

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Michael G. Nettles, Circuit Court Judge

DARRYL L. DRAYTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000329

APPENDIX

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-GS-10-8551

STATE OF SOUTH CAROLINA)
VS.)
DARRYL L. DRAYTON,)
DEFENDANT.)
_____)

JURY TRIAL

VOLUME 1 OF 5

held before the Honorable J.C. Nicholson, Jr.
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Monday, October 1, 2012, Commencing at 12:12 p.m.

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PROCEEDINGS

MOTION TO SUPPRESS

THE COURT: Mr. Pennington, I believe it's your motion to suppress some cell phone records; is that correct?

MR. PENNINGTON: That's correct, Your Honor.

THE COURT: Be glad to hear you.

MR. PENNINGTON: Thank you.

This is State v. Darryl R. Drayton and it is case number 2010-GS-10-8551. The indictment is for murder. I've supplied the court reporter with a copy of a thirteen-page written motion and also given a copy to the clerk and the Court and the solicitor.

Your Honor, I'm moving under both the fifth amendment as well as Article I, Section 10, of the South Carolina Constitution as well as our search warrant statute, which is 17-13-140. And I would amend my motion to include, also, the Interception of Communications Act, which is 17-30-10.

THE COURT: Not the Federal Storage Communications Act?

MR. PENNINGTON: No, sir. This is a South Carolina --

THE COURT: What's the statute?

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1 MR. PENNINGTON: It is the 17-30-10.

2 THE COURT: Have you got a copy of it?

3 MR. PENNINGTON: I don't.

4 THE COURT: Is it similar to the Federal Storage
5 Communication Act --

6 MR. PENNINGTON: It is --

7 THE COURT: I believe -- it's very similar?

8 MR. PENNINGTON: It is.

9 THE COURT: Okay. That's what I thought.
10 That's why the rest of the state is doing that,
11 solicitor.

12 MS. SHEALY: Yes, sir.

13 MR. PENNINGTON: Yes, sir. It was passed in
14 July of 2002. And the revised specific limitations on
15 the interception of this kind of communication we
16 contend -- and so I'll address that in turn.

17 What I've done -- and I'm happy to approach this
18 however the Court wishes. I have, in my motion,
19 prepared a detailed memorandum of what I believe are
20 the agreed facts in this case in terms of the murder
21 of the victim, Alexis Lukaitis, and the subsequent
22 investigation.

23 THE COURT: Your stipulation of facts as to this
24 motion, we'll make it a Court's Exhibit? I read them,
25 but I don't have them up here with me.

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1 MS. SHEALY: The facts are not stipulated, as he
2 set out, Judge.

3 THE COURT: Well, as far as his stipulation of
4 facts is what I'm saying. He can mark them as a
5 Court's Exhibit, if he would like to.

6 MR. PENNINGTON: Do you have a copy of my
7 motion?

8 THE COURT: I've got a copy of your motion, but
9 I do not have a copy of that stipulation of facts that
10 you submitted. Okay?

11 MR. PENNINGTON: All right. There was the
12 stipulation that related to the witness.

13 THE COURT: Right. I had it, but I don't have
14 it up here on the bench. You're welcome to mark it as
15 Court's Exhibit Number 1.

16 And then, solicitor, you can tell me whatever
17 those facts you disagree with. Okay?

18 MS. SHEALY: Yes, sir.

19 Judge, Mr. Pennington has prepared a stipulation
20 and I told him the only reason I had not signed it --
21 this is not as to the facts that he asserts in the
22 stipulation, but the separate document that he
23 entitled stipulation --

24 THE COURT: Right. Right.

25 MS. SHEALY: The only language that I objected

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1 to in that stipulation was the final paragraph. He
2 refers to a conversation as a later conversation and I
3 would object to the use of the word later. So I'm
4 going to scratch out the word later and comment.

5 THE COURT: Okay. That's as to the motion. Be
6 Court's Exhibit Number 1 as to the motion to suppress.

7 MS. SHEALY: It's as to a component of the
8 motion that's entitled stipulation.

9 THE COURT: Right. Yes, sir?

10 MR. PENNINGTON: If Your Honor, please. I'll
11 summarize the facts to the Court --

12 THE COURT: I've read them.

13 MR. PENNINGTON: Okay.

14 THE COURT: If you want to mark it a Court's
15 Exhibit.

16 Now, you can summarize it for the record, if you
17 so desire.

18 MR. PENNINGTON: Well, I think that the
19 following are agreed facts in this case, Your Honor,
20 in that in 2010 the victim, Alexis Lukaitis, who is
21 the fiancé of Michael Bartley, lived in Bluffton,
22 South Carolina. And according to statements that we
23 have that were given to the detectives in the Beaufort
24 County Sheriff's Office, Mr. Bartley, the fiancé, said
25 that on Sunday, August 8th, 2010, that he asked the

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1 victim to go with him to his parents home for a Sunday
2 dinner. As they prepared -- as he prepared to leave,
3 she had a reaction to some new dryer sheets and
4 indicated that she wanted to stay at the apartment,
5 take benadryl, and go to sleep.

6 He, Bartley, left with the twins at 3:00 p.m.
7 and returned to the apartment at sometime around
8 7:30 p.m. The victim was not home at that time.
9 Around 8:19 p.m. the evidence would show that there
10 was a conversation between Mr. Bartley and the victim.
11 The victim called Mr. Bartley by phone to say that she
12 was on the road on the way home. Mr. Bartley heard
13 her speak to someone in the car but he could not
14 determine who was riding with her. Bartley reported
15 to the deputy that the victim had been talking to him
16 earlier Sunday afternoon about driving D, the initial
17 "D", to Charleston.

18 In the second of two interviews that same
19 Monday, which occurred after the Sunday night that she
20 went missing, Mr. Bartley reported to Deputy Reynolds
21 that the victim was a user and seller of prescription
22 medications. Mr. Bartley stated that the victim told
23 him by phone on the Sunday that she would be driving
24 "D" to Charleston because "D" was going there to pick
25 up a large quantity of prescription pills, and that he

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1 would give her some free pills for her efforts, and
2 "D" was paying for gas.

3 Approximately 7:00 a.m. the next morning, on
4 Monday the 9th, the body of Ms. Lukaitis was found in
5 Charleston County. She had been murdered and left on
6 the side of the road. Her white Grand Prix was
7 missing.

8 On the evening of Tuesday, the 10th, Detective
9 Kip Cooke, with the Charleston County Sheriff's
10 Office, sought and received a search warrant for my
11 client, Darryl Drayton's, cell phone records from
12 Magistrate Alvin Bligen at the evening bond court.

13 And I have supplied and attached to my motion
14 the warrant and affidavit of the -- of -- the warrant
15 specifically calls for my client's phone, 368-9422.
16 And the search warrant lays out essentially two
17 grounds for probable cause for this magistrate to
18 consider. First of all, that Mr. Bartley, the fiancé
19 of the victim, stated that he last spoke with the
20 victim on August the 8th -- that's the Sunday -- and
21 informed him, she informed him, that she was traveling
22 through Charleston, South Carolina, with a/k/a "D".

23 The warrant then goes on and further states: a
24 separate witness came forward and provided information
25 about a conversation between Darryl Drayton and a

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1 friend and neighbor of the victim named Shannon in
2 which they discussed the murder of the victim.

3 Bartley provided Darryl Drayton's cell number as
4 a contact number for Darryl and they indicate that it
5 is believed that this information will provide
6 information pertinent to the death investigation,
7 although there is no specificity as to any nexus in
8 terms of references to calls between these parties
9 that I've just described.

10 My argument, Your Honor, is that this is an
11 instance where my client has an expectation of privacy
12 and under our McKnight case a right to assert under
13 our search warrant statute -- McKnight is the 352
14 S.E.2nd 471 decision where in South Carolina citizens
15 always have standing to raise a violation of the
16 search warrant statute under South Carolina Code
17 17-13-140. And so in that case, that was a case where
18 there was a question as to whether the defendants had
19 standing over a search of a location. And the court
20 held under McKnight that they didn't have to show
21 standing because the standing was automatic under that
22 statute when the State intends to offer evidence
23 against that defendant.

24 I first of all will talk about the what's wrong
25 with the search warrant and then I'm going to talk

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1 about why in my view this is protected speech in South
2 Carolina and the decisions offered by the State in
3 which they indicate that this is not an area where
4 there's an expectation of --

5 THE COURT: Are you talking about protected
6 speech or are you talking about protected information
7 in reference to a cell phone? I don't think there's
8 any speech involved.

9 MR. PENNINGTON: Right. I think --

10 THE COURT: I would agree with you if it was
11 speech it would be a different -- entirely different
12 subject matter. And you said speech.

13 MR. PENNINGTON: I did. I'll correct it in
14 saying that the records with Verizon are protected in
15 our -- in my view, in South Carolina because they
16 contain not only a transaction record of calls in and
17 calls out by the subscriber Mr. Drayton, but they also
18 show specific information about cell tower locations
19 for each call which then can be used to triangulate
20 the location of the cell phone at the time that the
21 call is made.

22 And we contend that -- I'll just go ahead and
23 address this privacy question and whether or not --
24 and then I'll come back to the warrant.

25 THE COURT: Okay.

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1 MR. PENNINGTON: U.S. v. Allen was a case, Your
2 Honor, where -- well, let me back up.

3 The State has given you what is Smith v.
4 Maryland, a 1979 U.S. Supreme Court decision, which it
5 described where some officers had gotten a pen
6 register without getting a search warrant and the U.S.
7 Supreme Court said that that's not protected.
8 However, that decision was essentially statutorily
9 overruled by Congress, in which they passed a pen
10 register statute.

11 The South Carolina Legislature has done the same
12 thing in our state in 2002. Actually, there was
13 precedent even before that. But for our purposes, the
14 2002 Interception and Communications Act is a very
15 broad, explicit statement of protections for our
16 citizens on the issue of records where it is
17 specifically prohibited that a person who discloses or
18 attempts to disclose to any other person the contents
19 of any wire, oral, or electronic communications
20 knowing or have reason to know that the information
21 was obtained through the interception of a wire, oral,
22 or electronic communication in violation of the
23 subsection.

24 There are specific procedures where the
25 legislature created a prohibition under 17-30-65 where

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1 any wire, oral, or electronic communication has been
2 intercepted, no part of any contents of the
3 communication and no evidence derived therefrom may be
4 received in evidence in any trial, hearing, or other
5 proceeding, or in or before any court grand jury,
6 department, et cetera.

7 THE COURT: There they're talking about
8 eavesdropping with conversations itself, aren't they?

9 MR. PENNINGTON: Your Honor, my reading of it is
10 is that this also is for records of those kind of
11 communications.

12 THE COURT: Okay. All right.

13 MR. PENNINGTON: And I will tell you that our
14 courts have not specifically -- there are no case
15 decisions construing this Act. But you can see from
16 the explicit language that there is an expectation
17 that there would be a process by which a court order
18 was sought and that there is -- there are criminal
19 sanctions for failing to do so and there is an
20 explicit ground for a motion to suppress under
21 17-30-110 where there would be cause for a pre-trial
22 determination.

23 Of course, the State has the right to appeal an
24 adverse finding. But I believe that the legislature
25 clearly intended to make it explicit the idea that

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1 this is not just public -- in the public domain where
2 it's available upon request, but that there has to be
3 a showing of cause.

4 The orders that authorize interception under
5 17-30-70 provide that an application authorizing and
6 approving that -- I read somewhere the grounds. They
7 list in here, Your Honor, the situations where it
8 would be justified and they actually, in fact, mention
9 homicide investigations explicitly.

10 If I may have a moment.

11 [Whereupon, Mr. Pennington reviews documents]

12 MR. PENNINGTON: It's under 17-30-70, South
13 Carolina code, where for the investigation of an
14 offense the application may be made -- may provide for
15 or has provided evidence of the commission of the
16 offense of murder.

17 In addition to that, Your Honor, I believe that
18 putting aside that Act if you construe it as --

19 THE COURT: Before you leave the Act -- I
20 haven't looked at it in recent years, but I guess I'm
21 getting ready to -- what type of activity does it
22 cover, i.e. transmissions, phone numbers, location of
23 cell towers? Because in this case we're talking about
24 the location of cell towers, if I understand
25 correctly.

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1 MR. PENNINGTON: I believe it also includes
2 electronic storage, which means any temporary or
3 immediate storage of a wire or electronic
4 communication incidental --

5 THE COURT: Well, isn't that statute primarily
6 covering conversations? And I'm asking does the
7 statute -- does the statute give an indication of what
8 it covers?

9 MR. PENNINGTON: Not that I could find, Your
10 Honor. I see that it has extensive definitions -- it
11 does not have one of those preambles where it
12 describes its purpose.

13 THE COURT: Now, the Federal Storage
14 Communication Act does. You know, it does cover
15 towers.

16 MR. PENNINGTON: Well, and my reading of this is
17 that you have explicit reference to listening to
18 future calls -- that's clearly covered, no question
19 about it -- but that this reference to electronic
20 storage and any storage of wire or electronic
21 communications by electronic communications service
22 for the purposes of back-up protection of such
23 communications.

24 So in my view, this seems to talk about the same
25 exact situation that we're in. We've got someone that

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1 is a paid subscriber for electronic communications.
2 Clearly, they're coming in after the fact and they're
3 essentially -- the officers recognized that this was
4 something that they couldn't simply just call Verizon
5 and get. That's why they went and got a search
6 warrant. Arguably, they should have gone under this
7 Act. But clearly there is a recognition that this is
8 not something that's in the public domain simply by a
9 written request.

10 THE COURT: Let -- go ahead. I didn't mean to
11 interrupt you. I didn't -- go ahead and finish your
12 argument. I'll try to keep my questions until after
13 you finish your argument.

14 MR. PENNINGTON: Your Honor, I will also mention
15 that the cases that are -- the other Fourth Circuit
16 cases are dealing with other states who have different
17 statutory settings. One is a Maryland case, another
18 is a North Carolina case, a Virginia case. And so I
19 believe that it's not really as germane as they would
20 normally be, because I think the states have the
21 ability to create their own protections. And South
22 Carolina has done so, looking at what was done here,
23 which is is that I believe in good faith the officers
24 relied on the search warrant statute under our law.

25 What we have here, factually, is that the --

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1 normally we have to have what are facts which are
2 either immediately self-verifiable, authentic,
3 something that indicates the voracity and accuracy of
4 a liability, or there has to be some corroboration.
5 So the typical conundrum is do we have a confidential
6 and reliable informant that we can go by probable
7 cause or do we have external facts that corroborate
8 the unreliable informant?

9 I content in my argument, on page 4, that we're
10 dealing in a setting where we're dealing with someone
11 who's voracity as an informant is not being vouched
12 for. There is no claim that Mr. Bartley has provided
13 information in the past or that he has a track record.

14 THE COURT: Well, but aren't we dealing with a
15 citizen in this case? We're not dealing with a
16 confidential informant. Aren't we dealing with, as
17 you said in page 6 of your brief: where a citizen
18 come forward without potential gain of possible bias,
19 ways in favor of finding the informant reliable, State
20 v. Sullivan? I mean, that's what we're dealing with.
21 We're not dealing with a traditional confidential
22 informant concerning drugs.

23 MR. PENNINGTON: That is true.

24 THE COURT: I mean, we're dealing with a
25 citizen, i.e., even though he was the fiancé of the

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1 victim.

2 MR. PENNINGTON: That is the crux of my argument
3 on that point about his reliability. With hindsight,
4 twenty-twenty hindsight knowing where we are two years
5 later, I think that would make sense. But I'm going
6 on what they knew and what they told the magistrate in
7 obtaining this warrant, which I think is the
8 restrictions that we have to set in terms of
9 determining whether this warrant had probable cause as
10 it was presented to the magistrate.

11 If we were to go into a full, wide-ranging
12 exploration of what's been validated subsequently,
13 obviously we would be doing a whole different
14 conversation of what is probable cause.

15 But in this setting Mr. Bartley, like it or not,
16 was the fiancé of the victim, who had reported her
17 missing and who was not immediately forthcoming to the
18 law enforcement officers about the extent of her drug
19 use.

20 THE COURT: But then you're going outside the
21 affidavit. I mean, the affidavit --

22 MR. PENNINGTON: That is true.

23 THE COURT: The affidavit very clearly says
24 Mike Bartley, the fiancé of the victim, stated that he
25 last spoke with the victim on August the 8th, 2010,

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1 and she informed him that she was traveling to
2 Charleston with Darryl Drayton, also known as "D".

3 Now, is that sufficient? I don't think we can
4 go outside what's in the affidavit, can we?

5 MR. PENNINGTON: I think that if the officers
6 testify --

7 THE COURT: I mean, if that's your basis that
8 the affidavit is insufficient, we've got to go by the
9 affidavit.

10 MR. PENNINGTON: Well, let's do that, Your
11 Honor. I'll follow that logic with you. And I
12 believe that --

13 THE COURT: Well, do you agree with that or
14 disagree?

15 MR. PENNINGTON: I believe that what the
16 magistrate was told was what was on the warrant. And
17 I completely agree with you that we should restrict
18 ourselves to that. And what the -- what the warrant
19 does not say is is that they have found it in any way
20 reliable. They have a report, but they don't
21 corroborate --

22 THE COURT: They don't corroborate --

23 MR. PENNINGTON: -- they get to be involved --

24 THE COURT: -- the citizen, so to speak?

25 MR. PENNINGTON: That is correct.

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1 THE COURT: Okay.

2 MR. PENNINGTON: And so what we have is the
3 affiant, Kip Cooke, who's a sheriff's deputy in
4 Charleston County who appears in front of the night
5 bond magistrate in Charleston and who is not the lead
6 detective in the case and who is essentially taking
7 what he's given by the other detectives and presenting
8 it for a yes or no on the warrant. And the warrant
9 does not vouch that they verify what he said.

10 But they do go further to this extent. They
11 use false verification or inaccurate verification.
12 In an attempt to help the magistrate reach the finding
13 that this is trustworthy in terms of going into
14 Mr. Drayton's privacy with his phone, they go with the
15 statement that is utterly contradicted by the facts,
16 which is that there is a third-party separate witness
17 came forward and provided information about a
18 conversation between Darryl Drayton and a friend and
19 neighbor of the victim, named Shannon, in which they
20 discussed the murder of the victim.

21 That statement has several factual problems
22 because -- and I believe it is conceded --

23 THE COURT: Well, it doesn't really say anything
24 factually. It just said they had a conversation.
25 Doesn't say what it was.

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1 MR. PENNINGTON: Well, I'm going to contend --

2 THE COURT: It insinuates that they talked about
3 the murder, but it doesn't say that.

4 MR. PENNINGTON: Well, they discussed the murder
5 with --

6 THE COURT: Right. But it doesn't say what they
7 discussed.

8 MR. PENNINGTON: Correct.

9 THE COURT: So, I mean, it's really almost
10 innocuous.

11 MR. PENNINGTON: Well, I took that position
12 initially myself, in the sense of how -- what does
13 that statement mean. In the context of seeking
14 probable cause, it seems to me that it would have no
15 place in the warrant if the officers were not
16 contending that it wasn't incriminating. In other
17 words, the juxtaposition of this statement with the
18 claim of Mr. Bartley, it seems to be supporting Mr.
19 Bartley's claim that this is a reliable reason to go
20 forward with finding probable cause and searching Mr.
21 Drayton's phone. If it has no evidentiary weight, it
22 shouldn't have been in there. It's -- I mean, if it
23 has no weight, there's no reason to put it in there.

24 And I do have the magistrate present and we can
25 offer his testimony. I will proffer, as I did in

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1 chambers to the court, that last week I interviewed
2 him and simply presented him with a chance to read the
3 warrant and read that second sentence and ask him if
4 he -- how he knew that, did it -- did he infer that
5 that was to imply something incriminating --

6 MS. SHEALY: Your Honor, I would object at this
7 time. Because we did speak with the magistrate. He
8 indicated he did want to move to squash the subpoena.
9 And so I think that --

10 THE COURT: Okay. Well, we'll get --

11 MS. SHEALY: Okay.

12 THE COURT: -- we'll get to it in just a second.
13 Okay?

14 MR. PENNINGTON: And I'll contend that if Your
15 Honor views this as a critical question, then he will
16 be the best source of that and an essential witness.
17 And under the In Re: Whetstone decision of our court,
18 magistrates are perfectly available as subpoenaed
19 witnesses, as fact witnesses. And in that case -- it
20 was found that the judge, the circuit judge, in that
21 case was not needed for that PCR. In this setting,
22 the Court may determine that it does need the honest
23 appraisal of this magistrate.

24 THE COURT: Go ahead with your argument.

25 MR. PENNINGTON: Yes, sir.

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1 So what I was about to say is is that the
2 magistrate found that this was -- implied that this
3 was not just a discussion of the news or what was
4 going on but that these were incriminating remarks
5 which was essentially adding weight to the reason to
6 issue the warrant.

7 So what we know now is that there was no
8 separate person and that from my interview last week
9 with Detective Cooke, who was the affient -- and this
10 was after he had spoken with the lead detectives in
11 preparation for our meeting with the solicitor -- that
12 he admitted that the source of this information never
13 existed and that it was some sort of rouse to mislead
14 the defendant when he got the warrant to -- insofar as
15 judging how willing Ms. Shannon Sekanina was to
16 provide information to the police.

17 More dramatic is that the described conversation
18 did not contain anything that was not public
19 information coming from Mr. Bartley. Mr. Bartley had
20 been in touch with Shannon that morning, the morning
21 of August the 8th. He had relayed what he knew and he
22 continued throughout the day to relay information that
23 he knew and that there was no -- and there still is no
24 claim that Mr. Drayton had more information than what
25 had been provided to him by Sekanina, by Shannon

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1 Sekanina, and by Mr. Bartley when they spoke, et
2 cetera.

3 So what is troubling is that Franks v. Delaware
4 provides that while warrants are to be presumed valid,
5 that that presumption disappears when there is
6 materially false claims of facts that are essential to
7 probable cause. And we think we have that squarely in
8 this case where we have what is a materially
9 inaccurate, misleading, dare I say false claim, that
10 implies, at the very least, that there were
11 incriminating admissions by Mr. Drayton to Shannon
12 that would add weight to this claim of a need for a
13 warrant.

14 Given that, I then fall back to where we
15 started, which is is there -- if you redact -- if I
16 understand the process, the Court could choose to
17 redact the entire statement by referencing the
18 conversation between Drayton and Sekanina and look to
19 see whether or not Mr. Bartley's initial report is
20 sufficient. And we contend -- and I've supplied the
21 Court with the cases where our courts have said that
22 reliability is critical in making a determination.
23 People can make all kinds of claims. The question is
24 is there any real finding or reliability. And in this
25 setting, there is no claim for reliability. And there

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1 couldn't have been, because at that early stage of the
2 investigation, they were still evaluating everyone's
3 credibility.

4 As I have proffered to the Court, the same day
5 that the warrant was issued, which was the 10th, there
6 was a swab taken of Mr. Bartley's cheek to get his
7 DNA, from hair, to DNA at the crime scene. There
8 were, as I mentioned a moment ago -- in the initial
9 report to Detective or Officer Reynolds, there were --
10 there was partial disclosure about what had been going
11 on in subsequent interviews. Mr. Bartley decided to
12 tell about her history of using and selling drugs in
13 more detail.

14 So that I think under those circumstances, any
15 conscientious law enforcement officer would be saying,
16 standard operating procedure, we have a paramour who
17 goes missing. Until we rule out or we know more, the
18 paramour is always a suspect in those kinds of
19 settings.

20 So you're left with, on Tuesday night, which was
21 roughly -- was less than forty-eight hours later,
22 they're still swabbing his cheek, and they're going to
23 the magistrate and saying, let's do this warrant this
24 way; we'll report what he said reporting a
25 conversation about her going out of town with Drayton

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1 and we'll corroborate it with a claim that he talked
2 about the murder with Shannon. That's why that
3 statement is in there. It's materially misleading and
4 I believe based on their own formulation that it would
5 be necessary probable cause.

6 The last thing I would say about my argument is
7 the nexus necklace [phonetic] claim. And it's in
8 page --

9 THE COURT: Page 12.

10 MR. PENNINGTON: Yes, sir.

11 And there the idea is to give the magistrate
12 some reason to think that the information sought is
13 going to have some evidentiary value. And there is no
14 claim, hint, suggestion, or in any way, facts, given
15 to the magistrate that would help that magistrate know
16 that these phone calls would have some bearing. So it
17 becomes a kind of a, well, if the person's a suspect,
18 let's just look at their phone calls without any
19 probable cause, which, again, I find -- or I've argued
20 to the Court is deficient.

21 If there had been a further claim of some kind
22 that there had been telephonic communications between
23 the two, obviously that would have strengthened the
24 warrant. It's lacking in that regard.

25 This crime does not involve the use of a phone.

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1 It involves the claim of that they were together and a
2 murder occurred that would not have necessarily have
3 implicated phone use in any way on its face.

4 So that the -- I will go ahead and mark as a
5 Court's Exhibit the stipulation and then --

6 I guess you've seen a copy of the stipulation?

7 THE COURT: Yes, sir. You gave me a copy of it
8 and I read it. I just left it on my desk in the
9 office. I didn't bring it in.

10 MS. SHEALY: No objection.

11 [Whereupon, Court's Exhibit Number 1 is marked
12 by the court reporter]

13 MR. PENNINGTON: It's now Court's Exhibit 1.

14 THE COURT: As to the motion.

15 MR. PENNINGTON: As to the motion. Yes, sir.

16 THE COURT: Okay.

17 MR. PENNINGTON: And what it provides is that
18 you may accept as true that in the conversations
19 between Drayton and Shannon that Drayton denied ever
20 going to Charleston, denied any knowledge of the
21 involvement in the disappearance, and that --

22 Well, I think that covers what is the
23 stipulation. And I'll pass it up to the Court.

24 Might want to put a staple in this. Or you may
25 want to put a staple in it.

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1 [Whereupon, Mr. Pennington proffers documents to
2 the Court]

3 MR. PENNINGTON: What I think is also -- there's
4 one more relevant --

5 THE COURT: I'm sorry. What? Go ahead.

6 MR. PENNINGTON: There's one more, I believe,
7 relevant consideration. And you may disagree or you
8 may agree. But there was a level of indifference to
9 the responsibilities of accurate swearing, truthful
10 swearing, in this case, by this agency, that is bourne
11 out by the murder warrant that was signed two days
12 later, in which we don't contest the murder warrant as
13 probable cause but I use this as information to
14 provide to the Court that --

15 MS. SHEALY: I would object to the relevancy
16 again, Your Honor.

17 THE COURT: Overruled. Go ahead.

18 MR. PENNINGTON: The murder warrant provides the
19 statement that Shannon Johnson, a friend and neighbor
20 of Lukaitis, stated that she spoke to Ms. Lukaitis on
21 August 8th, which would have been the Sunday night,
22 and was informed that she was in Charleston with the
23 defendant, Darryl Drayton. Now, that is a whopping,
24 huge claim. That is essentially a statement that this
25 witness stated that the victim herself told this other

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1 person that she was in Charleston with the defendant.

2 What we've since learned in this setting is that
3 there is a Shannon Sekanina and there is a Tina
4 Johnson, both of whom have been interviewed, both of
5 whom cell records have been examined, and neither of
6 whom had any such conversation with the victim on
7 Sunday night. So that this is another illustration of
8 a reckless disregard for the accuracy of what were --
9 are the sworn facts going to provide probable cause.

10 My point is is that if the Court rules that this
11 is information that is protected, then -- as I believe
12 that it should -- the probable cause, we contend, is
13 absent both for lacking in nexus as to his phone calls
14 and as to providing reliable information that the
15 magistrate would need to be able to reach a
16 determination of probable cause.

17 THE COURT: Okay. Let me ask you a question.

18 MR. PENNINGTON: Yes, sir.

19 THE COURT: Now, other than conversations -- and
20 in this particular case we're not talking about
21 conversations other than a misuse of a cell phone,
22 harassment, or something to that extent. The standard
23 for the nexus is as follows: there's sufficient
24 reason to believe that evidence of criminal activity
25 will be found in the location specified.

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1 So please tell me how you could ever find
2 evidence of a murder through a phone record and phone
3 information. How could you ever meet that standard?

4 MR. PENNINGTON: I believe that the officers
5 would say that there were reasons to think that they
6 had been communicating and that those records would be
7 valuable in placing the parties.

8 THE COURT: Well, I mean, that just sort of
9 goes to the circumstantial evidence that there was
10 communication.

11 MR. PENNINGTON: Those facts were not supplied
12 to --

13 THE COURT: So your argument is --

14 MR. PENNINGTON: -- to the magistrate.

15 THE COURT: Your argument is that the evidence
16 that the parties had talked to each other would be
17 evidence or activity of the criminal activity? The
18 conversation between the parties would be evidence of
19 criminal activity, i.e., when they were together? All
20 it's going to show is they were together and they
21 talked together; right?

22 MR. PENNINGTON: I don't believe that the
23 warrant alleges a conversation between my client and
24 the victim.

25 THE COURT: It just alleges information trying

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1 to determine his location through the triangulation of
2 the cell towers; correct?

3 MR. PENNINGTON: It -- well, it does.

4 THE COURT: So that information alone, how would
5 that ever -- how could you ever show sufficient reason
6 of evidence of the activity without looking at the
7 cell towers first?

8 MR. PENNINGTON: By having some indication, some
9 evidence, that these people were talking on the phone
10 on a regular basis. And that material fact is not
11 included in this warrant. It's simply, again, the
12 ball that might have provided -- that might have put
13 them over the edge, in terms of the accuracy of the
14 warrant, had Mr. Bartley made that further assertion
15 and the officers chosen to include that as grounds for
16 probable cause. But we're confined, as you said, to
17 the four corners of the warrant. And this magistrate
18 didn't have the benefit of that information.

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

20 MR. PENNINGTON: Yes, sir.

21 THE COURT: Ms. Shealy.

22 MS. SHEALY: Thank you, Your Honor. Beginning
23 first with the Act that Mr. Pennington --

24 THE COURT: Let me just put that to rest right
25 now. Okay? I think that Act is only on the

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1 interceptions. Okay?

2 MS. SHEALY: That's correct. And I have that --

3 THE COURT: It doesn't have anything to do with
4 the stored information that Verizon and Alltel have on
5 their customers. Okay?

6 MS. SHEALY: That's correct. It --

7 THE COURT: It's about intercepting
8 conversations, is what the statute was for. To
9 prohibit that.

10 MS. SHEALY: That's correct. That's --

11 THE COURT: And I don't think it has anything to
12 do with this particular case or this subject matter.

13 MS. SHEALY: Yes, sir.

14 THE COURT: Okay?

15 MS. SHEALY: Okay. Thank you.

16 Then if we could address McKnight. And as a
17 reminder, the State's position is that this is not a
18 search and that the defendant does not have standing.

19 In regarding McKnight, and I'm quoting from
20 McKnight, it does state that one who seeks to have
21 evidence suppressed on this basis must establish that
22 his own fourth amendment rights were violated. And it
23 also states: however, the primary benefit of the
24 statute -- that being the search warrant statute -- is
25 to the person arrested or searched.

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1 And what the factual situation in McKnight was,
2 it was a drug bust in a mobile home and several people
3 were searched and arrested. And it extended to those
4 people who were searched and arrested, but were not
5 the homeowners, the right to bring up the search in
6 court even though they were not the homeowners. That
7 is not analogous here. It is the phone company that
8 is searched in this case. So McKnight is not
9 applicable.

10 Regarding the statutes that I handed up -- and I
11 do want to put this on the record, Judge. Regarding
12 Smith v. Maryland, and it does relate to a pen
13 register, it sets out the CAT standard which sets out
14 the test that the first is whether the individual by
15 his conduct has exhibited an actual subjective
16 expectation of privacy, whether in the words of the
17 CAT's majority the individual has shown that he seeks
18 to preserve something as private. The second question
19 is whether the individual's subjective expectation of
20 privacy is one that society is prepared to recognize
21 as reasonable. It further states that even if the
22 petitioner did harbor some subjective expectation that
23 the phone numbers he dialed would remain private, this
24 expectation is not one that society is prepared to
25 recognize as reasonable. This court has consistently

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1 held that a person has no legitimate expectation of
2 privacy in information he voluntarily turns over to
3 third parties.

4 In the Miller case, for example, the court held
5 that a bank depositor has no legitimate expectation of
6 privacy in financial information voluntarily conveyed
7 to banks and exposed to their employees in the
8 ordinary course of business. The depositor takes the
9 risk, in revealing his affairs to another, that the
10 information will be conveyed by that person to the
11 government.

12 This analysis dictates that petitioner can claim
13 no legitimate expectation of privacy here. When he
14 used his phone, petitioner voluntarily conveyed
15 numerical information to the telephone company and
16 exposed that information to its equipment in the
17 ordinary course of business.

18 In United States v. Bynum: this is a case that
19 they were getting both internet information and phone
20 subscriber information. And the court quotes -- and
21 this is a fourth circuit court -- in this case -- I'm
22 sorry. It's Bynum. Bynum can point to no evidence
23 that he had a subjective expectation of privacy in his
24 internet and phone subscriber information, his name,
25 e-mail address, telephone number, and physical

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1 address, which the government obtained through an
2 administrative subpoena. Bynum voluntarily conveyed
3 all this information to his internet and phone
4 companies. In so doing, Bynum assumed the risk that
5 those companies would reveal that information to the
6 police. Even if Bynum could show that he had a
7 subjective expectation of privacy in his subscriber
8 information, such an expectation would not be
9 objectively reasonable. Indeed, every federal court
10 to address this issue has held that subscriber
11 information provided to an internet provider is not
12 protected by the fourth amendment's privacy
13 expectation.

14 And in United States District Court v. United
15 States of America: while the -- excuse me. Excuse
16 me, Judge. While the central issue presented, whether
17 a defendant's fourth amendment rights are violated
18 when the government requires historical cell data
19 location -- historical cell-site location to that data
20 without a warrant based on probable cause is one of
21 first suppression in this district and in the fourth
22 circuit, it is not altogether novel. In light of the
23 expanding use of cellular network information by law
24 enforcement, several courts have recently grappled
25 with the fourth amendment implications of cellular

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1 telephone technology that allows enforcement to
2 approximate the location of suspect cellular phones
3 and by implicating the location of the suspects
4 themselves. A majority of courts, on the other hand,
5 have concluded that the acquisitions of historical
6 site-location data pursuant to the Stored
7 Communications Act to specific and articulable fact
8 standard does not implicate the fourth amendment
9 regardless of the time period involved. These courts
10 have primarily relied on a line of Supreme Court cases
11 construing the scope of fourth amendment rights
12 relating to business records held by third parties.
13 More specifically, the courts have concluded that
14 because people voluntarily convey their cell site
15 location data to their cellular provider, they
16 relinquish any expectation of privacy over these
17 records.

18 So the State maintains that this is not a
19 search.

20 Your Honor, now regarding the examination of the
21 warrant. The language itself survives without that
22 cumbersome sentence that we've been addressing. I
23 wanted to point out, because Mr. Pennington pointed
24 out, that they took a buccal swab of Mike Bartley.
25 Michael Bartley voluntarily gave his buccal swab. He

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1 reported his fiancé missing. He told the police that
2 she said she was going to Charleston with Darryl
3 Drayton. She was found in Charleston County. He told
4 the police, and the police put in their search
5 warrant, she was going to Charleston County with
6 Darryl Drayton, her dead body was found in Charleston
7 County. He had spoken to her on the phone.

8 When they are investigating a murder case, it is
9 obvious to a magistrate, when they are seeking records
10 of telephone calls, cell tower information, he doesn't
11 -- they don't need to spell it out to the judge.
12 They're interested in knowing where he was traveling,
13 if they are asking for cell tower information. That's
14 obvious. The magistrate knows by the language in the
15 search warrant that she was traveling from Bluffton to
16 Charleston with Darryl Drayton. So the warrant
17 survives, even if that language of that sentence is
18 troublesome.

19 I disagree with Mr. Pennington's version of Kip
20 Cooke's saying that he was creating a ruse for the
21 magistrate. We jointly spoke to Mr. Cooke and, Judge,
22 he indicated that he can't explain why the sentence
23 was written that way.

24 When I look at that sentence, it looks like a
25 good example for an English teacher to try to have

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1 someone correct it, because you don't know -- it's
2 like who are you referring to when you say a separate
3 witness.

4 It's obvious that it's a separate witness from
5 Mike Bartley, but it's not obvious if the second
6 witness is also Shannon Hooper or Shannon Sekanina. I
7 don't remember which way she's referred to within the
8 paragraph. It's a poorly-written sentence. We've all
9 written poorly-written sentences.

10 And Mr. Cooke did not have a fresh memory of
11 what exactly he was trying to convey in the sentence.
12 He did say, I don't know, maybe I was trying to not
13 state that Shannon was the person giving the
14 information about the phone calls with Mr. Drayton.
15 But he didn't remember that specifically, because he
16 was looking at the sentence going, oh, my gosh.

17 But what is clear is never in that sentence does
18 it say Darryl Drayton told us he did it, Darryl
19 Drayton has given details about the murder, or
20 anything to suggest anything -- oh, my goodness, I
21 can't get the word out -- inculcating himself.
22 Nothing suggests that within that sentence. So even
23 if you took the sentence out, there is probable cause
24 to warrant the issuing of that search warrant.

25 Additionally, Judge, the officers acted in good
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1 faith in the getting the search warrant. The judge
2 signed it. The judge looked at it and signed it. He
3 signed several other search warrants that day that did
4 not have that sentence in it but had the other
5 language in it for other people's search -- other
6 people's cell phone records and the officers acted in
7 good faith. I don't think there's a problem anyway.
8 But it's not a search. I don't think the officers in
9 any way were trying to be dishonest with Judge Bligen,
10 someone that they work with. They're trying to
11 investigate a case and investigate it quickly.

12 And I do need to put in the record, just so
13 it'll be clear for the record, this is a case where
14 the investigation started out in Bluffton. He reports
15 it to the local Beaufort County officers that his
16 fiancé is missing, the last time he spoke with her was
17 when she was in Charleston with Darryl Drayton, that
18 she was going to be on her way back and thought she
19 would be back in about an hour. She never returned.
20 He fretted all night. In the morning, he started
21 looking for her. The night before, however, he's
22 calling jails, he's calling the hospital. The next
23 morning, he does go over to Shannon Hooper's house --
24 apartment, who's in the same apartment complex with
25 him. He goes over to Tina Johnson's house. And those

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1 three people are communicating with each other: Mike
2 Bartley, Tina Johnson, Shannon Hooper. And as you can
3 imagine, they're having phone conversations with each
4 other. So Tina is telling Shannon what Mike told her,
5 Shannon is telling Mike what Tina told her. In the
6 interim, Tina Johnson's child sees Darryl Drayton.
7 He's got an injured finger and scratches.

8 All of this is being relayed to the detective in
9 Bluffton. That detective is relaying it to the
10 detectives in Charleston and then they are relaying it
11 to Kip Cooke, who is drafting the warrant. So if
12 mistakes were made, they were not made purposefully,
13 they were not made to deceive, and they were not made
14 in an effort to contrive something to get this warrant
15 that they absolutely were entitled to get. I mean,
16 there was no reason to lie in a warrant to get his
17 records. Thank you.

18 THE COURT: Thank you.

19 MR. PENNINGTON: In reply, Your Honor, I'll be
20 brief.

21 First of all, I don't have copies but I can
22 provide copies for the Court for the search warrants
23 that the solicitor is referencing that were signed the
24 same evening, August 10th, 2010, by Magistrate Bligen.

25 THE COURT: If you want to mark it Court's

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1 Exhibit Number 2, that will be fine.

2 MR. PENNINGTON: I would. Although I would like
3 to do that after we adjourn, if I may.

4 THE COURT: That's fine. You can substitute a
5 copy if you don't have a copy.

6 MR. PENNINGTON: I don't have a copy.

7 The warrants were for Mr. Bartley's records,
8 which is obviously he -- said that Mr. Bartley
9 provided his own records. It is also for the victim's
10 cell records.

11 And then to correct perhaps a --

12 THE COURT: I've got a copy of it, if you want
13 me to mark it a Court's Exhibit.

14 MR. PENNINGTON: I don't believe that you have
15 copies of what are these other four -- three warrants.

16 THE COURT: Well, I don't. Just the affidavit
17 on this case. Do you want to mark that?

18 MR. PENNINGTON: It has been attached as part of
19 my -- it's an Exhibit A in my motion, Your Honor.

20 THE COURT: Okay.

21 MR. PENNINGTON: The warrant for Shannon
22 Sakanina's records does have the same offending
23 statement: a separate witness came forward and
24 provided information about a conversation between
25 Darryl Drayton and a friend and neighbor of the

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1 victim's, named Shannon, in which they discussed the
2 murder.

3 And so I want the record to be clear that, in
4 fact, they did use that when they were going outside
5 the nuclear-family subpoena request. They --

6 MS. SHEALY: Our apologies, Judge. Mr.
7 Pennington is correct about that.

8 MR. PENNINGTON: With regard to the talking with
9 the officers, I don't in any way mean to impugn that
10 these aren't vigorous, hardworking law enforcement
11 officers. What we're here to decide is whether or not
12 the magistrate was given probable cause on those four
13 corners of the warrant.

14 The solicitor's recitation of facts about other
15 information that was potentially known and was known
16 to Beaufort police officers didn't make it into this
17 search warrant. The magistrate did not have those
18 facts about seeing -- someone seeing Mr. Drayton with
19 a cut finger and all those things that are -- could
20 have perhaps provided additional probable cause but
21 which were not offered.

22 I would call Officer Cooke for the limited
23 purpose of clarifying what he's reported to us last
24 week and that I think it is probative on this issue
25 that he, last Wednesday, took the position that he had

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1 made up a third party who talked to the police to
2 shield Shannon from criticism.

3 THE COURT: That's fine, if you want to proffer
4 it.

5 But let me say this. As far as I'm concerned,
6 the separate witness paragraph or sentence, it's so
7 ambiguous and so confusing, as far as I'm concerned,
8 I'm going to redact it.

9 MR. PENNINGTON: Okay.

10 THE COURT: Okay?

11 MR. PENNINGTON: Okay.

12 THE COURT: All right. If you want to call him
13 for that purpose, that's fine.

14 MR. PENNINGTON: If you're going to do that --

15 THE COURT: But I think it's so ambiguous,
16 there's no way -- you could come up with a half a
17 dozen interpretations of that sentence. It's not even
18 a sentence. I don't know where he took English, but
19 it's not even a -- it's not even a -- I guess it's a
20 multi-compound sentence of some sort.

21 MR. PENNINGTON: Well, if the Court's position
22 is --

23 THE COURT: My position is I'm going to redact
24 it and look at the rest of the warrant and see if it's
25 sufficient. Okay?

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1 MR. PENNINGTON: That's where I wanted the Court
2 to go. If the Court is there, then --

3 THE COURT: Okay? I'm there.

4 MR. PENNINGTON: -- we don't need that
5 testimony.

6 THE COURT: I'm there.

7 MR. PENNINGTON: So, essentially, if my motion
8 is having eliminated or redacted that part that
9 Brighton -- that the Bartley claim was insufficient
10 and that all these other facts were not available to
11 the magistrate, and on its face it lacks probable
12 cause, and a nexus to my --

13 THE COURT: Correct.

14 MR. PENNINGTON: Thank you.

15 THE COURT: All right.

16 MR. PENNINGTON: One other thing I do want to
17 just state for the record, in terms of contrasting
18 some of these other courts, it's looking like we're
19 going to make law in this case in the sense that South
20 Carolina has never ruled --

21 THE COURT: We're getting ready to.

22 MR. PENNINGTON: We are getting ready to.

23 THE COURT: We're getting ready to.

24 MR. PENNINGTON: I would contend that the
25 privacy concerns that go to an individual supplying

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1 information to their internet service provider is not
2 the same thing as ones use of ones mobile phone. So I
3 would ask the Court not to consider binding them in
4 the same light.

5 In terms of the solicitor's recitation of the
6 1979 U.S. Supreme Court decision, Smith v. Maryland,
7 where she described the limits of expectation of
8 privacy, this is akin to this area where at that time
9 the Supreme Court said that. And then Congress came
10 back and said they disagreed and created an
11 expectation of privacy for those very records.

12 Just as in the death penalty arena where they
13 are changing trends of expectations of privacy, it
14 seems to me that the South Carolina Legislature's
15 decision to pass such a rigorous interception act
16 suggests that records are, in South Carolina, to be
17 viewed as private, personal matters and while there's
18 no -- if the Court reads it narrowly, then I suppose
19 you could say that these Verizon records don't apply.
20 We contend that they do. But that even if the Court's
21 view of it is correct, I think the Court has to make
22 the additional finding that my client had no
23 reasonable expectation of privacy. It seems to me
24 counterintuitive to what people really believe insofar
25 as their use of their cell phones and whether or not

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1 they believe that a third party can, on no probable
2 cause and no justification, simply get those records
3 because they wish to have them.

4 So I would ask the Court in its ruling to
5 specify whether it's going to find that the warrant
6 was sufficient or whether or not there is, in fact, no
7 expectation of privacy and no warrant would be
8 required.

9 THE COURT: Okay. As the State pointed out,
10 this warrant was against Verizon, not the defendant in
11 this particular case. Although it was subject to his
12 own records and I do think he has standing. And the
13 reason I point that out is is for this reason. Number
14 1, this Court finds -- and the Court is going to
15 follow the long line of federal cases that have stated
16 there's no expectation of privacy as to records. I'm
17 not talking about conversations, now. I'm not talking
18 about interception of conversation or storing those
19 conversations and obtaining conversations. I'm
20 talking about the records that specifically in this
21 case the Court is going to find that there's no
22 expectation of privacy.

23 Now, having said that and referring to the
24 Maryland case, the United States District Court case
25 and the Fourth Circuit cases, the Stored Communication
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1 Act, 18 U.S. -- I think it's -- I can't -- the
2 section. Anyhow, that communication Act affects all
3 of the carriers, i.e., Verizon, Alltel, AT&T, whoever
4 is providing the service.

5 So even though this has not been addressed in
6 South Carolina by the legislature or by case law, the
7 Stored Communication Act I think is persuasive
8 argument on this Court. And it's persuasive argument
9 to this extent: we're not talking about probable
10 cause in this search warrant, we're talking about
11 reasonable grounds to believe that the records and
12 other information sought are relevant and material to
13 an ongoing and criminal investigation. This Court is
14 going to review that warrant in that light primarily
15 because the provider of these records or the holder of
16 these records have to be protected from the federal
17 violation law, i.e., the Stored Communication law. So
18 you've either got to go with a warrant in South
19 Carolina or a court order.

20 There's no statute, there's no case, that
21 provides that mechanism whether it's a warrant or
22 whether it's an order so this Court is going to look
23 at this warrant as obtaining an order from the
24 magistrate to obtain the records to determine the --
25 I'll just read: the identification address of the

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1 cellular towers related to the use of the defendant's
2 cellular telephone is relevant to the ongoing and
3 criminal investigation as to this murder charge.

4 The language in the warrant that states Mike
5 Bartley, the fiancé of the victim, stated he last
6 spoke to the victim on August the 8th, 2010, and she
7 informed him that she was traveling to Charleston,
8 South Carolina, with Darryl Drayton, also known as
9 "D". Bartley provided the Verizon cellular telephone
10 number [REDACTED] as a contact number for Darryl
11 Drayton. It goes on to say this -- it is believed
12 that the call or and information contained in here
13 will provide information as pertinent to the death
14 investigation. All evidence being sought will be
15 compared with evidence already obtained in this
16 investigation.

17 They were trying to investigate a murder and
18 with the persuasive argument of federal cases and the
19 persuasive argument of the Stored Communication Act.
20 The Court finds that the order obtained by the
21 magistrate was sufficient to obtain the records and
22 reasonable grounds were proven under that warrant.
23 And this Court specifically finds probable cause is
24 not necessary.

25 Anything else? Or any clarification on what I'm

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1 trying to say and do?

2 As I said -- as you said, you may be making some
3 law in this case. I don't know. I'm laying the
4 groundwork for you to do that.

5 MR. PENNINGTON: Yes, sir.

6 We would obviously just -- we contend that
7 probable cause is necessary. We've made that clear --

8 THE COURT: I understand.

9 MR. PENNINGTON: -- and we appreciate the
10 Court's --

11 THE COURT: There's no question that you made
12 that determination. I just disagree with you.

13 MR. PENNINGTON: Yes, sir.

14 THE COURT: And the problem is there's no
15 mechanism to protect the providers from the federal
16 law. And if they just give it to you willy-nilly,
17 it'll violate the federal law. We need a mechanism.
18 It's either going to have to be a warrant or a court
19 order. In this case I'm saying it's the warrant
20 obtained in the court order. Okay?

21 MR. PENNINGTON: Yes, sir.

22 THE COURT: That's as simple as I can put it.

23 - - -

24 - - -

25 - - -

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MOTION

THE COURT: Anything else from the State?

MS. SHEALY: Not regarding this matter, Judge.

I do have that one other motion regarding the statement of the deceased.

THE COURT: Okay.

MS. SHEALY: Your Honor, I provided your law clerk with a copy of the Griffin case that I think is right on point.

THE COURT: All right. The State is that -- what's the statement you want to come in?

MS. SHEALY: The testimony of Mike Bartley, the fiancé of the deceased, Alexis Lukaitis, he spoke with her when he was over at her parents' house. She indicated that she was going to give "D", Darryl Drayton, a ride to Charleston, he was going to give her \$20 for gas, he was going to pick up prescription drugs and he was going to give her a few for having driven him. And that phone call took place around six o'clock --

THE COURT: All right. Specifically, what do you want in?

MS. SHEALY: That: that she was going to drive -- she was going to drive Mr. Drayton to Charleston, that he was going to pay for her gas and that she --

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1 they were going to pick up some drugs while they were
2 there and he would give her some of the drugs.

3 THE COURT: The last part we're not going -- the
4 drug issue we're not going into.

5 MS. SHEALY: I don't know that Mr. Pennington
6 has an objection to that part.

7 THE COURT: What have you got an objection to?

8 MR. PENNINGTON: The central objection --

9 And this is Michael's issue I'm going to let him
10 address.

11 But our chief objection is to the naming of "D"
12 as essentially a way to prove the hearsay -- the fact
13 of the matter asserted rather than her state of mind.

14 THE COURT: All right. I think they can show
15 the state of mind, i.e., where she was going, not why
16 she was going, and I think I'm going to limit it to
17 that.

18 Now, my problem is I haven't heard the
19 testimony. I don't know what he's going to actually
20 say. But I think in 803, Subsection 3, and the
21 Griffin case, and I guess the federal case, which
22 is -- that's an old case, an 1892 case. Under those
23 cases I think they can say where they were going, to
24 show her mental intent, but I don't think they can go
25 into why they did that.

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1 MR. COOPER: Yes, Your Honor.

2 And our contention is we'll be satisfied if the
3 Court would limit the statement to say that she was
4 going to Charleston. However, for her to say that she
5 was going with "D" implies that "D" --

6 THE COURT: I think that she can say where she
7 was going and who she was going with. But after that,
8 I'm not going any further.

9 MR. COOPER: Yes, Your Honor.

10 And if I may lay out my argument --

11 THE COURT: Yes, lay out your argument. I'm
12 going to listen to your argument.

13 Solicitor, I didn't mean to cut you off.

14 MS. SHEALY: That's okay.

15 Judge, she -- he does talk to her again later,
16 just so you know both components of the statement, and
17 she is then in Charleston with "D".

18 So there are two components: her plan to go;
19 and then she is in Charleston with "D".

20 THE COURT: Okay. All right.

21 MR. COOPER: Thank you, Your Honor.

22 First, generally, hearsay statements are not
23 admissible. And 803(3) is a specific and narrow
24 exception to the inadmissibility of these hearsay
25 statements. First, Your Honor, I would like to

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1 address that. I don't think that the victim's
2 statement in this case is relevant to our case. In
3 order to be relevant, it has to prove that more likely
4 or less likely a murder happened and go to the
5 elements of murder. And in this case the victim's
6 statement that she's going to Charleston with "D" does
7 not make that more or less likely.

8 Your Honor, as well, the statement is being
9 introduced as a hearsay statement introduced for an
10 improper purpose, namely that the victim intended to
11 go to Charleston with "D", the defendant, and that the
12 defendant's action was in conformity with the victim's
13 then state of mind.

14 Now, the State gave the Court the Mutual Life
15 Insurance Company v. Hillmon case from 1892. It's 145
16 U.S. 285. Your Honor, the federal rule 803 --

17 THE COURT: I think I more agree with The State
18 v. Griffin, the 2000 case. Okay?

19 MR. COOPER: Yes, Your Honor. And I'll address
20 that case I guess --

21 THE COURT: Why don't you address the Griffin
22 case, if you will.

23 MR. COOPER: Yes, Your Honor.

24 THE COURT: You don't need to address the
25 federal case.

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1 MR. COOPER: Okay.

2 THE COURT: I mean, the federal rule is a little
3 bit different on this issue.

4 MR. COOPER: And just to -- my point was, Your
5 Honor, with the Hillmon case and the old case, the
6 federal rule's enacted in response to that case.

7 THE COURT: Right.

8 MR. COOPER: And the court in that case allowed
9 that hearsay testimony to prove the actions of some
10 third party, which is --

11 THE COURT: Well, the district court didn't
12 allow it in. The Supreme Court said, yeah, they
13 should allow it in.

14 MR. COOPER: Yes, Your Honor. And 803(3) was
15 enacted in response to that case.

16 THE COURT: Right.

17 MR. COOPER: And so 803(3), the purpose of that
18 rule is to allow only statements by the declarant of
19 their future actions and not the future actions of
20 some third party, which is how the State intends to
21 introduce what occurred as what they're using this
22 hearsay statement for.

23 Your Honor, the Griffin case I think is --

24 THE COURT: Well, the -- as you -- you referred
25 to it as the Hillmont case. The Hillmont case says

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1 wherever the bodily or mental feelings of an
2 individual are material to be proven. The existence
3 of a particular intention as to a certain person at a
4 certain time is a material fact to be proven.

5 I mean, I -- go ahead.

6 MR. COOPER: Yes, Your Honor.

7 And from that, the -- there's that materiality
8 thing. I don't think that the victim's statement is
9 material to whether or not there was a murder here.
10 But, also, after the Hillmon case --

11 THE COURT: Well, as far as the relevancy issue,
12 I'll have to take that under advisement. It's hard to
13 pull it out of the context that we're pulling it out
14 and rule on whether it's relevant or not relevant.
15 But as far as the relevant issue, I'll take that under
16 advisement. Okay?

17 MR. COOPER: Thank you, Your Honor.

18 As well, my point is that they're using this
19 statement to prove the defendant's conduct, which is
20 an improper purpose.

21 THE COURT: The defendant's conduct?

22 MR. COOPER: To prove that the defendant was, in
23 fact, with the declarant.

24 MR. PENNINGTON: Which is the whole issue in our
25 case.

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1 THE COURT: I understand.

2 MR. COOPER: Yes, Your Honor.

3 And under 803(3), there's a second part of that
4 rule --

5 THE COURT: In the U.S. case that you said they
6 produced 803(8)(a) on, that was part of what they
7 said, that who they were with and where they were
8 going.

9 MR. COOPER: Yes, Your Honor. And that --

10 THE COURT: In this case, how is that different?
11 She said where they were going and who she was with.

12 MR. COOPER: And Rule --

13 THE COURT: How is there any difference?

14 MR. COOPER: Yes, Your Honor.

15 Rule 803(3) was enacted in response to that case
16 and --

17 THE COURT: So you think they dropped out the
18 portion of who she was with?

19 MR. COOPER: Yes, Your Honor. The House
20 committee, in enacting that, constructed that
21 limitation of the doctrine in Hillmon to render the
22 statement of the defendant -- or the declarant, excuse
23 me, admissible only through his or her future conduct
24 and specifically not the future conduct of another
25 person, which we contend is the State's intention in

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1 admitting that hearsay statement here.

2 Your Honor, I don't think that the Court can
3 rely on the Griffin case because in that case the
4 issue was not preserved. So the Supreme Court's
5 comment on 803(3) in State v. Griffin, 339 S.C. 74,
6 the court states that the trial judge ruled the
7 statement was admissible as a present sense impression
8 and a co-conspirator statement and a statement against
9 interest under Rule 804, but when the declarant then
10 testified no objection was made. So any comment the
11 Supreme Court would have on this would be merely
12 dicta, Your Honor.

13 I think we can assume that it was not fully
14 argued before the Supreme Court then and that this
15 Court should not rely on that. I think that the
16 controlling case that this Court should rely on
17 is State v. Garcia, which is 334 S.C. 71 and 512
18 S.E.2d --

19 THE COURT: Garcia just said the reason for the
20 state of mind: I'm scared --

21 MR. COOPER: Yes, Your Honor.

22 THE COURT: -- I'm scared because John
23 threatened me.

24 MR. COOPER: Yes, Your Honor.

25 THE COURT: That's all Garcia said.

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1 MR. COOPER: And like you said, with the issue
2 of the drugs the reason behind the state of mind is
3 not admissible.

4 But what I would like to point the Court to is
5 in Garcia the court makes a very specific analysis of
6 why that hearsay statement was admissible and why it
7 was relevant. In Garcia, there was an allegation by
8 the defendant of an accident, and we're not presenting
9 that sort of defense in this case. So that's what
10 made the statement by the declarant, which we cannot
11 cross-examine, relevant, which is not relevant in our
12 case and under our facts.

13 THE COURT: Okay. Thank you very much.

14 MS. SHEALY: If I could respond briefly, Judge.

15 Looking and reading directly from Griffin, it
16 states that -- and Griffin's first name is Scott, just
17 to make that clear for the record. Priscilla
18 testified that when Tory hung up the phone he told her
19 -- Tory being the victim -- he had to meet Scott and
20 someone else who wanted to buy two or three pounds of
21 marijuana. And then the court states: in any event,
22 Priscilla's testimony is admissible under 803(3),
23 which provides for the admission of the statement of
24 the declarant's then existing state of mind, such as
25 intent or plan.

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1 So it clearly addresses that issue and is
2 accepting of that use in a completely analogous
3 situation.

4 Judge, also, there's another reason that it's
5 important in this case: because he talks to his
6 fiancé and she tells him that she's with Darryl
7 Drayton, he's been looking for her and he's been
8 looking for Darryl Drayton. He's calling Darryl
9 Drayton that night. He's calling Darryl Drayton that
10 morning. He's going to Shannon Hooper and saying,
11 have you talked to Drayton, have you talked to Alexis.
12 He goes to Tina Johnson and he says, have you talked
13 to Drayton, have you talked to Alexis. Tina Johnson
14 discussed it with her family. They go to a local
15 place, a self-help place, where you can buy -- get
16 food and stuff, if you're impoverished, and her son
17 sees Darryl Drayton walking across with a bandaged
18 finger and some scratches on his face. He tells mom
19 because she's been talking about where's Alexis,
20 where's Darryl Drayton.

21 In context, it's necessary to show why everybody
22 is looking for Darryl Drayton. Otherwise, the jury
23 would be misled as to why -- why is everybody focusing
24 on Darryl Drayton and could improperly think that Mike
25 Bartley, for some reason, is looking at Darryl Drayton

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1 for some unknown reason. The only reason he's looking
2 for Darryl Drayton is his wife says, I'm riding with
3 him to Charleston. It would be completely unfair not
4 to go through it.

5 But Griffin absolutely supports the use of it.

6 MR. COOPER: Your Honor, as to that point, I
7 think that under Rule 404 -- Rule 403, that the
8 prejudicial value of that statement outweighs its
9 probative value. The State can prove where Darryl
10 Drayton was in a number of means. They don't have to
11 use a hearsay statement that we can't cross-examine in
12 order to do so.

13 THE COURT: Well, let me do this. I'm going to
14 take it under advisement so I can hear the testimony,
15 because sometimes it changes.

16 MR. COOPER: Yes, Your Honor.

17 THE COURT: And when we get to the statement
18 itself, I'll listen to it very briefly in chambers. I
19 mean, not in chambers but in camera --

20 MR. PENNINGTON: In camera.

21 THE COURT: Okay? In camera.

22 MS. SHEALY: He will be our first witness in the
23 morning.

24 THE COURT: Okay. And I'll listen to it very
25 briefly in camera just to see what they're going to

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1 say.

2 MS. SHEALY: Well, do you want me to put him up
3 now just so we don't have to do that --

4 THE COURT: Well, it may change overnight. You
5 know how that is. Unless I let you lead him through
6 it. I might do that.

7 MS. SHEALY: I mean, he hasn't -- he's never
8 changed about what he said.

9 But we'll -- however you want. I'm just
10 interested in kind of getting going when we start
11 tomorrow. Whatever you want to do.

12 THE COURT: Okay. Well, yeah, that's -- if he's
13 here. Have you got him here?

14 MS. SHEALY: He's here.

15 THE COURT: All right. Let's listen to it
16 today.

17 MR. COOPER: Your Honor, just for the record, I
18 would like to point out that in State v. Griffin, the
19 Court failed to analyze why that statement was
20 relevant. I think this Court needs to do that. It
21 points to the lack of usefulness of that Griffin
22 decision.

23 And as well, Your Honor, I'll point the Court to
24 another case in State v. Weston, which is five --
25 excuse me -- 625 S.E.2d 641 (2006). And, Your Honor,

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1 in that case the Court also found that the hearsay
2 statement was relevant because the defendant asserted
3 that the victim ran away with some boyfriend and the
4 State was introducing it to rebut that statement.

5 THE COURT: Okay.

6 MR. COOPER: Thank you.

7 THE COURT: You want to call your witness?

8 MS. SHEALY: Yes. Mike Bartley.

9 [Whereupon, Mr. Bartley comes forward]

10 THE CLERK OF COURT: Raise your hand.

11 [Whereupon, Mr. Bartley is duly sworn by the
12 clerk of court as follows: do you swear or affirm
13 your testimony will be the truth, the whole truth, so
14 help you God]

15 THE WITNESS: Yes.

16 [Whereupon, Mr. Bartley takes the witness stand]

17 THE CLERK OF COURT: State your full name and
18 spell your last name.

19 THE WITNESS: Michael Edwin [phonetic] Bartley.
20 B-A-R-T-L-E-Y.

21 MS. SHEALY: Okay. Mike, you're going to need
22 to speak up a little bit for us. Okay?

23 - - -

24 - - -

25 - - -

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PROFFER

- - - - -

MICHAEL E. BARTLEY,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. SHEALY:

Q. I'm going to just kind of jump to the
conversation that you had with Alexis on Sunday afternoon,
August 8th, 2010. Okay?

Did you leave your apartment to go somewhere
that afternoon?

A. Yes.

Q. Where did you go?

A. My parents' house.

Q. Who did you take with you?

A. My kids.

Q. Did you have a telephone with you?

A. Yes.

Q. What was your telephone number?

A. [REDACTED] --

Q. Well, if you don't remember, it's not -- it
doesn't matter.

You had a cell phone with you?

A. Yes.

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1 Q. Did Alexis have her cell phone with her?

2 A. Yes.

3 Q. Were you communicating by telephone vocally and
4 also by text?

5 A. Yes.

6 Q. Okay. Could you tell the judge whether or not
7 y'all were communicating with each other while you were at
8 your parents' house?

9 A. Yes.

10 Q. At some point that afternoon, did you have a
11 conversation, or either text, with Alexis about her plans
12 for that late afternoon-evening?

13 A. She called at about 6:00 and then we started
14 texting.

15 Q. Okay. Would you tell the Court, please, what
16 she indicated to you she was going to do?

17 A. She was going with Darryl to Charleston and pick
18 up pills.

19 Q. Okay. And was it -- did she give you any
20 information about the terms of her going?

21 A. Yes.

22 Q. What was that?

23 A. He was going to give her twenty in gas and give
24 her about twenty pills.

25 Q. Okay. Did you have any further communication

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1 with her?

2 A. Yeah. I spoke with her at about 8:19, 8:20, was
3 the last time I spoke with her.

4 Q. Okay. And did she indicate to you at that point
5 where she was at that point?

6 A. Yeah. Well, I heard -- she said she was on 17,
7 about to make a right.

8 Q. Okay. And did she tell you who she was with?

9 A. Yes.

10 Q. Who did she say she was with?

11 A. Darryl.

12 Q. Did she tell you when she thought she would be
13 home?

14 A. About an hour.

15 Q. Did you speak with her again?

16 A. No.

17 Q. Did you text with her again?

18 A. I was sending texts all night.

19 Q. Did you ever get any response from her again?

20 A. Only at ten o'clock when the phone picked up and
21 it went dead.

22 Q. Okay. Did you ever hear her voice again?

23 A. No.

24 Q. Did you ever receive a text back from her?

25 A. No.

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1 MS. SHEALY: I have no further questions.
2 Answer any Mr. Pennington may have.

3 THE COURT: Any cross-examination?

4 MS. SHEALY: Or Mr. Cooper. I'm sorry.

5 THE COURT: Any questions you want to ask
6 concerning the motion?

7 [Whereupon, Mr. Cooper and Mr. Pennington
8 confer]

9 MR. COOPER: Mr. Bartley, thank you for
10 answering my questions.

11 - - - - -

12 PROFFER

13 BY MR. COOPER:

14 Q. When your fiancé called you do -- just to
15 clarify -- did she say that she was heading to Charleston
16 or had left for Charleston?

17 A. She already left.

18 Q. She was saying that she had left?

19 A. She was -- she was leaving. She was already on
20 her way. When I got that last call at 8:19, she said she
21 was with Darryl.

22 Q. Okay. The first phone call you had --

23 A. Uh-huh.

24 Q. -- was she saying that -- in that phone call,
25 was -- had -- was she already on her way to Charleston?

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1 A. No. She was getting ready to leave. When I
2 first got the initial phone call, she was making plans to
3 go.

4 Q. Okay.

5 THE COURT: Any redirect? I'm sorry.

6 MR. PENNINGTON: The Court's indulgence, please,
7 Your Honor.

8 [Whereupon, Mr. Cooper and Mr. Pennington
9 confer]

10 Q. [Mr. Cooper] Mr. Bartley, you spoke about a
11 conversation at 8:19. Was that an oral conversation or a
12 written conversation?

13 A. It was oral.

14 Q. That was an oral conversation?

15 A. [Indicates affirmatively]

16 Q. Do you have any text messages from your fiancé
17 saying that she was with "D" --

18 A. No.

19 Q. -- or with Darryl?

20 A. No. That's why she called.

21 Q. So it was only an oral conversation?

22 A. [Indicates affirmatively]

23 MR. COOPER: Court's indulgence, Your Honor.

24 [Whereupon, Mr. Cooper and Mr. Pennington
25 confer]

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1 MR. COOPER: That's all, Your Honor. Thank you.

2 MS. SHEALY: I beg the Court's indulgence for
3 just a moment.

4 [Whereupon, Ms. Shealy reviews documents]

5 THE COURT: Anything in reply?

6 MS. SHEALY: Just one second, Judge. I'm sorry.

7 [Whereupon, Ms. Shealy reviews documents]

8 - - - - -

9 PROFFER

10 BY MS. SHEALY:

11 Q. You did send her some text messages, though; is
12 that correct?

13 A. Oh, I'm sure.

14 Q. Okay. And --

15 MS. SHEALY: Just a moment.

16 [Whereupon, Ms. Shealy and Mr. Finch confer]

17 Q. [Ms. Shealy] Mr. Bartley, I'm going to hand you
18 a copy of your cell phone records with your text messages.
19 Looking at your text messages timed at 6:35, could you
20 read for the Court what you texted her?

21 A. Tell him twenty before you go, not after.

22 Q. Tell him twenty before you go, not after. Who
23 is him that you're referencing there?

24 A. Darryl.

25 Q. And you're referencing Darryl why?

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1 A. Because she'll go do something and somebody will
2 promise her something and not give it to her, so I said
3 make sure you get the twenty.

4 Q. And you're referencing Darryl because she had
5 told you what? that she was going --

6 A. She was going with him.

7 Q. Okay. And then at 8:49, what do you text to
8 her? And it's military time.

9 [Whereupon, the witness reviews documents]

10 Q. [Ms. Shealy] At 8:49, what do you text her?

11 A. On your way back.

12 Q. And do you hear anything from her after that?

13 A. [Indicates negatively]

14 Q. And then at 9:02 what do you text her?

15 A. You know I'm worried about you.

16 Q. Okay. And at 9:58? Well, at 21:44:52, what do
17 you text her?

18 A. I wish you would call so I know you're okay.

19 Q. And you, again, never hear back from her that
20 evening; correct?

21 A. No.

22 MS. SHEALY: I have no further questions of
23 Mr. Bartley.

24 THE COURT: Anything on recross?

25 MR. COOPER: No, Your Honor.

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1 THE COURT: Okay. Thank you very much.

2 MS. SHEALY: He can step down?

3 THE COURT: Yes, ma'am.

4 [Whereupon, Mr. Bartley is excused and exits the
5 witness stand]

6 THE COURT: Solicitor, I will allow for him to
7 testify who he -- who he -- where she was going and
8 who he [sic] was with. Okay? We're not going into
9 the drugs and why she was with him --

10 MS. SHEALY: Okay.

11 THE COURT: -- i.e., the \$20 for gas and the
12 drugs.

13 MS. SHEALY: Okay.

14 THE COURT: Okay?

15 MS. SHEALY: Do not go into the gas or the --

16 THE COURT: The drugs.

17 MS. SHEALY: -- the drugs?

18 MR. COOPER: And, Your Honor, for the record,
19 we --

20 THE COURT: Unless something comes up between
21 now and then that would show it's not relevant.

22 Now, that doesn't say it may not become relevant
23 on redirect. It depends on whether they open the door
24 or something. I don't know. But I'm just talking
25 about on your case in chief.

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1 MR. COOPER: Yes, Your Honor.

2 And I would just like to make the argument for
3 the record that --

4 THE COURT: You've already made a good argument
5 for the record. What else do you want to say? I've
6 already ruled.

7 MR. COOPER: That the State is not intending to
8 show a state of mind but the State is intending to
9 show the identity of Darryl, the defendant, and as
10 such it's an improper purpose and it does not fall
11 within the compounds of that exception.

12 THE COURT: Your motion is overruled, with the
13 exception of the not allowing the drugs and the gas
14 money as to why she was going to Charleston. Okay?

15 MR. COOPER: Thank you, Your Honor.

16 THE COURT: All right. Anything else?

17 MS. SHEALY: I think Mr. Pennington may have
18 just had a few other motions.

19 MR. PENNINGTON: Really, these are mostly things
20 that I think we've worked out. We've worked pretty
21 hard getting the case ready, Your Honor, and so I'm
22 going to cover some of the agreements that we've
23 reached about evidence that I would have made 404(b),
24 bad act kind of objections to --

25 THE COURT: Well, if y'all have agreed with

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1 them, I don't need to hear it.

2 MR. PENNINGTON: That's fine.

3 THE COURT: I mean, we've got the exhibit list.
4 Why don't you just go through and mark the ones you
5 don't have an objection to and we'll know.

6 MR. PENNINGTON: These were matters that I think
7 the solicitor has decided to stay away from. And I
8 agree with the Court I don't have to recite all of
9 them. But I, just for the record --

10 THE COURT: The only ones I need to hear are the
11 ones y'all can't agree on.

12 MR. PENNINGTON: Pardon me?

13 THE COURT: The only ones I need to hear are the
14 ones you can't agree on.

15 MR. PENNINGTON: Very well, Your Honor.

16 With regard to the indictment, we have moved,
17 and I believe the State would agree, to amend the
18 indictment from Darold, D-A-R-O-L-D, to Darryl. There
19 was a question about his name on his driver's license
20 but it's confusing and not relevant to our case. I
21 think we all agree that everyone knew him as Darryl
22 and I would ask that for clarity, that we amend the
23 indictment to Darryl.

24 THE COURT: Any objection?

25 MS. SHEALY: No, Your Honor.

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1 THE COURT: All right. That motion is granted.

2 MR. PENNINGTON: That's all I have, Your Honor.

3 THE COURT: All right. And it's been changed on
4 the indictment. Let me see on the back of it --

5 [Whereupon, the Court reviews documents]

6 THE COURT: D-A-R-R-Y; correct?

7 MR. PENNINGTON: D-A-R-R-Y-L.

8 THE COURT: Y-L. Okay.

9 MS. SHEALY: Judge, one thing I was going to
10 propose, just so --

11 THE COURT: Let me make sure I've changed it
12 everywhere it needs to be changed.

13 [Whereupon, the Court reviews documents]

14 THE COURT: Yeah. The indictment has been
15 changed. Grant that motion.

16 MS. SHEALY: One thing I was going to suggest,
17 just so that when we get started tomorrow it will run
18 smoothly, because I think we have worked things out so
19 that it could, is maybe --

20 I don't know that everybody needs to be here,
21 but that if we could I guess take a lunch break and
22 then come back with the court reporter and mark our
23 exhibits. I've provided her with a list. And just
24 mechanically labeling all our exhibits. Then tomorrow
25 we wouldn't have to go through that exercise --

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1 THE COURT: That's fine.

2 Talking about the exhibits, do you generally --
3 which ones do you disagree on the admissibility on?
4 Or do you know yet?

5 MR. PENNINGTON: I don't believe that we're
6 going to have any objection. We've more or less
7 agreed on almost everything.

8 THE COURT: On 1 through 206?

9 MR. PENNINGTON: I'll have to review it again.
10 But pretty much, yes. I've looked at her photographs
11 and I have no objections to the photographs. I have
12 that. I was given that last night.

13 THE COURT: You've got the exhibit list?

14 MR. PENNINGTON: I do have an exhibit list.

15 MS. SHEALY: If we could just have access to
16 your --

17 THE COURT: Mia, will you come --

18 MS. SHEALY: -- court reporter and --

19 THE COURT: -- back after lunch and mark the
20 exhibits?

21 And during lunch, if you would look and see if
22 you disagree with any of these and we can just put
23 them all into evidence without objection and be done
24 with it.

25 Unless there are some you object to or unless

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1 you don't want to do that, Mr. Pennington. Whatever
2 you want to do.

3 MR. PENNINGTON: Well, we have -- I've agreed to
4 tons of chain witnesses and we have a number of
5 stipulations about that.

6 THE COURT: Okay.

7 MR. PENNINGTON: I'm not going to agree that we
8 completely skip over the person that found the item
9 and is going to authenticate it, but I have agreed to
10 a number of stipulations about chain so that it would
11 shorten the case probably by a day, day and a half.

12 THE COURT: All right.

13 MR. PENNINGTON: There also may be objections
14 about what we actually send back to the jury, because
15 some of these items are biological hazard type of
16 things and they're -- it would be inappropriate. But
17 we don't have to take that up at this moment.

18 THE COURT: No. You think you --

19 MS. SHEALY: Maybe we could contemplate that
20 now, Judge. I think what I can do --

21 THE COURT: Which ones are you talking about?
22 Number 166?

23 MS. SHEALY: Like the -- there's some items that
24 have a lot of blood on them.

25 THE COURT: Shoe laces, white socks, yellow

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1 shirt? Number 166?

2 MR. PENNINGTON: Actually, those don't have
3 blood --

4 MS. SHEALY: Those don't. But --

5 THE COURT: They don't? Okay.

6 MS. SHEALY: -- but there are -- what I think
7 I'm going to do with that, Judge, is show a photograph
8 simultaneously when I'm asking someone to identify the
9 object and I could have the object marked as an I.D.
10 and then show the photograph at the same time so that
11 the witness -- so the jury can see what the item is,
12 and the jury will know I've got it, but then not send
13 it back and put it in.

14 MR. PENNINGTON: That makes sense to me.

15 THE COURT: Okay.

16 MS. SHEALY: I want them to know I've got it.

17 THE COURT: Well, the only thing I would say, if
18 for some reason the jury wants to see it, I don't have
19 a problem. If they send out a question to see it,
20 I'll send it back in with the bailiff and let them
21 look at it.

22 MS. SHEALY: So move it in but just don't send
23 it back?

24 THE COURT: Right. If they want to see it for
25 some reason, other than the picture. But we'll deal

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1 with that when it arises.

2 MR. PENNINGTON: I think --

3 THE COURT: That sounds like a good plan to me,
4 the way you're talking about.

5 MS. SHEALY: Okay.

6 THE COURT: Which ones are you talking about?

7 MS. SHEALY: He said move it in but just don't
8 send it back.

9 THE COURT: Which ones are you talking about
10 that's got all the blood on them?

11 MS. SHEALY: I'll go back over lunch and look at
12 those. There are a good number of them.

13 MR. PENNINGTON: There are. But --

14 MS. SHEALY: There's a diaper bag, there's a
15 tire, there's a tire cover. The tire cover I'm --

16 MR. PENNINGTON: There are a variety of things
17 that you would not feel comfortable sending back for
18 biohazard reasons. But I think you'll -- once you see
19 the evidence, Judge, you'll see that they can get the
20 flavor of it without having to have it admitted.

21 And the relevance of the stuff is going to be
22 only that they were -- some of them were swabbed and
23 tested. And we're not disputing that. So I can't
24 imagine the jury is really going to want to go back
25 and, you know, handle some of this evidence.

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1 THE COURT: All right. Anything else?

2 MR. PENNINGTON: There is one matter about the
3 diamond ring, which we would agree --

4 MS. SHEALY: Judge, her diamond ring was pawned
5 by Mr. Drayton. And I have a photograph of it. I'm
6 going to have Mr. Bartley identify it -- and the
7 person to whom he pawned it. I'm going to show a
8 photograph of it, as well, so that it does not get
9 marked in evidence because I would like for Mr.
10 Bartley to be able to have that ring back, if you
11 don't -- if you don't have a problem with that. The
12 defense --

13 THE COURT: We'll just substitute the photograph
14 for the diamond ring. If you want to put it into
15 evidence during the trial, that's fine, and I'll just
16 -- after the trial, if you'll remember, I'll
17 substitute a picture and I'll give it back to you.

18 MS. SHEALY: Can we do it that way?

19 THE COURT: Yeah, we can do it that way.

20 MS. SHEALY: Okay.

21 THE COURT: Rather than just keeping the diamond
22 ring, we can just substitute a picture of the ring.

23 MS. SHEALY: There's some -- okay. I know
24 there's a rule that once something has gone into
25 evidence, they're so strict about --

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1 THE COURT: Well, we --

2 MS. SHEALY: I thought I could just put the
3 picture in --

4 THE COURT: I'll --

5 MS. SHEALY: -- in lieu of it.

6 THE COURT: Have you got any problem with that,
7 Mia?

8 THE COURT REPORTER: I don't. Whitney --

9 THE COURT: I've done it before that way. But
10 if y'all don't want to do it that way, that's fine
11 with me. It doesn't matter to me. Especially some of
12 your bigger items I've done it on. You know, your
13 bigger items that you -- the clerk didn't have room
14 for.

15 MS. SHEALY: Are you checking --

16 THE COURT REPORTER: Whitney --

17 MS. SHEALY: We'll figure that out, too.

18 THE COURT: Okay.

19 MS. SHEALY: What time should we come back to
20 mark the exhibits?

21 THE COURT REPORTER: I don't need to go to
22 lunch, so whatever time --

23 MS. SHEALY: Oh. You don't?

24 THE COURT REPORTER: I'm going to be -- I'm
25 going to be here.

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1 THE COURT: It's ten minutes to 2:00 now. What
2 time do you want to --

3 THE COURT REPORTER: I'll be here. I'm not
4 leaving the courtroom.

5 MS. SHEALY: What time do y'all want to come
6 back.

7 [Whereupon, Ms. Shealy and deputies confer]

8 MS. SHEALY: So what if we came back at -- what
9 time? Three o'clock?

10 THE COURT: Three o'clock?

11 MS. SHEALY: Three o'clock?

12 THE COURT: Okay. Thank you. Otherwise, we'll
13 adjourn until ten o'clock in the morning.

14 [Whereupon, Court's Exhibit Number 2 is marked
15 by the court reporter]

16 [Whereupon, State's Exhibit Numbers 1 through
17 206 are pre-marked by the State]

18 [JURY TRIAL ADJOURNS AT 1:50 P.M.]
19
20
21
22
23
24
25

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable J.C. Nicholson, Jr., on Monday, October 1, 2012.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 15th day of February, 2013.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO.: 2010-GS-10-8551

STATE OF SOUTH CAROLINA)
)
VS.)
)
DARRYL L. DRAYTON,)
)
DEFENDANT.)

JURY TRIAL

VOLUME 2 OF 5

held before the Honorable J.C. Nicholson, Jr.
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Tuesday, October 2, 2012, Commencing at 11:46 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
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PROCEEDINGS

- - - - -

PRETRIAL MOTIONS

MS. SHEALY: Judge, you know, I know typically we have one officer from an agency. In this case I've got two investigating officers, one from Beaufort County, who was the lead investigator --

THE COURT: Are y'all going to sequester witnesses?

MS. SHEALY: We are.

But I have a lead investigating officer from Bluffton, the Beaufort County investigator. And Detective Perkins is the lead investigating officer in Charleston. I would ask that both of them be allowed to be in the courtroom. I have two different -- I have two different scenes in two different counties investigating the matter. Todd Calhoun is the lead investigating officer in Beaufort County and James Perkins --

THE COURT: Well, Mr. Pennington, do you have any objection to that?

MR. PENNINGTON: I do not, Your Honor.

THE COURT: Okay. And the victims can stay. Who are the victims?

MS. SHEALY: I have -- Mike Bartley is the

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1 fiancé of the victim. I have asked that he not be in
2 here. He's our first witness. But even though --

3 THE COURT: I mean, I was just asking who do you
4 want to stay in here as the victim. Or do you?

5 MS. SHEALY: All other victims in the case are
6 not witnesses. So I'm going to ask Mike Bartley to
7 sit out. He's my first witness.

8 And then if we can get one more chair for our
9 law clerk to be at the table, if that's possible.

10 [Off the record momentarily]

11 THE COURT: Are we on the record, Mia? Are you
12 ready?

13 THE COURT REPORTER: Yes, sir.

14 THE COURT: All right. We're back on the record
15 in the case the State of South Carolina v. Darryl
16 Drayton, charged with murder, case number 2010-GS-10-
17 8551.

18 I understand the attorney on behalf of the
19 defendant, Mr. Pennington, would like to put something
20 on the record as a result of the Court's decision
21 yesterday. Is that correct?

22 MR. PENNINGTON: That is correct, Your Honor.

23 I in no way want to argue with the Court's
24 ruling.

25 THE COURT: I understand. I'm going to allow

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1 you to go -- go ahead.

2 MR. PENNINGTON: Thank you very much, Your
3 Honor.

4 What I wanted to clarify is several things.
5 First is is that I have marked as Court's Exhibits,
6 and they just need to be entered as Court's Exhibits,
7 what are the other search warrants that were issued
8 that afternoon by the officers. There were a total of
9 five warrants, as you -- as I've referred to. One of
10 the warrants was obviously for my client, his phone
11 calls, which was Court's Exhibit 1.

12 There is also now what I'm offering Court's
13 Exhibit 3, which is Michael Bartley's cell records;
14 Court's Exhibit 4, which is Alexis Lukaitis' phone
15 records; Shannon's phone records. This is the search
16 -- these are the -- this is the search warrant for
17 Verizon records for the victim and her fiancé. And
18 then there are -- there's Court's Exhibit 5, which is
19 for Shannon Sekanina or Shannon Cooper Sekanina. And
20 finally Court's 6, which is an alternate phone number
21 for the defendant.

22 And we -- I've made reference to these, but we
23 didn't formally mark them until now. I would ask the
24 Court to make that a part of the record.

25 THE COURT: That will be fine. Anything else?

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1 [Whereupon, Court's Exhibit Number 3 is marked
2 by Mr. Pennington]

3 [Whereupon, Court's Exhibit Number 4 is marked
4 by Mr. Pennington]

5 [Whereupon, Court's Exhibit Number 5 is marked
6 by Mr. Pennington]

7 [Whereupon, Court's Exhibit Number 6 is marked
8 by Mr. Pennington]

9 MR. PENNINGTON: Yes, sir.

10 On listening to the Court's ruling yesterday --
11 as you know, I submitted a thirteen-page memorandum of
12 law that really focused mostly on the South Carolina
13 right of privacy under our state constitution, Article
14 1, Section 10, where I contended that the warrant
15 requirement, the requirement of police showing
16 probable cause to a neutral and detached magistrate
17 was the standard for the issuance of the warrant.

18 And after the Court's ruling, I did go back last
19 evening and look more closely at what is the emerging
20 trends in our federal courts. And as the Court's
21 ruling explicitly noted when the Court made reference
22 to the Stored Communication Act of the federal courts,
23 that Congress, in effect, set up a barrier for the
24 dissemination of cellular records by requiring that
25 vendors not provide those with court order. And the

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1 federal courts have broadly construed this as
2 requiring a what I would call reasonable suspicion
3 standard.

4 THE COURT: I think the cases refer to
5 reasonable grounds. But --

6 MR. PENNINGTON: And what I have noted is that
7 today in the Fifth Circuit Court of Appeals there is
8 an opinion coming from the District Court of Houston,
9 -- written opinion which I've cited. In re:
10 application of the United States of America for
11 historical cell-site data, which is noted as
12 magistrate number H-10-998M, 990M and 981M, where the
13 magistrate judge, Steven Smith, in Texas, goes to
14 pains to review what is the -- what are the trends.
15 And what they're finding is that courts have commonly
16 been issuing -- district courts have been giving what
17 -- these court orders for reasonable suspicion or
18 reasonable grounds on a regular basis but that given
19 what has emerged in the U.S. Supreme Court lately in
20 terms of some of the concerns about protecting
21 particularly home privacy where the case that involves
22 the --

23 [Whereupon, Mr. Pennington reviews documents]

24 MR. PENNINGTON: Here. I have it right here.

25 The thermal imaging case in 2001, Kyllo v. U.S.

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1 533 U.S. 27, in 2001, where the Supreme Court struck
2 down the use of thermal imaging devices on a home as a
3 search, that would require a warrant, because of the
4 protection of privacy that's related to homes.

5 Then there was another case, U.S. v. Karo, 468
6 U.S. 705, a 1984 case, where the narcotics officers
7 had put a beeper into an ether can that they knew
8 would go out and likely be used in the commerce of
9 drugs and cocaine manufacturing. And while they
10 didn't find problems with doing that, providing that
11 beeper ended up in a warehouse, that they found that
12 when it was used to monitor its presence in a home,
13 that that violated the privacy of the resident unless
14 there had been some sort of probable cause.

15 Finally, the GPS tracking case from 2012,
16 earlier this year, U.S. v. Jones, where our Supreme
17 Court directly addressed that there is an expectation
18 of privacy when the level of surveillance gets so
19 high. In that case you are dealing with an alleged
20 narcotics trafficker where they were looking at the
21 movements of this individual through the use of his
22 phone, for what would have been months on end, and
23 would have directly implicated his presence and
24 absence in his home.

25 Those refinements in technology where more and

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1 more information is now being gathered are having what
2 the court contended in Texas as a decisive fourth
3 amendment consequence. And that decisive fourth
4 amendment consequence is is that we're beginning to be
5 able to map people's movements with tremendous
6 specificity and that that is beginning to cross over a
7 line where it's becoming a search as recognized by the
8 fourth amendment. And under the fourth amendment,
9 warrants must issue, in order to breach that privacy,
10 by a standard of probable cause --

11 THE COURT: Aren't those cases talking about the
12 GPS aspect of it, not the cellular --

13 MR. PENNINGTON: They really do.

14 THE COURT: -- the GPS aspect of the records,
15 not what we're talking about here today, the tower
16 information --

17 MR. PENNINGTON: I think the --

18 THE COURT: -- where you can cross-triangulate.

19 MR. PENNINGTON: I would concede that point,
20 Your Honor, in that I believe that those cases are
21 where officers have -- the level of specificity is
22 greater than what we have here where you're looking at
23 a couple of days of simply cell tower pinging data as
24 opposed to if he had had an iPhone and you could
25 somehow reconstruct movement by movement. Those cases

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1 do. And the judge does express that concern.

2 But I note that this is a -- apparently a trend
3 where magistrates across the country are now beginning
4 to reconsider. And so we have decision -- I've given
5 you a decision in New York, a decision from
6 Pennsylvania, and I understand that there are cited
7 decisions in here from Austin, Texas, and Indiana and
8 Massachusetts, all where a line can be crossed where
9 probable cause would be needed.

10 To make it more pertinent and now germane to our
11 case, what we have is that with the totality of
12 circumstances we look at not just federal law. And
13 that's what all the federal courts have been looking
14 at is what is required under the Stored Communications
15 Act and the fourth amendment.

16 I would simply say that we also have in South
17 Carolina a unique provision about the right of people
18 to be secure from unreasonable invasions of privacy,
19 which is in Article 1, Section 10, and that there is
20 no precedent. Up until now, there's no decision
21 that's been reached on this question in South Carolina
22 of looking at someone's cell towers.

23 We will be looking at this for the first time
24 and I would contend in South Carolina, based on that
25 right of privacy and our mandate for search warrants

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1 and the descriptions that are required under our
2 search warrant statute, that Mr. Drayton's right would
3 be that this be a probable cause finding, which we
4 contend is absent in this warrant, rather than a
5 reasonable ground or a reasonable suspicion standard.

6 THE COURT: Thank you very much.

7 Solicitor Shealy, anything you would like to
8 add?

9 MS. SHEALY: Your Honor, I think you touched on
10 it. Mr. Pennington did, as well.

11 But I would assert that the cases that
12 Mr. Pennington handed up: in contrast, ours is not
13 dealing with any home privacy, ours is not dealing
14 with thermal imagery, ours is not dealing with GPS
15 monitoring, ours does not deal with any type of
16 protracted period. They were seeking records from a
17 very limited time period, August 6th through August
18 10th. This is not dealing with an ether can with a
19 beeper. And that this is not something with a high
20 level of surveillance and that, therefore, the fourth
21 amendment's consequences do not exist.

22 Thank you.

23 THE COURT: Okay. Thank you very much.

24 All right. Anything else you need to --

25 MR. PENNINGTON: No, sir. That's my proffer for

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1 the Court on the law in this area.

2 THE COURT: Okay. Is there anything else that
3 we need to tend to or do before hopefully we get a
4 jury panel to draw from?

5 MR. PENNINGTON: Your Honor, I have an objection
6 to what would be question 13 of the State's voir dire.

7 THE COURT: You have what, now? Which one?

8 MR. PENNINGTON: I have an objection to question
9 13, which is in the State's proposed voir dire,
10 because it implies a fact that I don't know that it's
11 going to come into evidence, which is that -- the
12 question is: is any member of the jury panel a close
13 personal friend, acquaintance, or relative of the
14 Drayton family -- my client is Darryl Drayton -- from
15 the Dixie Plantation Road area of Charleston County.

16 I don't know that the State intends to offer
17 that.

18 MS. SHEALY: I don't think that we are going to
19 offer it.

20 My concern is, Judge, he does have a host of
21 family members that live in the Dixie Plantation Road
22 area of Charleston. He, in fact, had a former
23 residence there.

24 My concern is we're going to get mid trial and
25 they're going to realize that he is related to someone

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1 out there and we're going to have a jury situation.

2 But I do not believe I'm going to have a witness
3 testify to that.

4 THE COURT: Okay.

5 MR. PENNINGTON: Well, my objection would be
6 that this puts a fact in evidence that the jury would
7 not otherwise know and so it becomes --

8 THE COURT: Well, I won't answer [phonetic], but
9 I will ask does anybody know Mr. Darryl Drayton and
10 have him stand. And after I ask that, I'll ask does
11 anybody know any of his relatives in Charleston County
12 or Beaufort County, and leave it at that.

13 MR. PENNINGTON: That's fine.

14 THE COURT: Okay?

15 MR. PENNINGTON: That will be great.

16 Your Honor, and, again, we've been off the
17 record as we've been hoping that we could empanel a
18 jury --

19 THE COURT: Let me put this on the record --

20 MR. PENNINGTON: Yes, sir.

21 THE COURT: -- and then I'll let y'all respond
22 to what I'm getting ready to put on the record,
23 please, sir.

24 All right. Yesterday, either prior to the jury
25 panel being in the Charleston County assembly room

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1 prior to the general questioning and answering
2 session, an individual suffered a heart attack and the
3 jury was dismissed on Monday, October the 1st, and
4 brought back today on Tuesday, October the 2nd.

5 At my request, Judge Jefferson, during the
6 general voir dire, asked the jurors whether or not
7 they had read an internet article that was posted by
8 the Post and Courier on the internet yesterday at some
9 time -- it doesn't give the time.

10 [Whereupon, the Court reviews documents]

11 THE COURT: Okay. It was posted October the
12 4th, 2012, at 11:38 a.m. It was updated at 11:57 a.m.
13 The Court's concern of this internet article was it
14 states: Drayton has three armed robbery convictions
15 and multiple drug convictions dating back to 1996. He
16 was placed on the South Carolina register sex offender
17 list in 2005 after he was convicted of committing a
18 lewd act upon a child under sixteen, according to a
19 SLED background check.

20 As a result of this article, Judge Jefferson
21 asked the jury panel as a whole how many people read
22 the article on the internet concerning the potential
23 "juror for murder trial suffers heart attack, halts
24 jury selection". Twenty-seven people stood. I have
25 asked the clerk to exclude those twenty-seven from my

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1 potential panel to draw from.

2 I am going to mark the Post and Courier internet
3 posting as Court's Exhibit Number whatever is next.

4 THE COURT REPORTER: 7.

5 THE COURT: 7.

6 [Whereupon, Court's Exhibit Number 7 is marked
7 by the court reporter]

8 THE COURT: I do not have the names of the
9 jurors, but I'm going to call out the names of the
10 jurors that stood. Juror number 297, 238, 252, 226,
11 162, 93, 102, 289, 74, 254, 66, 181, 274, 271, 6, 95,
12 156, 60, 167, 235, 287, 166, 89, 56, 23, 120 and 77.

13 I will keep those jurors in the jury assembly
14 room while we are attempting to draw a jury in this
15 case and we will have approximately fifty-three
16 jurors, less those twenty-seven, less a jury that is
17 being drawn for a two-week civil case, and use those
18 twenty-seven, if necessary, to try to fill out the
19 remaining portions of this jury panel.

20 The Court's major concern with the article was
21 prior criminal history and I think -- I think it would
22 be almost impossible through voir dire questioning to
23 withdraw that criminal record from their minds, and I
24 think it would be highly prejudicial, so I'm trying to
25 avoid that issue if possible.

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1 Is there anything the State would like to add?

2 MS. SHEALY: Yes, Your Honor.

3 Mr. Pennington brought that article that you're
4 talking about to my attention yesterday afternoon
5 around 2:30. Ms. Wilson, the Solicitor, was in my
6 office. I asked her to contact the newspaper, which
7 she did. They then redacted the article to take out
8 the language regarding the prior record. It was
9 amended right about 2:37 yesterday afternoon.

10 I brought to the attention of the Court and
11 Mr. Pennington today that I was concerned that the
12 list of people that you called out who had read an
13 article on the internet, that I was concerned with
14 them being excluded from potential jurors because it
15 may be that they read the redacted one and not the one
16 that had the prior record in it.

17 Mr. Pennington has some questions, that we
18 drafted together, that we think might ferret out the
19 concern about the prior record.

20 But I understand the Court's procedure, that
21 we're going to start with the ones that weren't on the
22 list at all.

23 THE COURT: If we have to go to that list --

24 MS. SHEALY: I understand.

25 THE COURT: -- the ones I've excluded, we will.

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1 MS. SHEALY: I do [phonetic].

2 I just want to make sure that the record is
3 clear that the effort was made by the solicitor's
4 office to have that language taken out of it.

5 THE COURT: I understand it was taken off
6 approximately at four o'clock?

7 MS. SHEALY: No. No, sir. It was taken off
8 earlier than that. It was at 2:37.

9 THE COURT: 2:37 is when it was taken off?

10 MS. SHEALY: Yes, sir.

11 THE COURT: Okay.

12 MS. SHEALY: Also, I had some colleagues this
13 morning that advised me that on the television there
14 had been some mention of his prior record and other
15 people in the courtroom. I brought that to the
16 attention of Mr. Pennington and I think we have
17 questions hoping to address those issues, as well,
18 with the panel that we get.

19 THE COURT: Okay. Anything else you would like
20 to add, Mr. Pennington?

21 MR. PENNINGTON: In my question number 5 of my
22 proposed voir dire, after a summary of the case, the
23 question is: have you seen any publicity regarding
24 this case; if so, please stand and give us your name
25 and number.

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1 And I would suggest that the procedure should be
2 that we should ask jurors to come forward as
3 individuals to get to the question about what they
4 could have heard yesterday about criminal history. I
5 agree it's impossible to ask that question without
6 tipping an issue.

7 The language that I would propose that the Court
8 use when we do individuals in camera voir dire would
9 be something along the lines of do you remember what
10 you read or heard yesterday about the case or about
11 the defendant.

12 THE COURT: Okay. Anything else you want to
13 add?

14 MR. PENNINGTON: My fear, Judge, is that while
15 I'm glad that we were able to get it redacted, we
16 actually have unusual situations where spouses and
17 friends read these things and get the perception and
18 then pass it along. And so I'm concerned not just
19 about those twenty-seven jurors that acknowledged
20 reading a post from the Post and Courier on the
21 internet, but who could have talked to other family
22 members who said, oh, you were down at the court today
23 and they were dealing with that registered sex
24 offender or that guy that has those three armed
25 robberies. Which, for the Court's information, he has

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1 one armed robbery. So it's not even accurate.

2 In addition to that, I would say that we
3 actually have a husband and wife who are on the panel.
4 One of them stood and said that he had read the
5 report. That was Reginald Costen, juror 60. His
6 wife, Vanessa Costen, did not stand. But it's hard to
7 imagine that they would not have discussed it. They
8 are both in the -- right now in the big panel upstairs
9 for the civil case that's being chosen --

10 THE COURT: What numbers are they?

11 MR. PENNINGTON: 60 and 61. We may get
12 Ms. Costen --

13 THE COURT: Well, 60 stood this morning. 61 did
14 not stand.

15 MR. PENNINGTON: That is correct.

16 THE COURT: Okay. Well, I mean, the only thing
17 I can tell you, Mr. Pennington, we'll just have to
18 deal with it as it comes. I don't know what's going
19 to come.

20 But, yeah, obviously we're going to do it in
21 camera. Okay? And when I say in camera, we're going
22 to do it up here at the bench. I'm not going to send
23 the whole panel out. I'm going to do the voir dire at
24 the bench. And, quite frankly, I do that on a quite
25 regular basis at trials. And I will also give you and

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1 Ms. Shealy an opportunity to ask any questions that
2 you deem appropriate.

3 MR. PENNINGTON: Your Honor, the only last thing
4 that I have before we conclude is that the internet
5 article also made reference to what had been ruled
6 yesterday as inadmissible; that is, is that the
7 statement of Mr. Bartley where he said that -- told
8 investigators that Ms. Lukaitis and Drayton were going
9 to Charleston to get prescription pills. That is also
10 in the article, as well as the statement that Drayton
11 told deputies while he was interviewed that he
12 occasionally gave her pills. And as I understand the
13 posture of the case right now, the State does not
14 intend to offer that admission by my client during the
15 course of the trial. So all of those are problems for
16 us and they're all in the article.

17 THE COURT: Well, that's just generally problems
18 in all criminal cases that have any I guess newspaper
19 coverage, TV coverage, internet coverage, whatever you
20 want to call it.

21 MR. PENNINGTON: Yes, sir.

22 THE COURT: And we'll just have to deal with it.

23 MR. PENNINGTON: We'll do the best we can.

24 That's all I have at this time.

25 THE COURT: Anything else from the State?

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1 MS. SHEALY: I have nothing further.

2 THE COURT: Well, we will stand in recess until
3 we can get a panel. My guess, it's going to probably
4 be about fifty-three, fifty-four. And let's see.
5 We've got -- we're going to try to get two alternates.
6 So that will be, what, six right there. Three and
7 three are six.

8 MR. PENNINGTON: By my count we need thirty-five
9 jurors, if we exercise all the strikes, assuming that
10 we don't excuse anyone for cause based on all these
11 issues that we're discussing.

12 THE COURT: It's how many?

13 MR. PENNINGTON: My count is thirty-five if we
14 exercise all of our strikes, not counting whoever we
15 would excuse for cause. If we're going to have two
16 alternates, I think thirty-five eligible jurors is our
17 minimum.

18 THE COURT: Okay. I mean, that will leave us
19 approximately eighteen left over. We'll see how it
20 goes.

21 MR. PENNINGTON: We'll see how it goes.

22 THE COURT: Thank you very much.

23 MR. PENNINGTON: Thank you, sir.

24 [Whereupon, a recess is taken from 12:18 p.m. to
25 2:25 p.m.]

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1 [Whereupon, an off-the-record bench conference
2 is held]

3 MR. PENNINGTON: Your Honor, just for the
4 record, I have a copy of what is a news post by our
5 Channel 5 WCSC TV affiliate that has a website that
6 references this jury selection process on Tuesday,
7 October 2nd. And we still at this stage, which is at
8 2:15, 2:30, have not been able to get a petit jury
9 panel. They're on their way to us now.

10 But over the lunch break I looked and observed
11 that they posted my client's criminal history,
12 including the fact that he is on the sex offender
13 registry, 2005 conviction of a lewd act. It alleges a
14 few armed robberies, although that's inaccurate --
15 there's only one armed robbery conviction --
16 convictions for forgery, drug possession,
17 manufacturing drugs, assault and battery of a high and
18 aggravated nature. And I brought this for your
19 reference in case --

20 THE COURT: Mark it a Court's Exhibit.

21 MR. PENNINGTON: Okay.

22 THE COURT: And the only reason I'm doing that
23 is just to try to show the record why we're doing it
24 this way and the reason we're doing it this way.

25 MR. PENNINGTON: Yes, sir.

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1 [Whereupon, Court's Exhibit Number 8 is marked
2 by the court reporter]

3 THE COURT: So you don't get surprised: I'm
4 going to cover the publicity first.

5 MR. PENNINGTON: That would make sense --

6 MS. SHEALY: Judge --

7 THE COURT: Because I'm not going --

8 MR. PENNINGTON: We can weed it out --

9 THE COURT: -- to do all the other stuff.

10 I want to weed out the publicity first and see
11 how many we've got left before I even get into
12 anything else.

13 MS. SHEALY: We do have one other matter.

14 Ashley and I spoke over the lunch break. And
15 because of the sequence of statements and all by Mike
16 Bartley and because of Ashley's theory of his defense,
17 we have agreed that we do need to go into the fact
18 that Alexis was riding with Drayton to pick up some
19 pills.

20 MR. PENNINGTON: That is correct, if your ruling
21 stands, which I assume it will. And we'll renew it
22 right before opening. But assuming your ruling is
23 going to be that he can identify Drayton as the person
24 going to Charleston, then my defense is going to be --

25 THE COURT: -- I'm going to do it because --

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1 MR. PENNINGTON: I do. I do. I have to.

2 THE COURT: That's fine with me.

3 MR. PENNINGTON: Okay.

4 THE COURT: I mean, you were opposed to it
5 earlier.

6 MR. PENNINGTON: I'm opposed to the --
7 initially, I would object to the identifying of the
8 passenger.

9 THE COURT: If you don't have any objection to
10 it, that's fine with me.

11 MR. PENNINGTON: But if we cross that line, then
12 I have to get into the business of the drugs. So it's
13 the idea of the guy that is my objection -- or I
14 should say Michael's objection -- on the issue of that
15 being offered more to prove who the perpetrator was
16 than her state of mind.

17 THE COURT: At some point in time, based upon
18 his argument and my ruling, we need to put something
19 on the record to clarify that you don't have any
20 objection to it now.

21 MR. PENNINGTON: I do not. Yeah. Right.

22 THE COURT: Let's go ahead and if you would put
23 it --

24 MS. SHEALY: She's doing it. She's taking that
25 down.

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1 MR. PENNINGTON: She is -- I think she took that
2 down.

3 THE COURT: Did you take that down, Mia?

4 THE COURT REPORTER: I took it down.

5 MR. PENNINGTON: So just so that we can clarify,
6 prior to opening statements we would renew our
7 objection to the Court's ruling yesterday that under
8 803(3) that the testimony of Mr. Bartley would permit
9 him to describe that he heard from the victim on
10 Sunday, August 8th, that she was driving to Charleston
11 with "D" to acquire drugs and the Court has ruled
12 previously that he could identify who she said she was
13 riding with.

14 If that ruling stands, then our contention would
15 be that our defense would have to then accept that
16 ruling, and then incorporate reference to the fact
17 that they were going to buy drugs, as part of the
18 defense.

19 THE COURT: That's fine. I mean, if you have no
20 objection to it.

21 My ruling, as far as who she was with, "D", is
22 still the same. But, now, if you don't have any
23 objection to the drug issue, then that's fine.

24 MS. SHEALY: And then also the \$20 for gas,
25 which is all part of it.

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1 MR. PENNINGTON: Yes, that is all part of it.

2 MS. SHEALY: And I do intend to go into that in
3 my opening and with my first witness.

4 THE COURT: I mean, that's fine. If they don't
5 have any objection to it, I don't have any objection
6 to it.

7 MR. PENNINGTON: And just to flesh out: we
8 would argue, in addition to the Rule 803(3) and the
9 cases that we pointed out to the Court, Mr. Drayton's
10 fourteenth amendment due process rights and the
11 corresponding provision of the state constitution and
12 his right to confront the witnesses against him.

13 THE COURT: Well, there was no State involvement
14 in that. Okay?

15 MR. PENNINGTON: Thank you.

16 MS. SHEALY: Thank you, Your Honor.

17 THE COURT: If that's a --

18 MR. PENNINGTON: Thank you, Your Honor.

19 THE COURT: If that's a new motion, it's denied.
20 Okay?

21 MR. PENNINGTON: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. PENNINGTON: It's just the underpinning that
24 -- denial of due process under the theory that a fair
25 trial requires the ability to -- we can't cross-

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1 examine Lex about that, Alexis, the victim.

2 THE COURT: Well, Crawford just covers from the
3 State's involvement --

4 MR. PENNINGTON: That's correct.

5 THE COURT: -- not this issue.

6 MR. PENNINGTON: We're concerned that the -- and
7 we respect your ruling.

8 But to clarify what we're trying to say, maybe
9 inartfully, is the notion that the underpinnings of a
10 basic fair trial creates a problem when we do not
11 think that they need this to establish her state of
12 mind -- because they're not required to prove it --
13 but it does do profound prejudice to our client in
14 that it identifies him, although that's not the stated
15 purpose.

16 THE COURT: All right. Thank you very much.

17 MS. SHEALY: Thank you, Judge.

18 MR. PENNINGTON: Thank you, Judge.

19 THE BAILIFF: Ready to bring them in, Judge?

20 THE COURT: Yes, sir.

21 [Whereupon, the jury panel enters the courtroom
22 at 2:32 p.m.]

23 - - -

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25 - - -

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JURY VOIR DIRE

1 THE COURT: All right. Ladies and gentlemen of
2 the jury panel, I'm Judge Nicholson and we're going to
3 be drawing a jury in general sessions, which is
4 criminal court. The State has called the case of The
5 State v. Darryl Drayton, who has been indicted for
6 murder concerning the death of Alexis Lukaitis --

7 MS. SHEALY: Lukaitis.

8 THE COURT: -- Lukaitis on August the 9th, 2010.

9 Now, this is the indictment. It is not
10 evidence. It's merely the administrative process
11 which the defendant is brought before the Court for
12 trial. It's not evidence. It's not for you to
13 consider any innocence or guilt of the defendant in
14 any manner whatsoever. It's just merely a piece of
15 paper that's brought into the courtroom in the
16 administrative process, as I said, to bring the
17 defendant before the Court for trial.

18 Now, when this occurred on August the 9th, 2010,
19 there was a lot of media coverage. And because of the
20 incident that occurred yesterday with the juror, there
21 has also been a lot of media coverage by the
22 television, by the newspaper, and also on the TV,
23 newspaper websites, and on the internet.

24 I'm going to tell you very briefly the facts
25

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1 in the case and we're going to get into any
2 information that you have heard outside the
3 courtroom. This case involves the death of Alexis
4 Lukaitis --

5 MS. SHEALY: Lukaitis.

6 THE COURT: -- Lukaitis on August in 2010.

7 On Monday, August the 9th, 2010, Ms. Lukaitis'
8 body was found lying on the side of Old Jacksonboro
9 Road near Highway 174 in the Adams Run area of
10 Charleston County. Her identity was not immediately
11 known and she was reported as an unknown woman. It
12 was shortly determined that Ms. Lukaitis was a
13 resident of Bluffton in Beaufort County, South
14 Carolina. And as I said earlier, the defendant,
15 Darryl L. Drayton has been charged with her -- with
16 murder as a result of her death.

17 Now, has any member of the jury panel read
18 anything about this case on the internet, heard
19 anything on TV about it, read anything in the
20 newspaper about it, or heard anyone talking about it,
21 or has anyone spoke to you about it, hey, I read that
22 about the death of the juror yesterday and this is
23 what it said.

24 If you've heard anything at all about it at any
25 point in time, please stand.

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1 Okay. The people that are standing, line up
2 right here. I'm going to bring you up one at the
3 time.

4 And the attorneys can join me.

5 THE BAILIFF: Number 11.

6 [Whereupon, Mr. Keith Bartleson, juror number
7 11, comes forward]

8 THE COURT: Juror number 11. Keith Bartleson?

9 MR. BARTLESON: Yes, sir.

10 THE COURT: Is that correct? Bartleson?

11 MR. BARTLESON: Yes, sir.

12 THE COURT: How are you doing, Mr. Bartleson?

13 MR. BARTLESON: Good.

14 THE COURT: You're juror number?

15 MR. BARTLESON: 11.

16 THE COURT: What have you heard about the case?

17 MR. BARTLESON: Just what they said on the
18 news --

19 THE COURT: All right. What did --

20 MR. BARTLESON: -- on the TV.

21 THE COURT: When did they say it?

22 MR. BARTLESON: Oh. When it was -- when it
23 first happened. Not recently.

24 THE COURT: Okay. Have you heard anything
25 recently?

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1 MR. BARTLESON: Oh. No, sir.

2 THE COURT: Have you heard anything on TV last
3 night or today?

4 MR. BARTLESON: No.

5 THE COURT: Have you read anything on the
6 internet?

7 MR. BARTLESON: No.

8 THE COURT: All right. But you remember when it
9 came on TV when it happened?

10 MR. BARTLESON: Yeah.

11 THE COURT: What do you remember hearing on the
12 television?

13 MR. BARTLESON: Just that there was a woman
14 found on Jacksonboro Road and that the name that
15 you -- the man you named was charged with it. That's
16 all I heard. I heard they came to Charleston, that
17 she was missing and went back -- supposed to be back
18 where she lived at and was found missing. They found
19 her. She was missing.

20 THE COURT: Do you remember anything else?

21 MR. BARTLESON: That's it.

22 THE COURT: Do you remember anything said about
23 the defendant in this case?

24 MR. BARTLESON: No.

25 THE COURT: When you heard that on television,

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1 did you form an opinion about the case?

2 MR. BARTLESON: No.

3 THE COURT: So you don't have an opinion one way
4 or the other about the case?

5 MR. BARTLESON: No.

6 THE COURT: Do you think you can set that aside
7 and listen to what testimony comes out in the
8 courtroom?

9 MR. BARTLESON: Yes, sir.

10 THE COURT: Because the problem I have is this.
11 Okay? The TV report may be correct, it may be
12 incorrect. I have no idea. I didn't hear it.

13 MR. BARTLESON: Right.

14 THE COURT: And I don't want any incorrect
15 information affecting a juror's decision. I want you
16 to make a decision from what you hear here in the
17 courtroom. Do you understand?

18 MR. BARTLESON: Yes, sir.

19 THE COURT: Do you think you can do that?

20 MR. BARTLESON: Yeah.

21 THE COURT: Can you set this other matter aside?

22 MR. BARTLESON: Uh-huh.

23 THE COURT: And at the time you heard it, read
24 about it, you and your wife or you and your girlfriend
25 didn't discuss it and say, hey, that guy's guilty?

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1 MR. BARTLESON: No, sir.

2 THE COURT: Okay. So you think you can be fair
3 and impartial to both the State and the defense?

4 MR. BARTLESON: Yes, sir.

5 THE COURT: And base your decision on testimony
6 you hear in the courtroom?

7 MR. BARTLESON: Yeah, what I hear in the court.

8 THE COURT: Any questions from the State?

9 MS. SHEALY: No, sir.

10 THE COURT: Any from the defense?

11 MR. PENNINGTON: No, sir.

12 THE COURT: You go have a seat. Thank you very
13 much.

14 MR. BARTLESON: Thank you.

15 [Whereupon, Mr. Keith Bartleson, juror number
16 11, returns to the audience]

17 THE COURT: Any motions?

18 MR. PENNINGTON: Not at this time, Your Honor.

19 MS. SHEALY: [No response]

20 THE BAILIFF: Number 236 [sic].

21 [Whereupon, Mr. Lawrence Smith, juror number
22 246, comes forward]

23 THE COURT: What's your juror number?

24 MR. SMITH: 236.

25 THE COURT: 236?

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1 MR. SMITH: Lawrence Smith.

2 THE COURT: I don't have a 236. What's your
3 name?

4 MR. SMITH: Lawrence Smith.

5 THE COURT: Lawrence what?

6 MR. SMITH: Smith. Lawrence. L-A-W --

7 MR. PENNINGTON: It's 246, Your Honor.

8 THE COURT: 246. Okay. I got you. Lawrence
9 Smith.

10 How are you doing, Mr. Smith?

11 MR. SMITH: All right, sir.

12 THE COURT: You're doing all right?

13 MR. SMITH: Yes, sir.

14 THE COURT: All right. Tell me what you've
15 heard or seen about the case.

16 MR. SMITH: First of all, I work for Charleston
17 County Detention Center.

18 THE COURT: Okay.

19 MR. SMITH: I heard what was in the newspapers
20 and so on.

21 THE COURT: What do you remember?

22 MR. SMITH: Found on the side of the road; they
23 came to buy some prescription drugs. That -- just
24 basically what was in the news.

25 THE COURT: All right. Now, you work at the

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1 detention center.

2 MR. SMITH: Yes, sir.

3 THE COURT: Do you know Mr. Drayton?

4 MR. SMITH: Personally, no. But I do deal with
5 the inmates with disciplinary problems and --

6 THE COURT: Has he had any disciplinary
7 problems?

8 MR. SMITH: Not that I can remember right now,
9 not offhand.

10 THE COURT: Have you had to deal with him at all
11 in your job at the jail?

12 MR. SMITH: If he's been in the medical
13 department, I oversee the medical. I do disciplinary
14 boards and I deal with the kitchen workers so --

15 THE COURT: You work in the medical department?

16 MR. SMITH: I have a number of areas I have to
17 cover.

18 THE COURT: You cover a lot of ground?

19 MR. SMITH: Yes, sir.

20 THE COURT: All right. Have you reviewed his
21 records at the jail?

22 MR. SMITH: No. I don't believe so.

23 THE COURT: What do you know about him and the
24 case, either through television, internet, or --

25 MR. SMITH: You're saying what I --

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1 THE COURT: What do you remember --

2 MR. SMITH: Yeah, what I do know --

3 THE COURT: What do you know about -- what do
4 you know about the case and him as a result of
5 television, newspaper, or whatever you've heard? What
6 do you know?

7 MR. SMITH: That this is a crime that he was
8 accused of. That's it. That's all. I don't know
9 anything other than that.

10 THE COURT: When you heard it, and because of
11 your job, do you have an opinion about the case?

12 MR. SMITH: About the case, no.

13 THE COURT: Why not?

14 MR. SMITH: Because I'm not the judge. It's not
15 for me to decide whether he's guilty or --

16 THE COURT: But as a juror, you're going to be
17 sitting in judge of the facts.

18 MR. SMITH: Right.

19 THE COURT: Okay? What I'm trying to determine
20 is because of your position at the jail and because of
21 your knowledge about the case, have you prejudged the
22 defendant?

23 MR. SMITH: No.

24 THE COURT: No?

25 MR. SMITH: No.

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1 THE COURT: Do you think you can set all this
2 aside?

3 MR. SMITH: [No response]

4 THE COURT: Can you set everything you know
5 aside and be fair to both plaintiff and -- I mean,
6 excuse me -- the State and the defendant?

7 MR. SMITH: I don't know. It would be a
8 problem.

9 THE COURT: How would it be a problem?

10 MR. SMITH: If I go back to work, I don't know.

11 THE COURT: Tell me how it would be a problem
12 for you.

13 MR. SMITH: I just don't want to -- because I
14 have to deal with so many inmates --

15 THE COURT: Right.

16 MR. SMITH: -- I don't remember them all and I
17 don't want it to come up later somewhere along the
18 line we may have had a dealing or we may not have. I
19 don't know. Offhand, I don't know. Could I have in
20 the past? I may have. Like I said, I do disciplinary
21 reports, I do the medical reports. They would have
22 the records of it, I wouldn't.

23 THE COURT: All right. So you're concerned
24 about something coming up --

25 MR. SMITH: Yes, sir.

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1 THE COURT: -- in the future with you sitting on
2 this jury?

3 MR. SMITH: Yes, sir.

4 THE COURT: Is that what you're concerned about?

5 MR. SMITH: Yes, sir.

6 THE COURT: Questions from the State?

7 MS. SHEALY: No.

8 THE COURT: Any from the defendant?

9 MR. PENNINGTON: I do. I have a couple, Your
10 Honor.

11 THE COURT: Okay.

12 MR. PENNINGTON: Sargent Smith, how long have
13 you worked for Sheriff Cannon?

14 MR. SMITH: Twenty years.

15 MR. PENNINGTON: And how much of that time has
16 been at the jail?

17 MR. SMITH: All of it.

18 MR. PENNINGTON: Okay. And Sheriff Cannon is
19 the same sheriff of the sheriff's department that
20 investigated this case?

21 MR. SMITH: Yes.

22 MR. PENNINGTON: And so you are in some ways in
23 the same organization of some of the detectives that
24 worked this case or some of the crime scene officers
25 that worked this case?

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1 MR. SMITH: Yes.

2 MR. PENNINGTON: Would it be difficult or
3 awkward or uncomfortable for you to be involved in a
4 case of this magnitude if you ultimately decided to
5 acquit or find somebody not guilty and then have to go
6 back to work and deal with that?

7 MR. SMITH: Yes.

8 MR. PENNINGTON: And on the other hand, would it
9 be difficult to go back to the general population of
10 the jail if you sit on this jury and --

11 THE COURT: Mr. Smith, you can go have a seat.
12 Okay? Thank you so very much.

13 MR. PENNINGTON: Thank you, sir.

14 THE COURT: I'm going to strike him for cause.

15 MR. PENNINGTON: Okay.

16 THE COURT: 246, stricken for cause.

17 [Whereupon, Mr. Lawrence Smith, juror number
18 246, is stricken for cause]

19 [Whereupon, Mr. Lawrence Smith, juror number
20 246, returns to the audience]

21 THE BAILIFF: Number 41. 41.

22 [Whereupon, Ms. Kathy Burnet, juror number 41,
23 comes forward]

24 MS. BURNET: Hi.

25 THE COURT: How are you --

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1 MS. BURNET: Kathy Burnet.

2 THE COURT: -- doing today? Kathy Burnet?

3 MS. BURNET: Uh-huh.

4 THE COURT: How are you doing, Ms. Burnet?

5 MS. BURNET: Good.

6 THE COURT: Are you doing all right?

7 MS. BURNET: Yes, sir.

8 THE COURT: Now, you stood up when I asked you
9 the question about hearing something about this case.

10 MS. BURNET: Yes.

11 THE COURT: Where did you hear it?

12 MS. BURNET: The only thing I heard was last
13 night when I was running around the house --

14 MR. PENNINGTON: Your Honor -- Your Honor, this
15 noise, I'm afraid the whole panel --

16 MS. BURNET: Oh. I'm sorry.

17 THE COURT: Slow down. Just talk a little
18 slower, a little softer.

19 MS. BURNET: I'm sorry.

20 When I was running around the house, it came on
21 the news that jury selection had been postponed due to
22 an incident. And I continued watching and just saw
23 the pictures of this -- the young girl that was found
24 dead.

25 THE COURT: Okay. What else did it show?

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1 MS. BURNET: And it just jogged my memory of the
2 incident when it happened.

3 THE COURT: Do you remember what it said about
4 the defendant?

5 MS. BURNET: No. No, I don't. I was --

6 THE COURT: Did it say -- did you hear anything
7 being said about Mr. Drayton?

8 MS. BURNET: That he -- that he -- I believe I
9 just remember that he was arrested for the crime.

10 THE COURT: Arrested when?

11 MS. BURNET: I don't know that.

12 THE COURT: They said he was arrested?

13 MS. BURNET: Well, I don't --

14 THE COURT: Did they say anything --

15 MS. BURNET: I'm not sure --

16 THE COURT: -- else about it?

17 MS. BURNET: -- that I know that.

18 THE COURT: I'm not --

19 MS. BURNET: I just saw the pictures on the
20 screen.

21 THE COURT: I'm not concerned about what you
22 know.

23 MS. BURNET: Yeah.

24 THE COURT: I'm just talking about what you
25 heard on TV.

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1 MS. BURNET: Yes.

2 THE COURT: What did you specifically hear about
3 Mr. Drayton on TV last night?

4 MS. BURNET: I don't remember hearing a thing
5 about him. I remember trying to catch the name of the
6 girl and I don't know that I -- it even stuck in my
7 mind what her name was, either.

8 THE COURT: Okay. Other than that, have you
9 heard anything else about it?

10 MS. BURNET: No.

11 I didn't read, didn't look at anything, I
12 haven't -- that was it. I'm too busy to --

13 THE COURT: Okay. Do you think you can set that
14 aside and be fair in this case?

15 MS. BURNET: Yes, sir.

16 THE COURT: Do you think you can base your
17 testimony -- excuse me -- base your decision on what
18 you hear in the courtroom?

19 MS. BURNET: Yes, sir.

20 THE COURT: You don't think that would --
21 hearing that on television would affect you in any
22 way?

23 MS. BURNET: No, sir.

24 THE COURT: Any questions from the State?

25 MS. SHEALY: No, sir.

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1 THE COURT: From the defendant?

2 MR. PENNINGTON: I don't believe so. No, sir.

3 THE COURT: Okay. You can go have a seat.

4 [Whereupon, Ms. Kathy Burnet, juror number 41,
5 returns to the audience]

6 THE BAILIFF: Number 218.

7 THE COURT: Number what?

8 THE BAILIFF: Two one eight.

9 THE COURT: Two one eight.

10 [Whereupon, Ms. Vanessa Reid, juror number 218,
11 comes forward]

12 THE COURT: Vanessa Reid; is that correct?

13 MS. REID: Yes.

14 THE COURT: How are you doing, Ms. Reid?

15 MS. REID: I'm fine. Thank you.

16 THE COURT: What have you heard or read about
17 the case?

18 MS. REID: I've read -- well, I heard that they
19 were lovers.

20 THE COURT: You heard what?

21 MS. REID: That they were lovers, they had a
22 relationship.

23 THE COURT: Okay. Where did you hear that?

24 MS. REID: That was like two years ago, soon as
25 it happened.

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1 THE COURT: Two years ago? Okay.

2 MS. REID: I also -- from the news that she's
3 been going to him to --

4 THE COURT: She was what?

5 MS. REID: Would go to him to see if she could
6 find prescription drugs.

7 THE COURT: Prescription drugs. Okay. What
8 else do you remember?

9 MS. REID: Oh, God. I know those two things.

10 THE COURT: Have you heard anything recently or
11 read anything recently?

12 MS. REID: No.

13 THE COURT: Saw anything in --

14 MS. REID: The only thing I read was yesterday
15 about them having a relationship.

16 THE COURT: All right. Where did you read that?

17 MS. REID: On the internet.

18 THE COURT: What?

19 MS. REID: On the internet.

20 THE COURT: On the internet?

21 MS. REID: Uh-huh.

22 THE COURT: On which website?

23 MS. REID: Facebook.

24 THE COURT: Facebook website?

25 MS. REID: Uh-huh.

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1 THE COURT: Okay. On whose -- whose facebook
2 was it? His or hers? Or whose?

3 MS. REID: No. On my news feed.

4 THE COURT: Pardon?

5 MS. REID: On my news feed. I get info from
6 Live 5 News.

7 THE COURT: Live 5 News?

8 MS. REID: Yeah.

9 THE COURT: What did it say about Mr. Drayton on
10 Live 5 News?

11 MS. REID: That he was being charged with
12 murder.

13 THE COURT: Did it say anything else about it?

14 MS. REID: No.

15 THE COURT: Nothing else that you remember?

16 MS. REID: Nothing that I can remember.

17 THE COURT: All right. Having heard all this
18 about the case, what do you think about it? Have you
19 made -- do you have an opinion about it?

20 MS. REID: I have kind of a bad opinion about
21 drugs anyway and --

22 THE COURT: Okay. What opinion is that?

23 MS. REID: It's kind of like actually they both
24 got what they deserved. That's how I feel. You know,
25 if he killed her, you know, then he got what he got

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1 and if she died, you know, that's what happens when
2 you go looking for drugs or you're dealing with drugs.
3 I have -- I just have that attitude of that.

4 THE COURT: Well, having thought that, how do
5 you think it would affect you sitting on this jury?

6 MS. REID: Not well, I don't think.

7 THE COURT: Not well?

8 MS. REID: No.

9 THE COURT: Okay. It wouldn't affect you very
10 well?

11 MS. REID: No.

12 THE COURT: You don't think you could be fair?

13 MS. REID: No, I couldn't.

14 THE COURT: Okay. Thank you so very much,
15 Ms. Reid.

16 MS. REID: You're welcome.

17 [Whereupon, Ms. Vanessa Reid, juror number 218,
18 returns to the audience]

19 THE COURT: Excuse 218 for cause.

20 [Whereupon, Ms. Vanessa Reid, juror number 218,
21 is excused for cause]

22 THE BAILIFF: Juror 241.

23 [Whereupon, Ms. Jane Skatell, juror number 241,
24 comes forward]

25 THE COURT: How are you doing?

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1 MS. SKATELL: Just fine. Thank you.

2 THE COURT: Is it Jane Skatell?

3 MS. SKATELL: Yes.

4 THE COURT: Okay. Is that the jeweler? The
5 jewelry store?

6 MS. SKATELL: That's my husband, yes, sir.

7 THE COURT: Your husband owns a jewelry store?

8 MS. SKATELL: Yes.

9 THE COURT: Out there on Johnnie Dobbs?

10 MS. SKATELL: There's a couple of them.

11 THE COURT: A couple of them on Johnnie Dobbs?

12 MS. SKATELL: [No response]

13 THE COURT: What have you heard about the case
14 or read about the case?

15 MS. SKATELL: Very little. News report, the
16 victim --

17 THE COURT: What do you remember from the news
18 reports?

19 MS. SKATELL: She was a twenty-seven-year-old
20 victim found stabbed by the side of the road.

21 THE COURT: That was when --

22 MS. SKATELL: Saw her picture.

23 THE COURT: -- it occurred?

24 MS. SKATELL: No. This is recently.

25 THE COURT: Recently. All right. What did you

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1 see recently and where did you see it?

2 MS. SKATELL: I saw it on the news, and I saw a
3 picture of the defendant.

4 THE COURT: TV news?

5 MS. SKATELL: TV news.

6 THE COURT: Okay.

7 MS. SKATELL: Picture of the defendant and a
8 picture of the victim.

9 THE COURT: Did they say anything about the
10 defendant, or do you remember?

11 MS. SKATELL: They did not.

12 THE COURT: They didn't say anything about the
13 defendant? What did the news say? Do you remember?

14 MS. SKATELL: I think I've told you all that I
15 remember. Twenty-seven-year-old victim found stabbed
16 by the side of the road, jury selection was beginning.

17 THE COURT: Okay. And that's all you saw?

18 MS. SKATELL: [Indicates affirmatively]

19 THE COURT: Have you looked at any websites or
20 anything?

21 MS. SKATELL: No.

22 THE COURT: Nothing?

23 MS. SKATELL: No.

24 THE COURT: Based upon what you heard on TV --
25 Was it last night?

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1 MS. SKATELL: Yes.

2 THE COURT: -- have you formed an opinion about
3 the case?

4 MS. SKATELL: It was very tragic. But, no.

5 THE COURT: No? Do you think you can be fair to
6 both the State and the defendant?

7 MS. SKATELL: Based on the information that I
8 received from the news, yeah, the news was a very --

9 THE COURT: All right. Can you set what you
10 heard on the news -- and let me tell you why. I
11 didn't see what was on TV. I don't know if it was
12 accurate or inaccurate and I don't want you to make a
13 decision on inaccurate information. So my question to
14 you is can you set that aside and listen to what comes
15 out in the courtroom and base your decision on that,
16 not what you heard on TV?

17 MS. SKATELL: Yes.

18 THE COURT: You're sure you can do that?

19 MS. SKATELL: Not based on anything on TV.

20 THE COURT: You think you -- you haven't
21 prejudged one side or the other based on what you've
22 heard?

23 MS. SKATELL: I have not, based on TV, but I'm a
24 victim of a violent crime in my past.

25 THE COURT: Okay. Tell me about that.

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1 MS. SKATELL: I'm a gunshot victim.

2 THE COURT: You're a gunshot victim?

3 MS. SKATELL: Yeah.

4 THE COURT: When was this?

5 MS. SKATELL: 1980. October.

6 THE COURT: 1980?

7 MS. SKATELL: I was a college freshman.

8 THE COURT: College freshman? I'm awful sorry
9 about that.

10 MS. SKATELL: Thank you.

11 THE COURT: Was there anybody arrested?

12 MS. SKATELL: No. It was a stalker and he took
13 his life.

14 THE COURT: Okay. How would that, being a
15 victim such as that, affect you in this case?

16 MS. SKATELL: It could affect me.

17 THE COURT: In what respect? How?

18 MS. SKATELL: Because I have a great deal of
19 empathy for victims.

20 THE COURT: What?

21 MS. SKATELL: I have a great deal --

22 THE COURT: A lot of sympathy for the victim?

23 MS. SKATELL: -- of empathy for the victims.

24 THE COURT: I can understand that. I think I
25 would, too.

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1 MS. SKATELL: Uh-huh.

2 THE COURT: And so you think that would affect
3 you and you may have difficulty being fair?

4 MS. SKATELL: I think that could affect me, yes,
5 sir.

6 THE COURT: Okay. Any questions from the State?

7 MS. SHEALY: You stated you had a lot of
8 sympathy for the victim. Do you --

9 MS. SKATELL: Empathy for the victim.

10 MS. SHEALY: -- empathy for the victim. Do you
11 think you could fairly listen to the facts that would
12 determine someone else's guilt, even though you
13 empathize with victims, or do you think that would
14 make you unfair in evaluating facts?

15 MS. SKATELL: I could certainly try.

16 MS. SHEALY: Do you have some concern about your
17 ability to be fair?

18 MS. SKATELL: I think it would be very emotional
19 for me.

20 MS. SHEALY: A case like this is probably going
21 to be emotional for everybody on the jury.

22 What we're hoping for is to get a jury that can
23 be fair, that can evaluate the facts fairly. Do you
24 feel that you can fairly evaluate the facts?

25 MS. SKATELL: I can certainly try.

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1 MS. SHEALY: I have no further questions.

2 THE COURT: Okay. Thank you very much.

3 Appreciate it. Thank you.

4 [Whereupon, Ms. Skatell, juror number 241,
5 returns to the audience]

6 MR. PENNINGTON: Your Honor --

7 THE COURT: I'm going to excuse her for cause.

8 I mean, she told me she was a victim and she
9 would sympathize with the victim and she didn't think
10 she could be fair. She didn't use the word fair, but
11 she said it could cause her a lot of problems. Plus,
12 I'm not sure I want to put her through that trauma
13 again.

14 Do you want to make an argument against?

15 MS. SHEALY: Well, I mean, I think that -- I
16 think it's going to be hard to find people who don't
17 empathize with victims on a jury. The question,
18 though, is whether or not they can be fair and --

19 THE COURT: I understand. But she --

20 MS. SHEALY: -- you don't want people who can't
21 empathize with jurors [sic] --

22 THE COURT: I understand. But she said that it
23 would cause her a lot of difficulty.

24 MS. SHEALY: I think it's going to cause a lot
25 of people difficulty. I mean, it's not pleasant to be

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1 on a jury. Do you understand --

2 THE COURT: I understand.

3 MS. SHEALY: -- what I'm saying?

4 THE COURT: Especially if you've been shot
5 yourself.

6 MS. SHEALY: Well, I understand.

7 THE COURT: I'm going to excuse her for cause.

8 [Whereupon, Ms. Skatell, juror number 241, is
9 excused for cause]

10 THE BAILIFF: Number 24.

11 [Whereupon, Ms. Blume, juror number 24, comes
12 forward]

13 THE COURT: Katherine Blume; is that right?

14 MS. BLUME: Uh-huh.

15 THE COURT: Blume?

16 MS. BLUME: Yes, sir.

17 THE COURT: Yes, ma'am, Ms. Bloom. What have
18 you heard?

19 MS. BLUME: I'm only coming up here because of
20 the juror that died yesterday.

21 THE COURT: You did what?

22 MS. BLUME: I'm only coming up here about the
23 juror that died yesterday. I didn't see anything on
24 the news or read anything. I just have talked to
25 people today.

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1 THE COURT: Who have you talked to about the
2 juror?

3 MS. BLUME: Other jurors.

4 THE COURT: All right. And what did y'all talk
5 about?

6 MS. BLUME: Just that maybe help wasn't called
7 prompt enough.

8 THE COURT: Do what?

9 MS. BLUME: Help wasn't called prompt enough, is
10 what many seem to think. I wasn't there. I didn't
11 see it.

12 THE COURT: So y'all talked about the man that
13 died, not about this case?

14 MS. BLUME: Right. Exactly.

15 THE COURT: No conversation about this case?

16 MS. BLUME: Exactly, yeah.

17 THE COURT: Have you read anything about this
18 case?

19 MS. BLUME: Not this case, no.

20 THE COURT: Have you heard anything on
21 television about it?

22 MS. BLUME: Uh-huh.

23 THE COURT: So all the conversations that you
24 heard were about the man that collapsed in the jury
25 room?

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1 MS. BLUME: Uh-huh.

2 THE COURT: Okay. Anything else?

3 MS. BLUME: No. That's it.

4 THE COURT: Can you be fair to both parties?

5 MS. BLUME: Yes.

6 THE COURT: And can you base your decision on
7 the testimony you hear in court?

8 MS. BLUME: Yes.

9 THE COURT: All right. Thank you, Ms. Blume.

10 [Whereupon, Ms. Katherine Blume, juror number
11 24, returns to the audience]

12 THE BAILIFF: 196.

13 [Whereupon, Ms. Emily O'Connor, juror number
14 196, comes forward]

15 THE COURT: Is that Emily O'Connor?

16 MS. O'CONNOR: Yes.

17 THE COURT: Ms. O'Connor, what have you heard?

18 MS. O'CONNOR: I heard two jurors talking this
19 morning about the case saying --

20 THE COURT: You heard two jurors talking about
21 the case?

22 MS. O'CONNOR: Yes. This morning. I wasn't
23 involved in it, I was just listening.

24 THE COURT: You just heard two of them talking.

25 MS. O'CONNOR: Yes.

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1 THE COURT: What were they talking about?

2 MS. O'CONNOR: They were saying that the
3 defendant killed a woman and left her on --

4 THE COURT: Said what?

5 MS. O'CONNOR: The defendant killed a woman and
6 left her on the side of the road.

7 THE COURT: I'm sorry. I couldn't hear you.

8 MS. O'CONNOR: The defendant killed a woman and
9 left her on --

10 THE COURT: -- on the side of the road?

11 MS. O'CONNOR: -- on the side of the road.

12 THE COURT: Okay. That's what they were saying?

13 MS. O'CONNOR: [No response]

14 THE COURT: Did you participate in the
15 conversation?

16 MS. O'CONNOR: No.

17 THE COURT: Do you remember which two jurors it
18 was?

19 MS. O'CONNOR: Probably not.

20 THE COURT: Can you point them out to me?

21 MS. O'CONNOR: Probably not.

22 THE COURT: If you go take a closer look can
23 you?

24 MS. O'CONNOR: I could. I'll try.

25 THE COURT: Okay. Before you go -- before you

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1 go do it, let me ask you a couple of questions.

2 How would that affect you sitting on this jury
3 since you heard that?

4 MS. O'CONNOR: Probably no effect on --

5 THE COURT: Pardon?

6 MS. O'CONNOR: -- me at all. No effect on me at
7 all.

8 THE COURT: No effect on you at all?

9 MS. O'CONNOR: No.

10 THE COURT: Do you think you can be fair?

11 MS. O'CONNOR: Yes.

12 THE COURT: And you can base your decision on
13 what you hear in the courtroom --

14 MS. O'CONNOR: Yes.

15 THE COURT: -- not on what those two jurors
16 said?

17 MS. O'CONNOR: Yes.

18 THE COURT: You haven't read anything on -- in
19 the --

20 MS. O'CONNOR: No.

21 THE COURT: -- paper?

22 MS. O'CONNOR: No, sir.

23 THE COURT: -- nothing on the internet, heard
24 nothing on television?

25 MS. O'CONNOR: No, sir.

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1 THE COURT: Go back and walk sort of in front of
2 the jury and see if you can point out the two jurors,
3 and then I'll get them to stand if you can identify
4 them for me --

5 MS. O'CONNOR: Okay.

6 THE COURT: -- please.

7 MS. O'CONNOR: All right. Thank you.

8 [Whereupon, Ms. O'Connor complies]

9 THE BAILIFF: Juror --

10 THE COURT: Hold on a second. Wait a minute.

11 [Off the record momentarily]

12 THE COURT: They may be upstairs or they may be
13 downstairs.

14 MS. O'CONNOR: I don't think any of them are in
15 here. One woman had a light teal shirt and I don't
16 see her in here, so I know she's not in here --

17 THE COURT: Okay. So you don't see her in here?

18 MS. O'CONNOR: No.

19 THE COURT: Okay. So you don't think she's
20 sitting out here?

21 MS. O'CONNOR: And I don't remember what the
22 other one looked like, but I know the one in the teal
23 shirt is not in here.

24 THE COURT: What did the other lady have on; do
25 you remember?

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1 MS. O'CONNOR: No.

2 THE COURT: Okay. Thank you so very much.

3 MS. O'CONNOR: Okay.

4 [Whereupon, Ms. Emily O'Connor, juror number
5 196, returns to the audience]

6 THE COURT: Okay.

7 THE BAILIFF: 159.

8 [Whereupon, Ms. Patricia Lockard, juror number
9 159, comes forward]

10 THE COURT: Lockard? How are you doing,
11 Ms. Lockard?

12 MS. LOCKARD: Okay.

13 THE COURT: Pardon?

14 MS. LOCKARD: Okay.

15 THE COURT: Okay? What have you heard or read
16 about the case?

17 MS. LOCKARD: Well, it was all over the news
18 last night, the TV, because I was trying to --

19 THE COURT: Tell me, first of all, what's --
20 what news? The TV or what?

21 MS. LOCKARD: It's on TV. It was in the
22 newspaper today, too.

23 THE COURT: Do you remember which channel?

24 MS. LOCKARD: 5.

25 THE COURT: 5?

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1 MS. LOCKARD: Uh-huh.

2 THE COURT: What did you hear on channel 5?

3 MS. LOCKARD: Well, I was trying to find out
4 about the man. And it said that the jury was
5 postponed, selection for the murder trial of this
6 black man with this blond-headed lady. And then it
7 came back on again last night at 10:30.

8 THE COURT: Did they add anything to it?

9 MS. LOCKARD: Just clearer pictures, different
10 little pictures.

11 THE COURT: Clearer pictures?

12 MS. LOCKARD: Yeah.

13 THE COURT: Did they say anything about the
14 lady?

15 MS. LOCKARD: It said she was the mother of
16 twins, boys. Twin boys.

17 THE COURT: Okay. Did they say anything about
18 the man?

19 MS. LOCKARD: He was a convicted rapist.

20 THE COURT: He was a convicted rapist is what
21 they --

22 MS. LOCKARD: Something like that, yeah.

23 THE COURT: Okay. You can go have a seat.

24 MS. LOCKARD: Okay. If it makes any difference,
25 my son-in-law is in prison for rape.

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1 THE COURT: For rape? Okay.

2 MS. LOCKARD: For life.

3 THE COURT: How would that affect you sitting on
4 this jury?

5 MS. LOCKARD: For the fact that he tried to kill
6 my daughter, at Lieber, the death penalty, I don't
7 care.

8 THE COURT: Okay. You can go have a seat.
9 Thank you so very much.

10 [Whereupon, Ms. Patricia Lockard, juror number
11 159, returns to the audience]

12 THE BAILIFF: 281.

13 THE COURT: What number?

14 THE BAILIFF: 281.

15 [Whereupon, Ms. Leeann Webb, juror number 281,
16 comes forward]

17 THE COURT: 281. Leeann Webb. How are you
18 doing, Ms. Webb?

19 MS. WEBB: Hi, Your Honor.

20 THE COURT: Step right up here, if you would.
21 How are you doing today?

22 MS. WEBB: I'm fine, sir.

23 THE COURT: What have you heard?

24 MS. WEBB: You know what? I really haven't
25 heard anything recently, but I do remember it being a

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1 Post and Courier article when it happened.

2 THE COURT: Okay. What do you remember in the
3 article?

4 MS. WEBB: I do remember that they found her
5 body. I do think that they were friends or coworkers,
6 something to that effect, and I know that they
7 traveled between here and Charleston, and I know that
8 there was possible drug involvement, but I'm vague.

9 THE COURT: That's all you remember?

10 MS. WEBB: Pretty much.

11 THE COURT: Did you hear anything else today or
12 heard any jurors talking about it or --

13 MS. WEBB: I have not.

14 There was -- you know, I heard that there was
15 possibly a murder trial, but I didn't know exactly
16 what was involved so --

17 THE COURT: Have you looked at any websites --

18 MS. WEBB: No.

19 THE COURT: -- in the last couple of days?

20 MS. WEBB: No.

21 THE COURT: And you haven't heard anything on TV
22 or read anything in the paper about it in the last few
23 days?

24 MS. WEBB: No. Unfortunately, I haven't had the
25 time.

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1 THE COURT: Huh?

2 MS. WEBB: I haven't had the time, so --

3 THE COURT: Oh. Okay.

4 MS. WEBB: Yeah.

5 THE COURT: Well, let me ask you this. Based on
6 what you heard when it occurred, did you form an
7 opinion about the case?

8 MS. WEBB: No, sir. I mean, I just -- it was
9 just an article so -- I mean, it was pretty vague at
10 the time anyway.

11 THE COURT: Could you set that aside and base
12 your decision on what you hear in the courtroom?

13 MS. WEBB: Yes.

14 THE COURT: Let me tell you the reason I ask you
15 that.

16 MS. WEBB: Sure.

17 THE COURT: I want you to decide what's in the
18 courtroom, because I don't know if that article is
19 accurate or inaccurate --

20 MS. WEBB: Exactly.

21 THE COURT: -- or not. I don't want you to base
22 your decision on that, but I want you to base your
23 decision on what you hear here.

24 MS. WEBB: Exactly.

25 THE COURT: Can you do that?

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1 MS. WEBB: I can do that.

2 THE COURT: Can you be fair to both the State
3 and the defendant?

4 MS. WEBB: Yes, sir.

5 THE COURT: Go have a seat. Thank you very
6 much.

7 MR. PENNINGTON: Your Honor, may we ask about
8 whether there was any information she had heard about
9 the defendant?

10 THE COURT: I asked her had she -- had she heard
11 any jurors talking about it.

12 MR. PENNINGTON: No. I mean in terms of the
13 news reporting.

14 THE COURT: She said no.

15 MS. WEBB: Yeah. The only thing that was
16 mentioned, that they were possibly friends. But other
17 than that --

18 THE COURT: Other than when it occurred, is what
19 she said.

20 MR. PENNINGTON: Got it. Thank you.

21 THE COURT: Thank you very much.

22 MR. PENNINGTON: Thank you, Your Honor.

23 [Whereupon, Ms. Leeann Webb, juror number 281,
24 returns to the audience]

25 THE BAILIFF: 258.

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1 [Whereupon, Mr. Mark Stowell, juror number 258,
2 comes forward]

3 THE COURT: Silwell; is that correct?

4 MR. STOWELL: Stowell.

5 THE COURT: Stowell.

6 MR. STOWELL: Stowell.

7 THE COURT: Mr. Stowell, how are you doing?

8 MR. STOWELL: Doing well.

9 THE COURT: What have you heard or read about
10 the case?

11 MR. STOWELL: I just scanned an article in the
12 paper this morning.

13 THE COURT: An article in the paper this
14 morning?

15 MR. STOWELL: Yes.

16 THE COURT: Have you heard anything else about
17 it?

18 MR. STOWELL: Nothing on this case, no.

19 THE COURT: Heard any jurors talking about it?

20 MR. STOWELL: No, I have not.

21 THE COURT: Did you read anything on the
22 internet about it?

23 MR. STOWELL: I did not.

24 THE COURT: The only thing you read was the
25 article in the paper today --

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1 MR. STOWELL: Just that, yes, sir.

2 THE COURT: -- back hidden in Section B, I
3 believe?

4 MR. STOWELL: Right. Correct.

5 THE COURT: All right. Having read that article
6 this morning in the paper, have you formed an opinion
7 about the case?

8 MR. STOWELL: I don't know if this has any
9 bearing on it. The Saint Martin incident that's all
10 over the paper --

11 THE COURT: The Saint what?

12 MR. STOWELL: The Saint Martin. The two people
13 that were slain down in Saint Martin were close with
14 my in-laws, which has made it pretty emotional in the
15 last week as far as cases like this.

16 THE COURT: Uh-huh.

17 MR. STOWELL: Okay? Do I think that would
18 influence my thinking in any way --

19 THE COURT: Are you talking about the Saint
20 Martin case would influence your decision?

21 MR. STOWELL: Possibly. I -- to be honest with
22 you. I'm trying to be completely honest with you.

23 THE COURT: I understand. I want you to be.

24 See, my problem is how do you think it would
25 affect you. The Saint Martin case, not this case.

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1 MR. STOWELL: Lot of anger in the family --

2 THE COURT: Huh?

3 MR. STOWELL: -- right now. Anger. Wanting --

4 THE COURT: Do you think that would spill over
5 to this case?

6 MR. STOWELL: I don't believe so. But to be
7 honest with you, I mean, that's --

8 THE COURT: Well, see, my problem is only you
9 know that. I don't. I gave up reading minds a long
10 time ago.

11 MR. STOWELL: I understand completely. And I
12 want to say no, but I'm also trying to --

13 THE COURT: Well, we're all -- we're all --

14 MR. STOWELL: -- be completely honest --

15 THE COURT: -- human. I'm a --

16 MR. STOWELL: -- with you, too.

17 THE COURT: -- New York Yankee fan. I don't
18 like Boston Red Sox. And we've all got our prejudice.

19 MR. STOWELL: Sure.

20 THE COURT: And there's nothing wrong with that.
21 If you feel like that what happened to your friends in
22 Saint Martin would affect you here and you couldn't be
23 fair, that's fine. That's all I'm trying to
24 determine.

25 MR. STOWELL: Yeah. Yeah. I don't believe --

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1 it could possibly. And I don't want to let something
2 like this possibly affect one way or the other.

3 THE COURT: Okay. Any questions from the State?

4 MS. SHEALY: No.

5 THE COURT: Any from the defendant?

6 MR. PENNINGTON: No.

7 THE COURT: You can go have a seat.

8 [Whereupon, Mr. Mark Stowell, juror number 258,
9 returns to the audience]

10 THE COURT: What number was he?

11 MR. PENNINGTON: 258.

12 THE COURT: Huh?

13 MR. PENNINGTON: 258.

14 THE COURT: Any objection? Any objection to
15 excusing him?

16 MS. SHEALY: [No response]

17 MR. PENNINGTON: [No response]

18 [Whereupon, Mr. Mark Stowell, juror number 258,
19 is excused by the Court]

20 THE BAILIFF: 164.

21 [Whereupon, Mr. Steven Makatura, juror number
22 164, comes forward]

23 THE COURT: Makatura?

24 MR. MAKATURA: Yeah, Makatura.

25 THE COURT: Makatura. Steven Makatura. How are

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1 you doing, Mr. Makatura?

2 MR. MAKATURA: Good. Thank you.

3 THE COURT: Reading glasses you've got there?

4 MR. MAKATURA: Yeah.

5 THE COURT: Unfortunately, I have to wear mine
6 all the time. I can't see up close or away.

7 MR. MAKATURA: I've got contacts on.

8 THE COURT: Pardon?

9 MR. MAKATURA: I have contacts on, so, yeah.

10 THE COURT: Oh. Okay. Unfortunately, they
11 don't have the -- it's hard to get that bifocal into
12 contacts.

13 What have you heard about the case?

14 MR. MAKATURA: Just the initial report, vaguely,
15 when she was found.

16 THE COURT: When it happened?

17 MR. MAKATURA: Yeah.

18 THE COURT: Have you heard anything recently or
19 yesterday or today --

20 MR. MAKATURA: No.

21 THE COURT: -- heard any juror talking about it?

22 MR. MAKATURA: No.

23 THE COURT: Haven't read anything in the paper
24 about it?

25 MR. MAKATURA: Have not.

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1 THE COURT: Nothing on television?

2 MR. MAKATURA: Nothing on television.

3 THE COURT: Looked at, no internet?

4 MR. MAKATURA: No internet.

5 THE COURT: All right. What do you remember in
6 the paper --

7 MR. MAKATURA: Just a body --

8 THE COURT: -- a couple of years ago?

9 MR. MAKATURA: Just a body being found on a
10 road. I don't recall the road name.

11 THE COURT: Do you remember anything it said
12 about Mr. Drayton?

13 MR. MAKATURA: No names were involved in the
14 early events.

15 THE COURT: Let me ask you this. How would that
16 affect you in this -- in the case?

17 MR. MAKATURA: I don't think at all.

18 THE COURT: Not at all? Can you set that aside
19 and be fair in this case?

20 MR. MAKATURA: Yeah.

21 THE COURT: Can you base your decision on the
22 testimony you hear in the courtroom --

23 MR. MAKATURA: Yes.

24 THE COURT: -- not on what you read in the paper
25 two years ago?

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1 MR. MAKATURA: I didn't read it, I just watched
2 television.

3 THE COURT: Pardon?

4 MR. MAKATURA: I didn't read, I just watched
5 television.

6 THE COURT: Oh. It was on television?

7 MR. MAKATURA: Yeah.

8 THE COURT: That's probably even more
9 inaccurate.

10 But all you remember is a body found?

11 MR. MAKATURA: Yeah.

12 THE COURT: Any questions from the State?

13 MS. SHEALY: No, Your Honor.

14 THE COURT: The defendant?

15 MR. PENNINGTON: No, Your Honor.

16 THE COURT: You can go have a seat. Thank you
17 very much.

18 [Whereupon, Mr. Steven Makatura, juror number
19 164, returns to the audience]

20 THE BAILIFF: 48.

21 [Whereupon, Ms. Chinnis, juror number 48, comes
22 forward]

23 THE COURT: Chinnis; is that correct?

24 MS. CHINNIS: Yes.

25 THE COURT: Ms. Chinnis, how are you doing?

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1 MS. CHINNIS: Fine.

2 THE COURT: What have you heard about the case?

3 MS. CHINNIS: My husband was talking about it.

4 THE COURT: Your husband was talking about it?

5 MS. CHINNIS: Yeah, was telling me about it --

6 THE COURT: What did he tell you about it?

7 MS. CHINNIS: He said they found a young lady
8 dead.

9 THE COURT: Huh?

10 MS. CHINNIS: Dead. That they found a young
11 lady dead and they think -- I can't remember too much
12 because that time he was talking I was --

13 THE COURT: When did he tell you this?

14 MS. CHINNIS: I can't even remember. And then
15 when he was talking --

16 THE COURT: Was it recently?

17 MS. CHINNIS: No.

18 THE COURT: Back when it happened?

19 MS. CHINNIS: [Indicates affirmatively]

20 THE COURT: Do you remember what he told you?

21 MS. CHINNIS: No, I don't remember too much of
22 it.

23 THE COURT: Have you read anything yourself
24 about it?

25 MS. CHINNIS: No.

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1 THE COURT: Seen anything on television?

2 MS. CHINNIS: Huh-uh. [Indicates negatively]

3 THE COURT: Has your husband talked to you about
4 it since it happened two years ago --

5 MS. CHINNIS: Huh-uh.

6 THE COURT: -- or whenever it was? Two years
7 ago.

8 MS. CHINNIS: No.

9 THE COURT: What do you remember that --
10 specifically that your husband told you?

11 MS. CHINNIS: He told me, he said that they
12 found a young lady dead. And I said, oh, I'm so sorry
13 for that family. And I kept on looking at my soap
14 opera and I just --

15 THE COURT: You watched your soap opera, you
16 weren't listening to him?

17 MS. CHINNIS: Not at all.

18 THE COURT: Okay. Would that -- how would that
19 affect you in this case?

20 MS. CHINNIS: I don't think it would affect me.

21 THE COURT: It wouldn't affect you at all?

22 MS. CHINNIS: [Indicates negatively]

23 THE COURT: Can you be fair?

24 MS. CHINNIS: Yes.

25 THE COURT: Can you base your decision on what

1 you hear in the courtroom?

2 MS. CHINNIS: Yes, I think I can.

3 THE COURT: Okay. Thank you very much.

4 [Whereupon, Ms. Julia Chinnis, juror number 48,
5 returns to the audience]

6 THE BAILIFF: 153.

7 [Whereupon, Mr. Robert Kramer, juror number 153,
8 comes forward]

9 THE COURT: Mr. Kramer, how are you doing?

10 MR. KRAMER: Good.

11 THE COURT: What have you heard about the case?

12 MR. KRAMER: Well, you asked two questions. One
13 was about what happened yesterday. And I was there
14 when it happened. That -- didn't read anything about
15 it.

16 Then you asked about this older case, which I
17 read in the Post and Courier, I don't know how long, a
18 year ago, two years ago, something like that.

19 THE COURT: Okay. What do you remember reading
20 in the paper?

21 MR. KRAMER: That the body was found by 174 but
22 the murder probably happened in Bluffton, and then he
23 stole her car, and there was drugs involved, and then
24 he claimed self-defense but she was a smaller person,
25 she was white, he was black, that type of stuff.

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1 THE COURT: All right. Do you remember anything
2 it said about Mr. Drayton?

3 MR. KRAMER: It was a long time ago. You just
4 asked if I remembered anything. I'm just trying to be
5 honest.

6 THE COURT: Have you heard any jurors talking
7 about it?

8 MR. KRAMER: No. I didn't even know what that
9 case was until you said it.

10 THE COURT: Have you read anything on the
11 internet about --

12 MR. KRAMER: No.

13 THE COURT: -- about the man that collapsed
14 yesterday? You read about that on the news?

15 MR. KRAMER: No. We G-mail and they don't
16 have --

17 THE COURT: Huh?

18 MR. KRAMER: I read Google and they don't have
19 local news because -- I haven't been reading the paper
20 lately, so --

21 THE COURT: Okay. You gave up the paper?

22 MR. KRAMER: I moved onto our boat and it's
23 in --

24 THE COURT: Did what?

25 MR. KRAMER: I moved on our boat and it's in a

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1 marina and they won't deliver a paper.

2 THE COURT: What kind of boat have you got?

3 MR. KRAMER: -- a forty-four C.S. One sailboat.

4 THE COURT: Forty-four what?

5 MR. KRAMER: C.S. One sailboat.

6 THE COURT: Oh. Okay. Do you sail it on a
7 regular basis?

8 MR. KRAMER: We're leaving for five months, for
9 the Carribean, in two weeks.

10 THE COURT: Oh. Okay. Well, that's good.

11 MR. KRAMER: Yeah.

12 THE COURT: That's good.

13 Well, let me ask you this. What you heard two
14 years ago or a year ago, or whenever you think you
15 heard it, how would that affect you sitting on this
16 jury?

17 MR. KRAMER: I don't know. I mean, it doesn't
18 seem plausible that she could have -- that it's a
19 self-defense case or something.

20 But I don't know. I would try to be honest
21 about it, but I don't --

22 THE COURT: I understand.

23 MR. KRAMER: -- know. I would try to be honest.

24 THE COURT: Well, I just -- in other words, my
25 concern is this. I don't know what you heard, and I

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1 don't know if it was accurate or inaccurate, and I
2 don't want you to be basing your decision on anything
3 that was inaccurate --

4 MR. KRAMER: Right.

5 THE COURT: -- I want you to base your decision
6 on what you hear in the courtroom. And if you have an
7 opinion somewhat because of that article, I need to
8 know it.

9 MR. KRAMER: I mean, we're just people. I would
10 try to be as honest. And I could listen to everything
11 I hear --

12 THE COURT: I understand.

13 MR. KRAMER: -- I hear here. But I don't know.
14 I would try to do the best I could.

15 THE COURT: So your concern was you think that
16 she was -- it was a self-defense issue? Is that what
17 you think?

18 MR. KRAMER: I don't think it was. Yeah, I
19 just --

20 THE COURT: You don't think it could have been
21 self-defense?

22 MR. KRAMER: No. It just seems implausible.
23 But I don't know. I don't know the facts.

24 THE COURT: Well, have you prejudged the guilt
25 or innocence of the defendant?

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1 MR. KRAMER: You know, I've never thought about
2 it again after reading that article two years ago, I
3 mean, so --

4 THE COURT: Until today, huh?

5 MR. KRAMER: Until you just mentioned it. And I
6 was like, oop, I think I remember that one.

7 THE COURT: Well, how would it affect you on the
8 jury? Only you know that, not me.

9 MR. KRAMER: I would try to take the facts and
10 be as honest as I could.

11 THE COURT: You would try to take the facts and
12 be as honest as you could?

13 MR. KRAMER: Right.

14 THE COURT: And you think you can set that
15 aside?

16 MR. KRAMER: I hope so. I mean, I would want
17 to.

18 I mean, I wouldn't want to send someone --

19 THE COURT: You would want to?

20 MR. KRAMER: Right.

21 THE COURT: So you would make an effort to set
22 it aside?

23 MR. KRAMER: I would.

24 THE COURT: Can you base your decision on what
25 you hear in the courtroom and not what you read two

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1 years ago?

2 MR. KRAMER: You know, I would try to.

3 You're asking me to say something that I don't
4 know if I can stand up to, and I don't know if I can
5 do that.

6 THE COURT: All right. Have you heard any
7 jurors talking about it?

8 MR. KRAMER: No. No.

9 THE COURT: All right. Any questions from the
10 State?

11 MS. SHEALY: No, sir.

12 THE COURT: Any from the defendant?

13 MR. PENNINGTON: No, sir.

14 THE COURT: All right. You can go have a seat.
15 Thank you very much.

16 [Whereupon, Mr. Robert Kramer, juror number 153,
17 returns to the audience]

18 THE COURT: Any motions?

19 MS. SHEALY: No, sir.

20 MR. PENNINGTON: Move to strike for cause.

21 I think that he seems to be communicating that
22 he is not sure that he can set aside his opinions and
23 he --

24 THE COURT: Well, he said he would try. And
25 that's all you can ask anybody. He said he would try

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1 and do his best.

2 MR. PENNINGTON: He had --

3 THE COURT: Motion denied. Okay?

4 MR. PENNINGTON: Yes, sir.

5 THE COURT: Right or wrong, denied. Okay?

6 MR. PENNINGTON: Right.

7 THE COURT: Who is next?

8 THE BAILIFF: 270.

9 THE COURT: 270?

10 THE BAILIFF: Yes, sir.

11 [Whereupon, Ms. Deborah Thompson, juror number
12 270, comes forward]

13 THE COURT: Ms. Thompson, how are you doing
14 today?

15 MS. THOMPSON: Good afternoon. I'm fine.

16 THE COURT: Rice Pond Road. Have you got a pond
17 on the road or --

18 MS. THOMPSON: Actually, we do --

19 THE COURT: -- or any rice?

20 MS. THOMPSON: We do.

21 THE COURT: Oh. Good.

22 MS. THOMPSON: Off 61.

23 THE COURT: Is it a rice pond? Really?

24 MS. THOMPSON: I don't think so.

25 THE COURT: You don't think so?

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1 MS. THOMPSON: I think somebody just thought --

2 THE COURT: -- somebody thought that was a good
3 name?

4 MS. THOMPSON: -- that was a great name, yeah.
5 Yeah. That's right.

6 THE COURT: Tell me what you've heard about the
7 case.

8 MS. THOMPSON: I really don't know anything, but
9 I felt like it was worth saying something: that over
10 lunch I did hear that the case was concerning a woman
11 that was killed over near Ravenel where I work.

12 THE COURT: All right. And you --

13 MS. THOMPSON: And I don't --

14 THE COURT: -- heard that at lunch?

15 MS. THOMPSON: I did.

16 THE COURT: Where did you hear it?

17 MS. THOMPSON: Downstairs.

18 THE COURT: Pardon?

19 MS. THOMPSON: Downstairs.

20 THE COURT: The jurors?

21 MS. THOMPSON: Outside the building.

22 THE COURT: You heard some other jurors talking
23 about it?

24 MS. THOMPSON: Another juror, yes.

25 THE COURT: What did the -- what did the juror

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1 say?

2 MS. THOMPSON: It was just a conversation like
3 do you remember the -- and I didn't even know anything
4 about it.

5 THE COURT: Who said it to you?

6 MS. THOMPSON: Jack Greenberg.

7 THE COURT: Who?

8 MS. THOMPSON: Jack Greenberg.

9 THE COURT: Greenberg?

10 MS. THOMPSON: Yes.

11 And he and I work for the same people. We're
12 both --

13 THE COURT: Is he on the jury?

14 MS. THOMPSON: He's downstairs, yes.

15 THE COURT: He's downstairs. Okay.

16 MS. THOMPSON: He had seen that thing last
17 night.

18 THE COURT: Okay. What else --

19 MS. THOMPSON: -- and it was an innocent
20 conversation, but I didn't realize --

21 THE COURT: All right. Let me ask you this.
22 When you talked -- after you talked to Mr. Greenberg,
23 have you formed an opinion about the case based on his
24 conversation?

25 MS. THOMPSON: No. Honestly, I don't even

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1 remember this.

2 His comment was just -- evidently, he had seen
3 whatever it was last night and I did not -- but do you
4 remember this --

5 THE COURT: Do you --

6 MS. THOMPSON: -- a couple of years ago.

7 THE COURT: Do you specifically remember what he
8 told you?

9 MS. THOMPSON: That's all he said.

10 THE COURT: Okay. That's all he said?

11 MS. THOMPSON: Yeah.

12 THE COURT: Okay.

13 MS. THOMPSON: Yeah.

14 THE COURT: Do you think you can set that aside?

15 MS. THOMPSON: Definitely, because I don't even
16 remember it.

17 THE COURT: Okay. And you can be fair?

18 MS. THOMPSON: Yes, sir.

19 THE COURT: And base your decision on what you
20 hear in the courtroom?

21 MS. THOMPSON: Absolutely.

22 THE COURT: All right. Thank you, Ms. Thompson.

23 MS. THOMPSON: You're welcome.

24 THE COURT: Appreciate it.

25 Is Mr. Greenberg downstairs?

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1 THE CLERK OF COURT: Yes, sir.

2 MR. PENNINGTON: He is.

3 THE COURT: Okay. Good.

4 MR. PENNINGTON: That is good.

5 THE COURT: That's good.

6 THE BAILIFF: 103.

7 [Whereupon, Ms. Michelle Greene, juror number
8 103, comes forward]

9 THE COURT: Ms. Greene, how are you doing?

10 MS. GREENE: Fine. And you, sir?

11 THE COURT: You live out there on John's Island?

12 MS. GREENE: Yes, sir.

13 THE COURT: Do you want that road or you don't
14 want it?

15 MS. GREENE: Huh?

16 THE COURT: Do you want that 526 or you don't
17 want it --

18 MS. GREENE: They already started it --

19 THE COURT: -- taking some --

20 MS. GREENE: They already started it, sir.

21 THE COURT: I know. But they're saying they're
22 not going to do it now. Do you think it will help or
23 hurt?

24 MS. GREENE: Help.

25 THE COURT: You think it would help?

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1 MS. GREENE: Yeah, because if a hurricane come
2 or whatever, you know, you have more roads --

3 THE COURT: Be hard to get out.

4 MS. GREENE: -- you can get out.

5 THE COURT: I understand.

6 MS. GREENE: More travel roads.

7 THE COURT: I don't know if they're going to do
8 it or not, but I was just -- it's been a hot-button
9 issue.

10 MS. GREENE: Somebody going to pick up the slack
11 still.

12 THE COURT: Yeah. You're right.

13 Well, let me ask you this. What have you heard
14 about this case?

15 MS. GREENE: Well, I heard on television that it
16 was postponed because of the -- I mean, well, it --
17 the trial was postponed because of medical reasons.
18 That's --

19 THE COURT: Okay. Anything else you remember on
20 television? Remember what channel?

21 MS. GREENE: Channel 5.

22 THE COURT: Channel 5?

23 MS. GREENE: And they had the young lady's
24 picture on. And they talked about the Drayton guy,
25 Darryl Drayton.

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1 THE COURT: What did they say about Darryl
2 Drayton?

3 MS. GREENE: Well, my husband, he kind of
4 enlightened me because I missed that part.

5 THE COURT: Well, tell me what your husband told
6 you.

7 MS. GREENE: Well, I asked him, I said, well,
8 they never did showed the guy. He said, yes, they
9 did. He's a black guy. He's named Darryl Drayton.
10 Charged for the murder, I believe.

11 THE COURT: Okay. Have you heard anything else
12 other than last night?

13 MS. GREENE: Just on television. No, sir.

14 THE COURT: All right. How would that affect
15 you?

16 MS. GREENE: It wouldn't affect me.

17 THE COURT: It wouldn't affect you at all?

18 MS. GREENE: No, sir, because I don't even know
19 them.

20 THE COURT: Okay. You think you could be fair?

21 MS. GREENE: Yes, sir.

22 THE COURT: Can you base -- can you set that
23 aside, what you heard on television and what your
24 husband said?

25 MS. GREENE: Yes, sir.

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1 THE COURT: Your husband didn't tell you what he
2 thought about the case, did he?

3 MS. GREENE: No, sir.

4 He did ask me how do I feel about the death
5 penalty.

6 THE COURT: He said what?

7 MS. GREENE: He asked me how do I feel about the
8 death penalty. He was --

9 THE COURT: The death penalty doesn't have
10 anything to do with this case.

11 MS. GREENE: I know. That's -- he was just
12 throwing out questions.

13 THE COURT: That's an entirely different subject
14 matter.

15 MS. GREENE: I know.

16 THE COURT: Okay? Doesn't have anything --

17 MS. GREENE: Yes, I do.

18 THE COURT: -- to do with this case.

19 MS. GREENE: Uh-huh.

20 THE COURT: Okay?

21 MS. GREENE: Yes.

22 THE COURT: Can you base your decision on the
23 testimony you hear in the courtroom?

24 MS. GREENE: I can be fair --

25 THE COURT: What you hear in the courtroom.

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1 MS. GREENE: -- fair, yes.

2 THE COURT: Can you set that aside, what your
3 husband told you --

4 MS. GREENE: Yes, sir.

5 THE COURT: -- and what you heard on Channel 5?

6 MS. GREENE: Yes, sir.

7 THE COURT: Okay. Thank you so very much.

8 MS. GREENE: You're welcome.

9 MR. PENNINGTON: Your Honor, can we ask if
10 she -- if her husband relayed anything more about
11 the defendant, specifically? Anything about him or
12 his -- anything about him?

13 MS. GREENE: No, sir. Only what he heard on the
14 news.

15 MR. PENNINGTON: Okay. Thank you.

16 THE COURT: Thank you so very much.

17 [Whereupon, Ms. Michelle Greene, juror number
18 103, returns to the audience]

19 THE COURT: Is that everybody?

20 MS. SHEALY: Judge, since she brought that up.
21 I have that come up in so many cases, that they think
22 it's a death penalty case.

23 THE COURT: Do what, now?

24 MS. SHEALY: I have that come up in so many
25 cases at some point where they think it's a death

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1 penalty case.

2 I wonder if it would be wise for you to say at
3 some point during the voir dire that this is not a
4 death penalty --

5 THE COURT: Well, if you want me to I will.

6 MR. PENNINGTON: That's fine. I have no
7 objection. The State's not seeking that --

8 MS. SHEALY: But, I mean, I think it would ease
9 some people's minds.

10 THE COURT: All right. Ladies and gentlemen of
11 the jury panel, I'm going to call out a list of names
12 and I'm basically going to ask you the same question
13 about each name. I'm going to ask you do you know the
14 individual, or related by blood or marriage. And when
15 I say marriages, I'm talking about present marriages,
16 past marriages or future marriages.

17 The first name is Mike Bartley.

18 Is anybody related by blood or marriage, or does
19 anybody know, Mike Bartley? If so, please stand.

20 [Whereupon, there is no response]

21 THE COURT: The next name is Tina Johnson.

22 Is anybody related by blood or marriage or does
23 anybody know Tina Johnson? If so, please stand.

24 [Whereupon, there is no response]

25 THE COURT: The next name is Bradley V. .

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1 Is anybody related by blood or marriage or does
2 anybody know -- I'm sorry. Bradley V. .

3 MS. SHEALY: Actually, it's V. .

4 THE COURT: V. . Bradley V. . Is anybody
5 related by blood or marriage, or does anybody know
6 him? If so, please stand.

7 [Whereupon, there is no response]

8 THE COURT: The next name is Jackie Seward.

9 Anybody related by blood or marriage to Jackie
10 Seward? It's Seward, S-E-W-A-R-D. If so, please
11 stand.

12 [Whereupon, there is no response]

13 THE COURT: The next name is Deputy W. Shepherd,
14 Charleston County Sheriff's Office.

15 Does anybody know Deputy Shepherd or is anybody
16 related by blood or marriage? If so, please stand.

17 [Whereupon, there is no response]

18 THE COURT: The next name is Stephen Edwards.

19 Anybody related by blood or marriage or does
20 anybody know Stephen Edwards? If so, please stand.

21 [Whereupon, there is no response]

22 THE COURT: The next name is Luca R. Delatore.

23 Anybody related by blood or marriage, does
24 anybody know, Luca R. Delatore?

25 [Whereupon, there is no response]

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1 THE COURT: What type of doctor, solicitor?

2 MS. SHEALY: He is an emergency room doctor.

3 THE COURT: He's an emergency room doctor.

4 Anybody been treated by Dr. Delatore?

5 Where? MUSC, Roper, or where?

6 MS. SHEALY: No. He's at Hilton Head Island
7 hospital.

8 THE COURT: Hilton Head? Okay. Hilton Head
9 Island. If so, please stand.

10 [Whereupon, there is no response]

11 THE COURT: The next name is Maggie Furchak.

12 Is anybody related by blood or marriage or does
13 anybody know Maggie Furchak? If so, please stand.

14 [Whereupon, there is no response]

15 THE COURT: Kevin Wilson. Anybody know Kevin
16 Wilson? Anybody related by blood or marriage? If so,
17 please stand.

18 [Whereupon, there is no response]

19 THE COURT: Does she pronounce it Kim Dinh or --

20 MS. SHEALY: Yes, sir.

21 THE COURT: -- Kim what?

22 MS. SHEALY: Kim Dinh.

23 THE COURT: Kim Dinh. Works for SLED, South
24 Carolina Law Enforcement Division.

25 Anybody related by blood or marriage, does

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1 anybody know, Kim Dinh? If so, please stand.

2 [Whereupon, there is no response]

3 THE COURT: The next name is Wendy Contant,
4 Beaufort County Sheriff's Office.

5 Anybody know Wendy Contant, or anybody related
6 by blood or marriage? If so, please stand.

7 [Whereupon, there is no response]

8 THE COURT: The next name is Christopher Golis.

9 Anybody related by blood or marriage, or does
10 anybody know, Christopher Golis? If so, please stand.

11 [Whereupon, there is no response]

12 THE COURT: The next name is Sargent Todd M.
13 Calhoun, Beaufort County Sheriff's Office.

14 Anybody related by blood or marriage, does
15 anybody know, Sargent Calhoun? He just stood in front
16 of the jury panel. If so, please stand.

17 [Whereupon, there is no response]

18 THE COURT: The next name is Sargent John Adams,
19 Beaufort County Sheriff's Office.

20 Anybody related by blood or marriage or does
21 anybody know Sargent John Adams? If so, please stand.

22 [Whereupon, there is no response]

23 THE COURT: The next name is James Milz,
24 Charleston County Sheriff's Office.

25 Is anybody related by blood or marriage or does

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1 anybody know Mr. Milz? If so, please stand.

2 [Whereupon, there is no response]

3 THE COURT: Yes, sir. You can have a seat.
4 Thank you very much.

5 [Whereupon, Mr. Milz complies]

6 THE COURT: The next name is Paul McManigal,
7 Charleston County Sheriff's Office.

8 Anybody related by blood or marriage to Paul
9 McManigal or anybody know Paul McManigal? If so,
10 please stand.

11 [Whereupon, there is no response]

12 THE COURT: The next name is Vicki Hallman, of
13 SLED, South Carolina Law Enforcement Division.

14 Anybody related by blood or marriage, does
15 anybody know, Vicki Hallman? If so, please stand.

16 [Whereupon, there is no response]

17 THE COURT: The next name is Almon Brown, also
18 of SLED.

19 Anybody related by blood or marriage or does
20 anybody know Amon Brown? If so, please stand.

21 [Whereupon, there is no response]

22 THE COURT: The next name is Tom Darnell of
23 SLED.

24 Anybody related by blood or marriage or does
25 anybody know Mr. Darnell? If so, please stand.

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1 [Whereupon, there is no response]

2 THE COURT: The next name is Detective James
3 Perkins, Charleston County Sheriff's Office.

4 He's standing in front of the jury panel.

5 [Whereupon, there is no response]

6 THE COURT: Thank you, Detective Perkins.

7 Anybody --

8 You can have a seat.

9 [Whereupon, Detective Perkins complies]

10 THE COURT: Anybody related by blood or marriage
11 or anybody know Detective James Perkins?

12 [Whereupon, there is no response]

13 THE COURT: The next name is Deputy Kathy
14 Kjellman?

15 MS. SHEALY: Kjellman.

16 THE COURT: Killman?

17 MS. SHEALY: It's actually pronounced Kjellman.

18 THE COURT: Kjellman.. Okay. Deputy Kathy
19 Kjellman, Charleston County Sheriff's Office.

20 Anybody know Deputy Kathy Kjellman? If so,
21 please stand.

22 [Whereupon, there is no response]

23 THE COURT: The next name is Detective Derek
24 Boyd, Charleston County Sheriff's Office.

25 Anybody related by blood or marriage, does

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1 anybody know, Detective Derek Boyd? If so, please
2 stand.

3 [Whereupon, there is no response]

4 THE COURT: The next name is Veronica -- Verona.
5 Excuse me. Verona Gibson, SLED.

6 Anybody related by blood or marriage or anybody
7 know Verona Gibson? If so, please stand.

8 [Whereupon, there is no response]

9 THE COURT: The next name is Catherine Leisy,
10 SLED.

11 Anybody related by blood or marriage, anybody
12 know, Catherine Leisy? If so, please stand.

13 [Whereupon, there is no response]

14 THE COURT: Jennifer Dalmida of Verizon.

15 Anybody know Jennifer Dalmida? Anybody related
16 to her? If so, please stand.

17 [Whereupon, there is no response]

18 THE COURT: Ken Aycock, FBI in Columbia.

19 Anybody know Ken Aycock? Anybody related? If
20 so, please stand.

21 [Whereupon, there is no response]

22 THE COURT: Erin Presnell, Pathologist, MUSC.

23 Anybody related to Erin Presnell? Does anybody
24 know Dr. Presnell? I won't ask you if you've been
25 treated by her.

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1 [Whereupon, there is no response]

2 THE COURT: The next name is Robert DiCarlo,
3 Beaufort County deputy.

4 Anybody know Robert DiCarlo? Is anybody related
5 to Robert DiCarlo? If so, please stand.

6 [Whereupon, there is no response]

7 THE COURT: The next name is Shannon Hooper
8 Sekanina. Sekanina.

9 How do you pronounce it?

10 MR. PENNINGTON: Sekanina.

11 THE COURT: Sekanina. Shannon Hooper Sekanina.

12 Anybody related by blood or marriage or does
13 anybody known Shannon Sekanina? If so, please stand.

14 [Whereupon, there is no response]

15 THE COURT: The next name is Kip Cooke,
16 Charleston County sheriff's detective.

17 Anybody related by blood or marriage or does
18 anybody know Kip Cooke? If so, please stand.

19 [Whereupon, there is no response]

20 THE COURT: Has any member of the jury panel or
21 a member of your immediate family had any criminal
22 charges adjudicated by the Charleston County
23 Solicitor's Office? That means has any member of the
24 jury panel or a member of your family been charged
25 with a crime and the solicitor's office handled the

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1 case. If so, please stand.

2 Yes, sir. Your name?

3 MR. HANSON: My name is Tommy Hanson, juror
4 number 111.

5 THE COURT: Okay. Mr. Hanson, tell me who and
6 when.

7 MR. HANSON: Okay. I have a son that was
8 convicted, I believe it was in March last year, of --
9 dad gum it -- it was a robbery charge, a forcible
10 robbery, or whatever you call it, and he served the
11 time in Wateree Correctional Institute.

12 THE COURT: Okay. Would that affect you sitting
13 on this jury?

14 MR. HANSON: Not a bit.

15 THE COURT: Can you be fair to both the State
16 and the defendant?

17 MR. HANSON: Yes, sir.

18 I had -- my sister was a deputy warden at Lieber
19 Correctional Institute, for quite a few years, since
20 they opened the place up. She retired and passed
21 away. I served on various prison ministries and then
22 I had a son in prison. So I've got all different
23 aspects on it. So --

24 THE COURT: But you think you can be fair?

25 MR. HANSON: Yes, sir.

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1 THE COURT: You can base your decision on the
2 testimony you hear in the courtroom?

3 MR. HANSON: Yes, sir.

4 THE COURT: All right. Thank you, Mr. Hanson.
5 Yes, ma'am. Your name?

6 MS. LOCKARD: Patricia Lockard.

7 THE COURT: Pardon?

8 MS. LOCKARD: Patricia Lockard.

9 THE COURT: Do you know your number?

10 MS. LOCKARD: 159.

11 THE CLERK OF COURT: You've already excused her.

12 THE COURT: Ms. Lockard, you can have a seat.
13 Thank you so very much.

14 [Whereupon, the Court and the law clerk confer]

15 THE COURT: Is there any member of the jury
16 panel or a member of your immediate family have any
17 criminal charges pending with the Ninth Circuit
18 Solicitor's Office? That includes Charleston and
19 Berkeley County. If so, please stand.

20 [Whereupon, there is no response]

21 THE COURT: Solicitor Shealy, if you'll stand
22 and introduce yourself, please, ma'am.

23 MS. SHEALY: I'm Jennifer Shealy. I'm assistant
24 solicitor in the Charleston solicitor's office.

25 This is my co-counsel, Timmy Finch. And this is

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1 Sheneka Smith [phonetic]. She's a paralegal in my
2 office. Daniel Cooper. He is a second-year law
3 student. And you have been introduced to our two lead
4 detectives, one from Charleston County and one from
5 Beaufort County.

6 THE COURT: All right. Is there any member of
7 the jury panel have a close friend or know any of the
8 attorneys representing the State in this case, or a
9 close friend in the solicitor's office either here in
10 Berkeley County or Charleston County? If so, please
11 stand.

12 [Whereupon, there is no response]

13 THE COURT: Mr. Pennington, if you'll stand and
14 introduce yourself, please.

15 MR. PENNINGTON: Yes, Your Honor.

16 My name is Ashley Pennington. I am counsel for
17 Darryl Drayton, who is seated right here.

18 Darryl, why don't you stand up.

19 [Whereupon, Mr. Drayton complies]

20 MR. PENNINGTON: And this is Michael Cooper, who
21 is my co-counsel in this case.

22 THE COURT: Has any member of the jury panel
23 been represented by Mr. Pennington or anyone in his
24 office, or have a close personal friend in the public
25 defender's office here in Charleston County? If so,

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1 please stand.

2 [Whereupon, there is no response]

3 THE COURT: Does anybody know Darryl Drayton or
4 anybody related by blood or marriage to Mr. Darryl
5 Drayton? If so, please stand.

6 [Whereupon, there is no response]

7 THE COURT: Has any member of the jury panel
8 previously been a witness in a civil or criminal case?
9 If so, please stand. If you've testified in court
10 before, please stand.

11 [Whereupon, there is no response]

12 THE COURT: Has any member of the jury panel --

13 THE BAILIFF: Judge --

14 THE COURT: Yes, sir. Your name?

15 MR. DANIEL: Tony Daniel, juror number 65.

16 THE COURT: Yes, sir, Mr. Daniel.

17 MR. DANIEL: Well, I work in the bank and we're
18 in and out of court on different things.

19 THE COURT: Is that in magistrate's court or
20 city court?

21 MR. DANIEL: It's in master of equity and common
22 pleas.

23 THE COURT: Okay. You're talking about
24 foreclosures, primarily?

25 MR. DANIEL: Foreclosures and collection

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1 matters.

2 THE COURT: Okay. Do you have any bias or
3 prejudice towards the criminal court system as a
4 result of your experience on the civil side?

5 MR. DANIEL: No, sir.

6 THE COURT: Can you be fair to both parties?

7 MR. DANIEL: Yes, sir.

8 THE COURT: Can you base your decision on the
9 testimony you hear in the courtroom?

10 MR. DANIEL: Yes, sir.

11 THE COURT: Thank you, Mr. Daniel.

12 Yes, ma'am?

13 MS. WEBB: My name is Leeann Webb.

14 THE COURT: What's your number?

15 MS. WEBB: 281.

16 THE COURT: 201?

17 MS. WEBB: 281.

18 THE COURT: 281.

19 MS. WEBB: Yes, sir.

20 I was an agent with the probation and parole and
21 I was a state constable. So I've been in --

22 THE COURT: In and out of court.

23 MS. WEBB: Yes.

24 THE COURT: All right. Can you be fair to both
25 sides?

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1 MS. WEBB: I can.

2 THE COURT: Can you base your decision on the
3 testimony you hear in the courtroom?

4 MS. WEBB: Yes, sir.

5 THE COURT: Thank you, Ms. Webb.

6 Yes, sir?

7 MR. LAYTON: Carey Layton, 157.

8 THE COURT: 157?

9 MR. LAYTON: Yes, sir.

10 THE COURT: Okay.

11 MR. LAYTON: I -- a defendant in a civil suit, I
12 guess you could say. It was a contract dispute.

13 THE COURT: How long ago?

14 MR. LAYTON: It's been ten years.

15 THE COURT: Was it in --

16 MR. LAYTON: Here in Charleston County.

17 THE COURT: Was it out at North Charleston?

18 MR. LAYTON: No, sir. It was here in town.

19 THE COURT: In the old courthouse?

20 MR. LAYTON: Yes, sir.

21 THE COURT: All right. Do you have any bias or
22 prejudice as a result of that, Mr. Layton?

23 MR. LAYTON: No. No, sir.

24 THE COURT: Can you be fair to both parties in
25 this case?

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1 MR. LAYTON: Yes, sir.
2 THE COURT: Thank you, Mr. Layton.
3 Yes, sir, your name?
4 MR. BARKO: Juror number 10.
5 THE COURT: Number 90?
6 MR. BARKO: 10.
7 THE COURT: 10. Yes, sir, Mr. Barko.
8 MR. BARKO: Magistrate; civil case concerning
9 escrow; two and a half years ago
10 THE COURT: Thank you very much.
11 Has any member of the jury panel or a member of
12 your family or close personal friend ever been a
13 victim of a violent crime? If so, please stand.
14 Let's start on my left.
15 MS LENDSTROM: Susan Lindstrom, 158.
16 THE COURT: 159?
17 MS LENDSTROM: Yes, sir.
18 THE COURT: Yes, ma'am, Ms. Lendstrom.
19 MS LENDSTROM: My brother was stabbed twice.
20 THE COURT: Your brother was what?
21 MS LENDSTROM: Stabbed twice --
22 THE COURT: How long ago?
23 MS LENDSTROM: Thirty years ago.
24 THE COURT: Thirty years ago.
25 Were you involved in the -- was anybody ever

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1 arrested?

2 MS LENDSTROM: No. They didn't press charges.

3 THE COURT: Okay. Do you have any bias or
4 prejudice towards defendants, in general, as a result
5 of that?

6 MS LENDSTROM: [Indicates negatively]

7 THE COURT: Can you be fair in this case?

8 MS LENDSTROM: [Indicates affirmatively]

9 THE COURT: Base your decision on the testimony
10 you hear in the courtroom?

11 MS LENDSTROM: Yes, sir.

12 THE COURT: Thank you, ma'am.

13 Yes, sir. Your name?

14 MR. FETTEROLF: John Fetterolf.

15 THE COURT: Do you know your number?

16 MR. FETTEROLF: 84.

17 THE COURT: Yes, sir, Mr. Fetterolf.

18 MR. FETTEROLF: My son -- or rather my -- I
19 call him my son. My nephew, him and his wife were
20 murdered --

21 THE COURT: How long ago?

22 MR. FETTEROLF: Seven years.

23 THE COURT: Seven years ago?

24 MR. FETTEROLF: Yes. And a baby was due in four
25 days.

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1 THE COURT: Was anybody ever arrested?

2 MR. FETTEROLF: No, sir.

3 THE COURT: It was never solved?

4 MR. FETTEROLF: No, sir.

5 THE COURT: Do you have any bias or prejudice
6 towards the police for not solving the case?

7 MR. FETTEROLF: No, sir.

8 THE COURT: Have any bias or prejudice towards
9 the system as a result of no one ever being arrested?

10 MR. FETTEROLF: Kind of.

11 THE COURT: Kind of?

12 MR. FETTEROLF: Yeah. They have an idea who it
13 is.

14 THE COURT: All right. Well, come on around and
15 let me talk to you about it.

16 [Whereupon, Mr. John Fetterolf, juror number 84,
17 comes forward]

18 THE COURT: How are you doing?

19 MR. FETTEROLF: How are you doing, sir?

20 THE COURT: I'm doing fine.

21 Tell me kind of -- what do you mean when you say
22 kind of?

23 MR. FETTEROLF: I raised him since he was young
24 and he moved to Atlanta and he got married and they
25 were -- he called me and said they were getting ready

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1 to have a child in about four days. And the next
2 morning they were found murdered, shot in the head.

3 THE COURT: I'm awful sorry about your loss.
4 Sorry about your loss.

5 My concern is how is this going to affect you in
6 this case.

7 MR. FETTEROLF: Well, they had different
8 detectives and they had no leads. And then they
9 switched and got some detectives to help out. They
10 had some leads, didn't follow up on them.

11 I sent my wife -- she wanted to go to California
12 to see some people about it, you know. And come to
13 find out that they had a suspect, but the Feds were
14 involved because he's been looked at for other
15 murders, trafficking guns and drugs.

16 THE COURT: Was he ever arrested?

17 MR. FETTEROLF: No, sir.

18 THE COURT: All right. Well, how is that going
19 to affect you sitting on this jury?

20 MR. FETTEROLF: I don't think it would affect me
21 personally. It's just my idea of the justice system,
22 you know.

23 THE COURT: So you've got a bias against the
24 justice system, in general?

25 MR. FETTEROLF: Yes, ma'am.

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1 THE COURT: Because no one was ever arrested and
2 prosecuted?

3 MR. FETTEROLF: Yeah. Yeah.

4 And to be told by the detectives that, you know,
5 we have an idea who it is but we're not going to
6 arrest him for that.

7 THE COURT: Okay. I understand.

8 Well, my problem is how is that going to play
9 out, if you're sitting on this jury, in your mind?

10 MR. FETTEROLF: I'm not sure.

11 THE COURT: I'm not, either. Only you would
12 know that.

13 MR. FETTEROLF: I know.

14 THE COURT: That's what I need to know.

15 MR. FETTEROLF: I would take in what I hear, you
16 know, and if I find him guilty, he's guilty, and if
17 not, he's not.

18 THE COURT: Okay. Do you think you can base
19 your decision on what you hear in the courtroom?

20 MR. FETTEROLF: Yeah.

21 THE COURT: Can you set that aside?

22 MR. FETTEROLF: Yeah.

23 THE COURT: Any questions from the State?

24 MS. SHEALY: I understand that you're, I mean,
25 disappointed -- what happened to your nephew, your

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1 son.

2 But you understand the defendant has a right to
3 a fair trial?

4 MR. FETTEROLF: Right. Right.

5 MS. SHEALY: And the victims here have a right
6 to a fair trial?

7 MR. FETTEROLF: Right.

8 MS. SHEALY: Do you feel like the emotions that
9 you have about your situation you could set aside and
10 listen to the evidence in this case, or do you feel
11 like whatever resentment you have would spill over to
12 your ability to listen to this case?

13 MR. FETTEROLF: I don't have any resentment to
14 the defendant or that -- you know, towards anybody.

15 MS. SHEALY: In this case?

16 MR. FETTEROLF: Right.

17 MS. SHEALY: So when you were -- when you were
18 kind of hesitant, what were you worried about?

19 MR. FETTEROLF: Just my feelings, you know,
20 having to -- I guess kind of having to relive a death.

21 MS. SHEALY: Uh-huh.

22 MR. FETTEROLF: Yeah.

23 MS. SHEALY: But you don't think that would
24 affect your ability to listen to the evidence in --

25 MR. FETTEROLF: No.

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1 MS. SHEALY: -- this case?

2 MR. FETTEROLF: No.

3 MS. SHEALY: I have nothing further.

4 THE COURT: All right. Thank you. You may have
5 a seat.

6 MR. PENNINGTON: Your Honor, may I voir dire
7 him?

8 THE COURT: Go have a seat. Go have a seat.

9 [Whereupon, Mr. John Fetterolf, juror number 84,
10 returns to the audience]

11 THE COURT: Any motions?

12 MS. SHEALY: I think Ashley wanted to ask him
13 something.

14 THE COURT: Huh?

15 MS. SHEALY: Ashley wanted to ask him something.

16 MR. PENNINGTON: My concern was prejudice
17 against the defendant, in that I didn't get to ask the
18 question he had issues with how the police
19 investigation was run and whether or not that would
20 cause him to step up and feel like he needed to fill a
21 void --

22 THE COURT: The prejudice he talked about, he
23 didn't talk about the defendant. Do you want me to
24 bring him back and ask him about that?

25 MR. PENNINGTON: I would. I would, yes, sir.

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1 THE COURT: Got another question for you.

2 MR. FETTEROLF: Yes, sir.

3 [Whereupon, Mr. John Fetterolf, juror number 84,
4 comes forward]

5 MR. PENNINGTON: Mr. Fetterolf, were you
6 frustrated feeling like that the system did too much
7 to protect the rights of the accused or that the
8 system had been ineffective in serving the community
9 in that case in Atlanta?

10 MR. FETTEROLF: Both.

11 MR. PENNINGTON: Would that lead you at times to
12 feel that people sometimes have to step up and fill
13 the gap, given the fact that the legal system lets
14 people get off the hook?

15 MR. FETTEROLF: [Indicates affirmatively]

16 MR. PENNINGTON: And you're nodding yes,
17 but I think the court reporter would need you to say
18 yes.

19 MR. FETTEROLF: Yes.

20 MR. PENNINGTON: All right. And so if you were
21 in the back and were discussing this case with other
22 jurors, would you feel that the legal system sometimes
23 needs help because criminals are coddled or are not
24 brought to justice?

25 MR. FETTEROLF: Help as in?

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1 MR. PENNINGTON: Well, that the laws sometimes
2 don't provide justice.

3 MR. FETTEROLF: What do you mean as in help? As
4 in making up stuff or what?

5 MR. PENNINGTON: No. In terms of if -- well, I
6 don't want to get into the specifics of the case. But
7 do you --

8 THE COURT: Let me just ask you this. Your
9 displeasure with the system in general, okay -- and I
10 understand why you've got the displeasure. If I was
11 in your shoes, I would feel the same way. My concern
12 is you'll take it out on the defendant.

13 MR. FETTEROLF: I wouldn't take it out on
14 anybody.

15 THE COURT: Wouldn't take it out on anybody?

16 MR. FETTEROLF: No.

17 THE COURT: All right. Anything else?

18 MR. PENNINGTON: No, sir.

19 THE COURT: You can have a seat.

20 [Whereupon, Mr. John Fetterolf, juror number 84,
21 returns to the audience]

22 THE COURT: Any motions?

23 MR. PENNINGTON: Your Honor, he expressed -- I
24 think he had courage to stand up and talk about his
25 strong emotional feelings about that the legal system

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1 had let him down. My concern is is that we don't know
2 how this is going to affect him when he actually is
3 faced with a case where there's an issue of proof
4 beyond a reasonable doubt and circumstantial evidence.

5 My concern is is that he may well feel that he
6 is going to have trouble following the law; that if
7 there are reasonable alternatives, that he would have
8 to observe the burden of proof and the presumption of
9 innocence.

10 I would move to strike him for cause, based on
11 his emotional state of mind.

12 THE COURT: What's your position?

13 MS. SHEALY: I think he answered the question --

14 THE COURT: Do you want him gone?

15 MS. SHEALY: No, I don't want him gone.

16 You know, if Mr. Pennington wants to use a
17 strike, he could.

18 But I think he answered the questions sincerely
19 and said he wouldn't let his emotions interfere.

20 THE COURT: Motion denied.

21 All right. Who else is standing?

22 THE BAILIFF: Three of them.

23 THE COURT: Why don't y'all just come on up
24 here, since I'm here.

25 MS. SHEALY: Two of them are --

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1 MR. PENNINGTON: Two of them are gone --

2 THE COURT: You can have a seat. Both of y'all
3 can have a seat.

4 Yes, sir. Yes, sir.

5 [Off the record momentarily]

6 [Whereupon, Mr. Robert Kramer, juror number 153,
7 comes forward]

8 MR. KRAMER: Back again.

9 THE COURT: Back again. Tell me about it.

10 MR. KRAMER: My mother-in-law was raped.

11 THE COURT: Huh?

12 MR. KRAMER: My mother-in-law was raped and
13 assaulted in New Orleans seven years ago.

14 THE COURT: Seven years ago. Were you involved
15 in it at all?

16 MR. KRAMER: No.

17 THE COURT: Well, did you go down or see --

18 MR. KRAMER: Yeah. Well, we -- they never got
19 anybody.

20 THE COURT: Okay. How would that affect you in
21 this case?

22 MR. KRAMER: I don't think it would.

23 THE COURT: You don't think it would? You think
24 you can be fair?

25 MR. KRAMER: Yes.

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1 THE COURT: Okay. Go have a seat.

2 MR. PENNINGTON: Can we get the juror's name and
3 number again, please?

4 MR. KRAMER: 153. Kramer.

5 [Whereupon, Mr. Robert Kramer, juror number 153,
6 returns to the audience]

7 THE COURT: Has any member of the jury panel or
8 a member of your family or close personal friend ever
9 been accused or charged with a violent crime? If so,
10 please stand.

11 Yes, sir. Your name?

12 MR. STERRETT: Charles Sterrett, 256.

13 THE COURT: 253?

14 MR. STERRETT: 256.

15 THE COURT: Who was charged?

16 MS. SHEALY: 256.

17 THE COURT: 256. Charles Sterrett.

18 Yes, sir. Who was --

19 MR. STERRETT: My oldest brother.

20 THE COURT: Your oldest brother was charged?

21 When?

22 MR. STERRETT: '96, '97.

23 THE COURT: Was he ever -- was he prosecuted?

24 MR. STERRETT: Yes, sir.

25 THE COURT: Did he have a jury trial?

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1 MR. STERRETT: Yes. No, sir. The public
2 defender made a deal with the --

3 THE COURT: So he pled guilty?

4 MR. STERRETT: Yes, sir.

5 THE COURT: All right. How would that affect
6 you in this jury, sitting on this jury?

7 MR. STERRETT: It wouldn't.

8 THE COURT: Do you have any bias or prejudice
9 against the State as a result of that prosecution of
10 your brother?

11 MR. STERRETT: No, sir.

12 THE COURT: Can you be fair and impartial to
13 both parties?

14 MR. STERRETT: Yes, sir.

15 THE COURT: Thank you so very much. You can
16 have a seat.

17 Yes, ma'am?

18 MS. BLUME: Yes. My cousin a long time ago --

19 THE COURT: What's your name?

20 MS. BLUME: Katherine Blume, 24.

21 THE COURT: Yes, ma'am, Ms. Blume.

22 MS. BLUME: Valerie Hood, she was charged with a
23 DUI and hit-and-run that resulted in a murder and a
24 really bad injury of somebody else.

25 THE COURT: Okay. How long ago?

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1 MS. BLUME: 2010.

2 THE COURT: Okay. Were you involved in it at
3 all?

4 MS. BLUME: No.

5 THE COURT: You were?

6 MS. BLUME: I was not.

7 THE COURT: You were not.

8 All right. Do you have any bias or prejudice as
9 a result of that?

10 MS. BLUME: No.

11 THE COURT: Okay. Thank you so very much.

12 Has any member of the jury panel ever had an
13 unpleasant experience with a law enforcement officer?
14 And I'm not talking about speeding tickets. If so,
15 please stand.

16 A speeding ticket is always unpleasant. Any
17 other bad experience with a law enforcement agency
18 that may affect you in this case, please stand.

19 [Whereupon, there is no response]

20 THE COURT: Does any member of the jury panel
21 have any relatives or close friends in prison, other
22 than the people that have already stood and announced
23 that? Please stand.

24 Yes, ma'am. Your name?

25 MS. KITT: Delores Kitt.

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1 THE COURT: Do you know your number?

2 MS. KITT: 151. One five one.

3 THE COURT: Yes, ma'am, Ms. Kitt.

4 MS. KITT: I have a son --

5 THE COURT: You've got a son in jail?

6 MS. KITT: Yes, sir.

7 THE COURT: What's he in jail for?

8 MS. KITT: He said he didn't do it. A child
9 molestation.

10 THE COURT: Okay. How long ago was it?

11 MS. KITT: Four or five years ago.

12 THE COURT: How long?

13 MS. KITT: Four or five years ago.

14 THE COURT: Four or five years ago?

15 MS. KITT: He says he's --

16 THE COURT: All right. How would that affect
17 you sitting on this jury? Or would it?

18 MS. KITT: No.

19 THE COURT: Can you be fair to both parties?

20 MS. KITT: Sir?

21 THE COURT: Can you be fair to both parties?

22 MS. KITT: Yes, sir.

23 THE COURT: Can you base your decision on the
24 testimony you hear in the courtroom?

25 MS. KITT: [No response]

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1 THE COURT: Can you base your decision on the
2 testimony you hear in the courtroom?

3 MS. KITT: Yes, sir.

4 THE COURT: Thank you, Ms. Kitt.

5 Yes, ma'am?

6 MS. SMITH: Carrie Smith, number 245. I have a
7 nephew that's incarcerated.

8 THE COURT: What's he incarcerated for?

9 MS. SMITH: Robbery.

10 THE COURT: Robbery? How long ago was it?

11 MS. SMITH: He was sentenced I think it was last
12 year.

13 THE COURT: Okay. Were you involved in the
14 process at all?

15 MS. SMITH: [Indicates negatively]

16 THE COURT: You just know about it?

17 MS. SMITH: I just know about it.

18 THE COURT: Can you be fair to both the State
19 and the defendant in this case?

20 MS. SMITH: Yes.

21 THE COURT: Can you base your decision on the
22 testimony you hear in the courtroom?

23 MS. SMITH: Yes.

24 THE COURT: Thank you very much.

25 Is there any member of the jury panel that would

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1 have difficulty in following the law as the judge
2 gives it to you, even though you believe it's
3 inappropriate or unfair? If you think that way or
4 feel that way, please stand.

5 [Whereupon, there is no response]

6 THE COURT: Does any member of the jury panel
7 hold social, ethnic, or racial views that would render
8 you incapable of being fair and impartial in a case
9 involving a defendant who is from a certain social,
10 ethic, or racial background? If so, please stand.

11 [Whereupon, there is no response]

12 THE COURT: Does any member of the jury have a
13 religious conviction, a philosophical, moral belief,
14 or political orientation, that would make it difficult
15 for you to sit in judgment of another person? If so,
16 please stand.

17 [Whereupon, there is no response]

18 THE COURT: Is there any member of the jury
19 panel that is familiar or knows any member of Mr.
20 Darryl Drayton's family here in Charleston County? If
21 you do, please stand.

22 MR. PENNINGTON: Your Honor, one of our jurors
23 just --

24 UNIDENTIFIED: I have a problem with --

25 THE BAILIFF: Stand, sir.

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1 UNIDENTIFIED: I have a problem with somebody --

2 THE COURT: You have what, now?

3 UNIDENTIFIED: I would have a problem with the
4 death penalty.

5 THE COURT: All right. Let me say this to the
6 jury. This is not a death penalty case, period. The
7 death penalty doesn't have anything to do with it.
8 Okay?

9 UNIDENTIFIED: What if it was to come up,
10 though?

11 THE COURT: It's not coming up, period.

12 UNIDENTIFIED: Okay.

13 THE COURT: Okay? I can't make it any plainer
14 than that. It is not coming up. It is not a death
15 penalty case. The death penalty doesn't have anything
16 to do with this case.

17 Is there anybody that does not understand that?

18 [Whereupon, there is no response]

19 THE COURT: Is there any member of the jury
20 panel who's a former law enforcement officer or
21 department of corrections? If so, please stand.

22 You were previously with --

23 UNIDENTIFIED: Yeah. Probation and parole.

24 THE COURT: Probation and parole; right?

25 UNIDENTIFIED: And I was a state constable.

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1 THE COURT: Is there any member of the jury
2 panel who has family members that are employed by law
3 enforcement agencies? If so, please stand.

4 Starting with the gentleman on the front row.
5 Your name?

6 MR. PARKER: I'm Joseph Parker, 200.

7 My wife is a detective, Dorchester County
8 Sheriff.

9 THE COURT: Okay. How long has she been a
10 detective?

11 MR. PARKER: Six years.

12 THE COURT: Okay. Would that cause you any
13 difficulty in sitting on this jury?

14 MR. PARKER: No, sir.

15 THE COURT: Can you be fair to both the State
16 and defendant?

17 MR. PARKER: Yes, sir.

18 THE COURT: Can you base your decision on
19 testimony you hear in the courtroom?

20 MR. PARKER: Yes, sir.

21 THE COURT: Thank you very much.

22 Mr. Skatell, you can have a seat. Thank you
23 very much.

24 Yes, ma'am. Your name?

25 MS. SMITH: Carrie Smith, 245.

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1 I have a cousin that is a detective.

2 THE COURT: Whereabouts?

3 MS. SMITH: I think Mount Pleasant. I'm not
4 sure.

5 THE COURT: Okay. How often do you see him?

6 MS. SMITH: I don't.

7 THE COURT: You don't? Okay. Is that because
8 you don't like him? Or he lives too far away? Huh?

9 MS. SMITH: Don't see him.

10 THE COURT: Pardon?

11 MS. SMITH: I just don't see him.

12 THE COURT: All right. Thank you very much.

13 Is any member of the jury panel aware of any
14 bias or prejudice towards either the State or the
15 defendant in this case? If so, please stand.

16 [Whereupon, there is no response]

17 THE COURT: Is any member of the jury panel a
18 member or contributor to any group which has as its
19 primary concern the promotion of law enforcement or
20 victims rights? These groups include but are not
21 limited to MADD, SADD, CAV. If so, please stand.

22 [Whereupon, there is no response]

23 THE COURT: Does any member of the jury panel
24 know of any reason whatsoever why he or she cannot
25 serve as a juror in this case, with particular

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1 emphasis being placed upon your ability to be fair and
2 impartial? If so, please stand.

3 [Whereupon, there is no response]

4 THE COURT: Does any member of the jury panel
5 know of any reason, personal or otherwise, as to why
6 they cannot serve on this jury? If so, please stand.

7 Yes, sir. What's your name?

8 MR. IRELAND: Geoffrey Ireland.

9 THE COURT: You want to come around, Mr.
10 Ireland? What's your number?

11 MR. IRELAND: 136.

12 [Whereupon, Mr. Geoffrey Ireland, juror number
13 136, comes forward]

14 THE COURT: What's your problem, Mr. Ireland?

15 MR. IRELAND: Monday, the 8th, I have a funeral
16 for my grandmother and so if this were to go any
17 length of time, I would not be able to serve.

18 THE COURT: When is the funeral?

19 MR. IRELAND: The 8th. Monday the 8th.

20 THE COURT: What time?

21 MR. IRELAND: It's at 12:55.

22 THE COURT: 12:55?

23 MR. IRELAND: Uh-huh..

24 THE COURT: All right. I appreciate that.
25 Thank you so very much.

MIA PERRON, CVR-CM-M

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1 MR. IRELAND: Yes.

2 [Whereupon, Mr. Geoffrey Ireland, juror number
3 136, returns to the audience]

4 THE BAILIFF: Number 179. 279.

5 [Whereupon, Ms. Phyllis Watson, juror number
6 279, comes forward]

7 THE COURT: Yes, ma'am. 279?

8 MS. WATSON: 279.

9 THE COURT: What's your problem, Ms. Watson?

10 MS. WATSON: On Thursdays I get my granddaughter
11 for a court-ordered visitation.

12 And they told me that I was protected for
13 Thursdays.

14 THE COURT: Have what?

15 MS. WATSON: Court-ordered visitation in family
16 court.

17 And they told me I would be protected on
18 Thursdays.

19 MR. PENNINGTON: I think that was Judge
20 Jefferson this morning excused her on Thursdays.

21 THE COURT: Thursday?

22 MS. WATSON: Yes.

23 THE COURT: All right. You're number seventy --

24 MS. WATSON: 279. Yes.

25 THE COURT: 279. All right. Thank you.

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1 MS. WATSON: Thank you.

2 [Whereupon, Ms. Phyllis Watson, juror number
3 279, returns to the audience]

4 THE COURT: All right. Have y'all got anymore
5 questions?

6 MR. PENNINGTON: Only number 8, which is --

7 THE COURT: What, now?

8 MR. PENNINGTON: Number 8 on mine. I think mine
9 is over here, Judge.

10 It's involving the deceased and her family. I
11 don't know that we --

12 THE COURT: I didn't ask that. I'll ask that.
13 Anything else while you're up here? Anything
14 from the State?

15 MS. SHEALY: No, sir.

16 THE COURT: Anything from the State?

17 MS. SHEALY: No, sir.

18 MR. COOPER: Juror number 8. I don't --

19 THE COURT: What?

20 MR. COOPER: Juror number 8. I play softball
21 with him.

22 THE COURT: What about him?

23 MR. COOPER: I'm not close friends with him, but
24 I know him. I know who he is.

25 THE COURT: Bannerman?

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1 MR. COOPER: Yes, sir.

2 THE COURT: How do you know him?

3 MR. COOPER: I play softball once a week -- once
4 a week with him --

5 THE COURT: Y'all want me to bring him up?

6 MR. COOPER: -- for six weeks.

7 THE COURT: Y'all want me to bring him up?

8 Because he didn't -- my problem is he did not
9 stand up.

10 MS. SHEALY: He didn't stand up. Yeah, I guess
11 we've got to.

12 MR. COOPER: We're not -- we're not close
13 friends or anything but --

14 THE COURT: You play on the same team?

15 MR. COOPER: Uh-huh.

16 MS. SHEALY: I mean, does he know you by name?

17 MR. COOPER: He probably --

18 THE COURT: Well, you stood up in front of him.

19 MS. SHEALY: Yeah. I think we should --

20 THE COURT: I'll call --

21 MS. SHEALY: -- call him up and ask him --

22 [Whereupon, the Court reviews documents]

23 THE COURT: How --

24 MR. PENNINGTON: Alexis.

25 THE COURT: I'll get it straight in a minute in

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1 my mind. Lukaitis.

2 MS. SHEALY: Lukaitis.

3 THE COURT: Lukaitis. Okay. I'll get it
4 straight here in a minute.

5 MS. SHEALY: We've all struggled with it.

6 THE COURT: Alexis Lukaitis.

7 All right. Ladies and gentlemen of the jury
8 panel, does any member of the jury panel know the
9 family or close friends of the victim, Alexis
10 Lukaitis, or any members of her family? If so, please
11 stand.

12 [Whereupon, there is no response]

13 THE COURT: All right. Mr. Bannerman, juror
14 number 8, would you come around, please, sir.

15 [Whereupon, Mr. Reynolds Bannerman, juror number
16 8, comes forward]

17 MR. BANNERMAN: What did I do?

18 THE COURT: You pay softball with -- why didn't
19 you stand up?

20 MR. BANNERMAN: Well, I didn't know we were
21 considered good friends.

22 THE COURT: Huh?

23 MR. BANNERMAN: You said good friends.

24 THE COURT: Well, you don't classify him as a --
25 what position do you play?

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1 MR. BANNERMAN: What's that?

2 THE COURT: What position do you play?

3 MR. BANNERMAN: I play third base.

4 THE COURT: What does he play?

5 MR. BANNERMAN: He plays way out in right field.

6 THE COURT: So you're a long ways from him?

7 MR. BANNERMAN: Yeah.

8 THE COURT: You're not friends because of the
9 distance; is that right?

10 MR. BANNERMAN: I didn't -- I've played with him
11 for one season, and I didn't know -- well, I didn't
12 want to waste your time.

13 THE COURT: You're not wasting my time.

14 MR. BANNERMAN: Okay.

15 THE COURT: That's what I'm here for.

16 MR. BANNERMAN: Yes, sir.

17 THE COURT: Is that going to affect you sitting
18 on this jury?

19 MR. BANNERMAN: Not at all.

20 THE COURT: Why not? Right field doesn't ever
21 throw it to third base?

22 MR. BANNERMAN: He can't -- he's not quite
23 strong enough no more.

24 THE COURT: He doesn't have a good enough arm?

25 MR. BANNERMAN: He does. I'm teasing.

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1 THE COURT: All right. Can you be fair?

2 MR. BANNERMAN: Absolutely.

3 THE COURT: That won't -- his softball endeavors
4 won't influence --

5 MR. BANNERMAN: I don't think so.

6 THE COURT: -- your decision?

7 MR. BANNERMAN: I don't think so.

8 THE COURT: All right. Thank you very much.

9 MR. BANNERMAN: You're welcome.

10 [Whereupon, Mr. Reynolds Bannerman, juror number
11 8, returns to the audience]

12 THE COURT: Any further questions from the
13 State?

14 MS. SHEALY: No, sir. Thank you.

15 THE COURT: Any further questions from the
16 defendant?

17 MR. PENNINGTON: No.

18 THE COURT: Madam Clerk, can you --

19 [Whereupon, the Court and the clerk of court
20 confer]

21 THE COURT: How much time do you need, so I can
22 give the jury a break? How much time do y'all need to
23 look at the list?

24 MR. PENNINGTON: Ten, fifteen minutes, Your
25 Honor.

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1 THE COURT: All right. Ladies and gentlemen of
2 the jury, it's four o'clock. Be back in here at 4:15.

3 [Whereupon, a recess is taken from 3:58 p.m. to
4 4:11 p.m.]

5 THE COURT: All right. Is the State ready to
6 strike?

7 MS. SHEALY: Just a couple of minutes, Your
8 Honor.

9 MR. PENNINGTON: We're almost there, Your Honor.

10 THE COURT: Okay.

11 [Off the record momentarily]

12 THE COURT: While they look at the list, the
13 gentleman --

14 [Whereupon, the Court reviews documents]

15 THE COURT: Is the State ready or almost ready?

16 MS. SHEALY: We are, Your Honor.

17 THE COURT: How about the defense? Are y'all
18 ready?

19 MR. PENNINGTON: We are, Your Honor. May we
20 approach?

21 THE COURT: Yes, sir.

22 [Whereupon, an off-the-record bench conference
23 is held]

24 THE COURT: Let's put this on the record. Lets
25 put this on the record.

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1 All right. Mr. Pennington brought it to the
2 attention of the Court that Jason White, juror number
3 286, talked with him the other day and seemed to be of
4 very limited intelligence, and the parties have agreed
5 for the Court to strike juror number 286.

6 Is that correct, Ms. Shealy?

7 MS. SHEALY: That's correct.

8 THE COURT: Is that correct, Mr. Pennington?

9 MR. PENNINGTON: Yes, sir.

10 THE COURT: And I'm doing it by agreement.

11 MR. PENNINGTON: Thank you, Your Honor.

12 [Whereupon, Mr. Jason White, juror number 286,
13 is excused from the jury panel]
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STRIKING OF THE JURY

THE COURT: Is the Court ready?

MS. SHEALY: Yes, Your Honor.

THE COURT: Is the defense ready?

MR. PENNINGTON: Yes, Your Honor.

THE COURT: All right. Madam Clerk, if you will
give us a jury, please, ma'am.

THE CLERK OF COURT: Ladies and gentlemen, when
I call your name and juror number, please come forward
with your belongings, stand by the podium, and face
the audience.

Juror number 240, Tammara Singleton.

[Whereupon, Ms. Singleton comes forward]

THE CLERK OF COURT: What say ye for the State?

MS. SHEALY: Please excuse this juror.

THE CLERK OF COURT: Ms. Singleton, please have
a seat back in the gallery.

[Whereupon, Ms. Singleton returns to the
audience]

THE CLERK OF COURT: Juror number 47, Shaun
Chambers.

[Whereupon, Mr. Chambers comes forward]

THE CLERK OF COURT: What say ye for the State?

MS. SHEALY: Please seat the juror.

THE CLERK OF COURT: What say ye for the

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1 defendant?

2 MR. PENNINGTON: The Court's indulgence. We
3 were playing a little musical chairs here.

4 [Whereupon, Mr. Pennington and Mr. Cooper
5 confer]

6 MR. PENNINGTON: Please swear in Mr. Chambers.

7 THE CLERK OF COURT: Mr. Chambers, please have a
8 seat in the jury box.

9 [Whereupon, Mr. Chambers is seated in the jury
10 box as a juror]

11 THE CLERK OF COURT: Juror number 43, Gary Buse.

12 [Whereupon, Mr. Buse comes forward]

13 THE CLERK OF COURT: What say ye for the State?

14 MS. SHEALY: Please seat the juror.

15 THE CLERK OF COURT: What say ye for the
16 defendant?

17 MR. PENNINGTON: Please excuse Mr. Buse from the
18 trial of this case.

19 THE CLERK OF COURT: Mr. Buse, please have a
20 seat back in the gallery.

21 [Whereupon, Mr. Buse returns to the audience]

22 THE CLERK OF COURT: Juror number 24, Katherine
23 Blume.

24 [Whereupon, Ms. Blume comes forward]

25 THE CLERK OF COURT: What say ye for the State?

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1 MS. SHEALY: Please seat the juror.

2 THE CLERK OF COURT: What say ye for the
3 defendant?

4 MR. PENNINGTON: Please swear the juror.

5 THE CLERK OF COURT: Ms. Blume, please have a
6 seat in the jury box.

7 [Whereupon, Ms. Blume is seated in the jury box
8 as a juror]

9 THE CLERK OF COURT: Juror number 164, Steven
10 Makatura.

11 [Whereupon, Makatura comes forward]

12 THE CLERK OF COURT: What say ye for the State?

13 MS. SHEALY: Please seat the jury.

14 THE CLERK OF COURT: What say ye for the
15 defendant?

16 MR. PENNINGTON: Please excuse Mr. Makatura from
17 the trial of this case.

18 THE CLERK OF COURT: Please have a seat in the
19 gallery.

20 [Whereupon, Mr. Makatura returns to the
21 audience]

22 THE CLERK OF COURT: Juror number 41, Kathy
23 Burnet.

24 [Whereupon, Ms. Burnet comes forward]

25 THE CLERK OF COURT: What say ye for the State?

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1 MS. SHEALY: Please seat the juror.

2 THE CLERK OF COURT: What say ye for the
3 defendant?

4 MR. PENNINGTON: Please excuse Ms. Burnet from
5 the trial of this case.

6 THE CLERK OF COURT: Ms. Burnet, please have a
7 seat back in the gallery.

8 [Whereupon, Ms. Burnet returns to the audience]

9 THE CLERK OF COURT: Juror number 61, Vanessa
10 Costen.

11 [Whereupon, Ms. Costen comes forward]

12 THE CLERK OF COURT: What say ye for the State?

13 MS. SHEALY: Please seat the juror.

14 THE CLERK OF COURT: What say ye for the
15 defendant?

16 MR. PENNINGTON: The Court's indulgence.

17 [Whereupon, Mr. Pennington reviews documents]

18 MR. PENNINGTON: Please excuse Ms. Costen from
19 the trial of this case.

20 THE CLERK OF COURT: Ms. Costen, please have a
21 seat back in the gallery.

22 [Whereupon, Ms. Costen returns to the audience]

23 THE CLERK OF COURT: Juror number 196, Emily
24 O'Connor.

25 [Whereupon, Ms. O'Connor comes forward]

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1 THE CLERK OF COURT: What say ye for the State?

2 MS. SHEALY: Please seat this juror.

3 THE CLERK OF COURT: What say ye for the
4 defendant?

5 MR. PENNINGTON: Please swear Ms. O'Connor.

6 THE CLERK OF COURT: Ms. O'Connor, please have a
7 seat in the jury box.

8 [Whereupon, Ms. O'Connor is seated in the jury
9 box as a juror]

10 THE CLERK OF COURT: Juror number 11, Keith
11 Bartleson.

12 [Whereupon, Mr. Bartleson comes forward]

13 THE CLERK OF COURT: What say ye for the State?

14 MS. SHEALY: Please seat the juror.

15 THE CLERK OF COURT: What say ye for the
16 defendant?

17 MR. PENNINGTON: Please swear Mr. Bartleson.

18 THE CLERK OF COURT: Mr. Bartleson, please have
19 a seat in the jury box.

20 MR. BARTLESON: The jury?

21 THE CLERK OF COURT: The jury box.

22 [Whereupon, Mr. Bartleson is seated in the jury
23 box as a juror]

24 THE CLERK OF COURT: Juror number 91, Lacosha
25 Frazier.

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1 [Whereupon, Ms. Frazier comes forward]

2 THE CLERK OF COURT: What say ye for the State?

3 MS. SHEALY: Please excuse this juror.

4 THE CLERK OF COURT: Ms. Frazier, please have a
5 seat back in the gallery.

6 [Whereupon, Ms. Frazier returns to the audience]

7 THE CLERK OF COURT: Juror number 273, Lorne
8 Walker.

9 [Whereupon, Mr. Walker comes forward]

10 THE CLERK OF COURT: What say ye for the State?

11 MS. SHEALY: Please seat the juror.

12 THE CLERK OF COURT: What say ye for the
13 defendant?

14 MR. PENNINGTON: Please swear Mr. Walker.

15 THE CLERK OF COURT: Mr. Walker, please have a
16 seat in the jury box.

17 [Whereupon, Mr. Walker is seated in the jury box
18 as a juror]

19 THE CLERK OF COURT: Juror number 202, Glenda
20 Patierno.

21 [Whereupon, Ms. Patierno comes forward]

22 THE CLERK OF COURT: What say ye for the State?

23 MS. SHEALY: Please seat the juror.

24 THE CLERK OF COURT: What say ye for the
25 defendant?

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1 MR. PENNINGTON: Court's indulgence.

2 [Whereupon, Mr. Pennington reviews documents]

3 MR. PENNINGTON: Please swear Ms. Patierno.

4 THE CLERK OF COURT: Ms. Patierno, please have a
5 seat in the jury box.

6 [Whereupon, Ms. Patierno is seated in the jury
7 box as a juror]

8 THE CLERK OF COURT: Juror number 153, Robert
9 Kramer.

10 [Whereupon, Mr. Kramer comes forward]

11 THE CLERK OF COURT: What say ye for the State?

12 MS. SHEALY: Please excuse the juror.

13 THE CLERK OF COURT: Mr. Kramer, please have a
14 seat back in the gallery.

15 [Whereupon, Mr. Kramer returns to the audience]

16 THE CLERK OF COURT: Three strikes for the
17 State.

18 Juror number 151, Delores Kitt.

19 [Whereupon, Ms. Kitt comes forward]

20 THE CLERK OF COURT: What say ye for the State?

21 MS. SHEALY: Please excuse the juror.

22 THE CLERK OF COURT: Ms. Kitt, please have a
23 seat back in the audience.

24 [Whereupon, Ms. Kitt returns to the audience]

25 THE CLERK OF COURT: Juror number 253, Maurice

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1 Stanley.

2 [Whereupon, Mr. Stanley comes forward]

3 THE CLERK OF COURT: What say ye for the State?

4 MS. SHEALY: Please seat the juror.

5 THE CLERK OF COURT: What say ye for the
6 defendant?

7 MR. PENNINGTON: Please swear Mr. Stanley.

8 THE CLERK OF COURT: Mr. Stanley, please have a
9 seat in the jury box.

10 [Whereupon, Mr. Stanley is seated in the jury
11 box as a juror]

12 THE CLERK OF COURT: Juror number 157, Cary --
13 or Carey Layton. I'm sorry.

14 [Whereupon, Mr. Layton comes forward]

15 THE CLERK OF COURT: What say ye for the state?

16 MS. SHEALY: Please swear the juror.

17 THE CLERK OF COURT: What say the defendant?

18 MR. PENNINGTON: Please excuse Ms. Layton from
19 the trial of this case.

20 THE CLERK OF COURT: Ms. Layton, have a seat in
21 the audience.

22 [Whereupon, Ms. Layton returns to the audience]

23 THE CLERK OF COURT: Five strikes for the
24 defendant.

25 Juror number 45, Justin Carr.

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1 [Whereupon, Mr. Carr comes forward]

2 THE CLERK OF COURT: What say ye for the State?

3 MS. SHEALY: Please seat the juror.

4 THE CLERK OF COURT: What say ye for the
5 defendant?

6 MR. PENNINGTON: Please swear Mr. Carr.

7 THE CLERK OF COURT: Mr. Carr, please have a
8 seat in the jury box.

9 [Whereupon, Mr. Carr is seated in the jury box
10 as a juror]

11 THE CLERK OF COURT: Juror number 270, Deborah
12 Thompson.

13 [Whereupon, Ms. Thompson comes forward]

14 THE CLERK OF COURT: What say ye for the State?

15 MS. SHEALY: Please seat the juror.

16 THE CLERK OF COURT: What say ye for the
17 defendant?

18 MR. PENNINGTON: Please excuse Ms. Thompson from
19 the trial of this case.

20 [Whereupon, Ms. Thompson returns to the
21 audience]

22 THE CLERK OF COURT: Juror number 136, Geoffrey
23 Ireland.

24 [Whereupon, Mr. Ireland comes forward]

25 THE CLERK OF COURT: What say ye for the State?

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1 MS. SHEALY: Please seat the juror.

2 THE CLERK OF COURT: What say ye for the
3 defendant?

4 MR. PENNINGTON: Please excuse Mr. Ireland from
5 the trial of this case.

6 [Whereupon, Mr. Ireland returns to the audience]

7 THE CLERK OF COURT: Juror number 59, Steven
8 Costa.

9 [Whereupon, Mr. Costa comes forward]

10 THE CLERK OF COURT: What say ye for the State?

11 MS. SHEALY: Please seat the juror.

12 THE CLERK OF COURT: What say ye for the
13 defendant?

14 MR. PENNINGTON: Please swear Mr. Costa.

15 THE CLERK OF COURT: Please have a seat in the
16 jury box.

17 [Whereupon, Mr. Costa is seated in the jury box
18 as a juror]

19 THE CLERK OF COURT: Juror number 103, Michelle
20 Greene.

21 [Whereupon, Ms. Greené comes forward]

22 THE CLERK OF COURT: What say ye for the State?

23 MS. SHEALY: Please seat the juror.

24 THE CLERK OF COURT: What say ye for the
25 defendant?

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1 MR. PENNINGTON: Please swear Ms. Greene.

2 THE CLERK OF COURT: Ms. Greene, please have a
3 seat in the jury box.

4 [Whereupon, Ms. Greene is seated in the jury box
5 as a juror]

6 THE CLERK OF COURT: Juror number 158, Susan
7 Lindstrom.

8 [Whereupon, Ms. Lindstrom comes forward].

9 THE CLERK OF COURT: What say ye for the State?

10 MS. SHEALY: Please seat the juror.

11 THE CLERK OF COURT: What say ye for the
12 defendant?

13 MR. PENNINGTON: Please excuse Ms. Lindstrom
14 from the trial of this case.

15 [Whereupon, Ms. Lindstrom returns to the
16 audience]

17 THE CLERK OF COURT: Juror Number 96, Tamara
18 Gilliard.

19 [Whereupon, Ms. Gilliard comes forward]

20 THE CLERK OF COURT: What say ye for the State?

21 MS. SHEALY: Please seat the juror.

22 THE CLERK OF COURT: What say ye for the
23 defendant?

24 MR. PENNINGTON: Please swear Ms. Gilliard.

25 THE CLERK OF COURT: Ms. Gilliard, please have a

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1 seat in the jury box.

2 [Whereupon, Ms. Gilliard is seated in the jury
3 box as a juror]

4 THE CLERK OF COURT: Juror number 150, Robert
5 King.

6 [Whereupon, Mr. King comes forward]

7 THE CLERK OF COURT: What say ye for the State?

8 MS. SHEALY: Please seat the juror.

9 THE CLERK OF COURT: What say ye for the
10 defendant?

11 MR. PENNINGTON: One moment.

12 [Whereupon, Mr. Pennington reviews documents]

13 MR. PENNINGTON: Please excuse Mr. King from the
14 trial of this case.

15 [Whereupon, Mr. King returns to the audience]

16 THE CLERK OF COURT: Juror number 132, Stephanie
17 Horn.

18 [Whereupon, Ms. Horn comes forward]

19 THE CLERK OF COURT: What say ye for the State?

20 MS. SHEALY: Please seat the juror.

21 THE CLERK OF COURT: What say ye for the
22 defendant?

23 MR. PENNINGTON: Please excuse Ms. Horn from the
24 trial of this case.

25 [Whereupon, Ms. Horn returns to the audience]

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1 THE CLERK OF COURT: Defendant has exhausted its
2 strikes.

3 Juror Number 8, Reynoldson Bannerman.

4 [Whereupon, Mr. Bannerman comes forward]

5 THE CLERK OF COURT: What say ye for the State?

6 MS. SHEALY: Please seat the juror.

7 THE CLERK OF COURT: Any challenge from the
8 defendant?

9 MR. PENNINGTON: None.

10 THE CLERK OF COURT: Mr. Bannerman, please have
11 a seat in the jury box.

12 [Whereupon, Mr. Bannerman is seated in the jury
13 box as a juror]

14 THE COURT: All right. Two alternates.

15 THE CLERK OF COURT: Now striking for the first
16 alternate.

17 Juror number 122, Kenneth Hewett.

18 [Whereupon, Mr. Hewett comes forward]

19 THE CLERK OF COURT: What say ye for the State?

20 MS. SHEALY: Please seat the juror.

21 THE CLERK OF COURT: What say ye for the
22 defendant?

23 MR. PENNINGTON: Please excuse Mr. Hewett from
24 the trial of this case.

25 [Whereupon, Mr. Hewett returns to the audience]

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1 THE CLERK OF COURT: Juror number 256, Charles
2 Sterrett.

3 [Whereupon, Mr. Sterrett comes forward]

4 THE CLERK OF COURT: What say ye for the State?

5 MS. SHEALY: Beg the Court's indulgence just a
6 moment.

7 THE COURT: Yes, ma'am.

8 [Whereupon, Ms. Shealy and Mr. Finch confer]

9 MS. SHEALY: Please seat the juror.

10 THE CLERK OF COURT: What say ye for the
11 defendant?

12 MR. PENNINGTON: Please seat Mr. Sterrett.

13 THE CLERK OF COURT: Mr. Sterrett, please have a
14 seat in the jury box. You've been chosen as an
15 alternate.

16 [Whereupon, Mr. Sterrett is seated in the jury
17 box as an alternate juror]

18 THE CLERK OF COURT: Now striking for the second
19 alternate.

20 Juror number 209, Donna Porter.

21 [Whereupon, Ms. Porter comes forward]

22 THE CLERK OF COURT: What say ye for the State?

23 MS. SHEALY: Please excuse the juror.

24 [Whereupon, Ms. Porter returns to the audience]

25 THE CLERK OF COURT: Juror number 75, Charles

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1 Dover.

2 [Whereupon, Mr. Dover comes forward]

3 THE CLERK OF COURT: Any challenges from the
4 State?

5 MS. SHEALY: Please seat the juror.

6 THE CLERK OF COURT: What say ye for the
7 defendant?

8 MR. PENNINGTON: Please swear Mr. Dover.

9 THE CLERK OF COURT: Mr. Dover, please have a
10 seat in the jury box. You've been chosen as an
11 alternate.

12 [Whereupon, Mr. Dover is seated in the jury box
13 as an alternate juror]

14 THE COURT: All right. Ladies and gentlemen of
15 the jury, I'm going to ask you to go to the jury room.

16 Please don't discuss the case amongst
17 yourselves. Don't use any electronic information in
18 the jury room.

19 If you'll follow the bailiff, I'll get you back
20 hopefully very shortly. Follow the bailiff.

21 [Whereupon, the jury exits the courtroom at
22 4:38 p.m.]

23 THE COURT: Any exceptions on the drawing the
24 jury from the State, other than what we've previously
25 covered at the bench during voir dire?

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1 MS. SHEALY: No, Your Honor.

2 THE COURT: Any from the defendant, other than
3 what we previously have heard at the bench during voir
4 dire?

5 MR. PENNINGTON: May we approach, Your Honor?

6 THE COURT: Yes, sir.

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MIA PERRON, CVR-CM-M

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BATSON HEARING

[Whereupon, a Batson hearing is held at the bench as follows]

MR. PENNINGTON: Your Honor, I have a Batson challenge to jurors 240, 91, and 151.

That would be the first juror, Tammara Singleton, Lacosha Frazier --

THE COURT: Juror number 11 on the strike sheet; right?

MR. PENNINGTON: Number --

THE COURT: 11 on the strike sheet. Number 91.

MR. PENNINGTON: Yes. Or, actually, it would be the first --

[Off the record momentarily]

THE COURT: All right. You've got a Batson as to juror number 91.

The State --

MS. SHEALY: Struck her --

THE COURT: -- struck her and she was a black female.

MR. PENNINGTON: This is --

MS. SHEALY: The first one is number --

THE COURT: Lacosta Frazier.

MR. PENNINGTON: That's right.

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1 MS. SHEALY: The first one is number 240.

2 MR. PENNINGTON: Tammara Singleton.

3 THE COURT: Tammara Singleton, juror number
4 240.

5 MR. PENNINGTON: That is correct.

6 THE COURT: She was a black female and the
7 State struck her.

8 MS. SHEALY: She had a CDV --

9 THE COURT: Had what?

10 MS. SHEALY: She had a CDV conviction.

11 THE COURT: Okay.

12 MS. SHEALY: A criminal domestic violence
13 conviction.

14 THE COURT: Okay. All right.

15 MS. SHEALY: We were concerned about the
16 nature of that kind of conviction.

17 It's a lower-level charge, but we were just
18 concerned with her being a victim of CDV and how
19 that may play into this.

20 MR. PENNINGTON: I can't overcome that.

21 THE COURT: No, you can't.

22 All right. What about the next one? The
23 next one is going to be --

24 MR. PENNINGTON: The next one would be
25 juror 91.

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1 THE COURT: -- 91. Costa Frazier.

2 MR. FINCH: That's the twenty-two-year-old.

3 MS. SHEALY: Well, when she came up -- she
4 had an attitude when she came up. We feel like
5 visibly, when she came up, had an attitude. Did
6 you notice it --

7 MR. PENNINGTON: I didn't see it.

8 MS. SHEALY: I mean, she did. When she
9 came up she kind of [indicates], like that.
10 Because I had her down as MUSC and okay and then
11 when she came up and did that, I wrote down
12 attitude.

13 THE COURT: She just had an attitude?

14 MS. SHEALY: Uh-huh.

15 THE COURT: What do you want to tell me?

16 MR. PENNINGTON: I'll accept that. I think
17 the solicitor is honest.

18 THE COURT: All right. Anything else?

19 MR. PENNINGTON: No, sir.

20 MS. SHEALY: The other --

21 MR. PENNINGTON: I can't overcome that.

22 THE COURT: Okay. Anything else, as far as
23 any motions --

24 MR. PENNINGTON: Oh. I'm sorry.

25 MS. SHEALY: 151.

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1 THE COURT: -- regarding the jury?

2 MR. PENNINGTON: Yes. 151, which is --

3 MS. SHEALY: 151 is the one who has a son
4 in jail.

5 THE COURT: That's okay. That's a black
6 female --

7 MS. SHEALY: She has a son in jail.

8 And she's cute. She's the one who was a little
9 confused, too, and turned the other way.

10 But, I mean, my primary reason, I had already --

11 THE COURT: She had a son, that was in
12 jail, who was convicted last year; right?

13 MS. SHEALY: Yeah.

14 MR. PENNINGTON: Uh-huh. She's an older
15 lady.

16 MS. SHEALY: I don't think she would be too
17 pleased with me.

18 THE COURT: And she came up front one time.

19 MS. SHEALY: Yeah. I didn't want her.

20 THE COURT: Anything you want to tell me?

21 MR. PENNINGTON: No, sir.

22 THE COURT: All right. Anything else? Any
23 of the rest? I think that was it, wasn't it?

24 MR. PENNINGTON: That is it.

25 THE COURT: Any other motions, other than

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1 the Batson motion?

2 MR. PENNINGTON: No, sir.

3 THE COURT: All right. Thank you very
4 much.

5 [Whereupon, the bench conference concludes]

6 [Whereupon, the Court and the clerk of court
7 confer]

8 THE COURT: All right. Ladies and gentlemen of
9 the jury panel, is there anybody that does not have
10 the number to call in that was given to you this
11 morning when you arrived in the courthouse?

12 [Whereupon, there is no response]

13 THE COURT: All right. Call that number after
14 six o'clock. There will be a message. The message
15 may be come back tomorrow and the message may be call
16 in tomorrow night. But follow those instructions.

17 You're welcome to stay. Otherwise, thank you
18 very much for being here. Have a good day.

19 [Whereupon, the jury panel is excused and exits
20 the courtroom at 4:42 p.m.]

21 THE COURT: All right. Is there anything from
22 the State before we bring the jury?

23 MS. SHEALY: No, sir, Your Honor.

24 THE COURT: Okay. Anything from the defendant
25 before we bring the jury?

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1 MR. PENNINGTON: No, sir.

2 THE COURT: Would you bring us the jury, please.

3 [Whereupon, the jury enters the courtroom at
4 4:44 p.m.]

5 THE COURT: Ladies and gentlemen of the jury
6 panel, it is now ten minutes to 5:00. We are going to
7 wait until in the morning to start the trial.

8 Normally, the hours will run -- I'm going to ask
9 you to come in at -- is there anybody that cannot be
10 here at nine o'clock in the morning? If you have some
11 hardship where you can't be here at 9:00, please tell
12 me now.

13 We'll start in the morning at 9:00, generally
14 take an hour or hour and half at lunch, and quit
15 somewhere between 5:00 and 6:00 tomorrow afternoon.
16 We'll take a break during the morning and a break in
17 the afternoon.

18 I do not -- as Judge Jefferson told you
19 downstairs, I do not want you reading anything in
20 the paper about this case. I don't -- would not want
21 you watching anything on television about it. I don't
22 want you discussing it with your girlfriend, your
23 boyfriend, your husband, your wife, or any friends.
24 They don't know what transpired. They don't know what
25 the testimony in the courtroom amounts to or what it

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1 is.

2 I don't want you to make your decision on what
3 someone has told you outside the courtroom. So please
4 avoid that. If anybody tries to talk with you, please
5 walk away.

6 Do not get on the internet. Do not Goggle any
7 names involved in the case. Leave it alone.

8 Have a good evening. I'll see you in the
9 morning at nine o'clock.

10 And while -- before you go, let me ask you this
11 question so we'll be prepared in the morning. Is
12 there any member of the jury panel that would like to
13 take notes? I've got one. Anybody else? Two, three,
14 four. Anybody else? Five. Going for six. All
15 right.

16 The bailiffs will be prepared to give you
17 notepads in the morning.

18 See you in the morning. Have a good evening.

19 [Whereupon, the jury exits the courtroom at
20 4:47 p.m.]

21 THE COURT: All right. Anything from the State
22 before we adjourn?

23 MS. SHEALY: No. No thank you.

24 THE COURT: Anything from the defendant?

25 MR. PENNINGTON: No, Your Honor.

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1 THE COURT: All right. We'll see you in the
2 morning at nine o'clock.

3 MR. PENNINGTON: Yes, sir.

4 [JURY TRIAL ADJOURNS AT 4:47 P.M.]
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MIA PERRON, CVR-CM-M

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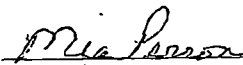
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable J.C. Nicholson, on Tuesday, October 2, 2012.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 15th day of February, 2012.


Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) CASE NO.: 2010-GS-10-8551

STATE OF SOUTH CAROLINA)
)
 VS.)
)
 DARRYL L. DRAYTON,)
)
 DEFENDANT.)
 _____)

JURY TRIAL

VOLUME 3 OF 5

held before the Honorable J.C. Nicholson, Jr.
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Charleston County Courthouse
 Charleston, South Carolina
 on Wednesday, October 3, 2012, Commencing at 9:16 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
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PROCEEDINGS

THE COURT: Let me see the lawyers up here real quick.

[Whereupon, an off-the-record bench conference is held]

THE COURT: All right. Anything from the State before we bring the jury?

MS. SHEALY: No. I just need to get my folk, if I can.

THE COURT: Anything from the defendant before we bring the jury?

MR. PENNINGTON: Yes, sir. We're ready.

Oh. And I do have one matter, Judge, and this is just a housekeeping chore. When you go to these CLE conferences --

THE COURT: You're going to have a clean house, when this is over, you've been doing so much house cleaning.

MR. PENNINGTON: I'm telling you.

They just remind us to always renew our objections --

[Off the record momentarily]

MR. PENNINGTON: We're just renewing the two objections that we made that you've already ruled on, which we've had a number of arguments on, dealing with

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1 the search warrant and dealing with the hearsay
2 objection. Would be made under 803.

3 THE COURT: You just wanted to make sure that
4 those issues were preserved; right?

5 MR. PENNINGTON: That's right.

6 THE COURT: Okay.

7 MR. PENNINGTON: And the assistant solicitor is
8 now going to make reference to that evidence. It
9 seemed like the time to do it.

10 THE COURT: Okay. Thank you so very much.

11 MR. PENNINGTON: Yes, sir. Thank you.

12 THE COURT: All right. For the record, I'm
13 going to appoint Lorne G. Walker, juror number 273, as
14 foreman.

15 Will you bring us the jury, please.

16 [Whereupon, the jury enters the courtroom at
17 9:18 a.m.]

18 THE BAILIFF: The jurors are all present, Your
19 Honor.

20 THE COURT: Okay. Thank you.

21 Madam Clerk, if you will swear the jury, please.

22 THE CLERK OF COURT: Raise your right hand to be
23 sworn.

24 [Whereupon, the jury is duly sworn by the clerk
25 of court as follows: do you swear or affirm that you

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1 shall well and truly try and a true deliverance make
2 between the State of South Carolina and the defendant
3 at the bar, who you shall have in charge, and a true
4 verdict render according to the evidence and the law,
5 so help you God]

6 THE CLERK OF COURT: And please indicate by
7 saying I do.

8 [Whereupon, jurors comply]

9 THE CLERK OF COURT: Thank you.

10 THE COURT: All right. Dr. Walker, I'm going to
11 appoint you as foreman of the jury. Okay?

12 THE FOREPERSON: Okay.

13 THE COURT: And as foreman of the jury, your
14 responsibilities are to make sure my instructions are
15 followed in the jury room during the discussions.

16 If any other jurors have a question, if you'll
17 write that question down, submit it to the Court
18 through the bailiffs, I'll try to respond to it.

19 And you're going to sort of be the one that's
20 going to supervise the activities in the jury room
21 during the trial and during the deliberation process.
22 Okay?

23 THE FOREPERSON: Okay.

24 THE COURT: All right: Thank you so very much.

25 Now, today we are going to break at twelve

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1 o'clock instead of one o'clock. We'll break from
2 twelve o'clock to 1:30 today, for your planning
3 purposes.

4 Ms. Blume, is that -- will that be satisfactory
5 for you? Will that give you enough time?

6 MS. BLUME: Yes, sir. That will be great.
7 Thank you.

8 THE COURT: Okay. Thank you so very much.

9 All right. I'm just going to explain very
10 briefly to you the trial process and what's going to
11 transpire during the trial.

12 The attorneys are going to make opening
13 statements. In their opening statements, they're
14 going to tell you what they're planning on proving in
15 this case.

16 After the opening statements are given by both
17 sides, then the State will call their first witnesses
18 and they will have those witnesses on direct
19 examination, which we call direct examination. After
20 each witness has testified for the State on direct,
21 then the defense will have the opportunity to cross-
22 examine that witness.

23 Now, the difference between direct examination
24 and cross-examination: on direct examination, you
25 cannot ask a leading question. A leading question is

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1 a question that suggests an answer. After all the
2 witnesses have testified for the State, then the
3 defense will have an opportunity to present witnesses
4 and the roles will reverse. The defendant will have
5 the witnesses on direct and the State will be able to
6 cross-examine those witnesses.

7 Assuming the defense does offer testimony --
8 they're not obligated to offer testimony. But
9 assuming they do, then the State will have an
10 opportunity to reply to that testimony if they so
11 choose. They're not obligated to, but they have that
12 opportunity.

13 After that occurs, then you'll have closing
14 arguments. The attorneys will make closing arguments
15 and argue their case to you for their perspective of
16 the facts and how you should interpret those facts.

17 After the closing arguments, I will charge you
18 on the law that's applicable in the case. After that
19 occurs, then you will begin your deliberations.

20 Now, during the course of the trial I will tell
21 you, and repeatedly tell you, not to discuss the case
22 amongst yourselves, not to use any electronic measures
23 to research the case or any of the parties in the
24 case. And the reason I do that is I want you to make
25 a decision based upon what you hear in the courtroom

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1 and I don't want you trying to decide the case, during
2 the process of the case, because you may hear
3 something and later on hear something else to change
4 your mind and once you take a position amongst your
5 fellow jurors, it's hard to say, hey, I was wrong, I
6 believe this now. So just don't get into the
7 discussions about the case itself until you begin your
8 deliberations. And that's the reason I try to tell
9 you that. I want you to hear all the testimony before
10 you begin your deliberations, and try and determine
11 the facts in the case.

12 THE COURT: Solicitor?

13 MS. SHEALY: May it please the Court.

14 Mr. Pennington, Mr. Cooper.

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OPENING STATEMENT?

MS. SHEALY: Good morning.

I'm not sure how many of you are familiar with Bluffton, South Carolina -- I had only been there once before I got involved in this case -- but if you're heading down 17 towards Walterboro and then Beaufort and Hilton Head, Bluffton is not very far at all from Hilton Head or from Beaufort.

Mike Bartley and Alexis Lukaitis lived in Bluffton. They were from South Jersey, which is actually right outside Philadelphia. They had dated for seven years before they got engaged. And Mike gave Alexis an engagement ring, it had three diamonds, and she wore it every day. And they had been engaged for three years.

They moved to Beaufort about eight and a half years ago now. Mike still lives there. They had twin little boys, Child 1 and Child 2. And Mike worked in the automobile business. He worked for I think it was Southern Motors, and he worked long days. Would get to work about seven o'clock in the morning, get home about seven o'clock at night. They lived in an apartment complex in Beaufort. And Alexis worked at an outlet mall there at the Polo outlet. She just worked part time. Mike's mom would take care of the

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1 boys when they were not -- or when she was working,
2 Alexis was working. His parents, his mom and dad,
3 lived in Bluffton, so they would help out with the
4 kids.

5 On Sunday, August 8th, Mike wasn't working. And
6 they would frequently go over to his parents' house
7 for Sunday dinner. A supper meal, not a midday meal.
8 Well, that day they were home as a family. And when
9 Alexis took a shower -- she had these new dryer
10 sheets. They're sort of fragrant. They're supposed
11 to not make your clothes staticie. And it made her
12 break out a little bit so she took a benadryl pill and
13 wanted to sleep on the couch and decided not to go
14 over for hamburgers that night. So Mike bundled up
15 the boys and went over to his parents' house.

16 While he was over there, he and Alexis were
17 talking. And she said she was going to ride with "D"
18 to Charleston, she was going to take him to
19 Charleston. Now, Alexis would take prescription pills
20 that she had not been prescribed. And "D", Darryl
21 Drayton, was going to pick up some pills. Alexis told
22 Mike, he's going to pay me for the gas and give me a
23 few pills. So Mike and Alexis talked about that on
24 the phone. That was around six o'clock.

25 A little later in the evening, Mike came on home

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1 and he talked to Alexis again and she said, I should
2 be back in about an hour. She didn't come home, and
3 Mike started really worrying. When he talked to her
4 that last time at about 8:19 she said, I'm with "D",
5 we should be home in about an hour.

6 Well, it got to be 9:00. And he calls, doesn't
7 get an answer. Then it got to be ten o'clock. He's
8 texting her, calling her. And one time it sounds like
9 somebody's rummaging to try to answer a phone, to pull
10 it out after he's already -- they've already answered
11 it. And then it hangs up. And he's getting
12 increasingly panicked. He keeps calling. He keeps
13 texting. No answer.

14 Well, at this point he has no idea what's
15 happened. He knew "D" because "D" had lived in that
16 same apartment complex. He lived with a girlfriend
17 there for a while. He didn't still live there on
18 August 8th. But he knew Alexis had met "D" through a
19 joint friend named Shannon Hooper. Shannon lived in
20 the apartment complex. And Mike knew that Alexis had
21 gotten some pills from "D" before. He didn't like the
22 idea of any of this. He cannot find Alexis.

23 So he keeps calling. But when he can't get any
24 answer, he doesn't know had they gotten arrested, had
25 they gotten stopped by the police, were they busted,

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1 is she hurt. He has no ideas. He calls hospitals.
2 He calls jails. He is fretting beyond belief.

3 In the middle of the night, one of the little
4 boys wakes up crying. He puts the child in his bed
5 and he dozes off. When he wakes up early that
6 morning, immediately panics. Alexis is still not
7 home. He starts calling her friends. He goes over to
8 Shannon's. He gets Shannon to start driving with him
9 to look for Alexis.

10 He goes over to a girl named Tina Johnson's
11 house: is Alexis here, do you know where she is. She
12 went with "D" to Charleston, is what he tells Tina.
13 So all of that is going on in Beaufort.

14 At this same time in the morning, Monday, August
15 9th, a gentleman named Jackie Seward -- he's about a
16 fifty-nine-year-old gentleman, been in the logging
17 business for thirty years. His parents own a logging
18 company and have for forty years. And he is right off
19 of Highway 17 in Charleston, Charleston County, on Old
20 Jacksonboro Road. That's where the logging company
21 is. That's a country road, dirt road. The business
22 is there and he's traveling down that road in his
23 truck at about seven o'clock in the morning. That's
24 the type of road where you'll see a bottle thrown
25 here, a bag of potato chips thrown there, et cetera.

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1 And as he travels down that road, he looks over
2 to the right and he sees something that looks very
3 strange. He says it looked, to use his word, like a
4 dummy. But he continues on down. It doesn't sit well
5 with him. So when he gets down to the family business
6 one of the employees, Earl Ankrum, is there and he
7 goes, I saw something over on the road; it looked like
8 a dummy, but I'm not sure that's what it was.

9 So he puts Earl in his truck. They go back down
10 the road. They look at it. They don't get out. And
11 they're like, that's not a dummy. Then they do what
12 they should do. They call 911. They wait for police.
13 And the Charleston County police come out there. They
14 put crime scene tape up so nobody else can disturb the
15 scene. Detective James Perkins showed up. Crime
16 scene from Charleston County shows up. And the body
17 of a young woman is there.

18 Go back to Bluffton. Mike Bartley is calling
19 police reporting -- or anybody knows about this
20 happening in Charleston -- that Alexis was missing.
21 Now, I'll tell you the first time he reports it, he
22 doesn't mention the stuff about drugs. The reason he
23 doesn't is he's hopeful she's alive and he doesn't
24 want to get her in criminal trouble. But as the day
25 progresses he's like, look, she went with "D", they

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1 were buying -- he was going to get prescription pills,
2 she was going to get some, they were going to
3 Charleston. He tells everything.

4 He also says -- gives a description of her.
5 She's five two, she's twenty-seven years old, she has
6 a tattoo of a butterfly on her hip, and a half moon,
7 she weighs about a hundred pounds, she has long, dark
8 curly hair. That information was getting relayed to
9 Charleston. While they're at the scene, they're
10 looking for the tattoo. They see one. But they've
11 got to make a match with dental records, et cetera,
12 before they can identify that body.

13 Early in the morning in Bluffton, on Geothie
14 Road, a guy named Stephen Edwards lived in a house
15 there. He's dead asleep in his house. He hears a
16 knock [indicates]. Cannot imagine who's knocking on
17 his door, his back door, in his yard. He gets out of
18 bed. He looks out the window. "D", Darryl Drayton,
19 his cousin. What in the world do you want, Darryl.
20 You need to take me to the hospital, says Darryl
21 Drayton. My finger is cut. Stephen Edwards says, I
22 don't have any money for gas. Darryl Drayton leaves,
23 comes back with some money, and Stephen Edwards takes
24 him to the Hilton Head hospital. Listen carefully to
25 what Darryl Drayton tells Stephen Edwards as to how he

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1 cut his finger.

2 They get to the Hilton Head hospital. Dr. Luca
3 Delatore treats Darryl Drayton. Listen carefully to
4 what Dr. Luca Delatore will tell you that Darryl
5 Drayton said happened to his finger. It's not the
6 same thing that he told Stephen Edwards.

7 When I say that finger was cut, it is severely
8 cut. It fractures his finger. Dr. Delatore couldn't
9 suture it. Now, this is Monday morning. He can't put
10 stitches in it because it's been so long since it was
11 cut that it was swollen already. It didn't just
12 happen. And it was bleeding and bleeding. And he
13 gave him a prescription. He soaks it, he wraps it,
14 and he tells him, you need to go to a plastic surgeon.

15 Stephen Edwards and Darryl Drayton leave Hilton
16 Head hospital. And Darryl needs to do a little
17 business. He wants to go to a jewelry store. He
18 tells Stephen Edwards, I've got a class ring I want to
19 sell. So Stephen Edwards drives Darryl Drayton over
20 to Golis Jewelers. Darryl Drayton walks in there,
21 wanted to do some jewelry business. He presents a
22 ring to Chris Golis, the jeweler, says he wants to
23 sell it. Chris Golis said, wow, this thing is worth a
24 lot more than I can give you. I don't care, says
25 Darryl Drayton, just give me some money.

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1 Chris Golis goes, what happened to that finger.
2 Darryl Drayton gives a story to Chris Golis. Guess
3 what? It's not the same thing he told Dr. Luca
4 Delatore. It's not the same thing he told Stephen
5 Edwards. And then he gets -- guess what? It's also
6 not a class ring.

7 He gets back in the car with Stephen Edwards and
8 they go spend the night in Hardeeville. The next day,
9 he goes to the plastic surgeon. Stephen Edwards takes
10 him. On Wednesday -- and they spend the night in
11 Hardeeville that night, Stephen Edwards and Darryl
12 Drayton.

13 You're going to hear about Stephen Edwards's
14 house. The idea of spending the night in a hotel
15 would be a treat to Stephen Edwards. He's a guy that
16 doesn't have a lot of money.

17 The next day, which is Wednesday, Stephen
18 Edwards doesn't feel so hot so he goes to the local
19 Doctor's Care because his blood sugar is out of whack.
20 They send him to the Hilton Head hospital. While he's
21 there, they treat him. And he sees on the television
22 about the body of a young mother that was found in
23 Charleston County. And then he goes home.

24 Pause for a moment and let me go back to what
25 happened in Bluffton. Tina Johnson, one of the people

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1 that Mike Bartley had gone over to try to find where
2 Alexis was, she and her son went to the local self-
3 help place where they were going to give food out to
4 people who are in need. And her son had heard all
5 this about Alexis being missing. While he was there,
6 he saw Darryl Drayton walking across the self-help
7 place with a bandaged finger and scratches all over
8 him, fresh scratches. And he told Mike Bartley that.
9 And Mike Bartley told the police that. The police
10 were looking for Darryl Drayton. He was the one who
11 took -- was going with Alexis to Charleston County.
12 He's the one with the injured finger. They were on
13 the lookout for Darryl Drayton.

14 Well, when Stephen Edwards comes home that night
15 from having gone to Doctor's care and to the hospital,
16 and having seen that thing on the television about the
17 body of a woman being found, he goes out to trash can.
18 He opens up his trash can and he sees bloody items in
19 there that were not his. He sees diapers, he sees a
20 spare tire, he sees a box with miscellaneous stuff
21 with blood on it, and freaks out. And he does the
22 right thing.

23 Now, he doesn't want to take his car down to the
24 store to make a phone call. He doesn't have a phone.
25 The reason he doesn't want to take his car is he

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1 doesn't have insurance on it and he knows he's getting
2 ready to deal with the police. So he walks to the
3 store. He calls the police and he says, I've got
4 stuff at my house with blood on it, y'all need to come
5 look at it.

6 So he talks to police number one. They meet him
7 at the store and they go to his house. They wait for
8 the detectives from Beaufort to come meet him there.
9 Todd Calhoun and other detectives from Beaufort County
10 go over to Stephen Edwards's house. They say, can we
11 search your house? Absolutely. He lets them search
12 his entire house. And you will hear what all was
13 found in Stephen Edwards's house with blood on it.

14 Then a car is found in Bluffton, abandoned,
15 minutes away from Stephen Edwards's house. SLED is
16 called from Columbia. SLED is the State Law
17 Enforcement Division. A SLED agent named Kim Dinh is
18 called from Columbia to come down and process the
19 scene. On the outside of the car you see blood, spots
20 here, smears there. She processes this by taking
21 photographs of all of this and then swabbing it. And
22 she'll describe that process to you.

23 She takes samples of the blood from the outside,
24 she takes samples from the inside, and some of those
25 samples are sent for DNA analysis. And you'll hear

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1 the results of the DNA analysis and you will hear that
2 -- Darryl Drayton's blood from that finger on the
3 outside of the car and on the inside of the car.

4 And of interest, when Kim Dinh opens that trunk,
5 nothing is in there. The spare tire that should have
6 been in there, gone. The cover over the tire, gone.
7 The diaper bag that's kept in that car, gone. The
8 items that Alexis kept in the back of that car, gone.
9 They all got dumped at Stephen Edwards'.

10 The State has the burden of proving to each of
11 you that Darryl Drayton, "D", killed Alexis Lukaitis.
12 You will hear the testimony from the pathologist, the
13 medical doctor who examined her body. She will tell
14 you he didn't cut her once, he didn't cut her twice,
15 he cut her three times. There are puncture wounds
16 elsewhere. There are abrasions. And then he tries to
17 set her on fire. Her clothes are burned, the skin is
18 charred.

19 He murdered her. Thank you.

20 MR. PENNINGTON: Please the Court?

21 THE COURT: Yes, sir, Mr. Pennington.

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OPENING STATEMENT

MR. PENNINGTON: Good morning.

Blood drops and cell phone records in this area where the death occurred are some pieces of evidence that have led the government in this case to rush to judgment, to leap to conclusions, about what happened to Alexis.

They will ask you to pretend that that answers the question of who killed Alexis. Other evidence, however, is going to show you that there are no fenestration products of Darryl Drayton, or any other perpetrator, in the car. There is a cigarette butt thirty-nine yards near the body on the same little road that we're talking about that belongs to, beyond doubt, some other unknown male. There are footprints around the body that the crime scene specialists looked at, examined, photographed, measured, studied, which do not match the shoes that Darryl Drayton had when he was taken into custody that week.

There are clothes that are collected from Darryl Drayton, my client, clothes that he had on, clothes that he -- were turned in by Stephen Edwards that were supposedly his clothes and there was no blood on those clothes, no blood of Alexis Lukaitis.

And the car in Bluffton which the solicitor

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1 referred to, it was, in fact, a white Grand Prix that
2 was Alexis' car, which was back in Bluffton in which
3 they went over with a fine-tooth comb. And you'll see
4 photographs and in those photographs there are
5 numerous spots of blood inside, outside, on the trunk,
6 on the panels. So many, in fact, that the SLED agent
7 will tell you that there were twenty -- that there
8 were fourteen -- well, actually, let me back up.
9 There were seven that were tested by the SLED agent.
10 Fourteen more were given to the sheriff's office. The
11 sheriff's office never sent those for testing.

12 After SLED got done, the Beaufort County police
13 were so concerned that they went back with their own
14 expert, Wendy Contant, and gathered six more swabs of
15 blood, took photographs. Those were submitted for
16 testing to the Charleston County Sheriff's Office, and
17 those were never sent for testing.

18 Ladies and gentlemen, the law says that in cases
19 where there's no witness to what happened and when the
20 jury is asked to rely just on circumstances, that mere
21 suspicion, mere suspicion, is never enough for a
22 finding of guilt. To convict, the law says that you,
23 as a juror, have to rule out every reasonable
24 alternative that explains the evidence other than
25 guilt before you -- and it's only when you can rule

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1 out innocent explanations that you can begin to rely
2 and conclude that this is true evidence of guilt of
3 murder.

4 The judge will instruct you at the end of the
5 case that there is -- in South Carolina and in the
6 United States, that every citizen is presumed innocent
7 until and unless they are proven guilty by competent
8 evidence. And that means that, as the State said,
9 they have the burden of removing every -- all
10 reasonable doubt from your mind as individual judges
11 of the facts of this case. The purpose of the trial,
12 the purpose of taking all that time Monday and Tuesday
13 and getting you here and taking you from your jobs is
14 because you individually, and then together as you
15 deliberate together collectively, are to test the
16 evidence, to evaluate it, and to avoid convicting
17 those that have not been proven guilty. That's your
18 job: to avoid mistakes.

19 Everyone in this room will feel throughout this
20 trial what a tremendous tragedy this case is, what a
21 tremendous loss that Mr. Bartley, that Alexis' father,
22 and other relatives have suffered as a result of this
23 killing. Nothing the defense has or can say can
24 change that. We all feel their loss. But the
25 important thing to remember with that oath that you

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1 took a few minutes ago is that you have to remain an
2 impartial judge of the facts, meaning that you cannot
3 decide a case to make somebody else feel better just
4 based on their suspicions. That's not enough. It
5 wasn't enough yesterday, it's not now, it's not going
6 to be enough tomorrow.

7 We look for what the Court calls moral certainty
8 of guilt. No one is going to come into this courtroom
9 and take an oath and say that they saw my client,
10 Darryl, kill anyone, much less kill Alexis Lukaitis.
11 No one is going to come in and testify and take an
12 oath and swear that they have firsthand knowledge of
13 who was there when she was killed. No one is going to
14 come in and take an oath and say that they're even
15 sure where she was when she was stabbed, or whether
16 her body was put into the trunk and moved. These are
17 going to be unanswered questions that give you an idea
18 of how much the State is going to rely on guesswork,
19 speculation, and suspicion.

20 So at the end of this case, at the end of
21 evidence, you're going to be left with just those
22 suspicions. The State can bring a charge, there can
23 be a rush to judgment to bring a case, but the law
24 does not let you jump to conclusions. At the end of
25 the evidence, you will see that there are reasons to

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1 doubt. We call those reasonable doubts. And the
2 judge will tell you that when you find a reasonable
3 doubt in cases like this, that the only true verdict
4 in a case like that is a verdict of not guilty.

5 THE COURT: Call your first witness, please,
6 ma'am.

7 MS. SHEALY: Thank you, Your Honor. Mike
8 Bartley.

9 [Whereupon, Mr. Bartley comes forward]

10 [Whereupon, Mr. Bartley is duly sworn by the
11 clerk of court as follows: do you swear or affirm
12 your testimony will be the whole truth and nothing but
13 the truth, so help you God]

14 THE WITNESS: Yes.

15 [Whereupon, Mr. Bartley takes the witness stand]

16 THE CLERK OF COURT: State your full name and
17 spell your last name.

18 THE WITNESS: Michael Bartley. B-A-R-T-L-E-Y.

19 MS. SHEALY: Your Honor, at this time -- I had
20 spoken with Mr. Pennington and without objection I
21 would like to offer into evidence State's Exhibits 1,
22 2, 105, 106, 128, 131, 133, 134, 135, 136, 138, 139,
23 140, 141, 142, 144, 151, 152, 153 and 154.

24 THE COURT: All right. No objection?

25 MR. PENNINGTON: No objection, Your Honor.

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1 THE COURT: All right. Admitted with objection.

2 [Whereupon, State's Exhibit Numbers 1 and 2 are
3 admitted into evidence by the Court]

4 [Whereupon, State's Exhibit Numbers 105 and 106
5 are admitted into evidence by the Court]

6 [Whereupon, State's Exhibit Number 128 is
7 admitted into evidence by the Court]

8 [Whereupon, State's Exhibit Number 131 is
9 admitted into evidence by the Court]

10 [Whereupon, State's Exhibit Numbers 133, 134,
11 135 and 136 are admitted into evidence by the Court]

12 [Whereupon, State's Exhibit Numbers 138, 139,
13 140, 141 and 142 are admitted into evidence by the
14 Court]

15 [Whereupon, State's Exhibit Number 144 is
16 admitted into evidence by the Court]

17 [Whereupon, State's Exhibit Numbers 151, 152,
18 153 and 154 are admitted into evidence by the Court]

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MICHAEL BARTLEY,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. SHEALY:

Q. Mr. Bartley, tell us a little bit about yourself. Where are you from?

A. Originally from South Jersey. Moved down about eight years ago to Bluffton, South Carolina.

Q. Okay. And how old are you?

A. Thirty-five.

Q. How far did you go in school?

A. High school. Graduated.

Q. And was that in Jersey?

A. Uh-huh.

Q. Okay. Tell us about your relationship with Alexis Lukaitis. How old were you when you met her?

A. I was eighteen. You know, we had just -- well, I was actually nineteen.

She was friends with a neighbor and we just started hanging out and it grew from there. Years.

Q. And how long did y'all date before you became engaged?

A. A long time. Seven years, eight years. Seven.

Q. How long were y'all engaged for before she died?

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1 A. Two and a half, three years.

2 Q. Okay. And when you became engaged did you, in
3 fact, give her a ring?

4 A. [Indicates affirmatively]

5 Q. Okay. Let me show you this and ask if you can
6 identify it for me.

7 A. Yeah.

8 Q. And is this -- this is the ring you gave her?

9 A. Uh-huh.

10 MS. SHEALY: Your Honor, I'm going to ask that
11 this just be marked for ID at this point, State's 173.

12 THE COURT: 173 marked for identification only.

13 Q. [Ms. Shealy] And how often would Alexis wear
14 this ring?

15 A. Every day.

16 Q. When did y'all move to Bluffton?

17 A. Quite a while ago. I mean, I -- seven, eight --
18 seven years ago at this point.

19 Q. And did y'all, in fact, have children together?

20 A. Yeah. We have twin boys.

21 Q. And what are your little boys' names?

22 A. Child 1 and Child 2

23 Q. And how old are your boys now?

24 A. Just turned four.

25 Q. And back in August of 2010, how old were they?

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- 1 A. One year, ten months.
- 2 Q. Where were you working in August?
- 3 A. In Savannah at a car dealership.
- 4 Q. What was the name of the car dealership?
- 5 A. Southern Motors.
- 6 Q. And where was Alexis working?
- 7 A. She was working at Polo at the Tanger Outlets
- 8 down the street.
- 9 Q. In Bluffton?
- 10 A. Uh-huh.
- 11 Q. And where were y'all living?
- 12 A. We were living in an apartment complex.
- 13 Q. What was the name of the apartment complex?
- 14 A. Lakes at Myrtle Park.
- 15 Q. Okay. Where did your parents live?
- 16 A. Down the street. Three miles down the road.
- 17 Q. Okay. Tell us about your work days during the
- 18 week that you had. What were your typical hours?
- 19 A. You know, I would leave the house at like 6:00,
- 20 6:15 and get home at 7:00 Monday through Friday. Saturday
- 21 I worked -- I would leave the house at 7:00, get home at
- 22 5:00, 6:00.
- 23 Q. And when Alexis was working, who would take care
- 24 of the boys?
- 25 A. My mom.

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1 Q. Now, would Alexis take prescription medication
2 that had not been prescribed to her?

3 A. Yes.

4 Q. And did she, in fact, get pills from "D"?

5 A. Yes.

6 Q. Do you see "D" in the courtroom?

7 A. Yes.

8 Q. Could you point him out, please, for the jury?

9 A. Right there [indicates].

10 Q. What color shirt does he have on?

11 A. Gray.

12 MS. SHEALY: Okay. If the record could reflect
13 that he has pointed out Darryl Drayton.

14 THE COURT: Yes, ma'am.

15 Q. [Ms. Shealy] Now, you know now that his name is
16 Darryl Drayton?

17 A. [Indicates affirmatively]

18 Q. You have to say yes.

19 A. Yes. Yes.

20 Q. Okay. At the time, did you know his full name?

21 A. You know, I knew it was Darryl. But "D".
22 Everybody -- all his friends called him "D".

23 Q. And did you know where he lived when you first
24 got to know him?

25 A. No.

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1 Q. Do you know whether he lived in the apartment
2 complex?

3 A. I knew he -- he lived with his girlfriend in the
4 very beginning but he moved out, you know.

5 Q. And you didn't know where he lived at that
6 point?

7 A. No.

8 Q. Did Alexis have other friends in the apartment
9 complex?

10 A. Yes.

11 Q. And who is Shannon Hooper?

12 A. She was the neighbor.

13 She -- her apartment was right behind -- kind of
14 next door to us.

15 Q. Okay. Did you have a relationship with Darryl
16 Drayton?

17 A. No. Huh-uh.

18 Q. You were aware that Alexis had a friendship with
19 him?

20 A. Yeah. Yeah.

21 He was always at Shannon -- you know, they would
22 be over in Shannon's apartment together.

23 Q. Okay. Now, did you know someone named Tina
24 Johnson, as well?

25 A. Uh-huh.

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1 Q. And who was she to you and who was she to
2 Alexis?

3 A. It was Shannon's cousin.

4 You know, that was really -- I didn't -- really
5 wasn't too friendly. I didn't, you know, hang out with
6 them. But, you know, that was their connection, you know.
7 Lexie would get pills from them.

8 Q. Okay. Now, I would like for you, if you would,
9 please, to focus your attention back to August 8th.

10 A. Uh-huh.

11 Q. That was a Sunday?

12 A. Yes.

13 Q. Could you describe for the jury what you were
14 doing that Sunday?

15 A. You know, we were getting ready -- I was getting
16 ready, getting the kids together, going to my mom's house
17 for dinner, you know. Alexis was getting a shower. And,
18 you know, she had a -- she had this fabric -- dryer sheets
19 that she got a little allergic reaction to, so she didn't
20 want to go.

21 Q. When you say she had an allergic reaction to it,
22 was it --

23 A. It was a little rash.

24 Q. -- something you could see?

25 A. Yeah. It was a little rash.

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1 She did it before and I told her to thrown them
2 out and she didn't, so she accidentally used it. And then
3 she said that she was just going to take some benadryl and
4 stay in bed and hang out. And I said, that's no problem.
5 Packed the kids up and took them to my mom's.

6 Q. And are your parents here today?

7 A. Uh-huh.

8 Q. Okay. So you went over to your parents' house?

9 A. Uh-huh.

10 Q. Were you communicating with Alexis when you --
11 you called her Lex?

12 A. Yeah.

13 Q. Were you communicating with her while you were
14 over at your parents'?

15 A. Yeah.

16 She called me at like 6:00, you know, and then I
17 started -- you know, and then we would always text. But
18 then I started, you know, texting her after that.

19 Q. Did she indicate to you whether she had plans
20 for later that day?

21 A. At first, no, but she --

22 MR. PENNINGTON: Your Honor --

23 THE COURT: Yes, sir. Do you have a legal
24 objection?

25 MR. PENNINGTON: Only to renew those that were

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1 made pretrial. We would renew them again at this
2 time.

3 THE COURT: Yes, sir. For the record, denied.

4 MR. PENNINGTON: Yes, sir. Thank you.

5 THE COURT: Or overruled. Excuse me.

6 MR. PENNINGTON: Yes, sir.

7 THE COURT: Go ahead.

8 Q. [Ms. Shealy] I had asked you did she indicate
9 to you some plans that she had.

10 A. When she called me, that was when --

11 Q. When she told you her plans?

12 A. Yes.

13 Q. Would you tell the jury, please, what her plans
14 were?

15 A. Plans were to take Darryl to get pills.

16 Q. Okay. And did she indicate to you where she was
17 going to take Darryl?

18 A. You know, at first it was down the road, and
19 then it was Charleston, you know.

20 Q. And what was she going to get in return for
21 taking him?

22 A. Prescription pills.

23 Q. Okay. Was she going to pay for the gas, or was
24 he going to pay for the gas?

25 A. He was going to.

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1 Q. After that phone call, when was the next time
2 that you talked to her?

3 A. After that, it was about -- it was 8:19 that I
4 talked to her last.

5 Q. Now, between those two times, did you have some
6 concern about whether she really would get her gas money?

7 A. Oh, yeah. I told her, I said, it -- you know, I
8 texted her -- it wasn't even going to -- get it beforehand
9 because you're --

10 Q. You texted her that?

11 A. Uh-huh.

12 Q. Now at 8:19, tell us about the conversation that
13 you had then.

14 A. Well, when I spoke with her she was, you know,
15 driving and she was on the road and she said that, you
16 know, I'm going to -- I'll be home soon.

17 I said, you know, are you with "D". She's like,
18 yeah. I said, everything okay. Yeah. And then it was
19 like she pulled the phone aside and said, you know, make a
20 right here. And some -- you know, you could hear somebody
21 saying something. And she was like, I love you, I'll, you
22 know, talk to you -- be home soon.

23 Q. So when she asked make a right here, who was
24 she -- was she speaking to you at the time?

25 A. No.

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1 She was speaking -- she said she was in the
2 vehicle with Darryl, and I could only assume that it was
3 him that she was speaking with.

4 Q. You couldn't hear who was talking?

5 A. No. It was muffled.

6 Q. Okay. Now, when you're saying Darryl now, at
7 the time you would have been --

8 A. It was "D".

9 Q. Okay. Did you try to call her after that?

10 A. Yeah.

11 Q. And did she indicate to you when she thought she
12 would get home?

13 A. About an hour.

14 Q. Okay. Did you hear from her again?

15 A. No.

16 Q. Could you describe to the jury your attempts to
17 try to get her back on the phone?

18 A. I called all night. Hospitals, jails, police
19 stations. Nothing.

20 Q. At any point that evening, do you try her again
21 and does the phone seem to answer?

22 A. Ten o'clock I called and it was like muffled.

23 You know, like she was -- like I thought she was digging
24 her phone out of the purse.

25 And then it got quiet. And I was like hello,

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1 hello. And then it hung up, and that was it.

2 Q. Well, when you say that you were calling
3 hospitals and jails, why were you calling jails?

4 A. You know, I knew what they were going out for.
5 I just figured worse case scenario. You know, I just --
6 not hearing anything and hours were ticking by and it was
7 the only thing I could think of doing.

8 Q. And then what about the hospitals? Why were you
9 calling hospitals?

10 A. Just thinking they were in an accident,
11 something happened, you know. So it was like a next
12 logical choice, okay, hospitals, you know.

13 Q. And when you say hospitals --

14 A. Oh, yeah. I called --

15 Q. -- what do you mean by that?

16 A. -- Bluffton and MCU [phonetic].

17 I mean, I called everywhere from Bluffton to
18 Charleston. You know, I went online and I just grabbed
19 every number of every hospital, every police station, and
20 just started going through one by one.

21 Q. Did something happen to one of your children
22 later on in that evening or early in that morning?

23 A. Yeah.

24 About two o'clock, my son woke up and he was
25 crying so I gave him -- you know, gave him some water and

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1 put him in bed with me and I just laid there and ended up
2 falling asleep with him.

3 Q. Then what happened?

4 A. Woke up first thing in the morning and it was --
5 you know, it was -- I went next door and, you know, I told
6 Shannon, I said, you know, can you watch the boys real
7 quick. I ran to Tina's house and I said, have you seen --
8 you know, what's going on, you know. And she was like,
9 no, I haven't -- I haven't talked to her since Saturday.
10 But she was, you know -- so then I went back home, you
11 know, and I was -- called the police.

12 Q. Well, let me interrupt you for a second. When
13 you went over to Tina's, did you tell Tina --

14 A. She said that I guess that --

15 Q. Don't tell me anything about what Tina said.
16 Okay? What I'm asking you is what you told Tina about who
17 you believed Alexis was with.

18 A. Oh, yeah. I --

19 MR. PENNINGTON: Objection, Your Honor.
20 Irrelevant and just repetitive.

21 THE COURT: Overruled. Go ahead.

22 Q. [Ms. Shealy] Let's be careful about that. I'm
23 asking you what you told Tina.

24 A. I told Tina, I said, she was with -- you know, I
25 was told she was with "D".

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1 Q. Okay. And did Tina know where Alexis was?
2 Forget that question. I'm sorry.

3 Okay. So you told her that you thought she was
4 with "D"?

5 A. [Indicates affirmatively]

6 Q. And after you left Tina's, what did you do?

7 A. Then I called the police.

8 Q. Okay. And the first time you talked to the
9 police, could you tell the jury whether you told them
10 about the prescription pills?

11 A. No.

12 You know, and when it happened I didn't know
13 what was going on. So the police came. And they did the
14 same thing I did. They called the jail, the hospital.
15 And they were like, no. Then they left.

16 Q. Okay. What did you do next?

17 A. Started -- you know, I dropped the kids off at
18 my parents' house and then I just started driving, just
19 to -- driving up 17 just trying to think maybe the car's
20 on the side of the road, you know, it's -- I don't --

21 Q. And at that point did --

22 A. -- it was just doing something.

23 And then I ended up turning around, you know.
24 You know, my brother-in-law, I called -- you know, I
25 called him. He was just like, just go home. You know, he

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1 was --

2 Q. Well, let me interrupt you for a second, Mike.
3 I'm sorry.

4 When you said that you rode up 17, was anyone
5 with you at that point?

6 A. Shannon was.

7 Q. Okay. So you and Shannon were going down 17 for
8 what reason?

9 A. Just to -- just to look. Just to find
10 something. Maybe, you know, her car was on the side of
11 the road. I -- you know, it was just --

12 Q. Just to do something?

13 A. -- I had to do something.

14 Q. And when you say you called your brother-in-law,
15 what does your brother-in-law do for a living?

16 A. He was a police officer.

17 Q. And he was a police officer where?

18 A. Hardeeville.

19 Q. Okay. So when you called him, did you tell him
20 about the whole situation?

21 A. Uh-huh.

22 Q. When you and Shannon got back, do you talk to
23 the police again?

24 A. I went back online, you know, and I was just --
25 and then I saw like body found in Charleston, and that's

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1 when I called Charleston.

2 Q. Okay. Do you remember meeting with Officer
3 Raymonds?

4 A. There was so many. If he was the gentleman that
5 came at night to the house, to my parents' house, then
6 yeah.

7 Q. Okay. And do you remember describing Alexis --

8 A. Uh-huh.

9 Q. -- to the officers?

10 A. Uh-huh.

11 Q. Okay. Well, describe her to us. How tall was
12 she?

13 A. Five two.

14 Q. And about how much --

15 A. 105 pounds. You know, brown curly hair.

16 Q. Long hair or short hair?

17 A. Long hair.

18 Q. Tell us about her -- if she had any tattoos.

19 A. She had two tattoos, one in the back and one in
20 the front. Butterfly. And one was like a moon with a
21 star. It was small. Small one.

22 Q. So that day, that Monday the 9th, you talked to
23 one police officer in the morning and one in the evening?
24 Is that what you recall?

25 A. Yeah.

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1 Because when I called Charleston they were like,
2 well, we'll call you back in like three hours. And they
3 never called back. And then I had Bluffton knocking on
4 the door like -- you know, they wanted me to do a
5 statement and everything.

6 Q. Okay. And you gave them a statement?

7 A. Uh-huh.

8 Q. And that's when you told them about Darryl
9 Drayton?

10 A. Uh-huh.

11 Q. Okay. Do you also recall giving them your
12 telephone number, at the time, and Alexis' telephone
13 number?

14 A. Uh-huh. Yeah.

15 Q. Now, do you remember those numbers now or would
16 it help you to look at your statements from the time?

17 A. I would probably have to look at the statements.

18 Q. You've got new --

19 A. Everything is -- you type in the name and it
20 just goes to it. I --

21 Q. I'm sorry. What do you mean by that?

22 A. You know, on the phone I log in a number and I
23 never remember the number. You know, it was just speed
24 dial.

25 Q. Right. Do you have a new telephone number now?

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1 A. Uh-huh. Yeah.

2 Q. Okay. I'm showing you -- this is your statement
3 actually from August 10th.

4 THE COURT: Mr. Bartley, could I ask you instead
5 of saying uh-huh or huh-uh, say yes or no --

6 THE WITNESS: Yes, sir.

7 THE COURT: -- because that way it will be
8 clearer for the court reporter on whether you're
9 saying uh or huh or whatever you're saying. Okay?

10 THE WITNESS: Yes, sir.

11 THE COURT: All right. Thank you.

12 THE WITNESS: Thank you.

13 Q. [Ms. Shealy] I want you to take a look at that
14 and see if that refreshes your memory as to the numbers.

15 [Whereupon, the witness reviews documents]

16 A. Yeah. The [REDACTED].

17 Q. Is whose number? Or was whose number?

18 A. That was mine. And then hers was the [REDACTED].

19 Q. Okay. And you've told us that you had all of
20 that. Are you talking about in your contacts on your
21 phone?

22 A. Yeah. Yeah.

23 I mean, when the police came, I pulled my phone
24 out and just -- you know, because I had the times and
25 everything listed out. So they knew, you know, exactly

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1 what time was called and, you know, what it was.

2 Q. Okay. And regarding that, did you also have
3 Shannon's number and Darryl Drayton's number in your
4 phone, as well?

5 A. Yeah.

6 Q. Okay. I think a little bit of that Jersey is in
7 you and so we do need to make sure we know what --

8 A. Yes.

9 Q. -- you're saying.

10 A. Yes.

11 Q. When you said you handed them the phone, you let
12 them see the telephone numbers in your telephone --

13 A. Uh-huh.

14 Q. -- under your contacts?

15 A. Yes.

16 Q. And then you were telling us you also let them
17 see the times of your calls?

18 A. Yes.

19 Q. Okay. Now, so they've got your number, Alexis'
20 number, Shannon's number, and Darryl Drayton's number?

21 A. [Indicates affirmatively]

22 Q. Okay. Did you -- so you gave a statement to the
23 police, a written statement, on the 9th and then another
24 one on the 10th; is that correct?

25 A. Yes.

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1 Q. And you dealt with three different sets of
2 officers then?

3 A. Yes.

4 Q. And you told us that there was the early-morning
5 officer on the 9th?

6 A. Correct.

7 Q. And then the Bluffton officers on --

8 A. On the evening.

9 Q. -- the evening.

10 And then did you, in fact, go to Charleston?

11 A. Yes.

12 Q. And who accompanied you to Charleston?

13 A. My brother-in-law and my dad.

14 Q. And your father.

15 Okay. How did you learn about the body that was
16 found?

17 A. I saw it on the internet on Yahoo.

18 Q. And at that time, had the body been identified?

19 A. No.

20 Q. How did you react when you saw the body -- the
21 information about the body?

22 A. I called. I knew. I just called and gave them
23 everything, told them what she looked like and they said,
24 well, they'll call me back.

25 Q. Okay. When you went to Charleston, you shared

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1 the information about prescription pills and about Darryl
2 Drayton?

3 A. Uh-huh. Yes.

4 Q. And while you were there, did you learn that
5 they had made a positive identification?

6 A. That night, no.

7 Q. Okay. While you were there, did they ask you
8 whether they could swab your mouth --

9 A. Yes.

10 Q. -- for DNA purposes? And did you consent?

11 A. Yeah.

12 Q. Okay. And someone, in fact, stuck a Q-tip type
13 device in your mouth to get your DNA?

14 A. Yes.

15 Q. Now, you told us that she drove a white Grand
16 Prix?

17 A. Correct.

18 Q. I'm showing you what's been marked as State's
19 Exhibit Number 1.

20 MS. SHEALY: It will take a second for it to
21 come up. It's going to -- Mike, it's going to show up
22 right there behind you.

23 Q. [Ms. Shealy] Is that a picture of Alexis' car?

24 A. Yes.

25 Q. And then State's Exhibit Number 2. That's her

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1 license tag?

2 A. Yes.

3 Q. Okay. We looked at the ring itself.

4 State's Exhibit 105, just so the jury can see
5 the ring a little closer up. That's the ring?

6 A. Yes. Yes.

7 Q. And 106 is just a different angle?

8 A. Yes.

9 Q. Okay. Now, regarding the car itself: the
10 trunk, was it usually completely empty?

11 A. She had -- I mean, she always kept it clean.
12 But, I mean, there was like a diaper bag in there that she
13 would have the diapers and wipes. And, you know, a little
14 kit that had -- you know, for emergencies, you know,
15 flares and jump stuff like that.

16 Q. What about a spare tire?

17 A. Yeah. A spare tire, the jack, everything, you
18 know.

19 Q. Okay. I'm showing you, then, what has been
20 marked as State's Exhibit 128. Is that the emergency road
21 kit that was usually in the trunk?

22 A. Yeah. Yes.

23 Q. And showing you State's Exhibit 131.

24 A. That's a CD case of hers.

25 Q. That's hers?

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1 A. Yeah.

2 Q. And was that usually in her vehicle?

3 A. Yeah. Yes. It's either in the front or in the
4 trunk, depending.

5 Q. Okay. Showing you State's Exhibit 133. Is this
6 yours?

7 A. No.

8 Q. Okay. And showing you -- 134 shows you a little
9 bit better picture of that. Do those items appears to be
10 yours?

11 A. No.

12 Q. 135. Do those appear to be yours?

13 A. No.

14 Q. Showing you State's Exhibit 136.

15 A. That's a diaper bag.

16 Q. Is that y'all's diaper bag?

17 A. Yes.

18 Q. Where would Alexis usually keep that?

19 A. In the trunk.

20 Q. Showing you 138 and then 139. Are those the
21 contents that she would keep in the diaper bag?

22 A. Yeah. Yes.

23 Q. 140. Do you recognize those as being the
24 diapers and blanket of your children?

25 A. Yes.

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1 Q. 141. Does this appear to be the cover in your
2 trunk?

3 A. Yes.

4 Q. 142. Spare tire?

5 A. Yes.

6 Q. 144?

7 A. That's what all the jack and stuff was in.

8 Q. Okay. 151. Are those clothing items yours?

9 A. No.

10 Q. Is that CVS bag yours?

11 A. No.

12 Q. 152. Better picture of that clothing -- the
13 clothing items. Is that yours?

14 A. No.

15 Q. 153. Is that your speaker box?

16 A. I don't believe, no.

17 Q. And then 154, are those items y'all's?

18 A. Yes.

19 Q. Okay. And where were those usually kept?

20 A. At the house.

21 But she -- you know, she probably had put them
22 in the car. We moved and that was the stuff we had
23 outside, so I can only imagine she boxed that stuff up and
24 just threw it in the car.

25 Q. Okay. When Alexis left on August 8th, did she

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1 leave her pocketbook behind?

2 A. No.

3 Q. Have you seen her pocketbook since she left on
4 August 8th?

5 A. No.

6 Q. Have you had her car keys since she left on
7 August 8th?

8 A. No.

9 MS. SHEALY: I beg the Court's indulgence just a
10 moment.

11 [Whereupon, Ms. Shealy and Mr. Finch confer]

12 Q. [Ms. Shealy] Have you seen her cell phone since
13 then?

14 A. No.

15 MS. SHEALY: I have no further questions.
16 Please answer any that Mr. Pennington or Mr. Cooper
17 may have. Thank you.

18 THE COURT: Cross-examination?

19 MR. PENNINGTON: Please the Court.

20 CROSS-EXAMINATION

21 BY MR. PENNINGTON:

22 Q. Mr. Bartley, you told the jury that the police
23 got Darryl Drayton's phone number from your telephone?

24 A. Correct.

25 Q. Before her death, it's very clear that Alexis

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1 and Darryl knew each other?

2 A. Correct.

3 Q. And that you worked long hours, from morning to
4 early evening around 7:00 p.m. --

5 A. Correct.

6 Q. -- correct? Yes?

7 A. Yes. Correct.

8 Q. And from your communications with Alexis and
9 your knowledge of her activities, you knew that Darryl and
10 Alexis would go places together?

11 A. Not to the extent, you know, that -- you know,
12 afterwards you find out more. But I never thought it was,
13 you know, more than down the street.

14 Q. Well, you had known Darryl Drayton for
15 approximately a year?

16 A. About, yes.

17 Q. A year before Alexis' death?

18 A. Yes.

19 Q. And you had seen him numerous times?

20 A. Yes.

21 Q. And you knew that Darryl had even been inside
22 your residence?

23 A. Correct.

24 Q. And that you knew that you were not concerned,
25 when she told you that she was going to go get some pills

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1 with Darryl, because they had been friends?

2 A. Correct.

3 Q. And that Darryl had furnished Alexis with pills
4 in exchange for taking him places?

5 A. Yeah. Correct.

6 Q. Now, Alexis had the white Grand Prix that we
7 just looked at? That was --

8 A. Correct.

9 Q. -- the car that she used?

10 A. Correct.

11 Q. Mr. Bartley, I want to turn your attention to
12 talk a little bit about Alexis' drug problem. Alexis was
13 taking some prescription medications; correct?

14 A. Correct.

15 Q. There were -- what is rock or roxie?

16 A. It's a form of percocet.

17 Q. And that would be a prescription-type pain
18 killer?

19 A. Correct.

20 Q. A powerful drug?

21 A. Yes.

22 Q. And Alexis was known to take those not
23 prescribed by a doctor?

24 A. Correct.

25 Q. She would get those pills from off the street?

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1 A. Correct. Off of people she knew.

2 Q. Alexis had used cocaine in years past, hasn't
3 she?

4 A. Correct.

5 MS. SHEALY: Your Honor, I'm going to object to
6 the relevancy.

7 THE COURT: I'll sustain that objection.

8 Disregard the question about cocaine in years
9 past.

10 Unless you want to lay some foundation and make
11 it more current and relevant.

12 MR. PENNINGTON: Well, I'll just ask this.

13 Q. [Mr. Pennington] Mr. Bartley, she had a drug
14 problem, didn't she?

15 A. Yes.

16 Q. And Alexis even sometimes sold pills?

17 A. No.

18 Q. Do you recall talking to the detectives in
19 Charleston?

20 A. Yes.

21 Q. And you indicated that early in the process that
22 some of the Beaufort County sheriff's deputies were
23 involved in this case?

24 A. Correct.

25 Q. Do you recall talking to an Officer Reynolds

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1 from Beaufort County?

2 A. I'm sure I did.

3 Q. Okay. The first day when -- after she had gone
4 missing on Sunday night Monday morning you had contact
5 with and were interviewed more than once by an Officer
6 Reynolds from Beaufort County, weren't you?

7 A. Yes.

8 Q. Mr. Bartley, I'm going to ask you just to take a
9 look at this document, and particularly call attention to
10 this first paragraph. Just read it to yourself and then
11 I'm going to ask you a question.

12 [Whereupon, the witness reviews documents]

13 Q. [Mr. Pennington] Ready?

14 A. Yeah. Yes.

15 Q. Mr. Bartley, you told Officer Reynolds that
16 Alexis was a seller of prescription medications, didn't
17 you?

18 A. It was -- the context there it's not -- you
19 know, if she got it, she would sell maybe two to a friend,
20 you know. It's not -- she wouldn't go out --

21 Q. She wasn't in the commercial --

22 A. No.

23 Q. -- large --

24 A. No.

25 Q. -- amounts of drugs?

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1 A. No.

2 Q. She would exchange for --

3 A. If her friend wanted one or two if she -- and
4 she had some, she would sell them one or two. That was
5 all.

6 Q. Okay. You didn't feel good about the fact that
7 she had this drug problem, obviously?

8 A. No.

9 Q. Or that she was out on the street --

10 MS. SHEALY: Your Honor, I would object. Can we
11 approach, Your Honor?

12 THE COURT: Yes, ma'am.

13 [Whereupon, an off-the-record bench conference
14 is held]

15 THE COURT: For the record, the State's
16 objection is overruled.

17 Ladies and gentlemen, let me just explain
18 something very briefly. The attorneys during a trial
19 make certain objections. My obligation during the
20 trial, or my job during the trial, is to make sure
21 that the trial and the testimony abides by the rules
22 of court and the rules of evidence.

23 The rules of evidence are designed to bring to
24 you the most trustworthy testimony we can bring and
25 certain things are not admissible, such as hearsay and

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1 some other items. Hearsay is someone else making a
2 statement outside of the court. So my job is to rule
3 on those objections. The attorneys are not trying to
4 hide anything from you. They just -- in their
5 opinion, it's not admissible under the rules of
6 evidence.

7 When I use the words overruled, I disagree with
8 the attorneys objection and you will hear it. If I
9 use the word sustained, that means that I agree it's
10 not admissible and you won't hear it. And then when I
11 instruct you to disregard a statement, I'm telling you
12 it's not admissible under the rules of evidence and
13 you are to disregard it and not consider it at all in
14 your deliberations or your thought process concerning
15 the facts of the case.

16 Please proceed.

17 MR. PENNINGTON: Thank you, Your Honor.

18 Q. [Mr. Pennington] Mr. Bartley, I want to turn
19 your attention to -- back to Sunday, August 8th, 2010.
20 You went to Sunday dinner at your parents' house?

21 A. Correct.

22 Q. And Lex stayed home?

23 A. Correct.

24 Q. And that was unusual in that Sunday was usually
25 your family day with your family and with Lex; correct?

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1 A. Correct.

2 Q. After you spoke to her at about 6:30 p.m., in
3 which she described that she was going to meet "D" and go
4 to Charleston to get some pills, you do not know of your
5 own knowledge where she went?

6 A. No.

7 Q. You do not know who she met after she hung up
8 and talked to you? Of your own knowledge.

9 A. At that point. But then I spoke with her at
10 8:19.

11 Q. All right. Well, let's talk about during the
12 period between 6:30 and 8:19 and then we'll talk about
13 8:19. All right?

14 A. Uh-huh.

15 Q. Before 8:19, you don't know who she met?

16 A. No.

17 Q. You don't know where she went first or what
18 her -- where precisely she drove?

19 A. No.

20 Q. You don't know who she had in her car that
21 night?

22 A. No.

23 Q. Let's talk about 8:19 p.m. This is Sunday
24 evening and you had that conversation that you recited on
25 direct. She said she was okay and that she was about an

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1 hour away from home?

2 A. Correct.

3 Q. And you testified that you did not hear a voice
4 of anyone else in the car?

5 A. Correct.

6 Q. And you cannot say how many people were in the
7 car other than Lex?

8 A. Other than her telling me that, you know she was
9 with -- she with "D". You know, you with "D". Yes.

10 Q. All right. But you don't know who else was in
11 the car?

12 A. No.

13 Q. And you cannot say, from what she said, exactly
14 where she was?

15 A. She was on 17 at that point, making a right
16 somewhere.

17 Q. And so where would that have been?

18 A. I have no idea.

19 Q. You don't know?

20 A. [Indicates negatively]

21 Q. And you cannot say who she met with after that
22 conversation?

23 A. No.

24 MR. PENNINGTON: Thank you very much,
25 Mr. Bartley.

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1 THE COURT: Redirect?

2 MS. SHEALY: Yes, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. SHEALY:

5 Q. Mr. Pennington was asking you about your not
6 being able to say of your own knowledge. But tell the
7 jury -- you've told us you called the jail, you told us
8 you called the hospitals. Who else were you calling that
9 night?

10 A. Her number.

11 Q. And did you call Darryl Drayton's --

12 A. Yeah.

13 Q. -- number?

14 A. Yeah.

15 Q. How often did you try to call Darryl Drayton?

16 A. I started -- I think at like 11:30 I started
17 calling. But I called her phone number every ten minutes.
18 At a certain point it was just, you know, call, call,
19 call.

20 Q. And when you went to see Shannon Hooper, you
21 were looking for Alexis. And who else were you looking
22 for?

23 A. Him.

24 Q. And when you went over to Tina Johnson's house,
25 you were looking for Alexis. And who else were you

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1 looking for?

2 A. Him.

3 Q. That morning, August 9th, did you go to anybody
4 else's house looking for Darryl Drayton?

5 A. There was another friend of theirs, but there
6 was -- you know, he had nothing to do with it. You know,
7 he didn't --

8 It was just to find something that had -- you
9 know, anybody that had information.

10 Q. Okay. And did you -- without saying what the
11 information was, did you learn some information from Tina
12 Johnson later that day?

13 A. Yes.

14 Q. Okay. Did you find out from anybody where
15 Darryl Drayton lived?

16 A. No. Not exactly.

17 Q. Okay. Did you go over to where you believed he
18 lived?

19 A. Yes.

20 MR. PENNINGTON: Objection, Your Honor.

21 At this point we've gone way beyond the scope of
22 my cross-examination. We're now into the next day.

23 THE COURT: Let me see the attorneys up here.

24 [Whereupon, an off-the-record bench conference
25 is held]

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1 THE COURT: At this point, the objection is
2 overruled.

3 Q. [Ms. Shealy] Mr. Bartley --

4 A. Yes.

5 Q. -- on August 9th, tell the jury whether or not
6 you went over to where you believed that Mr. Drayton
7 lived.

8 A. Yeah. I mean, we -- he had a -- he lived I
9 guess in a -- it was down the road, a neighborhood road,
10 so I went by -- you know, by his house, you know, that I
11 thought, trying to -- trying to find any kind of -- you
12 know, trying to find out what's going on.

13 Q. Did you ever get to see him?

14 A. I got ahold to him on the phone, you know. He
15 said she never came by.

16 Q. Did he deny going to Charleston with her?

17 A. Correct.

18 Q. Okay. So you kept calling him and you spoke to
19 him once?

20 A. Twice.

21 Q. And the person that you were looking for that
22 day was Darryl Drayton?

23 A. Yes.

24 Q. And that was based on what Alexis told you who
25 she was with?

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1 A. Correct.

2 MS. SHEALY: I have no further questions.

3 THE COURT: All right. Recross?

4 MR. PENNINGTON: No follow up, Your Honor.

5 THE COURT: Okay. You may step down. Thank you
6 very much.

7 [Whereupon, Mr. Bartley is excused and exits the
8 witness stand]

9 MS. SHEALY: Tina Johnson.

10 Your Honor, at this time we would ask that
11 Mr. Bartley be allowed to stay in the courtroom.

12 MR. PENNINGTON: I have no objection to that,
13 Your Honor.

14 THE COURT: Well, let me say this. If you're
15 going to possibly use him on reply down the road, do
16 you want him out of the courtroom?

17 MR. PENNINGTON: On that basis, Your Honor, then
18 I guess it would be best to have him out of the
19 courtroom.

20 THE COURT: Now, if you want to keep him, that's
21 fine. But, solicitor, what do you want to do?

22 MS. SHEALY: Well, I --

23 THE COURT: What we're talking about, ladies and
24 gentlemen, all the witnesses have been sequestered.

25 That means the witnesses that are going to testify in

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1 this trial are in the hall and they don't hear what's
2 transpired in the courtroom. It's called witness
3 sequestration.

4 Solicitor, what do you want to do? It doesn't
5 matter to the Court. If you want to leave him in,
6 fine, but he's not going be -- you can't use him in
7 reply.

8 MS. SHEALY: Beg the Court's indulgence just one
9 second.

10 THE COURT: Yes, ma'am.

11 [Whereupon, Ms. Shealy and Mr. Pennington
12 confer]

13 MS. SHEALY: I think maybe just to be safe right
14 now, I'm going to leave him -- is he back out right
15 now? Let's just leave him out there for right now.

16 THE COURT: Okay.

17 MS. SHEALY: Okay.

18 THE COURT: I just wanted to make sure --

19 MS. SHEALY: I know.

20 THE COURT: You understand where I'm coming
21 from. Okay?

22 MS. SHEALY: I do.

23 THE COURT: All right. Please proceed.

24 [Whereupon, Ms. Johnson comes forward]

25 [Whereupon, Ms. Johnson is duly sworn by the

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1 clerk of court as follows: do you swear or affirm
2 that your testimony will be the whole truth and
3 nothing but the truth, so help you God]

4 THE WITNESS: Yes.

5 THE CLERK OF COURT: State your full name and
6 spell your last name.

7 THE WITNESS: Tina Johnson. J-O-H-N-S-O-N.

8 MR. PENNINGTON: Your Honor, may I approach?

9 THE COURT: Yes, sir.

10 [Whereupon, an off-the-record bench conference
11 is held]

12 THE COURT: All right. Mr. Foreman and ladies
13 and gentlemen of the jury, we're going to take a break
14 at this time. I don't know if we have any smokers but
15 if we do, let the bailiffs know and they'll take you
16 to an appropriate place where you can smoke.

17 And please don't discuss the case amongst
18 yourselves.

19 If you need anything, let the bailiffs know and
20 they'll be happy to get it for you.

21 Please don't discuss the case amongst
22 yourselves.

23 Mr. Foreman, if you and the jury would follow
24 the bailiff to the jury room. Leave your notepads in
25 the chairs, please. Leave your notepads in the

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1 courtroom.

2 [Whereupon, the jury exits the courtroom at
3 10:35 a.m.]

4 THE COURT: All right. Ms. Johnson, during the
5 break, please don't discuss the case with anyone.

6 We'll take about a fifteen- or twenty-minute
7 break.

8 [Whereupon, a recess is taken from 10:39 a.m. to
9 11:00 a.m.]

10 THE COURT: Anything from the State before we
11 get started?

12 MS. SHEALY: Just one thing, Your Honor. I've
13 got several very quick witnesses. And I brought to
14 the court reporter's attention: Jackie Seward, who is
15 my third witness -- I have a pointer, because our
16 laser pointer won't work on that television. I think
17 he's going to need to go through those doors right
18 there, Judge, to point out something on the screen.

19 THE COURT: Go through what?

20 MS. SHEALY: See those little doors right there?

21 THE COURT: He's going to pull those doors?

22 MS. SHEALY: No. Right here.

23 THE COURT: Yeah.

24 MS. SHEALY: She said she had no problem with
25 that. I just wanted to advise.

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1 THE COURT: Are you okay with that?
2 THE COURT REPORTER: I'm okay with that.
3 THE COURT: If she's okay with it, I'm okay with
4 it.

5 MS. SHEALY: Thank you.

6 THE COURT: If she's not, I'm not.

7 MS. SHEALY: Yes, sir.

8 THE COURT: Anything from the -- anything else?

9 MS. SHEALY: No, sir.

10 THE COURT: Anything from the defense?

11 MR. PENNINGTON: No, sir.

12 THE COURT: Bring us the jury, please.

13 [Whereupon, the jury enters the courtroom at
14 11:02 a.m.]

15 THE BAILIFF: The jurors are all present, Your
16 Honor.

17 THE COURT: Thank you very much.

18 [Whereupon, Ms. Johnson takes the witness stand]

19 [Whereupon, the Court and the clerk of court
20 confer]

21 THE COURT: All right. Please proceed.

22 MS. SHEALY: Thank you, Your Honor.

23 - - -
24 - - -
25 - - -

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TINA JOHNSON,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. SHEALY:

Q. Ms. Johnson, would you please tell the jury
where you live.

A. [REDACTED] South
Carolina.

Q. Okay. And how many children do you have?

A. Two.

Q. What are your children's names?

A. Bradley and Sarah.

Q. And how old is Bradley?

A. Bradley is thirteen.

Q. Would you tell the jury, please, if you know
Shannon Hooper.

A. Yes, ma'am. That's my ex-sister-in-law. My
niece and nephew, that's their mother.

Q. Okay. And you said she's your ex-sister-in-law?

A. Yes.

Q. How is it that y'all are related?

A. Well, my brother and her were common-law
married, not actually married, for about twelve years and
I have a fifteen-year-old niece and a thirteen-year-old

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1 nephew from my brother.

2 Q. Did you know Alexis Lukaitis?

3 A. Yes, ma'am.

4 Q. And how did you meet her?

5 A. I met her from Shannon. She was Shannon's
6 friend and she had brought her over to my house and we
7 became friends after that.

8 Q. Would you visit with Alexis over at the
9 apartment complex, as well?

10 A. Yes, ma'am.

11 Q. Okay. Did you know Alexis' husband Mike?

12 A. Yes, sir.

13 Q. Who were you closer to, Alexis or Mike?

14 A. Alexis.

15 Q. Okay. Now, your son Bradley, would he spend
16 time over at his Aunt Shannon's apartment?

17 A. Yes, ma'am.

18 Q. When was the last time that you saw Alexis?

19 A. The last time I saw Alexis was the Saturday
20 before she went missing.

21 Q. Okay. And on that Sunday that she -- no.

22 Excuse me.

23 On the Monday that she was missing, did you see
24 Mike Bartley?

25 A. Yes, ma'am.

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1 Q. Okay. Could you tell the jury about that event?

2 A. He had come to my house really early. I think
3 it was like seven o'clock. My dad told me someone was at
4 the door and I went and he was standing there and he asked
5 me if I had seen Alexis. And I told him, no, I hadn't
6 seen him -- or seen her since Saturday.

7 He was really upset, really worried. He told me
8 she had never stayed out like that before. He just seemed
9 really upset. And I hadn't seen or heard from her so when
10 I told him that then he said if I heard anything, to call
11 him.

12 Q. Okay. And did he indicate to you who he
13 believed that she was with?

14 A. Yes, ma'am.

15 Q. Okay. Now, did you have a conversation with
16 your son Bradley about why Mike came over?

17 A. Yes, ma'am.

18 Q. Okay. And could you tell the jury, please, what
19 you told Bradley?

20 A. I told Bradley that Alexis was -- had gone
21 supposedly with Darryl Drayton to Charleston. Bradley
22 knew who he was because he had seen him at his aunt's
23 house. I told him that she didn't come back, you know,
24 Mike had told me that she hadn't come back, that wasn't
25 like her because she had two little boys at home, and

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1 that, you know, we thought something had happened to her.

2 Q. Okay. Now, you referred to him as Darryl
3 Drayton. What did y'all call him at that time?

4 A. "D".

5 Q. Okay. Were you familiar with where "D" lived?

6 A. Yes, ma'am.

7 Q. Can you describe to the jury where he lived?

8 A. As far as I know, he lived in the brick house
9 next to the Bluffton self-help. When we had picked him
10 up, it was at that house.

11 Q. And when you say when we had picked him
12 up: meaning you and Alexis?

13 A. Yes, ma'am.

14 Q. Now, tell us what the Bluffton self-help place
15 is.

16 A. It's a community place that helps people when,
17 you know, you need food or any assistance like that.
18 Clothing or help with bills.

19 My dad had cancer so we went there because he,
20 you know, needed help.

21 Q. Okay. So when you and Alexis had picked him up,
22 it was from the brick house right next to the self-help --

23 A. Yes, ma'am.

24 Q. -- building?

25 Later that morning, Monday the 9th, did you and

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1 Bradley go somewhere?

2 A. Yes, ma'am.

3 We went with my dad. It was me, Bradley, and my
4 daughter Sarah and my dad went to the Bluffton self-help.
5 And my fiancé, D.J., was also there. And me and D.J.
6 walked in and Bradley and Sarah were walking behind us.
7 My dad stayed in the truck.

8 Q. And did y'all, in fact, get some items while
9 y'all were there?

10 A. Yes, ma'am.

11 Q. At some point did your son -- and you don't have
12 to tell me now what he said -- but did your son tell you
13 something about who he saw?

14 A. Yes, ma'am.

15 Q. Okay. And after he told you who he saw, did you
16 share that with Mike Bartley?

17 A. Yes, ma'am.

18 Q. Okay. Later, did you also share that with the
19 police?

20 A. Yes, ma'am.

21 Q. And do you -- did the police also interview your
22 son?

23 A. Yes, they did.

24 Q. Did you give a written statement to the police
25 about what your son had seen?

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1 A. Yes, ma'am.

2 MS. SHEALY: I have no further questions.
3 Please answer any that the defense may have.

4 THE COURT: Cross-examination?

5 MR. PENNINGTON: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. PENNINGTON:

8 Q. Ms. Johnson, you just testified, I believe, that
9 you and Alexis picked up Darryl Drayton in a car?

10 A. Yes, sir.

11 Q. That would have been in that white Grand Prix
12 automobile that she drove?

13 A. Yes, sir.

14 MR. PENNINGTON: No further questions, Your
15 Honor.

16 THE COURT: Okay. Any recross? I mean, excuse
17 me. Redirect?

18 MS. SHEALY: No, Your Honor.

19 THE COURT: All right.

20 MS. SHEALY: Bradley V.

21 THE COURT: Ms. Johnson, you may step down.
22 Thank you very much.

23 [Whereupon, Ms. Johnson is excused and exits the
24 witness stand]

25 [Whereupon, Mr. V. comes forward]

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1 THE CLERK OF COURT: Place your left hand here
2 and raise your right hand. ;

3 [Whereupon, Mr. V. is duly sworn by the clerk
4 of court as follows: do you swear or affirm your
5 testimony will be the whole truth and nothing but the
6 truth, so help you God]

7 THE WITNESS: Yes.

8 THE CLERK OF COURT: Be seated. State your full
9 name and spell your last name.

10 THE WITNESS: Bradley V.

11 MS. SHEALY: Bradley, have a seat.

12 [Whereupon, Mr. V. takes the witness stand]

13 MS. SHEALY: And you're kind of quiet-spoken so
14 go ahead and get comfortable and then scoot up and
15 then if you can just -- just talk loudly for us.

16 - - - - -

17 Bradley V. ,

18 Having Been First Duly Sworn,
19 was Examined and Testified as Follows:

20 DIRECT EXAMINATION

21 BY MS. SHEALY:

22 Q. Tell the jury how old you are, please.

23 A. Thirteen.

24 Q. And Tina Johnson, who just testified, is your
25 mother?

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1 A. Yes.

2 Q. Do you know "D"?

3 A. Yes.

4 Q. And do you see "D" in the courtroom?

5 A. Yes.

6 Q. Okay. Is he seated right over here?

7 A. Yes.

8 Q. How did you know him?

9 A. He used to come over to my aunt's house.

10 Q. Okay. And who is your aunt?

11 A. Shannon Hooper.

12 Q. Okay. Do you remember talking to the police
13 about him a couple of years ago?

14 A. Yes.

15 Q. Could you tell the jury what you told the
16 police?

17 A. I saw him in the self-help parking lot and he
18 had scratches on his face and a bandage on his finger and
19 a hospital bracelet.

20 Q. And a what?

21 A. A hospital bracelet.

22 MS. SHEALY: Oh. Excuse me. I'm sorry.

23 Q. [Ms. Shealy] And a hospital bracelet?

24 A. Yes.

25 Q. Okay. And when you say you saw him in the

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1 parking lot of the self-help, could you tell which way he
2 was walking?

3 A. Towards like that way [indicates]. He was
4 walking towards --

5 Q. Okay. Well, if you're looking at self-help, was
6 he walking towards -- if you're looking at self-help --
7 let's see. Well, stand up for me.

8 A. [Witness complies]

9 Q. Where is self-help? Point to self-help for me.

10 A. Where is self-help?

11 Q. Yeah.

12 A. It's right in front.

13 Q. Okay. So which way was he walking?

14 A. That way.

15 Q. Okay. And the day that you saw him with the
16 bandaged hand and the hospital bracelet and the scratches,
17 what had your -- had your mother told you about something
18 earlier that day?

19 A. Yes.

20 Q. And did that -- who did that involve?

21 A. Miss Alexis.

22 Q. Okay. And did you tell your mother about seeing
23 "D"?

24 A. Yes.

25 Q. Okay. And then did you tell the police what

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1 you've told us?

2 A. Yes.

3 MS. SHEALY: Okay. I have no further questions.
4 Thank you, Bradley.

5 Hold on just a second: The defense might have a
6 question for you. Okay?

7 THE WITNESS: Okay.

8 THE COURT: Cross-examination?

9 MR. PENNINGTON: Good morning, Bradley.

10 THE WITNESS: Good morning.

11 MR. PENNINGTON: I've just got a question or two
12 for you.

13 THE WITNESS: Uh-huh.

14 CROSS-EXAMINATION

15 BY MR. PENNINGTON:

16 Q. You said that you saw scratches on Darryl's
17 face?

18 A. Uh-huh.

19 Q. Whereabouts on his face?

20 A. Like right here.

21 Q. Okay. So you're gesturing to what would be
22 your -- the right side of your face?

23 A. Uh-huh.

24 Q. In the mouth area?

25 A. Well, towards like kind of like on his cheek a

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1 little bit.

2 Q. Okay. On the cheek area on which side of his
3 face? Right or left?

4 A. I can't remember.

5 Q. Okay. So you're not sure whether it was --

6 A. I think it was on this side.

7 Q. You think it was on what would be his right
8 side?

9 A. Yes.

10 Q. Okay. But you're not sure?

11 A. [Indicates affirmatively]

12 Q. And when you nod -- when I say you're not sure
13 does that mean, yes, you're not sure?

14 A. Yes.

15 Q. Okay. But you say you saw some scratches?

16 A. Yes.

17 Q. You didn't know where those occurred?

18 A. Well, they were near on one of his cheeks.

19 Q. Okay. You don't know how they got there, do
20 you?

21 A. No.

22 MR. PENNINGTON: Okay. That's all I have,
23 Bradley.

24 THE WITNESS: All right.

25 THE COURT: Any redirect?

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1 MS. SHEALY: Just one quick question.

2 REDIRECT EXAMINATION

3 BY MS. SHEALY:

4 Q. What was it about the scratches that drew your
5 attention?

6 A. They were pink.

7 MS. SHEALY: Okay. Nothing further.

8 THE WITNESS: Okay.

9 THE COURT: Any recross?

10 MR. PENNINGTON: No, Your Honor. Thank you.

11 THE COURT: You may step down. Thank you very
12 much.

13 [Whereupon, Mr. V. is excused and exits the
14 witness stand]

15 THE COURT: Solicitor -- let me see the
16 attorneys up here just a second.

17 [Whereupon, an off-the-record bench conference
18 is held]

19 [Whereupon, Mr. Seward comes forward]

20 THE CLERK OF COURT: Place your left hand here
21 and raise your right hand.

22 [Whereupon, Mr. Seward is duly sworn by the
23 clerk of court as follows: do you swear or affirm
24 your testimony will be the whole truth and nothing but
25 the truth, so help you God].

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1 THE WITNESS: Yes.

2 [Whereupon, Mr. Seward takes the witness stand]

3 THE CLERK OF COURT: State your full name and
4 spell your last name.

5 [No response]

6 MS. SHEALY: Will you state your full name and
7 spell your last name for us.

8 THE WITNESS: Jackie Seward. S-E-W-A-R-D.

9 MS. SHEALY: Your Honor, at this time I would
10 move into evidence, without objection, State's 3, 4
11 and 5.

12 MR. PENNINGTON: No objection, Your Honor.

13 THE COURT: All right. 3, 4 and 5 admitted
14 without objection.

15 [Whereupon, State's Exhibit Number 3 is admitted
16 into evidence by the Court]

17 [Whereupon, State's Exhibit Number 4 is admitted
18 into evidence by the Court]

19 [Whereupon, State's Exhibit Number 5 is admitted
20 into evidence by the Court]

21

22

23

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JACKIE SEWARD,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. SHEALY:

Q. Mr. Seward, tell the jury, please, where you live and what you do for a living.

A. I reside in Hollywood, South Carolina, and I'm a professional logger.

Q. Okay. And how long have you been in the logging business?

A. Between thirty and forty years.

Q. Okay. And is it actually your family's business?

A. Yeah, it was a family business.

Q. How long has your family had that business?

A. Forty years.

Q. Okay. Where is your business located?

A. [REDACTED].

Q. And could you describe that road to us? What is Old Jacksonboro Road like?

A. Well, coming from Charleston heading south it's a paved road and about three -- maybe three-quarters of a mile it's a dirt road.

Q. Okay. I'm going to show you State's Exhibit 3.

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1 MS. SHEALY: It's going to show up on this
2 television. And, Mr. Seward, I'm going to ask you --
3 let's see. Would you mind walking through this little
4 door right here and taking this pointer.

5 And it probably would be best if you stood over
6 on this side so the jury can see you.

7 Q. [Ms. Shealy] And kind of orient us. Can you
8 show us where Highway 17 is?

9 A. This is Highway 17 right here.

10 MS. SHEALY: Okay. And speak loudly for us,
11 because you don't have a microphone right now.

12 THE WITNESS: Okay.

13 A. This is Highway 17.

14 Q. [Ms. Shealy] Okay. And then what's that next
15 road over that's running parallel?

16 A. This right here is the railroad track and this
17 is Old Jacksonboro Road

18 Q. Okay. So take that pointer and run down Old
19 Jacksonboro for me.

20 A. Okay. [Witness complies]

21 Q. And where on that road, approximately, is your
22 family's business?

23 A. Right down in here.

24 Q. Okay. And you were telling us that part of it
25 is dirt. Can you show us what part is dirt?

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1 A. This part right here is a dirt road and it stop
2 about right here and the pavement begins.

3 Q. Okay. And which way were you driving on Monday,
4 August 9th?

5 A. This is Highway 162 coming from Hollywood, and I
6 made a right turn onto Old Jacksonboro Road.

7 Q. Okay. And where is Highway 174?

8 A. Highway 174, it branch off here.

9 Q. Okay. So tell me again the road that you were
10 coming in on.

11 A. Highway 162.

12 Q. Okay. And what time in the morning were you
13 turning onto Old Jacksonboro?

14 A. Between 7:00 and 7:15.

15 Q. Okay. And just another shot. State's Exhibit
16 4. That just shows you a different angle. Kind of orient
17 us on that photo.

18 A. This is Highway 17. This is the railroad track
19 running parallel with Highway 17. This is Old Jacksonboro
20 Road.

21 Q. Okay. And something draws your attention as you
22 traveled down that road that morning?

23 A. Yes, it did.

24 Q. What got your attention?

25 A. When I pulled on Old Jacksonboro Road, maybe

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1 about maybe a quarter of a mile on the right I saw
2 something that appeared -- looked like a mannequin. And I
3 wasn't sure. Then I left my parents' house and I came
4 back and that's when I discovered it was a body on the
5 side of the road up there.

6 Q. Okay. Now, when you traveled down the road, you
7 first thought it was a mannequin. When you got down to
8 your parents' house -- and when you say your parents'
9 house, is that where the employees report in the morning?

10 A. Yes.

11 Q. Okay. Did you pick up someone to go back with
12 you?

13 A. Yeah. One of my employees, Earl Ankrum.

14 Q. Earl Ankrum. Okay.

15 A. I picked him up, and me and him came back.

16 Q. And what kind of vehicle do you drive?

17 A. I was driving a 1984 Ford F-150.

18 Q. Okay. That's a truck?

19 A. Yeah.

20 Q. And when you went down to your parents' house
21 and came back, at any point did you get out of your truck?

22 A. No.

23 Q. Did Mr. Ankrum?

24 A. No.

25 Q. Did you see any other vehicles on that road when

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1 you were traveling?

2 A. No.

3 Q. Okay. Showing you State's Exhibit 5. Is that
4 what you saw?

5 A. Yes.

6 Q. Well, when you and Mr. Ankrum drove back down
7 there and saw that, at that point did you realize it was
8 not a mannequin?

9 A. Right.

10 Q. And what did y'all do?

11 A. I drove to the -- headed -- headed home and
12 called 911 and told them there was a body beside the
13 highway.

14 MS. SHEALY: You can go ahead and have a seat
15 for me now.

16 [Whereupon, the witness complies]

17 Q. [Ms. Shealy] You called 911?

18 A. Yes.

19 Q. And did you wait there until the police came?

20 A. Yes.

21 Q. And when the police came, did you, in fact, give
22 them a statement?

23 A. Yes.

24 Q. And did Mr. Ankrum give them a statement?

25 A. Yes.

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1 Q. And it was actually a written statement; is that
2 correct?

3 A. Right.

4 MS. SHEALY: Okay. I have no further questions.
5 And I appreciate your coming. Answer any that the
6 defense attorney may have.

7 THE COURT: Cross-examination?

8 MR. PENNINGTON: None, Your Honor.

9 MS. SHEALY: Thank you.

10 THE COURT: Mr. Seward, you may step down.
11 Thank you very much.

12 Any reason he can't be excused?

13 MS. SHEALY: No, sir, Your Honor.

14 MR. PENNINGTON: No, sir.

15 THE COURT: Mr. Seward, you're welcome to stay;
16 otherwise, you can be excused. Thank you very much.

17 [Whereupon, Mr. Seward is excused and exits the
18 courtroom]

19 MS. SHEALY: Deputy Shepherd.

20 [Whereupon, Mr. Shepherd comes forward]

21 THE CLERK OF COURT: Place your left hand here
22 and raise your right hand.

23 [Whereupon, Mr. Shepherd is duly sworn by the
24 clerk of court as follows: do you swear or affirm
25 that your testimony will be the whole truth and

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1 nothing but the truth, so help you God]

2 THE WITNESS: I do.

3 [Whereupon, Mr. Shepherd takes the witness
4 stand]

5 THE CLERK OF COURT: State your full name and
6 spell your last name.

7 THE WITNESS: Deputy William Shepherd. S-H-E-P-
8 H-E-R-D.

9

10

WILLIAM SHEPARD,

11

Having Been First Duly Sworn,

12

was Examined and Testified as Follows:

13

DIRECT EXAMINATION

14

BY MS. SHEALY:

15

Q. Deputy Shepherd, tell the jury, if you would,
16 please, who are you employed by?

17

A. I'm employed with the Charleston County
18 Sheriff's Office.

19

Q. How long have you worked for the sheriff's
20 office?

21

A. Almost twenty-one years.

22

Q. Focusing your attention back to August 9th,
23 2010, what capacity were you working for the sheriff's
24 office at that time?

25

A. I was a patrol deputy in the south district,

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1 which included Hollywood, Edisto, Ravenel.

2 Q. Okay. And did you have the occasion to report
3 out to Old Jacksonboro -- Old Jacksonboro Road?

4 A. Yes, ma'am.

5 Q. What was the reason you were reporting there?

6 A. I believe the initial call came out that there
7 was a possibility -- we got a call that a citizen had
8 spotted something in -- off on the side of a dirt road
9 that looked like possibly a mannequin or a person.

10 Q. And when you arrived there, what was going on?

11 A. When I got there, the road was clear. I did
12 meet with the gentleman who called it in. At that time it
13 was a dirt road, complete dirt-road section. I parked my
14 vehicle and I proceeded to walk down to the area that he
15 had pointed out to me.

16 MS. SHEALY: Okay. Your Honor, at this time I
17 would move into evidence State's Exhibits 6 and 7.

18 MR. PENNINGTON: No objection, Your Honor.

19 THE COURT: 6 and 7 admitted without objection.

20 [Whereupon, State's Exhibit Number 6 is admitted
21 into evidence by the Court]

22 [Whereupon, State's Exhibit Number 7 is admitted
23 into evidence by the Court]

24 Q. [Ms. Shealy] Could you describe the area for
25 us?

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1 A. The area comes off of Savannah Highway onto 174,
2 Highway 174. And as you come up, there is a dirt road
3 which would be on my lefthand side. That dirt road is Old
4 Jacksonboro Road. It crosses, it intersects, with Highway
5 174. The dirt road extends for maybe somewhere between a
6 quarter mile to a half mile before it turns into a hardtop
7 again.

8 Q. What is of concern to you, as a first responder
9 from law enforcement, when you are approaching a scene
10 like that?

11 A. I want to be careful. I want to make sure that,
12 you know -- even though I don't know exactly what I have
13 at the time, I want to make sure that when I approach that
14 scene I don't contaminate or destroy any possible evidence
15 that could be there on the scene.

16 Q. Okay. And so what do you do in an effort to
17 preserve the scene?

18 A. Well, in this case here I stop -- I didn't allow
19 anyone else to go down there. My car was parked on one
20 end of the dirt road and I had another deputy go around
21 back down Savannah Highway onto the other end of Old
22 Jacksonboro Road and come up to the dirt road and stop --
23 block that part off.

24 And as I proceeded down to the area that was in
25 question, I stayed which would have been on my lefthand

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1 side of the road as I walked down.

2 Q. Okay. Showing you, then, State's Exhibits 5 and
3 6. Looking at 5 -- I'm sorry. 6 and 7. Looking at the
4 television there, could you describe what you did?
5 Looking at that.

6 A. Yes.

7 Where the vehicle is parked there, that -- to
8 me, that would have been my lefthand side of the road.
9 Actually, my vehicle -- this is -- I think this is a more
10 recent photo from when I got there.

11 But I walked down the entire lefthand side, as
12 close to the grass line as I could, and I made everyone
13 else, EMS who responded, also do the same so I could keep
14 track of where we had been so I could tell our TSU
15 [phonetic] guys where we had been, that they were our
16 footprints that were going up that road.

17 Q. Okay. And then the crime scene tape that we
18 see, is that part of what you did, as well?

19 A. No, ma'am. My crime scene tape was back in --

20 Q. Farther --

21 A. -- farther to the dirt -- to Highway 174.

22 Q. Okay. So yo blocked it off even a farther area
23 so that people could not go --

24 A. Initially, ma'am, I blocked the entire dirt road
25 off. Yes, ma'am.

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1 Q. Okay. And then showing you State's Exhibit 7.
2 That just reflects the opposite end?

3 A. Yes, ma'am.

4 I believe that is the other end of Old
5 Jacksonboro Road.

6 Q. Okay. And, again, that's to assist the crime
7 scene technicians who will come out and process the scene?

8 A. Yes, ma'am.

9 MS. SHEALY: Okay. Very good. I have no
10 further questions. Please answer any that the defense
11 may have.

12 THE COURT: Cross-examination.

13 CROSS-EXAMINATION

14 BY MR. PENNINGTON:

15 Q. Deputy Shepherd, you indicated in that
16 photograph that at some point vehicles were allowed to
17 drive down there to where the body was?

18 A. No, sir, not while I was there. I let no one --
19 fire department, EMS, all stayed outside off of the dirt
20 road while I was there.

21 MR. PENNINGTON: Could we have State's 6 back
22 up, please.

23 Q. [Mr. Pennington] All right. Is that your
24 cruiser on the left?

25 A. Do not believe that's my cruiser. This is after

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1 -- I believe down farther you're going to see that's the
2 crime scene unit down there. This is after they took over
3 the scene and I guess they determined at that time that
4 they could close the crime scene in a little closer.

5 Q. Okay. And so somebody else made the decision
6 when it was safe to drive down there?

7 A. Yes, sir.

8 MR. PENNINGTON: Thank you. That's all I have,
9 Your Honor.

10 THE COURT: Redirect?

11 MS. SHEALY: No, Your Honor.

12 THE COURT: You may step down. Thank you very
13 much. You may be excused.

14 [Whereupon, Mr. Shepherd is excused and exits
15 the witness stand]

16 MS. SHEALY: Stephen Edwards.

17 [Whereupon, Mr. Edwards comes forward]

18 THE CLERK OF COURT: Place your left hand here
19 and raise your right hand.

20 [Whereupon, Mr. Edwards is duly sworn by the
21 clerk of court as follows: do you swear or affirm
22 that your testimony will be the whole truth and
23 nothing but the truth, so help you God]

24 THE WITNESS: I do.

25 [Whereupon, Mr. Edwards takes the witness stand]

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1 THE CLERK OF COURT: If you would state your
2 full name and spell your last name.

3 THE WITNESS: Stephen Edwards. E-D-W-A-R-D-S.

4 MS. SHEALY: Beg the Court's indulgence just a
5 moment.

6 [Whereupon, Ms. Shealy reviews documents]

7 MS. SHEALY: Mr. Edwards, we need to make sure
8 that we can hear you clearly. Okay?

9 THE WITNESS: Yes.

10 MS. SHEALY: Okay.

11 - - - - -

12 STEPHEN EDWARDS,

13 Having Been First Duly Sworn,
14 was Examined and Testified as Follows:

15 DIRECT EXAMINATION

16 BY MS. SHEALY:

17 Q. Tell the jury if you would, please, where are
18 you from?

19 A. Bluffton.

20 Q. And where do you live now?

21 A. I'm at [REDACTED].

22 Q. Okay. I keep calling it Gothy Road. It's
23 Geothie?

24 A. Geothie.

25 Q. How do you spell it?

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1 A. I can't spell it too good, ma'am.

2 Q. Okay. I'm sorry. That's okay.

3 Do you know Darryl Drayton?

4 A. Yes, I do.

5 Q. And are you, in fact, related to Darryl Drayton?

6 A. Yes, I am.

7 Q. How are y'all related?

8 A. His grandmother and my grandfather are sister
9 and brothers.

10 Q. Do y'all consider yourself cousins?

11 A. Yes, ma'am.

12 Q. Now, I need to ask you about something. In
13 1999, were you convicted of criminal domestic violence of
14 a high and aggravated nature?

15 A. Yes, I was.

16 Q. And in 1999, were you convicted of threatening
17 the life of a police officer?

18 A. Yes, I was.

19 Q. Okay. Now, back in August of 2010, how often
20 did you see Darryl Drayton?

21 A. Pretty much maybe once or twice a week he'd come
22 by and ask me to take him to Wal Mart or Target. Or
23 sometimes I would take him out to the club and then I
24 would go back and pick him up.

25 Q. Okay. And so you had a car at the time?

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1 A. Yes, ma'am.

2 Q. And what kind of car was that?

3 A. 2000 Gold Pontiac.

4 Q. 2000 --

5 A. Gold Pontiac.

6 Q. Gold Pontiac?

7 A. Yes, ma'am.

8 Q. Okay. Let's focus in, then, on August 9th,
9 2010. Had you spent the night at your house?

10 A. Yes, ma'am.

11 Q. And tell us about waking up that day. What woke
12 you up that morning?

13 A. There was a knock at the door.

14 Q. Which door?

15 A. The back door.

16 Q. Okay.

17 A. Okay? And I asked who it was and Darryl said,
18 it's me, Cuz.

19 Q. Me, what?

20 A. Me, Cuz.

21 Q. Me, Cuz?

22 A. Yes, ma'am.

23 Q. Okay.

24 A. Okay. He said he needed a ride at the hospital.

25 I told him I didn't have any gas in the car and he said

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1 he'll be back.

2 Q. Okay. So hang tight for a second.

3 MS. SHEALY: Judge, at this time I would like to
4 move into evidence State's Exhibits 8, 9, 10, 11, 12,
5 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 --

6 THE COURT: 22, 23 and what?

7 MS. SHEALY: -- 24, 25, 26, 27, 28, 29, 30, 31,
8 32 and 33, without objection.

9 MR. PENNINGTON: That is correct, Your Honor.

10 THE COURT: So you're doing 8 through 33; is
11 that correct?

12 MS. SHEALY: Yes.

13 THE COURT: Okay. 8 through 33 admitted without
14 objection.

15 [Whereupon, State's Exhibit Numbers 8 through 33
16 are admitted into evidence by the Court]

17 Q. [Ms. Shealy] Stephen, on this television back
18 here, is that a photograph where you live at night?

19 A. Yes, ma'am.

20 Q. Okay. That's the front of your house?

21 A. Yes, ma'am.

22 This is the front of the house. Going through
23 the gate is the way we go to the back back there.

24 MS. SHEALY: Okay. Let me tell you what you're
25 going to have to do for me.

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1 THE WITNESS: Stand up?

2 MS. SHEALY: No. Well, not quite yet.

3 When you speak, come back towards the
4 microphone.

5 THE WITNESS: Oh. I'm sorry.

6 MS. SHEALY: That's okay.

7 THE WITNESS: I'm sorry.

8 A. Do you see where that yellow piece of tape at
9 where the red and black --

10 Q. [Ms. Shealy] The crime tape?

11 A. Yeah.

12 -- the crime tape is. That's where you go
13 inside the gate to get to the back.

14 Q. Okay. And then showing you State's Exhibit 9.
15 What side of the house is that?

16 A. This side of the house right here is when you go
17 into the driveway. It's on this side of the house --

18 Q. Okay. Showing you State's Exhibit 10.

19 A. Okay. This is the back door -- the back porch
20 to get to the back door that he knocked on.

21 Q. Okay. So when he knocked, he was on that porch?

22 A. Yes.

23 Q. Okay. So you told him you didn't have any gas
24 and you didn't have any money for gas?

25 A. Yes, ma'am.

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1 Q. So what happened at that point?

2 A. He said he'll be back. And I rolled back over
3 and went back to sleep. And maybe an hour and thirty
4 minutes or so he came back and knocked again. I asked who
5 the hell is it and he said, it's me, Cuz, and that he has
6 money. He had \$5.

7 Q. Okay. And what happened at that point?

8 A. Well, I got up and went outside. And he told me
9 that he needed a ride to the emergency room because he had
10 got in a fight with three guys from Beaufort and he got
11 cut on his finger.

12 Q. Did you see his hand at that point?

13 A. It was bandaged up.

14 Q. Could you tell whether it was bleeding or had
15 bled?

16 A. Oh. You could see some bloody tissues on the
17 outside of it.

18 Q. Okay. So what did y'all do?

19 A. I took him to the emergency room.

20 Q. And tell the jury, if you would, how far is --
21 what hospital were y'all going to go to?

22 A. Hilton Head hospital.

23 Q. And how far is Hilton Head hospital from where
24 you live?

25 A. Maybe two and a half miles or more. A lot more

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1 than that. Three miles at the most.

2 Q. Okay. Did y'all stop to get gas?

3 A. Yes, we did.

4 Q. Where did y'all stop to get gas?

5 A. We stopped at the station across from CVS,
6 because I wasn't too sure whether we were going to make it
7 or not because I wanted to go to Bluffton, make sure we
8 didn't run out of gas. But he didn't wanted to.

9 Q. He didn't want to stop in Bluffton --

10 A. No, he didn't want me --

11 Q. -- to get gas?

12 A. -- to go to Bluffton.

13 He wanted to go ahead and take a chance and get
14 to the station right there and maybe make it to Hilton
15 Head Island.

16 Q. Okay. And when y'all got to the hospital, did
17 you go in the hospital?

18 A. Yes, I did.

19 Q. And did he go back into a room to be seen?

20 A. Yeah.

21 He went into the emergency room and I was in the
22 waiting room.

23 Q. Okay. At the Hilton Head hospital, did you go
24 back where he was being treated?

25 A. Yes, ma'am.

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1 It was like two hours sitting -- I was sitting
2 out there.

3 Q. Okay. And when you went back where he was
4 treated, what was going on with his finger?

5 A. They had his thumb in a solution. They were
6 soaking his thumb.

7 Q. Did you get a look at the cut at that point?

8 A. It was visibly -- it was a gash on top of the
9 finger.

10 And the solution was soapy but you could also
11 see the dried blood rinsing in the water, also.

12 Q. Okay. After he got finished at the hospital,
13 did you drive him from there?

14 A. Yes, ma'am.

15 Q. And where did y'all go?

16 A. He wanted to stop at a jewelry store.

17 Q. And did you take him to the jewelry store?

18 A. Yes, ma'am.

19 Q. Did he say why he wanted to go to a jewelry
20 store?

21 A. He told me that he had a class ring that he
22 wanted to pawn.

23 Q. A class ring?

24 A. Yes, ma'am.

25 Q. Did he show you the ring?

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1 A. No, ma'am.

2 Q. Where was this jewelry store?

3 A. It was in the area where Food Lion was.

4 Q. Where Food Lion was?

5 A. Yes, ma'am.

6 Q. Okay. When you got to the jewelry store, did
7 you get out of the car?

8 A. No, ma'am.

9 Q. When he -- did he, in fact, go in the jewelry
10 store?

11 A. Yeah, he went inside the jewelry store.

12 Q. When he came out of the jewelry store, did he
13 tell you whether he pawned it?

14 A. No.

15 He didn't really say anything. He just said,
16 let's go. That was it.

17 Q. Okay. What did y'all do the rest of the day?

18 A. We went down to some friends of his house, at
19 Palmer's Raod [phonetic] in the Getty [phonetic], and we
20 went in there and played games and drank some beers.

21 Q. Okay. Where did y'all spend the night that
22 night?

23 A. Hardeeville.

24 Q. Hardeeville?

25 A. Yes, ma'am. At the Economy Lodge.

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1 Q. Now, why didn't -- why did you stay in
2 Hardeeville instead of at your own place?

3 A. Well, he said he was having problems with the
4 guy that he was staying with, that he was sleeping in his
5 car and the guy, you know, was having a problem with that.

6 So he told me to take him down to Hardeeville,
7 which is why I had to sign -- get the room for him. And
8 so instead of me coming back to Bluffton, he suggested I
9 stay over there.

10 Q. Okay. And so this was August?

11 A. Yeah.

12 Q. How did you feel about staying in a hotel?

13 A. It wasn't -- it wasn't that bad because I didn't
14 had any heat or air-conditioning in my house. And then it
15 would beat going all the way back to Bluffton to get up
16 early in the morning and pick him up, you know.

17 Q. Okay. Now, did you know -- when he said -- you
18 said he said that he was having a problem with his
19 roommate or whatever, where was he staying?

20 A. Yeah he -- I mean his car.

21 Q. Oh. He was having problems with his car?

22 A. Yeah.

23 But the guy's yard that he had his car parked
24 in, he was having a problem with him. You know, so the
25 guy didn't want him on the property --

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1 Q. Where was that? Where is that?

2 A. In Bluffton on the other side of self-help.

3 Q. On the other side of self-help?

4 A. Yes, ma'am.

5 Q. Okay. The next day, what did y'all do?

6 A. He had an appointment to go to the plastic
7 surgery. I took him to the plastic surgery office and
8 they made another appointment, which is why we stayed
9 there maybe two hours or something like that. They made
10 another appointment for him to come back a week later or
11 so. And after we left from there, he went back to his
12 friend's house. But we left his friend's house earlier,
13 because I was tired.

14 It was before sundown. So we went back to the
15 same motel again. I rented a room again. And he sent me
16 for a pack of cigarettes, a couple of beers. Which he
17 don't usually give nobody his money. But I went and got
18 it. And he was on the phone.

19 Q. Okay. Now, you were -- so on Tuesday night you
20 stayed in Hardeeville, as well?

21 A. Yes, ma'am.

22 Q. Okay. And did he ever say anything else about
23 those guys that jumped him?

24 A. No, ma'am.

25 Q. Okay. Anything else significant happen on

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1 Tuesday?

2 A. He wanted me to take him to Florida.

3 Q. Did you agree to take him to Florida?

4 A. No, ma'am.

5 He was talking to a friend of his in Florida and
6 she said if I bring him up there, they would take care of
7 him -- I didn't.

8 Q. You didn't take him?

9 A. No.

10 Q. Okay. What happened on Wednesday?

11 A. I think I went home.

12 Let me just make sure I get the dates right. I
13 don't want to get it confused.

14 After I did that, took -- I dropped him to the
15 library. I wasn't feeling good, so I went to the doctor.

16 Q. Let me interrupt you for a second. When you
17 said you went to the library: what did you like to do at
18 the library?

19 A. I usually go there, watch movies or whatever.
20 But that particular day I dropped him off. He wanted to
21 get dropped off.

22 Q. Okay. What else do people do at the library in
23 Bluffton?

24 A. Basically just watch movies or chitchat on the
25 computers and stuff like that.

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1 Q. You have internet access --
2 A. Yeah.
3 Q. -- there?
4 A. Yeah.
5 Q. Okay. And you were saying you didn't feel well?
6 A. No, I wasn't feeling good.
7 Q. So where did you go?
8 A. I went to the doctor.
9 Q. And what happened when you went to the doctor?
10 A. My sugar level was so high that they called the
11 ambulance and they took me to the emergency room.
12 Q. Okay. So let's slow down just a second.
13 When you say you went to the doctor, which place
14 was that and where was it?
15 A. Doctor Care in Bluffton.
16 Q. Okay. And then they sent you by ambulance
17 where?
18 A. To the Hilton Head hospital.
19 Q. Did anything significant happen while you were
20 at the hospital at Hilton Head?
21 A. Yeah.
22 I was sitting there. And the news came on and
23 they showed this female with two kids, you know. And,
24 basically, it didn't hit me right then and there. That
25 was just regular news, missing in Bluffton.

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1 So after I left, I went home. And for some.
2 reason I had trash on the porch, you know, and somebody
3 didn't put the trash in the trash can. So I seen there's
4 a spare tire sitting on top of the trash can. And when I
5 pulled the spare tire out, there was a bunch of items in
6 there which I couldn't hardly really see. I took a few of
7 the items out --

8 Q. Let me interrupt you there.

9 A. Go ahead.

10 Q. When you say you couldn't hardly see them --

11 A. Right.

12 Q. -- what time of day was that?

13 A. It was like basically dark. But I had a night
14 lamp, you know, a light post, and you could really see --
15 vaguely see what was going on inside of it.

16 So I took the tire off, sit it on this side. So
17 there was a bunch of other stuff in there. So I grabbed a
18 couple of other stuff out of there. So I went in the
19 house and light the candle. And basically, at first when
20 the candle come on, it looked like a stain and then all of
21 a sudden you take a second look and it was blood.

22 So I went back outside, looked in the trash can
23 with the candle. Looked like there was a bunch of bloody
24 stuff in there. Took that same speed --

25 Q. Took that what?

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1 A. Same speed. Went and called 911.

2 Q. I'm sorry. I still didn't understand what you
3 were --

4 A. I went and took the same speed and went and
5 called 911.

6 Q. I'm sorry. I still didn't --

7 A. I left from home -- and went up to the same
8 speed. I left from home --

9 Q. I'm still not getting --

10 A. I left --

11 Q. Wait. Hold on one -- I took that same what?

12 A. Speed. It's I guess like if you leave -- not
13 pills or anything like that. It's like if you leave home.
14 That's what I mean by I took the same speed.

15 Q. The same speed?

16 A. Right. In fact, just like if you dropped
17 everything and you --

18 Q. Oh. It's an expression?

19 A. Yeah, it's an expression.

20 Q. Okay. Okay.

21 A. Yeah. No speed.

22 Q. I'm sorry. Go ahead. Go ahead.

23 A. So I went and called 911. And they wanted to
24 know why I was calling them. I said --

25 Q. Slow down. When you went to call 911, where did

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1 you call 911 from?

2 A. From a neighbor apartment in Bluffton.

3 Q. Okay. Now, did you drive that car down to the
4 neighbor?

5 A. Yes, I did.

6 Q. You drove your car down there?

7 A. Yes.

8 But I parked it in the church yard, because I
9 didn't have insurance on it. I did not have insurance on
10 my car and I didn't --

11 Q. You parked at the church parking lot?

12 A. Yeah. The church I attend, you know.

13 Q. Okay.

14 A. And I didn't want them to go ahead and run my
15 tag, because I did not have insurance on my car, because
16 they probably would have pulled it.

17 So a young guy was walking by. I used his cell
18 phone. And Nicklepumper was already closed. So I called
19 911 and they wanted to know why I was calling and I said,
20 I'm not going to tell you anything else on the phone. I
21 said, you need to come to Nicklepumper and pick me up;
22 I've got something to show you. I told them that several
23 times and finally an officer came up there.

24 So he called another Bluffton police officer.
25 They took me to my house. I took them to where the trash

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1 can was. And then that's when they called Beaufort
2 County. Beaufort County called the detective.

3 MS. SHEALY: And you have to slow down. You
4 talk faster than I do.

5 THE WITNESS: Oh. I'm sorry.

6 MS. SHEALY: Okay. Hold on a second.

7 Q. [Ms. Shealy] Let's go back to when you first
8 see the tire in the trash can. Okay?

9 A. Okay.

10 Q. Do you take some of the items out of the trash
11 can?

12 A. Yes, ma'am.

13 Q. Okay. And where do you put the items from the
14 trash can?

15 A. In the house.

16 Q. Okay. Do you remember what items you put in the
17 house?

18 A. It was a box with speakers in it, I think.

19 Q. Okay. Let me show you some photographs and walk
20 you through it. Okay? First of all, looking at that
21 photograph right there, do you see your trash can there?

22 A. It's right there.

23 Q. And that's that reddish trash can?

24 A. Yes, ma'am. It's brown, really.

25 Q. Okay. And showing you State's Exhibit 13. Are

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1 those the diapers that you saw?

2 A. That's what got my attention.

3 Q. Were the diapers?

4 A. The diapers.

5 Q. Because you didn't put any diapers in your trash
6 can?

7 A. No, ma'am.

8 Q. Showing you State's Exhibit 14.

9 A. That's the tire that was on top of the trash can
10 that I took off of it.

11 Q. And you put it there --

12 A. Yes, ma'am.

13 Q. -- on the ground?

14 Okay. Now showing you State's Exhibit 21.

15 First of all, where is this picture taken?

16 A. That's on the inside of my -- that's on the
17 inside of my house, which is junky.

18 Q. And is that how -- not trying to embarrass you.
19 But is that how you keep your house?

20 A. Basically. Sometimes, but not all --

21 Q. All right.

22 A. Yes, ma'am.

23 Q. You cleaned things up?

24 A. Yes, ma'am.

25 Q. Okay. But everything that's in that picture,

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1 did all of that come out of the trash can?

2 A. No, ma'am. Because I pulled it out.

3 MS. SHEALY: Your Honor, with the Court's
4 permission and the court reporter's permission, may he
5 step down?

6 THE COURT: Have you got a pointer?

7 A. It was -- it was --

8 THE COURT: Hold on just a second.

9 MS. SHEALY: Hang tight just a second. Let me
10 get you --

11 THE COURT: She's going to give you a pointer,
12 okay --

13 THE WITNESS: Okay. Thank you.

14 THE COURT: -- to make it easier for you.

15 THE WITNESS: Yes, sir.

16 THE COURT: Come over and stand by the picture.

17 MS. SHEALY: If you'll come over here. And,
18 look, I'm going to hand you this.

19 THE WITNESS: Uh-huh.

20 MS. SHEALY: We're going to take it item by
21 item. Okay?

22 Q. [Ms. Shealy] If you would point to the items
23 that you took out of the trash can.

24 A. This I took out of the trash can; this I took
25 out of the trash can.

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1 Everything else was not in there.

2 Q. Okay. Now, when you're pointing to those other
3 things like that can and the book and the cups --

4 A. -- the case.

5 Q. No. I know. Those you took out of the trash
6 can.

7 A. Right.

8 Q. But that can of food --

9 A. Right.

10 Q. Point to that for me.

11 A. Right there.

12 Q. And that book.

13 A. Okay. That's mine.

14 Q. All right. Now, what about that handle right
15 there? That white handle.

16 A. This is a knife. That's mine.

17 Q. That's a filet knife?

18 A. Right.

19 Q. And that's -- that was not in the trash can?

20 A. No, that was not in the trash can.

21 Q. And those cups of soup, whatever?

22 A. All that stuff is mine.

23 Q. All that was yours?

24 A. Yeah.

25 Q. And where in your house is all that?

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1 A. It's in the other side of the back bedroom -- by
2 the way that you come into the back door.

3 Q. Uh-huh.

4 A. That way.

5 Q. Okay. Stand up there for just a second.

6 Showing you State's Exhibit Number 11. Now, this is the
7 chair that was outside next to the trash can?

8 A. Right.

9 Q. Is that your bag?

10 A. No, ma'am.

11 Q. Showing you State's Exhibit Number 12. Point to
12 that -- first of all, point to that bluish-gray --

13 A. This.

14 Q. Okay. That: is that yours?

15 A. No, ma'am.

16 Q. And then that larger bluish-gray item?

17 A. None of this stuff right here is mine.

18 Q. Okay.

19 A. Okay? This was another indication that it just
20 seemed like this was a bag that was -- a bag where the
21 baby diaper was in.

22 Q. Okay. State's Exhibit 13: those diapers we've
23 talked about.

24 A. Right here.

25 Q. State's Exhibit 15. And this is a shed that's

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1 in your back yard; right?

2 A. Yes, ma'am.

3 That's a little tool house. I think you've got
4 another picture of it. But this thing wasn't in it.

5 Q. That was not there?

6 A. No.

7 Q. Here's another picture of the shed, just a
8 better picture of the shed and the hole, on State's
9 Exhibit 16.

10 A. This is the shed right here.

11 Q. Okay. And then State's Exhibit 17. Is that --

12 A. Yeah, this is the bottom of the shed.

13 Q. Okay. Now, what about that insert right there?

14 A. This wasn't supposed to be -- all this stuff was
15 not there. Nobody don't even go in that place.

16 Q. Okay. And a closer shot there on State's
17 Exhibit 18. Is that yours?

18 A. No.

19 Q. Okay. State's Exhibit 19. That bag?

20 A. No, ma'am.

21 Q. Now, had you even seen all this --

22 A. No, I haven't even --

23 Q. -- before you called the police?

24 A. No.

25 I haven't seen none of that because I remember

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1 them asking me about does anybody ever go in there or
2 anything, and I told them no.

3 But this stuff wasn't even supposed to be
4 underneath here.

5 Q. So when you walked down to call the police, you
6 hadn't even seen all this stuff?

7 A. No, I had not.

8 Q. State's Exhibit 20. It's a little bit better
9 picture of that bag.

10 A. Right.

11 Q. And that's what you put on your floor?

12 A. Right. This is it right here.

13 Q. And then this that was in the trash can, 22,
14 that is 22, that is not your --

15 A. No, ma'am.

16 Q. -- diaper bag?

17 A. No, ma'am.

18 Q. And we showed you this a minute ago, 23, that
19 was in the trash can.

20 A. Right.

21 Q. That's not yours?

22 A. No. None of them, either.

23 Q. Another shot of that 24.

24 A. No. All this got my attention.

25 Q. 25. The blanket and diaper?

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1 A. Right. That's not mine.

2 Q. 27. Is that your CVS bag?

3 A. No.

4 It don't look like it. It's got clothes in it
5 now.

6 Q. And those aren't your clothes?

7 A. No.

8 Q. Okay. Now, State's Exhibit 28. Are these items
9 that you removed?

10 A. That's the only thing that was in that box.
11 That's it. Remember I told you about the box? That was
12 it right there.

13 Q. That was where?

14 A. One of them that was in the trash can along with
15 that CVD player and that emergency --

16 Q. That was in the trash can, as well?

17 A. Right.

18 Q. You moved it out?

19 A. Yes, ma'am.

20 Q. And then what about that box to the right?

21 A. Yeah, I think that was in there, too, also.

22 Q. That hand soap --

23 A. Yeah.

24 Q. -- thing and the --

25 A. Yeah.

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1 Q. -- potted plant?

2 A. Yes, ma'am.

3 Q. So those two things you took out of the trash
4 can?

5 A. Right.

6 Q. This is a better picture of it? 29.

7 A. Yeah, that's it.

8 Because I remember me telling the detective
9 about it because I let them know that I took that stuff
10 that was in the house.

11 Q. Okay. Now, here's a larger picture of that
12 knife --

13 A. Uh-huh.

14 Q. -- 33, that was on your floor. And that's your
15 filet knife?

16 A. Yeah, this is my knife.

17 This is the one that I usually work with to
18 clean my fish and stuff with. I used to work at the
19 Oyster Factory. I also told the detective about that.
20 And I told them they could take anything out of there to
21 do with that knife.

22 They took everything out of that house,
23 including the house that I used to stay in the back, also.
24 I give them permission to take all that stuff out of
25 there.

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1 MS. SHEALY: Okay. You can go ahead and have a
2 seat again for a moment.

3 [Whereupon, the witness complies]

4 Q. [Ms. Shealy] So you walk down to Nicklepumpers.
5 And how do you get back to your house once you called 911?

6 A. Bluffton Police Department took me there.

7 Q. And then when you get there, you're waiting for
8 other officers to come?

9 A. Yes.

10 They called out -- two other officers from
11 Bluffton came to Nicklepumpers. So they decided to take
12 me back to the house. They called the sheriff department.
13 The sheriff department went to the back and also look at
14 the trash can. Then the sheriff department called the
15 detective.

16 Q. Okay. And that first officer that shows up, did
17 you tell him what you're telling us about the stuff?

18 A. Yes, I did.

19 Q. And then was it Todd Calhoun? Do you see --

20 A. Yes.

21 Q. -- Detective Calhoun?

22 A. Yes.

23 Q. And did some other deputies and detectives
24 from --

25 A. Right. They --

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1 Q. -- Beaufort County come?

2 A. Yes.

3 Q. And when they walked on your property and came
4 in your house, did they tell you they wanted to look at
5 everything?

6 A. That's right.

7 Q. Everything you had?

8 A. Yes.

9 Q. And did you give them permission to do so?

10 A. Yes, I did. I had nothing to hide.

11 Q. Did they ask you to sign a voluntary consent to
12 search?

13 A. Yes, they did.

14 Q. And did you, in fact, sign it?

15 A. Yes, I did.

16 Q. Is this the document reflecting your consent to
17 search?

18 A. Yes, ma'am. That's my signature.

19 MS. SHEALY: Your Honor, at this time I would
20 offer State's Exhibit 174 into evidence.

21 MR. PENNINGTON: No objection, Your Honor.

22 THE COURT: 174 admitted without objection.

23 [Whereupon, State's Exhibit Number 174 is
24 admitted into evidence by the Court]

25 Q. [Ms. Shealy] Now, while they were looking

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1 through all your stuff, where did they ask you to go sit?

2 A. I was sitting on the outside of the fence of
3 the -- I was outside the fence on top of the -- on the
4 side of the police car.

5 Q. Okay. And after you talked to those first
6 officers and then Detective Calhoun and then the
7 detectives that showed up that night, did they ask you
8 if -- later if they could come back and get that knife
9 from you?

10 A. Yes.

11 Q. And did you tell them to come on back?

12 A. Yes, I did.

13 Q. When they came back, did you tell them you had
14 found some other stuff?

15 A. Yes, I did.

16 Q. What had you found?

17 A. It was a pair of tennis.

18 Q. A pair of tennies?

19 A. Tennis.

20 Q. Tennis?

21 A. Yeah.

22 Q. Okay. Are you talking about shoes?

23 A. Yes, ma'am.

24 Q. And where did you find those?

25 A. They was underneath my car seat on the passenger

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1 side.

2 Q. Okay. First of all, let's show you State's
3 Exhibit 30. Looking at State's Exhibit 30, is that the
4 pair of shoes you're talking about?

5 A. Yes, ma'am.

6 Q. Okay. Showing you what's been previously marked
7 as State's Exhibit 172. This is the shoe?

8 A. Yes, ma'am.

9 Q. And this is a nine and a half. Do you wear nine
10 and a half?

11 A. No, ma'am.

12 Q. What size shoe do you wear?

13 A. Twelve and a half.

14 MS. SHEALY: I would move this into evidence
15 without objection.

16 MR. PENNINGTON: That's correct. No objection.

17 THE COURT: Any objection?

18 MR. PENNINGTON: No, sir.

19 THE COURT: State's Number 172 admitted without
20 objection.

21 [Whereupon, State's Exhibit Number 172 is
22 admitted into evidence by the Court]

23 Q. [Ms. Shealy] And State's 171. So you found
24 both shoes. Where were they?

25 A. Underneath the seat of the car.

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1. Q. Tucked under?

2 A. Yes.

3 MS. SHEALY: And 172 [sic], as well, Your Honor,
4 being the other --

5 THE WITNESS: Yes, ma'am.

6 MS. SHEALY: -- the matching.

7 MR. PENNINGTON: No objection, Your Honor.

8 Q. [Ms. Shealy] Who had been sitting --

9 THE COURT: All right. 171 admitted without
10 objection.

11 [Whereupon, State's Exhibit Number 171 is
12 admitted into evidence by the Court]

13 Q. [Ms. Shealy] Who had been sitting in that seat?

14 A. My cousin Darryl there.

15 Q. Okay. And showing you State's Exhibit 31 and
16 32.

17 A. That's my car.

18 Q. That was your car?

19 A. Yes, ma'am.

20 MS. SHEALY: Beg the Court's indulgence just a
21 moment.

22 [Whereupon, Ms. Shealy reviews documents]

23 Q. [Ms. Shealy] And there was a sock that was also
24 found with those shoes --

25 A. Yes, ma'am.

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1 Q. -- is that correct?

2 A. Yes, ma'am.

3 Q. And you gave that to the --

4 A. Deputy -- I mean, detective, also.

5 Q. Now, you told us about your involvement with the
6 Bluffton police, you told us about your involvement with
7 the Beaufort County police.

8 A. Yes, ma'am.

9 Q. Did you also get interviewed by the Charleston
10 County detectives?

11 A. Yes, I did.

12 Q. Okay. And that would have been detective James
13 Perkins and --

14 A. Yes, ma'am.

15 Q. -- Detective Derek Boyd?

16 A. Yes, ma'am.

17 Q. And they brought you over -- was it to Hilton
18 Head?

19 A. Hilton Head. Yes, ma'am.

20 Q. And that was a lengthy interview and they asked
21 you a bunch of questions?

22 A. Yes, ma'am.

23 Q. And did you tell them what you've told us today?

24 A. Yes, ma'am.

25 Q. Okay. They read you your Miranda warnings?

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1 A. Yes, ma'am.

2 Q. And you voluntarily --

3 A. Yes, ma'am.

4 Q. -- agreed to speak to them?

5 Let me ask you a little bit about where places
6 are in Bluffton so we can kind of get an idea.

7 A. Yes, ma'am.

8 THE COURT: Let's stop right there.

9 All right. Mr. Foreman, ladies and gentlemen of
10 the jury, it's twelve o'clock and as I told you this
11 morning, we're going to stop at twelve o'clock and
12 take a lunch break at this time.

13 The notepads leave in the chairs. The clerk
14 will collect them and give them to you after lunch.
15 The clerk keeps track of the pads. I will allow you
16 to take the pads into the jury room after the charge
17 at the end of the trial. But in the meantime, we'll
18 keep them in the courtroom.

19 Please don't talk to anybody, please don't
20 listen to anything about the case, during lunch.

21 If you'll be back in the jury room at 1:30,
22 we'll get started at that time. Have a good lunch.

23 If you'll follow the bailiffs.

24 [Whereupon, the jury exits the courtroom at
25 11:55 a.m.]

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1 THE COURT: All right. Mr. Edwards --

2 THE WITNESS: Yes, sir.

3 THE COURT: -- see you back at 1:30.

4 During the lunch break, don't talk to anybody
5 about the case. Okay?

6 THE WITNESS: Yes, sir.

7 THE COURT: And you have a good lunch. You may
8 step down.

9 THE WITNESS: Thank you, sir.

10 THE COURT: You're welcome to leave. And be
11 back at 1:30.

12 [Whereupon, Mr. Edwards exits the witness stand]

13 THE COURT: All right. We'll adjourn until --
14 Is there anything we need to take up before
15 lunch?

16 MR. PENNINGTON: I don't believe so.

17 THE COURT: We'll adjourn until 1:30.

18 MR. PENNINGTON: Yes, sir.

19 [Whereupon, a recess is taken from 11:58 a.m. to
20 1:34 p.m.]

21 THE COURT: Anything else from the State before
22 we bring the jury?

23 MS. SHEALY: No, sir.

24 THE COURT: Anything from the defendant?

25 MR. PENNINGTON: No, sir.

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1 THE COURT: All right. Bring us the jury,
2 please, sir.

3 [Whereupon, Mr. Edwards re-takes the witness
4 stand]

5 [Whereupon, the jury enters the courtroom at
6 1:36 p.m.]

7 THE BAILIFF: All jurors are present, Your
8 Honor.

9 THE COURT: Thank you very much.
10 If you will proceed with your direct
11 examination, please, ma'am.

12 MS. SHEALY: Thank you, Your Honor.

13 I just have a few more questions, Mr. Edwards.

14 THE WITNESS: Yes, ma'am.

15 CONTINUED DIRECT EXAMINATION

16 BY MS. SHEALY:

17 Q. I was getting ready to ask you a little bit
18 about where things were I relationship to each other in
19 Bluffton.

20 A. Yes, ma'am.

21 Q. Okay. If you would tell us: how far of a walk
22 is it from where the Oyster Factor is to your house?

23 A. I would say about maybe five, ten minutes for a
24 regular person. Fifteen for me because of the artificial
25 leg that I have.

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1. Q. You have an artificial leg?

2. A. Yes, ma'am.

3. Q. And how long have you had that?

4. A. Since I was three years old.

5. Q. About a fifteen-minute walk you said?

6. A. Yes, ma'am.

7. Q. And how far of a walk from the self-help place
8 to your house is it?

9. A. I would say about ten.

10. Q. Okay.

11. A. Yes.

12. Q. Now, did you know Alexis Lukaitis?

13. A. No, ma'am.

14. Q. Had you ever seen her?

15. A. No, ma'am.

16. Q. Tell the jury: on that Sunday night did you go
17 with Darryl Drayton to Charleston with Alexis Lukaitis?

18. A. No, ma'am. Not at all.

19. Q. And when you made that phone call that night,
20 why did you do that? Why did you go down to
21 Nicklepumpers?

22. A. I went down there to make sure that somebody
23 knew what was in my trash can, because I did not put it in
24 there. You know, I wanted them to know exactly what it
25 was and where it was at.

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1 MS. SHEALY: Okay. I have no further questions.
2 Please answer any that the defense may have.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: Cross-examination

5 MR. PENNINGTON: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. PENNINGTON:

8 Q. Mr. Edwards, you live at [REDACTED] -- what's the
9 name --

10 A. Geothie Road.

11 Q. Geothie?

12 A. Geothie Road.

13 Q. Geothie Road?

14 A. Yes, sir.

15 Q. That's where you live?

16 A. Yes.

17 Q. This evidence, this spare tire, was where you
18 live? In your brown trash can?

19 A. Yes.

20 Q. And when you opened the trash can, the other
21 evidence that we saw was in your brown trash can?

22 A. Yes.

23 Q. At your house?

24 A. Yes.

25 Q. And it's your testimony today that you did not

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1 see who put those items in that trash can?

2 A. No, sir.

3 Q. And that you did not hear who put those items in
4 the trash can?

5 A. No, sir.

6 Q. Now, Mr. Edwards, behind your place there is the
7 shed that we talked about that you pointed out in the
8 photograph?

9 A. Yes.

10 Q. And is it common that people sit back there and
11 talk?

12 A. No, sir. The only person that came in that yard
13 is me.

14 The recent person been in that yard -- the last
15 -- the recent was him. Nobody else. And nobody come and
16 sit in that yard.

17 Q. There aren't chairs back up in there?

18 A. Sir, it's a chair. One chair. The only person
19 that came in that yard is him and me. That's it.

20 Q. And isn't there a place where a -- another place
21 where you can sleep back up in there?

22 A. There's a trailer in the back.

23 Q. Yes.

24 A. Yes, sir.

25 I moved from there because it's summer time.

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1 And the other house I sleep in in the winter time. It's
2 much cooler in there.

3 Nobody else be in that yard.

4 Q. All right. Now, you discovered these items the
5 day after -- or the evening of the time that you went to
6 the doctor for the high blood, the high blood sugar?

7 A. The sugar level.

8 Q. The sugar level?

9 A. Yes.

10 Q. Okay. So you had been in Hardeeville for two
11 nights with Darryl before finding these items?

12 A. Yes.

13 Q. And so in effect you don't know when, before
14 that Wednesday night, that those items got there?

15 A. No, I don't.

16 Q. And you described that this trailer had no
17 power?

18 A. Right.

19 Q. You were using candlelight?

20 A. Yes.

21 Q. Now, you acknowledged that you were convicted in
22 '99, 1999, of criminal domestic violence --

23 A. Yes, sir.

24 Q. -- of a high and aggravated nature?

25 A. Yes.

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1 Q. And threatening the life of a police officer?

2 A. Yes.

3 Q. And you did not like the penitentiary, did you?
4 You didn't like the penitentiary?

5 A. Excuse me. I did my time to society. I paid my
6 price.

7 Q. And you didn't like the penitentiary, did you?

8 A. I'm not going back for something I never did,
9 neither.

10 Q. You didn't like the penitentiary, did you?

11 A. No, sir.

12 Q. You didn't like the food?

13 A. I didn't even eat in the kitchen. They had a
14 canteen over there.

15 Q. You had money, so you could get it off --

16 A. Yes, sir.

17 Q. -- the canteen? You didn't like the cells?

18 A. I didn't have no choice but to live there.

19 Q. You didn't like the --

20 A. You get --

21 Q. -- cells?

22 A. -- used to it. No, sir.

23 Q. You certainly don't want to go back, do you?

24 A. Sure enough not planning on going back.

25 Q. When they interviewed you in this case, when the

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1 police interviewed you in this case, when you met with
2 Detective Perkins, the gentleman in the blue tie here, and
3 Detective Boyd from Charleston, you were at the Hilton
4 Head Sheriff's Office substation, weren't you?

5 A. Yes.

6 Q. All right. And they put you in a room and they
7 conducted a lengthy verbal interview with you, didn't
8 they?

9 A. Yes.

10 Q. At the beginning of that, they read you your
11 rights to remain silent?

12 A. Yes, sir.

13 Q. And you signed a waiver of your right to remain
14 silent?

15 A. Yes.

16 Q. Meaning that you agreed to talk to them?

17 A. Yes.

18 Q. And when they would leave out of the room, you
19 were locked in that room, weren't you?

20 A. Yes.

21 Q. And when you wanted to go to the bathroom, you
22 had to knock on the door and get permission to get out and
23 go to the bathroom?

24 A. Yes, sir.

25 Q. But then Boyd, Detective Boyd, came in and told

1 you that you were not a suspect in their eyes, didn't he?

2 A. Yeah.

3 Q. And they never took a swab of your mouth for DNA
4 purposes, did they?

5 A. No, sir.

6 Q. Now, that interview that you did at the Hilton
7 Head Police Station, or I should say the sheriff's
8 substation, you talked to them for at least an hour?

9 A. Yeah. Basically an hour.

10 And I laid on the floor for two hours until
11 somebody came back in there.

12 Q. Right. And you answered all the questions that
13 they had?

14 A. Every question possibly that I know of.

15 Q. And you were anxious to tell them everything
16 that you knew about this case?

17 A. I got nothing to hide, sir.

18 Q. Pardon?

19 A. I got nothing to hide.

20 Q. So you told them everything that you knew about
21 this case?

22 A. Yes.

23 Q. All right. And you didn't want to leave
24 anything out?

25 A. Tried not to.

MIA PERRON, CVR-CM-M

1. Q. And yet at no time during that entire interview
2 did you mention anything about Darryl saying that he was
3 pawning a class ring, did you?

4 A. I don't remember.

5 Q. And at no time during that interview with
6 Detective Perkins, and Detective Boyd from Charleston, did
7 you ever mention anything about Darryl saying that he
8 wanted to go -- you to take him to Florida, did you?

9 A. I don't recall.

10 Q. The filet knife --

11 MR. PENNINGTON: And if we could have picture
12 Number 21, please.

13 Q. [Mr. Pennington] Mr. Edwards, do you see the
14 filet knife up there?

15 A. Yes, I do. Right there.

16 Q. Do you see the handle of it?

17 A. Yes, I do.

18 MR. PENNINGTON: With the Court's permission,
19 Your Honor, may I have him use that pointer?

20 THE COURT: Yes, sir.

21 MS. SHEALY: I'm sorry. The pointer --

22 THE COURT: Just stand right there.

23 Where's the pointer?

24 Just stand right on the other side of the gate
25 there and use the pointer. He'll get it for you in

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1 just a second. Okay? Move over against the wall so
2 the jury can see you --

3 THE WITNESS: Yes, sir.

4 THE COURT: -- if you would, and just use the
5 pointer.

6 A. This is the knife right here.

7 Q. [Mr. Pennington] Now, Mr. Edwards, what you've
8 got your hand -- or the pointer on is the handle of the --

9 A. Handle of the knife. Right here.

10 Q. And so the blade is underneath what would be
11 that CD case?

12 A. Right.

13 Q. Okay. And so that is on your back porch?

14 A. This is inside of the house.

15 Q. On the side of the house?

16 A. Inside of the house.

17 Q. Inside of the house?

18 A. Inside of the house where the rest of the items
19 was at.

20 Q. Sort of near that trash can?

21 A. It's not sort of near the -- the brown trash can
22 is way in the back, before you can get on the porch.
23 Okay? This item, this item, and this item was in the
24 trash can. This is my knife.

25 Q. And they didn't swab your cheek for your DNA?

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1 A. No, sir.

2 Q. You were unemployed at the time?

3 A. Yes, sir.

4 Q. Now, you described that you know the area over
5 there on Wharf Street where Ms. Lukaitis' car was found?

6 A. Yes.

7 Q. Over by the Oyster Factor parking lot?

8 A. Yes.

9 Q. It's a new little county park?

10 A. Yeah.

11 They already developed it a little bigger now.

12 Q. And it was next to some new bathrooms that they
13 had built over there?

14 A. Yes.

15 Q. You know the area?

16 A. Yes.

17 Q. Walking distance from your house?

18 A. Yes.

19 Q. Fifteen minutes on a -- on what is your new
20 prosthetic leg?

21 A. On my time basis, yes.

22 MR. PENNINGTON: That's all I have. Thank you,
23 Mr. Edwards.

24 THE WITNESS: Uh-huh.

25 THE COURT: Any redirect?

1 MS. SHEALY: Beg the Court's indulgence just a
2 second.

3 [Whereupon, Ms. Shealy reviews documents]

4 REDIRECT EXAMINATION

5 BY MS. SHEALY:

6 Q. Mr. Edwards --

7 A. Yes, ma'am.

8 Q. -- regarding the ring and going by --

9 Did you call it a jewelry store, or a gold
10 shop --

11 A. It was a gold shop --

12 Q. -- or do you remember?

13 A. Yes, ma'am.

14 Q. Okay. And where was that located?

15 A. Located right in the area by Food Lion.

16 Q. Okay. And when you were being interviewed by
17 the detectives, did you tell the detective where that was
18 located?

19 A. Well, you know, it's been a year now. I can't
20 really recall it. But I think it, and then again I think
21 I'm not.

22 But I'm pretty sure that the store -- I let the
23 detectives know that I did dropped him off and left him --
24 took him to the store.

25 MS. SHEALY: Very good. I have no further

1 questions.

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Any recross?

4 MR. PENNINGTON: No, sir.

5 THE COURT: You may step down, Mr. Edwards.

6 Thank you very much.

7 THE WITNESS: Thank you.

8 [Whereupon, Mr. Edwards is excused and exits the
9 witness stand]

10 THE COURT: Call your next witness, please.

11 MS. SHEALY: Dr. Luca Delatore.

12 [Whereupon, Dr. Delatore comes forward]

13 THE CLERK OF COURT: Place your left hand here
14 and raise your right hand.

15 [Whereupon, Dr. Delatore is duly sworn by the
16 clerk of court as follows: do you swear or affirm
17 that your testimony will be the whole truth and
18 nothing but the truth, so help you God]

19 THE WITNESS: I do.

20 [Whereupon, Dr. Delatore takes the witness
21 stand]

22 THE CLERK OF COURT: State your full name and
23 spell your last name.

24 THE WITNESS: Luca Richard Delatore.

25 D-E-L-A-T-O-R-E.

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1. LUCA R. DELATORE, M.D.,
2. Having Been First Duly Sworn,
3. was Examined and Testified as Follows:

4. DIRECT EXAMINATION

5. BY MS. SHEALY:

6. Q. Dr. Delatore, tell us a little bit about your
7. background.

8. A. I went to undergraduate at University of
9. Kentucky. Graduated from there in 1997. Went to the
10. University of Toledo, what was called at the time Medical
11. College of Ohio, and graduated from there in 2001. And
12. from there went to residency at Mayo Clinic in Rochester,
13. Minnesota, for emergency medicine and completed a three-
14. year fellowship there.

15. Q. Okay. And where are you currently employed?

16. A. Hilton Head hospital in Hilton Head, South
17. Carolina.

18. Q. And you're practicing as an emergency --

19. A. Emergency medicine --

20. Q. -- physician?

21. A. -- physician. Correct.

22. Q. Were you employed there August 9th, 2010?

23. A. Yes.

24. Q. Could you tell the jury whether or not you
25. treated Darryl Drayton on that day?

MIA PERRON, CVR-CM-M

1 A. Based on the records, yes, I did.

2 Q. And if you would please tell the jury what was
3 the nature of his complaint that day.

4 A. A finger laceration.

5 Q. A finger what?

6 A. Laceration.

7 Q. Okay. Have you had the opportunity to review
8 the records from that day?

9 A. I did, yes.

10 Q. If you would please tell the jury how his injury
11 appeared and what your notes reflect regarding it.

12 A. The injury was reported to be a cut to the right
13 index finger, if I remember correctly, and was from a saw,
14 reportedly.

15 And he was seen early in the morning. And I
16 can -- the exact time would be on the chart.

17 Q. Do you have the chart with you?

18 A. I don't have it with me.

19 Q. If I hand you the records, would that help you?

20 A. Sure.

21 MS. SHEALY: Get my notes out.

22 And, Your Honor, as I'm handing these up to
23 Dr. Delatore, I will move into evidence without
24 objection State's Exhibit 114 in just a moment.

25 MR. PENNINGTON: That is correct, Your Honor.

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1 THE COURT: Any objection?

2 MR. PENNINGTON: No, sir.

3 THE COURT: State's Number 114 admitted without
4 objection.

5 [Whereupon, State's Exhibit Number 114 is
6 admitted into evidence by the Court]

7 [Whereupon, Ms. Shealy proffers documents to the
8 witness]

9 THE WITNESS: Thank you.

10 A. Any specifics that you want me to address?

11 Q. [Ms. Shealy] Just if you could indicate what
12 time of day that Mr. Drayton came in.

13 A. The time of registration was listed at 7:47 in
14 the morning. So a.m.

15 Q. Okay. And when you told us that it reportedly
16 came from a saw injury --

17 A. Uh-huh.

18 Q. -- are you indicating that Mr. Drayton indicated
19 there was a saw injury?

20 A. Correct.

21 Q. And did he reflect what time the injury had
22 occurred?

23 A. Initially, in my documentation 10:00 p.m.,
24 approximately, is what he had mentioned.

25 Q. On the night before?

MIA PERRON, CVR-CM-M

1 A. Correct.

2 Q. Was there anything about the injury that was
3 consistent with it not being a fresh injury having
4 happened that morning?

5 A. Yes.

6 Q. What was that?

7 A. With an acute laceration there are certain
8 changes to the skin that are not there. When he
9 presented, he had changes that were consistent with a
10 wound that had been open for quite some time.

11 We usually suture lacerations within six hours.
12 Beyond that, there's a significant risk of infection. And
13 unless -- in a very unusual situation do we actually close
14 a wound at that point because the risk of infection,
15 particularly in a digit, is very high.

16 Q. Okay. I'm going to show you what has been
17 marked as State's Exhibit 114 and ask you if you recognize
18 this.

19 [Whereupon, Ms. Shealy proffers documents to the
20 witness]

21 A. Correct. Yes.

22 MS. SHEALY: Okay. If you could bring that up?

23 Q. [Ms. Shealy] And describe for the jury, please:
24 is that a depiction of Mr. Drayton's injuries?

25 A. Yes.

1 Q. Okay. So in that you could not put stitches or
2 suture it --

3 A. Uh-huh.

4 Q. -- the nature of the injury, did that cause you
5 to get an x-ray done?

6 A. Yes.

7 Q. And could you tell the jury, please, what the
8 x-ray reflected?

9 A. I can give you the exact report. I don't
10 remember specifically if there was a fracture, but that's
11 what we would look for with an injury of this type.

12 And there was an open fracture of the second
13 digit, which is the index finger, mentioned on that. And
14 that was read by the radiologist and we also review those,
15 as well.

16 Q. What is meant by the term fracture?

17 A. A broken bone. So a break in the bone.

18 Q. So he had both a laceration and a fracture to
19 that finger?

20 A. Correct.

21 Q. And while you were there -- while he was there,
22 did y'all clean the wound?

23 A. Yeah. Extensively.

24 Q. Did you refer him to someone else?

25 A. Yeah.

1 Much of the time that he was spent in the
2 emergency room was trying to arrange follow up.
3 Lacerations of this nature, with a delayed presentation
4 with an open fracture -- which means that the bone is
5 exposed -- have a very high risk for infection. And so
6 with that, you usually need a specialist.

7 The picture may not do enough justice, but when
8 a wound is swollen you can't close it because the tension
9 is too tight. So if you tried to suture it, it would pop
10 open.

11 And so in this case the wound was very swollen
12 and if we tried to suture it, it wouldn't have held.

13 Q. Okay. When he was leaving the hospital that
14 day, did you actually prescribe some medication for him?

15 A. Yes.

16 Q. What did you prescribe?

17 A. Usually we prescribe a pain medicine and an
18 antibiotic as a preventative measure. And that's usually
19 done in conjunction with the surgeon that we set up follow
20 up with.

21 In this case it was keflex, which is a cephalus
22 foreign antibiotic, and Lortab, which is a narcotic pain
23 medication.

24 MS. SHEALY: That's all I have. Please answer
25 any questions that the defense may have.

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1 THE WITNESS: Sure.

2 MR. PENNINGTON: Your Honor, I have no questions
3 for Dr. Delatore.

4 MS. SHEALY: Thank you, Your Honor. We would
5 ask that he be excused. Thank you.

6 THE COURT: Doctor, thank you very much. You
7 may be excused.

8 [Whereupon, Dr. Delatore is excused and exits
9 the witness stand]

10 MS. SHEALY: Maggie Furchak.

11 [Whereupon, Ms. Furchak comes forward]

12 THE CLERK OF COURT: Place your left hand here
13 and raise your right hand for me.

14 [Whereupon, Ms. Furchak is duly sworn by the
15 clerk of court as follows: do you swear or affirm
16 that your testimony will be the whole truth and
17 nothing but the truth, so help you God]

18 THE WITNESS: I do.

19 [Whereupon, Ms. Furchak takes the witness stand]

20 THE CLERK OF COURT: State your full name and
21 spell your last name.

22 THE WITNESS: Maggie Mae Furchak.

23 F-U-R-C-H-A-K.
24 - - -
25 - - -

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MAGGIE FURCHAK,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. SHEALY:

Q. Ms. Furchak, where do you live? What city?

A. Bluffton, South Carolina.

Q. Okay. And do you know the defendant, Darryl Drayton?

A. Yes.

Q. Okay. How do you know him?

A. Through my best friend.

Q. Who is your best friend?

A. Rayland Johnson.

Q. And did she and Mr. Drayton have a relationship?

A. Yes, they did.

Q. What was the nature of that relationship?

A. Boyfriend-girlfriend.

Q. And did they live in an apartment complex together?

A. She had the apartment complex. He stayed there a lot.

Q. Do you remember the name of the apartment complex?

A. The Lakes at Myrtle Park, I think.

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1 Q. But by August of 2010, he was no longer living
2 there with him [sic]?

3 A. Correct.

4 Q. In August, specifically August 9th or 10th of
5 2010, tell the jury where you were working.

6 A. I was working at Bluffton pharmacy on August
7 10th --

8 Q. Did you say Bluffton --

9 A. -- in Bluffton --

10 Q. -- pharmacy?

11 A. Bluffton pharmacy.

12 Q. And what was your job there?

13 A. Pharmacy technician.

14 Q. Now, did you know Alexis Lukaitis?

15 A. No.

16 Q. Okay. And as a pharmacy technician, what was
17 your role?

18 A. To fill prescriptions for patients and clients
19 that came in.

20 Q. Did you have the occasion to see Mr. Drayton?

21 A. Yes.

22 Q. And could you tell the jury, please, what was
23 the situation for you to see him?

24 A. He came in Monday, August 10th, to fill two
25 prescriptions that he received from the emergency room.

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1 Q. Do you recall what those prescriptions were for?

2 A. One was for cephalexon, which is an antibiotic.

3 The other one was for pain medicine, hydrocodone tab 50.

4 Q. Okay. And could you explain to the jury,
5 please, how he was acting, how he appeared?

6 A. He seemed normal to me, because I knew him. He
7 seemed a little nervous, couldn't stand still, but the
8 conversation was normal.

9 Q. Did you notice anything about his hand?

10 A. It was wrapped up.

11 Q. And did he say anything to you about his hand?

12 A. That he had cut it that morning at work.

13 Q. That morning?

14 A. Yes, ma'am.

15 Q. And he said it happened where?

16 A. At work.

17 Q. Okay. Did he tell you how he hurt it?

18 A. On a piece of glass.

19 MS. SHEALY: Okay. Beg the Court's indulgence
20 just one moment.

21 [Whereupon, Ms. Shealy and Mr. Finch confer]

22 MS. SHEALY: I have nothing further. Please
23 answer any the defense may have.

24 THE COURT: Cross-examination?

25 MR. PENNINGTON: Thank you, Your Honor.

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CROSS-EXAMINATION

BY MR. PENNINGTON:

Q. Ms. Furchak, you mentioned that Darryl seemed nervous that morning?

A. Yes, sir.

Q. I think you also described it that he was fidgeting back and forth?

A. I did not state that.

Q. Couldn't stand still?

A. Correct.

Q. Did he describe to you that he was upset because his finger had been cut so deeply?

A. He seemed upset, yes.

Q. In fact, he said it looked like he had six fingers because it had been cut so deep?

A. He said that, yes. I didn't --

Q. Do you remember that?

A. Uh-huh.

Q. And so -- but he seemed upset about the injury to his hand?

A. Yes, sir.

MR. PENNINGTON: Thank you. That's all the questions I have.

MS. SHEALY: Just briefly, Your Honor.

- - -

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REDIRECT EXAMINATION

BY MS. SHEALY:

Q. Ms. Furchak, did he ask you if you would like to take a look at it?

A. Yes. Yes, ma'am.

Q. And did you take him up on that offer?

A. No, ma'am.

MS. SHEALY: Nothing further, Your Honor.

THE COURT: Any recross?

MR. PENNINGTON: No, Your Honor.

THE COURT: You may step down. Thank you very much.

[Whereupon, Ms. Furchak is excused and exits the witness stand]

THE COURT: Ma'am, you may be excused. Thank you.

MS. SHEALY: Chris Golis.

THE COURT: Who are you calling?

MS. SHEALY: Chris Golis.

[Whereupon, Mr. Golis comes forward]

THE CLERK OF COURT: Place your left hand here and raise your right hand.

[Whereupon, Mr. Golis is duly sworn by the clerk of court as follows: do you swear or affirm that your testimony will be the whole truth and nothing but the

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1 truth, so help you God]

2 THE WITNESS: Yes.

3 [Whereupon, Mr. Golis takes the witness stand]

4 THE CLERK OF COURT: State your full name and
5 spell your last name.

6 THE WITNESS: Christopher. My last name is
7 Golis, G-O-L-I-S.

8 - - - - -

9 CHRISTOPHER GOLIS,

10 Having Been First Duly Sworn,
11 was Examined and Testified as Follows:

12 DIRECT EXAMINATION

13 BY MS. SHEALY:

14 Q. Mr. Golis, if you would please tell the jury
15 where you work.

16 A. Golis Family Jewelers.

17 It's a family-owned jewelry store in Bluffton,
18 South Carolina.

19 Q. How long have -- is that your business?

20 A. Yes, ma'am.

21 Q. How long have you owned that business?

22 A. About thirteen years.

23 Q. And do you sell jewelry there?

24 A. Yes.

25 Q. Do you also buy jewelry?

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1 A. Yes.

2 Q. And is there a part of your store that you sell
3 pocketbooks and some other --

4 A. Yes.

5 Q. -- accessories?

6 Focusing your attention back to August of 2010,
7 did you have the occasion to sell a ring to an individual
8 named Darryl Drayton?

9 A. You said sell.

10 Q. I'm sorry. Buy --

11 A. Yes, ma'am.

12 Q. -- a ring.

13 A. Yes.

14 Q. Well, first, let me ask you: had you ever seen
15 that gentleman before?

16 A. I had seen him once before.

17 Q. Okay. And when you saw him before, were you
18 buying something from him on that occasion?

19 A. Yes, ma'am.

20 Q. When he came into the store, do you remember
21 what day it was?

22 A. The date, no. I could say earlier in the week,
23 but I just couldn't pinpoint a specific date.

24 Q. Okay. If I showed you a statement that you
25 gave, would that help refresh your memory?

1 A. [No response]

2 [Whereupon, Ms. Shealy proffers documents to the
3 witness]

4 THE WITNESS: I don't have my glasses.

5 MS. SHEALY: You need reading glasses?

6 THE WITNESS: Yes.

7 MS. SHEALY: We're all struggling.

8 THE WITNESS: Yes.

9 [Whereupon, the witness reviews documents]

10 A. That's for sure what I wrote.

11 Q. [Ms. Shealy] Okay. What date does it indicate
12 that he came in?

13 A. 8/9/10.

14 MS. SHEALY: Okay. I have to grab my glasses
15 back, too.

16 Q. [Ms. Shealy] If you would please describe to
17 the jury what had taken place. What happened?

18 A. He had come in sometime in the morning, offered
19 to sell an engagement ring to me.

20 Q. Okay. How did he appear when he came in?

21 A. Clean.

22 Q. And was there anything that drew your attention
23 as he came in?

24 A. Had an Ace -- not an Ace bandage, but a gauze --
25 had a gauze bandage around his hand.

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1 Q. Okay. And when you saw the ring, was there
2 anything about the ring that made you curious as to why he
3 wanted to sell it?

4 A. I had -- nothing specific. But I had told him
5 that it's worth substantially more than what I was
6 offering, because I'm only offering -- I'm only interested
7 in the metal.

8 Q. Okay. Well, let me show you what has been
9 previously marked as State's Exhibit 173 and ask you if
10 you can identify this. It's been marked for
11 identification. Is that the ring?

12 A. Yeah.

13 Q. Okay. How would you describe that ring to the
14 jury?

15 A. It's what would be called a past, present,
16 future ring. It's a three-stone diamond ring. It has
17 some pave' set stones on either side of it.

18 And it is quite unique. It's not -- it wouldn't
19 be a typical rope chain, or something that is quite
20 common. This is definitely more of a unique ring.

21 Q. Okay. And so tell us about the conversation you
22 had with him about what you thought you could pay and what
23 you thought he should do.

24 A. The value of the metal was only a couple, few
25 hundred dollars. And I had told him that the value of the

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1 ring and value of the stones are substantially more and he
2 would need to sell it to somebody else.

3 He could have easily have gotten 800 to \$1,000
4 for it and I was offering a few hundred, with the intent
5 on giving him the stones back.

6 Q. Where did he tell you he got the ring from?

7 A. Gas station. Found it in a gas station.

8 Q. Do you recall anything more specific about what
9 gas station?

10 MS. SHEALY: Let me just give you your statement
11 back ---

12 A. Oh, yeah.

13 MS. SHEALY: -- in case you need to refer to it.
14 Or do you still have it up there?

15 THE WITNESS: Uh-huh.

16 MS. SHEALY: Okay.

17 [Whereupon, the witness reviews documents]

18 A. Well, that -- on the -- on that day, I wrote a
19 Chevron gas station.

20 Q. [Ms. Shealy] So he told you he found it at the
21 gas station?

22 A. Yes.

23 Q. Did you make any suggestion to him as to what he
24 might want to do regarding the gas station?

25 A. I said, bring it back to the gas station; if

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1 nothing else, you can make a phone call; I'm sure there
2 would be a reward more than what I'm willing to offer for
3 it.

4 But I just kept on instilling on that, that the
5 stones are more valuable than the metal and, as a whole
6 unit, substantially more.

7 Q. When you made those suggestions to him about
8 ways that he could get more money, what -- how did he
9 respond?

10 A. After a nothing-to-do conversation, he said
11 that, I don't care; I found it anyway.

12 Q. Okay. Now, did you inquire at all about how he
13 had injured his hand?

14 A. Yes.

15 Q. And what did he say?

16 A. With a saws-saw [phonetic] on a chainlink fence.

17 Q. With a saws-saw on a chainlink fence?

18 A. He had told me he worked for a fence company and
19 cut it on -- cut it with a saws-saw.

20 Q. Okay. Were you -- do you remember how much
21 money you gave him for it?

22 A. No more than 400. Now that I'm looking at it,
23 between two and four but no more than four.

24 Q. And were you later then either visited by or
25 contacted by the police in this matter?

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1 A. Had a phone call from a detective in homicide.

2 Q. And did someone come and see you at your store?

3 A. Yes, ma'am.

4 Q. Did you relay to that detective -- was it
5 Detective Calhoun, sitting in the courtroom?

6 MS. SHEALY: Can you stand up, Detective
7 Calhoun?

8 MR. PENNINGTON: Your Honor, I'm going to object
9 at this point about vouching, you know, prior
10 consistent statements.

11 THE COURT: I'm sorry. What, now?

12 MS. SHEALY: I'm not going to ask him --

13 THE COURT: What's your legal objection?

14 MR. PENNINGTON: Vouching --

15 THE COURT: Overruled. Go ahead. She just had
16 him identify him.

17 Go ahead. Please proceed.

18 Q. [Ms. Shealy] Was it Detective Calhoun that came
19 to --

20 A. I can't honestly say.

21 Q. Okay. Do you remember being shown a line-up?

22 A. Yes, ma'am.

23 Q. And let me ask you --

24 MS. SHEALY: Your Honor, I'm going to have
25 this witness identify this. But this is State's

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1 Exhibit 175 and I'm going to offer it, as I understand
2 without --

3 THE COURT: 175?

4 MS. SHEALY: 175.

5 Q. [Ms. Shealy] This is a two-page document. When
6 whichever detective came to talk to you, did they have you
7 read a sheet and then show you --

8 A. Yes.

9 Q. -- a set of photographs?

10 A. Uh-huh.

11 Q. And do you recognize these two documents?

12 A. Yes.

13 MS. SHEALY: Your Honor, I would offer 175.

14 Q. [Ms. Shealy] First, they show you --

15 THE COURT: Any objection?

16 MR. PENNINGTON: No, sir.

17 THE COURT: What's the number, solicitor?

18 MS. SHEALY: 175.

19 THE COURT: 175 admitted without objection.

20 [Whereupon, State's Exhibit Number 175 is
21 admitted into evidence by the Court]

22 Q. [Ms. Shealy] Could you read this out loud to
23 the jury?

24 A. You will be asked to look at a group of
25 photographs: The fact that the photographs are shown to

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1 you should not influence your judgment. You should not
2 conclude nor guess that the photographs contain the
3 picture of the person who committed the crime. You're not
4 obligated to identify anyone. It is just as important to
5 free persons from suspicion as to identify guilty parties.
6 Please do not discuss the case with other witnesses nor
7 indicate in any way that you have identified someone.

8 Q. Okay. And then showing you the second page.
9 Could you take a look at these photographs?

10 A. Uh-huh.

11 Q. Now, tell the jury, if you would, at any point
12 did the officer point to anybody and ask you to --

13 A. No.

14 Q. -- choose someone?

15 A. Huh-uh.

16 Q. Okay. And when you looked at the photographs,
17 there are some x marks. What do those reflect?

18 A. Persons that I said weren't him.

19 Q. That were not him?

20 A. Yes.

21 Q. And then did you find someone who was the man --

22 A. Yes.

23 Q. -- that came in that day? How did you indicate
24 who that was?

25 A. Put a circle.

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1 Q. I'm going to put this up on the television right
2 here. I call it a television. The screen.

3 So the ones that you have x'd were the ones that
4 you knew were not him; is that correct?

5 A. Yes.

6 Q. And then you circled this number; is that
7 correct?

8 A. Yes, ma'am. Number 4.

9 Q. Okay. When the officer was there that day, did
10 they ask you for the ring back?

11 A. Yes.

12 Q. And you obviously gave it back to the police
13 officer?

14 A. [No response]

15 MS. SHEALY: Thank you very much. Answer any
16 questions that the defense may have. Thank you.

17 THE COURT: Cross-examination?

18 MR. PENNINGTON: No questions, Your Honor.

19 THE COURT: All right. You may step down.

20 Thank you very much. You may be excused. Thank you.

21 [Whereupon, Mr. Golis is excused and exits the
22 witness stand]

23 MR. FINCH: Robert Dicarlo.

24 [Whereupon, Mr. Dicarlo comes forward]

25 THE CLERK OF COURT: Place your left hand here

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1 and raise your right hand.

2 [Whereupon, Mr. Dicarlo is duly sworn by the
3 clerk of court as follows: do you swear or affirm
4 that your testimony will be the whole truth and
5 nothing but the truth, so help you God]

6 THE WITNESS: I do.

7 [Whereupon, Mr. Dicarlo takes the witness stand]

8 THE CLERK OF COURT: State your full name and
9 spell your last name.

10 THE WITNESS: Robert Dicarlo. D-I-C-A-R-L-O.

11 MR. FINCH: Good afternoon, Officer Dicarlo.

12 THE WITNESS: Good afternoon.

13 - - - - -

14 ROBERT DICARLO,

15 Having Been First Duly Sworn,
16 was Examined and Testified as Follows:

17 DIRECT EXAMINATION

18 BY MR. FINCH:

19 Q. If you would tell the Court where it is you're
20 employed.

21 A. Beaufort County Sheriff's Office.

22 Q. And how long have you been at the Beaufort
23 County Sheriff's Office?

24 A. Six and a half years.

25 Q. And what's your position with the sheriff's

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1 office?

2 A. Currently I'm a staff sargent right now, road
3 patrol supervisor.

4 Q. And was that your position in August, 2010?

5 A. I was actually a sargent at the time. I have
6 been promoted since.

7 Q. And what are some of the duties and
8 responsibilities of sargent at the sheriff's office in
9 Beaufort County?

10 A. I am the assistant supervisor to the road patrol
11 supervisor for the enforcement division. Respond to calls
12 for service from the general public, extra patrol of
13 neighborhoods and businesses, try to, you know, prevent
14 criminal activity.

15 Q. And did you respond to a call on Wharf Street in
16 Bluffton on August 10th, 2010?

17 A. I did.

18 Q. What was the nature of that call?

19 A. The Bluffton Police Department had located a
20 white 2001 Pontiac which was in the jurisdiction that was
21 listed in NCIC by the Beaufort County Sheriff's Office in
22 reference to an endangered person. I responded, met with
23 Officer Chandler [phonetic] from the Bluffton Police
24 Department, who pointed the vehicle out.

25 Q. And once you arrived on the scene, what did you

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1 do?

2 A. Walked up to the vehicle, ran the tag. As I was
3 approaching the vehicle I saw what may possibly have been
4 some type of red, you know, maybe blood near the trunk.

5 Circled the vehicle to do a security sweep to
6 make sure there was no one inside. No one was found. And
7 I immediately put crime scene tape up, about a fifty-foot
8 circumference of it, and began a crime scene log and
9 notified investigators to have them respond.

10 Q. I'm going to show you what's been previously
11 marked as State's Exhibit Number 41. Can you identify
12 that?

13 A. Yes.

14 That's the -- that's the vehicle in the parking
15 lot and the crime scene tape that I had put up.

16 Q. If you could -- up on the screen there, that's
17 what's been previously identified as State's 41. Can you
18 point out where the Oyster Factory is in relationship to
19 that vehicle?

20 A. It's actually down looking towards the right of
21 the screen.

22 Q. That photograph is a true and accurate depiction
23 of the scene as you -- after you had roped it off with
24 crime scene tape?

25 A. To the best of my recollection, yes.

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1 Q. I'm going to show you what's been previously --

2 MR. PENNINGTON: If Your Honor please, I have no
3 objection to these going in as evidence; however, I
4 think they need to be in evidence before they are
5 published.

6 THE COURT: What's the exhibit number?

7 MR. FINCH: 40 and 41.

8 THE COURT: No objection to 40 and 41; is that
9 correct?

10 MR. PENNINGTON: Yes, sir.

11 THE COURT: All right. 40 and 41 admitted
12 without objection.

13 [Whereupon, State's Exhibit Number 40 is
14 admitted into evidence by the Court]

15 [Whereupon, State's Exhibit Number 41 is
16 admitted into evidence by the Court]

17 Q. [Mr. Finch] And if you take a look at State's
18 40, does that depict the direction where the Oyster
19 Factory is?

20 A. That's correct.

21 MR. FINCH: Okay. No further questions for this
22 witness. Please answer any questions the defense may
23 have.

24 THE WITNESS: Certainly.

25 MR. PENNINGTON: No cross, Your Honor.

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1 THE COURT: All right. You may step down.
2 Thank you very much.

3 THE WITNESS: Thank you.

4 MS. SHEALY: Kim Dinh.

5 [Whereupon, Ms. Dinh comes forward]

6 THE CLERK OF COURT: Place your left hand here
7 and raise your right hand.

8 [Whereupon, Ms. Dinh is duly sworn by the clerk
9 of court as follows: do you swear or affirm that your
10 testimony will be the whole truth and nothing but the
11 truth, so help you God]

12 THE WITNESS: I do.

13 [Whereupon, Ms. Dinh takes the witness stand]

14 THE CLERK OF COURT: State your full name and
15 spell your last name.

16 THE WITNESS: My name is Kimberly Dinh. Last
17 name, D-I-N-H.

18

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1 KIM DINH,

2 Having Been First Duly Sworn,

3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. SHEALY:

6 Q. Ms. Dinh, if you would please tell the jury
7 where you are currently employed.

8 A. I am currently employed at the criminal justice
9 academy as a defensive tactile instructor.

10 Q. Okay. And where were you previously employed?

11 A. Previously I was employed at South Carolina Law
12 Enforcement Division, commonly known as SLED.

13 Q. What was your role at SLED?

14 A. I was assigned to the crime scene unit.

15 My duties were to process crime scenes, also
16 examine latents, footwear, tire wear, and blood pattern
17 analysis, as well as assisting local law enforcement
18 agencies around the state, state agencies and federal
19 agencies.

20 Q. Okay. Tell us a little bit about your
21 educational background.

22 A. Graduated with a four-year degree from
23 University of South Carolina in criminology. Shortly
24 after, I graduated from the criminal justice academy as a
25 class-one sworn law enforcement officer. And then at SLED

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1 I completed a two-year in-house training program, under
2 court-qualified examiners, as a crime scene agent.

3 Q. Okay. And you served as a special agent
4 assigned to the crime scene unit for how long?

5 A. For five years.

6 Q. Now, on August 11th, 2010, were you asked to go
7 to Bluffton?

8 A. Yes, ma'am.

9 Q. And for what purpose were you asked to go there?

10 A. I was asked to process a car in reference to at
11 that time was a missing persons case.

12 Q. Okay. And were you asked to go to Bridge Street
13 or Wharf Street in --

14 A. Yes, ma'am.

15 Q. -- in Bluffton?

16 What type of car was it that you were asked to
17 process?

18 A. It was a white Grand Prix.

19 MS. SHEALY: Beg the Court's indulgence just one
20 moment.

21 [Whereupon, Ms. Shealy reviews documents]

22 MS. SHEALY: Your Honor, at this time I would
23 move to admit State's Exhibit Numbers 42 through 91
24 into evidence. And I understand without objection.

25 MR. PENNINGTON: That is correct, Your Honor.

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1 THE COURT: All right. 42 through 91 admitted
2 without objection.

3 [Whereupon, State's Exhibit Numbers 42 through
4 91 are admitted into evidence by the Court]

5 Q. [Ms. Shealy] Okay. So if you would please
6 describe to the jury what is involved in processing a
7 vehicle.

8 A. Typically, when I arrive on scene the first
9 thing I do is to check and see if the scene is secured.
10 At this time the scene was secured by local law
11 enforcement agencies. I'll get some background
12 information in reference to what the car was involved with
13 to help me figure out exactly what I'm looking for.

14 The first thing I'll do is I'll take general
15 photographs three-sixty around the vehicle to document how
16 the car was when I arrived.

17 From there, if anything was on the outside, I'll
18 document that first to make sure no evidence gets lost
19 when I further enter the car.

20 From there, I'll document the inside of the car,
21 the driver's side, the passenger side, the backseat,
22 depending on what I'm looking for, as well as the trunk.

23 Q. And the goal of this is to do what? What is it
24 that you're trying to achieve when you process a vehicle?

25 A. I'm looking for any types of evidence that a

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1 particular crime has been committed, anything that's out
2 of place, anything that's been destroyed, any type of DNA
3 or biological evidence, any type of weapon, depending on
4 the nature of the crime.

5 MS. SHEALY: And you know what? I think when we
6 met, you asked me to put the pictures in a certain
7 order and I think I have not done it so --

8 THE WITNESS: That's okay.

9 MS. SHEALY: -- let's just -- if we can let them
10 flow in the order that we've got them --

11 THE WITNESS: Okay.

12 MS. SHEALY: -- it might be easier.

13 Q. [Ms. Shealy] Okay. So if we could begin with
14 photo number 42, State's Exhibit 42. And I think if we
15 could use the photos just to walk us through what you did.
16 If you could describe what you saw and what you collected.

17 A. This is the exterior of the car, the rear. This
18 is actually -- appears to be after I processed the car
19 with a chemical called leucocrystal violet. It's a
20 presumptive blood test. If it turns purple -- which in
21 those areas [indicates] you can kind of see the purple
22 area -- it's presumptive blood.

23 I also scaled off two areas, one on the corner
24 and one on the license plate, of blood that I wanted to
25 show exactly how big that area was to scale.

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1 MS. SHEALY: Okay. I'm going to hand up a
2 pointer for you. And if you need to stand and kind of
3 lean towards the screen to point things out for us,
4 you can do so. Just be mindful that the jury is going
5 to need to be able to hear what you're saying.

6 THE WITNESS: Okay.

7 Q. [Ms. Shealy] If you would describe for the jury
8 areas of interest in that photograph.

9 A. I can't really see on this photograph what
10 number that one is. But I believe it --

11 Q. Let me hand you up the actual photos and that
12 might be more helpful.

13 [Whereupon, Ms. Shealy proffers documents to the
14 witness]

15 Q. [Ms. Shealy] Can you see it on that photo?

16 A. Yes, ma'am, I think I can. Yeah. I'm going
17 to --

18 May I reference my notes --

19 Q. Certainly.

20 A. -- just to check?

21 [Whereupon, the witness reviews documents]

22 A. Okay. This area right here is area number --
23 sorry -- area number four, what I marked as marker four.
24 By the tag, that is marker five. That's two areas in the
25 back that I marked for presumptive blood.

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1 Q. [Ms. Shealy] Okay. And you're using that -- is
2 that tape that you're marking it off with?

3 A. Yes, ma'am.

4 It's scale tape. It's just a piece of tape with
5 a ruler on it so I can get an idea in reference to the
6 photograph approximately what the length and height of
7 this is.

8 Q. Okay. So you were seeing blood there and blood
9 on the license tag?

10 A. Yes, ma'am.

11 Q. Okay. And then showing you State's Exhibit -- I
12 think you'll be able to see this one better -- 43.

13 A. Yes, ma'am.

14 This is marker number five, showing a drop of
15 blood. Looks like a linear type of drop. Pretty much
16 means gravity has taken ahold of a drop of blood and
17 pulling it towards the ground, making contact with the
18 license plate first before it traveled.

19 Q. State's Exhibit 44.

20 A. This is a -- some spatter or transfer of blood,
21 along with a -- one strand of long dark hair.

22 Q. Okay. Did you actually collect that hair?

23 A. No, ma'am.

24 Typically, when hair is lost or just fallen out,
25 there's no bulb on the end of the hair. And the bulb is

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1 what they need to use for DNA collection. And then
2 there's no value in the actual strand of hair itself.

3 Q. So you let it remain on the car?

4 A. Yes, ma'am.

5 Q. Okay. State's Exhibit 45.

6 A. That is also another strand of hair. Appeared
7 below the license plate.

8 Q. Okay. And I'm going to hand you up the photo,
9 because you might be able to see it a little better up
10 close.

11 [Whereupon, Ms. Shealy proffers documents to the
12 witness]

13 Q. [Ms. Shealy] Anything else of interest in that
14 photo?

15 A. It appears to be a little bit of blood, as well.

16 Q. Okay. Then State's Exhibit 46.

17 A. This is the passenger side of the vehicle. This
18 would be markers number six, that small one is seven, and
19 those towards the bottom are going to be eight, nine, ten,
20 eleven, twelve. These are also areas that I found of
21 interest, particularly that could possibly be blood. Most
22 likely a free-flowing blood. Gravity pulls it. They're
23 drops of blood, not impact or any sort.

24 Q. Okay. And State's Exhibit 47.

25 A. This is a close-up, marker number six, two drops

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1 of blood.

2 Q. And that's -- it's calling one of those a left
3 and one a right. Showing you the photograph. Anything
4 else of interest on the right one?

5 A. There appears to be a small strand of hair that
6 actually travels through that right one. I'm not sure if
7 you can really see it. But just a piece of a hair in it
8 that --

9 Q. State's Exhibit 48.

10 A. This is marker number seven. It appears to be a
11 drop of blood.

12 Q. State's Exhibit 49.

13 A. This is marker number eight. It's also a drop
14 of blood that is traveling downward.

15 Q. State's Exhibit 50.

16 A. This is the passenger-side door of the Grand
17 Prix.

18 Q. And showing you the photograph itself. Is there
19 anything else of interest about the way that side of the
20 vehicle appears?

21 A. It appears to be something has moved across it.
22 You can kind of see some void areas or wiping kind of
23 motions where either dirt or something was -- has been
24 disturbed kind of in a linear motion.

25 Q. State's Exhibit 51.

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1 A. This would be markers nine, ten, eleven and
2 twelve. These are drops of blood on the passenger's side
3 of the Grand Prix.

4 Q. State's Exhibit 52.

5 A. This is marker number nine, a single drop of
6 blood.

7 Q. State's Exhibit 53.

8 A. This is marker number ten and it's a drop of
9 blood, got -- has a little bit of motion, downward travel.

10 Q. State's Exhibit 54.

11 A. This is marker number eleven. It's two drops of
12 blood. Direction of travel, slight low and right on these
13 two.

14 Q. State's Exhibit 55.

15 A. And this is marker number twelve. It's also a
16 drop of blood.

17 Q. Now, did you prepare a diagram, as well, in this
18 case?

19 A. Yes, ma'am, for the car.

20 Q. Okay. We will turn to that in just a moment.

21 State's Exhibit 56 reflects the front of the
22 vehicle?

23 A. Yes, ma'am.

24 Q. And then State's Exhibit 57 would be the
25 driver's side?

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1 A. Yes, ma'am.

2 Q. State's Exhibit 58, is that closer up on the
3 driver front-tire area?

4 A. Yes, ma'am.

5 Q. And then State's Exhibit 59.

6 A. This is the driver's side of the Grand Prix.
7 This is a post picture of after I process it with that
8 same chemical, LCV, for presumptive blood.

9 Q. And you have some tape on that window?

10 A. Yes, ma'am.

11 This is also -- that tape on the top is -- the
12 top right there is marker number one. That's the first
13 marker I laid down. It is a drop of blood that I've
14 marked.

15 MS. SHEALY: We really did put these pictures in
16 sort of a strange order.

17 Q. [Ms. Shealy] Okay. So State's Exhibit 61 is
18 showing the front -- I mean, the back of the driver's
19 side?

20 A. Yes, ma'am.

21 Q. And then State's Exhibit 62 --

22 MS. SHEALY: Go back -- go back one, please,
23 Shamekia.

24 Q. [Ms. Shealy] The rear of the driver's side --

25 MS. SHEALY: If you could use your pointer.

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1 Q. [Ms. Shealy] -- could you point out that area
2 that has -- right. Okay.

3 Then if we zoom in on State's 62, that reflects
4 that area closer up?

5 A. Yes, ma'am.

6 Q. And then going around the curve of the car, 63,
7 that's how the corner of the car looks there?

8 A. Yes, ma'am.

9 Q. And State's Exhibit 64 comes back to where we
10 started?

11 A. Yes, ma'am.

12 That's a post picture of LCV in the same
13 photograph.

14 Q. And 65 shows that light, a tail light --

15 A. Yes, ma'am.

16 Q. -- a little bit more fully.

17 And 66 zooms in that corner a little more
18 fully?

19 A. Yes, ma'am.

20 Q. And then 67 zooms in on that light?

21 A. Yes, ma'am.

22 Q. And what is that on -- what does appear to be on
23 that light?

24 A. That -- all that linear type of motion is kind
25 of a swiping motion. It's basically motion in blood. If

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1 there's blood on something, it moved across the surface
2 depositing blood in a linear pattern. Will be also called
3 a swipe.

4 Q. Okay. So we've done what you refer to as the
5 three-sixty around the outside --

6 A. Yes, ma'am.

7 Q. -- of the vehicle.

8 And then as a part of your analysis, you also
9 looked inside the trunk?

10 A. Yes, ma'am.

11 Q. Okay. And showing you, then, State's Exhibit
12 68. You opened the trunk. And could you tell the jury
13 how did the inside of the trunk look, as far as contents?
14 Was there --

15 A. There wasn't a lot of things in there. It was
16 mostly cleaned out. Just, as you can tell, one or two,
17 three things maybe and that was it. Normal things that
18 you would see, like a cover, there was -- there was
19 nothing like that in there.

20 You can also tell -- these pictures that when
21 I take them, I take them before entering the trunk. So
22 this is the trunk as I opened it, with the lefthand side
23 pulled down exposing that paint. That painted side, that
24 is all -- that was all done prior to me opening it.

25 Q. Okay. And then State's Exhibit 69. Does that

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1 focus in on the corner of the --

2 A. Yes, ma'am.

3 Q. -- facing the opening of the trunk?

4 A. Yes, ma'am.

5 Q. And then State's Exhibit 70.

6 A. That is the -- where the trunk meets that same
7 area where if you were to close the lid. That same side
8 of the trunk.

9 Q. And then State's Exhibit 71. What does that
10 reflect?

11 A. Originally we thought it was suspected blood,
12 but after we processed it we weren't sure what it was.
13 But it didn't react in a blood behavior.

14 Q. Okay. What are we looking at, though? What is
15 that?

16 A. This is the trunk-well where the spare tire
17 would be. That goes into the center of the tire. This is
18 the divot in the back of the trunk. It appears to be --
19 to have water in it of some sort. I don't know if it was
20 a leak or -- there was a decent amount of water inside of
21 that trunk-well.

22 Q. So was there a spare tire in the back?

23 A. No, ma'am, there was no spare tire.

24 Q. And when you said that you sprayed something on
25 it, that wasn't in your report but you think you remember

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1 doing that; right?

2 A. Yes, ma'am.

3 Q. And tell us what you mean by spraying something
4 on it.

5 A. Typically, as you notice in the other pictures,
6 when I spray LCV, the presumptive blood test, I get a
7 reaction that turns purple.

8 If I do have a positive reaction, I go back and
9 re-photograph that same area after it turns purple. So
10 the fact that there is not a secondary picture of this
11 area turning purple, it didn't behave in a blood-type
12 behavior. So there is no secondary picture of this trunk
13 area being purple.

14 Q. And had there been something covering that area
15 that was bloody, it could have absorbed the blood before
16 it got --

17 A. Absolutely.

18 Q. -- to that level?

19 Then did you go inside the vehicle?

20 A. Yes, ma'am.

21 Q. Showing you State's Exhibit 72. What does this
22 picture reflect?

23 A. This is the driver-side door as I opened it.
24 This is actually after I've marked it with scale tape on
25 the driver's side door right there. And that is marker

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1 number thirteen, I believe. Thirteen.

2 Q. And what are you marking over there with the
3 tape?

4 A. Presumptive blood or suspected blood.

5 MS. SHEALY: Beg the Court's indulgence just a
6 second.

7 [Whereupon, Ms. Shealy reviews documents]

8 MS. SHEALY: Okay. I'm sorry.

9 Q. [Ms. Shealy] Now, what did you say the tape
10 reflected?

11 A. It reflects of an area that I wanted to photo-
12 document closely. In this case it would be suspected
13 blood.

14 Q. Okay. And that is --

15 MS. SHEALY: Maybe I have a closer-up shot.
16 Let's see.

17 [Whereupon, Ms. Shealy reviews documents]

18 Q. [Ms. Shealy] Showing you State's Exhibit 73.
19 This is the steering wheel. Did you do something to the
20 steering wheel?

21 A. Yes, ma'am.

22 I collected two DNA swabs off the steering
23 wheel. We call it touch DNA. Whenever you have --
24 whenever you touch an object, you have the potential of
25 leaving skin cells behind. So what I do is I swab the

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1 steering wheel and potential -- for potential evidence of
2 if somebody grabs it, swabbing it, collecting that DNA, to
3 obtain a profile if anybody had touched that surface.

4 Q. Okay. Let's finish through the pictures and
5 then we'll talk about where all you actually swabbed.
6 Okay?

7 A. Yes, ma'am.

8 Q. So that's the steering wheel from inside the
9 car.

10 And then State's Exhibit 74, what is referred to
11 as a door pull?

12 A. It's the actual area that you use -- that bottom
13 portion.

14 Q. I don't think your --

15 A. Yeah.

16 Q. Your arms aren't quite long enough.

17 A. It's the bottom portion right there.

18 Q. Okay. Where you grab --

19 A. To grab the door physically --

20 Q. -- to put your hand in?

21 A. -- and put your hand and close the door.

22 It's where you're actually pulling the door to
23 close it, so I call that the door pull.

24 Q. Underneath the handle?

25 A. Yes, ma'am.

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1 Q. Okay. And State's Exhibit 75 is a little closer
2 in to that?

3 A. Yes, ma'am.

4 Q. Now, in this photograph, before you put the
5 tape, could you point out where you saw -- what you
6 thought was blood?

7 A. Presumptive or suspected blood in that area.
8 And right above it to the top and right of that,
9 too.

10 Q. And in State's Exhibit 76?

11 A. That's also suspected blood, in the door area,
12 on the frame.

13 Q. State's Exhibit 77?

14 A. Suspected blood here. And I'm also documenting
15 the floorboard, as well.

16 Q. And then State's Exhibit 78 is just a closer-up
17 shot?

18 A. Yes, ma'am. This is with the scale against it.

19 Q. State's Exhibit 79?

20 A. Suspected blood, also with a scale against it.
21 It's the driver doorframe.

22 Q. State's Exhibit 80?

23 A. It's a close-up of that same photograph.

24 Q. And State's Exhibit 81. Is this still your
25 photo?

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1 A. No, ma'am.

2 Q. Okay.

3 A. Probably not.

4 Q. Okay. I'll just hold that, then.

5 Did you also take some photos from the passenger
6 side?

7 A. Yes, ma'am.

8 Q. Okay. State's Exhibit 85.

9 A. This is the inside of the passenger door, as
10 well as the doorframe.

11 Q. And 86?

12 A. Scaled version of suspected blood on the
13 passenger doorframe.

14 Q. And 87?

15 A. A close-up of that same blood.

16 Q. 88?

17 A. Passenger-side seat with the rear and the front
18 floorboard, as well as an area scaled off on the
19 passenger-side seat.

20 Q. 90?

21 A. A baby seat in the back seat.

22 Q. And 91?

23 A. A close-up of that same area from the passenger
24 seat, marker number fourteen.

25 Q. Now, going back to 90 for a second. The back

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1 seat was full, pretty full, with the two baby seats;
2 right?

3 A. Yes, ma'am.

4 Q. Did you take any swabs from the back seat?

5 A. No, ma'am.

6 MS. SHEALY: Okay. You can have a seat again.

7 [Whereupon, the witness complies]

8 Q. [Ms. Shealy] Okay. So once you went through
9 and kind of eyeballed where it looked like there was blood
10 on the inside and on the outside, what's the next step in
11 the process?

12 A. The next step after that, after I photo-document
13 it, is to collect the physical evidence that I find. In
14 this case it would be swabbing the areas that I marked.

15 Q. And what is meant by the term swabbing?

16 A. Swabbing is taking two sterile swabs that are
17 prepackaged. I wet the swab with de-ionized water and
18 then I rub it across the surface that I'm collecting.

19 If I do a presumptive blood test, which is also
20 called phenol, it reacts to a purply color. I will test
21 one swab with the phenynol and then the second swab I will
22 leave untested and package it for the lab.

23 Q. And when you use the term swab, can you kind of
24 give us a description of what that looks like?

25 A. It looks like a standard Q-tip with just a

1 longer end. It's just a cotton end on a stick.

2 Q. And once you have swabbed something, what
3 happens with those actual swabs?

4 A. The swabs will be submitted to the SLED DNA lab
5 for further analysis.

6 Q. Okay. The diagram that you mentioned earlier:
7 do you have your diagram with you?

8 A. Of the exterior of the car? Yes, ma'am.

9 Q. Just take a look at it for a second.

10 A. Yes, ma'am.

11 [Whereupon, the witness reviews documents]

12 Q. [Ms. Shealy] Do you have another copy if I mark
13 this into evidence?

14 A. I believe I do. Let me double check.

15 [Whereupon, the witness reviews documents]

16 A. Yes, ma'am, I do.

17 MS. SHEALY: Your Honor, at this time I would
18 like to mark this into evidence, without objection, as
19 State's Exhibit 218.

20 THE COURT: Any objection to 218?

21 MR. PENNINGTON: No, Your Honor.

22 THE COURT: 218 admitted without objection.

23 [Whereupon, State's Exhibit Number 218 is marked
24 by the court reporter]

25 [Whereupon, State's Exhibit Number 218 is

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1 admitted into evidence by the Court]

2 Q. [Ms. Shealy] Well, this may not do it quite as
3 clearly as we need to.

4 Tell us about the terminology you used. This on
5 the outside --

6 A. Yes, ma'am.

7 Q. -- of the driver's-side back window you refer to
8 as what?

9 A. Marker one.

10 Q. Marker one.

11 And where is marker thirteen?

12 A. Marker thirteen is actually on the inside of
13 that same door. This is -- this being the exterior of the
14 door, I don't put the inside markers on the inside of the
15 door on the exterior sketch.

16 Q. Okay. Showing you State's Exhibit 74, does that
17 picture depict?

18 A. Yes, ma'am.

19 Q. Marker thirteen?

20 A. Yes, ma'am.

21 Q. Okay. Could you point to the jury as to what is
22 marker thirteen?

23 A. Marker thirteen is this area right in here
24 inside the scale tape, inside the "L", suspected blood.

25 Q. Okay. Now, each spot that you taped, did it get

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1 assigned a label of a number?

2 A. Yes, ma'am.

3 Q. And each swab, then, had a number or either a
4 description --

5 A. Yes, ma'am.

6 Q. -- is that correct?

7 Okay. So you showed us marker one from the
8 outside of the back window. That's marker thirteen.

9 A. Yes, ma'am.

10 Q. Then the swab from driver doorframe at bottom.
11 Could you show us? State's Exhibit 78.

12 A. Yes, ma'am.

13 Q. Is that the driver doorframe at bottom?

14 A. That -- I actually -- there was two areas. That
15 is one of the areas. The second area is the one with the
16 six-inch-grade scale tape.

17 Q. State's Exhibit 79?

18 A. Yes, ma'am.

19 Q. Will you point that out to us with the pointer?

20 A. This is the six-inch-grade scale. That's my
21 scale, and the blood right in front of our suspected
22 blood. Right in front of it is the area that I swabbed
23 for collection.

24 Q. Okay. And then the swabs from the inside-door
25 driver pull, going back to State's Exhibit 74 --

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1 Or you can point it out there, as well.

2 A. Yes, ma'am.

3 Q. -- those come from the driver's pull?

4 A. Yes, ma'am.

5 Q. And then the swabs from the steering wheel. And
6 how do you -- how do you swab a steering wheel?

7 A. Basically, I take two swabs and I run it across
8 the entire steering wheel.

9 Different people will grip the steering wheel in
10 different areas, depending on how you drive, so I swab the
11 entire wheel because I don't know how they drive.

12 And I saved both of those swabs to go to touch
13 DNA -- to be analyzed for touch DNA. I don't test
14 anything on those two swabs.

15 Q. Okay. So as you have shown us today, when you
16 went three-sixty around the car, you were taking swabs
17 from each place that you had tape?

18 A. Yes, ma'am.

19 Q. Is that correct?

20 How many swabs -- how many different locations
21 did you take swabs from?

22 A. On the exterior of the car I took twelve swabs
23 or twelve areas of swabs: on the interior, the inside
24 driver's door, the passenger seat, which is markers
25 thirteen and fourteen respectively, as well as the driver

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1 door -- the driver doorframe on the bottom side [phonetic]
2 and the driver -- the doorframe on the passenger side. So
3 that's four more from the inside. And then two sets of
4 touch DNA swabs from the steering wheel, as well as the
5 driver door pull.

6 Q. So how many swabs is that all together?

7 A. It should be twenty.

8 Q. And when you're collecting all these swabs, do
9 you make a decision as to which swabs then get sent to
10 SLED for analysis?

11 A. No, ma'am.

12 That's typically a decision that's made on
13 scene, with the on-scene investigator, to prioritize which
14 swabs are the most important. The top five swabs would be
15 then submitted to SLED for further analysis.

16 Q. Now, when you say the top five swabs get sent to
17 SLED for analysis, could you explain what that means to
18 the jury?

19 A. If there is -- for example, areas eight, nine,
20 ten, eleven, twelve are all collectively in one area.
21 More likely than not, all of that blood is going to be
22 deposited by one source. So we would pick sources that
23 could have potentially different -- I'm sorry -- pick
24 areas that could have potentially different sources to
25 cover as much area of the car as possible.

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1 So I wouldn't pick five of the swabs from one
2 same area. I would pick, for instance, touch DNA from the
3 steering wheel, as well as the door pull, depending on
4 where they could touch. Blood that is separated from
5 another source of blood -- for instance, the driver-side
6 door is on the opposite side from the passenger-side
7 frame, possibly two completely different sources, so I
8 would swab in two different areas, as well.

9 Q. So here in this case, Detective James Perkins,
10 from Charleston County, is that who you spoke with about
11 what should be then sent to SLED?

12 A. Yes, ma'am.

13 Q. And in our case, then, the door pull for touch
14 DNA?

15 A. Yes, ma'am.

16 Q. The steering wheel for touch DNA?

17 A. Yes, ma'am.

18 Q. And then inside the driver's side?

19 A. Yes, ma'am.

20 Q. Outside the vehicle?

21 A. Yes, ma'am.

22 Q. Is that correct?

23 A. Well, the ones from the outside of the vehicle
24 would be markers one -- actually, marker one is the only
25 one from the outside.

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1 The rest of them are from -- marker thirteen is
2 the inside of the driver door, the driver doorframe at the
3 bottom, and then the two touch DNA from the steering wheel
4 and the two touch DNA from the driver-door pull.

5 Q. And, again, in differentiating between the blood
6 DNA and the touch DNA, could you just describe the
7 difference between those two?

8 A. When I do -- when I submit one for a blood DNA,
9 I've done a presumptive field test, it's come back
10 positive for presumptive blood which means -- I can't tell
11 if it's human blood or animal blood. I know it's some
12 source of blood.

13 Touch DNA just basically is a blind swab. I
14 swab it and -- in hopes that the source might have touched
15 this particular area.

16 MS. SHEALY: I beg the Court's indulgence just
17 one moment.

18 [Whereupon, Ms. Shealy reviews documents]

19 Q. [Ms. Shealy] With the swabs that you took that
20 day, did you give some to Detective Perkins and then take
21 same back with you to SLED?

22 A. Yes, ma'am.

23 Q. Okay. And the ones that you took back with you
24 to SLED, those were for the purposes of their getting
25 analyzed by the DNA expert at SLED?

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1 A. That is correct.

2 MS. SHEALY: I beg the Court's indulgence just a
3 moment.

4 [Whereupon, Ms. Shealy reviews documents]

5 [Whereupon, Ms. Shealy and Mr. Finch confer]

6 MS. SHEALY: I have no further questions.

7 Please answer any the defense may have.

8 THE COURT: Cross-examination.

9 MR. PENNINGTON: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. PENNINGTON:

12 Q. Is it Agent Dinh, Officer Dinh, or Ms. Dinh?
13 How do you prefer?

14 A. At that current capacity I was Agent Dinh, I'm
15 currently Officer Dinh, so I don't have a preference.

16 Q. Okay. We'll go with Agent Dinh, to put you in
17 the right context for this case --

18 A. Yes, sir.

19 Q. -- if that's all right.

20 A. Yes, sir.

21 Q. Agent Dinh, one of the standard processes of the
22 procedure is to count swabs, so you know how many are
23 done, when you're going over a vehicle; is that correct?

24 A. Yes, sir.

25 Q. Okay. And there was a search warrant that had

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1 been obtained from a magistrate in order to search this
2 vehicle. And then it's customary to have a search warrant
3 return on the number of swabs, isn't it?

4 A. Yes, sir.

5 Q. Okay. I'm going to show you this document and
6 see if it would refresh your memory. You said that you
7 thought there were twenty swabs that you took?

8 A. May I double check?

9 Q. Certainly. Go ahead.

10 [Whereupon, the witness reviews documents]

11 A. That is correct.

12 Q. [Mr. Pennington] All right. Agent Dinh, I'm
13 going to show you a document. You don't have to tell us
14 what it is. But see if it would refresh your recollection
15 about this particular search of this particular vehicle
16 that day by you.

17 A. It appears to be a search warrant inventory. It
18 actually says --

19 Q. You don't -- you don't want to publish the
20 document. It's not in evidence.

21 A. Oh. I'm sorry.

22 Q. I'm only asking you does it refresh your
23 recollection now as to the number of swabs that you took.

24 A. Yes.

25 Q. And that would be twenty-one swabs?

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1 A. Yes, sir.

2 Q. Okay. Now, turning to the what happened to the
3 twenty-one, five of them went back to Columbia with you
4 that day?

5 A. I believe seven did, sir.

6 Q. Well, let's go through them. It may be seven.
7 But it's the ones that you outlined just a moment ago and
8 that you described that there was the area number one,
9 which was the outside of the car on the driver's side by
10 the pull?

11 A. Yes, sir.

12 Q. That would have been one of the swabs?

13 A. Yes.

14 Q. All right. In that same way, there was the
15 inside of the what would be the driver's door above the
16 pull area. That was one of the touch DNA areas?

17 A. The touch DNA was the actual door pull.

18 Q. The door pull. Okay.

19 All right. So above that is number thirteen,
20 which is the -- which is the area that's on what I would
21 call the fabric part of the door; correct?

22 A. I believe it was leather. I'm not sure if that
23 makes a difference.

24 Q. All right. Well, let's look at the pictures so
25 that we're not guessing.

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1 MR. PENNINGTON: If we could have photograph 74,
2 please. There you go.

3 Q. [Mr. Pennington] So that was a leathery type
4 material?

5 A. Yes, sir.

6 Q. Okay. And so if we count as one -- number one
7 being on the outside of the car by the window, this would
8 be -- let's call this number two in terms of the numbers
9 of swabs; correct?

10 A. Yes, sir.

11 Q. Okay. Then you described that there was touch
12 DNA on the pull.

13 A. Yes, sir.

14 Q. Okay. And the pull would be -- if you would
15 point to that with your pointer again. That's actually
16 where you grab the car door?

17 A. Yes, sir.

18 Q. In that area? Okay. All right. So then we've
19 got three areas identified.

20 Then the fourth area that I'll turn to is at the
21 base of the where the door is on the driver's side like
22 you were getting in or out with the door open?

23 A. Yes, sir.

24 Q. Okay. That's number four.

25 And number five would be the steering wheel?

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1 A. Yes, sir.

2 Q. Okay. And I think that what's confusing about
3 five versus seven is is that you did on the steering wheel
4 two touch DNA swabs; right?

5 A. Yes, sir.

6 Q. And I think that's also true of the pull. So
7 there were two there; correct?

8 A. Yes, sir.

9 Q. So that's how we get the seven?

10 A. Yes, sir.

11 Q. All right. Now, you've described that normally
12 what you try to do when you're doing this effectively --
13 because you want to kind of get diverse sources of DNA.
14 That's one of the things that you indicated your training
15 indicates; right?

16 A. Yes, sir.

17 Q. Because you look at different areas of the
18 target area to see where different kinds of sources might
19 be; is that correct? Fair to say?

20 A. There's also other circumstances on why we would
21 take a specific area versus other areas.

22 If we know -- in this case the victim is
23 deceased. We know that the victim did not get back in the
24 car and drive off, so any type of DNA or blood in the
25 driver area is going to be more probative to the case than

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1 the blood that's in or on the trunk or in the area where
2 we suspect the victim could have been.

3 Q. Okay. So you focused on the driver area and
4 that's where we got those seven swabs?

5 A. Correct.

6 Q. Okay. But you also did take these same Q-tip
7 swabs basically all around the vehicle?

8 A. Different sets of swabs, yes, sir.

9 Q. Right.

10 And so we ended up with fourteen swabs that
11 didn't go to Columbia?

12 A. I believe so.

13 Q. Okay. And so that would include, for example on
14 the passenger side where there was that big droplet that
15 was right there at the base of that car-door entry point,
16 wasn't there? Do you remember that one?

17 A. Yes, sir.

18 MR. PENNINGTON: Let's see if we can get up a
19 picture of that one. Could we have 86, please.

20 Q. [Mr. Pennington] All right. So this would be
21 the passenger side of the same vehicle?

22 A. Yes, sir.

23 Q. And the black dot or kind of reddish-black dot
24 next to the tape that you have there would be the target
25 area that we're talking about?

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1 A. Yes, sir.

2 Q. And that area was swabbed by you?

3 A. Yes, sir.

4 Q. Okay. And it's customary to basically give
5 what's left over to the agency that's in charge of the
6 investigation?

7 A. Yes, sir.

8 Q. And then they maintain it in a safe, secure
9 manner?

10 A. I would -- I can't answer that question for
11 them, but I would imagine they would.

12 Q. Well, I'm talking about what is the customary
13 practice and procedure.

14 A. I think that varies from agency to agency on
15 their customary. But typically it would be secured in
16 some shape, form or fashion.

17 Q. All right. It could be put in a bag and put in
18 a refrigerator?

19 A. I assume so.

20 Q. Okay. And DNA can be tested not just, you know,
21 like -- DNA is not like milk where if you don't drink it
22 within a few days it's no good and it has to be thrown
23 out. You can test DNA years after the fact, can't you?

24 A. Absolutely.

25 Q. Okay. So if these swabs were held on to, at any

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1 point subsequently they could have been sent up to SLED
2 for further testing?

3 A. That is correct.

4 Q. Okay.

5 [Whereupon, Mr. Pennington reviews documents]

6 MR. PENNINGTON: The Court's indulgence, please,
7 Your Honor.

8 [Whereupon, Mr. Pennington and Mr. Cooper
9 confer]

10 Q. [Mr. Pennington] Agent Dinh, as part of your
11 training as crime scene analyst, you obviously look at
12 things like blood patterns, splatter patterns, those kinds
13 of things; right?

14 A. Yes, sir, I do.

15 Q. All right. And you look for any kind of signs
16 or indications of how blood gets where it gets and that
17 kind of thing?

18 A. Yes, I do.

19 Q. But ultimately you are not qualified or able to
20 say how long a drop of blood had been in a certain
21 location? That is not your expertise?

22 A. It actually is.

23 The correct answer for that would be that once
24 blood dries, you really cannot tell. It depends on the
25 weather conditions, how hot it is. Blood, being

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1 biological, does break down. So not stored properly, it
2 can break down. Blood is similar to latents in that
3 manner in that once it is deposited you really can't tell
4 how long it's been, once it's been dried.

5 Now, if it's still wet, we can get an
6 approximation of time depending on the volume of blood.
7 Blood will dry, like water, on the outside going in. We
8 could get an approximation as long as the blood is still
9 wet. But the blood being dry, we cannot.

10 Q. All right. In this case, on August the 9th of
11 2010, we're talking about dried blood on this car?

12 A. I believe it was August the 11th, sir. But,
13 yes, sir.

14 Q. On August the 11th you came down to Bluffton and
15 there was dried blood?

16 A. Yes, sir.

17 MR. PENNINGTON: Thank you. That's all I have.

18 THE COURT: Redirect?

19 MS. SHEALY: Nothing further.

20 THE COURT: You may step down. Thank you very
21 much.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: You may be excused. Thank you.

24 [Whereupon, Ms. Dinh is excused and exits the
25 witness stand]

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1 MR. FINCH: The State calls Wendy Conant.

2 [Whereupon, Ms. Conant comes forward]

3 THE CLERK OF COURT: Place your left hand here
4 and raise your right hand.

5 [Whereupon, Ms. Conant is duly sworn by the
6 clerk of court as follows: do you swear or affirm
7 that your testimony will be the whole truth and
8 nothing but the truth, so help you God]

9 THE WITNESS: I do.

10 [Whereupon, Ms. Conant takes the witness stand]

11 THE CLERK OF COURT: State your full name and
12 spell your last name.

13 THE WITNESS: Wendy Conant. C-O-N-A-N-T.

14 MR. FINCH: Your Honor, at this time I would
15 move to -- move for the admission of State's 81
16 through 84 and 92 through 104, my understanding
17 without objection.

18 MR. PENNINGTON: That is correct, Your Honor.

19 THE COURT: All right. 81 through 84.

20 STATE'S LAW CLERK: And 92 through --

21 THE COURT: And 92 through 102 admitted without
22 objection --

23 STATE'S LAW CLERK: 104, Your Honor.

24 THE COURT: -- 104 admitted without objection.

25 MR. FINCH: Thank you, Your Honor.

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1 [Whereupon, State's Exhibit Numbers 81 through
2 84 are admitted into evidence by the Court]

3 [Whereupon, State's Exhibit Numbers 92 through
4 104 are admitted into evidence by the Court]

5 MR. FINCH: Good afternoon, Ms. Conant.

6 THE WITNESS: Good afternoon.

7 - - - - -

8 WINDY CONTANT,

9 Having Been First Duly Sworn,

10 was Examined and Testified as Follows:

11 DIRECT EXAMINATION

12 BY MR. FINCH:

13 Q. If you would tell us where you're employed.

14 A. I work for the Beaufort County Sheriff's Office
15 in Beaufort, South Carolina.

16 Q. And what is your position with Beaufort County?

17 A. I am an investigator.

18 Q. And how long have you been with Beaufort County?

19 A. Five yeas and eight months.

20 Q. And what are some of the duties and

21 responsibilities as an investigator with the Beaufort
22 County Sheriff's Office?

23 A. Typically, you know, you get assigned a case to
24 follow up on. And you make contact with witnesses. You
25 might need to subpoena records, do any -- you follow up on

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1 any leads that you have available to try and pinpoint the
2 person that committed the crime that was reported.

3 Q. And on August 10th, 2010, did you have any
4 involvement regarding a 2001 Pontiac Grand P -- Prix, I'm
5 sorry, that was found in a parking lot near the Bluffton
6 Police Department?

7 A. Yes, I did.

8 Q. And what was your involvement with that?

9 A. My involvement with that vehicle was I obtained
10 a search warrant that allowed SLED to do a search of the
11 vehicle.

12 Q. And did SLED conduct the search?

13 A. Yes, they did.

14 Q. Do you recall who was involved in that search
15 from SLED?

16 A. I know Kim Dinh.

17 And if I can refer to my notes.

18 [Whereupon, the witness reviews documents]

19 A. The other two were Kiki Stanley and Sabrina
20 Zonizer [phonetic].

21 Q. [Mr. Finch] And do you know what they
22 collected? SLED.

23 A. I know they had twenty-one swabs, but I do not
24 recall exactly what each swab was.

25 Q. And did you then have any direct contact with

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1 the vehicle?

2 A. Subsequent to the search warrant being served,
3 it was towed to our impound lot over in Beaufort and I
4 responded to the impound lot and I collected an additional
5 six swabs.

6 Q. And did you also photograph the vehicle?

7 A. Yes, I did.

8 Q. If I could refer you to State's Exhibit Number
9 92. You'll see it on the screen behind you. Can you
10 identify that picture?

11 A. Yes, sir.

12 That is the vehicle that was in our impound lot
13 on which I did six swabs.

14 Q. And going on to 93, that's a close-up of the
15 door?

16 A. Correct.

17 Q. As it -- just as it arrived at your impound lot?

18 A. Yes.

19 It had already been processed by SLED, and what
20 you're seeing is a residue from them processing it.

21 Q. And 94. What are we looking at there?

22 A. In the upper right-hand corner of the door just
23 near the window, there's a -- that outer black piece, you
24 see a red spot right near where the window is open, and
25 that is a drop of blood. And that is one of the ones that

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1 I swabbed.

2 Q. And move on to State's 95. I just referenced --

3 A. Correct. That's to scale. Uh-huh.

4 Q. And moving on to 96.

5 A. That's just an overview of an area that I'm
6 about to process.

7 I usually start from far away and work my way in
8 with the photographs.

9 Q. All right. And then let's move on to 97. And
10 can you see from this photo you were zeroing in on?

11 A. On this one in particular, where the doorframe
12 starts to curve up heading towards the steering wheel,
13 there is a red spot. And that is a blood spot that I
14 swabbed.

15 Q. Okay. And then 98.

16 A. And that's just a closer photograph of that same
17 spot.

18 Q. And take a look, then, at State's 103.

19 A. That is another spot that is about midway on the
20 foot-runner of the car, right near the driver's seat, and
21 that is an area of dried blood that I did swab.

22 Q. And who directed you to take these swabs once
23 it's in the impound lot?

24 A. That came from my master sargent, Master Sargent
25 Riley.

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1 Q. And when you take these swabs, generally what's
2 the process?

3 A. We have sterile cotton swabs that are packaged
4 in a sealed paper container. And you open the container.
5 You have gloves on. And you put one or two drops of a
6 saline solution onto the swab, if you're swabbing
7 something that's dry. And so that will moisten a little
8 bit. And then you swab the whole area. And then you put
9 that swab into a sterile box and you seal the box and you
10 write on the box when you collected it, where you
11 collected it, put your initials, the date and time.

12 Q. And that was done in this case?

13 A. Correct.

14 Q. And do you recall what you did with the swabs, I
15 believe the six swabs, that you took from that vehicle?

16 A. I turned all six of them over to the case
17 officer, who was Staff Sargent Todd Calhoun.

18 Q. And did you have any other involvement with this
19 vehicle or any investigation of this case after that?

20 A. I did not.

21 [Whereupon, Mr. Finch and Ms. Shealy confer]

22 MR. FINCH: No further questions. Please answer
23 any questions the defense may have.

24 THE COURT: Cross-examination.

25 MR. PENNINGTON: Officer Conant, just a couple

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1 of questions, if you don't mind.

2 THE WITNESS: No, sir.

3 CROSS-EXAMINATION

4 BY MR. PENNINGTON:

5 Q. The date that you did this was the tenth day of
6 August, 2010; is that right?

7 A. That's correct.

8 Q. August 10th?

9 A. Yes.

10 Q. And so if Monday was the 9th, this would be
11 Tuesday the 10th? Does that sound right?

12 A. That does sound right.

13 Q. Okay. That's the same day that the SLED agent
14 was also there?

15 A. They were there, correct.

16 Q. The same day? The same Tuesday?

17 A. They were -- yeah.

18 I got the search warrant so that SLED, who was
19 there, could process the car.

20 Q. All right. So in effect, SLED had the first
21 opportunity to go around and take their swabs; is that
22 right?

23 A. That's right.

24 Q. And they did that where the car was found on
25 Wharf Street in Bluffton?

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1 A. That's correct.

2 Q. And then the car was transported to the Beaufort
3 County Sheriff's Office impound lot?

4 A. That's correct.

5 Q. And that's on Shankland Road [phonetic] in
6 Beaufort?

7 A. Yes.

8 Q. And then that's when you were directed to take
9 the six swabs that you took from the vehicle that you've
10 just shown photographs of?

11 A. That's correct.

12 Q. And so those were collected at about 3:45 p.m.
13 on the same day?

14 A. That's correct.

15 Q. And then they would have been turned over to the
16 case agent?

17 A. Yes.

18 Q. And that ended your involvement in this case?

19 A. Yes, it did.

20 MR. PENNINGTON: One moment, Your Honor.

21 [Whereupon, Mr. Pennington and Mr. Cooper
22 confer]

23 MR. PENNINGTON: That's all I have. Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: Any redirect?

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1 MR. FINCH: No, Your Honor.

2 THE COURT: You may step down. Thank you very
3 much.

4 THE WITNESS: Thank you.

5 [Whereupon, Ms. Conant is excused and exits the
6 witness stand]

7 MS. SHEALY: Your Honor, may we approach the
8 bench for a moment?

9 THE COURT: Pardon?

10 MS. SHEALY: May we approach the bench for a
11 moment?

12 THE COURT: Yes, ma'am.

13 [Whereupon, an off-the-record bench conference
14 is held]

15 THE COURT: All right. Ladies and gentlemen of
16 the jury panel, we're going to take an afternoon break
17 at this time.

18 Leave your notepads in the chairs. Please don't
19 discuss the case amongst yourselves.

20 If you need anything, let the bailiffs know.
21 And if you'll follow the bailiffs to the jury room.

22 [Whereupon, the jury exits the courtroom at
23 3:10 p.m.]

24 THE COURT: All right. We'll take about a
25 fifteen or twenty-minute break. Thank you.

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1 MS. SHEALY: Thank you, Judge.

2 MR. PENNINGTON: Thank you, Your Honor.

3 [Whereupon, a recess is taken from 3:10 p.m. to
4 3:31 p.m.]

5 THE COURT: Are y'all ready? Are y'all ready?

6 MS. SHEALY: [No response]

7 MR. PENNINGTON: [No response]

8 THE COURT: Are y'all ready?

9 MS. SHEALY: Yes.

10 THE COURT: Are you ready to get started?

11 MS. SHEALY: Yes, sir.

12 THE COURT: Let me see both of you a minute.

13 [Whereupon, an off-the-record bench conference
14 is held]

15 THE COURT: Bring us the jury, please.

16 [Whereupon, the jury enters the courtroom at
17 3:37 p.m.]

18 THE BAILIFF: Jurors are all present, Your
19 Honor.

20 THE COURT: Thank you, very much.

21 And if you will call your next witness, please.

22 MS. SHEALY: I will, Your Honor. Todd Calhoun.

23 Your Honor, while he's walking up, I would move
24 to admit State's Exhibit 217, without objection, those
25 being the five swabs collected by Kim Dinh that were

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1 sent to SLED.

2 MR. PENNINGTON: No objection, Your Honor.

3 THE COURT: All right. 217 admitted without
4 objection.

5 [Whereupon, State's Exhibit Number 217 is marked
6 by the State]

7 [Whereupon, State's Exhibit Number 217 is
8 admitted into evidence by the Court]

9 [Whereupon, Mr. Calhoun comes forward]

10 [Whereupon, Mr. Calhoun is duly sworn by the
11 clerk of court as follows: do you swear or affirm
12 that your testimony will be the whole truth and
13 nothing but the truth, so help you God]

14 THE WITNESS: Yes, ma'am.

15 [whereupon, Mr. Calhoun takes the witness stand]

16 THE CLERK OF COURT: State your full name and
17 spell your last name.

18 THE WITNESS: Todd Calhoun. C-A-L-H-O-U-N.
19
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1 TODD CALHOUN,

2 Having Been First Duly Sworn,

3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. SHEALY:

6 Q. Detective Calhoun, tell the jury where you're
7 employed.

8 A. I am employed with the Beaufort County Sheriff's
9 Office, Beaufort, South Carolina.

10 Q. And how long have you worked there?

11 A. A little over eight years.

12 Q. Eight years?

13 A. Yes, ma'am.

14 Q. And what was your employment history prior to
15 working there?

16 A. I had worked for the City of Courtland Police
17 Department in upstate New York and for Tideway County
18 Sheriff's Office in upstate New York.

19 Q. Okay. In August of 2010, what was your role at
20 the Beaufort County Sheriff's Department?

21 A. I was a sargent assigned to the southern
22 investigations division.

23 Q. On August 9th, 2010, did you have the occasion
24 to meet Mike Bartley?

25 A. Yes, ma'am.

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1 Q. And could you describe for the jury the
2 circumstances of your meeting him?

3 A. As an investigator, I was assigned a follow-up
4 investigation to a missing report that Mr. Bartley had
5 made through Deputy Sheriff Seth Marantz [phonetic] with
6 the sheriff's office.

7 Q. And what was the nature of your meeting?

8 A. The nature of my meeting was to meet with
9 Mr. Bartley to ascertain any further information that he
10 could possibly give to aid us in locating Ms. Alexis
11 Lukaitis.

12 Q. Were you provided with a telephone number for a
13 Mr. Darryl Drayton?

14 A. Yes, ma'am.

15 Q. Okay. And would you advise the jury, please,
16 what that telephone number was?

17 A. The number that was provided was [REDACTED].

18 Q. Did you, in fact, attempt to call Mr. Drayton?

19 A. Yes, ma'am.

20 Q. And were you successful in reaching him?

21 A. Eventually I was.

22 Not before -- in calling that number, it had
23 indicated to us to call another number, which was [REDACTED]

24 [REDACTED] And we had contacted that number and had eventually
25 been able to speak to him after multiple attempts.

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1 Q. Now, when you say you eventually were able to
2 speak to him, how do you know you were talking to Darryl
3 Drayton?

4 A. As a normal course of business, because I
5 actually can't see the person on the other end of the
6 phone to make a facial identification, I asked, you know,
7 is this Darryl Drayton. And he indicated that it was.

8 Q. Was there an arrangement made with Mr. Drayton?

9 A. Yes.

10 Actually, myself and Lance Corporal Pooler
11 [phonetic], who was working with me, also an investigator,
12 we were actually at Mr. Drayton's residence. And I had
13 asked if we could meet with him. He had indicated to us
14 that he was not there at the time and I, in return,
15 indicated to him that I was aware of that because I was
16 standing in his driveway.

17 Q. I'm sorry. I didn't hear that last part.

18 A. Because I was standing in his driveway.

19 Q. Did, in fact, Mr. Drayton ever show up there?

20 A. No.

21 We waited approximately thirty minutes for
22 Mr. Drayton to show up, that being the relative time to be
23 able to travel from one side of the southern part of the
24 county to the other side. Would have been ample enough
25 time for him to reach us and meet us there.

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1 Q. Okay. Were you assigned to this missing persons
2 case?

3 A. Yes, ma'am.

4 Q. And at some point do you have contact with the
5 Charleston County Sheriff's Office?

6 A. Yes.

7 I received a phone call from Investigator James
8 Perkins, of the Charleston County Sheriff's Office,
9 indicating that they had located the body of Ms. Alexis
10 Lukaitis.

11 Q. When you have two different agencies involved in
12 a singular investigation, could you describe to the jury
13 what type of coordination takes place?

14 A. Typically, the lead investigators keep an open
15 line of communication so that one hand kind of knows what
16 the other hand is doing, per se.

17 And leading up to this conversation we had at
18 that point, in Beaufort County, been working a missing
19 persons case. And then when Mr. Perkins had advised to us
20 that they had located the body and they were conducting a
21 homicide investigation, that kind of leads us to switch
22 gears, per se, and be of support to the primary
23 investigations office, which ended up being Charleston
24 County Sheriff's Office.

25 Q. That's because the body was found --

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1 A. That's correct. Because it was found --

2 Q. -- in Charleston County?

3 A. -- within the jurisdiction of Charleston County.

4 Q. Were you familiar with the fact that it was
5 found on Old Jacksonboro Road?

6 A. Yes, ma'am.

7 Q. And could you advise the jury what county that's
8 in?

9 A. And that is in Charleston County. That is not
10 inside of Beaufort County.

11 Q. Okay. Now, initially when you had contact from
12 Detective Perkins, had an identity been made on the body?

13 A. There had not been a positive identification
14 until after they had spoken and met with Mr. Bartley.

15 Q. Okay. And do you -- are you aware that dental
16 records were ordered and compared to the body?

17 A. I do not recall that.

18 Q. Okay. Did you interview witnesses in connection
19 with this case?

20 A. Yes, ma'am.

21 Q. And could you tell the jury the names of some of
22 the witnesses that you interviewed?

23 A. I interviewed Mr. Bartley, the complainant on
24 our missing persons report. I interviewed a Tina Johnson,
25 a Bradley V. , Shannon Hooper, had a brief telephone

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1 conversation with a lady by the name of Pearl Powell who
2 was the defendant's aunt.

3 Q. Okay. And then did you actually answer a call
4 to [REDACTED] -- how do you pronounce it? Is it --

5 A. It's actually pronounced Geothie Road. It's
6 G-E-O-T-H-I-E. Geothie Road.

7 Q. Geothie Road.

8 And what was the date that you went to Geothie
9 Road?

10 A. We went to Geothie Road on August 11th. The
11 evening of August the 11th.

12 Q. Now, before we go into that, let me ask you a
13 little bit about your dealings with Mike Bartley. Could
14 you describe for the jury, if you would, his level of
15 cooperation with the police and his demeanor when dealing
16 with the police.

17 MR. PENNINGTON: Your Honor, we're now vouching
18 and giving opinions.

19 MS. SHEALY: I'm not asking him to render a
20 vouch. I'm just asking for his demeanor and whether
21 he was cooperative.

22 THE COURT: All right. I'll sustain the
23 objection.

24 Rephrase the question. I think the question is
25 improper form. Okay?

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1 MS. SHEALY: As to demeanor, as well, Judge?

2 THE COURT: Just rephrase the question.

3 Q. [Ms. Shealy] When you met with Mr. Bartley,
4 could you indicate to the jury whether or not he seemed
5 concerned about Alexis' whereabouts?

6 MR. PENNINGTON: Leading, Your Honor.

7 MS. SHEALY: Your Honor, I don't think demeanor
8 is inappropriate, to ask just what his demeanor was.

9 THE COURT: Well, just -- come up here just a
10 second.

11 [Whereupon, an off-the-record bench conference
12 is held]

13 Q. [Ms. Shealy] Would you describe your dealings
14 with Mike Bartley and how he appeared?

15 A. Mr. Bartley, being the complainant of a missings
16 persons report, seemed to be very concerned with the
17 whereabouts of his fiancé, Alexis Lukaitis.

18 Q. Okay. So now going back to your reporting to
19 Geothie Road.

20 A. Yes, ma'am.

21 Q. Describe for the jury who went there and what
22 you found when you got there.

23 A. Myself, Lance Corporal Pooler, who -- and who
24 was working with me. And Sargent Alberton, she also
25 responded with us to [REDACTED] [REDACTED] [REDACTED].

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1 And we had been requested to respond there
2 through the southern what we would refer to Bluffton as
3 area four patrol supervisor, who had been made contact
4 with through the Bluffton Police Department personnel that
5 was working that evening.

6 Q. Okay. And did you, in fact, speak with Stephen
7 Edwards?

8 A. Yes, ma'am.

9 Q. When you arrived, did you begin talking to
10 Stephen?

11 A. Yes.

12 In essence, being requested to respond at his
13 request, I met with Mr. Edwards to gather what information
14 he had pertaining while we were there.

15 Mr. Edwards seemed to be very cooperative and
16 concerned about some belongings --

17 MR. PENNINGTON: Objection as to what he's
18 concerned about. Hearsay, Your Honor.

19 THE COURT: Overruled. Go ahead.

20 A. He was concerned about some belongings that were
21 on his property that were not -- did not belong to him.

22 Q. [Ms. Shealy] Okay. If you would describe
23 Stephen Edwards' house to the jury.

24 A. Attempting not to be offensive. In approaching
25 his property, the grass is very overgrown. The exterior

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1 of the residence is in somewhat of disarray and in poor
2 condition as if it had not been well-maintained.

3 To go into further description, the interior of
4 the house was an extreme magnification of the exterior of
5 the house. There -- the back porch, which is the main
6 access to the interior of the home that's being used by
7 Mr. Edwards, is very well-dilapidated, somewhat cluttered,
8 and you have to be concerned where you step because of
9 different items that were laying around and the condition
10 that the floorboards were actually in. And that was
11 indicative of the interior of the residence.

12 It was very disorganized, dirty, conditions that
13 people typically shouldn't live in. There were buckets of
14 feces and urine throughout the residence. There clearly
15 was no power in the residence. And there were items that
16 were kind of stacked up and strewn throughout the
17 residence.

18 Q. Did you ask him or advise him that you would
19 like to search his whole property and his house and shed?

20 A. Yes, ma'am.

21 Q. And did he, in fact, give you consent to search
22 everything?

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

24 Q. Your Honor, I would ask that Detective Calhoun
25 be able to step down so we could go through the items.

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1 THE COURT: Okay.

2 THE WITNESS: Your Honor, if I may, can I remove
3 my sport coat while we do this?

4 THE COURT: Yes, sir.

5 THE WITNESS: Thank you.

6 Q. [Ms. Shealy] Now, when you got there, had some
7 items already been moved into Mr. Edwards' house?

8 A. Yes, ma'am.

9 Q. Okay. If we could begin with what has been
10 previously marked as State's Exhibit 159.

11 [Whereupon, Ms. Shealy and Mr. Pennington
12 confer]

13 MS. SHEALY: Your Honor, at this time, with no
14 objection, the State would like to move in items
15 State's Exhibits 15 through 162, including 162-A, 163,
16 164, and 164-A, 165, 166, 167, 168, 169 and 170.

17 THE COURT: Any objection?

18 MR. PENNINGTON: No, sir.

19 THE COURT: All right. Admitted without
20 objection.

21 [Whereupon, State's Exhibit Numbers 159 through
22 162, 162-A, 163, 164, 164-A, and 165 through 170 are
23 admitted into evidence by the Court]

24 Q. [Ms. Shealy] Okay. So showing you what's been
25 marked as State's Exhibit 159.

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1 MS. SHEALY: If you could come stand in front of
2 the jury.

3 [Whereupon, the witness complies]

4 Q. [Ms. Shealy] Could you tell the jury where you
5 found that?

6 A. This was -- if you recall the picture that shows
7 the chair and the garbage can at the back step going to
8 the back porch, you basically walk into the back porch, go
9 almost the length of the back porch to another door that
10 enters the main area of the house. Right inside that
11 doorway to the right, this was sitting there in a pile of
12 debris.

13 MS. SHEALY: Okay. You can just sit that back
14 on top.

15 Q. [Ms. Shealy] And I'm showing you what's been
16 marked as State's Exhibit Number 60.

17 A. And this, as well, was in that same area right
18 next to the emergency roadside kit, right inside the main
19 door into the residence.

20 Q. 161?

21 A. This is a bag of clothing which was sitting --
22 again, if you remember the picture of the back of the
23 house there's the white chair, the garbage can, and then
24 the back porch. This was sitting on that white chair.

25 Q. 162?

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1 A. This was the diaper bag that was inside of the
2 brownish-colored garbage can that was at the back porch
3 right next to the white chair.

4 Q. 162-A? I mean not -- now, I'm not sure -- well,
5 did you take the contents out of any items?

6 A. This was stuff that was inside of the diaper bag
7 that we removed and photographed.

8 Q. Okay. Very good. That's 162-A. Let me show
9 you those items.

10 A. That's a cloth diaper, two disposable diapers,
11 and a blue child's clothing.

12 Q. 163?

13 A. This is a pair of two disposable diapers and a
14 child's blanket you would have seen on the photograph.
15 Looking into the garbage can, it was kind of down
16 underneath the spare-tire mat.

17 Q. State's Exhibit 164?

18 A. This is the spare tire that was located between
19 where the white chair and the garbage can was, over near
20 the porch kind of out in the grassy area, between those
21 items and the porch.

22 Q. 164-A?

23 A. This is the spare-tire well cover that was --
24 that you also saw inside of the brownish-red garbage can.
25 This would have been sitting over the top of the baby

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1 blanket and the diapers.

2 Q. 165?

3 A. This is the spare-tire jack insert that would
4 have -- it fits in the trunk of a vehicle in the well.
5 This was located underneath Mr. Edwards' back porch.

6 Q. 166?

7 A. This is the shed building, that Mr. Edwards'
8 alluded to in his testimony, depicted in the picture.

9 This was the bag of clothing that was located
10 underneath the back porch and under that shed out on his
11 property.

12 Q. This is the CVS bag?

13 A. Yes.

14 Q. Hold it up.

15 [Whereupon, the witness complies]

16 A. It's contents are a pair of socks, some
17 shoelaces, and then a yellow shirt.

18 Q. [Ms. Shealy] And if we can just turn around the
19 back of the bag, as well.

20 [Whereupon, the witness complies]

21 Q. [Ms. Shealy] 167?

22 A. This is the speaker box and its contents.

23 Now, this would have been where you walked into
24 the back door and to the right where there was the items
25 that were previously alluded to right inside the right