, but it actually
25 makes the statement that this is not for complex mixtures.

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 But this guidance is for single source and two person
2 mixtures, but some of the information can be possibly
3 applied to those scenarios and I think it's in the
4 introduction, but I'm not finding it immediately.

5 Q And specifically that's why that chart is broken
6 down that way about saying when it's appropriate?

7 A And that's when you have high quality two person
8 mixtures.

9 Q No, ma'am. Read the chart again. When it says
10 multiple major contributors, multiple minor contributors
11 and indistinguishable mixture?

12 A And the multiple means two. So in the scenario
13 that I presented if we had four really tall peaks and a
14 little peak, we could have two majors which would be the
15 equivalent of having two -- a two person mixture, even if
16 there's a third person here it essentially becomes a two
17 person major contributor so it would be appropriate if we
18 had high confidence that we have all the data to do the CPI
19 and CPE.

20 And if we had high confidence that the minor
21 alleles were from a single individual we could even do ARMP
22 calculation on that. But the requirement is that we have
23 very high confidence of all the data for all individuals
24 there. When you have indistinguishable mixture, meaning
25 that you cannot distinguish, you can't separate out those

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1 two people or three people by looking at the data and
2 there's a high risk missing -- some of the data are
3 missing. The CPI and CPE cannot be used. And the --
4 that's what those recommendations are for. And they're not
5 saying you can't use it for nice two person mixtures.
6 That's still fine, but we can't use them when we think
7 there's a high likelihood of the data. It's a simple no.

8 Q Let's talk about your criticism. Pretty much you
9 agree with what they did whenever it excluded Mr. Martinez.

10 A Yes, because based on the information that cannot
11 be accounted for by a known individuals in the case, the
12 types that are leftover do not match him, so I do agree
13 with that statement.

14 Q Okay. That's good. And then the only one you have
15 a real problem with that you talked the most about was when
16 he, his DNA is there.

17 A You cannot say that. We do not know that his DNA
18 is there. And hopefully the State's witness made that very
19 clear. We can only state that with a lot of DNA -- sorry,
20 many results from a single individual -- and actually many
21 statisticians are arguing we shouldn't make that statement
22 anymore, complex mixtures, it is not possible to identify
23 specifically any other individuals. And the statistical
24 frequencies that they generated translated to one in
25 100,000 individuals. That is not a statement of identity.

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 That is not a statement that he is for sure a contributor
2 to that profile.

3 Q Let me get this at least out of you: You would
4 agree that his DNA profile is in that sample off that cell
5 phone?

6 A I will not. I do not know that his DNA is in that
7 sample. I will agree that if you look at his types and you
8 go into that sample, there are alleles consistent with his
9 profile. That does not mean we know he's a source and the
10 statistical frequency doesn't support that. It doesn't say
11 he's excluded, but we don't know whether he is truly a
12 contributor. The statistical calculations done are not
13 done correctly, so we have to -- we can't value that
14 number.

15 Q You can't value that number. Who's we? It's you.

16 A Well, the individuals in the PCHAST report, many
17 other scientists in the United States who have written text
18 books written authoritative documents, who have spent a lot
19 of time looking at these mixtures, the individuals that
20 have been -- reviewing work done by the Washington D.C.
21 lab for instance that got closed down, the Texas State
22 Commission has closed down many of the Texas labs and
23 they're going back and reevaluating old case work because
24 this type of problem has come to the forefront. Many labs
25 are going back and redoing case reports based on the change

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 in the understanding of the use of these materials of
2 today.

3 Q You just said a statement to them about how that
4 this document -- this specific document says you can't use
5 a number of contributors, multiple number of contributors,
6 specifically 4.6.3, does it say when using CPE with no
7 assumptions of number of contributors?

8 A Okay. That's a different statement. So to use the
9 CPE, CPI calculation I stated you have to have high
10 confidence that we have all the data from all the
11 contributors. To evaluate that, we have to make some
12 assumption about the numbers of contributors and see if the
13 data fit with that, what we expect to see for that number
14 of contributors. If we think there's a possibility there's
15 data missing, we can't do the CPI, CPE calculation. If we
16 look at our data we think there are only two contributors
17 and we have really nice high peaks and we've got three or
18 four alleles at every locus, we can absolutely use the CPE,
19 CPI. The calculation itself doesn't take into account the
20 number of contributors. That's what that statement is
21 referring to because once you've made decision to use it,
22 we don't care about the number of contributors. But to get
23 to the point that we can decide to use it, we absolutely
24 have to take that into consideration to evaluate our data.

25 Q You done?

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 A I am, thank you.

2 Q Let's talk about what the actual data does show.

3 A I'm sorry, what, what?

4 Q You can't hear me now?

5 A I just didn't quite catch what you said.

6 (State's Exhibit Number 109 and Number 110 were
7 marked for identification.)

8 THE COURT REPORTER: That's 109 and 110, Your
9 Honor.

10 MS. CAMPBELL: Your Honor, at this time we'd offer
11 State's Exhibits 109 and 110 into evidence.

12 THE COURT: Mr. Martinez.

13 MS. CAMPBELL: They're just blowups of what you put
14 in.

15 MR. MARTINEZ: No objection.

16 THE COURT: State's 109 and 110 is in evidence
17 without objection.

18 (State's Exhibit Number 109 and Number 110 were
19 entered into evidence.)

20 Q And this is -- how -- are you familiar with the
21 data that you reviewed, some of it before you came to court
22 and some of it right here after you got called to the
23 stand?

24 Let me ask you this, did anything you reviewed
25 change your mind in any way or you'd already come to all

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 these conclusions before you saw data?

2 A I made up my opinions based on the data. But I
3 didn't have any opinions before I came to court about this
4 case.

5 Q You didn't? I'm not following you. You didn't
6 have any opinions until you took the stand and then after
7 you reviewed the material or before?

8 A I have opinions based on my scientific training. I
9 have notes before I reviewed any data. Opinions regarding
10 to the specific testing in this case obviously, I generated
11 after I got the information and reviewed that. I think --

12 Q Some of the information you didn't get until you
13 got on the stand. You admit to that?

14 A That's correct.

15 Q Let's talk about -- do you recognize this? Can you
16 see it?

17 A I actually can't see it.

18 Q Sorry.

19 Can y'all see it?

20 Can you see it now? You can step off the stand if
21 you want?

22 A Okay.

23 Q You can come down here.

24 THE COURT REPORTER: Keep your voice up, please.

25 THE WITNESS: All right.

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 (The witness stepped down.)

2 BY MS. CAMPBELL:

3 Q You get on this side because the court reporter's
4 got to hear you.

5 Taking these basically, what is this that I'm
6 showing the jury?

7 A Can I look at my notes quickly?

8 Q Sure.

9 A This is the DNA profile that was provided for the
10 cell phone, Item 3 and you can tell from the number right
11 there.

12 Q Item Number 3?

13 A Yeah.

14 Q And then what are these D numbers and then what is
15 this across the top. Because they're different on every
16 row.

17 A So each of these locations are referred to as the
18 locus, plural is loci. These are the specific regions of
19 the DNA that we test that we know vary within the
20 population. So this first one is our gender typing.

21 Q So the X Y?

22 A X Y, so we know there's a male in the sample
23 because we have a Y.

24 Q A male is X Y -- if it were only a female what
25 would it be?

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 A Two X's and it would be a bigger peak.

2 Q And you've got an X Y there, I'm sorry.

3 A And then each of these little boxes are the name of
4 that particular location that's already been tested.

5 Q And I see over here, we've talked about peaks and I
6 see that this line, there are things that go up, are those
7 the peaks you're referring to?

8 A Yes, ma'am.

9 Q And then down here, are these numbers. How are
10 those generated, ma'am?

11 A These are -- short answer, these are generated
12 through a software package that takes the data from the
13 copied DNA, manipulates the data and generates the allele
14 number, the particular type and then the second number is
15 what's telling us how high a line of access is. So this is
16 telling us how tall that particular peak is.

17 Q Okay. So it's like -- this one, this first one is
18 15395, 15 is the -- are there numbers that are actually
19 attached to a program?

20 A That's correct. That would be -- remember I
21 mentioned that we have a repeated sequences, this means
22 this individual has 15 copies of that repeat at that
23 location.

24 Q Okay. So that's why it's getting -- it's an easy
25 way to track it; is that correct?

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 A Yes, ma'am.

2 Q And then sometimes a person's going to have two at
3 one point and sometimes they're going to have one because
4 it may be the same one?

5 A That's correct. They get the same type from mom
6 and dad. The two peaks are actually on top of each other
7 and we just get a taller peak.

8 Q And when you're looking at a whole sample, say if
9 it's a mixture or already been a single source, are you
10 necessarily going to get results after every single point?

11 A If it's good quality DNA, yes. If it's poor
12 quality DNA, no.

13 Q You can get a partial profile?

14 A Yes.

15 Q And you aren't getting before this jury and saying
16 you can't get information from a partial profile are you?

17 A No, I'm not. It depends on the profile. Some yes,
18 some no.

19 Q Okay. And I want to go through this and you're
20 familiar with where the defendant is in this one?

21 A I want to make it very clear. I cannot say that
22 the defendant's DNA profile is in this sample.

23 Q Okay. Well, let me ask you this, are the alleles
24 consistent with him being present?

25 A They're are alleles in here consistent with his

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 profile, that's correct.

2 Q Let's look at this first little point right here,
3 okay. It goes with this first one, right? What is the
4 number attached to him at that point? What are the two
5 numbers?

6 A May I get the data?

7 Q Yes, that would be very helpful.

8 A I certainly don't have them memorized.

9 Q What are these numbers?

10 A He has a 15 and an 18.

11 Q So he has a 15 and an 18, so you would agree with
12 me that both of his are present at that peak?

13 A I will not agree with that.

14 Q But would you agree with me that alleles consistent
15 with him at that point are present?

16 A Alleles that are the same as his types are in that
17 profile.

18 Q Let's move to the next one. What are his numbers
19 there?

20 A 15.3 and a 17.3.

21 Q Let me see if I can get a better highlighter.

22 Would you agree with me that his alleles are there?

23 A I will not.

24 Q That alleles consistent with him --

25 A There are sites that are present that are the same

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 numbers as what is in his profile, but you cannot say his
2 alleles are here or that we know he is here. We don't know
3 that his genotype is there. Those combinations are just
4 there.

5 Q And that's your opinion.

6 A That is my opinion.

7 Q Got it. Let's move onto the next one, see if he
8 shows up there. What are his numbers there?

9 A He has a 10 and 11.

10 Q And would you agree with me that there's a 10 and
11 11 there?

12 A That's correct.

13 Q Let's move to the next one. What are his numbers?

14 A He has a 14.

15 Q Just a 14?

16 A Yes, ma'am.

17 Q Low and behold. Let's move on to the next one.
18 What are his numbers?

19 A A 9 and a 12.

20 Q And you would agree with me there's a 9 and a 12
21 there?

22 A That's correct.

23 Q And then what's this down here?

24 A Yes, ma'am.

25 Q What are his numbers?

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 A He has a 7 and a 17.

2 Q And you would agree with me there's a 7 and a 17
3 there?

4 A That's correct.

5 Q Let's move onto the next one. The 185539, what are
6 his numbers.

7 A An 11 and a 13.

8 Q And you would agree with me that there's an 11 and
9 a 13 there.

10 A That's correct.

11 Q What's the next one?

12 A A 12 and a 15.

13 Q And you would agree with me there's a 12 and a 15
14 there?

15 A I would, yes.

16 Q Let's go onto the next one. What are his numbers?

17 A That's at G 2, a 20 and a 24.

18 Q And would you agree with me there's a 20 and a 24
19 there?

20 A Yes, ma'am.

21 Q And this is which sample?

22 A I believe it's the cell phone cover. I'd have to
23 look it up.

24 Q Let's move on to the next one. What are his
25 numbers?

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 A 10 and 12.

2 Q And you would agree with me there's a 10 and a 12
3 there?

4 A I would.

5 Q Let's go on to the next one. What are his numbers?

6 A 10 and 12.

7 Q Would you agree with me there's a 10 and a 12
8 there?

9 A Yes, ma'am.

10 Q Moving onto the next one.

11 A 7.

12 Q Is that the only one he has there?

13 A Yes.

14 Q Okie dokie. Moving onto the next one.

15 A 18 there.

16 Q Is that the only one he has there?

17 A Yes, ma'am.

18 Q And you would agree there's an 18 there?

19 A Yes.

20 Q Moving onto the next one.

21 A 30.2 and a 31.

22 Q Would you agree with me those two there?

23 A I would.

24 Q Moving onto the next one. What are his numbers?

25 A A 7 and a 10.

Charlotte J. Word - Cross-Examination by Ms. Campbell

1 Q And you would agree with me that those two are
2 there?

3 A Yes, ma'am.

4 Q Moving onto the D -- what is that, D 5?

5 A Yes.

6 Q An 11? That's it?

7 A Yes, ma'am.

8 Q Moving onto the next one?

9 A An 8.

10 Q And 8, is that the only one?

11 A Yes, ma'am.

12 Q Only one there. What's the next one?

13 A 10.

14 Q Is that the only one?

15 A Yes.

16 Q Want to keep going? What are the numbers?

17 A A 10 and a 12.

18 Q A 10 and a 12. Moving onto D 12?

19 A An 18 and a 19.

20 Q D 19?

21 A 14.

22 Q That's it?

23 A That's it.

24 Q Moving onto this thing. What are his numbers?

25 A 25 and 26.

Charlotte J. Word - Redirect Examination by Mr. Martinez

1 Q 25, 26. And then finally?

2 A A 16 and a 17.

3 Q And that's the extent of that graph?

4 A Yes.

5 Q You can get back on the stand. Thank you.

6 (The witness returned to the stand.)

7 BY MS. CAMPBELL:

8 Q Thank you, ma'am, have a nice trip back.

9 A Thank you.

10 THE COURT: Thank you, Solicitor.

11 Redirect, Mr. Martinez?

12 MR. MARTINEZ: Yes, sir.

13 **REDIRECT EXAMINATION**

14 BY MR. MARTINEZ:

15 Q Dr. Word, when there was an investigation or
16 whenever that happened with you and your other company
17 there was an investigation; is that correct?

18 A I'm not quite sure what you're asking about.

19 Q The solicitor asked you about some investigation
20 that happened into a previous business or company that you
21 worked for; is that correct?

22 A Are you asking me about when we discovered that one
23 of our analysts was changing some control data?

24 Q Yes, ma'am.

25 A We did an investigation of it to ensure that it was

Charlotte J. Word - Redirect Examination by Mr. Martinez

1 only one person and to see that the data had been reported,
2 was reported correctly. Yes.

3 Q And you was never a suspect or was never was fired
4 or that had nothing to do with you; is that correct?

5 A That's correct. I mean, I was partially involved
6 with the evaluation of the data and making decisions on
7 what to do and the process there.

8 Q And it's -- most people in your field, they make a
9 lot of money; is that correct?

10 A They what?

11 Q The people in your field, in your line of work,
12 they make a lot of money?

13 A No. This is a field that's not -- we're well paid,
14 but DNA analysts don't make the highest salaries, but we --
15 it's a living and it's a job.

16 Q You received -- you received, I think you said it
17 was 307 pages?

18 A Page 1 through 36.

19 Q And the rest of that 36 through like 37 and 57 has
20 nothing to do with DNA is that correct?

21 A I have not reviewed it. Just the first few pages
22 I'm looking at are police reports and I -- I don't know
23 that I've seen it. I haven't reviewed it.

24 Q This is -- the report you gave to Mr. Kata on the
25 27th regarding your opinion:

Charlotte J. Word - Redirect Examination by Mr. Martinez

1 (The solicitor was looking at a document.)

2 THE COURT: All right. Solicitor?

3 MS. CAMPBELL: We would object, Your Honor, I think
4 her testimony speaks for itself. This would be -- it's not
5 even bolstering.

6 THE COURT: All right. The objection is sustained.
7 It's 29 for ID only at this time.

8 (Defendant's Exhibit Number 29 was marked for
9 Identification.)

10 THE COURT: All right. You may ask your next
11 question, Mr. Martinez.

12 BY MR. MARTINEZ:

13 Q You requested additional information that wasn't
14 provided in this report that we originally gave to you; is
15 that correct?

16 A I stated that there was information that I did not
17 have that affected -- could affect my opinions, yes.

18 Q And after we -- after we got your report we asked
19 -- that weekend, we asked for that information from the
20 State. We provided you with that information with
21 additional information; is that correct?

22 A That's correct.

23 Q And we also provided you with additional new tests
24 that they went and ran after -- after your opinion came
25 out; is that correct?

Charlotte J. Word - Redirect Examination by Mr. Martinez

1 A A new statistical calculation, yes.

2 Q And as you testified and as the report states that
3 the true allele testing and the street mix, STR mix, that
4 -- it states that it's reliable if the evidence is reliable
5 and they have so many mixtures, they have to have so many
6 mixtures in order for it to be reliable, for the test to be
7 accurate; is that correct?

8 A Mostly. Based on the information that's come out
9 on those programs, if there's high quality data and a
10 limited number of individuals, contributors, two, three?
11 Maybe four, but with very good quality data, probably
12 having all or most all data for all the individuals that
13 are contributing, those calculations do seem to be
14 generally reliable. The -- there's limited validation
15 studies that have been made available on testing the
16 limitations of that software, the types of samples in this
17 case where we've got -- they're limitations on the
18 technology. It's unclear how well they perform for those
19 types of samples and what the risks of false inclusions and
20 false exclusions are using that software under validation
21 studies.

22 Q What's it called when someone shares like allele
23 sharing? What is that?

24 A So you saw on the profile that was here, some of
25 those peaks were very tall. Some of those are probably

Charlotte J. Word - Redirect Examination by Mr. Martinez

1 very tall because two and three and four people are sharing
2 those alleles. Some of the loci only had one peak. I
3 think there's a 14 only at the D 10 locus in the middle.
4 Everyone tested in this case has a 14, so the problem is
5 having a peak. All we have is that peak. We don't know if
6 that's from one person, two people, three people, it would
7 be nice if they could be color coded and break it out into
8 the individual people, but it doesn't do that. We just
9 have the one peak. So individuals that share alleles,
10 they're data just gets piled up on top of each other and
11 this makes interpretation of mixtures very, very hard.
12 Because we rely on the height of those peaks to help us
13 understand what alleles go together to make genotype of an
14 individual and that's why I said we can tell what alleles
15 are there, but we don't know the genotypes of the actual
16 contributors that are in there. We can't pull out a major
17 contributor, we can't pull out a minor contributor. We
18 just have this conglomeration of peaks that we can't
19 evaluate who is actually in -- who are actually enter here
20 to those peaks.

21 Q And the additional information that was given to
22 you today, it didn't have nothing to do with the tests that
23 was already done -- the test that was already done and that
24 you based your opinion on; is that correct?

25 A That's correct.

Charlotte J. Word - Redirect Examination by Mr. Martinez

1 Q That was just the stuff that was -- the stuff that
2 was gave to you today was just statistical analysis that
3 they gave for the new number?

4 A Right. That was some of the information -- some of
5 the documentation associated with how that statistical
6 calculation was generated. It was many, many, many more
7 pages of information that would go with that that wasn't
8 provided. But it's an overview of some of the analyses,
9 using the true allele software.

10 Q That information, that newly information wouldn't
11 alter your opinion that from their testing that we provided
12 previously, would it?

13 A That's correct. It does not.

14 Q And even with the chart that they showed you and
15 they went through and showed you similarities and
16 dissimilarities, as you said, there's other contributors
17 there from people that wasn't tested, as well as people
18 from the family that are in there as well?

19 A On many of the samples there are additional profile
20 -- additional alleles that cannot be accounted for by any
21 of the individuals tested in this case. So for example the
22 profile that was shown here, there are two alleles. One is
23 at the -- one locus there's a 16. None of the individuals
24 tested in this case have a 16. At the D 2 locus which is
25 in the middle of the second row, there's a 23 allele. None

Charlotte J. Word - Recross-Examination by Ms. Campbell

1 of the individuals tested in this case have a 23. If those
2 are true alleles and good data, that certainly indicates
3 that there's at least one unknown individual contributing
4 to these samples. If those two types don't go together, it
5 could be two individuals, we don't know.

6 Q All right. Thank you, Dr. Word.

7 MR. MARTINEZ: No further questions.

8 THE COURT: Recross?

9 **RECROSS EXAMINATION**

10 BY MS. CAMPBELL:

11 Q Have you ever run true alleles?

12 A I've -- actually I -- I took a two day workshop
13 with the developer of the software and did a little bit of
14 analysis with it, yes, but not recently.

15 Q When was that?

16 A Maybe 3 years ago.

17 Q How many?

18 A Maybe 3 years ago.

19 Q You don't do any forensic testing yourself?

20 A Hands on testing, no, I do all interpretation of
21 data.

22 Q Thank you.

23 THE COURT: Thank you, thank you, Doctor. You may
24 step down.

25 Can you give me an indication, Mr. Martinez of

1 about how long your next witness will take.

2 MR. MARTINEZ: I think this witness will be about
3 15, 15, 20 minutes at most.

4 THE COURT: All right.

5 THE JUROR: I just have an appointment at 6.

6 THE COURT: All right. Yes, ma'am.

7 All right. Then perhaps now would be a good time
8 to take our evening recess. Please remember during this
9 recess, do not discuss this case with others, including
10 your fellow jurors, families, friends, anyone else. Do not
11 read, watch, or listen to any news accounts about the case.
12 Do not do any independent investigation or any
13 investigation on the internet.

14 With that being said, I'll release you from your
15 jury service for the remainder of the day and ask you to
16 report back promptly at 9:30 in the morning. 9:30 in the
17 morning. Leave your notes, I'll have the clerk secure
18 them. Hope y'all have a pleasant evening.

19 (The jury left the courtroom at 4:58 p.m.)

20 THE COURT: Are all the reports from the Richland
21 County Sheriff's Department DNA lab in evidence, Mr.
22 Martinez?

23 MR. MARTINEZ: Yes, sir.

24 THE COURT: Is that correct, Solicitor?

25 MS. CAMPBELL: As far as I know, Your Honor, yes.

1 THE COURT: I'm going to allow Defendant's 29 into
2 evidence. Is that the only other DNA report?

3 MS. CAMPBELL: Sir?

4 THE COURT: Is that the only other one?

5 MS. CAMPBELL: It's the only other letter, yes.

6 THE COURT: All right. 29 is in evidence.

7 (Defendant's Exhibit Number 29 was entered into
8 evidence.)

9 THE COURT: Anything further from the State before
10 we take our recess?

11 MS. WALKER: Yes, Your Honor, again throughout the
12 afternoon, the juror who's sitting in that seat would go to
13 sleep, wakes up every now and then, writes stuff down. I
14 mean there are times that I think multiple people have
15 observed it. Even the sheriffs deputies, his head is just
16 down and he's knocked out, so we would ask Your Honor to
17 maybe take notice of that tomorrow and if he continues to
18 insist upon sleeping during the trial, that we address
19 that.

20 THE COURT: Thank you, Solicitor.

21 Mr. Martinez?

22 MR. MARTINEZ: Yeah, I agree with the solicitors.

23 THE COURT: Tell me what your position is.

24 MR. MARTINEZ: I agree with the solicitors to ask
25 him to be alert, to pay attention to what's going on.

1 THE COURT: Thank you. Thank you, Mr. Martinez.
2 Anything else, Solicitor?

3 MS. WALKER: No, sir.

4 THE COURT: Anything from the defense, Mr.
5 Martinez?

6 MR. MARTINEZ: No, sir.

7 THE COURT: Thank you. Court will be in recess
8 until 9:30 in the morning.

9 TUESDAY, DECEMBER 6, 2017

10 THE COURT: Anything from the defense before we
11 bring in our jury, Mr. Martinez?

12 MR. MARTINEZ: Yes, Your Honor. I'd like to file a
13 motion for a mistrial.

14 THE COURT: All right. I'll be glad to hear from
15 you.

16 MR. MARTINEZ: It's doing with the DNA. I was not
17 able to retest the DNA. Also, the DNA test that was
18 provided to us was inaccurate. There was -- there's other
19 person -- there's somebody else's DNA present above
20 Ms. Hurshman's vagina that wasn't stated in their report.
21 The State also promised the jury there was a 99.999 percent
22 chance of no match that I was the contributor, that I was a
23 match and that is not true. Even their own DNA technician
24 said that. She just said in her own wording that I can't
25 be excluded. It doesn't say anything about a match that

1 I'm that much closer to a match and that's causing me
2 unfair prejudice and I also want to renew all --

3 And also, my neck is causing me unfair prejudice.
4 The pictures from -- that have been entered from the State
5 with what the lettering means, that's causing me unfair
6 prejudice, undue prejudice, and it's not in my
7 constitutional rights to a fair trial, by due process,
8 equal protections and my -- and that's it.

9 THE COURT: And what? I'm sorry.

10 MR. MARTINEZ: That's it.

11 THE COURT: All right. Thank you.

12 (The judge collected some of the exhibits to look
13 through.)

14 THE COURT: All right. As to the photographs 70,
15 71, and 72 of the neck, that is in evidence and part and
16 parcel of identification by several of the witnesses.
17 Further, I gave a curative instruction to the jury and will
18 review that instruction, if necessary, at a later point
19 through my charge to the jury, if I do charge the jury. I
20 have not yet ruled on a directed verdict that may be made
21 at the close of the evidence.

22 So I do not think that is such that there is
23 manifest necessity and unfair prejudice in that regard as
24 to a mistrial; and I'd respectfully deny that motion.

25 The testimony of the DNA expert, Ms. Grant, who

1 testified and was fully and completely cross-examined in
2 that regard; additionally, Ms. Grant's report December 2nd,
3 2016 was introduced into evidence by the defendant as
4 Defendant's Exhibit Number 25. The probability of
5 exclusion report was introduced as evidence by the
6 defendant as Defendant's Exhibit Number 26.

7 There's also a report by Ms. Grant, the DNA analyst
8 dated June 9, 2014, introduced into evidence by the
9 defendant, Defendant's Exhibit Number 27. It appears to be
10 57 pages, part of which are notes from the DNA analyst and
11 attached incident reports, introduced by the defendant,
12 Defendant's Exhibit Number 28 or 29.

13 THE COURT REPORTER: 29 was the statement --

14 THE COURT: I thought 29 was the letter by Dr.
15 Wood.

16 THE COURT REPORTER: It is, you are correct. I'm
17 sorry.

18 THE COURT: Also Defendant's Exhibit Number 29,
19 introduced into evidence by the defendant is a 3 page
20 variously identified as a correspondence by Dr. Charlotte
21 J. Word, I think I said Wood, who is the defendant's DNA
22 expert.

23 So there's not a manifest necessity. There's no
24 undue prejudice in that regard. Ms. Grant testified. None
25 of her reports were offered into evidence at the time. She

1 was fully and completely cross-examined. Cumulatively the
2 defendant offered the reports as I have outlined, 25, 26,
3 27, 28, all of Analyst Grant; and 29 also is in evidence
4 being the correspondence and/or reports from his DNA
5 expert.

6 So given the standard I apply on a mistrial, given
7 that it is within my discretion, I find there's no manifest
8 necessity and there is no undue prejudice in regards to
9 either the DNA or photographs 70, 71, and 72.

10 All right. Anything further before we bring in our
11 jury, Mr. Martinez?

12 MR. MARTINEZ: No, sir.

13 THE COURT: Anything from the State before we bring
14 in our jury?

15 MS. WALKER: No, Your Honor.

16 (The jury entered the courtroom at 9:41 a.m.)

17 THE COURT: We lost our leader.

18 THE BAILIFF: He was in the bathroom.

19 Your Honor, the jury is present.

20 THE COURT: Thank you.

21 We also lost our Ohio State sweatshirt. Well, I
22 guess --

23 THE JUROR: I have one for every day of the week.

24 THE COURT: Good morning.

25 THE JURY: Good morning.

James Abraham - Direct Examination by Mr. Martinez

1 THE COURT: Welcome back. Ladies and gentlemen, of
2 course, we're continuing the trial of the case by the
3 presentation of evidence and testimony by the defense in
4 its case in chief. I would remind you as you have done
5 throughout the trial of the case, please stay focused and
6 attentive. If at any time any of you needs a break, you
7 don't have to write me a note. Just raise your hand and,
8 of course, we would then -- we would then take our break,
9 y'all would take y'all's break.

10 Again, please give the parties your complete and
11 undivided attention.

12 Mr. Martinez, you may call your next witness.

13 MR. MARTINEZ: Yes, I would call Deputy Abraham,
14 the K-9 handler.

15 THE COURT: All right. Deputy Abraham, if you
16 would come around and be sworn, please.

17 JAMES ABRAHAM,

18 having been duly sworn, testified as follows:

19 THE CLERK: Please have a seat. State your full
20 name for the record.

21 **DIRECT EXAMINATION**

22 **BY MR. MARTINEZ:**

23 Q Mr. Abraham, will you tell the Court what you do?

24 A I'm currently a K-9 handler for the Lexington
25 County Sheriff's Department.

James Abraham - Direct Examination by Mr. Martinez

1 Q And was you a -- you did that job on March 27,
2 2014, as well?

3 A Yes, sir.

4 Q And was you dispatched to the [REDACTED] Condos?

5 A Can you give me an address?

6 THE COURT: Just to move it along, it's [REDACTED]
7 [REDACTED].

8 THE WITNESS: Yes, sir.

9 THE COURT: Thank you.

10 You may ask your next question, Mr. Martinez.

11 BY MR. MARTINEZ:

12 Q Do you remember what time you got there?

13 A No, I don't have an exact time I arrived.

14 Q When -- did you hear -- you heard the call on your
15 radio; is that correct?

16 A The way it works is we assist other agencies.
17 Their dispatch contacts our dispatch which informs the
18 units that are needed. And it was sometime that morning
19 around 7:30.

20 Q And shortly after that you arrived on the scene?

21 A Yes.

22 Q And you was able -- your dog was able to get a
23 smell of the person that they was looking for?

24 A Well he wasn't -- our dogs are not trained to smell
25 individuals like you see on TV. You can't take clothing

James Abraham - Direct Examination by Mr. Martinez

1 and put it to their nose and expect them to find an
2 individual. They're trained to follow ecological
3 disturbances on the ground.

4 Q So you -- they was able to find ecological --

5 MS. WALKER: Your Honor, I would object to the
6 leading.

7 THE COURT: Rephrase your question, Mr. Martinez.

8 BY MR. MARTINEZ:

9 Q Your dog was able to pick up -- was your dog able
10 to pick up ecological -- how did you say that again?

11 A Ecological disturbances.

12 Q An ecological disturbance?

13 A What happened, when I arrived on scene, I spoke
14 with the officers on scene and what they did was set up
15 what we call a perimeter. In that perimeter they set up
16 kind of like a box to box the individual in or hold the
17 individual specific spot until the dog can actually pick up
18 their scent, meaning the ecological disturbance that they
19 had disturbed on the ground, and follow that to that
20 individual.

21 On that morning with the traffic and the weather
22 and all the vehicles that was going around that area, we
23 were unsuccessful in finding a disturbance and I called the
24 track for the safety of myself and the dog.

25 Q And there was also another dog present as well?

James Abraham - Direct Examination by Mr. Martinez

1 A There was another, yes. My backup partner was
2 present.

3 Q And neither one of the dogs was able to pick up one
4 of those disturbances; is that correct?

5 A That is correct.

6 Q And how -- how -- do you know how big this
7 perimeter was?

8 A No, sir, I did not no how big the perimeter was.
9 Once I arrived I obtained information, physical description
10 of whom I may be looking for and myself and my partner and
11 another officer started out with the attempt to find the
12 individual that we were looking for.

13 Q And you guys -- you guys did take the dogs to like
14 -- you guys went a distance from the area; is that correct?

15 A No, sir, not to my knowledge, it was not a long
16 distance. Once we got on Bethel Church with all the
17 traffic and the kids that were going to and from school,
18 all the vehicles that was coming along the roadway, I
19 cancelled the track because of those circumstances.

20 Q You guys didn't go all the way to the end of Bethel
21 Church Road?

22 A No, sir, we did not. Now, when you say the end,
23 what do you mean? Do you mean all the way from one end to
24 the other end or --

25 Q I mean from one --

James Abraham - Cross-Examination by Ms. Walker

1 A Explain to me what you mean when you say the end.

2 Q I mean --

3 MR. MARTINEZ: Well, I beg the Court's indulgence.

4 THE COURT: Yes, sir.

5 (There was a pause in the proceedings.)

6 BY MR. MARTINEZ:

7 Q Are you familiar with that area?

8 A Somewhat.

9 Q Okay. Bethel Church Road goes up to Satchelford
10 Road?

11 A Yes.

12 Q Okay. From Bethel Church Road, did you guys -- did
13 you and the dog and your other backup go to the end of
14 Bethel Church Road to where Satchelford Road connects?

15 A Not to my recollection, but if that's what the
16 report says, then that's where we went.

17 Q Did you guys make a report?

18 A No, I did not write a report.

19 Q Okay. Thank you.

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

21 THE COURT: All right. Solicitor?

22 **CROSS-EXAMINATION**

23 BY MS. WALKER:

24 Q Deputy, what's the ideal setting for your dogs to
25 perform a track?

James Abraham - Cross-Examination by Ms. Walker

1 A Basically, we try to set -- when we are trained, we
2 try to put them in all type of scenarios, but the ideal
3 setting to actually -- for a dog to actually really find
4 somebody is to be in a wooded area and where he has one
5 specific scent that he is following and that is a human
6 scent and he can follow that scent for a long period of
7 time. There are several different factors when you're
8 working in rural areas or working in areas such as Bethel
9 Church and you have to track it. There are other people
10 walking along. You have other dogs within the area, which
11 causes the dogs actions to be -- to differ.

12 Sometimes we train in those type of environments,
13 but we're not always allotted training for certain
14 environments. That day there was the weather, the track,
15 the vehicle traffic and the foot traffic. So when we have
16 all of these elements together that causes the dog to lose
17 the scent of what he's actually looking for.

18 Q So more human beings in a particular area, I guess
19 that makes it more difficult for the dog to track the
20 ecological disturbances?

21 A Yes, because it's -- basically it's a contamination
22 of the area. A good example is if you go -- if you have a
23 lady that has on perfume and you walk into say Belks and
24 you go to the perfume section, you can smell her perfume,
25 but if you saw her spray another perfume, the odors start

James Abraham - Redirect Examination by Mr. Martinez

1 to mix and that's what the dogs experiences when you have
2 other humans that are walking in the area. They all start
3 to combine together and it's kind of hard to distinguish
4 the one.

5 Q Thank you, sir.

6 MS. WALKER: I don't have any other questions.

7 THE COURT: Redirect, Mr. Martinez?

8 MR. MARTINEZ: Yes.

9 **REDIRECT EXAMINATION**

10 BY MR. MARTINEZ:

11 Q You stated that the dog can follow someone through
12 the woods?

13 A Yes.

14 Q If they have their scent?

15 A The -- they are following -- what you're saying
16 when you say scent, I'm thinking ecological disturbances.
17 They're following the breaking of the things that are on
18 the ground. If you walk in the grass, it gives a distinct
19 smell when you step on it besides a portion that hasn't
20 been stepped on. The odor is totally different.

21 Q Okay. But you guys -- well, you stated that you
22 went down a main road?

23 A Which was Bethel Church, yes.

24 Q Yes. And the dog didn't go to the woods, he
25 didn't --

James Abraham - Redirect Examination by Mr. Martinez

1 A Bethel Church is not a wooded area. It's a
2 neighborhood with houses all along the road with dogs and
3 things like that in the backyard, in the front yard and you
4 had people that were out and walking their dogs that time
5 of the morning.

6 Q What about -- what about behind Bethel Church Road?
7 Is that a wooded area?

8 A The entire area is well populated from my
9 understanding. Now, there are some parts that may be
10 wooded that we didn't venture off to.

11 Q All right. Thank you.

12 MR. MARTINEZ: No further questions, Your Honor.

13 THE COURT: Anything further, Solicitor?

14 MS. WALKER: No, sir.

15 THE COURT: Thank you, thank you very much, Sheriff
16 Abraham for being with us this morning.

17 THE WITNESS: Thank you, sir.

18 THE COURT: You may step down.

19 All right. Mr. Martinez, you may call your next
20 witness.

21 MS. WALKER: Your Honor, may the deputy be excused?

22 THE WITNESS: Any objections to the officer being
23 excused?

24 MR. MARTINEZ: No, sir.

25 THE COURT: Yes, sir, you may be excused. Thank

Heidi Jackson - Direct Examination by Mr. Martinez

1 you for being with us.

2 MR. MARTINEZ: Your Honor, I call Heidi Jackson to
3 the stand.

4 THE COURT: All right. If you would come around
5 and be sworn for us, please, Deputy Jackson.

6 HEIDI JACKSON,
7 having been duly sworn, testified as follows:

8 THE CLERK: Please have a seat. State your full
9 name for the record.

10 MR. MARTINEZ: I beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 (There was a pause in the proceedings.)

13 **DIRECT EXAMINATION**

14 **BY MR. MARTINEZ:**

15 Q Ms. Jackson, will you please state your name and
16 where you work at, please?

17 A My name is Heidi Jackson and I work for the
18 Richland County Sheriff's Department.

19 Q How long have you known me?

20 A Since 2013.

21 Q And how did you come in contact with me?

22 A You filed an incident report with the Richland
23 County Sheriff's Department.

24 Q And that complaint was because of?

25 A The complaint was that you believed someone from

Heidi Jackson - Direct Examination by Mr. Martinez

1 the Ogden Police Department implanted a device behind your
2 ear.

3 Q And I went to -- I went to you to seek medical
4 attention; is that correct?

5 A Yes.

6 Q And I -- and you referred me to where?

7 A Columbia Area Mental Health.

8 Q And then when I got out of there, I went back to
9 you still asking for medical attention; is that correct?

10 A Yes. You were asking for the problem to be
11 resolved.

12 Q I was asking for you to help me to get medical
13 attention to have them remove the microchips?

14 A Yes.

15 Q And when -- when I seen you -- when I seen you and
16 I was around you, did it ever seem like I was on drugs or
17 alcohol or anything like that?

18 A No.

19 Q Did -- did I ever speak of anything else besides
20 getting help for my issues that I have?

21 A No, that was the only thing that we spoke about was
22 that you needed help with your mental health issues.

23 Q And I was always e-mailing you or trying to reach
24 you to ask you to help me get the testing that I needed and
25 complaining that I didn't have funding and that the

Heidi Jackson - Cross-Examination by Ms. Walker

1 hospital wouldn't help me and the mental health place
2 wouldn't help me and that I was asking for your help?

3 A Yes.

4 Q Thank you.

5 MR. MARTINEZ: No further questions, Your Honor.

6 THE COURT: All right. Solicitor.

7 **CROSS-EXAMINATION**

8 BY MS. WALKER:

9 Q You said that the only thing he ever asked you
10 about was getting mental health, but that's not true is it?

11 A He asked mostly for mental health. He did ask
12 other things, of course, in a conversation like, for
13 instance, about other charges he had and things like that
14 in the past, if I would look into those.

15 Q And he also wanted mental health help because he
16 wanted to file disability, right?

17 A Yes, he did state he was going to file disability.

18 Q And he wanted you to check with other agents about
19 charges and tell them about the voices; right?

20 A Yes. He wanted me to check if there were any
21 active charges in Utah.

22 Q And when he went to mental health, he was released
23 because he refused to cooperate and take the medicine; is
24 that correct?

25 A I don't know. I only know from what he told me. I

Heidi Jackson - Cross-Examination by Ms. Walker

1 never got a chance to speak to any doctors at mental health
2 or anything because we can provide them information, but
3 they can't reciprocate and tell us what's going on.

4 Q Well, let me ask you this way, did he tell you that
5 he was released because he refused to take the medicine?

6 A No, ma'am.

7 Q He didn't send that to you in an e-mail?

8 A I don't believe he did. I believe that most of the
9 time he was telling me that they couldn't find anything
10 wrong with me. And there were a lot of e-mails, so if it's
11 in there, then it's my mistake.

12 Q I'll show it to you just give me one moment.

13 MS. WALKER: Beg the Court's indulgence, Your
14 Honor.

15 THE COURT: Yes, ma'am.

16 (There was a pause in the proceedings.)

17 BY MS. WALKER:

18 Q Well, before I get to that e-mail, he told you also
19 that when he went to mental health they told him he was
20 fine in this e-mail?

21 A Uh-huh.

22 Q I need you to say yes or no?

23 A Yes, it does say that. He did write that.

24 THE COURT: Please -- just a moment.

25 Show that to Mr. Martinez, please, Solicitor.

Heidi Jackson - Redirect Examination by Mr. Martinez

1 (The defendant was looking at the e-mail.)

2 BY MS. WALKER:

3 Q And also --

4 THE COURT: Give him an opportunity to review that.

5 MS. WALKER: Yes, sir, I apologize.

6 THE COURT: That's all right.

7 All right. Thank you. Solicitor, you may ask your
8 question.

9 BY MS. WALKER:

10 Q Could you read this e-mail?

11 A (Reading.) Okay. I got a chance to read it. So
12 yes, in this e-mail, he did write that -- that --

13 Q You don't have to read the whole thing into
14 evidence. But he did not take his medicine and was
15 released from mental health?

16 A Yes.

17 Q And mainly he wanted you to look into all this
18 because he needed to go the Court soon?

19 A Yes, and it said if I would help with the
20 disabilities.

21 Q Right. I have no further questions.

22 THE COURT: Redirect, Mr. Martinez?

23 **REDIRECT EXAMINATION**

24 BY MR. MARTINEZ:

25 Q When did -- where does it say that I had to go to

Heidi Jackson - Redirect Examination by Mr. Martinez

1 court soon?

2 A (Looking at the e-mail.)

3 Q Oh, that was court for my disability; is that
4 correct?

5 A Yes.

6 Q And my mother is the one that told you about that;
7 is that correct?

8 A I need to look at the e-mail again to be able to
9 tell you if it was you writing that or if it was your mom.

10 (Looking) yeah, you wrote that, I also am asking
11 for your help in me getting my disability because I have to
12 go to court for it soon.

13 Q And what was the date on that?

14 A Okay. The date on this was October 4th, 2013.

15 Q And what was the date that I originally got in
16 contact with you? Do you remember?

17 A No, I don't. It was in 2013.

18 Q So it was -- it was prior, way prior to that?

19 A It was prior to that.

20 Q And I again -- when I asked you -- I asked you if
21 you would check into warrants from Utah that was later on
22 after I had already complained about my issues; is that
23 correct?

24 A Yes.

25 Q And the reason why I asked you was because the

Heidi Jackson - Redirect Examination by Mr. Martinez

1 police were -- I said the police were going to my family's
2 house in Utah looking for me; is that correct?

3 A I don't remember, but I don't have any reason to
4 think that that wasn't true.

5 (Mr. Martinez showed an e-mail to the solicitor and
6 then the e-mail was handed up to the witness.)

7 THE WITNESS: Yes.

8 BY MR. MARTINEZ:

9 Q And that was way after I'd already asked you for
10 help -- and the thing is, I never -- I never asked you for
11 mental health help; is that correct?

12 A That's correct.

13 Q I only asked you for medical attention help?

14 A Yes.

15 Q I told you -- I told you from the first time that I
16 met you when you --

17 MS. WALKER: Your Honor, I would object to the
18 leading.

19 THE COURT: Yes, sir. You need to rephrase your
20 question, please.

21 BY MR. MARTINEZ:

22 Q When I first met you, did I -- did I tell you that
23 I had a mental health condition?

24 MS. WALKER: Object to the leading, Your Honor.

25 THE COURT: You need to rephrase your question, Mr.

Heidi Jackson - Redirect Examination by Mr. Martinez

1 Martinez.

2 BY MR. MARTINEZ:

3 Q Okay. When I first met you, what type of help did
4 I ask for?

5 A You asked for help to get the device -- that there
6 was a device in your head.

7 Q Did I ever ask you for mental health help?

8 A No.

9 Q When -- my mother -- okay. My mother went -- there
10 was an issue that my mother went to you and complained
11 about and you went and got a court order to -- to take me
12 to mental health. Did you and my mom -- did my mom go to
13 you and complain that I don't have a job and I wasn't doing
14 nothing that I was trying to wait on disability?

15 A No, sir. The reason I went to mental health to do
16 the paperwork was because you said something that would
17 have put the community and would have put yourself in
18 danger. That's why I went to mental health for the
19 paperwork. It did not -- it was not because of your
20 mother.

21 Q But my mother went and reported what -- supposedly
22 what I said to you?

23 A Your mother did report a lot of things to me, yes,
24 of her concerns.

25 Q And her concerns were directly related to what I

Heidi Jackson - Redirect Examination by Mr. Martinez

1 said about the police?

2 A She expressed more than those concerns.

3 Q Okay. What -- why was the reason that you came and
4 got me and you got a court order to have me involuntarily
5 committed to the mental hospital?

6 A Because you said that you were going to get a gun
7 and go take care of matters on your own, get on a bus and
8 go take care of matters on your own and I interpreted that
9 as a threat.

10 Q And who was I going to go take care of matters
11 with?

12 A The Ogden Police Department in Utah.

13 Q And all you -- as you stated previously, my issues
14 -- my -- my issues directly related -- are directly related
15 to police?

16 A All your complaints have been that the police are
17 talking to you through your device, yes.

18 Q And you are -- not only from what I've told you,
19 but what my mother's told you and what the mental health
20 told you is that I live in fear of my life from the police,
21 that they threaten me, they want me dead and they want me
22 to kill myself and they want me to kill other people; is
23 that correct?

24 A Yes.

25 Q Thank you.

Heidi Jackson - Recross-Examination by Ms. Walker

1 MR. MARTINEZ: No further questions, Your Honor.

2 THE COURT: Recross examination?

3 **RECROSS EXAMINATION**

4 **BY MS. WALKER:**

5 Q He hears voices telling him to kill himself an
6 other people. Has he ever acted on the ones telling him to
7 kill himself?

8 A No, ma'am.

9 Q Just the ones that tell him to hurt others?

10 A Yes, ma'am.

11 Q And he sent you an e-mail asking you if he could be
12 charged if he shows that he's crazy. Do you remember that?

13 A Yes.

14 Q So if he plays crazy, he can't be charged with a
15 crime? He wanted you to know that in an e-mail

16 A Yes, that's what he asked in the e-mail.

17 THE COURT: Can I see that, please.

18 MS. WALKER: Okay. No further questions.

19 THE COURT: Thank you, thank you very much, Deputy
20 Jackson for being with us.

21 MR. MARTINEZ: I'm not -- I'm not done, Your Honor.

22 THE COURT: Yes, sir, you are done. There's a
23 direct and cross-examination. Many judges do not even
24 allow the second cross-examination, if you read Rule 611.

25 Call your next witness, please, Mr. Martinez.

Jose Chavez - Direct Examination by Mr. Martinez

1 Mr. Martinez, call your next witness.

2 MR. MARTINEZ: I call Dr. Chavez.

3 THE COURT: Dr. Chavez.

4 MR. MARTINEZ: Yes.

5 THE COURT: All right. Doctor, if you would come
6 join us, please.

7 JOSE CHAVEZ,

8 having been duly sworn, testified as follows:

9 THE CLERK: Please have a seat. State your full
10 name for the record.

11 **DIRECT EXAMINATION**

12 BY MR. MARTINEZ:

13 Q Mr. Chavez, Dr. Chavez, could you please state your
14 name and your profession, please?

15 A Sure. My name the Jose Chavez C-H-A-V-E-Z. I am a
16 medical doctor who specializes in family practice.

17 Q And where do you work at?

18 A I'm sorry?

19 Q And where do you work at?

20 A I do several jobs. I am the medical director of
21 the Lexington County jail and I work also at the Alvin S.
22 Glenn as a psychiatrist.

23 Q And how long have you -- what's my and your
24 relationship?

25 A I'm sorry?

Jose Chavez - Direct Examination by Mr. Martinez

1 Q How do you know me?

2 A I know you because you are a patient over at Alvin
3 S. Glenn.

4 Q And so you treat me; is that correct?

5 A Yeah, but you report me.

6 Q Okay. But you treat me now; is that correct?

7 A That's correct.

8 Q And how long have you been treating me?

9 A I think since the first time I saw you which was
10 around April 2015. You were an inmate in April of 2014.

11 Q And what is your diagnosis of me?

12 A Delusional disorder.

13 Q And what is that delusional order come from?

14 A It's a mental illness in which the disorder is
15 characterized as psychosis, which because of one symptom,
16 which is a fixed delusion. A person is thinking that he's
17 going to be an artist or a person who is thinking that the
18 government has installed some microchips or they are here
19 to save you money.

20 Q And what is my delusion?

21 A You have a fixed delusion that you believe that the
22 government has installed some microchips in your brain.

23 Q And do you give me medication for me --

24 A I give you medication for that.

25 Q Do you give me other medications as well?

Jose Chavez - Direct Examination by Mr. Martinez

1 A Yeah, you are taking some more medications,
2 although, you have not been compliant with them.

3 Q What's that?

4 A You have received some other medications from some
5 other doctors and I -- I don't know if you have been
6 compliant with them.

7 Q You get a report every month or every 90 days about
8 me; is that correct?

9 A That's correct.

10 Q And the nurses report if I'm being compliant or
11 not; is that correct?

12 A For the past two weeks you have not been compliant.

13 Q And I haven't been taking my Zyprexa?

14 A The Zyprexa, you've been taking it off and on for
15 about 30 percent over the last two weeks.

16 Q Yeah. But what other medications do I take?

17 A What medications --

18 Q What other medications do I take?

19 A I think you are taking an antidepressant. You're
20 also taking Depakote, which is a mood stabilizer.

21 Q And what about Zyprexa or Cylexin?

22 A Zyprexa.

23 Q And am I prescribed Cylexin too?

24 A Yes, it was prescribed to you by Dr. Higgins.

25 Q What about Lithium?

Jose Chavez - Cross-Examination by Ms. Campbell

1 A That's some of the last medications that we
2 prescribed to you. We had hoped that you were able to get
3 better.

4 Q And every -- every month or every time that I go in
5 to report to you, do my symptoms ever change?

6 A No.

7 Q I always report the same symptoms?

8 A The same symptoms.

9 Q All right. Thank you.

10 MR. MARTINEZ: No further questions, Your Honor.

11 THE COURT: Thank you, Mr. Martinez.

12 Solicitor?

13 **CROSS-EXAMINATION**

14 **BY MS. CAMPBELL:**

15 Q Just a few questions. You mentioned that someone
16 had treated him prior to you treating him at Alvin S.
17 Glenn?

18 A That's correct.

19 Q And what was his name?

20 A Dr. Higgins.

21 Q And is Dr. Higgins a psychiatrist as well?

22 A He's a psychiatrist.

23 Q And when Dr. Higgins diagnosed the defendant from
24 him treating him, he treated him when he first came into
25 Alvin S. Glenn back in, I believe, April of 2014?

Jose Chavez - Cross-Examination by Ms. Campbell

1 A That's correct.

2 Q And then he treated him for a period of time after
3 that?

4 A Yes.

5 Q What was his diagnosis?

6 MR. MARTINEZ: Objection, Your Honor, hearsay.

7 THE COURT: Overruled.

8 THE WITNESS: His diagnosis was anxiety, depression
9 malingering psychosis.

10 BY MS. CAMPBELL:

11 Q I'm sorry could you repeat that?

12 A Sure. Anxiety, depression.

13 Q Anxiety, depression?

14 A Anxiety disorder.

15 Q Anxiety disorder?

16 A And malingering psychosis.

17 Q And malingering psychosis. What does malingering
18 psychosis mean?

19 A Malingering is a person who is exaggerating the
20 symptoms when they do not exist.

21 Q Exaggerating the symptoms where they do not exist?

22 A Correct.

23 Q That's what malingering is. And in your field, is
24 it unusual for people to exaggerate or make up symptoms?

25 A Sometimes they do with a purpose to get away from

Jose Chavez - Cross-Examination by Ms. Campbell

1 any crime that they have committed.

2 Q To get away from any crimes they've committed. And
3 you've been treating him and he's reported this fixed -- is
4 it --

5 A He continuous with the symptoms and is prescribed
6 medication for his complaint.

7 Q And the symptom that is simply delusion?

8 A It is about the microchips --

9 Q In his head?

10 A -- in his head.

11 Q And you prescribed medication for him. Does the
12 medication help him with his fixed delusion?

13 A We hope that the medication will help him, but the
14 person has to be compliant.

15 Q Has any medication he's received over the last 2
16 and a half years helped him with he has fixed delusions or
17 does he still report it?

18 A No.

19 Q It hasn't?

20 A Nothing has helped.

21 Q So should the medication such as Zyprexa or Lithium
22 help him?

23 A We couldn't tell if it helped because you need the
24 maintain certain levels in your system.

25 Q Since November 26th, has he been compliant with his

Jose Chavez - Redirect Examination by Mr. Martinez

1 medication?

2 A No.

3 Q So he hasn't taken his medication?

4 A He has times that he has been compliant off and on.

5 Q But specifically over the last two weeks while
6 we've been in here --

7 A Only like about two days.

8 Q So the medication is not effective if he's not
9 compliant?

10 A That's correct.

11 Q Thank you, sir. I don't have anything further.

12 THE COURT: Redirect, Mr. Martinez?

13 REDIRECT EXAMINATION

14 BY MR. MARTINEZ:

15 Q Is it -- in Mr. Higgins's -- Dr. Higgins's notes
16 does it not state that he got that conclusion because I
17 didn't want to take medication?

18 A No, you actually -- you wanted him to increase the
19 medication.

20 Q I wanted him --

21 A To increase the Cylexin.

22 Q Why did --

23 A I don't know. You need to ask Dr. Higgins.

24 Q When I first -- you're saying when I first got to
25 jail they tried to put me on medication. I said I didn't

Jose Chavez - Redirect Examination by Mr. Martinez

1 want medication because I don't need medication?

2 A Correct.

3 Q That's when they claimed that I was malingering?

4 A Correct.

5 Q And then my mother called and stated that --

6 MS. CAMPBELL: Objection, Your Honor, to hearsay.

7 THE COURT: Overruled.

8 BY MR. MARTINEZ:

9 Q -- and stated that I needed to be on medication?

10 A She called some staff member, I don't know his
11 name, but it was concern because you were actively
12 delusional. I'm talking about the voices that tell you,
13 you should kill everybody there at the jail and the
14 facility placed you in a shoe for your own safety.

15 Q And I have told you and you've even -- I've told
16 you that I don't need -- that none of the medications are
17 going to help me because I have implanted devices in me; is
18 that correct?

19 A You mentioned that.

20 Q And you told me that I should have my mother pay to
21 get my CAT scan and maybe to get my medical testing done;
22 is that correct?

23 A I don't recall that. I don't have that in my
24 notes.

25 Q Do you remember when I complained to you that the

Jose Chavez - Redirect Examination by Mr. Martinez

1 jail wasn't giving me medical attention that I needed?

2 A Perhaps.

3 Q When you increased my medication because you said I
4 was depressed?

5 A That's correct.

6 Q And I told you that I need -- that I have masses
7 inside of my head that they can't explain and they can't
8 tell what it is, but that they won't remove?

9 A I wasn't the only medical facility -- I don't know
10 if a medical doctor saw you for that same.

11 Q What about behind my ears.

12 A There originally was some lesions that were taken
13 care of.

14 Q And you was aware of that, correct?

15 A Briefly.

16 Q You never looked at it yourself?

17 A No.

18 Q You've never --

19 A I only have about 15 minutes to see each patient.
20 I'm not going to be able to look at every single thing
21 that you have. There is not enough time.

22 Q So you've never asked me about my ear?

23 A I think you mentioned to me that you have had
24 surgery for an issue that you wanted removed from the roof
25 of the mouth and another one behind your ear.

Jose Chavez - Recross-Examination by Ms. Campbell

1 Q And --

2 MR. MARTINEZ: No further questions, Your Honor.

3 THE COURT: Recross examination, Solicitor?

4 **RECROSS EXAMINATION**

5 BY MS. CAMPBELL:

6 Q He asked you about antidepressants because he was
7 depressed?

8 A Correct.

9 Q Is it unusual for people who are incarcerated at
10 Alvin S. Glenn to get depressed?

11 A Yes, they do.

12 Q They get depressed?

13 A Yes.

14 Q Thank you.

15 THE COURT: Thank you, thank you very much, Doctor.
16 Thank you for being with us today. You may step down.

17 Any objections to the doctor being excused, Mr.
18 Martinez?

19 MR. MARTINEZ: No, sir.

20 THE COURT: Solicitor?

21 MS. CAMPBELL: No, sir.

22 THE COURT: Thank you again, Doctor.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: All right. Again, you may call your
25 next witness, Mr. Martinez.

Gabriel Denizard - Direct Examination by Mr. Martinez

1 MR. MARTINEZ: I call Officer Gabriel Denizard.

2 THE COURT: All right, sir if you'd come around and
3 be sworn.

4 GABRIEL DENIZARD,
5 having been duly sworn, testified as follows:

6 THE CLERK: Please have a seat. State your full
7 name for the record.

8 THE WITNESS: Gabriel Denizard.

9 **DIRECT EXAMINATION**

10 BY MR. MARTINEZ:

11 Q Could you tell the Court where you work at?

12 A Currently I do work for -- I'm a crime scene agent
13 with the South Carolina Law Enforcement Division, also
14 known as SLED.

15 Q In 2014 where did you work at?

16 A I worked for Forest Acres Police Department. I was
17 a detective at the time.

18 Q And you worked on this case; is that correct?

19 A I did assist with this case, yes.

20 Q And what did you do -- how did you assist in this
21 case?

22 A Lieutenant Shumard was the lead on the case. He
23 had briefed me some information about what had taken place
24 and I was asked to assist as far as showing a lineup to
25 Kendall Decker at the pawnshop on Decker Boulevard.

Gabriel Denizard - Direct Examination by Mr. Martinez

1 Q And did you and -- also you and Jerry Russell go
2 out and canvas the area?

3 A Yes, myself and J. Russell, he was a detective at
4 the time also for Forest Acres, I helped him speak with a
5 couple of witnesses also.

6 Q And which witnesses did you speak to?

7 A The witness, Ms. McRae and I believe I did speak to
8 -- I can't remember her name. She lived off of Holiday
9 Circle. She's another witness.

10 Q Ashley Culpepper?

11 A Yes, that's it.

12 Q And did Ms. -- you went and met Ms. Culpepper; is
13 that correct?

14 A Myself and Jerry Russell, yes.

15 Q And she took -- she took you to the exact location
16 where she claimed she saw this individual that she saw?

17 A She did explain to me and Jerry Russell where she
18 had seen Mr. Martinez. And I can't remember exactly --
19 it's been a while -- exactly where she pointed, but she did
20 mention that she'd seen him coming out of some bushes.

21 Q And you don't recall exactly where?

22 A No, sir, I don't.

23 Q You -- you and Mr. Russell went to that area and
24 did like a search of the area and didn't find any clothing
25 article?

Gabriel Denizard - Direct Examination by Mr. Martinez

1 A We did. We canvassed the area for a possible
2 hoodie or sweatshirt and we didn't find anything at the
3 time.

4 Q And what about the area of Bethel Church Road? You
5 guys went and canvassed that area too, correct?

6 A I remember mostly searching near the area off of
7 Pinestraw, which is where -- near Ms. Culpepper's
8 neighborhood which is Holiday Circle because she'd seen
9 him. She said she'd seen him come out of the bushes at
10 that time. So we kind of looked around that area. There's
11 a church in that area too, we looked. As far as Bethel
12 Church Road, I don't really remember looking or walking
13 around.

14 Q You guys didn't go to the Kangaroo?

15 A We did go to the Kangaroo.

16 Q And they have cameras there, correct?

17 A They do, yes, sir.

18 Q And when they checked the cameras there was nobody
19 matching my description?

20 A I never -- we never followed up as far as if she --
21 I can't remember the employee at the time had found any
22 footage of Mr. Martinez.

23 Q You state in your report, in your investigative
24 notes that you guys did go to the Kangaroo and met with
25 Patricia, the manager?

Gabriel Denizard - Direct Examination by Mr. Martinez

1 A Yes, sir.

2 Q Who said she recognized the subject from the
3 composite. She said she would check the video surveillance
4 for the subject. She never got back with you?

5 A No, sir. She didn't.

6 Q When you guys -- did you guys go and find other --
7 other -- there was supposed to be -- at the entrance of the
8 condos there was supposedly multiple people there waiting
9 for the school bus, parents and children; is that correct?

10 A Yes, sir.

11 Q And did you -- were you guys -- were you notified
12 that there was multiple people there?

13 A We were notified about Ms. McRae, who was a mother
14 who took her child to the bus stop. So as far as any of us
15 speaking with anybody in reference to the bus stop, that's
16 who we spoke to about this case.

17 Q Did Ms. McRae tell you that there was --

18 MS. WALKER: I would object to the hearsay, Your
19 Honor.

20 THE COURT: Rephrase your question, Mr. Martinez.

21 BY MR. MARTINEZ:

22 Q Were you told by anyone that there was multiple
23 people at the bus stop?

24 A As far as what Ms. McRae told me, I can't remember
25 if she told me. She said she was present with her kid at

Gabriel Denizard - Direct Examination by Mr. Martinez

1 the time when she made contact with Mr. Martinez, but I do
2 not remember her ever expressing that there were multiple
3 people there with her at the time.

4 Q Did you -- did you and Mr. -- the Officer Russell
5 go and see if there was other parents there at the time?

6 A No, sir, we didn't.

7 Q Do you know about the -- about the SLED profile --
8 I mean for making -- the SLED operation for making --

9 A I have an idea of how it was done --

10 THE COURT: I didn't even finish hearing the
11 question.

12 THE WITNESS: I'm sorry.

13 THE COURT: That's all right. I wasn't fussing.

14 Mr. Martinez, state that full question for me,
15 please. Do you know about --

16 BY MR. MARTINEZ:

17 Q How the SLED photo lineups are conducted?

18 THE COURT: Thank you.

19 THE WITNESS: I have an idea of how they're done.

20 I'm not an expert because that's with the Fusion Center
21 with SLED, but I can somewhat explain it. Typically what
22 we do any time we have a person of interest, we go ahead
23 and either obtain some type of photograph or driver's
24 license and we e-mail them the information and sometimes a
25 photograph to SLED Fusion Center and they have a data base

Gabriel Denizard - Direct Examination by Mr. Martinez

1 which typically uses some type of facial recognition and
2 they go ahead and create the photo lineup, which is usually
3 a six person photo lineup.

4 It's usually just the neck and above and then they
5 will e-mail us back the -- whose this actual defendant,
6 which number they are and a copy of the black and white or
7 color photo lineup and then we use that particularly the
8 witnesses from there.

9 Q And all the people are supposed to be similar
10 looking, correct?

11 A Yes, sir.

12 Q As far as like scars, tattoos, other types of
13 distinguishing marks that wouldn't single a certain person
14 out?

15 A Typically, yes, sir.

16 Q And if they're supposed to alter the filler --
17 other people are called fillers; is that correct?

18 A You could say they're fillers, yes, sir.

19 Q From the suspect -- there's a suspect and there's
20 other people that are fillers --

21 MS. WALKER: I would object to leading, Your Honor.
22 He just wants to ask him how it's done.

23 THE COURT: Just restate your question, Mr.
24 Martinez.

25 BY MR. MARTINEZ:

Gabriel Denizard - Direct Examination by Mr. Martinez

1 Q There's supposed to -- is it -- everyone's supposed
2 to look the same?

3 A Typically in a photo lineup, the data base we use,
4 like I said, I believe it's a facial recognition type thing
5 so everyone's going to have the similar features, but they
6 also take into account based off communication with the
7 detectives as far as the description as far as wearing
8 glasses, you know, how much hair they have, and then from
9 there they use that -- his photo and then they use random
10 people that look similar to him.

11 Q Are they all supposed to be the same race?

12 A As far as race as in?

13 Q As far as ethnicity?

14 A Ethnicity, well, ethnicity as far as -- are you
15 referring to that as being the complexion.

16 Q As far as being Hispanic, as far as being black, as
17 far as being African American, as far as being Caucasian?

18 A Well, typically with photo lineups -- if they're
19 making a photographic lineup, let's say of an African
20 American, typically everyone's going to be African
21 American. As far as Hispanics, Mr. Martinez they're still
22 going to look for random people. But it's not -- their
23 data base is not created to go just by race. They also do
24 it by complexion. They look for similar features, so as
25 far as race, I can't tell those random people if they're

Gabriel Denizard - Direct Examination by Mr. Martinez

1 Hispanic or not, but when I look at them, I know they all
2 look similar, they had glasses, they had the same amount of
3 hair, the complexion pretty much looked similar to me which
4 looked accurate as far as a non-biased lineup.

5 Q How many of them people have a tattoo on them?

6 A A tattoo where?

7 Q Visible.

8 A Visible tattoo?

9 Q Yeah.

10 A Can I see the lineup again?

11 THE COURT: Hand him -- it's either State's 2 or --

12 Defendants 1? You want to show him that one, Mr.

13 Martinez?

14 MR. MARTINEZ: Yes, sir.

15 THE COURT: Do you need to look at it closer?

16 MR. MARTINEZ: No, I don't.

17 THE COURT: Okay. Thank you.

18 THE WITNESS: There is a mark above your eye, your
19 left eye.

20 BY MR. MARTINEZ:

21 Q Does anybody else have --

22 A I do not see one.

23 Q What about the neck area?

24 A The neck area, you can see a little bit of your
25 neck and everyone else's.

Gabriel Denizard - Direct Examination by Mr. Martinez

1 Q Can you see any marks on their neck?

2 A No. And I can't really see any marks on your neck
3 either.

4 Q Is it not true that my chin is touching the white
5 line?

6 A It is and I believe they possibly did that because
7 your neck has tattoos. So they probably cut off more so it
8 won't be visible and make it more non-biased.

9 Q According to -- it's supposed to be -- according to
10 SLED's photo lineup --

11 MS. WALKER: Your Honor, I would object to the
12 officer with Forest Acres Police Department being
13 cross-examined about SLED's documents.

14 MR. MARTINEZ: He's a SLED agent.

15 MS. WALKER: Or being examined. I'm sorry.

16 THE COURT: Well, and he said he had some
17 knowledge. I mean being limited, I have some knowledge of
18 how they prepare photo lineup. I'm not an expert about the
19 Fusion Center, so -- you can ask the question. The officer
20 may or may not be able to answer the question.

21 MR. MARTINEZ: All right. So --

22 THE COURT: Ask him if he knows SLED policies about
23 preparation of photo lineups at the Fusion Center.

24 BY MR. MARTINEZ:

25 Q Are you aware of the photographic lineup procedure

Gabriel Denizard - Direct Examination by Mr. Martinez

1 from SLED?

2 A I'm not -- I mean, I do currently work for South
3 Carolina Law Enforcement Division, but there's many units.
4 I work for the crime scene unit. The fusion department are
5 the ones that typically handle the photo lineups, so their
6 training and everything is in this, mine is completely
7 different. So I have really no knowledge of their policy
8 on how to fix a photo lineup.

9 Q And --

10 MR. MARTINEZ: No further questions, Your Honor.

11 THE COURT: Solicitor?

12 MS. WALKER: No questions, Your Honor.

13 THE COURT: Thank you. Thank you very much,
14 Detective Denizard. You may step down.

15 Any objection to this officer being excused from
16 the defense, Mr. Martinez? Any objections to the officer
17 being excused?

18 MR. MARTINEZ: No, sir.

19 THE COURT: Thank you for being with us.

20 All right. You may call your next witness.

21 MR. MARTINEZ: Yes, I call Warren Cavanaugh.

22 THE COURT: Detective Cavanaugh, if you'd come
23 around and be sworn for us please.

24 WARREN CAVANAUGH,

25 having been duly sworn, testified as follows:

Warren Cavanaugh - Direct Examination by Mr. Martinez

1 THE CLERK: Please have a seat. State your full
2 name for the record.

3 THE WITNESS: Warren Cavanaugh, Richland County
4 Sheriff's Department.

5 **DIRECT EXAMINATION**

6 BY MR. MARTINEZ:

7 Q Mr. Cavanaugh, would you please tell the Court what
8 you do?

9 A Currently I work for Richland County Sheriff's
10 Department Fugitive Task Force.

11 Q Is that what you was doing in 2014?

12 A That is correct.

13 Q And you assisted in apprehending me?

14 A That is correct.

15 Q And how was that done?

16 A How was what done? Can you be a little more
17 specific?

18 Q How did you know where I was at?

19 A So on the 31st of March in 2014, I believe it was,
20 Lieutenant Shumard with the Forest Acres Police Department
21 contacted myself and asked for assistance in apprehending a
22 suspect that they had in some criminal sexual conduct
23 cases, as well as the City of Columbia had some charges as
24 well, and they were asking for our assistance in locating
25 the suspect.

Warren Cavanaugh - Direct Examination by Mr. Martinez

1 Q And how did you guys -- how did you and your agency
2 go about that?

3 A Through investigative techniques we were able to
4 determine possible locations of friends and family members
5 and we actually located Mr. Martinez at his brother's
6 residence.

7 Q And how did you locate me at my brother's
8 residence?

9 A We rode by his brother's residence and there was a
10 -- I think it was some sort of red shade minivan that was
11 in the side lot of the house, next to the house. And that
12 was one of the vehicles that we were able to determine was
13 a family member's vehicle and one that I believe he was
14 driving as well.

15 Q Was it a gold?

16 A It may have been. I'm unsure of the color of the
17 minivan itself. I'm 100 percent it was a minivan.

18 Q Who was in the car with me?

19 A Say that again. I didn't hear you.

20 Q Who was in the car with me?

21 A It was him and his mother.

22 Q Did you and your agency track me with a court
23 ordered -- well trap and trace device?

24 A What he's talking about is along with that
25 investigation, a possible number was developed of a

Warren Cavanaugh - Direct Examination by Mr. Martinez

1 telephone that he may have been using. That information
2 was provided to SLED who then took the lead on that portion
3 of the investigation.

4 Q And was you aware of all this? About this phone
5 trap, trace, and all the GPS and let's see phone -- history
6 call phone detail, call detail, the records, historical
7 text message content? Installation and use of ping,
8 register --

9 A Are you reading off of something that I maybe see
10 what you're specifically talking about?

11 Q This is the exact -- well it's a copy -- it's not
12 the original, but it's a copy of the Court order?

13 A Okay. Is that something I can see?

14 THE COURT: Any objection, Solicitor?

15 MS. WALKER: No, sir, Your Honor.

16 THE COURT: Thank you.

17 (The witness was looking at the document.)

18 THE WITNESS: Okay. I'm familiar with this, but
19 this is an order that was done by SLED, not myself.

20 BY MR. MARTINEZ:

21 Q But that's what you and your agency or your strike
22 force was using, correct?

23 A No, this is -- this is SLED's order, this isn't
24 Richland County Sheriff's Department.

25 Q It says it's Richland County Sheriff's Department

Warren Cavanaugh - Direct Examination by Mr. Martinez

1 at the bottom. SLED and Richland County Sheriff's
2 Department?

3 A Okay. But what I'm specifically talking to, this
4 order had to be prepared. It was prepared by SLED, not
5 Richland County Police Department. So I can't -- I can't
6 talk about the preparation of this because I did not do it.

7 Q But did -- but you and your agency was using that
8 -- this order in order to gain information from the phone
9 that I was using?

10 A We were utilizing information that SLED was
11 providing to us, yes.

12 Q So when did you start tracking the phone?

13 A I received a phone call on the 31st, like I stated,
14 from Lieutenant Shumard. It was shortly after that that we
15 were able to, like I said, develop a possible number. And
16 I can't speak directly on it, but there were what's called
17 exigent circumstances to where the use of that GPS location
18 he's talking about is provided directly by the carrier. In
19 a situation where there's an individual that we may be
20 looking for that the longer the process took, the
21 possibility of somebody else being injured was greater.

22 So there is a hurry up, as you were, for something
23 like that. But SLED themselves could talk directly on the
24 specifics on that.

25 Q Okay. So you stated that it started on the 31st?

Warren Cavanaugh - Direct Examination by Mr. Martinez

1 A No, that's not what I stated at all. What I stated
2 was that SLED could tell you exactly when that started
3 happening.

4 Q Okay. So how would you -- okay. Do you have any
5 information as far as the GPS prior to -- or from March
6 31st, 2014?

7 A No, I don't have any information. That wouldn't
8 have been given to me. If SLED is the one that did the
9 request for the phone, all of that information would be
10 provided to them.

11 Q Okay. So you wasn't provided any information?

12 A The only information that I was provided was what
13 was relayed from SLED to myself.

14 Q And what information was that?

15 A Specifically what we are we talking about.

16 Q Specifically use, the phone use?

17 A Uh-huh.

18 Q Pings from different cell powers where you can see
19 where the phone's been at. And phone calls, incoming phone
20 calls?

21 A Okay. What I was given from SLED was possible
22 large GPS locations. It was then that we took those
23 addresses that I spoke about before, the possible locations
24 of family members and friends, et cetera. And if they fell
25 within that area, then we actually went by and checked on

Warren Cavanaugh - Direct Examination by Mr. Martinez

1 that. Is that what you're asking? I'm not --

2 Q Yeah, that's part of it. But were you given the
3 usage of that phone -- were you given detailed information
4 pertaining to the use of that phone?

5 A I wasn't given any detailed information, I don't --
6 if you could be more specific, I don't have -- I really am
7 having a hard time finding out what you're talking about
8 specifically.

9 MR. MARTINEZ: I beg the Court's indulgence.

10 THE COURT: Yes, sir, of course.

11 (There was a pause in the proceedings.)

12 BY MR. MARTINEZ:

13 Q Okay. You stated that you -- that lieutenant
14 Russell Shumard reached out to you; is that correct?

15 A On the 31st of March, that's correct.

16 Q And he stated that he needs assistance to apprehend
17 me?

18 A That's correct, yes.

19 Q And then you told him that you, you got back in
20 contact with him and told him that you came in contact with
21 a phone number that I used; is that correct?

22 A Right. That's what I was talking about. We were
23 able to develop a number that he was possibly using.

24 Q Okay. And that was on the 31st of April -- of
25 March, correct?

Warren Cavanaugh - Direct Examination by Mr. Martinez

1 A It could have been the 31st. I can tell you it was
2 no later than 1:30 in the morning on the 2nd, early, late
3 night hours of the 1st. That's how long it took for us to
4 locate him. It was not very long after the call.

5 Q And you told him that it was a government issue
6 phone and that --

7 THE COURT: Let him answer that question.

8 MR. MARTINEZ: Yes, sir.

9 THE WITNESS: I did.

10 BY MR. MARTINEZ:

11 Q And you told him -- did you also tell him that on
12 the -- on the 29th -- okay. From Verizon Wireless, you
13 told Lieutenant Shumard that the phone was used on 03/29th
14 at 3:56 p.m. on I-77 Killian Road?

15 A Okay. Now I understand what you're asking. If I
16 could go back to the exigent circumstances that I
17 mentioned, that was a direct call to the carrier. And I'm
18 not an expert. I don't deal directly with that, but I do
19 know that there are times during that direct call that
20 information like that may be provided by the carrier
21 directly over the telephone. That's not anything that I
22 requested.

23 Q The Court order requested all that; is that
24 correct?

25 A I don't know. I didn't do the Court order. SLED

Warren Cavanaugh - Direct Examination by Mr. Martinez

1 did the Court order.

2 Q Okay. And then also said -- you stated that: Mom,
3 3:18, tried to call?

4 A I don't know that I stated that. Does it say that
5 I stated that?

6 Q That's what Lieutenant Shumard stated from notes
7 recorded from --

8 A Can I see those notes that it says I said that?

9 (The document was handed up to the witness.)

10 THE WITNESS: I don't -- I don't see on here where
11 it says that I stated that.

12 BY MR. MARTINEZ:

13 Q It says Cavanaugh right at the top?

14 A I do see my name. And it says something about
15 minutes on a Verizon Wireless government phone, but that's
16 the only thing that's by my name. I don't --

17 Q So how would Mr. Shumard know that --

18 MS. WALKER: I would object to any speculation as
19 to how Investigator Shumard has something from this
20 investigator, Your Honor.

21 THE COURT: That's sustained.

22 BY MR. MARTINEZ:

23 Q So you never -- okay. So you never told
24 Mr. Shumard that the phone -- previously to the 31st --

25 A Uh-huh.

Warren Cavanaugh - Direct Examination by Mr. Martinez

1 Q -- was being tracked or traced or anything from --
2 that you guys had any information from that?

3 A I don't know that I said any of that to
4 Mr. Shumard. Like I stated, if anything was stated, it was
5 directly relayed from SLED to myself and then from myself
6 to Lieutenant Shumard. I don't know what you're talking
7 about.

8 Q So, okay. So you was there when I was arrested,
9 correct?

10 A That is correct.

11 Q And was -- where -- where -- do you remember
12 exactly where you was at?

13 A It was your brother's house, I think Quail Run
14 Subdivision, maybe, off of Lower Richland Boulevard.
15 Forgive me if the subdivision is wrong.

16 Q And was my brother thrown to the ground with guns
17 pointed in his face?

18 A No.

19 Q Was his girlfriend thrown to the ground with a gun
20 pointed at her face?

21 A Nobody was thrown to the ground.

22 Q Nobody was thrown to the ground?

23 A No.

24 Q When you guys came to the car --

25 A Yes.

Warren Cavanaugh - Direct Examination by Mr. Martinez

1 Q -- did you guys not have guns pointed at me and my
2 mom?

3 A We absolutely did.

4 Q And you guys threw me on the ground?

5 A No, nobody threw you on the ground.

6 Q So how would I -- how would I -- if I'm in a car,
7 how would I end up all dirty?

8 A Due to the nature of those charges, people were
9 ordered to the ground at gunpoint. Nobody was thrown to
10 the ground. So yes, you were handcuffed and you may have
11 been on the ground, but nobody threw you to the ground.

12 Q Did anybody threaten my mother?

13 A Not to my knowledge.

14 Q There wasn't an altercation between other officers
15 who had to restrain other officers because they wanted to
16 assault my mother?

17 A Not that I saw. And I can't speak directly, but I
18 do know the other officers that were there and nobody would
19 have attacked your mom.

20 Q Did -- who -- do you know who the officer was that
21 transported me to Richland -- or Forest Acres police?

22 A I'm not exactly sure who the officer was, but I can
23 tell you I followed that vehicle to -- for that transport
24 and drop off.

25 Q Did I state that I wanted -- did I -- was you

Warren Cavanaugh - Direct Examination by Mr. Martinez

1 present when I stated I wanted to go speak with the police?

2 A I don't know that you were asked if you wanted to
3 go speak with the police. So, no, to your question. I
4 wasn't present.

5 Q So you're not aware that I was -- that I
6 voluntarily, freely on my own free will wanted to go to the
7 police station and talk to the police?

8 A Well, at the point of arrest, you're no longer
9 free, but we were assisting the Forest Acres Police
10 Department on their warrants. We were simply, for lack of
11 a better term, a tool used to make the apprehension. They
12 were then -- Mr. Martinez was then taken to the police
13 department who had those warrants for him and custody was
14 transferred.

15 Q So just because I'm under arrest, I don't have the
16 choice to make to not want to go or want to go and speak
17 with the police?

18 A That's --

19 THE COURT: You don't have that choice.

20 THE WITNESS: That's not a choice.

21 THE COURT: Ask your next question.

22 THE WITNESS: I'm sorry.

23 THE COURT: That's a matter of law. Ask your next
24 question. Not just you, anybody who is placed under arrest
25 by warrant has no choice.

Warren Cavanaugh - Direct Examination by Mr. Martinez

1 So ask your next question.

2 It's a constitutional right.

3 Ask your next question.

4 BY MR. MARTINEZ:

5 Q So you don't know --

6 THE COURT: No, don't ask your next question.

7 Step down.

8 Court will be in recess 15 minutes. Do not discuss
9 the case during this brief recess.

10 Do not discuss your testimony.

11 THE WITNESS: You said for me to step down?

12 THE COURT: You may step down. Refresh yourself.

13 (The jury left the courtroom at 10:58 a.m.)

14 (There was a brief recess.)

15 THE COURT: Anything before we bring in our jury
16 from the defense?

17 MR. KATA: Your Honor, may I approach?

18 THE COURT: Yes, sir.

19 (There was a bench conference with Mr. Kata out of
20 the Court Reporter.)

21 THE COURT: All right. Anything from the defense
22 before we bring in the jury, Mr. Martinez?

23 MR. MARTINEZ: No, sir.

24 THE COURT: State, Solicitor? Anything from the
25 State, Solicitor?

Warren Cavanaugh - Direct Examination by Mr. Martinez

1 MS. GODWIN: No, sir.

2 (The jury entered the courtroom at 11:22 p.m.)

3 THE BAILIFF: Your Honor, the jury is present.

4 THE COURT: Thank you, thank you, Mr. Whittle.

5 All right. Ladies and gentlemen, we're continuing

6 the trial of the case by the direct examination by Mr.

7 Martinez of Mr. Cavanaugh.

8 All right. Mr. Martinez.

9 BY MR. MARTINEZ:

10 Q Mr. Cavanaugh, so you're not aware that I was
11 questioned as to -- as to me voluntarily, knowingly,
12 intelligently wanting to go and speak with the police?

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

14 Q And you are not aware of my phone being tracked,
15 traced, prior to the 31th of March?

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

17 Q Okay with that being said, you would not be -- you
18 would not know how Lieutenant Shumard gained that
19 information from my phone, correct?

20 A Which information are you asking about?

21 Q The usage from the 29th of March 2014 and the call
22 that came in from my mom.

23 A Huh-huh.

24 Q And him asking about possible pings to see where
25 the phone has been a week prior to -- to you guys speaking?

Warren Cavanaugh - Direct Examination by Mr. Martinez

1 A No, he didn't ask me for that. As I stated, the
2 information that I would have relayed would have come from
3 SLED that they relayed to me. And there was direct contact
4 between the carrier and SLED. Some of those things that
5 he's speaking of could be mentioned, but, you know, if it
6 was relayed to me, then I would relay it to Shumard. But
7 that's the only way I would get that information.

8 Q So was -- there was a GPS on that phone? Correct?

9 A Meaning what?

10 Q Meaning that they could follow that phone wherever
11 it was?

12 A That -- that -- what he's referring to, the carrier
13 was able to, like I say, give a large area of possibility
14 of where that phone may be located.

15 Q So it's not an exact area, it's a large area?

16 A No -- I mean it would be nice if they could tell us
17 if they're in the back bedroom of such a house, but that
18 doesn't exist.

19 Q All right. Thank you.

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

21 THE COURT: Solicitor?

22 MS. WALKER: Sir -- I'm sorry, Your Honor. I don't
23 any questions.

24 THE COURT: Thank you, thank you very much,
25 Detective Cavanaugh.

Mark Berube - Direct Examination by Mr. Martinez

1 Any objections to this officer being excused, Mr.
2 Martinez?

3 MR. MARTINEZ: No, sir.

4 THE COURT: Solicitor?

5 MS. WALKER: No, sir.

6 THE COURT: Thank you again, you may be excused.

7 All right. Mr. Martinez, you may call your next
8 witness.

9 MR. MARTINEZ: Yes, I call Mark Berube, Special
10 Agent.

11 THE COURT: All right. If you would come around
12 and be sworn for us, please.

13 MARK BERUBE,

14 having been duly sworn, testified as follows:

15 THE CLERK: Please have a seat. State your full
16 name for the record.

17 THE WITNESS: Mark Berube, B-E-R-U-B-E.

18 **DIRECT EXAMINATION**

19 **BY MR. MARTINEZ:**

20 Q Mr. Berube, where you work at?

21 A I'm a lieutenant with the South Carolina Law
22 Enforcement Division.

23 Q And was you working at SLED in 2014?

24 A Yes, I was.

25 Q And are you the one that made this Court order for

Mark Berube - Direct Examination by Mr. Martinez

1 the track and trace for the cell phone that I was using?

2 A I am the one that initiated that order through a
3 circuit court judge, yes.

4 Q And what exactly -- when did you file this?

5 A Could you explain what you mean by file?

6 Q Okay. When did you -- when did you obtain this
7 Court order?

8 A The first day of April, 2014.

9 Q And that was when you had it signed, correct?

10 A That is correct.

11 Q When did you actually start tracing the phone?

12 A By tracing, I'm assuming you mean GPS location.

13 Q Yes, sir.

14 A That was initiated on the 31st of March 2014.

15 Q And who gave you the authorization to get this?

16 A We made a decision at SLED that due to the nature
17 of this case it met an exigent circumstance, which meant we
18 could go directly with the phone company to get a GPS
19 locator on that phone for a period up to 48 hours prior to
20 getting a court order.

21 Q And did you do that?

22 A Yes, we did.

23 Q And so you started tracking the phone on the 30 --
24 30th?

25 A The 31st is when the -- when I received the phone

Mark Berube - Direct Examination by Mr. Martinez

1 call from the Richland County Sheriff's Department
2 requesting our assistance, so the 31 was when the exigent
3 was initiated on this particular device.

4 Q And in your court order, you specifically asked for
5 information -- let's see, authorizing the release of
6 history, call -- call details, detailed records, history
7 call, text message content, installation, and use of ping
8 register trap and trace device, GPS location, and the
9 activation and T Mobile Incorporated delivery system for
10 the time period of March 1st, 2014 to present to include 60
11 days from the date of this order for telephone number
12 [REDACTED]-2894, a cellular telephone issued by T Mobile
13 Incorporated and used by Nathan Martinez; is that correct?

14 A That is correct. I need to clarify something if I
15 may for the Court. I don't want to mislead the Court here.
16 This Court order, all those things that you listed, the PIN
17 register trap and trace, the call detail records, the
18 subscriber information, all that stuff is going to be on
19 every single order that we do. Okay? That doesn't mean
20 necessarily that that's what we're asking the phone company
21 for at that particular time. We will send that order to
22 the phone company and we will ask them for what we need.

23 In your case, GPS locator was the only thing that
24 was initiated on that device. I just don't want to mislead
25 the Court into thinking we were looking into other things

Mark Berube - Direct Examination by Mr. Martinez

1 on your phone when your phone's actually a GPS locate only.

2 Q So how would -- with that being stated, how would
3 other officers gain information from my phone being used on
4 the 29th?

5 MS. WALKER: I would object to the speculative
6 nature of him asking what other officers could gain.

7 THE COURT: I'll allow it. I'll allow that
8 question.

9 THE WITNESS: Can you say that question again for
10 me, please.

11 BY MR. MARTINEZ:

12 Q How would officers, other officers obtain
13 information from my phone from the 29th of March stating
14 who called, the number it was called from and where it was
15 called from?

16 A That, I don't know.

17 Q And you was passing on information to
18 Mr. Cavanaugh; is that correct?

19 A Yes, that's correct.

20 Q And you -- okay. Will you explain the -- okay.
21 Will you explain the process of how you obtained -- how you
22 obtained this -- this Court order.

23 A How I obtained the court order?

24 Q Yeah, how you obtained it.

25 A I will write the Court order. I will tell the

Mark Berube - Direct Examination by Mr. Martinez

1 information that's necessary that we're looking for and

2 I'll bring it to the judge and the judge will sign it.

3 Then I will fax that order -- at this time we're faxing it,

4 to the carrier.

5 Q And are you supposed to give a copy of this to your

6 -- to SLED as well?

7 A This is the copy. SLED had a copy.

8 Q So you're the only person that --

9 A Well, primarily what we have been doing is putting

10 a, sending a file -- a copy of the order to the clerk of

11 court's office. It's my understanding that this particular

12 order could not be located at the clerk of court's office,

13 but this is a copy that I kept at SLED. So this is the

14 order.

15 Q So you're the only person at SLED with this Court

16 order?

17 A Yes.

18 Q And you never -- after you got it signed, you never

19 took it to the clerk of court and had it filed?

20 A I did not personally take it to the clerk of

21 court's office. I put it in a bin where it was the

22 administrative person at this time was supposed to take it

23 over to the clerk's office. My -- excuse me. My

24 understanding is the clerk doesn't necessarily file -- I

25 don't know what your definition of file is, but they don't

Mark Berube - Direct Examination by Mr. Martinez

1 stamp it, they don't mark it, what it is. It's stored in
2 the bin is what happens.

3 Q And -- okay. So you're saying that you took it to
4 the clerk of court's office --

5 THE COURT: He didn't say that. Restate your
6 question. Think of what he said, Mr. Martinez.

7 BY MR. MARTINEZ:

8 Q And -- okay. So you -- you was present when I was
9 arrested; is that correct?

10 A I was.

11 Q And what -- do you recall where you was at?

12 A Specifically where I was at at the time of your
13 arrest?

14 Q Yes.

15 A I was -- when you were located, you were sitting in
16 a vehicle -- I can't remember the address of where it was.
17 It was your brother's house. You were sitting in a van.
18 You were in the passenger side and I believe it was your
19 mother that was in the driver's side if memory serves me
20 correctly. I was the first officer to come up on the
21 driver's side of the van, shine my light in there and saw
22 that you were in there along with your mother. That's when
23 I alerted the rest of the team that you were in the
24 vehicle.

25 Q And there was other -- there were other members on

Mark Berube - Direct Examination by Mr. Martinez

1 the other side of the house?

2 A Yes, the other members had gone around the house
3 and knocked on the door. When we discovered you were in
4 the vehicle, that's when I had some support to come over to
5 the vehicle to assist in handcuffing you.

6 Q And my brother -- my brother came out -- is it not
7 true that the dogs were -- he has multiple dogs that were
8 out barking and he came out?

9 A I cannot recall. I don't remember ever seeing your
10 brother.

11 Q Was -- when you're saying that you was the first
12 person on the scene that came up on to the car, correct?

13 A That is correct.

14 Q Did you have your gun pointed at me or my mother.

15 A Absolutely, I did.

16 Q And you and other officers came, pointing guns at
17 me and yelling?

18 A Well, to clarify, guns were drawn based on the
19 nature of your charges, the fact that it was nighttime and
20 we had an occupied vehicle, which is standard procedure.
21 You were given -- you were given loud verbal orders on
22 probably things like show me your hands, let me see your
23 hands, get out of the vehicle. Things like that. So, yes,
24 there probably was some yelling. It was instructions that
25 would be given to you.

Mark Berube - Direct Examination by Mr. Martinez

1 Q And was I thrown to the ground?

2 A I didn't see you thrown to the ground. I seem to
3 remember you exiting the vehicle with your hands up and
4 after that I couldn't see you. I'm assuming based upon the
5 standard procedure that you were ordered to the ground and
6 handcuffed while you were laying on your stomach.

7 Q And what about my mother being threatened?

8 A I don't know anything about your mother being
9 threatened. Now, I did tell your mother, I said, I need to
10 see your hands, ma'am. That's the only thing I said to
11 your mom after you were handcuffed and the situation was
12 under control, I left the scene because my duty was done
13 there.

14 Q So it was no threats made to my mother saying that
15 she was harboring a criminal?

16 A Not to my knowledge, no.

17 Q Was there another officer that had to be restrained
18 because he wanted to assault my mother?

19 A Not to my knowledge, no.

20 Q And back -- so out of this -- out of this four page
21 document --

22 MR. MARTINEZ: I'd like the introduce this into
23 evidence.

24 THE COURT: Any objection to the court order?

25 MS. WALKER: No objection.

Mark Berube - Cross-Examination by Ms. Walker

1 THE COURT: All right. 30?

2 THE COURT REPORTER: 30, uh-huh.

3 THE COURT: Defense 30 is in evidence without
4 objection.

5 (Defendant's Exhibit Number 30 was marked and
6 entered into evidence.)

7 BY MR. MARTINEZ:

8 Q So out of that four page document, court order I
9 mean, asking specific information from the carrier, you
10 only got the GPS locator on it?

11 A That is correct.

12 MR. MARTINEZ: No further questions, Your Honor.

13 THE COURT: Solicitor?

14 **CROSS-EXAMINATION**

15 BY MS. WALKER:

16 Q Agent, is his mother here today?

17 A I don't exactly remember what she looks like. I
18 can't say with any certainty that she's here.

19 Q So you don't know if any of these people are his
20 mother.

21 A I don't know that any of those people are his
22 mother, no. I think she had lighter colored hair, I can't
23 remember.

24 Q And when there is a violent fugitive that y'all are
25 trying to chase down, is it standard procedure to give them

Mark Berube - Redirect Examination by Mr. Martinez

1 direct orders to get on the ground?

2 A Yes, ma'am.

3 Q And is that what was done in this case?

4 A Yes, ma'am.

5 Q And in terms of exigent circumstances, because of
6 the nature of certain crimes, shootings, home invasions and
7 rapes, is it important to get to those people, the
8 perpetrators of those crimes as soon as possible?

9 A Absolutely, yes, ma'am.

10 Q And do the telephone companies actually aid y'all
11 in doing that?

12 A They do.

13 Q And the phone that was being tracked and traced was
14 his mother's phone; correct?

15 A That's correct. That's what I have here.

16 Q And when it was given, I guess a general location
17 of his brother's house, lo and behold his mother was there?

18 A That's correct.

19 Q Thank you, sir. I have no further questions.

20 THE COURT: Redirect, Mr. Martinez?

21 **REDIRECT EXAMINATION**

22 **BY MR. MARTINEZ:**

23 Q You said that the phone carrier cooperated with
24 you?

25 A Yes.

Mark Berube - Redirect Examination by Mr. Martinez

1 Q And in that court order and in the statute, as it
2 states from the -- in the Court order that whoever uses the
3 phone, correct?

4 A You said -- ask that question again. I don't
5 understand what you're asking.

6 Q It's not only whose phone it belongs to, but it's
7 who also uses the phone?

8 A It is -- the order is for the device itself.

9 Q And you guys got information that I was using the
10 phone, correct?

11 A I got information that it was your mother's phone
12 and you were likely with your mother.

13 Q And it didn't say that I was using the phone?

14 MS. WALKER: Objection, Your Honor, asked and
15 answered.

16 THE COURT: I'll allow him to answer it.

17 THE WITNESS: Say that one more time.

18 BY MR. MARTINEZ:

19 Q So you're saying I was with my mother when she was
20 at work. I was with my mother all the time?

21 THE COURT: That's not the same question I just
22 ruled on. Ask the question that you asked prior to the
23 solicitor's objection.

24 BY MR. MARTINEZ:

25 Q Did you hear that it was my mother's phone or that

Mark Berube - Redirect Examination by Mr. Martinez

1 I was using the phone?

2 A As I recall, I believe that the intel I was getting
3 was that it was your mother's phone and you were believed
4 to be with your mother which turned out to be very good
5 intel.

6 Q So --

7 MR. MARTINEZ: No further questions.

8 THE COURT: Recross, Solicitor?

9 MS. WALKER: No, sir, Your Honor.

10 THE COURT: Thank you. Thank you very much, Agent
11 Berube.

12 THE WITNESS: Yes, sir.

13 THE COURT: Any objection to the officer being
14 excused, Mr. Martinez?

15 MR. MARTINEZ: No, sir.

16 THE COURT: Solicitor?

17 MS. WALKER: No, sir, Your Honor.

18 THE COURT: Again, thank you, you may be excused.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: All right. Mr. Martinez, you may call
21 your next witness.

22 MR. MARTINEZ: Yes, I call Ms. Broadnax from the
23 clerk of court's office.

24 THE COURT: All right. Yes, ma'am, if you'd come
25 forward and be sworn, please.

Gail Broadnax - Direct Examination by Mr. Martinez

1 GAIL BROADNAX,
2 having been duly sworn, testified as follows:
3 THE CLERK: Please have a seat. State your full
4 name for the record.

5 THE WITNESS: Gail Broadnax, B-R-O-A-B-N-A-X.

6 THE COURT: All right. Mr. Martinez?

7 **DIRECT EXAMINATION**

8 BY MR. MARTINEZ:

9 Q Ma'am, will you please tell the Court where you
10 work at?

11 A Richland County Clerk of Court's Office.

12 Q And will you please explain to the jury and the
13 Court the process of special court orders that -- like the
14 one that Mr. Berube had done in 2014?

15 A This was a sealed document and when our office
16 receives a sealed document, we put the filing number, the
17 defendant's name, the judge's name, and the date on the
18 actual document; and it's filed in our office.

19 Q And when they -- okay. He -- the person that
20 orders it -- I mean the person who wants it ordered, they
21 take it to the judge, they get it signed?

22 MS. WALKER: I would object to leading, Your Honor.

23 THE COURT: Rephrase your question, Mr. Martinez.

24 MR. MARTINEZ: Okay.

25 BY MR. MARTINEZ:

Gail Broadnax - Direct Examination by Mr. Martinez

1 Q If someone wants to get one of these types of
2 orders, would they go to the judge and get it signed first?

3 A The usual procedure is that they would come to our
4 office with a file number and a name and a request for that
5 actual document and usually it's work ordered or the judge
6 has ordered that document because it is a sealed document
7 and anybody can't just get a sealed document.

8 Q So was that done on this case?

9 A The case number that was in reference to the
10 document that you asked for, our office did a search and
11 per that search, the documents were not received.

12 Q Was it received prior?

13 A We did a search in the clerk's office, an extensive
14 search. There was four or five of us that searched and we
15 came up with the documents were not received.

16 Q Was it filed beforehand?

17 A We did not -- we did not -- after doing the search,
18 we did not have the documents. We did not show them as
19 being received after searching.

20 Q Okay. So -- so you stated prior to going to get
21 this order they have to come and get a number from you?
22 From the clerk of court? They have to come and get a
23 document -- a number, a file number and then they take it
24 to the judge and get it signed?

25 A Not necessarily. I mean when they come down to our

Gail Broadnax - Direct Examination by Mr. Martinez

1 office, it's usually for a court hearing and it's usually
2 someone from the solicitor's office or an attorney or
3 someone who's probably already gotten the order and then
4 when they come to our office and we release the information
5 -- most of the time we release it to the solicitor's
6 office. Most of the time.

7 Q And so after the judge signs it, it's -- they seal
8 it or does your office seal it?

9 A It's sealed when we get it.

10 Q Okay. And then do they take it and put it in a bin
11 or do they hand it to the clerk of court?

12 A They? Who is that?

13 Q Whoever is issuing or passing on the Court order,
14 the sealed court order?

15 A I'm not sure on that. I just know when we get it,
16 it's already sealed and it has the judge's name, a file
17 number. It has the defendant's name and a date and we file
18 it by judge in our office.

19 Q And in your extensive search, there was nothing
20 found pertaining to that -- to the evidence I just entered
21 from Mr. Berube that was signed by Judge Barber?

22 A For that case number and defendant name, no.

23 Q And if it's not filed with the clerk of court, does
24 that make it invalid or --

25 A I don't know the answer to that, sir. I just know

Gail Broadnax - Direct Examination by Mr. Martinez

1 what we do in the clerk's office.

2 Q Does every -- does every -- does every paperwork
3 that comes in the clerk of court have to be filed -- I mean
4 that comes to court, have to have to be filed with the
5 clerk of court?

6 A Does every document that comes into the Court's
7 office have to be filed with the clerk of court?

8 Q Yes, ma'am.

9 A I'm not -- I don't know if it's every document that
10 comes in has to be filed with the clerk of court, but our
11 office handles thousands of documents on a daily basis and
12 there are a lot of files that is filed in the clerk's
13 office. We do have a lot of documents.

14 Q But in order for it to be on court record and for
15 it to be officially used in a court -- in a court, it has
16 to be -- it has to be clocked or it has to be processed
17 through the clerk of court's office, correct?

18 MS. WALKER: Your Honor, I would object to the
19 gross misstatement of law.

20 THE COURT: I would sustain that objection.

21 THE WITNESS: The document that you're speaking of
22 was being sealed.

23 THE COURT: Say that again, Ms. Broadnax.

24 THE WITNESS: It was a sealed document.

25 BY MR. MARTINEZ:

Gail Broadnax - Direct Examination by Mr. Martinez

1 Q And it should be sealed in the clerk of court's
2 office, correct?

3 A It was sealed when we got it.

4 Q Okay. So let's say all the sealed documents, every
5 sealed document it goes to the clerk of court's office and
6 as you stated, you put the name, the judge, the date, and
7 you file it; is that correct?

8 A There are a lot of sealed documents that come to
9 us. I can't say that every sealed document because I don't
10 know the other procedures for attorneys and lawyers, with
11 other documents, but we do have lots of documents that are
12 sealed that we do house at the clerk of court.

13 Q And you stated before previously that all the other
14 court sealed court orders was filed for that date, I think
15 it was the 1st of April 2014?

16 A We did look at everything pertaining to that day
17 because we were looking for a certain document and when we
18 went in there and we were doing our search, we checked
19 everything for that day to make sure that that file number
20 and that name was not on any of the information that we
21 have for that day or that judge, and it did not correspond
22 to what we were looking for in our search.

23 Q And did your office search further for this
24 document?

25 A Yes, we have.

Gail Broadnax - Cross-Examination by Ms. Walker

1 Q And what did -- did you guys find -- did your
2 office find the document?

3 A Not at this point.

4 Q And you guys questioned SLED; is that correct?

5 A I'm not sure about that. My supervisor handled
6 some aspects of it. I'm not sure.

7 Q All right. Thank you, ma'am.

8 A Uh-huh.

9 MR. MARTINEZ: No further questions.

10 THE COURT: Solicitor?

11 MS. WALKER: Just a few questions.

12 **CROSS-EXAMINATION**

13 **BY MS. WALKER:**

14 Q You don't know every document that comes into the
15 Richland County Clerk's Office?

16 A That's correct.

17 Q And you're not an expert in the procedures for
18 getting certain orders signed?

19 A That's correct.

20 Q Do you know who James Barber is, the man that
21 signed this document?

22 A Yes.

23 Q Who is that?

24 A He's the judge with the Richland County Office.

25 Q And you said that there are certain orders that are

Gail Broadnax - Redirect Examination by Mr. Martinez

1 sealed and sometimes they come to y'all and sometimes the
2 party has a copy of it, right?

3 A That's correct.

4 Q Okay.

5 MS. WALKER: I don't have any other questions.

6 THE COURT: Redirect, Mr. Martinez?

7 **REDIRECT EXAMINATION**

8 BY MR. MARTINEZ:

9 Q So -- so not all documents have to go -- not all
10 sealed documents have to be sealed in the clerk of court's
11 office?

12 A I'm not an expert. I wouldn't know on that, sir
13 about all the documents. I'm not familiar enough to tell
14 you about all the documents. I just know that there are a
15 lot of documents that are sealed and that are filed with
16 the clerk's office.

17 Q Who would know that?

18 A You can consult probably with one of the attorneys
19 or someone who has legal expertise is what I would advise.

20 Q Who in the clerk of court would know about the
21 procedure for these sealed court ordered documents?

22 A All of us in the clerk's office actually know our
23 procedure, the clerk's procedure, if that's what you're
24 asking. We know what the procedure is once we receive the
25 documents. We know where we keep the documents, what

Gail Broadnax - Redirect Examination by Mr. Martinez

1 information goes in the documents if the documents are
2 requested. You know, we know how to do a search and we
3 know how to find them. So everybody in the clerk's office
4 is familiar with what we do in the clerk's office. We are
5 just not familiar with what's down in other situations when
6 it's not filed with us.

7 Q Okay. So if a court order; a sealed court order is
8 not filed with you -- where else would it be at?

9 A We don't really know what's in a sealed file. We
10 don't open those files. So there would be no way of us
11 knowing what's in a sealed file. That file is sealed when
12 it comes to us.

13 Q Okay. I understand that, but if I file a court
14 order that's sealed and it doesn't go to the clerk of
15 court's office, where else would it go?

16 A I wouldn't know all that.

17 Q What if I filed a court -- sealed court order and
18 just placed it in a bin in the clerk of court's office
19 where would it go?

20 A It's usually not placed in a bin in the clerk's
21 office. It's usually given to the girl at the front
22 counter, or it's usually given to one of the clerk's and
23 then that information is filed, like I said, by judge. We
24 try to put as many identifiers as we possibly can on that
25 file. Sometimes it has identifiers on it and sometimes we

Gail Broadnax - Redirect Examination by Mr. Martinez

1 have to ask for additional identifiers to be able to pull
2 it. And it's filed by judge in the clerk's office.

3 Q And there's no procedure that if it's not filed?

4 A I don't understand that question.

5 Q If it's -- okay, I have a sealed document and I go
6 through all of the procedures, but I don't take it to the
7 clerk of court's office -- or let say I do take it to the
8 clerk of court's office, but yet it doesn't get filed in
9 the clerk of court's office.

10 A We would do a search like we did with the documents
11 that was requested in your case. We would do a search and
12 we would continue to do a search in our office. And we --
13 four or five of us have searched and tried to locate the
14 actual requests if we get requests for something that's
15 said should be in the clerk's office.

16 Q And being as it is not in the clerk of court's
17 office, what does that -- what does that mean?

18 A At this point in time, per our search, it says that
19 we didn't receive the document. We're still doing the
20 search to see. But as per the search, the documents was
21 not received. We haven't done it per our search.

22 Q Thank you.

23 MR. MARTINEZ: No further questions.

24 THE COURT: Recross examination, Solicitor?

25 MS. WALKER: No, sir.

Christopher Tucker - Direct Examination by Mr. Martinez

1 THE COURT: Thank you.

2 Thank you very much, Madam Clerk. You may step
3 down.

4 Any objections to the clerk being excused?

5 MR. MARTINEZ: No, sir.

6 THE COURT: Solicitor any objections to Madam Clerk
7 being excused?

8 MS. WALKER: No, sir.

9 THE COURT: Again, thank you. Thank you for being
10 with us.

11 All right. You may call your next witness, Mr.
12 Martinez.

13 MR. MARTINEZ: Yes, sir, I call Christopher Tucker.

14 THE COURT: All right. Mr. Tucker, if you'd come
15 around and be sworn for us, please.

16 CHRISTOPHER TUCKER,
17 having been duly sworn, testified as follows:

18 THE CLERK: Please have a seat. State your full
19 name for the record.

20 THE WITNESS: Christopher Tucker.

21 **DIRECT EXAMINATION**

22 BY MR. MARTINEZ:

23 Q Mr. Tucker, do you know who I am?

24 A Yes, I know who you are.

25 Q How do you know me?

Christopher Tucker - Direct Examination by Mr. Martinez

1 A I know your brother. He and -- I met you through
2 your brother.

3 Q And did you tell the police that you didn't know
4 me?

5 A I can't recall if I told them that I didn't know
6 him. I really don't know you. You're more of an
7 acquaintance. I've met you a couple of times. I won't say
8 we're friends.

9 Q But you know who I am though, correct?

10 A I met you a couple of times through your brother,
11 brief -- briefly.

12 Q Okay. And what was -- what was the reasoning for
13 our meeting?

14 A You followed your brother to my house. He comes
15 over every now and then and we hang out sometimes. And you
16 was with him on -- I remember two occasions you came over
17 with your brother, but I can't say we're really friends.
18 We're just acquainted with each other. I do know his
19 brother, though.

20 Q And what was the reason that I was going over to
21 your house?

22 A He comes over for different reasons. He bought a
23 car from me. He's borrowed a jack from me when he's had a
24 flat tire. He just comes over for different reasons.

25 Q And those are the only reasons?

Christopher Tucker - Direct Examination by Mr. Martinez

1 A Can you be more specific?

2 MS. WALKER: Your Honor, may Mr. Kata and I
3 approach?

4 THE COURT: Yes, ma'am. Yes, ma'am.

5 (There was a bench conference out of the hearing of
6 the jury and the Court Reporter.)

7 THE COURT: All right. Ladies and gentlemen, step
8 out momentarily. Do not discuss the case during this brief
9 recess.

10 (The jury left the courtroom at 11:58 a.m.)

11 THE COURT: All right. Solicitor, your objection,
12 please?

13 MS. WALKER: Your Honor, if Mr. -- the defendant,
14 if he's trying to go into drug use on the behalf of this
15 witness, which I think is maybe where he's going solely
16 based upon the first question he asked the witness's
17 daughter, Ms. Tucker, then that's not admissible.

18 THE COURT: Mr. Martinez?

19 MR. MARTINEZ: Mr. Tucker stated to the police that
20 he buys drugs and from Mr. Colin D. Bailey's notes and
21 records that's relevant to the this case as to like I said,
22 how I know them.

23 THE COURT: What's the record?

24 MR. MARTINEZ: The record?

25 THE COURT: Yeah, you said from Mr. Bailey's notes

Christopher Tucker - Direct Examination by Mr. Martinez

1 and his record. You're talking about Mr. Tucker's records
2 or did I misunderstand that?

3 MR. MARTINEZ: No, he testified to Mr. Bailey that
4 he knows me and my brother through buying drugs.

5 THE COURT: Okay.

6 MR. MARTINEZ: And that's the relevance. That's
7 why what I'm trying --

8 THE COURT: Why is that relevant.

9 MR. MARTINEZ: Because that's how he knows me.

10 THE COURT: But why is that relevant? Why is the
11 underlying reason for how he knows you relevant? Why is it
12 relevant -- read the definition of relevancy.

13 MR. MARTINEZ: Because it's going to prove a fact.

14 THE COURT: Sir?

15 MR. MARTINEZ: It's going to prove a fact.

16 THE COURT: So all facts are relevant? Is that
17 what you're saying.

18 MR. MARTINEZ: They're not all relevant --

19 THE COURT: The fact is that he knows you. He said
20 I've met you on a couple of occasions. Met you through
21 your brother. I don't really know you, we're
22 acquaintances, I wouldn't call us friends.

23 So how does the fact, if it is a fact, that it has
24 been stated that part of that acquaintanceship is based on
25 drugs, why is that admissible?

Christopher Tucker - Direct Examination by Mr. Martinez

1 MR. MARTINEZ: For impeachment purposes.

2 THE COURT: Sir?

3 MR. MARTINEZ: For impeachment.

4 THE COURT: No, sir. No, why is it admissible?

5 You called him as your witness. Why is that admissible?

6 He hasn't -- he hasn't denied that. I'm asking why is it
7 relevant.

8 MR. MARTINEZ: Because I'm establishing
9 Ms. Tucker's and Mr. Tucker's credibility. It's relevant
10 to what they state to what was said.

11 THE COURT: Relevant evidence means evidence having
12 any tendency to make the existence of any fact that is of
13 consequence for the determination of the action more
14 probable or less probable than it would be without the
15 evidence.

16 And this isn't a drug possession case or a drug
17 distribution case --

18 Whoever that is squatting down looking outside of
19 that window, either run him off or take him into custody;
20 one of the two.

21 Solicitor? Your position?

22 MS. WALKER: Your Honor, under 608, it's not
23 admissible. Under 609 it's not impeachment by evidence of
24 conviction of a crime under 404. I don't know understand
25 how it would be admissible. The State's position is that

Christopher Tucker - Direct Examination by Mr. Martinez

1 it's not admissible.

2 THE COURT: I mean the fact you're intending to
3 prove appears to me is that did Mr. Tucker know you and he
4 responded to that, that he knew you as an acquaintance and
5 met you through your brother.

6 MR. MARTINEZ: He's also evading the question as to
7 why and how I knew him.

8 THE COURT: He's -- he did not evade that question
9 whatsoever. He said he met you through your brother and he
10 didn't really know you, that you were acquaintances and he
11 thought he had met you twice. There's no evasion
12 whatsoever there.

13 MR. MARTINEZ: Well, he told the police a different
14 story.

15 THE COURT: Sir?

16 MR. MARTINEZ: He's told the police a different
17 story and now he's telling a different story again.

18 THE COURT: Did he tell the police that he didn't
19 know you and you weren't an acquaintance.

20 MR. MARTINEZ: Yes, he did say that.

21 THE COURT: I think you've already asked that
22 question.

23 MR. MARTINEZ: He told the police that he doesn't
24 know who I am.

25 THE COURT: And you can ask him about that. This's

Christopher Tucker - Direct Examination by Mr. Martinez

1 not the case -- that's not what I'm ruling on. I'm ruling
2 on drugs. You can ask him about that. I thought you did.
3 I thought you asked him, Did you tell the police that he
4 didn't know you.

5 MS. WALKER: I recall that, Your Honor.

6 THE COURT: Ma'am?

7 MS. WALKER: Your Honor, that's what I heard when
8 he answered that.

9 THE COURT: Let's see if that's what I heard, Madam
10 Court Reporter --

11 THE COURT REPORTER: The question was --

12 THE COURT: -- see if that's what I heard. Look
13 and see if that's what I heard.

14 THE COURT REPORTER: The question was, And did you
15 tell the police you didn't know me. The answer was, I
16 can't recall if I told them that I didn't know him, I
17 really don't know you.

18 THE COURT: All right. So how is that -- how does
19 that get into drugs.

20 MR. MARTINEZ: Because the whole reason I was going
21 to his house. How did I know him -- that's what I'm
22 saying, how did I know him, how was I going to your house.

23 THE COURT: If you want to get up there and you
24 want to testify that the reason you went to the Tucker
25 residence was because of drugs. You may do so. But the

Christopher Tucker - Direct Examination by Mr. Martinez

1 fact that that may have been part of any acquaintanceship
2 between you, your brother, and Mr. Tucker is not admissible
3 through this witness.

4 All right. Bring us our jury, please, Mr. Bailiff.

5 (The jury entered the courtroom at 12:07 p.m.)

6 THE BAILIFF: Your Honor, the jury is present.

7 THE COURT: All right. Thank you.

8 Our jury is back.

9 Mr. Martinez, you may ask your next question.

10 BY MR. MARTINEZ:

11 Q Mr. Tucker, did you ever invite me over to teach me
12 how to play the guitar?

13 A I never invited you to my house. You came over
14 with your brother and you noticed that I had guitars. I
15 remember you mentioning, saying that you always wanted to
16 learn how to play and I was actually gracious enough to say
17 I wouldn't mind helping you or showing you something. But
18 I never invited you over, no.

19 Q Did we ever sit and listen to your music that you
20 made on your XBox in your room?

21 A It's very possible. I can't recall. I may have --
22 when you were at my house, I may have had music going that
23 I'd recently recorded. It's very possible that you have
24 heard it.

25 Q So you seen me and know my tattoos; is that

Christopher Tucker - Direct Examination by Mr. Martinez

1 correct?

2 A I'm sorry, can you rephrase that question?

3 Q You seen me good enough to know that I had a tattoo
4 on my neck and on my face and other tattoos; is that
5 correct?

6 A Yeah, I would say that's correct.

7 Q And do you know many people that have those type of
8 marks on them?

9 A You're the only person I know with a tattoo on his
10 eyebrow. I do know people that have tattoos, but none on
11 their face.

12 Q And who is Mike Moore?

13 A My best friend since childhood.

14 Q And where was he at on -- I'm not sure of the exact
15 date, but the date that they claim, the 25th of April,
16 2014?

17 A The day you broke into my house was actually March
18 -- the morning of March 25th, 2014. He was in my living
19 room on the couch.

20 Q And from -- from where your standing right now, how
21 far would it be to the couch where he was sleeping at?

22 A From where?

23 Q From the front door --

24 A I'd say about 30 feet.

25 Q So farther than this right here?

Christopher Tucker - Direct Examination by Mr. Martinez

1 A About from where I'm sitting to that officer beside
2 you.

3 Q And is that a well lit area?

4 A If the lights were on. It was very early in the
5 morning. It was -- from what I understand it was anywhere
6 from 3:30 and 6 a.m. I'm not sure how lit it was.

7 Q Let's say the lights were off?

8 A If the lights were off, no, it's not very lit.

9 Q It would be completely black, correct?

10 A If the lights were off, yes, that's correct.

11 Q And if the lights were on, I'd be able to notice
12 that there was somebody in there, correct?

13 A You should have been.

14 Q Matter of fact, I would have a light on in order
15 for me to know there was somebody in there; is that
16 correct?

17 A From my front door --

18 Q From your front door --

19 A -- looking across my kitchen into my living room --

20 Q Yes.

21 A -- if the lights were off, I doubt you would be
22 able to see.

23 Q You have, it's like a -- you have like leather
24 couches, like -- it goes like an L shape and the windows
25 pretty much blacked out. It's like a TV room; is that

Christopher Tucker - Direct Examination by Mr. Martinez

1 correct?

2 A I'm not -- I'm not sure of your question.

3 Q Are the windows like heavily covered, or like --

4 A I have blinds over my windows.

5 Q And in the nighttime that area could be very
6 difficult to see without a light on; is that correct?

7 A Not necessarily. I always leave my kitchen light
8 on -- not my kitchen light, but the light above my stove is
9 always on, 24 hours a day. So there's always light in
10 there. And that would illuminate enough to where you could
11 see if somebody else was in the other room or not.

12 Q Okay. So let's say this is the wall. There's a
13 door right there, correct? Where she's sitting, there's a
14 door that goes into that room, correct?

15 A Yes.

16 Q And where would the -- where would the stove be at?

17 A In the kitchen?

18 Q Yes.

19 A It's going to be on the wall closest to the front
20 door.

21 Q So it's going to be on this side, correct? There's
22 a fridge right here --

23 A About in the middle of the room, yes.

24 Q Okay. So there's a fridge right here?

25 A Uh-huh.

Christopher Tucker - Direct Examination by Mr. Martinez

1 Q And there's a counter, then there's -- then there's
2 the door that goes into the living room, correct?

3 A Yes, that's correct.

4 Q So you're saying that the light on the other side
5 of the fridge will illuminate all the way to the back of
6 that room, 30 feet?

7 A No, not into the living room, no, no, it wouldn't
8 illuminate that room.

9 Q Okay. Okay. So help me -- help me understand
10 something. You're daughter comes home, correct, at 6
11 o'clock in the morning?

12 A It's around 6 a.m., I guess.

13 Q And what does she tell you?

14 A She told me that she was awoken -- woken up by
15 somebody that had a knife to her throat, tied her hands up
16 with her belt and the cord from her blow-dryer, tied her
17 hands up and she said that you asked her some questions, I
18 don't really recall what -- what you asked her, but she
19 said that you -- pretty much you and her took my car and
20 you proceeded to rape her and then she returned, she told
21 me -- that's pretty much what she told me, that's basically
22 what happened. She woke up frightened by you having a
23 knife to her throat.

24 Q And she told you it was me?

25 A Well, she didn't say -- she didn't know at that

Christopher Tucker - Direct Examination by Mr. Martinez

1 point it was you. At that point, it could have been

2 anybody. She was just woken up. But after the police had

3 apprehended you, we had pretty much come to the conclusion

4 that it was, without a doubt, you, that day.

5 Q So she didn't come to you that morning when she got
6 home and asked you what E's brother's name was?

7 A She had a feeling it was you, but we weren't sure.

8 There was no way we was absolutely positive it was you.

9 But I guess she had asked about you because she was -- she
10 suspected that it was you.

11 Q Okay. So she came home and said, Dad, I've just
12 got abducted out of the house, out of our house --

13 A Uh-huh.

14 Q -- at knife point, kidnapped, taken in your car to
15 some unknown place and raped and then comes home and tells
16 you about this and what do you do?

17 A I try to console her. She was traumatized and I --
18 what would a father do? You know, that's a terrible
19 situation. I mean, I didn't really know what to do. We
20 didn't call the police immediately because I was trying to
21 comfort her.

22 Q You didn't take her to the hospital?

23 A Not immediately, no. No, she was traumatized. The
24 hospital wasn't on my mind. My only concern was her.

25 Q You didn't call the police?

Christopher Tucker - Direct Examination by Mr. Martinez

1 A We did call the police. Not immediately because my
2 daughter didn't -- I guess she was still shaken up and we
3 called the police, I believe it was the next day or two
4 days afterwards.

5 Q And she called the police because you seen a sketch
6 and you convinced her to call the police?

7 A I don't think the sketch so much had much to do
8 with it other than her thinking it was you and she said
9 that she noticed the tattoo over your eye and that pretty
10 much narrowed it down for me because you're the only person
11 I know with a tattoo on their face. And when she said that
12 she noticed the tattoo over your eye, I had a disturbing
13 feeling it was you.

14 Q And when exactly did she say about the tattoo above
15 the eye?

16 A When she told me what happened. When she was
17 explaining that morning what happened.

18 Q So -- so -- so she explained it to you that morning
19 what happened and she told you that it was a guy with a
20 tattoo above his eye and at that time you had a very
21 disturbing feeling that it was me?

22 A That is correct.

23 Q And what about -- what about her -- did she say the
24 same thing?

25 A Further elaborate, please.

Christopher Tucker - Direct Examination by Mr. Martinez

1 Q Did she feel like it was me as well?

2 A Yes, that's why she asked about you.

3 Q So knowing that -- okay. So that goes back to my
4 other question. You're the one who seen the sketch on WIS;
5 is that correct?

6 A I'm not sure the source where it was from. I
7 believe it would have been a Facebook post or the news, but
8 we did see the sketch, yes.

9 Q And you sent her the sketch on her phone or sent
10 her a message to look at that sketch and see if that was --
11 that was the person that did it?

12 A I believe we looked at -- if I can recall, I
13 believe we looked at the picture together and kind of
14 agreed we had a feeling that -- that was you.

15 Q And once you had this feeling, you never notified
16 the police, you never went to the -- went to the hospital?

17 A We notified the police two days after the home
18 invasion. We didn't do it immediately because Elexia was
19 traumatized and she asked me not to, I guess. But we did
20 call them I guess it was about two days after the home
21 invasion.

22 Q And after this alleged incident, did you contact my
23 brother?

24 A No.

25 Q My brother never contacted you?

Christopher Tucker - Cross-Examination by Ms. Walker

1 A About the incident, no. No. We talked to each
2 other probably two or three times a week for various
3 reasons, but he never said -- well, we never -- I never
4 really brought it up to him and I don't recall him ever
5 bringing it up to me.

6 Q You never told him that you and Elexia was not
7 going to press charges or pursue charges?

8 A Absolutely not.

9 Q You never told him that -- that -- that you knew
10 that -- you never told him that you knew that -- that you
11 didn't want nothing to do with it and it was up to the
12 State as to whether they press charges or not?

13 A I don't recall ever saying that, but I would have
14 never not wanted to press charges. Of course, I would want
15 to press charges.

16 Q So why didn't you call the police?

17 MS. WALKER: Objection, Your Honor. This
18 question's been asked and answered.

19 THE COURT: Sustained.

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

21 THE COURT: Solicitor?

22 **CROSS-EXAMINATION**

23 **BY MS. WALKER:**

24 Q He asked you a lot of questions about how you knew
25 it was him.

Christopher Tucker - Cross-Examination by Ms. Walker

1 A Yes, ma'am.

2 Q And at first you had a sneaking suspicion, right?

3 A Yes, ma'am.

4 Q But did he later send you a letter?

5 A Yes, he did.

6 (Looking for an exhibit.)

7 THE COURT: I promise I don't have it.

8 MS. WALKER: I'm sorry, Your Honor, I wasn't
9 blaming you.

10 THE COURT: I'm used to those looks all the time
11 from Madam Court Reporter, all the time.

12 MS. WALKER: That wasn't my opinion, Your Honor, I
13 apologize. (Laughter)

14 BY MS. WALKER:

15 Q State's Number 106. Do you recognize this as the
16 letter he sent you?

17 A Yes.

18 Q And at this point when he sent you this letter, did
19 it go from the sneaking suspicion to a confirmation based
20 on his own words?

21 A Absolutely.

22 MS. WALKER: Your Honor, at this time, the State
23 seeks to move 106 into evidence.

24 MR. MARTINEZ: I object, Your Honor.

25 THE COURT: May I see it -- you may review it, Mr.

Christopher Tucker - Cross-Examination by Ms. Walker

1 Martinez.

2 MR. MARTINEZ: I object, Your Honor. This never
3 admits. It never states I did anything. Just
4 apologizing --

5 THE COURT: May I see it, please?

6 (The Court is looking at the exhibit.)

7 THE COURT: All right. Your objection, again, Mr.
8 Martinez.

9 MR. MARTINEZ: 403. As I said, it doesn't -- and
10 402, relevance. This right here doesn't -- they're trying
11 to misconstrue it as my apology because as I said I know
12 them. I've been acquainted with him. I was at his house.
13 I didn't state that I did anything to his daughter. I
14 don't state or admit anything. All I'm saying is I'm sorry
15 for whatever happened. And I go onto explain my microchip
16 issue.

17 THE COURT: All right. Well, it's clearly relevant
18 under 401 and under 403, it's probative value is not
19 substantially outweighed by the danger of unfair prejudice.
20 As to interpretation, weight, and admissibility, that would
21 be a decision -- the weight and the value would be a
22 decision for the fact finder, the jury. 106 is admissible,
23 subject the defense's objection.

24 (State's Exhibit Number 106 was entered into
25 evidence.)

Christopher Tucker - Redirect Examination by Mr. Martinez

1 BY MS. WALKER:

2 Q So your sneaking suspicion was confirmed once you
3 received a letter from Mr. Martinez?

4 A Yes, ma'am.

5 Q And it starts off by saying, I would like to
6 apologize to you both. I cannot express this enough to
7 you, but in time you will see and know the truth for what
8 it is?

9 A Yes, ma'am.

10 Q And at some point we will publish it at another
11 time.

12 I'm sorry you're here today, but thank you for
13 answering my questions.

14 A Yes, ma'am.

15 THE COURT: Redirect, Mr. Martinez?

16 **REDIRECT EXAMINATION**

17 BY MR. MARTINEZ:

18 Q In that letter that I wrote you, does it state that
19 I'm sorry for breaking into your house? Does it state that
20 I'm sorry for raping your daughter? Does it state that I'm
21 sorry for anything?

22 A What else would you have to be sorry for? Why
23 would you write a letter if you weren't -- I mean, if you
24 had nothing to be sorry for? No, it doesn't specifically
25 state that you raped her, but honestly, if your apologizing

Christopher Tucker - Redirect Examination by Mr. Martinez

1 and had no reason to apologize, it's just an admission of
2 guilt, the way I saw it, that's the way I perceived it when
3 I read the letter is that.

4 Q Okay.

5 A Admission of guilt.

6 Q And this goes back to when I said that if you had
7 spoken to my brother and my brother told me --

8 MS. WALKER: Objection to what his brother told
9 him.

10 THE COURT: No, sir, that would be hearsay, Mr.
11 Martinez.

12 MR. MARTINEZ: Okay.

13 BY MR. MARTINEZ:

14 Q Did you -- do you know who Susan is? Do you know
15 who Susan is?

16 A Susan who?

17 Q Susan -- I'm not sure of her last name. I referred
18 to her in the letter.

19 A I do know a Susan, yes. She's a very good friend
20 of mine.

21 Q She lives in Cayce, I think?

22 A She used to. Yeah, I believe we're talking about
23 the same Susan.

24 Q Did you ever inquire to what I was talking about in
25 the letter?

Christopher Tucker - Recross-Examination by Ms. Walker

1 A With Susan?

2 Q Yes.

3 A No. No, I don't even talk to -- I didn't even
4 discuss this with Susan.

5 Q Okay. But as you stated, in your own words, I
6 never in -- in this, state that I'm sorry for breaking into
7 your house, I'm sorry for committing crimes against you. I
8 just say I'm sorry to you and your family; is that correct?

9 A That's -- that was like the first sentence. Now
10 the majority of the letter that you sent was in regards to
11 the supposed microchip or whatnot, but I -- to me that was
12 irrelevant. I didn't even finish reading the letter. I
13 was sick after the first sentence.

14 Q All right. Thank you.

15 MR. MARTINEZ: No further questions.

16 **RECROSS EXAMINATION**

17 BY MR. MARTINEZ:

18 Q Is Mr. Martinez's brother here in the courtroom?

19 A No, ma'am.

20 Q Thank you.

21 A Not that I'm aware of, no.

22 Q Thank you, sir.

23 THE COURT: Thank you, Mr. Tucker, you may step
24 down.

25 THE WITNESS: Yes, sir.

1 THE COURT: All right. Mr. Martinez, you may call
2 your next witness.

3 MR. MARTINEZ: The defense rests, Your Honor.

4 THE COURT: All right. Thank you. Thank you very
5 much, Mr. Martinez..

6 All right. Ladies and gentlemen, as you've heard,
7 the defense has rested. No more evidence and testimony
8 will be offered by the parties in their case in chief.
9 However, in South Carolina, the State may present evidence
10 and testimony in reply, if the State chooses to do so.

11 Solicitor, does the State intend to present any
12 evidence in reply?

13 MS. CAMPBELL: Yes, sir.

14 MS. WALKER: Yes, sir.

15 THE COURT: Madam Clerk?

16 (There was a bench conference out of the hearing of
17 the jury and the Court Reporter.)

18 THE COURT: Step up here, please, Solicitor, and
19 Mr. Kata.

20 (There was a bench conference out of the hearing of
21 the jury and the Court Reporter.)

22 THE COURT: All right. Ladies and gentlemen, I'm
23 about to get a witness up before our lunch, but I need for
24 you to step out for just a moment. Do not discuss the case
25 during this brief recess. Thank you very much.

1 (The jury left the courtroom at 12:32 p.m.)

2 MOTIONS

3 THE COURT: All right. Any motions, Mr. Martinez.

4 MR. MARTINEZ: Yes, Your Honor, I'd like to renew
5 all my previous motions objections as well as my directed
6 verdict.

7 THE COURT: All right. Thank you.

8 Solicitor?

9 MS. WALKER: Your Honor, we ask that you stand by
10 all your previous rulings.

11 THE COURT: Anything further, Mr. Martinez?

12 MR. MARTINEZ: Yes. They don't possess a gun into
13 evidence. There's no gun, so I don't see how they can
14 charge me with possession of a gun when there's no -- when
15 I don't possess it either constructive or any type of
16 possession.

17 THE COURT: All right. Anything further?

18 MR. MARTINEZ: No, sir.

19 THE COURT: All right. In applying the standard in
20 the light most favorable to the nonmoving party, I find
21 there's sufficient direct and circumstantial evidence from
22 which I would deny the motion for directed verdict at this
23 stage, both as to burglary first, armed robbery, three
24 counts of kidnapping, possession of a weapon during the
25 commission of a violent crime.

1 As to specifically Mr. Martinez pointing out that
2 they do not have a gun, evidence can be proved by both
3 direct and/or circumstantial evidence. There is direct
4 testimony both from L.H. and Briona Hurshman as
5 to the possession of a gun during the commission of a
6 burglary, kidnappings, criminal sexual conduct, and armed
7 robberies. So I would respectfully deny that motion also.

8 Anything further before we bring in our jury,
9 Solicitor?

10 MS. WALKER: Your Honor, we need a short break to
11 get the witnesses in line. If we can take a short, maybe
12 15 or 20 minute break and then we'll be ready to go with
13 our next witness.

14 THE COURT: All right. Anything, Mr. Martinez?

15 MR. MARTINEZ: No, sir.

16 THE COURT: All right. The only caveat, Solicitor,
17 if their lunch gets here, we may not be able to take up
18 testimony at that time. But we'll take about a 10 minute
19 recess.

20 Court will be in recess 10 minutes.

21 (A brief recess was observed.)

22 MS. WALKER: Your Honor, may I ask a question about
23 scheduling?

24 THE COURT: Yes, ma'am.

25 MS. WALKER: I know we have a couple of witnesses

1 that could be lengthy. Do you think we'll argue and charge
2 in the morning?

3 THE COURT: Most likely.

4 MS. WALKER: Okay. Thank you, sir.

5 THE COURT: Because, you know, Mr. Martinez is
6 entitled to surreply. There could be other witnesses he's
7 got after the reply testimony by the State.

8 You understand that, Mr. Martinez?

9 MR. MARTINEZ: Yes, sir.

10 THE COURT: How about charge? Do y'all have any
11 specific requests the charge?

12 MS. WALKER: We're pulling them right now, Judge.
13 We'll have those to you by the end of the day.

14 THE COURT: Mr. Martinez, if you have any specific
15 requests to charge, if you would provide them.

16 MR. MARTINEZ: I do, Your Honor. I need to get
17 them ready.

18 THE COURT: You need to get what?

19 MR. MARTINEZ: I need to get it ready.

20 THE COURT: All right. Well, I need them before
21 the end of the day.

22 MR. MARTINEZ: All right.

23 THE COURT: And, of course, we'll lose one of our
24 alternates. I think it's either 204 or 171.

25 THE COURT REPORTER: 204.

1 THE COURT: 204. We'll lose her today because of
2 her request. So we'll end up with one alternate.

3 MS. WALKER: Thank you, Judge.

4 THE COURT: All right. Anything further before we
5 bring in our jury from the State?

6 MS. CAMPBELL: No, sir.

7 THE COURT: And how long do you think this witness
8 will be, Solicitor?

9 MS. CAMPBELL: It could be -- I think our direct
10 would be about 20 minutes.

11 THE COURT: Well, the jury's lunch is going to be
12 here at one o'clock.

13 THE CLERK: It's here, Your Honor.

14 THE COURT: I take that back. The jury's lunch is
15 here.

16 Bring me the jury, please.

17 (The jury entered the courtroom at 12:48 p.m.)

18 THE BAILIFF: Your Honor, the jury is present.

19 THE COURT: Thank you, thank you, Mr. Whittle.

20 Madame Forelady, ladies and gentlemen, I had hoped
21 to get a witness in before your -- before our luncheon
22 recess. I have been unsuccessful in that attempt. So
23 we'll just take our luncheon recess now. Say until 2
24 o'clock. Do not discuss the case with anyone. Do not
25 read, watch, listen to any news accounts, remember do not

1 do any investigation or any investigation or the internet.
2 You may certainly take a walk about or what have you if you
3 would like.

4 We'll start back, hopefully, promptly at 2 o'clock.
5 Hope y'all have a pleasant lunch.

6 (The jury left the courtroom at 12:50 p.m.)

7 THE COURT: Court will be in recess until 2
8 o'clock.

9 (A recess for lunch was observed.)

10 THE COURT: Anything from the State before we bring
11 in our jury?

12 MS. CAMPBELL: Nothing from the State, Your Honor.

13 THE COURT: Defense?

14 MR. MARTINEZ: Your Honor, Mr. Kata informed me
15 that the State continued to run the DNA test and came up
16 with a different result and as stated from the -- my DNA
17 expert in order to be able to have an accurate reading from
18 that kind of -- that specific test, you have to know the
19 exact number of contributors to that and I would ask that
20 that information be suppressed.

21 THE COURT: Help me track. What information -- any
22 additional information, that's what you're asking to be
23 suppressed.

24 MR. MARTINEZ: Yes, sir.

25 THE COURT: All right. Solicitor?

1 MS. CAMPBELL: Your Honor, they continued to run
2 statistical probabilities and ---

3 THE COURT: They what.

4 MS. CAMPBELL: They continued to run the
5 statistical probabilities --

6 THE COURT: Yes, ma'am.

7 MS. CAMPBELL: -- on the alleles and it's my
8 understanding the number did get much larger. We will not
9 be eliciting any information from that pursuant to his
10 motion.

11 THE COURT: All right.

12 MS. CAMPBELL: That's what he's asked us to do and
13 we will not be going into anything other than the numbers
14 that have already been testified too.

15 THE COURT: All right. Therefore, any additional
16 testing -- and it's all inculpatory, correct?

17 MS. CAMPBELL: Yes, sir.

18 THE COURT: I would grant Mr. Martinez's motion
19 that it may not be used in the trial of this case.

20 MS. CAMPBELL: Yes, sir. We understand that we are
21 not allowed to mention it pursuant to his motion.

22 THE COURT: All right. Anything else, Mr.
23 Martinez?

24 MR. MARTINEZ: No, Your Honor.

25 THE COURT: Solicitor, anything else.

1 MS. CAMPBELL: We're good. Your Honor, our next
2 witness is Dr. Tross. Just so we can go ahead and pull the
3 report. She is on our witness list.

4 THE COURT: All right.

5 (The jury entered the courtroom at 2:03 p.m.)

6 THE BAILIFF: Your Honor, the jury is present.

7 THE COURT: Thank you, thank you very much,
8 Mr. Whittle.

9 Welcome back, ladies and gentlemen, I hope y'all
10 had a pleasant lunch. As you recall, the State has rested,
11 the defense has rested both in their case in chief. The
12 State may present evidence and testimony in reply. They
13 have indicated to the Court and before you that they intend
14 to do so. If you would please continue to give the parties
15 your complete and undivided attention.

16 Solicitor, you may call your first witness.

17 MS. CAMPBELL: May it please the Court, the State
18 calls Dr. Rozanna Tross.

19 THE COURT: All right. If you would come around,
20 please, Doctor, and be sworn.

21 ROZANNA TROSS,
22 having been duly sworn, testified as follows:

23 THE CLERK: Please have a seat. State your full
24 name for the record.

25 THE WITNESS: It's Rozanna Tross, R-O-Z-A-N-N-A,

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1 T-R-O-S-S.

2 DIRECT EXAMINATION

3 BY MS. CAMPBELL:

4 Q Dr. Tross, where are you employed?

5 A I'm currently employed by the South Carolina
6 Department of Mental Health.

7 Q Okay. You kind of have a soft voice so answer nice
8 and loud. If you could speak up a just a little.

9 The Department of Mental Health?

10 A Yes, ma'am.

11 Q And how long have you been at the department of
12 mental health?

13 A Since January of 2014.

14 Q What do you do there?

15 A I'm a chief psychologist with the sexually violent
16 predator program. I perform evaluations and risk
17 assessment in dangerousness on all of our residents. I
18 also work in the forensic division where I do competency to
19 stand trial evaluations; and evaluations to determine if at
20 the time an alleged offense somebody was in their right
21 mind.

22 Q Tell the jury a little bit about your education and
23 your training in the field of psychology.

24 A Yes, I have a Bachelor's Degree in Psychology. I
25 have a Master's Degree in Forensic Psychology. I'm a

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1 doctor in clinical and forensic psychology and I have a
2 Post-Doctoral Fellowship in Forensic Psychology and I've
3 had several years of additional training in the assessment,
4 treatment, and management of sex offenders and in clinical
5 and forensic psychology.

6 Q Can you tell the jury, what's the difference
7 between psychology and what you refer to as forensic
8 psychology?

9 A Forensic psychology is an intersection of
10 psychology and the law. We answer legal questions for the
11 Court. So any time there's a question before the Court
12 about somebody's psychological state, we would be called in
13 to answer those types of questions.

14 Q And specifically the type of testing you do and the
15 opinions you give, do those revolve around the Court
16 system?

17 A Yes, they do.

18 Q And specifically are you ever asked to give an
19 opinion as to competency?

20 A Yes.

21 Q As to criminal responsibility?

22 A Yes.

23 Q And are you familiar with the term M'Naghten?

24 A Yes.

25 Q What is M'Naghten?

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1 A It's a standard for which criminal responsibility
2 is determined.

3 Q And finally are you also asked to make a
4 determination as to the capacity to conform at the time of
5 the offense?

6 A Yes.

7 Q And have you testified before as an expert in
8 forensic psychology?

9 A Yes.

10 Q And Doctor, how many times have you been qualified
11 as an expert in that area?

12 A In the State of South Carolina, probably between 30
13 and 40 times.

14 MS. CAMPBELL: Your Honor, at this time, we'd offer
15 her as an Expert in Forensic Psychology.

16 THE COURT: Mr. Martinez?

17 MR. MARTINEZ: Your Honor, I object to this
18 witness's testimony.

19 THE COURT: Focus Mr. Martinez. At this point,
20 she's being offered as an expert in forensic psychology.
21 Do you have any questions as to her expertise in the area
22 of forensic psychology?

23 MR. MARTINEZ: No, I don't have any.

24 THE COURT: All right. Well, let me charge the
25 jury and then you can make your objection. Okay?

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1 MR. MARTINEZ: Okay.

2 THE COURT: All right. Thank you.

3 Again, ladies and gentlemen, you've heard this
4 several times. Normally a person cannot testify to opinion
5 testimony. Normally when a person testifies, they must
6 testify to something they saw, heard, or sensed by smell or
7 something of that nature. However, there is an exception
8 when someone is qualified because of education, training,
9 experience, and the like, in a particular art, science,
10 craft, or profession, when the Court qualifies them that
11 way.

12 This witness, Dr. Tross --

13 Did I pronounce that correctly?

14 THE WITNESS: Yes, sir.

15 THE COURT: Dr. Tross will be qualified in the area
16 of forensic psychology to give opinion testimony in that
17 area and the basis of those opinions. That does not mean
18 that you must accept the opinions or the basis of the
19 opinions, but it is evidence for you, the jury to use in
20 any way you deem fit and appropriate.

21 Thank you.

22 And you had an objection otherwise, Mr. Martinez?

23 MR. MARTINEZ: Yes, sir. 403 -- Rule 403, 404, as
24 well as my 14th Amendment, due process, and right to a fair
25 trial.

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1 THE COURT: I'm not tracking 404 at all.

2 MR. MARTINEZ: She's about to disclose bad
3 character evidence.

4 THE COURT: And that's not 404, that's 608. But be
5 that as it may. The number is irrelevant, just the
6 substance of it. Based on the record before the Court at
7 this time, in the analysis of the 403, I would find that it
8 does not violate the standard that I must apply in that
9 regard.

10 All right. Thank you, Mr. Martinez.

11 Subject to his objection, Solicitor, you may ask
12 your next question.

13 BY MS. CAMPBELL:

14 Q In your -- when you do an evaluation, tell the jury
15 generally what -- what kind of documents you gather, what
16 you do as far as coming to an opinion regarding competency,
17 capacity to conform and criminal responsibility?

18 A When we're asked to do these evaluations, we're
19 given files that contain past histories on the individual
20 and usually we get a file that will have all the legal
21 documentation, what the police reports say, victim's
22 statements, witness statements, any gathered evidence or
23 discovery, anything related to the alleged offense is
24 detailed in the file.

25 We're also given histories if the individual's had

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1 any past psychological or mental health, we gather those
2 records from the hospitals that they may have been patients
3 at. We get them from correctional facilities where they
4 have been housed. We do social histories with collateral
5 sources, usually, it's a family member or someone they live
6 with that can sort of describe their upbringing, any mental
7 health history because mental health is kind of the crux of
8 what we're looking at. We're gathering any and all
9 information related to being able to answer that question.

10 All of that is compiled together. We usually start
11 with early notes, go into an interview with the individual.
12 We ask them questions related to their history as well. We
13 compare it to past documentation, we ask them questions
14 about mental health. We ask them about their hospital
15 admissions and medication; the onset or experience of any
16 mental health symptoms if they have them and then we
17 compile all of that into a report and submit that to the
18 Court with our opinions as to what our findings are.

19 Q Bringing your attention to this case, did you
20 receive a court order to do an evaluation on Nathan
21 Martinez?

22 A Yes, I did.

23 Q You see him here in the courtroom?

24 A I do.

25 Q Could you point him out to the jury?

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1 A This is Mr. Martinez (pointing.)

2 Q Who just stood up when I asked about your
3 qualifications?

4 A Yes.

5 MS. CAMPBELL: Your Honor, may the record reflect
6 she's identified the defendant?

7 THE COURT: So reflected.

8 BY MS. CAMPBELL:

9 Q And what information or background information did
10 you collect on Mr. Martinez prior to actually meeting with
11 him?

12 A Prior to meeting with him, I reviewed his criminal
13 history, anything that he'd been arrested for in this state
14 or prior states. I also reviewed the alleged offenses to
15 include the police reports, victim statements. I evaluated
16 records from Richland Springs Hospital, Columbia area
17 mental health, Logan Regional Hospital, as well as Alvin S.
18 Glenn Detention center where he was being held as a
19 detainee.

20 Q Once you've been able to review those records, did
21 you then actually meet with the defendant?

22 A Yes.

23 Q And approximately when was it that you met with
24 this defendant in order to perform the evaluation?

25 A On August 12th of last year for approximately 2

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1 hours.

2 Q And ultimately did you issue a report in this case?

3 A Yes, I did.

4 Q And when did you issue the report?

5 A The report is dated September 1st of 2015.

6 Q Once you made contact from him -- what type of
7 information, background information did you get from Mr.
8 Martinez himself?

9 A Well, I asked him a lot about himself --

10 THE COURT: Step up here just a minute, Solicitor,
11 Mr. Kata.

12 (There was a bench conference out of the hearing of
13 the jury and the Court Reporter.)

14 THE COURT: Step out, please, momentarily, ladies
15 and gentlemen.

16 (The jury left the courtroom at 2:14 p.m.)

17 THE COURT: Thank you, Mr. Kata. Thank you,
18 Solicitor.

19 MS. CAMPBELL: Your Honor, if I might provide the
20 Court an exhibit that was marked in pretrial.

21 THE COURT: Is it 80?

22 THE COURT REPORTER: It's 98.

23 THE COURT: I thought we were marking them in
24 order.

25 MS. CAMPBELL: We had already marked a lot in

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1 pretrial, Your Honor.

2 Dr. Tross, I just want to ask you today just do not
3 mention any type of prior incarceration either here or in
4 Utah, that he mentioned anything like that to you. And
5 also, we already talked about this before, don't mention
6 the Richland County case, which is the third case. Don't
7 even mention that you went into any of that with him.

8 Is there anything else in the report that you would
9 ask to be limited, Judge?

10 MR. MARTINEZ: Your Honor. Her findings are based
11 off of false representations of the facts from the police
12 reports, like her clinical finding of me supposedly having
13 knowledge or awareness or appreciation or knowingly is
14 based off of the other cases, so I'm not going to be able
15 to argue how she got to her findings without going into
16 this other case because --

17 THE COURT: That will be your choice. I'm not
18 allowing the State to present testimony of prior criminal
19 history except as it regards to this case. Your
20 cross-examination would be up to your wise decisions in
21 presenting your defense.

22 MR. MARTINEZ: Your Honor, as I stated, her
23 findings are based off of the first allegations as far as
24 me appreciating and knowing what was going on as she stated
25 in her thing, in her report. There's no way that I'm going

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1 to be able to defend that without stating how she got to
2 that conclusion.

3 THE COURT: You have -- you have made decisions
4 throughout the course of the trial to put your mental
5 health at issue and the State can respond to that. You can
6 then cross-examine the witness in any way you deem
7 appropriate, provided it complies with the rules of
8 evidence. But as I've already told the jury, that just
9 because Dr. Tross has been accepted as an expert in the
10 field of forensic psychology, that does not mean that they
11 must accept her opinions nor the basis of her opinions. I
12 further tell them that during my final charge, if we get to
13 my final charge, that they do not have to accept the
14 opinions of an expert even if it is uncontradicted.

15 So again, I'm limiting the State. I've not limited
16 you in any manner as to how you deem to present your
17 defense which you have a constitutional right to do.

18 MR. MARTINEZ: And this report -- I wrote to
19 Ms. Troll, to the forensic evaluator and I specifically
20 stated my complaint right after I received this report. I
21 stated my complaint. I stated that I want to dispute the
22 findings because I don't agree with them and I outlined
23 everything that I didn't agree with and at that time
24 Ms. Tross was able to go back and amend the complaint -- or
25 I mean amend her report, her evaluation and I stated before

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1 to -- Ms. Zmroczek stated before and I've stated it before
2 that I wanted to dispute this evidence.

3 THE COURT: And you'll have the right to do so in
4 cross-examination, Mr. Martinez. I'm not going to limit
5 you except as you may be limited by the rules of evidence
6 of South Carolina.

7 MR. MARTINEZ: It's -- Your Honor, it's going to
8 cause me unfair prejudice because I'm not going to be able
9 to adequately do that and effectively do that without
10 incriminating myself.

11 THE COURT: Mr. Martinez, you have put your mental
12 state at issue in this case. I am limiting the State right
13 now as to what they can bring out in their direct as to Dr.
14 Tross's testimony. But again, you have to make your trial
15 strategy decisions. You have to determine what you deem
16 appropriate to conduct your defense.

17 MR. MARTINEZ: Your Honor, there's no way I can
18 conduct my defense without -- her findings -- her findings
19 are based off allegations that I'm not on trial for.

20 THE COURT: Can I see the report, please,
21 Solicitor?

22 MS. CAMPBELL: I thought you still had it.

23 THE COURT: Do I have it? That's 98.

24 MS. CAMPBELL: Yes, sir.

25 THE COURT: I have that.

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1 (The Court was looking at the doctor's report.)

2 THE COURT: Identifying information reads and as
3 far as evaluation: Nathan Daniel Martinez is a 36 year old
4 male charged with a burglary first degree, criminal sexual
5 conduct first degree, burglary first degree, criminal
6 sexual conduct first degree, kidnapping, burglary first
7 degree, armed robbery, kidnapping, kidnapping, kidnapping,
8 criminal sexual conduct, possession of a weapon during the
9 commission of a violent crime, pointing and presenting
10 firearms and petit larceny for acts alleged to have
11 occurred 2/4/14, 3/25/14, and 3/27/14.

12 So therein of itself indicates the evaluation was
13 for the three events, two of which -- one of which is
14 called for trial, the 3/27/14; and the other which has been
15 admitted into evidence, 3/25/14, to determine the criminal
16 responsibility and capacity to conform. And as I look
17 further in the report to criminal responsibility on page 8
18 of 12, the doctor refers to the February 4th, 2014. That
19 is then split out to where she identifies on page 9 of 12,
20 March 25th of 2014 and also 3/28 of 2014, referring to the
21 victim's statements.

22 She then on page 10 of 12, she indicates regarding
23 the alleged offenses of burglary, robbery, kidnapping,
24 kidnapping, criminal sexual conduct, possession of a weapon
25 during the commission of a violent crime, petit larceny

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1 that occurred on or about the 27th of March 2015, City of
2 Forest Acres affidavit reports. She indicates that record,
3 additionally, she indicates concerning rings, bank card,
4 cash, she then goes into your version of events and then
5 she goes into her opinions as to your criminal
6 responsibility and capacity to conform.

7 If she can base her opinions on the information
8 that's before her on 3 -- concerning 3/25 and 3/27, I'm
9 allowing it. How you conduct your defense is solely and
10 entirely up to you within the rules of evidence of South
11 Carolina.

12 MR. MARTINEZ: Your Honor, when she asked me about
13 the events in this case right here, I told her that I don't
14 know anything about this. The only thing I know is from
15 what I read from the reports.

16 THE COURT: And you may -- you can ask her that on
17 cross-examination, Mr. Martinez.

18 MR. MARTINEZ: She's -- she --

19 THE COURT: You can test credibility. You can ask
20 her those questions. That 's part of the cross-examination
21 if you choose to use it.

22 MR. MARTINEZ: She got her opinion regarding
23 criminal responsibility because of the first offense.

24 THE COURT: No, sir. The report clearly indicates
25 it's on the three offenses. It's three separate and

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1 distinct dates.

2 MR. MARTINEZ: She states that I understood what I
3 was doing because I didn't go back to my mother's house and
4 therefore, I was avoiding the law.

5 THE COURT: Again, Mr. Martinez, I'm not going to
6 keep chasing this. You put your mental state in issue.
7 You put up Dr. Chavez. You put it up through the testimony
8 and cross-examination of many of the officers involved.
9 You put it up in your defense with the testimony of Deputy
10 Jackson.

11 I'm limiting the State to where no offense is
12 referred to except 27 March '14. So that you would not be
13 prejudiced. Again, your -- however you want to conduct
14 your defense is solely and entirely up to you within the
15 rules of evidence.

16 MR. MARTINEZ: All right.

17 THE COURT: Bring us the jury, please.

18 (The jury entered the courtroom at 2:26 p.m.)

19 THE BAILIFF: Your Honor, the jury is present.

20 THE COURT: Thank you.

21 Thank you, Mr. Martinez, Solicitor.

22 Solicitor, you may ask your next question.

23 MS. CAMPBELL: Thank you.

24 BY MS. CAMPBELL:

25 Q Prior to speaking to Mr. Martinez, did you

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1 basically communicate to him what the purpose of your
2 meeting was going to be?

3 A Yes. We communicate to everybody exactly the
4 nature and purpose of the evaluation, what's going to
5 happen in the evaluation and then what we're going to do
6 with that information once we collect it and then where we
7 submit the report.

8 Q And that you were going to submit a report?

9 A Correct.

10 Q And did he agree to proceeding, to talk to you?

11 A He did.

12 Q Going in through your report, the first thing you
13 retained, I believe was a history?

14 A Yes.

15 Q And did you obtain this information just from Mr.
16 Martinez or from additional sources?

17 A From additional sources. We look at all the
18 collateral information available to us, the social worker
19 involved in the case also does a collateral contact. I
20 believe this was with Ms. Martinez, Mr. Martinez's mother.
21 So she provided some information and then we supplement
22 that with whatever Mr. Martinez tells us.

23 Q And Mr. Martinez's personal history that he related
24 to your division, what was that.

25 A He provided information about his upbringing, his

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1 scholastic information, mental health history, work
2 history, substance abuse history.

3 Q And did he indicate where he grew up?

4 A He did.

5 Q And where was that?

6 A He said he was born and raised in Ogden, Utah.

7 Q And did he say who actually helped raise him?

8 A He actually vacillated between saying who raised
9 him. At one point he talked about living with his mother.

10 At another point he talked about living with his father.

11 His version of events were somewhat different than what the
12 collateral sources said, namely his mother.

13 Q Namely his mother?

14 A Correct.

15 Q The history that was gathered from his mother, was
16 that significantly different from what the history he
17 provided?

18 A It seemed to be so.

19 Q And how is that?

20 A Well, in his upbringing, she described a different
21 environment. She described a home environment where his
22 neighborhood wasn't safe. She described that his
23 grandparents primarily raised him, that his father was
24 involved in his life though he was -- she said that he was
25 not a good caretaker for him. She also described that he

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1 had described mental health symptoms since the age of 12,
2 which was different than what Mr. Martinez had described as
3 well as the collateral sources.

4 Q And in fact, when you were looking as far as the
5 mental -- any mental history, when did Mr. Martinez report
6 that he had first started having problems?

7 A At the time of this report, it was two years prior.

8 Q So that would have been 2013?

9 A Correct.

10 Q Were you able to assert anything about his
11 educational history?

12 A He provided that he graduated high school in 2002
13 and that he was somewhat held back due to moving between
14 Utah and South Carolina, but his mother reported that he
15 deliberately missed the bus, didn't want to go to school,
16 hated school; left school in the 10th or 11th grade when he
17 was 17. She said that he did have average grades and
18 denied that he was in special education, but that he
19 skipped school frequently and was expelled numerous times
20 due to behavioral concerns.

21 Q Okay. Did you also get some type of work history?

22 A Yes.

23 Q And other than odd jobs, was there any significant
24 work history?

25 A No.

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1 Q Did you also get a substance abuse history?

2 A Yes.

3 Q Is that important when you're doing your assessment
4 as far as mental health?

5 A Absolutely.

6 Q Why is that?

7 A If somebody is using substances, oftentimes it's
8 hard to determine if there is truly a mental health issue
9 that is a mental health issue by itself or if it's
10 something that's either exacerbated by the use of
11 substances or predicated upon the use of substances. And
12 sometimes substances like methamphetamine, crack cocaine,
13 cocaine, can demonstrate the symptoms of mental illness
14 when in fact they're not mental illness.

15 Q And specifically without going into specific --
16 well not specifically. Without looking into specifics, did
17 he give you a history of substance abuse?

18 A Yes.

19 Q That proved to be significant later on?

20 A Yes.

21 Q Did you also get a medical history from the
22 defendant?

23 A We often ask about medical problems and in this
24 case, we did as well.

25 Q And did he indicate any significant medical

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1 problems?

2 A A broken jaw in 2013, which he had to go to the
3 emergency room for. Outside of that, he denied significant
4 medical problems. His mother said that he did hit his jaw,
5 or hit his head and broke his jaw at the age of 12, not in
6 2013.

7 Q And from Mr. Martinez, did you then go into further
8 details about his alleged mental health history starting
9 back in 2013?

10 A Yes.

11 Q And what was that that he told you?

12 A Well, he talked about hearing voices and feeling
13 that the Utah police had implanted a chip behind one of his
14 ears and that they were trying to control him.

15 Q Specifically referring -- do you have your report
16 with you?

17 A I do.

18 Q Page 4.

19 A Yes.

20 Q Did he talk about a visit to the emergency room in
21 2013?

22 A Yes.

23 Q And what was significant about that that he told
24 you at that point?

25 A He said the doctors implanted a device the size of

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1 a microchip behind his ear so that the Utah police could
2 communicate with him and try to control me.

3 Q Did he also describe hearing voices?

4 A Yes, he said he now hears voices. He described
5 them as a whisper behind his ear. He says it's like a
6 constant vibration and that he has gone to the hospital on
7 several occasions trying to get medical help for the
8 devices but that they've told him there's nothing wrong
9 with him.

10 Q Did he describe what the vibrations felt like?

11 A He said it's like being shocked:

12 Q And what did the voices tell him?

13 A To hurt himself or to kill other people, to tell
14 them that -- he said that they tell me they want me dead,
15 that I deserve to die, to kill other people, and he said
16 that they refer to the Utah police.

17 Q And again, getting a history from his mother, did
18 she also have concerns about his -- I guess, assertions
19 over the last two years?

20 A She said that he has expressed suicidal ideation,
21 has had difficulty sleeping, isolates himself and expresses
22 anger at the voices. She said the voices tell him to hurt
23 himself or others, which he does not want to do.

24 Q Did you also receive certain mental health records
25 in this case?

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1 A Yes.

2 Q And doing this chronologically beginning with
3 records from Logan Regional Hospital. Where is that
4 located?

5 A In Logan, Utah.

6 Q Logan, Utah?

7 A Yes.

8 Q Did they have any contact with Mr. Martinez?

9 A They did. They had two different dates wherein
10 they saw Mr. Martinez.

11 Q What was the first date?

12 A June 5th of 2008.

13 Q And were you able to review those records?

14 A Yes.

15 Q Was there anything significant in those records to
16 you?

17 A Yes.

18 Q What was that?

19 A That he was -- according to hospital records, he
20 was brought in by police officers for swallowing a bag of
21 some type of crystal type material in an effort to avoid
22 having been taken into police officers that they were
23 trying to arrest him.

24 Q Did he try to assert what was in the bag?

25 A He was discharged after a few hours and he refused

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1 to tell hospital staff what was in the bag, so he -- he was
2 discharged and encouraged to follow up with his primary
3 care physician.

4 Q So at that point he was cleared and discharged that
5 day?

6 A Correct.

7 Q The next one at the Logan Regional Hospital was
8 what date?

9 A March 15, 2013.

10 Q And what was that admission for?

11 A The initial notes say that it was on an involuntary
12 basis for, quote, psychosis not otherwise specified, which
13 is a diagnoses and then subsequent notes say that after it
14 became evident that he'd been abusing substances, likely
15 stimulant substances and they concluded by saying that
16 after taking some basic medication, he had dramatic
17 resolution of any paranoia. After an additional two nights
18 sleep, he had complete resolution of any prior paranoia and
19 psychosis.

20 He was discharged with a diagnoses of substance
21 induced psychosis, meaning substances played a role in any
22 of his psychotic behavior and psychotic assertions.

23 Q So he was there for a matter of days, weeks, or
24 months?

25 A A few days.

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1 Q A few days. And you mentioned that he was
2 diagnosed or released with a substance abuse psychotic
3 disorder?

4 A Yes.

5 Q What does that mean?

6 A What it means is that substances are the reason for
7 any psychotic behavior that was evidenced at the time of
8 admission. When he was first brought in, it sounded like
9 he was exhibiting some psychosis and maybe some paranoia,
10 delusional beliefs. He thinks -- sometimes that can
11 include bizarre behavior, but it looks like their notes say
12 that during the course of hospitalization as he was sober,
13 the substances left his body, and he was on basic
14 medication. He didn't exhibit any of the psychotic
15 symptoms; and so therefore, they ruled that it was
16 substances that then prompted and created the psychotic
17 behavior in him and once he was clean of substances, that
18 behavior was no longer evidence.

19 Q And then he was released?

20 A Correct.

21 Q Now, were there further records from Utah?

22 A Yes.

23 Q And what were those?

24 A There were records from McKay Emergency Department.

25 Q McKay emergency?

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1 A McKay.

2 Q And that's in Utah?

3 A Correct.

4 Q Okay. Go ahead.

5 A From that emergency department that looked like it
6 was prior to the hospital admission to Logan. He was
7 brought into the hospital after calling police complaining
8 that people were trying to kill him by injecting air into
9 his body. He was noted to have history of methamphetamine
10 abuse and tested positive for amphetamines upon admission.
11 He was then transferred to Logan Regional Hospital where he
12 continued to complain that people didn't know -- that
13 people he did not know were chasing him or shooting him
14 with a kind of poisonous dart, injecting air into his body.
15 He vaguely admitted to getting high with some people prior
16 to this. Notes reflected that his admission in the
17 December of 2013 and then the results of that admission he
18 was given a diagnosis of depressant disorder and
19 schizophrenia versus a drug induced psychotic disorder.

20 So initially his behavior suggested that maybe he
21 had a psychotic disorder like schizophrenia, but again, as
22 I was saying, once he was at the hospital he became sober,
23 they medicated him, basic, you know, antianxiety or
24 depressant medications to keep him calm. The psychotic
25 behavior went away and they concluded that it was

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1 substances that produced the psychotic multiple behavior,
2 not a psychotic disorder.

3 Q And again, he was released?

4 A Correct.

5 Q So this is the second basis of substance abuse
6 psychotic disorder?

7 A Yes.

8 MR. MARTINEZ: Objection. That's only the first
9 one. Misrepresenting the facts in reverse. I only had one
10 stay at Logan Regional.

11 MS. CAMPBELL: I'm sorry.

12 THE COURT: All right. Restate your question,
13 Solicitor.

14 MS. CAMPBELL: Thank you, Your Honor.

15 BY MS. CAMPBELL:

16 Q As far as substance abuse psychotic disorders, is
17 that unusual?

18 A No.

19 Q And each time when he was given time to sober up,
20 the delusions went away?

21 A It appears -- the first admission it appears that
22 he swallowed a bag of what they described as a crystal type
23 material. He didn't want to disclose what the bag was.
24 Once I guess they were able to get it out of his system
25 they discharged him. And then the second time, they did

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1 keep him in the hospital for a couple of days and then they
2 diagnosed him with a substance induced psychosis.

3 Q Did you also receive records from South Carolina?

4 A Yes.

5 Q And going through those records in whatever order
6 is appropriate, what do those records reflect?

7 A Similar findings. Multiple admissions from
8 Columbia Area Mental Health. They had different admission
9 dates for him in 2013 and one in 2015. In July of 2013, he
10 reported to the hospital that he'd just relocated from Utah
11 to South Carolina just a couple of months prior. He stated
12 that the Utah police were following him and had been
13 harassing him for 6 months. He indicated that he was
14 hearing voices. He stated they were the Utah police. But
15 the notes reflected that he told staff he had reported to
16 the emergency department a couple of days prior asking to
17 be seen for evaluation for disabilities benefits.

18 Q All right. Can you slow down a little bit.

19 Okay. In July of 2013, he was admitted; is that
20 correct? Or he reported?

21 A These are notes from Columbia Area Mental Health,
22 which is an outpatient mental health agency.

23 Q Outpatient. So it was not an admission.

24 A Correct.

25 Q And what were his complaints when he reported to

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1 Columbia Area Mental Health on July 5, 2013?

2 A That he was being followed by the Utah police and
3 that they were harassing him.

4 Q Did he indicate anything about hearing voices?

5 A Yes, he indicated that he hears voices and that it
6 was the Utah police telling him to harm himself and that
7 they wanted him did.

8 Q And did he specifically request anything at this
9 time on July 5th, 2013 from the Columbia Area Mental
10 Health?

11 A No, what it looks like is that he referred to -- he
12 told staff that he had reported to the emergency department
13 two days prior to his visit to Columbia Area Mental Health.

14 Q And what was he trying to get at that point?

15 A An evaluation for disability benefits.

16 Q An evaluation for disability benefits?

17 A Correct.

18 Q And are disability benefits, money available if
19 someone is found to have mental health issues?

20 A In some instances, yes.

21 Q If they're found to have severe mental health
22 issues, they get money?

23 A Correct.

24 Q And that's what he had tried to get two days prior
25 to showing up at Columbia Area Mental Health?

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1 A That's what the notes would indicate.

2 Q What else did the notes indicate the clinicians
3 explained to him?

4 A The clinician at area mental health explained to
5 Mr. Martinez that Columbia Area Mental Health does not
6 offer psychological evaluation. On Wednesday he wanted to
7 be admitted and it looks like he was directed to the
8 emergency room if he wanted to be admitted. He stated that
9 he would go -- or that he did go to the emergency room, but
10 was not committed. He exhibited some rambling speech, some
11 delusional thought processes; however, the note went onto
12 say that it looks like he may be fabricating this story in
13 order to get disability benefits. He is complaining about
14 not being able to sleep and not being able to urinate or
15 defecate. This may be malingering for some unknown reason.
16 The more he kept talking, the more complaints of the
17 delusional content evolved.

18 He was then subsequently referred for an evaluation
19 directly, shortly after, telling the staff that he would
20 not be able to see the doctor because his mother had to go
21 the work and that he would walk back in on Monday.

22 Q And is there any indication that he came back to
23 Columbia Area Mental Health that Monday?

24 A No.

25 Q You mentioned that he -- the staff made notes that

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1 he was malingering for some reason. What does malingering
2 mean?

3 A Malingering is when you're feigning. In lay terms,
4 it could be lying, trying to exaggerate or create symptoms
5 that look like something else. Usually it's for secondary
6 gain, meaning a person has an ulterior motive into why
7 they're exaggerating or complaining of certain symptoms.
8 Usually it's in the absence of fact to support it, which is
9 why we call it malingering.

10 Q And in your dealings with people with mental
11 health, is it unusual for them to try to perhaps malingering
12 in order to gain money or benefits?

13 A No, that's not unusual.

14 Q Is it unusual for someone to try to malingering or
15 feign symptoms or delusions in order to avoid --

16 MR. MARTINEZ: Objection, Your Honor, speculation.

17 THE COURT: Overruled.

18 BY MS. CAMPBELL:

19 Q -- criminal prosecution?

20 A No, that's not unusual as well.

21 Q And at that point, he was referred for an
22 evaluation, but he said he had to go do what?

23 A His mother had to go to work.

24 Q So he couldn't do it?

25 A Correct.

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1 Q Then onto September 27th of 2013. Was he again --
2 did he again show up for help from Columbia Area Mental
3 Health?

4 A He did.

5 Q At that point what were his complaints?

6 A He said he was hearing voices inside his head that
7 are not -- that are not his that were telling him to jump
8 off a bridge and to kill himself. The note also indicated
9 that he was paranoid that the police were tracking him and
10 that they had implanted a device.

11 Q And what was their initial -- their initial
12 diagnosis in that case?

13 A They initially diagnosed him with psychotic
14 disorder, not otherwise specified.

15 Q At that point did they do any testing on Mr.
16 Martinez as far as the presence of drugs?

17 A They did. They did a drug screen.

18 Q And did he test positive?

19 A He did. He tested positive for THC.

20 Q At that point, was he admitted to a hospital for
21 the third time?

22 A He was. He was then committed to Richland Springs
23 Hospital.

24 Q And you referred -- or when he went to Richland
25 Springs, what do the records indicate?

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1 A He was admitted on September 27, 2013, and they
2 kept him until October 2nd, 2013. And he was initially
3 diagnosed with psychosis not otherwise specified with a
4 rule out of substance induced psychosis. They ruled out a
5 delusional disorder. And a rule out of substance abuse
6 problems.

7 Q And what were the -- what did the notes reflect as
8 far as that visit?

9 A He reported that he denied any suicidal ideation,
10 he denied any homicidal ideation. He presented with
11 organized and linear thoughts, meaning there was no concern
12 or confusion about how he was thinking. He did focus on
13 delusions and hallucinations, meaning he would tell police.
14 Subsequent notes confirmed a diagnoses of substance abuse
15 psychosis and that he had several substance abuse diagnoses
16 such as cocaine, amphetamine and cannabis.

17 Q I can barely hear you. I'm sorry.

18 A I have a cold.

19 Q Can I get you some water?

20 (The witness was given a cup of water.)

21 THE WITNESS: Thank you.

22 BY MS. CAMPBELL:

23 Q Okay. Let me go back over just -- at that point he
24 had a confirmed diagnosis of what?

25 A They confirmed a diagnoses of substance induced

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1 psychosis with additional substance abuse diagnoses,
2 meaning they ruled in that he had a specific depend dense
3 on certain types of substances and that --

4 Q Go ahead.

5 A -- and that the psychosis itself was substance
6 related, not independent psychosis by itself.

7 Q When we say psychosis, what do you mean?

8 A Oftentimes what we're referring to things like
9 schizophrenia where somebody has a true chemical imbalance
10 or neurotransmitter imbalance where they have disorganized
11 thinking. They have paranoid delusions or they have
12 impediments in the way they think and proceed and it's of a
13 delusional and psychotic nature. They oftentimes see
14 things that nobody else sees or hear things that nobody
15 else sees.

16 Q And when a person voluntarily ingests drugs and you
17 get these psychosis as a result, is that mental illness or
18 is that substance abuse?

19 A That's just substance induced.

20 Q At that point, did Mr. Martinez indicate that he
21 had a history with any certain drugs prior to his
22 admission?

23 A I'm sorry, I'm not sure I understand your question.

24 Q We were going over the assessment notes from your
25 diagnosis of substance induced psychoses, substance induced

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1 diagnoses. I believe you said cocaine and cannabis?

2 A Correct.

3 Q Okay. And then that next line, did he give a
4 history?

5 A He did.

6 Q What was that?

7 A He told the hospital that he had used alcohol,
8 cocaine and Cannabis or marijuana prior to his admission
9 and he felt hospitalization could perhaps help him with
10 assistance for his chronic headaches.

11 Q Assistance for his chronic headaches?

12 A Correct.

13 Q Did the notes indicate whether or not there was any
14 signs of psychosis?

15 A The notes actually reflected that there were no
16 signs of psychosis and that he did not report the presence
17 of delusions after day two of his admission. He was
18 subsequently discharged on October 2nd.

19 Q So, again, once he had time to sober up, there was
20 no psychosis?

21 A That's correct.

22 Q Moving onto October 11, 2013. Did he again go to
23 Columbia Area Mental Health?

24 A He did.

25 Q And what was his complaint at that point?

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1 A Notes indicated that he thinks the Utah police were
2 tracking -- had a tracking device on him and --

3 Q Go ahead.

4 A And he reported being in the emergency department
5 two days prior to that.

6 Q And at that point, what did he want?

7 A He wanted an EMG.

8 Q What was the initial diagnosis at that time?

9 A They initially diagnosed him with psychotic
10 disorder not otherwise specified, though a notation next to
11 that diagnosis listed using methamphetamine or marijuana
12 where indicated.

13 Q So at that point he's using methamphetamine and
14 marijuana again.

15 Did you also review some records from the Alvin S.
16 Glenn Detention Center?

17 A Yes.

18 Q And what did those records indicate?

19 A Notes from the detention center indicated that he
20 has reported hearing voices outside of his head that are
21 the Utah police telling him to hurt himself, though he
22 regularly denied any suicidal ideation. He was referred to
23 the psychological department, but was not seen -- excuse
24 me, but was seen quarterly to review his progress and
25 adjust medications which it appears that he was prescribed

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1 Cylexin, which is a mild antidepressant.

2 Q Is it unusual for a person that's incarcerated to
3 be prescribed Cylexin?

4 A No.

5 Q Okay. And that's an antidepressant?

6 A Correct.

7 Q Was there any indication of any psychosis at this
8 point?

9 A No, the notes actually indicate no acute psychosis
10 was indicated in any of the available records, followup
11 sessions, or notes as they continued to track Mr. Martinez;
12 indicated that he just described the voices as bother some
13 but he denied any disturbance as a result of them. And he
14 had a mix of diagnoses from the detention center.

15 Q And what were those diagnoses?

16 A The first one was malingering psychosis. The
17 second one was a delusional disorder and the last one was
18 antisocial personality traits.

19 Q And what does antisocial personality traits?

20 A So traits refer to an individual's way of thinking,
21 perceiving and relating to their environment and
22 themselves. So antisocial traits would suggest that this
23 is a person that has a pervasive disregard for the rights
24 and welfare of others consistently disregards the welfare
25 of others. He's very irritable, irresponsible, deceptive,

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1 often aggressive and very callous in their behavior.

2 Q And he was described that way?

3 A Well, that's what antisocial personality traits
4 would suggest and they've listed traits versus a disorder,
5 meaning that he's got characteristics along those lines
6 that make them think that that would be a way to
7 characterize his behavior for some of the staff.

8 Q And malingered psychosis, again means making --
9 making up psychosis --

10 A Correct.

11 Q -- for some gain?

12 A It means that -- correct. Making up psychosis or
13 at least if not making it up entirely sort of exaggerating
14 the extent of them or the impact of them, the duration of
15 them, the frequency of them. It could be exaggerating in
16 any of those ways.

17 Q And these were records from when he was awaiting
18 trial on this charge?

19 A Correct.

20 Q Moving onto his mental status examination, page 7.
21 Can you tell the jury your assessment as far as his mental
22 status examination when you met with him?

23 A Yes, we do a mental status every time we meet with
24 an individual. It sort of gives us a picture of how are
25 they thinking, functioning, and interpreting their

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1 environment right now, in the moment. So we ask a series
2 of questions. We also do a lot of observational behavior
3 of the individual to see if it matches maybe what they've
4 reported.

5 In meeting with Mr. Martinez, there was nothing
6 notable in his presentation that would suggest he was
7 experiencing any delusional or psychotic components. His
8 thoughts were very goal directed and oriented. He was able
9 to engage in the conversation. He had rational thoughts
10 and explanations for things. He was easily understood. He
11 had good attention and concentration. His short term
12 memory appeared intact. He was noted to, not necessarily
13 be a good historian in the sense that a lot of the
14 information he provided seemed to contradict information
15 that was in the available record. But he was able to, you
16 know, recall short term things. He was able the recall
17 some long term memory aspects.

18 There were no unusual ticks, compulsions or
19 behaviors evident. He didn't appear to be responding to
20 any internal stimuli, meaning it didn't seem like he was
21 hearing voices because he wasn't responding to voices. It
22 didn't appear that he was seeing anything in the room other
23 than the evaluators because he wasn't looking at anything
24 else in the room. He denied feeling depressed or suicidal
25 or homicidal. He did verbally report having vibrations on

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1 the side of his head, having a chip in his head and feeling
2 that the Utah police were trying to get him to hurt
3 himself. But his in-the-room behavior did not coincide
4 with those beliefs.

5 Q And did you make any clinical findings as to any
6 finding that you attributed to this defendant?

7 A I did.

8 Q And what was that?

9 A In my professional opinion, the most prevailing
10 diagnosis for him seemed to be antisocial personality
11 disorder.

12 Q And can you define that for the jury?

13 A Yes. As I said earlier, personality traits, and
14 everybody has them, is a way of thinking, perceiving, and
15 relating to ourselves and our environment or each other. A
16 disorder arises when the way somebody thinks, perceives,
17 and interacts with somebody else is sort of in an extreme
18 range and it's a disorder because it's inflexible. It's
19 pervasive. You're going to see it across multiple
20 settings. Almost as if they're unable to adapt to normal
21 social queues that say hey, don't do that.

22 Now, oftentimes when we want to build connections
23 with others, we take social feedback and when we get
24 negative social feedback, we tend to change our behavior
25 because we value those relationships. Oftentimes in

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1 personality disorders they're very unable to adapt to a
2 change. It's just sort of how they come to the table.

3 And so when something is that pervasive and
4 inflexible, it reaches the level of disorder. Antisocial
5 personality disorder is a pervasive disregard and violation
6 of the rights of others. It's a very selfish presentation
7 in the sense that they're typically very aggressive,
8 irresponsible, parasitic in their behavior as in they take
9 from others without giving back. The relationships are
10 very one sided, self-serving. They oftentimes lack remorse
11 and can sometimes be very callous. It's also a very
12 criminal disposition. I want what I want and I'm going to
13 take what I want when I want it regardless of the
14 consequences and regardless of the impact on someone else.
15 So taking all of Mr. Martinez's multiple behaviors into
16 consideration, this seemed to be the most prevailing way to
17 describe his behavior and so that became the most primary
18 diagnoses in my opinion.

19 Q Did you take into account his talking about the
20 solutions or the chip in his head and all that information?

21 A Absolutely. Given that that was something he had
22 talked about as a consistent way of thinking or feeling
23 that and he had these delusions, that was taken into
24 account. However, based on the available records, every
25 time he had been in contact with mental health or the

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1 emergency department, those seemed to be related to
2 substance abuse. So teased out whether something is just
3 substance abuse, whether it's just mental health, or
4 whether it's a combination of the two becomes fairly -- or
5 can become somewhat difficult. But in this case, all the
6 records seem to consistently note either the absence or
7 pronounced delusions or psychotic behavior that would
8 interfere with his ability to function suggesting that if
9 there was a delusional component, it was mild.

10 So it didn't seem like that would be a prevailing
11 diagnosis. In addition, any of the behavior that he did
12 demonstrate seemed to be created by his use of substances.
13 So, therefore, in my professional opinion, that would rule
14 out a true mental health diagnoses in that regard because
15 his multiple behaviors, when it was psychotic or paranoid
16 or even overtly delusional in the prior record seemed to
17 suggest that it was there because he was using substances
18 and/or malingering.

19 Q Using substances and/or malingering?

20 A Correct.

21 Q And malingering means that you're exaggerating or
22 making it up for some gain?

23 A Correct.

24 Q Did you make -- get any additional information as
25 far as criminal responsibility and capacity to conform from

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1 the defendant himself?

2 A Correct. We interview the individual themselves,
3 their version of sort of how they came do be arrested or
4 how they got accused of a certain offense.

5 Q And referring to the March 25th incident, did you
6 review certain records on that case?

7 A Yes.

8 Q Did you get information from Mr. Martinez?

9 A Yes.

10 Q And what was that information?

11 A So the March 25th, 2014 event, his version, he
12 started by saying that didn't happen. I was there because
13 her dad owed me money. I sold him some marijuana. Mr.
14 Martinez indicated that he went to the house to, quote,
15 collect that money, but that the daughter who is the
16 alleged victim, talked me out of robbing his father -- or
17 her father.

18 So Mr. Martinez stated that he knocked on the door,
19 the victim let him into the house and that once inside, he
20 asked her where her father was, if he had any guns in the
21 house, where her dog was. He reported that it was his
22 intent to take the guns and sell them for money, but that
23 the victim told him that he didn't need to rob and that her
24 father would pay and he described how that talked him out
25 of then robbing.

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1 He stated that he had walked to her house and that
2 he decided to have her drop him off at his brother's house
3 afterward. When asked about the allegations that there had
4 been a sexual assault, he said that it was -- that she had
5 offered to drive and that she willingly left with him from
6 the house and that while driving, we started talking, she
7 was telling me stuff about her life. I kind of flirted
8 with her. I was curious why she didn't like guys. She
9 said her girlfriends understood her more. She indicated
10 she'd never had oral sex with a guy and so he -- Mr.
11 Martinez then stated that he asked her to perform oral sex
12 on him, which she did and then they performed vaginal sex
13 and then he performed oral sex on her.

14 He stated that it was a consensual act and that she
15 had wanted to have sex with him and he reported they then
16 talked a little while longer and then he had her drop him
17 off at his brother's house and said he heard nothing else
18 about this until he was arrested.

19 Q Did he indicate whether or not he was armed at the
20 time?

21 A He said that he always carries a knife on him, but
22 that he did not take it out of his pocket or elude to it
23 during the -- during the conversation and he denied
24 threatening -- he denied threatening the victim with it or
25 suggesting that he would harm her if she did not comply

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1 with his wishes.

2 Q Did you also get -- did you also get the records
3 from the March 27th incident?

4 A Yes.

5 Q And was that -- were you able get a version of
6 events and to get his version?

7 A Yes.

8 Q What did he say?

9 MR. MARTINEZ: Objection, Your Honor. 403.

10 THE COURT: Overruled.

11 BY MS. CAMPBELL:

12 Q You can go ahead, sorry.

13 A When asked about his version of the events for the
14 March 27th, 2014 incident, he said that he didn't remember
15 all of it. I know I was there to steal something to sell.
16 He stated, quote, I had been up, the voices kept me up and
17 I was feeling down. I felt I didn't have a place to live
18 anymore and I couldn't stay with my mom anymore.

19 Q Did you ask him how he came to be at the apartment?

20 A Correct. He said he was just out walking. I was
21 focused on stealing something to sell to get money. He
22 said he wandered through the apartment complex until he
23 found a door that was unlocked. He then entered the
24 apartment and found two children and an adult woman
25 present. He then said, I don't know, I just went upstairs.

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1 I don't know what I was thinking, I just remember thinking
2 about the kids. I just left. I didn't want to hurt
3 anyone.

4 When asked -- you know, then I asked him what he
5 did while he was in the apartment. He said, I remember I
6 told the children to stay where they were in the bathroom
7 when I was leaving. He said he remembers tying one of the
8 children up with an electric cord and putting them both in
9 the bathroom. He did not really remember doing anything
10 else, but that he did take some rings and a bank card from
11 the house.

12 Q Did you ask him about the sexual assault?

13 A I did. When I asked if he remembered engaging in
14 sexual assault, he said no. He said he did not deny that
15 that took place, but that he just couldn't remember if he
16 had done that. When asked why it was hard for him to
17 remember, he said it was because the voices kept him up and
18 they wear him down.

19 Q Did he indicate what he did after he left the
20 residence?

21 A After he left the residence, he said he took the
22 rings to a pawnshop to sell them and that he went and
23 stayed at a friend's house and then he went to stay with
24 his brother.

25 Q Did he indicate he avoided going back to his

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1 mother's house?

2 A He did. He said he avoided going back to his
3 mother's house for fear of being arrested on the prior
4 charge.

5 Q Once you got that information and a review of
6 everything including your diagnosis of antisocial
7 personality disorder -- is an antisocial personality
8 disorder treatable?

9 A Treatable in the sense that it can be managed.
10 People can individual -- sort of learn how to curb some of
11 the thinking processes or the callous use and disuse of
12 others. But it's not going to go away. It's not going to
13 get a medication and become a new person.

14 Q And that's where I was going. There's no
15 medication that can just make him not have that personality
16 disorder?

17 A Correct. He would have to be someone who's
18 interested in increasing their awareness of how that
19 personality disorder impacts their ability to have
20 relationships or function and have a desire to maybe curb
21 that a little bit so that they're not impaired in that way.

22 Q And the substance abuse, can that exacerbate
23 somebody's personality traits?

24 A Oh, absolutely.

25 Q However, when asked about whether or not he was

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1 abusing these substances at the time of these two events,
2 what did he indicate to you?

3 A Well, he -- if I -- he denied using substances. Or
4 being intoxicated --

5 Q For both of those?

6 A -- for both of these offenses.

7 Q Did you come to have an opinion regarding criminal
8 responsibility?

9 A I did.

10 Q And what was your conclusion, ma'am?

11 A My conclusion based on all of the information was
12 that he didn't -- did not appear to be suffering from a
13 mental illness. He denied when asked directly for both of
14 those alleged offenses if he had acted as a result of being
15 told to do so by a voice or hallucination. He denied
16 hearing voices during the earlier March incident. He did
17 report being tired from the voices on the second incident,
18 but collectively, that does not seem consistent with what
19 the available records have said.

20 His personality disorder as I've testified seems to
21 be sort of the predominant way to describe his behavior and
22 thought processes and decision making. So his multiple
23 behaviors on these alleged offenses does not seem explained
24 by a mental illness. So it was my opinion he did not have
25 a mental illness that impaired his ability to make those

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1 choices or conform his behavior if he chose to.

2 Q And antisocial personality disorder is not a mental
3 illness?

4 A It's a personality disorder. It's not a psychotic
5 disorder, so it's -- it's in the realm of what we might
6 treat with mental health, but it's a personality disorder
7 versus a mental illness in the sense that it would impair
8 somebody's ability to make decisions, control their
9 behavior or act in accordance with the law.

10 Q And again, when you say treat, you mean through
11 therapy, not -- there's no medicine that can make him
12 better?

13 A Correct.

14 Q Did you come to an opinion regarding the capacity
15 to conform?

16 A Yes.

17 Q And what was that opinion, ma'am?

18 A It was the same as before that there was not a
19 mental illness that seemed to cause him to lack the
20 capacity to conform his multiple behaviors. He chose. He
21 did not relay symptoms of a mental illness to the
22 motivation for the specific decision making factors in his
23 -- in the alleged offenses. Therefore, it appears that he
24 had the ability to conform his behavior should he have
25 chosen. If he was -- if he's found guilty.

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1 Q So he did have the capacity to conform his behavior
2 to the law?

3 A Yes.

4 Q And he was responsible criminally in your opinion?

5 A Yes.

6 Q And as far as being competent to stand trial, as
7 part of your evaluation before you were able to proceed,
8 you have to make a finding as to whether or not he's
9 competent?

10 A We have to -- we do the mental status exam and
11 through the interview with him if there was an indication
12 that he was not understanding the questions being asked or
13 unable to attend to the information provided, we would then
14 ask for a full competency evaluation. In this case, there
15 was nothing in his behavior or presentation observed or
16 reported that would suggest he was not competent to engage
17 in the evaluation. Therefore, we proceeded with this.

18 Q Have you also had the opportunity to review a
19 transcript of some testimony from a Dr. Sutton?

20 A Yes.

21 Q And was she able to do any testing that supported
22 your malingering diagnosis?

23 A She testified to have performed a couple of tests
24 to assert and determine whether or not he was feigning
25 psychosis and --

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1 MR. MARTINEZ: Objection, Your Honor, hearsay.

2 THE COURT: Lay the foundation if you can,
3 Solicitor, for --

4 MS. CAMPBELL: The question was just sloppy.

5 BY MS. CAMPBELL:

6 Q Did you review some testimony by Dr. Sutton?

7 A Yes.

8 Q And did that further -- did that testimony aid you
9 or further help you in your diagnosis and your explanation
10 to the jury as far as confirming what you'd already found?

11 A Her testimony seems to confirm my original
12 findings, yes.

13 THE COURT: Mr. Martinez?

14 MR. MARTINEZ: The transcript I was given for
15 Ms. Sutton does not corroborate or go with what her
16 clinical findings.

17 THE COURT: All right. Thank you. Your objection
18 is overruled.

19 Mr. Foreman, ladies and gentlemen of the jury, as I
20 said, an expert witness can give opinion testimony and the
21 basis for those opinions. You do not have to accept their
22 opinions or the basis of those opinions, it is evidence for
23 you, the jury, to use in any way you deem fit and
24 appropriate.

25 Thank you, Solicitor.

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1 MS. CAMPBELL: Thank you.

2 BY MS. CAMPBELL:

3 Q And so she performed some tests?

4 A She did.

5 Q And what did those tests indicate?

6 A She testified that the tests indicated he was
7 malingering or feigning psychosis.

8 Q And psychosis again are the delusions, the chip,
9 those kinds of things?

10 A Correct.

11 Q Doctor, even if Mr. Martinez were to have a real
12 delusional disorder, which nothing indicates he does, could
13 -- can he still be competent?

14 A Yes.

15 Q Is there any indication that any delusion,
16 psychosis, or anything affected his behavior in any way as
17 far as these crimes?

18 A No.

19 Q Thank you, Doctor. That's all I have.

20 THE COURT: Y'all want to press on with
21 cross-examination or you want to take a break? Y'all good?

22 (Is juror raised her hand.)

23 THE COURT: All right. Let's take about a 15
24 minute recess. Do not discuss the case during this brief
25 recess.

1 (The jury left the courtroom at 2:13 p.m.)

2 THE COURT: Yes, sir, Mr. Martinez?

3 MR. MARTINEZ: Your Honor, I have to -- I have to
4 call numerous witnesses that she refers to from these
5 mental health places --

6 THE COURT: Yes, sir.

7 MR. MARTINEZ: -- as well as to obtain -- I have to
8 -- all my medical records at the jail, so in order for me
9 to be able to question her adequately, I'm going to need
10 that information.

11 THE COURT: You're telling me that you do not have
12 copies of your medical records.

13 MR. MARTINEZ: I don't have the exact -- I have it
14 at the jail. I don't have it with me, but I don't -- what
15 she's referring to right here, I didn't expect for her to
16 testify, but from the dates that she got her information
17 from and the things she got her information from, I would
18 like to be able to cross-examine her with that information
19 showing that what she's saying --

20 THE COURT: What are you saying? Just don't give
21 me a general thought. What specifically -- what records
22 are you referring to?

23 MR. MARTINEZ: She refers to Logan Regional
24 Hospital on 3/15.

25 THE COURT: And those are your records.

1 MR. MARTINEZ: Yes, sir.

2 THE COURT: You do not have your records?

3 MR. MARTINEZ: Not here.

4 THE COURT: You have them at the jail.

5 MR. MARTINEZ: Yes, sir.

6 THE COURT: All right. Well, then you have them,
7 you just don't have them here.

8 MR. MARTINEZ: Yes, sir.

9 THE COURT: All right. So -- all right. What
10 records do you not have either here or at the jail.

11 MR. MARTINEZ: I have all these that she refers to
12 at the jail.

13 THE COURT: Okay. I understand. I was
14 misunderstanding what you were saying. So to cross-examine
15 her, you need your copies of those records that the doctor
16 referred to and your copy of those records are at the jail.

17 MR. MARTINEZ: Yes, sir.

18 THE COURT: Okay. All right. And you go back to
19 the jail tonight and you'll be back with us in the morning.

20 MR. MARTINEZ: Yes, sir.

21 THE COURT: All right. So you want to
22 cross-examine the doctor in the morning?

23 MR. MARTINEZ: Yes, sir.

24 THE COURT: All right. I'll allow that. I
25 understand that.

1 All right. Anything else.

2 MR. MARTINEZ: No, sir.

3 THE COURT: All right. Doctor, I'm going to allow
4 you to step down. I'm going to release you for the
5 remainder of the day, ask you if you can be back with us --
6 that's an ask you, of course -- ask you to be back with us
7 at 9:30 in the morning.

8 THE WITNESS: Yes, sir.

9 THE COURT: Thank you. Thank you very much.
10 Any objection to that, Solicitor?

11 MS. CAMPBELL: No, sir.

12 THE COURT: Thank you. Thank you very much.
13 Doctor, you may step down. See you at 9:30 in the morning.
14 You have another reply witness, Solicitor?

15 MS. CAMPBELL: Yes, sir.

16 THE COURT: How many more do you have?

17 MS. CAMPBELL: Just one.

18 THE COURT: Just one. All right. Well, let's take
19 about a 15 minute recess and we'll take up that next
20 witness.

21 (A brief recess was observed.)

22 THE COURT: Mr. Martinez, does the defense intend
23 to present any evidence or testimony in surreply?

24 MR. MARTINEZ: Yes, sir.

25 THE COURT: All right. And could you tell me how

1 many witnesses that would be?

2 MR. MARTINEZ: I'm not sure right now. Like I
3 said, I have to go through the doctor reports, the medical
4 reports. I'm thinking like three.

5 THE COURT: All right. Well -- I'm going to make
6 arrangements today to have those individuals present
7 tomorrow. Are they under subpoena?

8 MR. MARTINEZ: No, sir, Mr. Kata's filling that out
9 right now.

10 THE COURT: Can you tell me who they are.

11 MR. MARTINEZ: I know one of them is Larry Jackson,
12 he works at Department of Mental Health, the one where I
13 was -- where I was going to and he was like interviewing
14 me.

15 THE COURT: Columbia Area Department of Mental
16 Health?

17 MR. MARTINEZ: Yes, sir.

18 THE COURT: Mr. Jackson.

19 MR. MARTINEZ: Yes, Larry Jackson.

20 THE COURT: Larry Jackson, all right.

21 MR. MARTINEZ: And there's a doctor -- Dr. Vernon
22 Scott, he works at Providence -- Providence Hospital.

23 THE COURT: Providence Hospital?

24 MR. MARTINEZ: Yes, sir.

25 THE COURT: All right. That's a Vernon Scott.

1 MR. MARTINEZ: And there's also one of the mental
2 health ladies, a psychologist that I see now. I can't
3 remember -- I don't know her name off the top of my head.

4 THE COURT: Is it Dr. David?

5 MR. MARTINEZ: No, sir.

6 THE COURT: Where was she at? Department of Mental
7 Health.

8 MR. MARTINEZ: Yes, she worked at Columbia Springs
9 or Richland Springs.

10 THE COURT: Richland Springs?

11 MR. MARTINEZ: Yes, sir.

12 THE COURT: Solicitor, do you have records from
13 Richland Springs?

14 MS. GODWIN: I believe so, Your Honor.

15 THE COURT: Let's see if we can identify these
16 people so that we can make sure they're available in the
17 morning.

18 MS. GODWIN: Yes, sir.

19 THE COURT: Would there be any others besides the
20 mental health?

21 MR. MARTINEZ: No, sir. Oh, yes, sir, I want Colbi
22 Sutton.

23 THE COURT: Sutton, we have contact for Dr. Sutton.

24 MR. KATA: Your Honor, she'll be here at 10:30 in
25 the morning, Your Honor.

1 THE COURT: I just don't want to delay once we
2 start in the morning.

3 All right. Anything before we bring in our jury,
4 Mr. Martinez?

5 MR. MARTINEZ: No, sir.

6 THE COURT: Solicitor?

7 MS. WALKER: Your Honor, I'm assuming we should be
8 prepared to close tomorrow as well, right?

9 THE COURT: I can predict anything but the future.
10 I don't know how long the testimony will take, Solicitor,
11 that's Plan A. I'd like to complete the testimony and if
12 we're closing and charging tomorrow, I need those charges
13 by the end of the day today, requests to charge both from
14 the State and from the defense. We'll take that up after
15 we release the jury for -- that's my hope.

16 MS. WALKER: Okay. I just want to be prepared,
17 Your Honor, that's all.

18 THE COURT: All right.

19 (The jury entered the courtroom at 3:37 p.m.)

20 THE BAILIFF: Your Honor, the jury is present.

21 THE COURT: Thank you, thank you, Mr. Whittle.

22 Madame Forelady, before we begin the testimony, I
23 would advise that as you left, Dr. Tross was on the witness
24 stand. She is now no longer on the stand as you see. I
25 have allowed Mr. Martinez overnight hours to review a

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1 volume of records which I think is appropriate. As you
2 know, certain types of testimony can be time consuming.
3 I'm going to give him that opportunity. I'm going to allow
4 that and so the cross-examination of Dr. Tross will not be
5 completed. It will begin at 9:30 in the morning, when we
6 return. And as I say, that's -- I think that's appropriate
7 to give him that opportunity to do so.

8 So we have one other reply witness -- is that
9 correct, just one other reply witness?

10 MS. CAMPBELL: (The solicitor nodded head.)

11 THE COURT: So we're going to complete the reply
12 testimony before the end of the day today, whenever that
13 may be.

14 Solicitor, call your next witness.

15 MS. CAMPBELL: May it please the Court. The State
16 calls Dr. Grey Amick.

17 THE COURT: All right. Dr. Amick, if you'd come
18 around and join us, please.

19 GREY AMICK,
20 having been duly sworn, testified as follows:

21 THE CLERK: Please have a seat. State your full
22 name for the record.

23 THE WITNESS: My name the Grey Amick.

24 **DIRECT EXAMINATION**

25 BY MS. CAMPBELL:

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1 Q Dr. Amick, where are you employed?

2 A Richland County Sheriff's Department.

3 Q What do you there?

4 A I'm a laboratory director, the forensic laboratory
5 director.

6 Q And as the forensic laboratory director, what do
7 your duties include?

8 A I oversee all the disciplines that we have
9 available at the sheriff's department, including
10 ballistics, drug ID, latent prints, crime scene, DNA and
11 firearm analysis.

12 Q And you mentioned DNA, do you have any expertise in
13 DNA analysis?

14 A I do.

15 Q Can you tell the jury a little bit about your
16 education and your training as a DNA analyst?

17 A I have a BS in Biology from 1989 and a PhD in
18 Biochemistry in 1993 from the University of South Carolina.
19 I was employed at the State law enforcement division in
20 1993 in the forensic's lab. I worked there for 11 years, 6
21 of which was in the DNA department.

22 In 2004, I was hired by the Richland County
23 Sheriff's Department with John Baron, another analyst who
24 started the DNA laboratory there at which time I was the
25 DNA technical leader until the beginning of last year,

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1 where I was promoted to laboratory director.

2 Q And as the DNA technical leader, what did your
3 duties include?

4 A To validate the procedures, to write the protocols,
5 be responsible for all the technical operations of the
6 laboratory as well as analysis of case work.

7 Q At some point during the course of your tenure at
8 Richland County, did you also become an advisor from SLED
9 as well?

10 A Yes, I served as interim technical leader for the
11 DNA laboratory at SLED for a 9 month period around 2009.

12 Q And that was at their request?

13 A That's correct.

14 Q And you did that in addition to your other duties?

15 A That's correct.

16 Q And do you actually do any DNA analysis or have you
17 in the past?

18 A Yes.

19 Q And how long have you been doing DNA analysis?

20 A I did it for 6 years at SLED and for the entire
21 time, including now as laboratory director at Lexington
22 County. So that's 18 years.

23 Q 18 years?

24 A Uh-huh.

25 Q And your laboratory, is it accredited in any way?

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1 A It is.

2 Q What's the purpose of having an accredited
3 laboratory?

4 A The purpose is to adhere to a group of quality
5 standards, basically to make sure everybody is doing it the
6 same way across different laboratories to make sure things
7 like protocols and quality measures are all uniform,
8 basically to adhere to quality standards that are
9 prescribed by the accrediting agency.

10 Q Are there any procedures that are put in place by
11 the accrediting agency to ensure the quality of your
12 results?

13 A Yes. There are recommendations and we -- we put
14 the procedures in place and to comply with the standards
15 that they have published.

16 Q And is your laboratory subject to being audited?

17 A Yes, it is. We -- the accreditation has a
18 five-year assessment cycle with an every year all site
19 assessment or on-site assessment as well as the FBI has
20 additional audit requirements for DNA laboratories that
21 requires every year we have an audit. Once -- every other
22 external and every other internal, so every year there's an
23 audit, every other year one of those is an external audit.

24 Q Have you been qualified before as an expert in DNA
25 analysis?

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1 A Yes, I have.

2 Q And approximately how many times have you been
3 qualified in DNA analysis?

4 A Over 90 times.

5 Q Over 90 times?

6 A Yes, ma'am.

7 MS. CAMPBELL: Your Honor, at this time we'd offer
8 him as an expert in DNA analysis.

9 THE COURT: Thank you, Solicitor.

10 Mr. Martinez.

11 MR. MARTINEZ: No objection, Your Honor.

12 THE COURT: All right. Again, ladies and
13 gentlemen, the opinion testimony of the witness, Dr. Grey
14 Amick will be qualified as an expert in DNA analysis to
15 give opinions in that regard and the basis for those
16 opinions. You may use the testimony in any way you deem
17 fit and appropriate.

18 Thank you, Solicitor. You may ask your next
19 question.

20 MS. CAMPBELL: Thank you, Your Honor.

21 BY MS. CAMPBELL:

22 Q Doctor, let me ask you this: Were you -- have you
23 had an opportunity to review the findings in this case?

24 A Yes, I have.

25 Q And before we get to that, is there a certain --

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1 certain guidelines that are in place to insure the quality
2 of y'all's results, certain group that kind of dictates how
3 forensic testing is done?

4 A Yes, there is.

5 Q Can you explain that to the jury?

6 A The accrediting body that we prescribe to is ASCLD,
7 American Society of Crime Laboratory Directors. But within
8 that group, there are other bodies that kind of direct
9 quality measures. One is the FBI, and they actually set
10 the most stringent quality measures that we adhere to. But
11 they also get recommendations from the group called SW GDM,
12 I think that was mentioned earlier: A Scientific Working
13 Group in DNA. Those SW GDM groups, they exist in all
14 different forensic disciplines.. There's SW GUN for
15 ballistics or SW GDRUGS for drug analysis, so those groups
16 are composed of scientists in the field that get together
17 and discuss policies and quality measures and recommend
18 certain guidelines for each of those disciplines. So those
19 are -- those are incorporated into our quality system as
20 well.

21 Q And you're talking about the same guidelines as you
22 say the FBI?

23 A Right. The FBI quality standards are what we are
24 audited on every year and those are also adopted by the
25 international accrediting body which is our big accrediting

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1 body.

2 Q And are there other groups out there that may or
3 may not criticize forensic testing as well?

4 A Yeah, there's plenty of other groups that have
5 opinions on forensics.

6 Q As in any discipline?

7 A Yes, correct.

8 Q But the guidelines that you follow, are those the
9 accepted guidelines within the scientific community?

10 A They are. Those -- those kind of comprise the
11 guiding documents that we adhere to for our accrediting --
12 our accreditation.

13 Q And again, if your results are found to be flawed
14 or any review or audit of anybody comes in and finds a
15 problem with you, could that affect your accreditation?

16 A Yes, it can.

17 Q So that's something you take seriously?

18 A Yes, it is.

19 Q There's been talk in this courtroom of like single
20 source DNA analysis versus multiple source DNA analysis.
21 Has DNA evolved over the years as many sciences do?

22 A Yes, it has.

23 Q And when testing is done, say of evidence from a
24 crime scene, is it unusual to find more than one source in
25 say like a swab that's collected from the scene or

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1 something of that nature?

2 A Not these days, it's actually quite common to find
3 mixtures.

4 Q And traditionally, even say in rape cases with
5 semen mixtures, were there mixtures all along?

6 A Yeah, we expect to see a mixture in a rape case.

7 Q So to say a mixture cannot be analyzed is a
8 mischaracterization at the very least?

9 A Most mixtures can -- can be -- we see mixtures all
10 the time and we interpret mixtures all the time. There is
11 -- there are certain circumstances where we cannot
12 interpret certain mixtures, but we -- almost on a daily
13 basis, we interpret mixtures.

14 Q And in your laboratory, do you have certain
15 equipment which helps you as far as extracting DNA and then
16 analyzing it as well?

17 A Yes, we do.

18 Q Can you explain that to the jury, what kind of
19 equipment y'all have made sure that you're up to date on?

20 A Well, the analysis has gotten more and more
21 sensitive. Most of all we see mixtures. So when we
22 analyze a swab from any piece of evidence, the old methods
23 weren't as sensitive so you don't pick up those lower level
24 components. So now we pick those up, but what has happened
25 is there are now computer programs that can de convolute

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1 those mixtures and I think that's what you're asking about.

2 Those programs are available now to forensic
3 scientists. They are vetted for the past, probably, 10
4 years in forensics through annual meetings of sign tests,
5 presentations and then documental evaluation of those
6 systems.

7 So in the last 3 to 4 years, those programs have
8 made it into laboratories, they've been developmentally
9 evaluated and internally evaluated and put into practice.
10 Now these programs can take mixtures and basically tell you
11 what is prop -- what the genotypes are probably there, how
12 likely a genotype is there. And it takes them a long time
13 to do it because it's a mathematical algorithm. But, it
14 can basically de convolute these mixtures without human
15 interference. So you put the information in the computer.
16 You get some basic information and it de convolutes that
17 mixture. Then we as analysts can take that information and
18 compare it to suspects or victims that may be in the case.

19 Q So the newer programs such as two alleles, actually
20 enhance your ability to get good results?

21 A It allows us to interpret mixtures. I guess -- I'm
22 trying to think of the best word. It doesn't -- I guess
23 enhancement is probably a good word. It enhances our
24 ability to de convolute those complex mixtures.

25 Q And a program such as true allele which is referred

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1 to here, is that different than the prior program you had
2 in place 2-and-a-half years ago?

3 A We didn't have a program to do that at all, so we
4 manually would interpret those mixtures. And we still
5 mainly interpret mixtures, we just have the tool now to
6 help us decipher these complex mixtures.

7 Q And is this something that y'all just got in the
8 mail one day and was up and running the next day?

9 A No, it's not.

10 Q And how did that happen. What vetting did you do
11 to make sure that you were able to use this instrument
12 properly?

13 A So any new technology that we implement in the
14 laboratory, again, there's sections in those quality
15 documents that tell us how to basically implement new
16 technology. And the component of that is called
17 validation. Any new technology, whether it's a computer
18 program or a new experiment that we do in the lab has to go
19 through what's called developmental validation, which is
20 done by the company who's offering the product. So they
21 have to do a series of experiments prescribed by the FBI
22 and their quality standards.

23 And then internal validation, which the laboratory
24 who is running it has to do, so we -- we had to do that.
25 So all these check boxes have to be checked for us to be

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1 able to begin to put it online. Then we have to have
2 training in the protocol to implement the technology.

3 Q And in your department, are you available if say a
4 defense attorney or a defense expert wants to talk to you?

5 A Yes, I am.

6 Q Was that done in this case?

7 A No, it was not.

8 Q There was also some mention -- and as far as you --
9 do you give lectures on DNA analysis?

10 A Yes, we actually -- I teach a -- or I help teach a
11 course at USC in forensics.

12 Q And in addition, sometimes you're a guest speaker
13 at conferences as well?

14 A I am.

15 Q And there was mention of a report from PCHAST?

16 A Yes.

17 Q What is that?

18 A That was a group that was solicited by the federal
19 government to look at forensics, several different fields
20 of forensics to give an opinion about how to possibly
21 improve some things, give some opinions and recommendations
22 on certain components of forensics.

23 Q So when you say forensics, it's more than DNA?

24 A Yeah, there is DNA; fingerprints are involved,
25 firearms is involved; many of the comparative sciences were

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1 involved.

2 Q Pretty much all of comparative sciences?

3 A Right.

4 Q And DNA, when you're doing your DNA test, do you
5 have a dog in the fight? I mean, do you have a goal to
6 implicate someone?

7 A No, no.

8 Q Has DNA done more to exonerate people as well as
9 implicate people over the last 15 years or so?

10 A We do report plenty of exclusions as well as
11 inclusions, yes.

12 Q And in that, just one other thing about the PCHAST
13 report, does it actually recommend certain programs be used
14 on those complex mixtures?

15 A It does. So it made a couple of recommendations,
16 but the issue with these groups that make these
17 recommendations are a couple of things. One, they're
18 recommendations, they're not part of our guiding documents.
19 So any group can come along and make a recommendation to
20 any forensic group or any other group saying this is how we
21 think you should do it, but until they are part of your
22 guiding documents, it would actually be quite irresponsible
23 to put them into our protocol.

24 Actually it would be detrimental to our lab.
25 Because if we were to take a recommendation from just a

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1 random group and implement it and then be audited by our
2 accrediting body and they ask us, Well, why did you do this
3 and we say, Oh, it's a recommendation we had from this
4 group over here, then they would probably come back and
5 say, Well, it's not part of our standards so we're going to
6 issue a finding on your lab.

7 So to just take a recommendation from a group like
8 that, no matter who sanctions the group or who calls it a
9 group, that's all it really is at that point. Until it's
10 one of our guiding documents, we cannot just implement
11 those. And that report came out 2 months ago, some of it
12 may eventually work its way into our guiding documents, but
13 at this point, they're recommendations.

14 Q But even that group recommended true allele is the
15 proper way?

16 A Correct. So they made recommendations about the
17 statistical method that probably 99 percent of the country
18 is using right now: CPI and CPE, but they went onto say
19 that these programs that are coming out probabilistic
20 genotyping programs, true alegal being one of them, is
21 probably a more effective way to interpret these mixtures.
22 Again, that's still a recommendation as well.

23 Q And the protocols that were followed in this case
24 as far as the initial testing with the CPE, was that done
25 properly?

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1 A Yes. That method is still in our protocol. This
2 report, I think, was issued 2 years ago. It was, back
3 then, also part of our protocol.

4 Q Okay. So it's still effective even though you have
5 a new program, true alegal, which can give you more
6 information?

7 A That's correct.

8 Q But when it gives you more information, it doesn't
9 change or alter the underlying information, does it?

10 A No, it does not.

11 Q And did we -- there was words yesterday about
12 whether or not it's a DNA protocol versus allele, versus --
13 if there are some -- in the way that people report things,
14 is there some difference of opinion there?

15 A There is. And it's been argued ever since I've
16 been in forensics, semantics about reporting and what's
17 bias and what's not bias. So we did make a conscious
18 decision back in 2005 to use the probability of exclusion
19 versus the probability of inclusion to be more
20 conservative, not to sound like we're trying to include
21 somebody. In fact, we're trying to exclude them.

22 So we chose that inverse calculation. However, how
23 it comes out on the report, you could probably ask a
24 hundred different forensic scientists about wording on a
25 record and probably get a hundred different ways to do it.

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1 So there are many different ways to report it.

2 Now, those programs we talked about, true alegal
3 being the one that I'm familiar with and physianym
4 (phonetic), those programs actually pull out genotypes. It
5 doesn't just pull out the alleles.

6 Q Yes, and that's what they need to know?

7 A Right. So those alleles that I think were being
8 looked at the other day, true, those are consistent with
9 the defendant, but the program surely actually pulls out
10 the genotype, meaning not just alleles, but what it sees as
11 a profile. And then we can ask it, okay. How likely is
12 this person in that mixture and it makes those comparisons.
13 And that was the second statistic we gave. It actually
14 confirmed the original statistic that the analyst drew and
15 that -- that was a CPE statistic. So it not only just
16 says, okay, are these alleles present, it actually looks
17 for the general type or tries to pull a genotype out. And
18 depending on how certain it is, we can tell and report the
19 likelihood that somebody or some profile is in that
20 mixture.

21 Q And when we're talking about mixtures and
22 everything, especially from crime scenes, you can get DNA
23 from multiple people?

24 A Yeah. You can get DNA from multiple people.

25 Q And say someone's down on the ground can you get

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1 DNA that's been left on the floor by somebody else?

2 A It's possible, yeah.

3 Q And if someone else is handling your phone, even if
4 they're just collecting it, can their DNA possibly end up
5 there?

6 A It's possible, yes.

7 Q And so to find what's -- there was some testimony
8 about stray alleles or alleles that don't match anyone, is
9 that unusual or is that something y'all take into account?

10 A It's -- it's not unusual at all. Especially on
11 those samples that are touch samples, samples that are --
12 they could have been handled or touched by different
13 people. We try to identify who's there based on the
14 standards we're given and sometimes we can. Sometimes
15 there are -- there is DNA there that we don't know where it
16 came from and we can never probably explain it.

17 Q And that information is included in all of your
18 reports and in your data, correct?

19 A That's correct.

20 Q And that was provided to the defense in this case?

21 A As far as I know, yes.

22 Q Did you have an opportunity to review the letter
23 that was written by the defendant's expert in this case?

24 A I did.

25 Q And do you make \$2,000 a day?

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1 A No, I do not.

2 Q So you don't make \$730,000 a year?

3 A No, I do not.

4 Q And the first paragraph of the letter, she requests
5 certain information. Was that significant to you in what
6 she was requesting as far as whether she even understood
7 what she had?

8 A Talking about the technical manuals, requesting
9 that?

10 Q And requesting electric something?

11 A Show me what you're talking about.

12 Q (Showing.)

13 A Oh, raw electronic data?

14 Q Yeah.

15 A Yeah, all that stuff was provided after we received
16 this letter.

17 Q After you received that letter?

18 A Right.

19 Q Did you know that she had your actual data before
20 you received that letter?

21 A I don't think she --

22 Q She had the actual data from the results?

23 A She had the printouts.

24 Q The printouts.

25 A She didn't have any electronic data.

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1 Q Okay. And that was all provided to her?

2 A Yes.

3 Q And as far as her criticism of the swabs taken from
4 the labia majora swab, have you reviewed that?

5 A I have.

6 Q And can you explain that to the jury?

7 A The criticism was that she didn't like the way we
8 recorded the number of contributors, again, matter of
9 opinions between experts and how you -- how you report
10 things, I guess. And she also said that because there
11 wasn't much of a result obtained there and she didn't --
12 she was questioning why the data was of poor quality.

13 Q Did anything in her opinion change your opinion as
14 to how that was reported?

15 A No.

16 Q And was it reported properly?

17 A Yes, it was reported according to our protocol.

18 Q And she talks about two alleles in there that she
19 notes had certain things that she doesn't like about them?

20 A All right. So those two alleles are actually --
21 she misidentified them as alleles, they were actually
22 artifacts.

23 Q And what's the definition of artifact?

24 A Artifact is something that you would see during the
25 process that's not part of the profile.

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1 Q Okay. And are you trained to recognize that?

2 A Yes.

3 Q Is Ms. Grant trained to recognize that?

4 A Who?

5 Q I'm sorry. Rachel?

6 A Oh, Ms. Grant. Yes, she is. That's the analyst.

7 Q The analyst.

8 A So her comment was that these alleles were there
9 and she couldn't account for them. I would say it probably
10 is not surprising given that the kit that we run here from
11 what you have seen in the CV of the expert, she is not
12 proficient in that kit. She's never run that kit. She's
13 never run these experiments. She's never run true a legal
14 to an extent that a proficient user would run it. So the
15 fact that she misidentified these as alleles versus
16 artifacts didn't surprise me and that's what her comment
17 is.

18 And artifacts, again that just means -- something
19 that's not part of the profile that's just basically
20 generated by the instrumentation. Whether it's sputter
21 peak that I think was talked about, just a spike an
22 electric call spike, pretty much easily identified by
23 competent analysts.

24 Q And then moving onto Item Number 3, which is a swab
25 of the cell phone, her opinion was that Mr. Martinez's DNA

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1 was not there?

2 A I don't -- from what I gathered her opinion was,
3 she couldn't exclude him, which is an inclusion statement,
4 but she would have reported it, I think her lab would have
5 reported it as inconclusive because she didn't like the
6 statistics available to her.

7 Q So even she had to admit that he's there?

8 A She -- her phrase was cannot be excluded. And that
9 the alleles were consistent with his in that profile.

10 Q And what's the way that I can understand that as an
11 American?

12 A And so, she was correct in that you cannot make a
13 statement about -- you cannot make an inclusion statement.
14 You can't make a match statement, let me put it that way,
15 without qualifying the statistic, so she was able to say
16 cannot be excluded, which is wording we will use sometimes,
17 but she could -- she didn't like the choice of statistic
18 that we use, so therefore, she deemed the whole profile
19 inconclusive. So she made no -- I took from that that she
20 would have made no conclusion with that profile.

21 Q But had she been qualified and knew what she was
22 talking about as far as true alegal, could she have made
23 the statement that's backed by your laboratory?

24 A I would assume she would.

25 Q And what is that? A mixture?

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1 A It would be a likelihood.

2 Q Under the first calculation it excludes what
3 percentage of the population?

4 A That's the CPE 99.999 percent.

5 Q And then y'all went a step further and ran it on
6 the more sophisticated --

7 A Right. So it's over 300 trillion times more likely
8 that Mr. Martinez is in that mixture versus a random
9 person.

10 Q And based on that calculation can you make an
11 assertion as to whether the DNA there is his?

12 A I would say that that genotype that that computer
13 program pulled out makes a statement that is over 300
14 trillion more likely it is his profile than a random
15 person.

16 Q In addition, again your laboratory is subject to
17 being reviewed any day or at any time by ASCLD?

18 A Yeah, we are assessed yearly by it's accrediting,
19 yes.

20 Q And you would have been available if she wanted to
21 talk to you?

22 A Yes.

23 Q And Ms. Grant would have been available as well?

24 A Yes.

25 Q So finally, however you want to argue about the

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1 verbiage, that's his DNA on Item 3?

2 A My opinion, his DNA pro -- his genotype is in that
3 mixture, yes.

4 Q Thank you.

5 THE COURT: Mr. Martinez?

6 **CROSS-EXAMINATION**

7 BY MR. MARTINEZ:

8 Q Mr. Amick?

9 A Amick.

10 Q Amick. You work for who?

11 A Richland County Sheriff's Department.

12 Q You work for the Richland County Sheriff's
13 Department, correct?

14 A That's correct.

15 Q And you stated that true allele is a new program
16 that you guys are using?

17 A That is the program we are using, correct.

18 Q And two years ago when this -- when this test --
19 this DNA was first done, what was you guys using?

20 A We did not have that program available to us. We
21 used the combined probability of exclusion statistic back
22 then.

23 Q And who did the -- who did this original test? The
24 original DNA test?

25 A Rachel Grant.

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1 Q And you stated that she wasn't, at the time she
2 wasn't qualified to do that job?

3 A No, I didn't state that.

4 Q You said at one time she wasn't qualified to do a
5 certain program?

6 A No, I was talking about Ms. Word. She has never
7 been qualified or proficiency tested or efficient in true
8 allele, not Ms. Grant.

9 Q You said -- okay. When was you talking about when
10 Ms. Grant couldn't distinguish the difference between
11 artifact and alleles?

12 A I was talking about Ms. Word. I was looking at
13 Ms. Word's letter and answering questions about what she
14 said about that and that she couldn't -- she couldn't
15 distinguish between an artifact and an allele.

16 Q Okay. She read the report that was given to her
17 from your office?

18 A (Witness nodded head.)

19 Q And does -- let's say an artifact, when it shows up
20 on the DNA test, do you guys mark it as an artifact or do
21 you guys not know whether it's an artifact yourselves?

22 A We do know if it's an artifact.

23 Q So would you mark it as an artifact or would you --
24 how would you know that it's an artifact?

25 A It may automatically be filtered by the software or

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1 we may mark it, yes.

2 Q Okay. And Ms. Word reviewed the mans pubis, the
3 DNA from the mans pubis and this's where she quotes from
4 the report that was given to her from your office that
5 there are two peaks that concerned her in that profile and
6 they are -- they were misreported as being -- as being the
7 victim's, Ms. Hurshman's, when that's not correct?

8 A I don't think that's what she said. I think what
9 she's saying is she couldn't account for these from the
10 standards we run. And what I'm saying is they were
11 artifacts.

12 Q So you're saying they were artifacts?

13 A That's correct.

14 Q So how could Ms. Grant come to the conclusion that
15 there's two contributors to this sample?

16 A Because there's other things you look for in the
17 profile that determine whether there's a mixture or not and
18 she looked at those other things.

19 Q What was the other things?

20 A You can look at the imbalance of the peaks, you can
21 look at peaks that aren't labeled but are present that
22 indicate mixtures. So it's imbalance, number of alleles
23 and basically those are the two main things.

24 Q So where would -- where would these two different
25 alleles come from?

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1 A You talking about the 12 and the 19.

2 Q Yes, sir.

3 A Again, they weren't alleles. They were artifacts.

4 And those were from -- those were artifacts from the victim

5 -- I can't remember the victim's name, from her profile at

6 those locations.

7 Q Why was they not -- why was they not specified and
8 labeled as artifacts?

9 A It's basically the analyst does the interpretation.

10 The analyst makes those calls and it's the analysts

11 discretion as to what notation she would make. She would

12 look at that, the reviewer would look at that and somebody

13 that's not as proficient or as experienced with that kit

14 may look at that and make an improper interpretation.

15 Q So she -- she stated that they was -- all the

16 alleles there were consistent with the victim's, but yet

17 she did not -- but then she goes back and contradicts her

18 statement and says this's two contributors there.

19 A I think the way it was worded is it's a mixture.

20 The major profile's not unlike that of the victim and the

21 minor is too weak to interpret. I think that was the

22 statement if I recall correctly.

23 Q And that would be consistent with there being two
24 people, correct?

25 A That would be -- the statement that there's a

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1 mixture, yes.

2 Q So with that being said, where would the other
3 mixture come from?

4 A We don't know. The minor contributor was too weak
5 to interpret. It didn't match anything and we don't know
6 who it may be.

7 Q But it wasn't consistent with me, it wasn't
8 consistent with the husband. It wasn't consistent with
9 anyone that was tested; is that correct?

10 A All the alleles that were labeled, were consistent
11 with the victim. The smaller component we don't know where
12 those came from.

13 Q On -- is it true that the true allele test in order
14 to do a complex mixture, in order to get those statistics,
15 in order to get those numbers, you have to know exactly the
16 number of contributors?

17 A You have to enter the number of contributors, yes.

18 Q So if you don't know the exact number of
19 exhibitors, you're not going to get the right number; is
20 that correct?

21 A You put the number of contributors in. If you're
22 unsure, you can put -- you can set it up to run another
23 analysis with say -- say you think it's three. You -- and
24 it may be four. You can run it at three or four, but the
25 data that it gives you back will confirm pretty much that

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1 it's three or four or whatever it sees. So it's not going
2 to give you the wrong answer -- it may give you a less
3 likelihood if it doesn't -- if the data doesn't fit the
4 contributors that you tell it you see.

5 Q But in order to get an accurate number, you would
6 have to know the exact number of contributors, correct?

7 A Let me see if I can rephrase it. It's going to --
8 it's going to take the data, fit the data based on what the
9 number of contributors you put in there. So if you don't
10 tell it the proper number of contributors, it's not going
11 to give you -- it's not going to give you a number that
12 would fit our -- the parameters we look for when we run
13 this program.

14 Q So why after -- why did you -- why did your lab
15 rerun the testing after I was -- after you was given a copy
16 of my specialist's report?

17 A Because basically when the initial statistic -- the
18 initial report was written, the statistic that was used was
19 the probability of exclusion. Now, after that would seem
20 to be in question, what's available to us now is the true
21 allele program and the probabilistic genotyping. So we
22 chose to run that since it's available to us now and also
23 report that statistic. So basically it confirmed what the
24 analyst had interpreted initially with the probability
25 exclusion statistic.

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1 Q Let's say if the lab -- I mean the officer, he gets
2 the cell phone and dusts it with whatever he dusts it with.
3 Does that alter the DNA on it?

4 A Dust it like for fingerprints?

5 Q Yes, sir.

6 A We can still get a DNA profile from something that
7 has fingerprint matter on it.

8 Q Even when they get it and then swab it they got to
9 swab it a certain direction; is that correct?

10 A For the DNA collection?

11 Q Yeah.

12 A They don't have to swab it a certain direction, no.

13 Q Do they -- they don't swab it in a specific manner?

14 A I mean there's a specific way to collect it, but it
15 didn't have to be in a certain direction.

16 Q But when you swab it, does it mix it up? Does it
17 mix up DNA's?

18 A Well, it depends on the item. You're collecting
19 all the DNA from one item with one swab. If you think, for
20 example, if you're swabbing a gun, you may swab the barrel
21 and the trigger separately thinking maybe there may be two
22 DNA sources there. But usually for a cell phone, you just
23 take one, or two swabs together and swab the whole cell
24 phone.

25 Q Okay. Let's say this table right here, this is a

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1 bunch of DNA and I get one swab, correct? Or two swabs and
2 I swab it all together, what's going to happen with all
3 this DNA?

4 A If you swab that desk with one swab the length of
5 that desk?

6 Q Yes.

7 A You may not get any profile. You may get one
8 person's profile or you may get a mixture of DNA different
9 profiles.

10 Q And is that possibly what happened with the cell
11 phone?

12 A Well, the cell phone we got a mixture of DNA.

13 Q And there's also a mixture of people that are not
14 mine, it doesn't mix -- it don't match mine, it doesn't
15 match any of the victims; isn't that correct?

16 A That's correct.

17 Q So there's multiple contributors?

18 A That's correct.

19 Q And there's also no way to tell how many people are
20 there?

21 A There is a way to tell, yes. I mean the way we
22 determine how many people are in a mixture, we would use
23 for that same sample.

24 Q Can you tell me how many people are in that
25 mixture?

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1 A There were at least three people in that mixture.

2 Q At least, so there could be more?

3 A There could be more, yes.

4 Q And due to relatedness of the family, you cannot
5 distinguish which one of the family members is on there?

6 A For the minor contributor, that's true.

7 Q So all the family members, you don't know if they
8 can be included or excluded; is that fair?

9 A I think the statement Ms. Grant made was because
10 they are all related that we weren't making a
11 determination. Now, what that means is that when she
12 starts looking at that, or when I look at it or a reviewer
13 looks at it, they can see these people's DNA there, but
14 because they share so many genetic properties, genetic
15 traits, they can't specifically pick these people out and
16 because they're at a lower level that the statement on the
17 report was that basically we're not going to make that
18 statement about those people for the minor component of
19 that item.

20 Q So with Ms. Grant saying that she could establish
21 -- that she could break this DNA mixture apart and tell it
22 -- tell who the family was and who's who and identify every
23 individual in this mixture; is that a true statement?

24 A Can you say that again? I didn't follow that.

25 Q If Ms. Grant testified that she could break down

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1 this mixture and tell exactly who was in this mixture, but
2 yet she didn't in her report and she specifically states
3 that she can't tell who the other contributors are, the
4 family, she can't tell if they're included or excluded in
5 this mixture, so would that be a true statement?

6 A That would be an accurate statement. So -- and
7 that's a scenario where you use probability of exclusion,
8 okay, is what she used. Or a program that can convolute
9 that mixture for you. And that's what we did.

10 Q Does the program tell you -- it's a probability,
11 it's not a guarantee; is that correct?

12 A It's a likelihood.

13 Q So a likelihood is not -- it's not a match?

14 A It's -- we don't express it in terms of a match,
15 no. It's expressed in terms of, we can't exclude this
16 individual and it's more likely 300 trillion times more
17 likely that this profile is in here versus just a random
18 profile?

19 Q It's trillion more times more likely to be
20 contributor to the mixture from item three than any random
21 unrelated individual?

22 A That's correct.

23 Q So that means it could be, it could be anybody
24 that's not related to them?

25 A No, that's not what it means.

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1 Q So it just means, it's just some random
2 probability?

3 A No, it's expressed that way to indicate basically
4 -- let me see if I can rephrase it. There's different ways
5 to express probability and likelihood and this is -- this
6 one is basically saying, it's 300 trillion times more
7 likely to find this profile, is one that matches the
8 defendant than walking out on the street randomly, picking
9 a person at random and finding their profile in that
10 mixture. It's a lot more likely that the defendant's
11 profile is in that mixture than just picking somebody at
12 random. It's 300 trillion times more likely that it's the
13 defendant's profile than just a random person. It's just a
14 way of expressing it.

15 Q You just said that it matches my profile?

16 A No, I said it's 300 trillion times more likely that
17 the genotype that matched you is in that mixture versus a
18 random person.

19 Q And do -- as my -- as my specialist, Dr. Word
20 stated, due to the complex mixture and not knowing exactly
21 how many contributors are in this mixture wouldn't that
22 make it difficult to read?

23 A No. Again, you know, I think she's speaking from a
24 lack of knowledge of the program. We probably went through
25 a year of training and three years of validation of that

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1 program to understand how to use it, what it's doing, how
2 to report it. And my understanding is that she went up to
3 a two-hour workshop. So I think she's probably speaking
4 from more lack of knowledge when she makes those
5 statements. So to me that program is a perfect tool for
6 this type of mixture and it's a tool that takes the
7 evidence, takes the data from the evidence and determines
8 -- it pulls out the genotypes without knowing anything,
9 without any human bias or intervention and then you ask it,
10 okay, those genotypes it pulled out, do they match anybody
11 or is it likely they match anybody and that's when we're
12 able to fashion that statement on the reports.

13 Q Okay. But as you testified, you have to know the
14 exact number of contributors in order for that program to
15 be effective?

16 A That's correct. And again, I would point to Dr.
17 Word's inexperience with the test that we run. She's never
18 run the kit Powerflex Fusion. She may not have even heard
19 of that kit. She's not proficient in that kit, she's never
20 been proficiency tested in that kit. So we have -- she has
21 no experience with what that data looks like. In fact,
22 she's not even qualified based on the FBI standards to
23 audit a lab that runs that kit. You must be qualified --
24 you must be proficiency tested in the kit or the technology
25 that you're auditing or interpreting to be an auditor. So

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1 her inexperience with that kit, to me, is kind of where
2 these statements may have come from.

3 Q Is it not true that Ms. Word's inexperience told
4 you guys, told your office, well she didn't tell you, but
5 she told me through my report that I passed along to the
6 solicitor's and they passed it onto you so you can now
7 obtain the information, additional information that your
8 reports were lacking so she could understand how you guys
9 came to your findings, but is she not the one that notified
10 you that the program that you were running a CPE, CPI test
11 was outdated and insufficient; and therefore, you guys went
12 and ran another test and came up with different results?

13 A Yeah, that's not why we ran it. And it is her
14 opinion that that is insufficient. Like I said, over --
15 probably 90 percent of the forensic labs in the country, in
16 the world use that statistical method. So it is her
17 opinion based on, say a recommendation from a committee
18 that that is not the proper statistic. We ran that because
19 we saw that she had a problem with that statistic. Not
20 that it was incorrect, but, okay. Due diligent, best
21 practice, we'll provide this statistic as well.

22 Q Well, if it's just her opinion and you guys know
23 that you're right, why would you have to retest because of
24 her opinion?

25 A Well, we didn't have to -- we didn't have to

Grey Amick - Cross-Examination by Mr. Martinez

1 produce the second statistic. We did it because she felt
2 like there was a question with that statistic, so since we
3 had that method available to us today, we produced that
4 statistic.

5 Q Is it not true that her opinion came from the
6 forensic science in criminal courts insuring the scientific
7 validity of future comparison methods?

8 A Yeah, that's that committee she's -- that we spoke
9 about before. And my problem with that committee, as I
10 spoke before is there's several groups, no matter who they
11 are or who sanctions them or who asks for their opinion,
12 they put to these people and particularly that one has no
13 forensic scientists on it. There are lawyers, they're
14 academicians, people from universities. They get together
15 and they say, Well, we think this -- this field should do
16 it this way.

17 So that came out two months ago after this initial
18 report and again, I would say it would be quite
19 inappropriate and probably would cause the lab to fall in
20 bad standing with our accreditation body to just
21 incorporate recommendations from a just a random committee.
22 I'm not saying that everything she says is -- there's some
23 validity to what she's saying. I'm not saying everything
24 she's saying is wrong, but we can't just take opinions from
25 committees and incorporate them into our policies. We have

Grey Amick - Cross-Examination by Mr. Martinez

1 -- they have to be part of our guiding documents. They
2 have to be vetted through our technical working group and
3 they have to be implemented in a standard in our quality
4 system. And if they're not and we implement them then we
5 will -- in fact, while we think we're trying to do
6 something progressive and take this recommendation, in
7 fact, we'll end up hurting ourselves because they haven't
8 been vetted and they haven't been incorporated into the
9 standards.

10 Q What -- this committee that you're speaking of,
11 aren't they directly related to President Obama?

12 A They were asked to do this by the federal
13 government, yes.

14 Q And they was asked to do that to make all of the --
15 not all, but the majority of the testing in the criminal
16 procedures and all the DNA laboratories more sufficient,
17 more efficient, and so everybody's doing their job more
18 correctly?

19 A I probably would disagree with the wording there.
20 I mean they're trying to -- always improve and involve the
21 field to make it more universal to make sure everybody's
22 doing it the same way. I mean that's the -- that's the
23 goal of any accrediting body and any of these to make sure,
24 okay, I do it the same way as the Georgia State Lab or
25 North Carolina State Lab or SLED or any other directing

Grey Amick - Cross-Examination by Mr. Martinez

1 body of governing body.

2 Q Okay. The -- how much -- how much DNA was
3 collected from the cell phone cover?

4 A How much DNA?

5 Q Yes.

6 A Yes.

7 Q Would you be -- okay. If it's a little sample,
8 it's going to tend to be weak and hard to read; is that
9 true?

10 A If it's of low concentration -- I mean, either we
11 can see it or we can't.

12 Q And it's not on the record -- on the -- that would
13 make it an issue though with the size of the sample though;
14 is that correct?

15 A Define size for me. I'm not -- make sure I answer
16 the right question.

17 Q Let's say you have -- like Mr. -- Dr. Word said you
18 could have like a body part compared to a drop compared to
19 just a touch, like somebody's touched just from -- from the
20 service of, of this -- this cup right here. Is there going
21 to be a difference?

22 A Yes. There would be a difference in the amount of
23 DNA from those different courses.

24 Q And does this probability test, it doesn't say no
25 matches or nothing like that, does it?

Grey Amick - Cross-Examination by Mr. Martinez

1 A The probability -- which probability?

2 Q The true allele?

3 A No, it's reported as a likelihood, so it's reported
4 as the defendant's DNA is 300 trillion more times likely to
5 be in this mixture than a random individual.

6 Q So there's no concrete evidence or -- in your
7 opinion that states that I'm a match to that DNA?

8 A I probably disagree with that statement.

9 Q So there's evidence that I'm a match in there?

10 A I mean I think we're talking semantics here. We
11 don't -- we don't use the word match unless a single
12 source. So when you're asking me about match, I don't --
13 we don't use that word for single course. We use -- and
14 depending on what kind of statistic we provide, we use a
15 likelihood. So you can ask me if it's a match over and
16 over and I'm going to probably repeat that likelihood
17 statement over and over.

18 Q Okay. And so there's no way that you can say that
19 I'm not in there or that I am in there?

20 A I would disagree with that statement. I can't
21 exclude you and I think it's 300 trillion times more likely
22 you are in there.

23 Q So you're saying that -- you're saying that I can't
24 be excluded, but I cannot be included?

25 A No, I'm not saying that.

Grey Amick - Cross-Examination by Mr. Martinez

1 Q What is your opinion on this?

2 A My opinion, my opinion is that your DNA is included
3 in this mixture and it's 300 trillion times more likely
4 than a random person.

5 Q And you're saying -- are you saying that just
6 because that's what your, Richland County Sheriff's
7 Department DNA forensic says?

8 A That's what the data has told us.

9 Q Okay. Would this have changed -- would this DNA
10 report have changed if you would have put five contributors
11 on there?

12 A If we had put five contributors in the true allele
13 program, it may have changed the number, yes. It may have
14 changed it to 200 trillion, it may have changed it to 100
15 trillion, but it's still a trillions of times more likely.
16 It wouldn't give us -- in addition to that, it would have
17 given us different indicators that that's not what's in the
18 -- that's not what the data is saying. It would give us
19 indicators in the software that no, there's not five or six
20 individuals, so it would -- clueless to run it at a more
21 appropriate number of individuals.

22 Q So you're saying from -- from the DNA test that
23 there's only three individuals in that?

24 A I'm saying that there's at least three individuals,
25 yes.

Grey Amick - Cross-Examination by Mr. Martinez

1 Q And there's more alleles that would say that
2 there's more than that.

3 A I'm saying there's at least three individuals.

4 Q So you wouldn't state from the DNA report that
5 there's other alleles that would clearly state that there's
6 more than three people included in that?

7 A Can you say that again? I'm not following.

8 Q Can you show him the board?

9 MS. WALKER: Sure.

10 THE COURT: Just hand him 25, 26, 27, 28.

11 MS. WALKER: I'm sorry, Judge. I had a hard time
12 hearing.

13 THE COURT: I asked the court reporter.

14 MS. WALKER: Oh.

15 You have them?

16 THE COURT REPORTER: They're over here.

17 THE COURT: All defendants.

18 (The exhibits were handed to the witness.)

19 THE COURT: Thank you, Madam Court Reporter.

20 THE COURT REPORTER: You're welcome.

21 THE COURT: Which one do you want him to look at,
22 Mr. Martinez?

23 MR. MARTINEZ: The one for the cell phone, it's
24 12-27-3.

25 THE WITNESS: Item 3?

Grey Amick - Cross-Examination by Mr. Martinez

1 BY MR. MARTINEZ:

2 Q Okay. Now from --

3 A Hang on now. Okay.

4 Q Okay. Now let's say if you was to take out all the
5 ones they claim are mine, that match me.

6 A Okay.

7 Q And then we was to take out all the ones that match
8 the family?

9 A I don't -- I mean -- I don't have -- I mean I can
10 do that. It will take me a while, but I may be able to
11 answer the question.

12 Q Okay. Now how many more people -- how many more
13 alleles that are not present from my sample and/or the
14 family's sample that would indicate other individuals have
15 touched this phone or that this mixture was mixed together
16 and therefore the alleles are mixed together and you can't
17 really read who's who and which is which?

18 A I can tell you from this profile that there are no
19 more than five alleles at any one locus, okay? And this
20 was -- when we determine how many people are in a mixture,
21 this was kind of mentioned yesterday, you can have it no
22 more than two from one individual. So if it's -- you can
23 have -- so if there are two people, there's a maximum of
24 four. If there's three people there's a maximum of six.
25 So if you have five just as a cursory look here, you would

Grey Amick - Cross-Examination by Mr. Martinez

1 indicate there's three people.

2 So everything -- all the indications from this
3 profile, looking at it right now is that there are three
4 individuals. And that's how I would report it.

5 Q So you're saying that there's three individuals in
6 this report?

7 THE COURT: In this profile.

8 THE WITNESS: In this profile.

9 BY MR. MARTINEZ:

10 Q Yeah, in this profile?

11 A Correct. At least three.

12 Q And least three?

13 A Yes. At least three individuals.

14 Q So you're saying there could be more?

15 A I'm saying there are at least three individuals
16 here.

17 Q Would you agree that there are other alleles in
18 this report?

19 A If you point me to a specific location, maybe I
20 could answer that on the profile.

21 Q Row 23 D 2.

22 A Which D 2? There's two D 2's.

23 Q D-2's?

24 A 1338?

25 Q Yes.

Grey Amick - Cross-Examination by Mr. Martinez

1 A What's the question?

2 Q Whose allele does that match up with?

3 THE COURT: That wasn't the question. What was the
4 question when you directed it to the doctor to that.

5 BY MR. MARTINEZ:

6 Q Oh, whose allele is that consistent with out of the
7 family or myself?

8 A 23? 23 is the stutter position. I would probably
9 call that stutter allele to the 24.

10 Q So, why would that -- you're saying that these
11 others can be a stutter as well then?

12 A I hadn't said anything about any of the other ones.

13 Q Okay. But I'm saying that these other ones can be
14 artifacts or stutters as well?

15 A Which other ones?

16 Q Let's say the -- the 15 that goes to the 16 and
17 then goes to the 17?

18 A Which locus.

19 Q On D. The first -- not the first -- not the
20 genotypes, but the D 3, the D 3?

21 A D 3, yes.

22 Q Yeah.

23 A What's the question?

24 Q Could that be a stutter as well?

25 A Which one?

Grey Amick - Cross-Examination by Mr. Martinez

1 Q It goes 15, 16, 17, 18?

2 A 15 is in the stutter position of the 17.

3 Q So that could possibly be stutter. Stutter --

4 A Stutter as described yesterday, it's usually one
5 peak from the main peak. So from that locus that you're
6 asking me what could be stutter and I'm just saying the 16
7 is in the stutter position of the 17. And I don't know if
8 that answers your question, but that's what I'm seeing.

9 Q So -- so which one could be the stutter?

10 A The 16.

11 Q And what about 17 and 18?

12 A Those are not -- that doesn't indicate stutter in
13 those two alleles.

14 Q So those are consistent with my sample, which is
15 the 15 and 18 and also consistent with Ms. Hurshman's which
16 is 17 and 18?

17 A You're asking me if your alleles are consistent
18 with that -- at that locus?

19 Q I'm saying that -- is it possible that them two are
20 mixed together?

21 A It is a mixture, yes. There is a mixture here of
22 more than one individual.

23 Q Okay. So that's what I'm saying. So could this
24 mixture, you can't distinguish that -- you can't
25 distinguish mine from Ms. -- Ms. Hurshman's?

Grey Amick - Cross-Examination by Mr. Martinez

1 A I'm -- so that's what the true allele program does.
2 It looks at this data and it determines, based on the
3 intensity of these peaks what genotypes are possible here.
4 So that's what it's done. And so it sees a 15, 16, 17, 18
5 and it determines -- it may see alleles that aren't even
6 labeled here as another strength of this program. It
7 doesn't discard any data and it determines what possible
8 genotypes can be here and it may be -- some locations may
9 give you a negative likelihood. Some give you a positive
10 likelihood, but the overall profile is reported in that
11 statement of 300 trillion times more likely.

12 Q Okay. But before it gets to that probability test
13 and that likelihood test, it's interpreted by yourself and
14 Ms. Grant, correct?

15 A We do look at and interpret it, but when the
16 computer looks at it, it's looking at the data without
17 bias.

18 Q Okay. As I stated, is it not possible, which I've
19 shown, it would be impossible to read because Ms. Hurshman
20 has a -- she has a 17, 18 in the first one?

21 A I have an L. Hurshman, D. Hurshman, B. Hurshman
22 and R, Hurshman. So --

23 Q She's -- she's the B Hurshman. It would be a 15
24 and 18?

25 A B. Hurshman is 17, 18.

Grey Amick - Cross-Examination by Mr. Martinez

1 Q 17, 18?

2 A And you are 15, 18 at that locus.

3 Q And what is -- and you said that these locus come
4 in pairs, right?

5 A No, the locus -- or loci do not come in pairs.

6 Q They don't -- so how -- what if they come in just
7 one single?

8 A I think you're talking about the alleles at the
9 loci.

10 Q Yeah.

11 A So at every locus, you get half of your DNA from
12 your mom and half from your dad which is two peaks. If you
13 get the same allele or peak from mom and dad, they're on
14 top of each other and it looks like one peak.

15 Q Okay. So as I was stating, with this mixture of
16 all these people, how difficult would it be to establish
17 who's who?

18 A This mixture is a complex mixture. All right?
19 That's what Ms. Word saw. That's what Rachel Grant saw.
20 That's what I see. That's what you're seeing. And what we
21 do is look for individuals that are included or excluded.
22 That's what happened and then we put a statistic to that
23 inclusion -- and we don't do statistic for exclusion. But
24 -- so initially, the analyst looked at this, saw the
25 alleles present and did a probability of exclusion. Then

Grey Amick - Cross-Examination by Mr. Martinez

1 since there was a question of that stat, best practices, we
2 let the computer look at it and it determined -- or it made
3 a determination of what it saw in that data as well. And
4 so it de convoluted the mixture and that statement that you
5 see about the likelihood is there, which actually
6 corroborates Ms. Grant's original statement.

7 Q And Ms. Grant's original statement is that it's a
8 complex mixture?

9 A Yes.

10 MR. MARTINEZ: No objection, Your Honor. Asked and
11 answered.

12 THE COURT: You may ask your next question, Mr.
13 Martinez.

14 BY MR. MARTINEZ:

15 Q So how -- how new is this -- is this true allele
16 test?

17 A How new is it?

18 Q Yes.

19 A It's been around, probably discussed in the field
20 of forensics for 8, 10 years. It is on the list of FBI's
21 approved expert systems. We've had it since 2013 and
22 implemented it the beginning of this year, 2016, January, I
23 believe.

24 Q Is there any --

25 A I'm sorry, 15.

Grey Amick - Cross-Examination by Mr. Martinez

1 Q Is there any debate about its use?

2 A Debate about its use? There's always discussion
3 about any technique that's used. But again, this program
4 has been one of the ones that has been accepted in our
5 quality circles as a valid program.

6 Q And you -- you don't agree with Dr. Word's opinion;
7 is that correct?

8 A Which opinion?

9 Q Her opinion related to all of the items that she
10 criticized?

11 THE COURT: You need to ask a specific question,
12 Mr. Martinez.

13 BY MR. MARTINEZ:

14 Q Her opinion related to the conclusion for the labia
15 majora swab?

16 A She doesn't state like a conclusion in here. It's
17 in more of a prose form. I don't -- again, I think her
18 opinion comes from ignorance of the test that we use, a
19 lack of knowledge with -- with the test that we use. We
20 are twice a year proficiency tested in these techniques in
21 that program and from what I heard, she indicated she has
22 not been proficiency tested in true allele or in any human
23 identity test for, I think, the last 5 years and has never
24 done any bench work at all.

25 So it doesn't surprise me to see some of these

Grey Amick - Cross-Examination by Mr. Martinez

1 opinions and so, to answer your question, no, I don't agree
2 with a lot of her opinions, and, however, I can see how
3 somebody could possibly make those opinions or have those
4 opinions because it comes from a lack of knowledge.

5 Q Her -- as she testified she's not a technician, she
6 is an analyst who reads, interpreted data that is provided
7 to her. And she interpreted the data she received from
8 your office and as she stated it was lacking a lot of
9 information. It wasn't efficient, it wasn't sufficient.

10 THE COURT: Is that a question?

11 BY MR. MARTINEZ:

12 Q Oh, okay. Was -- did your laboratory have to
13 provide additional notes and reports and standard operating
14 procedures and other specifics for how you're testing gets
15 ran and --

16 A Yes, so originally we were requested to provide our
17 case notes and it's very common in any case. So we provide
18 all the case notes that's a printout of all the data. So
19 that's what we provided and then this was generated and the
20 solicitor's office, her report came to us and it indicated
21 she didn't have what she needed to do an interpretation, so
22 our question was, well, what does she need. Can you tell
23 us what she needs to do that. So she made an official
24 request for our protocols and we provided those to her
25 along with the electronic data.

Grey Amick - Cross-Examination by Mr. Martinez

1 So it wasn't like we didn't give her what she
2 wanted. We gave her the normal discovery information and
3 then she had to tell us ha additional she wanted and we
4 provided that..

5 Q Okay. And in those notes, did you state whether it
6 was one swab or two swabs tested?

7 A What item are you talking about?

8 Q On every item?

9 A We indicate how many swabs are collected and how
10 much remains from that collection.

11 Q Is there still DNA -- is there still a swab left
12 over from the cell phone cover?

13 A Yes. From the cell phone cover, Item 3, 20 percent
14 remains. So part of your quality system indicates or makes
15 a recommendation for us to retain some sample for
16 additional testing -- for defense testing. So we retain,
17 when possible, a component of the evidence that's available
18 for additional testing by anybody.

19 Q So there's -- if I wanted to test that, I would be
20 able to test that swab?

21 A Yes.

22 MR. MARTINEZ: Beg the Court's indulgence.

23 THE COURT: Yes, sir.

24 (There was a pause in the proceedings.)

25 BY MR. MARTINEZ:

Grey Amick - Cross-Examination by Mr. Martinez

1 Q Okay. So on the swab taken from the mans pubis, do
2 you agree with the results from the opinion from the mans
3 pubis?

4 A From who?

5 Q From Dr. Word.

6 THE COURT: I thought that was paragraph -- the
7 first one you addressed with Dr. Amick.

8 MR. MARTINEZ: That was the labia majora.

9 THE WITNESS: Tell me what opinion you're referring
10 to. Like tell me the statement, the opinion statement.

11 BY MR. MARTINEZ:

12 Q Let's see, the second paragraph there are --
13 concerning this profile?

14 A Yes, I disagree with her opinion -- I disagree with
15 her opinion on that.

16 Q Why would you disagree with that?

17 A Again, as I stated, those are artifacts. Those are
18 not alleles.

19 Q And as she states, if they are artifacts, what
20 should have been done?

21 A Well, it's up to the analyst to indicate that or it
22 could be misidentified by Dr. Word. So when you look at
23 that profile, you either see them as alleles or as
24 artifacts. So when you look at that profile they are
25 clearly artifacts.

Grey Amick - Cross-Examination by Mr. Martinez

1 Q And how can you distinguish an artifact from a true
2 allele?

3 A I'm -- based on your experience and training with
4 the kit that you're using.

5 Q So pretty much discretion?

6 A Not discretion. It's experience. You see and are
7 trained to use that kit and so therefore, you're familiar
8 with the results that you may get from it. So when you see
9 these certain results over and over and over, you gain the
10 experience to know, okay. This is an artifact or this is
11 an allele.

12 Q So you're saying that through experience, you gain
13 -- you get to know if it's a stutter, if it's an artifact,
14 if it's not even --

15 A That's exactly right.

16 Q So you don't agree that if it's an artifact it
17 should have been re amplified and then rerun to see exactly
18 if it's an artifact or if it's a true allele?

19 A It can be. That's one possible way to determine
20 artifact. It could have been, yes. It doesn't have to be,
21 but it could have been.

22 Q And Ms. Grant's interpretation, you agree with
23 that?

24 A For which item?

25 Q For the same one I'm speaking of, the mans pubis?

Grey Amick - Cross-Examination by Mr. Martinez

1 A Yes, she stated that it's a mixture of at least two
2 individuals. Nathan Martinez is excluded as a contributor
3 and Briona Hurshman and Robert Hurshman cannot be excluded
4 as a contributor. I agree with that statement, yes.

5 Q So what she's saying is it's a mixture, correct?

6 A Yes.

7 Q That means that she didn't label them true
8 artifacts as -- I mean two alleles as artifacts?

9 A It means she looked at the profile and with her
10 experience determined it was a mixture so that's why she
11 said under the circumstances a mixture.

12 Q So that's what I'm saying: She didn't state in her
13 report. She claimed that there was another DNA present?

14 A She stated it's a mixture, yes.

15 Q So she didn't state that those two separate alleles
16 are artifacts. She claimed that there's another
17 contributor?

18 A She didn't -- she didn't base that statement on
19 those two artifacts you're talking about.

20 Q So if that's the case then, as Dr. Word stated,
21 that if she does state that there's Ms. Hurshman there --
22 and possibly someone else, that means there could be
23 another person there as well?

24 A I don't think -- I understand your question. I
25 don't think I agree with that statement.

Grey Amick - Cross-Examination by Mr. Martinez

1 Q But that's stated from the report that was --
2 because as stated there's -- from Ms. Grant, she didn't --
3 she didn't even -- on the mans pubis, she didn't even one
4 of the -- on the 19 allele, she crossed it out and gave no
5 explanation as to why she was crossing it out and she
6 stated that Ms. Hurshman's was the highest peaks, which
7 they wasn't because that 19 was the highest peak?

8 A Where does it say that?

9 Q This peak suggests a possible --

10 THE COURT: Where does it say that? Not read it.
11 Where does it say that?

12 MR. MARTINEZ: It states it on the second paragraph
13 on page 2 of Ms. -- Dr. Word's report or opinion.

14 THE WITNESS: I thought you were saying that Rachel
15 grant said that, so I'm not even -- I'm not following you.

16 BY MR. MARTINEZ:

17 Q Okay. Rachel Grant stated in her report that
18 Briona Hurshman was a major contributor to this sample?

19 A No, she did not.

20 Q She didn't?

21 A On the mans pubis?

22 Q Yes.

23 A Her result reads, the DNA result developed from the
24 mans pubis is a mixture of at least two individuals, Nathan
25 Martinez is excluded as a contributor. Briona Hurshman and

Grey Amick - Cross-Examination by Mr. Martinez

1 Robert Hurshman cannot be excluded as contributors. It
2 doesn't say that there's a major contributor there.

3 Q Ms. Grant testified that a week ago, she did see
4 someone else's DNA there but it was too weak for a match.

5 A I'm looking at her report and I agree with that
6 statement on the report.

7 Q Okay. So you wouldn't agree with her statement
8 that she testified to that she stated --

9 THE COURT: Under State versus Battle, we can't pit
10 witnesses.

11 MR. MARTINEZ: All right.

12 BY MR. MARTINEZ:

13 Q All right. So with the peak -- okay. Ms. Hurshman
14 -- how can you tell a major contributor?

15 A How can you tell a major contributor, if their
16 alleles or the peaks are higher, much higher than the other
17 mixture components there.

18 Q Okay. And does Ms. Hurshman's peaks go higher than
19 a 19 in that -- in that sample?

20 A Let me pull up the electronic program.
21 Ms. Hurshman being -- what's the first initial for
22 Ms. Hurshman?

23 Q B. Hurshman.

24 A And we're talking about the mans pubis?

25 Q Yes, sir.

Grey Amick - Cross-Examination by Mr. Martinez

- 1 A Okay. What's your question?
- 2 Q Does Ms. Hurshman's peak go higher than a 19?
- 3 A At what locus?
- 4 Q D -- D-5 S 8 13.
- 5 A Does Ms. Hurshman's -- say that again.
- 6 Q You stated that for them to be the major
7 contributor their peaks have to go at a certain level,
8 correct?
- 9 A Yes.
- 10 Q So does her peaks ever peak out higher than a 19?
- 11 A At D-5.
- 12 Q Yes, sir.
- 13 A The 19 that she's crossed out?
- 14 Q Yes, sir.
- 15 A Yes. The 12 allele that B. Hurshman has at D-5 is
16 at 8 35. The 19 artifact is at 204 RP. Does that answer
17 your question?
- 18 Q In that level, there's already -- Ms. Hurshman on
19 that D-5 is 8 15 or 3, she already has a 12 and a 13 there;
20 is that correct?
- 21 A There is a 12 and 13 there, yes.
- 22 Q And on the mans pubis at that same area there's a
23 12 and a 13 there as well, correct?
- 24 A Correct.
- 25 Q And then there's also a 19?

Grey Amick - Cross-Examination by Mr. Martinez

1 A That's been struck out, yes.

2 Q Okay. So would that -- would that state that
3 there's someone else's DNA there?

4 A There is someone else's DNA there. This is a
5 mixture. That's stated in the first statement of that
6 swab. It's a mixture.

7 Q Okay. And is it -- is this other DNA consistent
8 with her, my DNA?

9 A The mans pubis. Nathan Martinez is excluded as a
10 contributor to this mixture.

11 THE COURT: He's stated that several times, Mr.
12 Martinez.

13 BY MR. MARTINEZ:

14 Q Is it consistent with her husband's DNA?

15 A What is her husband's name? I can tell you if it
16 is --

17 Q Robert?

18 A -- Robert Hurshman, he cannot be excluded so from
19 that statement it would be inconsistent -- he would be
20 consistent with somebody in this mixture.

21 MR. MARTINEZ: Beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 BY MR. MARTINEZ:

24 Q Do you have Robert Hurshman's sample there?

25 A I do.

Grey Amick - Cross-Examination by Mr. Martinez

1 Q Could you tell me how consistent his profile is in
2 this mixture?

3 A How consistent? You don't use those terms. And --
4 you want me to look at any certain locus?

5 Q Yes, sir.

6 A Which one?

7 Q These -- his -- how many his is like different,
8 it's like a filtered Y filler have different numbers than
9 the other ones?

10 A I don't know what you're looking at.

11 Q On his it's 1227 R. Hurshman?

12 A Okay.

13 Q And he has a -- let's see, the second line, it goes
14 like G D Y S 45?

15 A You're looking at the Y STR profile.

16 MR. MARTINEZ: I'm sorry, excuse me. Beg the
17 Court's indulgence.

18 (There was a pause in the proceedings.)

19 BY MR. MARTINEZ:

20 Q Can you tell me what number his is?

21 A What his profile is at D-5.

22 Q No, what his number is on -- that's only --

23 THE COURT: What's the question, Mr. Martinez?

24 MR. MARTINEZ: I need -- Ms. -- Mr. Hurshman's
25 doesn't -- I'm looking at -- what did you say it was?

Grey Amick - Cross-Examination by Mr. Martinez

1 THE WITNESS: I think you're -- look at the Y STR
2 profile.

3 BY MR. MARTINEZ:

4 Q Yeah, I need his -- the DNA one that matches him.
5 Do you know what number it is?

6 A It's probably labeled the same way 1227 B.

7 Hurshman.

8 Q I need R. Hurshman?

9 A 1227 R. Hurshman is the way it would be labeled.

10 Q Okay. On the -- how come his is stated differently
11 than -- he was different numbers?

12 A Because you're looking at the output from a
13 different kit from the Y STR kit that was also run. I'm
14 looking at the PowerPlex Fusion kit that is analogous to
15 the evidence. I think that's what's happening.

16 Q So you're saying there was two different tests ran?

17 A Yes. There are two different kits run and that's
18 stated -- there's a statement at the bottom of the report
19 about the Y STR profile.

20 Q And why -- these were done at different times,
21 correct?

22 A These analyses, the Y kit was run June 26th of 2014
23 and the fusion kits were run, it looks like June of 2014.

24 Q So how much time gap was in between those tests?

25 A 26 days.

Grey Amick - Cross-Examination by Mr. Martinez

1 Q 26 days. And how come there was different tests as
2 to Robert Hurshman?

3 A Like I said, the Y STR kit is another tool that's
4 specific to the male components. So when we have a
5 male/female mixture, it's a tool we can use to just analyze
6 the male component. So we would have to run the evidence
7 with the Y STR kit and we would run any male individuals
8 involved in the case with that kit. So I think what you're
9 looking at is the Y STR profile from that individual.

10 The attempt was made also and the statement on the
11 report is that the Y STR DNA result developed from the
12 right breast is too weak for match purposes. So the only
13 thing that was run with the evidence looks like the right
14 breast. But we would have run the standards as well, which
15 would include that individual.

16 Q So how can we match this -- what is it, the Y Test,
17 with the other test and see how or if Mr. Hurshman's DNA is
18 in -- is in these other tests that are done?

19 A For which item?

20 Q For the mans pubis, the right breast and labia
21 majora.

22 A So based on these notes, the only item that was run
23 with the Y -- the only evidence that I know of that was run
24 with the Y is the breast, the right breast and that's what
25 the statement on the report indicates. The other items

Grey Amick - Cross-Examination by Mr. Martinez

1 haven't been indicated they were run with that test.

2 Q Okay. So --

3 A So you can't compare -- I think you're getting
4 confused. If you want to compare the husband's profile to
5 this mans pubis swab, you need to have in your hand the one
6 that says 1227 R. Hurshman PowerPlex Fusion and then we can
7 make that comparison. You can't compare that Y profile to
8 another kit, another sample that wasn't run with the Y kit.

9 Q Okay. So with that being said, how can you state
10 in your report that Mr. Hurshman can't be excluded?

11 A Because we did run him with Fusion. I have it
12 right here. He's been run with the regular kit, the Fusion
13 kit and the Y kit. So what I thought you were going to ask
14 me was what is his profile at D-5, which I would have said
15 11, 12. What's her profile at D-5? It's 12, 13 and the
16 evidence is 11, 12, 13. So -- but I just think you have
17 the wrong profile in your hand to ask the question.

18 MR. MARTINEZ: Yeah, is there any way I can get a
19 copy of that Your Honor? I don't have that in my notes.

20 THE COURT: You offered it into evidence Mr.
21 Martinez.

22 What are you looking at doctor?

23 THE WITNESS: I'm looking at the case jacket that
24 was --

25 THE COURT: The item number. You're looking at

Grey Amick - Cross-Examination by Mr. Martinez

1 something --

2 THE WITNESS: Defendant's Exhibit 25.

3 THE COURT: Defendant's Exhibit 25 is offered into
4 evidence right here. It's the report by --

5 MR. MARTINEZ: No, I'm talking about the R.
6 Hurshman.

7 THE WITNESS: Or 28. I'm not sure.

8 BY MR. MARTINEZ:

9 Q Is that the one you said the 1227 R. Hurshman, the
10 one that -- not the Y kit but the other, the Fusion?

11 A It's right here, yeah.

12 Q Is that from your notes or from --

13 A No, I didn't bring any notes up here.

14 THE COURT: It's from what exhibit, Doctor?

15 THE WITNESS: 28.

16 THE COURT: Defense Exhibit Number 28.

17 MR. MARTINEZ: Can I see that, please.

18 THE COURT: Of course.

19 MR. MARTINEZ: I might have -- beg the Court's
20 indulgence.

21 THE COURT: Yes, sir.

22 (There was a pause in the proceedings.)

23 THE COURT: Do you have other questions, Mr.
24 Martinez?

25 MR. MARTINEZ: Yes, Your Honor. I turned in my

1 copy that I was referring to.

2 THE COURT: I'm sorry, I couldn't quite hear you.

3 MR. MARTINEZ: I said I turned in my copy that I
4 was referring to so I don't have the paper I need.

5 THE COURT: All right. Well, perhaps now would be
6 a good time to take our evening recess and make
7 arrangements for copies to be made of all of the exhibits
8 for you. All right.

9 MR. MARTINEZ: All right. Thank you.

10 THE COURT: Thank you, thank you very much.

11 Thank you, Dr. Amick. You may step down. Be back
12 with us at 9:30 in the morning.

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: All right. Ladies and gentlemen,
15 perhaps now would be a good time to take our evening
16 recess.

17 During this recess, do not discuss this case with
18 others, family, friends or anyone else. Do not read,
19 watch, listen to any news reports about the case should
20 there be any. Do not do any independent investigation or
21 any investigation on the internet. Do not search any
22 information about a party, witness, attorney, or court
23 officer, news accounts of the case, past or present.
24 Information collected through juror research on any other
25 topics raised on testimony offered by any witness or

1 information collected through juror research on any other
2 topic the jury might think would be helpful in deciding the
3 case.

4 Remember, you decide the case based on the evidence
5 and testimony presented before you in the jury room,
6 reasonable inferences and the law as I tell you the law is.

7 With that being said, Juror 204 -- you with us
8 tomorrow? Is that right?

9 THE JUROR: Yes, sir.

10 THE COURT: Thank you, thank you so much.

11 With that being said, y'all please be back promptly
12 at 9:30 in the morning. 9:30 in the morning. Hope y'all
13 have a pleasant evening.

14 (The jury left the courtroom at 5:26 p.m.)

15 THE COURT: Madam Clerk, would you secure their
16 notes.

17 THE CLERK: Yes, Your Honor.

18 THE COURT: Madam Clerk, would you make some copies
19 for me, please?

20 THE CLERK: Yes.

21 THE COURT: Of Defendant's -- I think it's 25, 26,
22 27, 28, and 29. Make sure they're provided to Mr. Kata for
23 Mr. Martinez before Mr. Martinez departs today.

24 THE CLERK: I'll attempt.

25 THE COURT: Ma'am?

1 THE CLERK: I'll try to. Our office may be closed.

2 THE COURT: Is there any other way they can be
3 copied?

4 Solicitor, can someone make these copy's for Mr.
5 Martinez?

6 MS. CAMPBELL: Yes, sir.

7 THE COURT: All right. Request to charge.

8 MS. CAMPBELL: Your Honor, may I approach?

9 Your Honor, the last one -- I had it typed up, but
10 somehow it got lost, but this is standard charge on all of
11 it.

12 All right. What am I waiting on now? Is there
13 another request to charge?

14 MR. KATA: Yes, Your Honor. He had written down
15 some questions. We were making copies.

16 MS. CAMPBELL: He wrote out a request to charge
17 that apparently refers to Anderson's charge but he put it
18 in section numbers or something. So we're just making a
19 copy of that so you can have a copy too.

20 THE COURT: All right. Well just -- Mr. Kata bring
21 that back to my chambers before we break for the evening.

22 MR. KATA: Yes, Your Honor.

23 THE COURT: Anything else, Solicitor, before we
24 break for the evening.

25 MS. CAMPBELL: No, sir.

1 THE COURT: Mr. Martinez, anything further?

2 MR. MARTINEZ: No, sir.

3 THE COURT: All right. Court will be in recess
4 until 9:30 in the morning. Make sure Mr. Kata has copies
5 of those exhibits before he leaves tonight.

6 All right. Thank you, thank you very much.

7 WEDNESDAY, DECEMBER 7, 2016

8 THE COURT: We're still waiting on one juror.
9 That's why I wasn't out here at 9:30.

10 Can you give me an update, Mr. Martinez or Mr.
11 Kata, concerning the witnesses in surrepley? What's the
12 status?

13 MR. KATA: Yes, Your Honor. There's a Mr. Scott
14 that we weren't able --

15 MS. WALKER: It was Jackson, Larry Jackson?

16 MR. KATA: Yes.

17 THE COURT: He from Columbia Area Mental Health?

18 MS. WALKER: Yes, sir. He isn't working today so
19 he can't -- he doesn't know about the subpoena. I told Mr.
20 Martinez that if he wants to enter Mr. Jackson's report
21 into evidence, we wouldn't object to that.

22 THE COURT: All right. Well, Mr. Martinez, tell me
23 your position on the presence or absence of Mr. Jackson.

24 MR. MARTINEZ: I needed him to testify because
25 Ms. Tross mentions one visit and there was multiple visits

1 where he -- at first he stated I could be malingering, but
2 then he changes his -- his diagnosis when I came back. So
3 I needed him to testify to that, but if he's not able to,
4 then I'll have to enter his report where it states that.
5 But also, I wanted to ask yourself if I could be able to
6 reply -- if I could testify in reply to --

7 THE COURT: Let me take -- let me focus on one
8 thing at a time, okay? And then I'll address your next
9 question.

10 If the State has no objections to the introduction
11 of Doctor -- Mr. Jackson. --

12 MS. WALKER: He's a registered nurse, Your Honor.

13 THE COURT: All right. To Nurse Jackson and it
14 goes into evidence, you could then cross-examine or
15 question Dr. Tross about those records. You understand?
16 If that was part of the basis of her opinion, you
17 understand that?

18 MR. MARTINEZ: Yes, sir.

19 THE COURT: So they would be in evidence and you
20 could question the doctor about that. Is that -- of
21 course, the rules of evidence, but does that suit you to
22 proceed without the presence of Mr. Jackson if the record
23 is in evidence and you can question about the records.

24 MR. MARTINEZ: Yes, sir.

25 THE COURT: All right. That's number 1 witness.

1 And this was a number -- there was another witness, Mr.
2 Kata?

3 MR. KATA: Yes, Your Honor. His other witness is
4 Dr. Carroll with Providence Hospital. I had faxed the
5 subpoena last night. I figured that's the only thing I
6 could do, to every fax number that they've they had. Two
7 responded in error, one went through. I left some
8 voicemail's with whatever number I could find on the
9 website. I'm still trying to make contact with somebody at
10 Providence Hospital.

11 I have a third subpoena for --

12 THE COURT: And what -- you haven't heard nothing
13 back?

14 MR. KATA: Nothing back from them.

15 MS. WALKER: Your Honor, I have a friend who knows
16 Dr. Carroll. I got his phone number. He said I could give
17 him a call after 10:30. And at that point I'll step out of
18 the courtroom to call Dr. Carroll and see if he's available
19 to testify. If he's not available to testify, we again,
20 don't object to Mr. Martinez putting in those records.

21 THE COURT: All right. We'll wait on an update on
22 Dr. Carroll. Is that suitable to you, Mr. Martinez.

23 MR. MARTINEZ: Yes, sir.

24 THE COURT: All right. And then the third one,
25 Mr. Kata.

1 MR. KATA: It's an Aletha McGough -- McGough,
2 M-C-G-O-U-G-H. I was just provided that name when we
3 started.

4 THE COURT: And who is --

5 MR. KATA: I will try to track her down.

6 THE COURT: And who is this?

7 MR. MARTINEZ: She's a doctor from Richland
8 Springs.

9 THE COURT: Richland Springs? So you've had no
10 contact with that doctor at all?

11 MR. KATA: No, Your Honor.

12 MS. WALKER: I didn't know that that was one of the
13 doctors that I should have been trying to track down last
14 night. If you can get us a copy of those records, we can
15 start trying to track down -- we in our office will start
16 to try to track down that doctor as well.

17 THE COURT: All right. Now, you had another
18 matter, Mr. -- another matter, Mr. Martinez?

19 MR. MARTINEZ: Yes, I'd like to ask the Court if I
20 could testify in my behalf to my medical and my mental
21 health as well as my disability benefits.

22 MS. WALKER: And, Your Honor, I don't know that he
23 can be -- on direct examination, I guess he could ask
24 himself whatever questions that he wants, but I believe
25 that that would limit us in cross-examination into going

1 into the actual underlying facts of the case.

2 THE COURT: Well, I'm trying to think of the
3 parameters of reply and surreply.

4 I don't know of anything that prohibits a defendant
5 from testifying in surreply.

6 MS. WALKER: I would agree with that, Your Honor.

7 Would we then be limited in our scope of
8 cross-examination?

9 THE COURT: You know, I don't give anticipatory
10 rulings, Solicitor, Mr. Martinez. I don't know the answer
11 to that right now.

12 MS. WALKER: Okay.

13 THE COURT: You know, it depends because a lot of
14 testimony has been presented. There's a lot of testimony
15 that's been presented in reply, so...

16 MS. WALKER: That's true. I understand.

17 THE COURT: I don't know.

18 All right. Let's see, we have Dr. Amick to
19 complete and Dr. Tross.

20 MS. WALKER: Yes, Your Honor; they're both present.

21 THE COURT: And then you're going to have Dr. Amick
22 first?

23 MS. WALKER: Yes, sir.

24 THE COURT: I apologize Dr. Tross.

25 All right. Are we ready for our jury, Solicitor?

Grey Amick - Cross Examination Continued by Mr. Martinez

1 MS. WALKER: The State's ready, Your Honor.
2 THE COURT: Mr. Martinez?
3 (The jury entered the courtroom at 10:07 a.m.)
4 THE BAILIFF: The jury is present, Your Honor.
5 THE COURT: Thank you, thank you, Mr. Bailiff.
6 Good morning. Hope y'all had a pleasant evening.
7 Welcome back. We are continuing the trial of the case by
8 the cross-examination of Dr. Amick by Mr. Martinez. As
9 usual, give the parties your complete and undivided
10 attention. Thank you.
11 Mr. Martinez.

CROSS-EXAMINATION CONTINUED

12
13 BY MR. MARTINEZ:

14 Q Mr. Amick, on 11/30/2016, you guys reran your new
15 testing for, is it cyber genetics?

16 A Cyber genetics.

17 Q And you guys retested my DNA because, I guess Ms.
18 Campbell called and -- concerning the probabilistics
19 genotyping software for mixture?

20 A Are you asking me if we did that?

21 Q Or -- yeah, did you do that on account because Ms.
22 Campbell called you and expressed her concerns?

23 A I believe we did that after we received the opinion
24 from Ms. Word.

25 Q And it wasn't because Ms. Campbell called and said

Grey Amick - Cross Examination Continued by Mr. Martinez

1 to proceed with additional analysis?

2 A She didn't call me. I'm not aware of her calling.

3 She may have called Rachel Grant, but I don't know that.

4 Q And do you -- do you check -- who checks

5 Ms. Grant's work?

6 A In this case, her file was technically reviewed by
7 Vonn Baron, another qualified analyst. I also reviewed the
8 file before testimony. All of our case work is 100 percent
9 technically reviewed by another qualified analyst.

10 Q And is -- what's statistical -- I mean a to
11 stochastic threshold?

12 A Stochastic threshold?

13 Q Yes.

14 A Stochastic threshold is a threshold we use when we
15 look at data and it's an area of the data we know could
16 possibly be the events that happened that we are trained to
17 recognize. Things like imbalancing data, drop out, things
18 of that sort.

19 Q And is that effective for single source DNA
20 analysis?

21 A It applies to any data, any sample we run. That
22 threshold is something we use for all the data we produce.

23 Q And is it, does it have minimal effects for like
24 complex mixtures?

25 A It's irrelevant the type of sample that we have.

Grey Amick - Cross Examination Continued by Mr. Martinez

1 It's totally based on concentration, it's totally based on
2 the amount of DNA that's there. So it doesn't matter if
3 it's a single source or mixture. It's a range that we use
4 to describe a low amount of DNA, phenonomas that happen at
5 low levels of DNA.

6 Q And in order for it to be effective, it has to be a
7 certain amount of DNA for each contributor; is that
8 correct?

9 A That's not exactly an accurate -- the terms you're
10 using there. It's basically a range of our data that we
11 are aware of that those effects happen. It doesn't matter
12 how many individuals are there; doesn't matter if a single
13 source, two peak, three people, ten people; it's only
14 descriptive of a range of the data we look at and no
15 certain things happen there.

16 Q Was all of the items -- were they all re amplified?

17 A Were they all re amplified? I don't know.

18 Q When you re amp -- when the DNA is re amplified
19 will that take out like, artifacts, see if it's really an
20 artifact or really a true allele or -- will it take out the
21 stutters? Will it take out some of that?

22 A Not the stutter. It could, when you re amplify
23 something, you could see the absence or the disappearance
24 of an artifact.

25 Q So if -- let's say that the mans pubis and the

Grey Amick - Cross Examination Continued by Mr. Martinez

1 right breast and the -- okay, the mans pubis it states that
2 it was re amplified. And I guess there was no explanation
3 as to why it was. But I guess that they're -- that the
4 other unrelated and unknown supposed what you claim were
5 artifacts stay into the DNA; is that -- is that common or
6 is that --

7 A I'm not sure what you're asking.

8 Q Okay. You said that if it's re amplified to see if
9 it's a true allele or if it's an artifact; is that correct?

10 A It can be re amplified.

11 Q Okay. And from what was -- what was given to my
12 specialist, she stated -- Dr. Word said these things were
13 re amplified and with that being said, they still have the
14 presence of another contributor to this mixture that
15 doesn't match me. It doesn't match anyone that was tested?

16 A What's the question?

17 Q If it's re amplified, can -- it's supposed to take
18 -- whatever the artifact; is that correct?

19 A Not necessarily. You may see the artifact
20 disappear, it may still be there.

21 Q So what is the purpose of re amplifying?

22 A The purpose -- there are many reasons to re amplify
23 something. If it -- if there's instrumentation issue or
24 the analysis just failed, you may have to re amplify it.
25 If you want to clarify if there are artifacts to decrease

Grey Amick - Cross Examination Continued by Mr. Martinez

1 their presence or to -- usually instrumentation issue so --
2 there are many reasons to re amplify something, but it may
3 or may not necessarily remove completely artifacts that you
4 were looking at or could be looking at.

5 Q But there are other -- there are presence of
6 someone else's DNA on the mans pubis; is that correct?

7 A I don't have it in front of me anymore. And I
8 don't think that's accurate. I think what we're talking
9 about were artifacts, if I recall.

10 Q So there are multiple artifacts in this report?

11 A Again, which item are you talking about.

12 Q The mans pubis?

13 A Again, I don't have it in front of me.

14 Q Can we get --

15 THE COURT: Hand the doctor Defense 25 through 29,
16 please.

17 (The reports were handed to the doctor.)

18 THE COURT: Thank you.

19 All right. Mr. Martinez.

20 BY MR. MARTINEZ:

21 Q So you're saying that there's multiple artifacts
22 throughout this test?

23 A Are we talking about the mans pubis swab?

24 Q Yes, sir.

25 A I'm not saying there are multiple artifacts

Grey Amick - Cross Examination Continued by Mr. Martinez

1 throughout this analysis, no.

2 Q How would an artifact be labeled if it was an
3 artifact?

4 A It may be filtered out by the software, it may be
5 labeled by the analyst, it may remain on the printout.

6 Q Okay. And so in Ms. Grant's report, she states
7 that there's a mixture of two contributors?

8 A That's correct. This item, the mans pubis swab is
9 a mixture of at least two individuals. Nathan Martinez is
10 excluded as a contributor and Briona Hurshman and Robert
11 Hurshman cannot be excluded as contributors to this
12 mixture. This item is a mixture of two individuals.

13 Q Are Mr. -- are Mr. And Ms. Hurshman's alleles
14 consistent with that pattern?

15 MS. CAMPBELL: Objection, Your Honor, he said it's
16 too weak to interpret so he can't.

17 THE COURT: State that question again, Mr.
18 Martinez.

19 BY MR. MARTINEZ:

20 Q Is Mr. Hurshman's DNA consistent with matching with
21 the mans -- with the DNA pattern in the mans pubis.

22 THE COURT: I'll allow him to answer the question.
23 Doctor.

24 THE WITNESS: Yes, his -- Robert Hurshman cannot be
25 excluded as the contributor to this mixture.

Grey Amick - Cross Examination Continued by Mr. Martinez

1 BY MR. MARTINEZ:

2 Q Okay. So you're saying that his DNA pattern is
3 consistent with what's in the mans pubis?

4 MS. CAMPBELL: Objection, Your Honor, asked and
5 answered.

6 MR. MARTINEZ: He didn't answer me. He just read
7 from what was reported.

8 THE COURT: And that's the answer, Mr. Martinez.
9 Is that your answer, Doctor?

10 THE WITNESS: Yes, sir.

11 BY MR. MARTINEZ:

12 Q Okay. The right breast, it was re amplified, is
13 that correct?

14 A The right breast, I believe it was re amplified,
15 yes.

16 Q And it reported a major contributor?

17 A Yes, the DNA result from the right breast are
18 mixtures of two individuals. No DNA you know like that of
19 Briona Hurshman was found and the major and the minor was
20 too weak for match purposes.

21 Q All right. And you can't tell -- is that report
22 correct?

23 A Yes.

24 Q And can you tell who the minor and the major
25 contributor is on that?

Grey Amick - Cross Examination Continued by Mr. Martinez

1 A The major was consistent with the victim. It came
2 from her body, which is what we expect to see. The minor
3 is too weak for match purposes.

4 Q And it says that there was no male detected; is
5 that correct?

6 A It doesn't say that in the report, no.

7 Q It doesn't say who the -- it doesn't say the
8 genotypes?

9 A No, it says that we found the victim on the swab
10 and the minor is too weak for match purposes.

11 Q So how come there's just an X on the start of it?

12 A That's -- the X would be representative of the
13 victim, the female.

14 Q So there's no -- there's no Y there for a male; is
15 that correct?

16 A If you say. I was looking for that profile. If
17 there is no Y, correct. There is no Y, therefore -- if
18 there is a male there it's too weak as the report says to
19 interpret.

20 Q Okay. Why -- when it was reran, why did it drop
21 off a loci?

22 A I beg your pardon.

23 Q When the test was reran why would it drop off a
24 loci?

25 A You've got to be more specific. Why was --

Grey Amick - Cross Examination Continued by Mr. Martinez

1 Q At the original test it stated there were 12 loci
2 and when you reran it again it went to 1 loci?

3 A Oh. So what you're asking about is -- that didn't
4 happen when we reran it. It happened when she issued her
5 supplemental report, when she looked at the standard one of
6 the loci, she determined was not suitable for statistics on
7 standard. So she removed that from her calculations. It
8 remained at 9 on the 999 percent exclusion. So that's why
9 it went from 12 loci to 11 loci in that statement.

10 Q All right, sir. So you stated that the police and
11 the FBI use this technology, correct?

12 A Which technology are you speaking of?

13 Q This true allele and also this PCHAST -- is it
14 PCHAST?

15 A True allele is a program that is used by the FBI
16 and used by many labs around the country.

17 Q And is it these same labs who are going through and
18 exonerating all of the people that were wrongly convicted
19 due to the DNA?

20 A I don't think that's an accurate statement.

21 Q So it would have to be like independent
22 laboratories that are going through and rerunning or -- and
23 running tests from DNA that -- and exonerating numerous
24 individuals who were convicted due to DNA and inaccurate
25 tests that were done; is that correct?

Grey Amick - Cross Examination Continued by Mr. Martinez

1 A I'm not sure what you're asking. A true allele
2 program is used, like I said by many labs around the
3 country as well as other probabilistic genotyping programs.
4 So I'm not sure how that's related to exonerating or
5 retesting.

6 Q Okay. I just -- as I read in -- I read some
7 knowledge about the true allele and it states that the
8 probabilistic genotyping is promising and it's -- they're
9 working on the fundamental validity of it, but in order for
10 it to -- in order for it to be accurate, then it has to
11 accurately have the correct number of contributors as well
12 as has to have accurate data in order for it to have an
13 accurate result; is that correct?

14 A That's correct.

15 Q So with that being said, with a single source, it's
16 going to be accurate. With multiple contributor source, it
17 has to have the exact number and it has to --

18 MS. CAMPBELL: Objection, Your Honor, asked and
19 answered repeatedly yesterday.

20 THE COURT: Ask your question, Mr. Martinez.

21 MR. MARTINEZ: No further questions, Your Honor.

22 THE COURT: Thank you, Mr. Martinez.

23 Anything in redirect, Solicitor?

24 MS. CAMPBELL: No, sir.

25 THE COURT: Thank you.

Rozanna Tross - Cross-Examination by Mr. Martinez

1 Thank you very much, Dr. Amick, thank you.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Any objection to the doctor being
4 excused, Mr. Martinez?

5 MR. MARTINEZ: No, sir.

6 THE COURT: Solicitor?

7 MS. CAMPBELL: No, sir.

8 THE COURT: Thank you, you may be excused.

9 Next, I believe we have Dr. Tross, if you would
10 come around for us please. And Doctor, you're still under
11 oath.

12 And as you recall, ladies and gentlemen, Dr. Tross
13 was presented by the State in its reply and the State had
14 completed its direct testimony so we're going into
15 cross-examination of Dr. Tross by Mr. Martinez.

16 MR. MARTINEZ: I beg the Court's indulgence.

17 THE COURT: Of course, yes, sir.

18 (There was a pause in the proceedings.)

19 **CROSS-EXAMINATION**

20 **BY MR. MARTINEZ:**

21 Q All right. Ms. Tross, do you recall how long it
22 took me to get my evaluation done?

23 A Are you asking how long we met?

24 Q No, how long it took before -- I was court ordered
25 to get an evaluation; is that correct?

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1 A Yes, sir.

2 Q And that was in, I believe, March of 2014?

3 A The order I have is dated September 15, 2014.

4 Q Okay. Previous to that, I was -- did you not --
5 did your office receive a notification that I was scheduled
6 to -- Court ordered M'Naghten test as well as criminal
7 responsibility?

8 A The order I have, yes. And it's --

9 Q Of what --

10 A -- dated September 14, 20 -- September 15, 2014.

11 Q Is that the date that we met?

12 A No.

13 Q Okay. So it states here that I had a previous
14 appointment scheduled for Wednesday, March 25th, 2015, with
15 South Carolina Department of Mental Health?

16 THE COURT: I'm not tracking your dates.

17 MR. MARTINEZ: I was court ordered by -- I think it
18 was Judge Hood on 9/15/2014.

19 THE COURT: All right.

20 MR. MARTINEZ: And it took almost a year -- well, I
21 think it was 11 months for me to be seen.

22 THE COURT: You can ask the doctor.

23 BY MR. MARTINEZ:

24 Q And is it true that I was only -- that I was seen
25 because Ms. Campbell called your office and made sure that

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1 I was seen -- that I was scheduled and seen for my testing?

2 THE COURT: Didn't you say you had a court order by
3 a judge.

4 MR. MARTINEZ: Yes, I did, but that wasn't honored
5 and I had -- my lawyer at the time brought it up with Ms.
6 Campbell and she was able to call and get it done. Not
7 because of the Court order, but because --

8 THE COURT: You may ask your question.

9 BY MR. MARTINEZ:

10 Q Are you aware of that?

11 A I'm not involved in the scheduling, so I wouldn't
12 know any correspondence or communication you had about
13 scheduling your evaluation. I do have a court order and I
14 have a scheduling sheet that shows the dates that you were
15 scheduled to be seen.

16 Q And when we met, you told me that -- that you knew
17 about my prior meeting that was cancelled; is that correct?

18 A There is a notation that that prior meeting was
19 cancelled due to the evaluator being sick.

20 Q And in -- in that notation, does it have the month
21 of when it was?

22 A Yes.

23 Q Was it March of 2015?

24 A Yes.

25 Q Okay. When -- when we -- okay. What information

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1 was all provided to you from the -- I don't know if it was
2 my lawyer at the time or Ms. Campbell?

3 A The information that was given to me in order to do
4 the evaluation.

5 THE COURT: Can you speak up a little bit for me,
6 please, Doctor, I apologize. Thank you.

7 THE WITNESS: We're given a large file that
8 contains all prior police reports, victim statements,
9 witness statements, any prior psychological evaluations
10 that may have been done basically given to us requesting
11 the evaluation and it should contain all the information
12 they have pertaining to their client in this case and in
13 regards to the nature of why we're doing the evaluation.
14 So in this case it's criminal responsibility, so it's
15 information about his criminal involvement or allegations
16 thereof; and subsequently, we typically request additional
17 information if through sorting through the record and/or
18 interview with the individual we discover that there was
19 other pieces of information that would be helpful.

20 BY MR. MARTINEZ:

21 Q And you stated that you get more information; is
22 that correct?

23 A At times, yes.

24 Q And at any time, did you not -- did I not fill out
25 paperwork, fill out release forms for you to obtain.

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1 additional information?

2 A Yes.

3 Q Did you obtain this information?

4 A At the conclusion of our interview together, we did
5 ask you to sign a release of information for Vocab -- or
6 Vocational Rehabilitation Center, I believe from Utah. You
7 did sign that release and information from that place was
8 requested.

9 Q What about McKay-Dee Hospital?

10 A I'm not sure we have a release on that. The
11 release I have is for the Utah vocational rehabilitation
12 center.

13 Q And that's the only one?

14 A I believe so. And that information was requested.

15 Q Did you obtain that?

16 A The information was received in November, which is
17 2 months after the submission of this report.

18 Q Would you agree with that report?

19 A The report came in two months after my report had
20 been completed and submitted to the Court.

21 Q What about after you amended our report?

22 A The amendment he's referring to is a type of a name
23 that was not Mr. Martinez that was found in the conclusion
24 of the report and so in consultation with my supervisor I
25 did not need to send an amendment, but I wanted the report

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1 to be as accurate and professional as possible, so I sent
2 in a revision, correcting the name on the last page of the
3 report. That is the only change that was made.

4 Q It was on the last page of the report?

5 A Yes, sir.

6 Q It wasn't on your diagnosis of me Mr. Hill and
7 saying I was antisocial?

8 A I believe it was on the last page of the report,
9 but if you found it on a separate page, then that would
10 have been the change. But it was one change.

11 Q It was -- and you was notified of this information
12 after I filed a complaint; is that correct?

13 A Correct.

14 Q And I filed a complaint stating that your findings
15 were inaccurate and not based off the facts of the record
16 that was provided to you; is that correct?

17 A You cited a lot of different things in your letter.

18 Q And -- okay. So you was provided psychological
19 evaluation from vocational rehab that was an independent
20 doctor who gave it, but it was for vocational rehab and as
21 I told you it was -- I applied for disability benefits for
22 antisocial behavior, not for schizophrenia or bipolar or
23 nothing like that, which I was diagnosed with; is that
24 correct?

25 A I'm not sure I understand what you're referring to

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1 and what your question is.

2 Q Do you have a copy of the -- okay. You requested
3 information from voc rehab, correct?

4 A Yes.

5 Q Do you have a copy of that?

6 A There is a copy in the file, but again it was
7 received after my report was concluded and submitted to the
8 Court, so it was not reviewed in relation to the report I
9 submitted.

10 Q Would you agree with the report or no?

11 A The report was not reviewed in connection with my
12 completing the evaluation for you or the report submitted
13 to the Court because it was received months after the
14 completion of that report.

15 Q Okay. But had you factored this diagnosis, would
16 it have changed your findings?

17 A No.

18 Q Okay. But it does say that there's multiple
19 disorders that I suffer from; is that correct?

20 A No, actually the report refers to diagnostic
21 impressions which is not the same thing as a conclusion or
22 a diagnosis.

23 Q This is the same thing -- this diagnosis or
24 impression is the same thing that said I go to psychiatric
25 hospital. That's the same thing they used too, correct?

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1 A Not necessarily.

2 Q So you're saying that this AXIS -- this AXIS I,
3 AXIS II, AXIS III, and they go down and it lists all the --
4 in order and in categories, different issues that a person
5 suffers from; is that correct?

6 A In the report that you're referring to, he was --
7 based on his interview with you and the multiple tests that
8 he provided to you, his impressions could be a variety of
9 diagnosis to include and he lists multiple diagnoses.

10 Q Okay. But this -- he based those off of testing?

11 A Correct.

12 Q Okay. Was you provided in your -- were you
13 provided a list of -- well multiple e-mails sent from me to
14 Officer Heidi Jackson?

15 A E-mails?

16 Q Yes.

17 A I don't believe so.

18 Q Can you tell me who provided you that information?

19 A Which information?

20 Q The information that was forwarded to your office
21 to gain your -- your findings?

22 A I have a faxed confirmation from a Jacob T. Bell,
23 Esquire that looks like it's in regard to scheduling your
24 first appointment.

25 Q And he -- did he fax you copies of my e-mail

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1 account?

2 A No.

3 Q Did -- and you said that you have or that you had
4 all of the Richland Springs visits; is that correct?

5 A I have records supplied by Richland Springs. I
6 don't know if they're in their entirety.

7 Q You're not sure if they're in their entirety?

8 A Correct.

9 Q Is there -- you stated three separate visits,
10 correct?

11 A To Richland Springs?

12 Q Yes, ma'am.

13 A To Richland Springs, I have an admission from
14 September 27, 2013 to October 2nd, 2013?

15 Q So you have one visit?

16 A One admission.

17 Q And that admission was voluntary or involuntary?

18 A I believe it was involuntary.

19 Q So that means that they come and -- they come and
20 seize me and they take me to the hospital and they admit me
21 into a psychiatric ward involuntary, correct?

22 A Correct. You were at the Columbia Area Mental
23 Health and they referred you to Richland Springs.

24 Q And I was there because the police took me there;
25 is that correct?

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1 A I believe so.

2 Q Okay. Would you -- okay. You was also provided
3 with information from Logan Regional Hospital, correct?

4 A Yes, sir.

5 Q And that was for a 72-hour hold, correct?

6 A It's noted as an involuntary hospitalization.

7 Q Okay. And you also was provided with 2008 I went
8 to the hospital. They said that I swallowed a crystal-like
9 substance?

10 A From Logan Regional Hospital?

11 Q Yeah.

12 A Yes, sir.

13 Q Okay. And you was provided records from Alvin S.
14 Glenn; is that correct?

15 A Yes.

16 Q And if you don't have a complete history of
17 someone's, let's say history -- if you don't have a
18 complete record, if you don't have all the records of
19 someone's past, let's say, you don't have their record,
20 their full record, is it -- is your findings going to be
21 accurate?

22 A It depends on what you mean by complete record.
23 Oftentimes in doing a psychological evaluation of any
24 nature we are not going to have every record that ever
25 existed, so to reach a conclusion depends on what you need

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1 to reach that conclusion. If there's enough information
2 available to say, make a diagnosis that's relevant
3 answering the legal question as to whether or not the
4 record is complete is sometimes inconsequential. If you
5 have enough information available, oftentimes it's -- we do
6 request additional records and they come very late, they
7 don't come at all, or they don't contain enough information
8 that's different than the information currently available,
9 so it hasn't changed the opinion or wouldn't change the
10 opinion. So oftentimes when you look at whether or not we
11 have complete records, we're asking ourselves the question
12 of do we have enough to answer the questions asked of us by
13 the Court.

14 And in your case, the answer to that is yes, sir.
15 So therefore, I was able to complete the report and submit
16 it.

17 Q Okay. Did you request additional information from
18 my lawyer at that time?

19 A I don't believe so.

20 Q Okay. So you state that you had enough information
21 at the time. Do you believe that the onset of someone's
22 medical issues from a hospital where they told you that all
23 their problems began from -- and there's a lengthy record
24 of it, of hospital visits that are not drug induced, that
25 are not -- no evidence of drug use, but are dealing with

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1 medical issues, would that play a factor into your report?

2 A It depends.

3 Q Would it depend on if the doctor there is claiming
4 that I'm a paranoid schizophrenic that the doctor claims
5 that I'm suicidal that I need to be long-term incarcerated
6 like in a mental institution, would that play a factor?

7 A It depends.

8 Q So you're saying that a doctor's -- okay. Help me
9 understand this. A person's -- okay. Let's say a
10 psychologist, every psychologist I've been -- that I've
11 been in contact with it seems like they don't base their
12 own opinion off of their findings, they base their opinions
13 off of what somebody else's findings are; is that correct?

14 A That is not my understanding, no. That's typically
15 not correct of any psychologist.

16 Q Okay. So do you have -- do you have the Logan --
17 not the -- I mean not the Logan -- do you have the Richland
18 Springs -- there was two involuntary commitments that I
19 went to. I'm not sure why you didn't get the other one,
20 but the first one was, I think, October -- no, let me see.

21 MR. MARTINEZ: I beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 (There was a pause in the proceedings.)

24 BY MR. MARTINEZ:

25 Q Do. It states -- okay. When I first got there, I

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1 had to give like -- I had to discuss why I was there. And
2 then they went and gathered information from previous,
3 previous hospitals I've been at and they went and got Logan
4 Regional's evaluation and Ms. -- Doctor Three that, I think
5 it's McGull or McGough or something like that, her
6 diagnosis of me is the same as what Logan Regional said.
7 And she told me that she doesn't understand -- she doesn't
8 understand what was wrong with me. She didn't do no
9 testing -- well, she didn't -- she did her own testing, but
10 she did show me some pictures, she had somebody come show
11 me some pictures. And she didn't do no other testing. Her
12 whole basis and her whole --

13 MS. CAMPBELL: Objection, Your Honor, if he could
14 ask a question.

15 THE COURT: Yes, sir, Mr. Martinez.

16 MR. MARTINEZ: I'm sorry, Your Honor.

17 BY MR. MARTINEZ:

18 Q From her notes and what she said and what you even
19 quoted that she said, is it not -- is it correct that her
20 diagnosis is directly from what Logan Regional said?

21 A I wouldn't know that.

22 Q You wouldn't what?

23 A I wouldn't know that. I didn't perform that
24 evaluation and I can't talk with a doctor to know why she
25 opined her diagnosis. I only have the records that she

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1 wrote and that's what I used to inform me of what your
2 prior hospitalization was about, the course of that
3 hospitalization and then the resulting diagnosis or
4 conclusions.

5 Q Okay. And that's what I'm trying to get at. You
6 got to -- she got to a conclusion because someone else gave
7 her that conclusion; and therefore, she gave you their
8 conclusion -- well, she wrote down their conclusion and
9 then gave you that conclusion; and therefore your
10 conclusion is the same -- not the same as, but you got all
11 this information just because of what someone else said?

12 A Well, it's not what somebody said, it's what's
13 documented and it's a combination of the observed behavior
14 when you arrived at the hospital, while you were at the
15 hospital. It's their discussion of how you changed as a
16 result of becoming more sober. It's their discussion of
17 what they're understanding of your past history was and
18 then what their conclusions were.

19 All of that together helps future evaluators
20 determine the nature and course of something and factor
21 that into a current diagnosis. But it's not because
22 somebody wrote it; therefore, that's my conclusion too.
23 What I'm references is that a prior hospitalization
24 concluded you had a diagnosis based on observed behavior,
25 ordered behavior and their collection of historical

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1 documents to support it. Therefore, that factors into my
2 understanding of what happened during that particular
3 hospitalization.

4 But my diagnosis and conclusion is going to be
5 based on the totality of the information that I've been
6 able to glean, from historical records; again, the
7 interview with you, as well as observed behavior and what
8 all that information tells me about the predominant
9 psychological issue that may or may not be present.

10 So therefore, my conclusion is based on a variety
11 of pieces of information, not just what one doctor or
12 psychologist may have concluded on a given incident, if
13 that makes sense.

14 Q Yeah, it makes sense. I understand what you're
15 saying, but it doesn't answer my question though.

16 Okay. See, I was sent to Logan Regional Hospital
17 from McKay hospital; is that correct?

18 A Yes, sir.

19 Q And McKay Hospital sent me there saying that I was
20 a paranoid schizophrenic; that I was drug induced; and that
21 I had to be restrained and that I was losing my mind and
22 whatever they said because the doctor from Logan Regional
23 states it in his report.

24 A Well, according to the record, McKay, the emergency
25 department took you to Logan Regional Hospital because you

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1 had called police complaining that people were trying kill
2 you and injecting air into your body. So they're
3 experiencing from you a report of psychotic symptoms and
4 psychotic behavior. They didn't list a diagnosis of
5 schizophrenia.

6 MR. MARTINEZ: I beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 (There was a pause in the proceedings.)

9 BY MR. MARTINEZ:

10 Q There's not a page number, but it's on -- it's
11 where psychiatric -- it's a physical report. I'm not sure
12 what page it's on. It's done by Doctor Jeffrey McCon,
13 McKan. It states that per Dr. Smith from McKay Hospital,
14 it goes depressive, D-O-N-E-S and question mark,
15 schizophrenia versus drug induced psychotic due to
16 psychotic due meds, DO meds. Disorder, I think that's
17 disorder; is that correct?

18 A D O usually means that, yes.

19 Q Okay. So as I stated this doctor from McKay
20 Hospital states that I have a depressive -- this was in
21 December. This was in December when he first diagnosed me.
22 He wanted to long term admit me into the mental
23 institution. But he stated that I was -- I suffer from a
24 depression disorder as well as a schizophrenia disorder, as
25 well as drug related disorder. And as I state in all these

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1 records that I wasn't using drugs, that I was being
2 drugged; is that correct?

3 A I'm sorry, what is your question?

4 Q In the reports, does it state that I was being
5 drugged or I was using drugs?

6 A Which report?

7 Q The Logan Regional?

8 A Okay.

9 Q Does it say that I was being injected with air and
10 darts, poisonous darts, and stuff like that?

11 A On the admission records I have they say that it
12 was evident that you were on substances and that after
13 hospitalization a dramatic resolution of any paranoia and
14 complete of any prior paranoia and psychosis, you were
15 discharged with some type of psychotic disorder.

16 Q So it doesn't say that I was telling -- I was being
17 drugged with poisonous darts and air being injected into my
18 body.

19 A The report I have here, the Logan Regional Hospital
20 record is that people were trying to kill him by injecting
21 air into his body.

22 Q What about poisonous darts that was being --
23 leaving marks on my clothes?

24 A And that people he didn't know were chasing him,
25 shooting at him with some kind of poisonous dart and were

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1 injecting air in his body. And yes, then it goes onto say
2 he believes they left marks on his clothes.

3 Q And they state they put me on medication; is that
4 correct?

5 A They did.

6 Q What type of medication is that?

7 A They evidently put you on medication to help you
8 with insomnia and psychosis.

9 Q And the effects of that medication are?

10 A What do you mean.

11 Q What did that medication do?

12 A It helps you sleep.

13 Q And in that report how long did I sleep for? Of
14 that stay?

15 A It says after two days there was a dramatic
16 resolution of any paranoia.

17 Q It also says I was afraid to be there?

18 A No.

19 Q They go through and they do like periodical checks
20 like suicidal checks and they ask you do you feel safe on
21 the unit, if you're thinking about harming yourself, if
22 you're suffering from delusions, do you have a means to
23 carry out this plan, if you have a plan. They ask you --
24 it's a violence and suicide assessment scale. It says what
25 brought you to behavioral health unit? Why are you here?

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1 People were trying to kill me and shit.

2 Are you having thoughts of -- or hearing voices
3 telling you to hurt yourself? No, I'm not suicidal, no
4 thoughts of hurting myself.

5 Do you have a plan? No response.

6 Do you have means to carry this out? No response.

7 Do you have --

8 MS. CAMPBELL: Objection, Your Honor, if he could
9 ask a question.

10 THE COURT: Yes, sir, if you would ask a question,
11 Mr. Martinez.

12 BY MR. MARTINEZ:

13 Q Okay. On that thing, it says, do you feel safe --

14 MR. MARTINEZ: Well, I beg the Court's indulgence.

15 (There was a pause in the proceedings.)

16 BY MR. MARTINEZ:

17 Q All right. That -- the suicide belief, that was
18 the first one. And then they go through and do a
19 reassessment and it says do you feel safe on the unit and I
20 stated -- do you have this right here? I'm sorry.

21 A I don't know what you're referring to.

22 Q It's a suicide reassessment for 3/17/13.

23 A From?

24 Q I guess they do one of these -- I guess they did
25 one of these every day. I was there for 72 hours, so they

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1 did one for 3/36/13. They did one for 3/15/13, but they
2 said I wasn't awake. Yeah, I wasn't awake for that.

3 THE COURT: Mr. Martinez, there still hasn't been a
4 question. What is your question for Dr. Tross?

5 BY MR. MARTINEZ:

6 Q It -- did I state in these suicidal reassessments
7 that I felt safe on the unit?

8 A I don't have what you're referring to.

9 THE COURT: Hand it up to the doctor for me.

10 MS. WALKER: Yes, sir, Your Honor.

11 MS. CAMPBELL: May I see it before?

12 (Solicitor was looking at the document the
13 defendant was reading from.)

14 (The document was handed to the witness.)

15 THE WITNESS: Thank you.

16 Sir?

17 BY MR. MARTINEZ:

18 Q So you're telling me you don't have those records
19 right there?

20 A These two I do not.

21 Q So you're saying that you wasn't provided all the
22 information from Logan Regional Hospital?

23 THE COURT: Mr. Martinez, I thought the question
24 was, what was the response on March of 13 whether or not
25 you indicated you were scared on the unit.

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1 MR. MARTINEZ: This is --

2 THE COURT: What is that response, Doctor? Do you
3 see that in that record?

4 THE WITNESS: It looks like one of the questions
5 asked is, Do you feel safe here on the unit and there's a
6 written yes.

7 BY MR. MARTINEZ:

8 Q Okay. That was the day I was getting out.

9 A This is dated March 27, 2013.

10 Q Okay. Go back the day before that?

11 A This is dated March 15, 2013.

12 Q And there was --

13 A And the same question, do you feel safe here on the
14 unit. Quote, no, it's a lot like jail, I'm locked up.

15 Q And the next date?

16 A These are the only two dates.

17 Q They're are not three on there?

18 A No, sir.

19 Q Okay. Can I see that, please?

20 (The document was returned to the defendant.)

21 THE COURT: You may ask your next question.

22 BY MR. MARTINEZ:

23 Q Okay. So you wasn't provided this information in
24 the record?

25 A Correct.