

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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1 door. You would have gone farther to the right to a
2 secondary room or an off-room, which would have appeared
3 to have been a bedroom of sorts, and this was sitting
4 right inside of that door.

5 Q. And then 168?

6 A. And this is the box of items that you would have
7 seen in the picture next to the speaker box in that same
8 room where the speaker box was located.

9 MS. SHEALY: Okay. You can have a seat again.

10 Q. [Ms. Shealy] Now, would you describe to the
11 jury when -- did y'all actually collect the evidence while
12 y'all were out there?

13 A. Yes, ma'am.

14 Q. Now, what happens with evidence once you collect
15 it from a scene?

16 A. We collect it from the scene, place it in
17 various and sundry containers, this being because the
18 majority of it had what we believed to be was blood with
19 possible DNA value.

20 It was packaged in -- excuse me -- in paper
21 bags, taken back to the Hilton Head Law Enforcement Center
22 where my office is located, and secured in a processing
23 room.

24 Q. Okay. What is a processing room?

25 A. It's a room that we use to -- that has a variety

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1 of different implements in it, such as what they're
2 referred to as commercial dryers, not your typical dryer
3 that you would throw something in that would tumble-dry.
4 It's actually a cabinet that circulates ambient air and it
5 helps aid in the process of drying. Cabinets such as
6 those, some refrigerators, some workspace areas that we
7 would use for processing latent evidence, and some glue
8 tanks that would also be used for processing latent
9 evidence. And it's literally across the hall from our
10 office.

11 Q. Now, who has access to the evidence processing
12 room?

13 A. Typically, in the use of the room, anybody has
14 access to it unless we use it to store evidence and then
15 the case officer who is responsible for the case and the
16 evidence will secure it there for processing.

17 In this case because we knew that Charleston
18 County was going to be, in essence, taking possession of
19 it, it was secured in this room. It's locked with a key.
20 And we use, as you can see on these bags, the red evidence
21 tape to tape the door so that everybody knows to stay out
22 and we know if it's been tampered with.

23 Q. Could you describe for the jury what SLED is?

24 A. State Law Enforcement Division. They basically
25 handle assisting other agencies in the process of

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1 evidence. In some cases they investigate other crimes.
2 And in this incident, they're an agency that we -- a State
3 agency that we used to assist us in the investigation,
4 whether it be processing the evidence and things of that
5 nature.

6 Q. Okay. Well, you told us about the corroborative
7 effort with Charleston. At some point, do -- these items
8 that you talked to us about, were they then turned over to
9 Charleston County's crime scene office?

10 A. Yes, ma'am.

11 Officer Mills, from Charleston County Sheriff's
12 Office, he responded to our office and he took possession
13 of all these items.

14 Q. Now, in that photograph that has the CD disk
15 stuff and the emergency bag --

16 A. Yes, ma'am.

17 Q. -- there was a filet knife?

18 A. Yes, ma'am.

19 Q. Why didn't y'all take that filet knife that day?

20 A. Could you pull that picture up so that I --

21 Q. Yes.

22 A. -- can explain that easier?

23 MS. SHEALY: Photograph 21.

24 A. Okay. As I alluded to previously, this is kind
25 of a very small micro picture of the way Mr. Edwards'

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1 house is.

2 There's piles of debris all throughout the house
3 and things of that nature. At the time, in collecting
4 this evidence and photographing this, Mr. Edwards
5 indicated to us that this was his knife, this was his
6 filet knife. And in the Bluffton area there's a lot of
7 waterfront, and a lot of people that have a lot of time on
8 their hands have a tendency of hanging out down fishing
9 and working at the Oyster Factory and things of that
10 nature. So there was no reason for me to believe that
11 this was not his knife.

12 Also, if you look -- and from our perspective,
13 in this situation we looked to see what to us kind of
14 looks out of place. And I know this kind of looks like a
15 mess of jumble. But you can clearly see that items that
16 are sitting on top are the emergency bag and the CD tapes
17 and, in fact, the knife -- the blade and the knife is
18 actually underneath this visor. And that black object and
19 the bottom of the knife is underneath this bag, which were
20 I believe items that he had -- the blue bags were food
21 products and things of that nature that he got from the
22 Bluffton self-help.

23 So we didn't collect it the night we went out
24 and collected all this evidence, because all indications
25 to us were that this didn't belong to him and it was not

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1 involved in the crime because of the way it was stacked
2 throughout the house.

3 Q. [Ms. Shealy] Now, in fact, though, you do go
4 back later and get the knife; is that correct?

5 A. Yes, ma'am.

6 After conferring with my master sargent who is,
7 in essence, my big supervisor over the investigations, he
8 felt that we should probably collect it and submit that as
9 well to Charleston County.

10 Q. Okay. And showing you what's been marked as
11 State's Exhibit 170: is this the -- this may not be the
12 container that you had it in, but is this --

13 A. No.

14 Q. -- the knife that you got from Mr. Edwards's
15 house?

16 A. Yes, this is the knife.

17 Q. Okay. And on the occasion that you went back to
18 get the knife, did --

19 MS. SHEALY: Let me just stick it back in there.

20 Q. [Ms. Shealy] When you went back to get the
21 knife, did Mr. Edwards point out some other items that he
22 had found?

23 A. Yes, ma'am.

24 He had indicated -- at this point in time,
25 his --

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1 THE COURT: Solicitor --

2 MS. SHEALY: I'm sorry. Go ahead.

3 MR. PENNINGTON: Objection. Hearsay, Your
4 Honor. He's describing what the witness pointed out
5 to the officer.

6 THE COURT: [No response]

7 Q. [Ms. Shealy] Did you collect some items?

8 A. Yes, ma'am.

9 I collected a pair of sneakers and a sock that
10 had been cut in half.

11 Q. And showing you what's already been marked into
12 evidence State's 172 and 171.

13 A. This is the left sneaker that had been located
14 in Mr. Edwards' car and this is the right sneaker that had
15 been located in Mr. Edwards' car.

16 Q. And showing you State's Exhibit Number 30, does
17 that picture depict from where you got the sneakers?

18 A. Yes, ma'am.

19 That's actually located in Mr. Edwards's car,
20 the rear-passenger compartment area.

21 Q. And was there a sock also found in that area?

22 A. Yes, ma'am, there was.

23 Q. And showing you State's Exhibit 169.

24 A. This is the sock that was recovered, as well, in
25 the same general area.

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1 Q. And all of these items that we've gone over,
2 they stayed in the evidence processing room until James
3 Mills from Charleston County came and picked them up?

4 A. That's correct.

5 Q. Now, what about the vehicle of Ms. Lukaitis?
6 Are you aware that he also picked up that vehicle?

7 A. I'm not familiar with that at all.

8 Q. Okay. Did you participate that evening in
9 interviewing Mr. Edwards?

10 A. Yes.

11 Q. And based on that, did you go to a jewelry
12 store?

13 A. We did go, based -- we did go to a jewelry
14 store, based on information that Mr. Edwards provided to
15 us.

16 Q. And where is that jewelry store located in
17 relationship to the Food Lion?

18 A. It's actually in what's called Kitty's Crossing,
19 which is a plaza that houses a variety of different
20 stores. And it is -- if you're -- from 278 were -- the
21 road in Bluffton, if you were looking at the complex from
22 the road, Food Lion is all the way to the right and Golis
23 Jewelers is right next door. I mean, it's two doors down
24 to the left.

25 Q. Okay. And did you have the occasion to speak to

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1 Mr. Golis when you went in there?

2 A. Yes, ma'am. I went to Mr. Golis and inquired
3 about a --

4 MR. PENNINGTON: Objection as to what Mr. Golis
5 said.

6 THE COURT: He said he inquired.

7 Don't testify to what Mr. Golis said to you.

8 THE WITNESS: Yes, sir.

9 Q. [Ms. Shealy] You were asking Mr. Golis?

10 A. I was asking Mr. Golis about a ring, an
11 individual that may have brought in a ring within
12 recent --

13 Q. Okay. And while there, did you show him a
14 photographic line-up?

15 A. Yes, ma'am.

16 Q. And did you in any way tell him who to choose
17 out of the line-up?

18 A. No, ma'am.

19 Q. Showing you what's been previously marked as
20 State's Exhibit 175. Is this the line-up that you showed
21 him?

22 A. Yes, ma'am.

23 Q. And did you read this admonition to him prior to
24 his looking at it?

25 A. Yes, ma'am.

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1 Q. Okay. And did he, in fact, give you a written
2 statement?

3 A. He did.

4 Q. And did he give you a ring?

5 A. Yes, he did.

6 Q. I'm showing you what's been marked as State's
7 173 for ID purposes. Is this the ring that he gave you?

8 A. Yes, ma'am, it is.

9 Q. Now, could you tell the jury whether Mr. Drayton
10 was arrested for the murder of Alexis Lukaitis?

11 A. Yes. He was picked up by our agency on an
12 unrelated incident and subsequently he was charged by
13 Charleston County Sheriff's Office for the murder of
14 Alexis Lukaitis.

15 Q. Okay. And what was the date that he was
16 arrested?

17 A. He was arrested on the 11th of August.

18 MS. SHEALY: Beg the Court's indulgence just a
19 moment.

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

21 Q. [Ms. Shealy] The ring and the line-up that you
22 just showed me, you also gave those over to Mr. Mills?

23 A. That's correct.

24 MS. SHEALY: I have no further questions.

25 Please answer any that the defense may have.

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1 THE WITNESS: Yes, ma'am.

2 THE COURT: Cross-examination.

3 MR. PENNINGTON: Just a moment, Your Honor.

4 [Whereupon, Mr. Pennington reviews documents]

5 CROSS-EXAMINATION

6 BY MR. PENNINGTON:

7 Q. Sargent Calhoun, you mentioned that my client
8 was arrested on Wednesday, August the 11th. That was in
9 Bluffton, was it not?

10 A. Yes, I believe so. I was not present during
11 that process.

12 Q. Okay. And so -- and just so we get the dates
13 correct -- and I sometimes confuse numbers but I know the
14 days better. This would have been -- if Monday was August
15 9th, the 11th would have been Wednesday, the same week?

16 A. I believe so.

17 MR. PENNINGTON: Thank you.

18 THE COURT: Redirect?

19 MS. SHEALY: None, Your Honor.

20 THE COURT: You may step down. Thank you very
21 much.

22 THE WITNESS: Thank you, Your Honor.

23 [Whereupon, Mr. Calhoun is excused and exits the
24 witness stand]

25 MR. FINCH: The State calls John Adams.

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1 [Whereupon, Mr. Adams comes forward]

2 THE CLERK OF COURT: Place your left hand here
3 and raise your right hand.

4 [Whereupon, Mr. Adams is duly sworn by the clerk
5 of court as follows: do you swear or affirm that your
6 testimony will be the whole truth and nothing but the
7 truth, so help you God]

8 THE WITNESS: I do.

9 THE CLERK OF COURT: State your full name and
10 spell your last name.

11 THE WITNESS: My name is John G. Adams. The
12 last name is A-D-A-M-S.

13 MR. FINCH: Your Honor, at this time the State
14 would move for the admission of State's 107 through
15 113 into evidence.

16 MR. PENNINGTON: No objection, Your Honor.

17 THE COURT: 107 through 113 admitted without
18 objection.

19 [Whereupon, State's Exhibit Numbers 107 through
20 113 are admitted into evidence by the Court]

21 MR. FINCH: Good afternoon, Mr. Adams.
22
23
24
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JOHN G. ADAMS,

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

DIRECT EXAMINATION

BY MR. FINCH:

Q. If you would tell the Court where it is you're employed.

A. I'm employed with the Beaufort County Sheriff's Office.

Q. And how long have you been with Beaufort County?

A. I've been with Beaufort County since 2002.

Q. And what's your position there?

A. My current position is I'm an investigator with the southern division.

Q. And is that what you were doing in August, 2010?

A. Yes, sir.

Q. What are some of the duties and responsibilities of investigator?

A. Following up on cases, collecting fingerprints and other evidence, photographs, shoe impressions, tire impressions, interviewing witnesses, things like that.

Q. And did you have occasion to take some photographs of Mr. Drayton in August, 2010?

A. I did, sir.

Q. And what's generally the nature of just taking

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1 those photographs, if you recall?

2 A. I believe that Mr. Drayton was in one of our
3 interview rooms and I went in and took my camera and photo
4 scale and took some photographs of him.

5 Q. And what's the -- I'm going to show you what's
6 been marked and admitted as State's 107 through 113. If
7 you could identify those.

8 [Whereupon, the witness reviews documents]

9 Q. [Mr. Finch] And if we could, we'll just go
10 through them one at a time starting with 107. Can you
11 just tell us what that photo is of?

12 A. It's an overview shot of the defendant from the
13 waist up.

14 Q. And would that be for identification purposes?

15 A. Yes, sir.

16 Q. And then we go on to 108. And what are we
17 looking at here?

18 A. Noting tattoo, scars, marks, anything like that.

19 Q. And 109?

20 A. Just giving a more detailed shot of tattoos,
21 with the photo scale for reference.

22 Q. And anything else of note in that photograph?

23 A. I believe there are some scratches up around the
24 neck area right in the center of the chest.

25 Q. And going to the next one. I believe it's 110.

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1 A. Some scratch marks on the forearm.

2 Q. If you could, I believe there's a pointer up
3 here. There it is right there next to you. If you could
4 use that to indicate -- we'll go back one picture to 109.
5 If you could indicate areas of interest in that
6 photograph.

7 A. These appear to be scratches up in here.

8 Q. And you would have been photographing to
9 document those scratches?

10 A. The scratches and the tattoos.

11 Q. And going to the next; 110.

12 A. Some sort of scratch here and here.

13 Q. And 111?

14 A. It appears there's a scratch or a scar right
15 through the web of the hand.

16 Q. 112?

17 A. Just documenting the inside of the palm of the
18 hand.

19 Q. 113?

20 A. An injury to the finger that's been bandaged --

21 Q. And then 114 --

22 A. -- the right-hand index finger.

23 Q. And then 114?

24 A. And this is underneath the bandage.

25 MR. FINCH: Thank you. Take your seat.

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1 [Whereupon, the witness complies]

2 MR. FINCH: No further questions at this time,
3 Your Honor.

4 Please answer any questions the defense may have
5 for you.

6 THE COURT: Cross-examination.

7 MR. PENNINGTON: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. PENNINGTON:

10 Q. Sargent Adams, referencing these photographs
11 that you've just talked about, 107 through 111, let's back
12 up. The date that you took these photographs was on
13 Wednesday the 11th?

14 A. I believe that's correct, sir.

15 Q. Okay. And this was at the Hilton Head --

16 A. Substation.

17 Q. -- substation for the --

18 A. Yes, sir.

19 Q. -- Beaufort County --

20 A. -- Sheriff's Office --

21 Q. -- Sheriff's Office?

22 A. Yes, sir.

23 Q. Okay. And you were not part of any kind of --
24 you were just asked to come into the room and take some
25 photographs?

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1 A. Yes, sir, that's correct.

2 Q. And so you do not know how the marks on the
3 chest occurred? They didn't occur in your presence?

4 A. No, sir, they did not.

5 Q. Or the mark on the forearm, you don't know how
6 old that was or where it came from?

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

8 Q. Or the scratch or scar on the hand that you
9 referenced, you don't know how old that was or where it
10 came from?

11 A. That's correct, sir.

12 Q. But you were there to gather evidence; right?
13 You were there to photograph --

14 A. Took photographs, yes, sir.

15 Q. -- my client for evidentiary reasons?

16 A. Yes, sir.

17 Q. And, specifically, you were looking for any kind
18 of marks that you could find?

19 A. Yes, sir.

20 Q. Including recent injuries or scratches; correct?

21 A. I was told to photograph the defendant. And
22 just of general practice I would look for identifying
23 marks, scars, tattoos, or any sort of injury.

24 Q. All right. So if you had seen an injury you
25 would have zeroed on in and taken a picture, just like you

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1 did on these photographs?

2 A. To the best of my knowledge, yes, sir.

3 Q. Now, you've shown us some of the pictures you've
4 taken, but not all; isn't that correct?

5 A. I believe there are quite a few more pictures.

6 Q. Now, you had occasion -- let me back up and lay
7 a predicate for this. You had occasion to see my client's
8 face, did you not?

9 A. Yes, sir. I was in the room with him.

10 Q. Okay. And then as a consequence you not only
11 took the pictures you took, but you had a chance to
12 photograph him from both sides? From the right side and
13 from the left side?

14 A. Yes, sir.

15 Q. Okay. Without telling us what this is, since
16 it's not in evidence, I would ask you to just simply
17 indicate if you recognize what that depicts. Do you
18 recognize that?

19 A. I believe I do, yes, sir.

20 Q. All right. So you took -- you had a chance to
21 take pictures of my client from what would be the right
22 side of his face?

23 A. That appears to be his right side, yes, sir.

24 Q. And these are digital pictures, aren't they?

25 A. Yes, sir, they are.

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1 Q. And so we can blow them up?

2 A. [No response]

3 Q. Just take a look at that for me, sir. Is it
4 fair to say that there are no scratches on the right side
5 of his face?

6 A. I would say that's fair.

7 Q. Does that -- that particular view confirm that
8 there are no scratches on the right side of his face?

9 A. There don't appear to be any scratches on the
10 right side of his face in that photograph.

11 MR. FINCH: Your Honor, the State would object.
12 No one can see what he's referencing.

13 THE COURT: I'm sorry. What?

14 MR. FINCH: The State can't -- the State would
15 object because no one can see -- the jury can't see
16 what he's referencing. He's got to reference --

17 THE COURT: Well, he's just referencing it for
18 questioning. He's not introducing it. You can go sit
19 there and look, if you want, if you want to cross-
20 examine him on it -- or redirect on it, excuse me, you
21 may do that.

22 The objection is overruled.

23 Q. [Mr. Pennington] Now, I'm going to ask you if
24 you recall looking at what would be the left side of his
25 face. Did you look at the left side of his face, Officer

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1 Adams?

2 A. I took these photographs.

3 Q. Well, let's not talk about the photographs. I'm
4 really just trying to give you a chance to refresh your
5 recollection about what you saw.

6 So you did have an opportunity to see the left
7 side of his face, did you not?

8 A. I took these photographs, yes, sir.

9 Q. And is it fair to say that there were no
10 scratches on the left side of Darryl Drayton's face?

11 A. I do not see any scratches, in this photograph,
12 of the left side of his face.

13 Q. And, in fact, that's what you were looking for?
14 In other words, you were looking for all the marks or
15 artifacts that would be visible to you as a crime scene --
16 or as a detective?

17 A. Yes, sir. Photograph the defendant.

18 [Whereupon, Mr. Pennington and Mr. Cooper
19 confer]

20 MR. PENNINGTON: The Court's indulgence.

21 [Whereupon, Mr. Pennington and Mr. Cooper
22 confer]

23 MR. PENNINGTON: Thank you, Officer. There may
24 be some redirect. I'm not sure.

25 THE COURT: Any redirect?

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1 MR. FINCH: Yes, Your Honor, briefly.

2 REDIRECT EXAMINATION

3 BY MR. FINCH:

4 Q. If I may refer to the items Mr. Pennington was
5 showing you --

6 [Whereupon, Mr. Finch reviews documents]

7 Q. [Mr. Finch] Now, you say this is a photo that
8 you took?

9 A. I believe these are all photos that I took.

10 Q. And what date were those taken?

11 A. On the 11th, I believe.

12 Q. Okay. Did you see the defendant on August 8th?

13 A. No, sir.

14 Q. Did you see the defendant on August 9th?

15 A. No, sir.

16 Q. Did you see the defendant on August 10th?

17 A. No, sir.

18 Q. And the injuries that you photographed on the
19 11th, what was the condition of those injuries and
20 scratches?

21 A. I'm not sure of the question.

22 Q. Were they bleeding?

23 A. They were just as they were depicted in the
24 photos.

25 Q. So scabbed?

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1 A. Yes, sir.

2 Q. Healed?

3 A. Yes, sir.

4 MR. FINCH: No further questions, Your Honor.

5 THE COURT: Any recross?

6 MR. PENNINGTON: No, sir.

7 THE COURT: You may step down. Thank you very
8 much.

9 [Whereupon, Mr. Adams is excused and exits the
10 witness stand]

11 [Whereupon, Ms. Shealy and Mr. Pennington
12 confer]

13 MS. SHEALY: James Milz.

14 [Whereupon, Mr. Milz comes forward]

15 THE CLERK OF COURT: Place your left hand here
16 and raise your right hand.

17 [Whereupon, Mr. Milz is duly sworn by the clerk
18 of court as follows: do you swear or affirm that your
19 testimony will be the whole truth and nothing but the
20 truth, so help you God]

21 THE WITNESS: Yes, I do.

22 THE CLERK OF COURT: State your full name and
23 spell your last name.

24 THE WITNESS: James Thomas Milz. M-I-L-Z.
25

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JAMES MILZ,

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

DIRECT EXAMINATION

BY MS. SHEALY:

Q. Officer Milz --

A. Ma'am?

Q. -- tell the jury where you work.

A. I work at the Charleston County Sheriff's
Office, forensic investigator.

Q. How long have you been a forensic investigator?

A. Going on five years now, ma'am.

MS. SHEALY: Judge, I'm going to admit, without
objection, photograph State's Exhibits 115 through
127, photographs 129 through 158.

THE COURT: 158?

MS. SHEALY: Yes, sir.

THE COURT: All right. Any objection?

MR. PENNINGTON: No, sir.

THE COURT: All right. 115 through 127, 129
through 158, admitted without objection.

[Whereupon, State's Exhibit Numbers 115 through
127 are admitted into evidence by the Court]

[Whereupon, State's Exhibit Numbers 129 through
158 are admitted into evidence by the Court]

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1 Q. [Ms. Shealy] Okay. You were one of the
2 forensic investigators pertaining to the investigation of
3 the case of the State vs. Darryl Drayton; is that correct?

4 A. Correct, ma'am.

5 Q. And that involved evidence from a variety of
6 places; is that correct?

7 A. Yes, ma'am.

8 Q. Okay. Now, was your first role in going to the
9 scene where the body was located?

10 A. It was, ma'am.

11 Q. And that was at Old Jacksonboro Road?

12 A. And 174. Yes, ma'am.

13 Q. Would you tell the jury whether or not that's
14 actually in Charleston County.

15 A. It is in Charleston County. Highway 174 and Old
16 Jacksonboro cross just near Savannah Highway.

17 Q. Okay. Tell the jury, please, if you would, when
18 you arrived there what do you do first when you get to a
19 scene and who did you go with.

20 A. I went with my sargent, Sargent Paul McManigal.
21 He is the sargent in charge of the forensic department.

22 One of the first things that we do when we come
23 on a scene is we talk to the officers that are already on
24 scene, just to get a little bit of the lay of the land,
25 what's going on.

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1 After that, I like to take a moment and look at
2 what I have, see -- in this case, since we had a victim,
3 to find the best route into this area that would not
4 disturb any evidence, an entry and exit pathway into the
5 area.

6 And then after that, then we will usually decide
7 what we're going to do next. Usually, that will consist
8 of starting to take photographs and video of the actual
9 incident location.

10 Q. Okay. And in that this was on a dirt road, were
11 there any tracks that you saw that were of particular
12 interest to you?

13 A. Yes, ma'am.

14 The tracks that we particularly liked where the
15 deceased was was footprints and also tire tracks that
16 swerved off of the road where the victim was at and then
17 it looked like it swerved in and out possibly --

18 MR. PENNINGTON: Objection to speculation.

19 THE COURT: Overruled. Go ahead.

20 A. -- possibly placing the victim near the apex of
21 the tire tracks off of the road.

22 Q. [Ms. Shealy] Okay. And when you arrived there,
23 was the body still there?

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

25 Q. When you say that you saw both shoe -- possible

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1 shoe prints and tire prints, what level of care did you
2 have to take in the area?

3 A. Well, like I stated earlier, it was a dirt road
4 and it had rained I believe in the past forty-eight hours,
5 so we had good tracks in the dirt surface. So we took
6 care to make sure that we could photograph and possibly
7 gather this evidence.

8 Q. Okay. Now, so what do you do first when you see
9 possible tire impressions? What do you do?

10 A. The first thing I'm going to do, ma'am, is
11 photograph at all angles, look at the tire tracks, the
12 ones that I especially like best that show the best
13 detail. I'm going to photograph this from a birds-eye
14 view and then from all angles, left, right, front and
15 back. And then after that, we try to lift it with plaster
16 of paris molds to preserve it.

17 Q. Okay. And what is the reason for taking these
18 photographs? What purpose does that serve?

19 A. The purpose of the photographs is to -- later,
20 if we can establish possibly a motor vehicle, to try to
21 match them up to that vehicle.

22 Q. If I could get you to --

23 MS. SHEALY: Judge, with your permission, may I
24 have Mr. Milz step down in front of the jury?

25 THE COURT: Yes, ma'am.

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1 Q. [Ms. Shealy] Okay. Showing you State's Exhibit
2 176 -- I've collected all of these together -- could you
3 just kind of tell us what this means and what the orange
4 depicts and what you're depicting in these photographs?
5 If you would go through each one.

6 A. The orange -- my sargent and I, we put the
7 spray-paint, this orange marker paint, just so -- as a
8 reference point for visualization so we could come back to
9 it.

10 The scale right here is just a scale so -- just
11 for reference of the size of the track itself. Again --

12 Q. And do these pictures -- are these pictures in
13 the same place on the ground or are these -- are you
14 taking them as you go along a route?

15 A. Yeah, we -- we are going along taking pictures
16 of, like I said, the best pictures that we could see that
17 we had detail in the actual tire tracks itself.

18 Q. Okay.

19 A. So we are not just staying in one little
20 location. We are moving around in the area looking at the
21 best impressions in the dark.

22 Q. And is that because different tires have
23 different treads?

24 A. Yes, ma'am, they do.

25 Q. Now, would y'all, then, make the comparison

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1 between the tire impressions? Or is that sent somewhere
2 else?

3 A. No, ma'am. That would be sent to SLED itself.

4 Q. Okay. We don't need to go through each of
5 those. But you took a series of photographs based on the
6 impressions that were on the ground?

7 A. Yes, ma'am, we sure did.

8 Q. Now, when you were -- let's look at some of the
9 photographs regarding the tire tracks. Showing you what
10 has been previously marked as State's Exhibit 116 -- I'm
11 sorry -- 115.

12 MS. SHEALY: And I believe there's a pointer up
13 there.

14 THE WITNESS: Yes, ma'am.

15 Q. [Ms. Shealy] It's fairly obvious. But if you
16 can just show what y'all saw as possible relevant tire
17 tracks. Can you point those out?

18 A. Yes, ma'am.

19 Anywhere that you can see these blue and green
20 cones, we were -- we first put those down as reference
21 points for the tire tracks that I mentioned earlier that
22 curved in toward where the victim was laying.

23 Q. And can you show us --

24 MS. SHEALY: Your Honor, I don't know if he's
25 going to be able to reach far enough to show where the

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1 body was in that picture. Would you mind if he
2 stepped in just for a second to point that out?

3 THE COURT: That's fine.

4 MS. SHEALY: Be careful with that door. It's
5 going to swing.

6 THE WITNESS: Okay.

7 Q. [Ms. Shealy] The body has been removed in this
8 photograph; is that correct?

9 A. Yes, ma'am --

10 Q. Could you show --

11 A. -- but it would be off the -- this point --

12 Q. Just point with the pointer.

13 A. -- right here.

14 It would be almost to this location, off of the
15 apex of the tire tracks right here. It would be off-
16 screen.

17 Q. Okay. And you used different type of markers
18 for different type of evidence in this photograph?

19 A. Yes, ma'am.

20 In this scene, in this picture right here,
21 actual green and blue cones we use for tire tracks.

22 These right here, these little yellow placards,
23 we use those -- I believe -- I have to consult my notes,
24 but I believe those are for the footprints.

25 These white placards right here was for actual

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1 hard pieces of evidence that we found. I believe this was
2 a napkin that was near the deceased. That was also taken
3 just for evidentiary reasons --

4 Q. Okay. We'll go over those in just a second.

5 But each of those different types of markers
6 were for different types of evidence?

7 A. Yes, ma'am.

8 Q. Okay. Showing you what's been marked as State's
9 Exhibit 122. Can you show us the tire marks in those
10 pictures -- that picture?

11 A. Uh-huh.

12 I don't if the jury can actually see the -- but
13 there is a curve mark right here, going toward this area
14 right in here, where it appeared to us that a vehicle came
15 in and then came out.

16 Q. Okay. A little closer-up of that is 123.

17 A. Yes, ma'am. It's sideways, yes, ma'am, but
18 that's it.

19 Q. And 124?

20 A. Same view. Coming in from here, curving forward
21 where the remains were, and then going back out to the
22 road.

23 Q. And you have told us about the use of the orange
24 paint.

25 A. Yes, ma'am.

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1 Q. I'm showing you State's Exhibit 125. Can you
2 explain the use of the orange paint?

3 A. That was just to help us when we first started
4 before we put actually the blue and green markers, plastic
5 markers, down that -- the path that we really were really
6 interested in before we actually put the plastic markers
7 down now.

8 Q. Okay. And then from the opposite direction,
9 State's Exhibit 126. Does that show it coming from the
10 other area?

11 A. Correct. There is the curve right there, yes,
12 ma'am.

13 Q. Now, in that photo, as well as the previous one,
14 125, I notice there are no vehicles in the area. Were
15 y'all allowing vehicles to travel in the area that you
16 were working in?

17 A. Oh, no, ma'am.

18 Both ends of that road were -- had crime scene
19 tape up and actual deputies preventing anybody from coming
20 into that scene.

21 Q. Okay. Now, you told us that you actually took
22 some tire casts. Once you had taken your photographs, you
23 actually took some impressions of the tire area?

24 A. Yes, ma'am, we did.

25 MS. SHEALY: Okay. You can go ahead and have a

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1 seat again.

2 [Whereupon, the witness complies]

3 Q. [Ms. Shealy] And how is that accomplished?

4 A. We have a actual kit that is -- I get a metal
5 frame of an area that I want to cast. I'll put this metal
6 frame around this area. I'll make a slurry mix of plaster
7 of paris or dental stone with water. I will pour this
8 into the area. And pretty much because it was a hot day
9 that day, it takes about a half hour to make it as hard as
10 cement.

11 Q. Okay. Now, in this case, because of the types
12 of photographs that you took on the ground, you sent to
13 SLED the photographs; is that correct?

14 A. Yes, ma'am.

15 Q. Okay. For them to make their comparison?

16 A. Correct.

17 Q. And we'll get to what you took off the car in a
18 moment. Okay?

19 A. Yes, ma'am.

20 Q. But you've also told us that as part of what you
21 do, you look to see -- I think you told us there's a
22 certain type of marker to see if there's any type of
23 physical potential evidence on the ground?

24 A. Yes, ma'am.

25 Q. Okay. So in the area near where the body was or

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1 the body had been, were there some items around there that
2 you collected?

3 A. Yes, ma'am, there was.

4 Q. Okay. Showing you State's Exhibit 116. Could
5 you tell the jury what that depicts?

6 A. Yes, ma'am. That was a crushed Bud Lite beer
7 can.

8 Q. And did you actually collect that?

9 A. It was, ma'am. It was collected.

10 Q. And did you do any type of testing on them?

11 A. Yes, ma'am.

12 The item was subjected to Super-Glue fuming,
13 which will enhance latent fingerprints. And then we
14 dusted. And no fingerprints were developed on the can,
15 ma'am, of any use.

16 MS. SHEALY: Your Honor, at this time I would
17 admit into evidence State's 184.

18 MR. PENNINGTON: No objection, Your Honor.

19 THE COURT: 184 admitted without objection.

20 [Whereupon, State's Exhibit Number 184 is
21 admitted into evidence by the Court]

22 Q. [Ms. Shealy] And this is the beer can that was
23 found?

24 MS. SHEALY: Well, this is going to take
25 forever.

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1 Q. [Ms. Shealy] But you didn't find any
2 fingerprints on it?

3 A. No, ma'am. There was no usable fingerprints
4 observed on the can.

5 Q. You can just pull it out for the jury.

6 [Whereupon, the witness complies]

7 Q. [Ms. Shealy] And where was that in relationship
8 to the body?

9 A. Very close to the body, ma'am. No more than
10 five yards, possibly.

11 Q. Okay. And then you mentioned earlier a napkin
12 that you found?

13 A. Yes, ma'am. Also close to the body.

14 Q. Showing you State's Exhibit 117.

15 A. Yes, ma'am. Placard number three.

16 Q. And did you do anything to see if you could find
17 any evidence on the napkin?

18 A. Yes, ma'am.

19 That was also collected. Since it is a paper
20 product, I use another chemical to try to develop latent
21 prints on paper products, which is called menhydren
22 [phonetic], which if there is a print on there it will
23 turn it pink. There was nothing developed on that napkin.

24 MS. SHEALY: Okay. Your Honor, at this time I
25 would admit 185, the napkin.

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1 MR. PENNINGTON: No objection, Your Honor --

2 Q. [Ms. Shealy] And you can see --

3 THE COURT: Number 185 admitted without
4 objection.

5 Q. [Ms. Shealy] -- the napkin in there?

6 A. Yes, ma'am.

7 [Whereupon, State's Exhibit Number 185 is
8 admitted into evidence by the Court]

9 Q. Okay. So you found nothing on that?

10 A. No, ma'am.

11 Q. And then was there a wrapper from a -- is that a
12 case of Budweiser or something?

13 A. Yes, ma'am. The plastic wrapper from a case of
14 Budweiser beer.

15 Q. Okay. And showing you State's Exhibit 118.

16 A. Yes, ma'am. Number -- placard number four was
17 the plastic wrapper.

18 Q. Okay. Using your pointer, if you could stand on
19 that side, please, and show us where the body was in
20 relationship to that. Do you see the debris over on the
21 lefthand side?

22 A. Yes, ma'am.

23 If y'all can see this black area right here,
24 this is almost where -- if this photo was a little bit
25 bigger -- the victim was laying right here.

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1 Q. Okay. And, also, just a closer-up shot of that
2 is State's Exhibit 119. Did you do any kind of testing on
3 that?

4 A. Yes, ma'am.

5 The beer wrapper was also subjected to Super-
6 Glue fuming, to try to enhance any kind of latent prints,
7 and dusted also with black powder. Negative results on
8 anything usable.

9 Q. Okay. Showing you --

10 MS. SHEALY: State's Exhibit 179, Your Honor,
11 that we would move into evidence with no objection.

12 THE COURT: Did you say 179?

13 MS. SHEALY: 179.

14 THE COURT: Any objection?

15 MR. PENNINGTON: No, sir.

16 A. Yes, ma'am.

17 MR. PENNINGTON: No objection.

18 THE COURT: 179 admitted without objection.

19 [Whereupon, State's Exhibit Number 179 is
20 admitted into evidence by the Court]

21 Q. [Ms. Shealy] So you found nothing on that?

22 A. No, ma'am. Nothing usable, no, ma'am.

23 Q. Now, was there a cigarette butt?

24 A. Yes, ma'am. But farther up the road from that
25 area.

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1 Q. Okay. And when you say farther up the road,
2 could you tell the jury how much farther up the road? Do
3 you have that information, or did Sargent McManigal find
4 it?

5 A. From the actual where the deceased was -- and,
6 yes, I forgot my glasses -- 115 feet.

7 Q. 115 feet?

8 A. Yes, ma'am.

9 I found it when actually I was walking toward
10 where my vehicle was parked, collected it, and I -- and
11 collected it because it was a fresh cigarette butt, it had
12 not been weathered.

13 Q. Okay. And you found it as you were walking back
14 to your vehicle, you said?

15 A. Yes, ma'am.

16 Q. But you went ahead and collected it?

17 A. Yes, ma'am.

18 Q. And you identified that with the number five
19 placard? Showing you State's Exhibit 120.

20 A. Yes, ma'am, that is it. Yes, ma'am.

21 Q. Now, was this actually sent up to SLED?

22 A. Yes, ma'am. It was sent up for DNA testing.

23 Q. Okay. And is that inside this bag?

24 A. Yes, ma'am, it is.

25 MS. SHEALY: Okay. Your Honor, we would move

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1 into evidence State's Exhibit 178.

2 MR. PENNINGTON: No objection, Your Honor.

3 THE COURT: Admitted without objection.

4 [Whereupon, State's Exhibit Number 178 is
5 admitted into evidence by the Court]

6 Q. [Ms. Shealy] Now, you were telling us about
7 that area of debris -- I'm sorry -- the fire debris.

8 A. Yes, ma'am.

9 Q. I'm showing you what's been marked as State's
10 Exhibit 121.

11 Let me first ask you: could you describe how
12 the body appeared when you saw it?

13 A. The body was -- the deceased was laying on her
14 back, and right side, if I recall, in a slightly bent
15 shape. Rigor mortis had set in and her --

16 THE WITNESS: Can I consult my notes, please?

17 MS. SHEALY: Absolutely.

18 [Whereupon, the witness review documents]

19 A. She displayed signs of rigor mortis. And her
20 right arm and left leg were elevated off the ground,
21 indicating that the victim had died in a different
22 position.

23 Q. Okay. Was there anything unusual about her
24 clothing?

25 A. Yes, ma'am.

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1 The clothing was charred and the -- we took that
2 as a sign that the remains -- someone tried to set the
3 remains on fire.

4 Q. Okay. Could you tell us about what type of
5 clothing she had on?

6 A. Yes, ma'am.

7 She was wearing white Niki shoes, white shorts,
8 halter top.

9 Q. And was there an obvious wound to her?

10 A. Yes, ma'am.

11 There was a large laceration to the throat
12 area.

13 Q. And you told us that there was charring to her
14 shorts and her shirt. What about her arm and legs? Was
15 there any charring to her arms and legs?

16 A. Yes, ma'am.

17 Q. Now, that photograph that's being shown right
18 now, what does that represent? State's Exhibit 121.

19 A. In the debris field near the victim was this
20 pack of Marlboro cigarettes.

21 Q. And when you say the debris field, what do you
22 mean by that?

23 A. The charred debris that was right beside the
24 body. Burnt -- the burnt Marlboro pack, all -- leaves,
25 stick -- twigs, that -- to that effect.

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1 MS. SHEALY: Your Honor, at this time, without
2 objection, the State would offer State's Exhibit 177.

3 MR. PENNINGTON: No objection, Your Honor.

4 Q. [Ms. Shealy] And, Detective --

5 THE COURT: Admitted without objection.

6 [Whereupon, State's Exhibit Number 177 is
7 admitted into evidence by the Court]

8 Q. [Ms. Shealy] Does this include some of the
9 debris that was found in that area?

10 A. It was.

11 Q. Okay. And then in addition to that, other items
12 that were found in that area?

13 A. Yeah. This is the cigarette pack.

14 Q. Now, we talked about the tire marks. Tell us
15 about the footprint marks you came across.

16 A. Near also the deceased we found some footprints
17 marks that to us appeared fresh enough that -- to preclude
18 being washing out from the rain from several days ago. So
19 those were also photographed in detail, and plaster-casted
20 and collected.

21 Q. Okay. And showing you State's Exhibit 127. You
22 took several photographs of them; is that correct?

23 A. That is correct.

24 Q. Okay. And is this an example of the photographs
25 that you took?

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1 A. It is, ma'am. Without scale, yes, ma'am.

2 MS. SHEALY: Why don't you come step down in
3 front of the jury.

4 With the Court's permission?

5 THE COURT: Yes, sir. Yes, ma'am.

6 [Whereupon, the witness complies]

7 Q. [Ms. Shealy] I think you might can see the
8 tread on the bottom of them better here, the detail. Is
9 this a photograph --

10 A. It is, ma'am.

11 Q. -- of the bottom?

12 And when you say you took a cast of that print,
13 you did it a similar way that you did the tire tracks?

14 A. Exact same way, ma'am. Yes, ma'am.

15 Q. Okay. Showing you --

16 MS. SHEALY: Judge, we would move these in at
17 this time, State's 181 and 182.

18 MR. PENNINGTON: No objection, Your Honor.

19 THE COURT: 181 and 182 without objection.

20 [Whereupon, State's Exhibit Number 181 is
21 admitted into evidence by the Court]

22 [Whereupon, State's Exhibit Number 182 is
23 admitted into evidence by the Court]

24 Q. [Ms. Shealy] Show State's 181.

25 MS. SHEALY: Come stand right in front of them.

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1 A. This area right here, this is footprint one. We
2 took two plaster casts of the shoe impressions. You can
3 see there is some ridge detail matching the photos.

4 Q. [Ms. Shealy] And then this one might be a
5 little better.

6 A. Yeah, I believe so.

7 Q. State's Exhibit 182.

8 A. Okay. This is the plaster cast of the photo
9 that you see right there. Little bit better detail in
10 this one. Ridge detail in the actual tread pattern and
11 also length of the actual footprint itself.

12 Q. Okay. Now, while you were there, did -- when
13 the body was still there, did you notice anything about
14 the victim's ankle area?

15 A. There was blood transfer. It looked like, from
16 observing, that the body was moved by the ankle by someone
17 that maybe had blood on their hands possibly and grabbed
18 the ankle area.

19 Q. Why? How did the ankle look?

20 A. It looked like -- it looked like a hand print.

21 Q. Okay. And because of that, did y'all do
22 anything at the scene regarding that?

23 A. No, ma'am.

24 Q. Did you see anything regarding a tattoo on the
25 body while you were there?

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1 A. Yes, ma'am.

2 Once the coroner was on scene and we started
3 examining the victim in detail, one of the things that we
4 were told on a missing person -- possible missing person
5 report was a particular tattoo.

6 Q. Okay. And did you see one while you were there?

7 A. Yes, ma'am.

8 Q. And how did that tattoo appear?

9 A. What kind of tattoo was it, ma'am?

10 Q. Yes.

11 A. It was a butterfly tattoo. Yes, ma'am.

12 Q. It was a butterfly tattoo. Okay.

13 Now, anything else at the scene that you can
14 remember specifically that was -- anything else you
15 gathered or anything else eventful that occurred while you
16 were at the scene of the body?

17 A. No, ma'am.

18 Q. Okay. Now, did you actually travel to Bluffton?

19 A. I did.

20 Q. And what was the purpose of your traveling to
21 Bluffton?

22 A. I traveled to Bluffton to -- for -- to gather
23 evidence that was collected from the Beaufort County
24 Sheriff's Office.

25 Q. Okay. And when you were there, did you receive

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1 items that had been collected at Geothie Road?

2 A. Yes, ma'am.

3 MS. SHEALY: Okay. Your Honor, I think Mr.
4 Pennington and I have agreed that it's not necessary
5 for me to go through each item with Mr. Milz for
6 purposes of chain of custody, that he would --

7 Is that correct?

8 MR. PENNINGTON: That is correct.

9 MS. SHEALY: Okay.

10 Q. [Ms. Shealy] So you received all the items that
11 they had put in their evidence processing room and brought
12 those back to Charleston and did what with those?

13 A. They were brought back to Charleston to my
14 evidence compound and they were -- they were logged into
15 my evidence system.

16 Q. Okay. Now, we will need to go through some of
17 those items. Because you did some processing yourself of
18 those items; is that correct?

19 A. That is correct.

20 Q. But before we get to that, did you also pick up
21 a vehicle while you were there?

22 A. Yes, ma'am.

23 Q. Okay. If you would please tell the jury what
24 vehicle you picked up.

25 A. It was a -- just bear with me, please. Let me

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1 just get this correct.

2 Q. Yes. That's fine.

3 [Whereupon, the witness reviews documents]

4 A. 2001 Pontiac Grand P -- Grand Prix, South
5 Carolina , , -- , ,

6 Q. [Ms. Shealy] And you're calling out the license
7 tag?

8 A. Yes, ma'am. I apologize.

9 Q. What was the purpose of bringing that vehicle
10 back to Charleston?

11 A. For further evidentiary research on the vehicle
12 itself.

13 Q. Okay. And what did you do with the vehicle when
14 you brought it back?

15 A. It was secured in our locked evidence compound
16 and awaiting a search warrant on the vehicle.

17 Q. Okay. And did you, in fact, gain -- or did
18 someone gain a search warrant for the vehicle?

19 A. Yes, ma'am.

20 Q. Did you participate in the processing of the
21 vehicle?

22 A. Yes, ma'am.

23 Q. And what did that include?

24 A. After -- the very first thing was pictures of
25 the vehicle itself, interior and exterior. Then my

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1 sargent and I sprayed it with a chemical called amido
2 black.

3 Amido black is a chemical that turns blood
4 black. Even if let's say I had touched this wall with a
5 bloody fingerprint, even if you could not see it to the
6 visible eye if I sprayed it with this chemical called
7 amido it will turn that area black. Reveals blood on
8 areas.

9 Q. Okay. And after you did that, what did y'all
10 then do?

11 A. Those areas were photographed and we also dusted
12 the -- I'm getting ahead of myself.

13 Before we amidoed, we dusted the vehicle with
14 latent powders to try to get any kind of fingerprints.

15 Q. And were you able to lift any potential prints?

16 A. Just two, ma'am.

17 Q. Okay. And where were those located?

18 [Whereupon, the witness reviews documents]

19 A. One was on the rearview mirror. That was
20 collected. And also --

21 [Whereupon, the witness reviews documents]

22 Q. [Ms. Shealy] Would it be helpful if I showed
23 you the search warrant?

24 A. I found it. I'm sorry, ma'am.

25 Q. Okay.

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1 A. I had to just read it.

2 The other one was the exterior passenger front-
3 door handle.

4 THE WITNESS: I'm sorry.

5 MS. SHEALY: That's okay.

6 Q. [Ms. Shealy] And after you received those, what
7 did you do with those two items?

8 A. They were collected and they were sent to the
9 North Charleston Police Department for a AFIS or Automated
10 Fingerprint Identification System. It's -- if your
11 fingerprint's on the record in the computer system, they
12 have an AFIS operator that will try to match --

13 Q. Well, let me just -- let me just ask you. I
14 could just ask you this way. Are you aware of whether any
15 identification was made?

16 A. There was no identification made on the two
17 fingerprints, ma'am.

18 Q. After you did that, were you -- did you make any
19 effort to get inked tire impressions from the vehicle?

20 A. Yes, ma'am.

21 The next step at the very end was inking the
22 actual tires that were on the vehicle.

23 Q. Okay. Tell us how you do that.

24 A. The vehicle is put on a jack one tire at a time.
25 And I actually get fingerprint ink and I just smear it all

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1 on the treads of the vehicle. Then I just put a long
2 sheet of cardboard paper down and slowly drive the vehicle
3 over the paper, making an impression on the paper.

4 Q. Okay. And what is the purpose of doing that?

5 A. This was done in the effort to try to match the
6 tires -- the tires that were on the vehicle to the
7 impressions that were recovered on scene.

8 MS. SHEALY: Okay. Let me ask you to come on
9 back down, if you could.

10 [Whereupon, the witness complies]

11 Q. [Ms. Shealy] Would you open this for us and
12 show the jury.

13 [Whereupon, the witness complies]

14 A. All the information on the tire itself is
15 recorded in that one corner, the maker of the -- all the
16 tread pattern -- well, not tread pattern, but
17 manufacturer. Also, the direction of travel when we start
18 driving the actual vehicle on the paper.

19 Q. [Ms. Shealy] Okay.

20 MR. PENNINGTON: What exhibit is this?

21 MS. SHEALY: Oh. I'm sorry.

22 MR. PENNINGTON: Is it in?

23 MS. SHEALY: Actually, I don't know if I have
24 mentioned it.

25 It's 180, Your Honor. At this time I would like

1 to move --

2 THE COURT: 180?

3 MS. SHEALY: Yes. I'm sorry.

4 THE COURT: Any objection?

5 MR. PENNINGTON: No, sir. Nor to --

6 THE COURT: 180 admitted without objection.

7 [Whereupon, State's Exhibit Number 180 is
8 admitted into evidence by the Court]

9 MR. PENNINGTON: 180-A? Does that sound --

10 THE COURT: Is it A, 180, or 188?

11 MS. SHEALY: 180.

12 [Whereupon, Ms. Shealy and Mr. Pennington
13 confer]

14 THE COURT: 180 or 180-A?

15 MR. PENNINGTON: 180, Your Honor.

16 MS. SHEALY: 180.

17 THE COURT: Okay. Thank you.

18 Q. [Ms. Shealy] Okay. So this shows the car
19 moving?

20 A. Yes, ma'am.

21 That's the impressions of the inked tire on the
22 paper, yes, ma'am.

23 Q. And so what does -- what do we have all together
24 here?

25 A. All four tires.

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1 Q. And that's reflected on the impression itself?

2 A. Yes, ma'am.

3 MS. SHEALY: Okay. Put that right here --

4 Q. [Ms. Shealy] Now, did you go to the autopsy in
5 this case?

6 A. No, ma'am, I did not.

7 Q. What I would like to do, if we could, is walk
8 through some of the items that were -- that went to SLED
9 and if you did anything in-house before they went to SLED.

10 A. Yes, ma'am.

11 Q. Okay?

12 A. Uh-huh.

13 Q. First of all, would you describe for the jury:
14 when evidence is collected in a case, does every single
15 item that you collect go to SLED?

16 A. No, ma'am.

17 Q. And when there are multiple blood swabs, for
18 example, does every single blood swab go to SLED?

19 A. No, ma'am.

20 Q. Okay. How many do you typically send up?

21 A. There is a limit, I believe, on SLED.

22 I believe -- I'm not sure of the actual numeric
23 number, but I want to say ten at a time. I'm not sure of
24 that figure, though.

25 Q. But you think SLED has a limit?

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1 A. There is a limit, yes, ma'am.

2 Q. Okay. And so someone from SLED could better
3 answer that?

4 A. Correct.

5 Q. Okay. Now, regarding the items from Geothie
6 Road --

7 A. Yes, ma'am.

8 Q. -- and the emergency road kit: when you got the
9 items to Charleston County, you took some photographs of
10 the items; is that correct?

11 A. Yes, ma'am.

12 Q. And showing you State's Exhibit 128, which is
13 already in evidence -- it's up here on the screen -- you
14 took that photograph?

15 A. Yes, ma'am.

16 Q. Was anything further done with the emergency
17 road kit? Did it go -- did it go up? Or do you remember?

18 A. I would have to consult my notes.

19 Q. You can consult your notes.

20 [Whereupon, the witness reviews documents]

21 Q. [Ms. Shealy] Let me do it a different way.
22 Okay? Hang on just a second.

23 MS. SHEALY: Your Honor, while he's looking for
24 that, though, my law clerk said that I may not have
25 entered 176, the photographs of the tire impressions.

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1 If not, I would like to move those in at this time.

2 MR. PENNINGTON: No objection, Your Honor.

3 THE COURT: 176 admitted without objection.

4 [Whereupon, State's Exhibit Number 176 is
5 admitted into evidence by the Court]

6 A. The actual emergency road kit, ma'am, I do not
7 believe actually went up to SLED.

8 Q. [Ms. Shealy] Okay. Now, regarding the diaper
9 bag, which I believe you took a picture of, 136 --

10 A. Okay.

11 Q. -- that was sent to SLED?

12 A. Yes, ma'am.

13 Q. And the tire cover from the trunk --

14 A. Yes, ma'am, it did --

15 Q. -- 141. That went up to SLED?

16 A. Yes, ma'am.

17 Q. And the white-handled knife, 33, that went to
18 SLED?

19 A. Yes, ma'am.

20 Q. And 27. Did the CVS bag as a whole go, or did
21 you swab it?

22 A. It was swabbed, ma'am. Yes, ma'am, just a swab.

23 Q. Swabbed locally and then the swab was sent to --

24 A. Yes, ma'am.

25 Q. -- SLED?

1 A. Uh-huh.

2 Q. Okay. And that was because blood appeared on
3 the bag?

4 A. Yes, ma'am.

5 Q. And then the spare tire insert?

6 A. Right. That went to SLED.

7 Q. And was it swabbed here and then sent to SLED?

8 A. Yes, ma'am. It was swabbed at my evidence
9 compound, yes, ma'am.

10 Q. Okay. Now, you told us that Sargent McManigal
11 actually went to the autopsy?

12 A. Yes, ma'am.

13 Q. And then he brought items back from the autopsy
14 that went to SLED; is that correct?

15 A. Yes, ma'am.

16 Q. And are you familiar with what went to SLED from
17 the autopsy?

18 A. Yes, ma'am.

19 Q. Okay. And you told us that -- the cigarette
20 butt from out at the scene, that was how -- how far away
21 from the body?

22 A. Over a hundred yards.

23 Q. Okay. That went to SLED?

24 A. Yes, ma'am.

25 Q. And then the fingernail clippings from

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1 Ms. Lukaitis went to SLED?

2 A. They did.

3 Q. And the swabs from Ms. Lukaitis, her oral,
4 vaginal, rectal --

5 A. They did.

6 Q. -- swabs all went?

7 And -- okay. What about a pair of tennis shoes?

8 A swab -- y'all received the clothing items from Ms.
9 Lukaitis; is that correct?

10 A. We did.

11 Q. And I'll go over those with Sargent McManigal.
12 But did you participate in swabbing the tennis shoes?

13 A. I actually did the procedure.

14 Q. You did the swabbing?

15 A. I did.

16 MS. SHEALY: Okay. Sargent, will you put on
17 your gloves while I'm walking over that way?

18 THE WITNESS: Uh-huh.

19 Q. [Ms. Shealy] So after Sargent McManigal got
20 back from the autopsy you then did what, as it related to
21 Ms. Lukaitis' tennis shoes that she had on?

22 A. They were -- the very first thing, that they
23 were logged into our evidence system.

24 MS. SHEALY: Okay. Your Honor, at this time I
25 would move in State's Exhibit 192, Ms. Lukaitis'

1 tennis shoes.

2 MR. PENNINGTON: No objection, Your Honor.

3 THE COURT: Tennis shoes?

4 MS. SHEALY: And State's Exhibit 192-A, the swab
5 from the right shoe. And State's Exhibit 192-B, the
6 swab from the left shoe.

7 MR. PENNINGTON: No objection, Your Honor.

8 THE COURT: All right. 192, 192-A and 192-B
9 admitted without objection.

10 [Whereupon, State's Exhibit Number 192 is
11 admitted into evidence by the Court]

12 [Whereupon, State's Exhibit Number 192-A is
13 admitted into evidence by the Court]

14 [Whereupon, State's Exhibit Number 192-B is
15 admitted into evidence by the Court]

16 MS. SHEALY: Could you come down, Mr. Milz,
17 and --

18 THE WITNESS: Sure.

19 [Whereupon, the witness complies]

20 Q. [Ms. Shealy] When you say you swabbed the
21 tennis shoes, what does that mean?

22 A. That's -- when you're going for DNA, sterility
23 is very important.

24 Would you like me to explain the procedure?

25 Q. Yes. Uh-huh.

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1 A. Sure.

2 After I photograph the item in particular, I
3 will put on fresh gloves, sterile gloves. I will get a
4 sterile swab. It's almost like a Q-tip, cotton tip Q-tip.
5 That will also be moistened with sterile water.

6 So the area that I'm interested in collecting,
7 it'll be swabbed, it'll be put into a cardboard box
8 itself, which is also sterile, and then placed into
9 another envelope itself and then sealed with tape. From
10 there, it will go to SLED for the testing that we're
11 trying to accomplish.

12 Q. Okay. So when you were going through that
13 procedure, was there obvious blood on the shoes?

14 A. Yes, ma'am.

15 Q. Was there obvious blood on both shoes?

16 A. Yes, ma'am.

17 Q. And you went through that process as it related
18 to each of the shoes?

19 A. Yes, ma'am.

20 And I believe, if I remember right, we did a
21 presumptive blood test to one of the shoes just to make
22 sure that we were looking at blood itself. Presumptive
23 test, it just -- it tells me it's blood. It will not
24 specify if it's human or animal, but it'll just tell me
25 that this is a blood product.

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1 MS. SHEALY: Beg the Court's indulgence just a
2 moment.

3 [Whereupon, Ms. Shealy reviews documents]

4 MS. SHEALY: I have no further questions,
5 Mr. Milz. Thank you very much. Answer any that
6 the defense may have.

7 THE COURT: Cross-examination.

8 MR. PENNINGTON: Thank you, Your Honor. The
9 Court's indulgence just a moment.

10 [Whereupon, Mr. Pennington and Mr. Cooper
11 confer]

12 MS. SHEALY: Oh. I apologize. I may have
13 neglected to ask one question.

14 Q. [Ms. Shealy] Did you swab -- you swabbed the
15 spare-tire cover? Or was that done at SLED?

16 A. I did collect a swab from the spare-tire insert.
17 I swabbed that.

18 Q. Okay. Hold on just a second. And the CVS bag
19 you did?

20 A. Yes, ma'am.

21 MS. SHEALY: Your Honor, at this time I would
22 like to move 165-A in, the swab for the spare-tire
23 insert and --

24 THE COURT: Any objection?

25 MR. PENNINGTON: No, sir.

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1 THE COURT: Number 165-A without -- admitted
2 without objection.

3 [Whereupon, State's Exhibit Number 165-A is
4 admitted into evidence by the Court]

5 MS. SHEALY: So 165-A is the swab from the
6 spare-tire insert. 166-A is the swab from the CVS
7 bag. And I'm so sorry. I've got so much stuff up
8 here, Judge.

9 THE COURT: Do you have any objection to 166-A,
10 a CVS bag swab?

11 MS. SHEALY: And 164-B, which is the spare-tire
12 cover swab.

13 THE COURT: Any objection to 164-B, the tire --
14 swab on the tire cover and 166-A, the CVS bag swab?

15 MR. PENNINGTON: No objection to 164-B, the
16 spare-tire cover swab.

17 THE COURT: How about 166-A?

18 MR. PENNINGTON: I do not have an objection to
19 it, Your Honor.

20 THE COURT: All right. 164-A and 164-B admitted
21 without objection.

22 [Whereupon, State's Exhibit Number 164-A is
23 admitted into evidence by the Court]

24 [Whereupon, State's Exhibit Number 164-B is
25 admitted into evidence by the Court]

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1 [Whereupon, State's Exhibit Number 166-A is
2 admitted into evidence by the Court]

3 MS. SHEALY: Thank you, Your Honor.

4 THE COURT: Anything else before cross-
5 examination?

6 MS. SHEALY: Not at this time. Thank you.

7 THE COURT: Cross-examination.

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

10 THE COURT: Ladies and gentlemen, while they are
11 conferring, why don't you stand up and take a stretch,
12 take a break. I'm not going to take a break out of
13 the courtroom, but we'll take one in the courtroom.
14 If you'll stand up and stretch and get the blood
15 moving again.

16 [Off the record momentarily]

17 THE COURT: Are you ready?

18 MR. PENNINGTON: I am, Your Honor.

19 THE COURT: Okay.

20 MR. PENNINGTON: And if Mr. Cooper can just
21 examine this while we're moving forward, I can exam on
22 other things and come back to this item.

23 THE COURT: That's fine.

24 - - -

25 - - -

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CROSS-EXAMINATION

BY MR. PENNINGTON:

Q. Sargent Milz --

A. No, sir. I'm just an investigator, not a
sargent.

MR. PENNINGTON: Okay. Sorry.

THE WITNESS: That's all right. I'll take the
money, though.

MR. PENNINGTON: I don't blame you.

Sargent Milz, earlier -- Sargent Milz. I'm
sorry. My brain is --

THE COURT: Unless you've got the money for a
raise, call him investigator.

MR. PENNINGTON: I don't have it in my budget,
Judge. Sorry.

Q. [Mr. Pennington] The week that this all
occurred is in August of 2010; correct?

A. 8/9/2010.

Q. Okay. So August of 2010?

A. [Indicates affirmatively]

Q. Yes?

A. Yes, sir. I'm sorry. Yes, sir.

Q. And so what we're talking about is is that you,
as a crime scene officer, also have to keep a log of all
this stuff that comes at you so that you can put it all

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1 together when we come to court like this; correct?

2 A. That is correct, sir.

3 Q. All right. And so you maintain a log of the
4 evidence you receive?

5 A. Yes, sir, I do.

6 Q. All right. And you know from consulting your
7 business records that you received on the 11th of August,
8 2010, fourteen swabs from Detective Perkins?

9 A. Let me find that record, sir, and I will tell
10 you the exact date.

11 [Whereupon, the witness reviews documents]

12 MR. PENNINGTON: If I may approach?

13 Q. [Mr. Pennington] Would it refresh your --

14 [Whereupon, Mr. Pennington proffers documents to
15 the witness]

16 [Whereupon, the witness reviews documents]

17 A. Yes, sir. From Detective Perkins, yes, sir.

18 Q. [Mr. Pennington] Okay. These were fourteen
19 swabs from the white vehicle down in Beaufort?

20 A. Yes, sir.

21 Q. And Detective James Perkins was one of the lead
22 detectives in this particular case?

23 A. He was, sir.

24 Q. And still is, of course.

25 A. Yes, sir.

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1 Q. And it was reported that that came from that
2 white vehicle from what they describe as Bridge Street in
3 Bluffton?

4 A. Yes, sir.

5 Q. All right. And that was put into evidence at
6 your locker at the sheriff's office in North Charleston?

7 A. It was, sir.

8 Q. It was put into a paper bag like this?

9 A. Correct, sir.

10 Q. And then put into a refrigerator?

11 A. Yes, sir, it was.

12 Q. Until it was brought here to court today?

13 A. Yes, sir.

14 Q. It never made the trip to SLED, did it?

15 A. If these are the fourteen swabs that was
16 collected by the SLED agents --

17 Q. To clarify things, just look and see. From your
18 chain on these items, were they ever checked out and sent
19 to SLED?

20 [Whereupon, the witness reviews documents]

21 A. No, sir.

22 Q. [Mr. Pennington] You also received six swabs
23 from detective -- well, from the Beaufort County Sheriff's
24 Office, didn't you? This would be ID 114585?

25 A. Let me find that.

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1 [Whereupon, the witness reviews documents]

2 A. I found that.

3 Q. [Mr. Pennington] Okay. These -- this describes
4 six swabs, from the driver's-side door and car frame, from
5 the Berkeley -- the Beaufort County Sheriff's Office?

6 A. Correct.

7 Q. And that was submitted into evidence from you?
8 You actually received it from their department?

9 A. Yes, sir.

10 Q. What date was that?

11 A. [No response]

12 Q. On or about August 19th, 2010?

13 A. Yes, sir.

14 [Whereupon, the witness reviews documents]

15 A. Just trying to make sure that I give the correct
16 date.

17 Yes, sir.

18 Q. That would have been as you went down to collect
19 all the evidence that they had down in Beaufort County?

20 A. Yes, sir.

21 Q. And as far as your records show, those items
22 were never sent by the lead detectives to SLED for
23 examination?

24 A. Correct, sir.

25 Q. Now, you mentioned that you know from your

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1 training and from your work that SLED will indicate that
2 they prefer not to receive more than some number of items
3 at any one time; is that correct?

4 A. At one time, yes, sir.

5 Q. But you also know from your training that the
6 agency, the submitting agency, can contact them and say
7 that they have additional items that need testing based on
8 what appears to be a relevant new perspective in the case?

9 A. That is correct.

10 Q. And, in fact, that was done in February of this
11 year? There was -- in February of 2012, a number of items
12 were submitted to SLED for testing?

13 A. That is correct.

14 Q. But that was not done with the six swabs from
15 the Beaufort County examination?

16 A. Correct.

17 Q. Or the fourteen that you have from Detective
18 Perkins?

19 A. Correct.

20 MR. PENNINGTON: Have the Court's indulgence a
21 moment.

22 [Whereupon, Mr. Pennington and Mr. Cooper
23 confer]

24 Q. [Mr. Pennington] Officer Milz --

25 A. Yes, sir.

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1 Q. -- let's talk about the footwear impressions
2 that you took and the photographs that you have.

3 MR. PENNINGTON: And if we could please put up
4 what would be I believe photograph 127.

5 Q. [Mr. Pennington] Okay. That is a photograph of
6 the actual footwear impression that you saw at the scene,
7 is it not?

8 A. It is.

9 Q. And you noticed that there were a number of
10 those kinds of impressions that were around the body?

11 A. Near the body, yes, sir.

12 Q. And that alerted you that that could have some
13 evidentiary importance or significance?

14 A. Correct, sir.

15 Q. Because they appeared to be relatively fresh
16 impressions that were, as you described, seemed to be
17 fairly recent? of recent origin?

18 A. Yes, sir.

19 Q. And this particular photograph is actually just
20 the best representation of what you saw in those various
21 photographs?

22 A. It was, sir.

23 Q. Okay. And is it fair to describe that in -- if
24 you look closely, that you'll see what is kind of a
25 circular impression, little ridges that are circular, both

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1 in the front of the foot and then sort of where the heel
2 is?

3 A. I see that, sir, yes, sir.

4 Q. Okay. And referring you to --

5 MR. PENNINGTON: Officer Milz, could you come
6 down for us again, please.

7 [Whereupon, the witness complies]

8 MR. PENNINGTON: Could you hold that for me,
9 sir?

10 [Whereupon, the witness complies]

11 Q. [Mr. Pennington] Now, you also had in your
12 custody some Niki tennis shoes that y'all have gone
13 through?

14 A. Yes, sir.

15 Q. What were these? State's Exhibit 172?

16 A. Yes, sir.

17 Q. Some black-and-red Niki footwear?

18 A. Yes, sir.

19 Q. All right. And did you have occasion to then
20 look at the tread of this Nike shoe and compare it to the
21 circular patterns that you see both in the picture and in
22 the what you can detect from looking at this footwear
23 impression?

24 A. Yes, sir.

25 Q. And is it fair to say that it does not match?

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1 A. That is correct.

2 MR. PENNINGTON: Thank you, sir. You can sit
3 down.

4 [Whereupon, the witness complies]

5 MR. PENNINGTON: One moment, Your Honor.

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

8 MR. PENNINGTON: Thank you, Officer Milz.

9 No further questions, Your Honor.

10 THE COURT: Any redirect?

11 MS. SHEALY: Yes, Your Honor, just briefly.

12 REDIRECT EXAMINATION

13 BY MS. SHEALY:

14 Q. Mr. Milz, Mr. Pennington asked you about whether
15 some items had, in fact, been sent up to SLED; is that
16 correct?

17 A. Yes, sir [sic].

18 Q. Now, there weren't any other swabs from that
19 same car sent up; is that correct?

20 A. Yes, ma'am.

21 Q. But they were from different scene areas; is
22 that correct?

23 A. Yes, ma'am.

24 Q. In fact, from the Geothie Road area, the trunk-
25 cover swab got sent up?

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- 1 A. Yes, ma'am.
- 2 Q. And the swab from the insert got sent up?
- 3 A. Yes, ma'am.
- 4 Q. A hair from the victim's right hand got sent up?
- 5 A. Yes, ma'am.
- 6 Q. The knife got sent up?
- 7 A. Yes, ma'am.
- 8 Q. And a swab from her shoes got sent up?
- 9 A. Yes, ma'am.
- 10 Q. And the tire impressions got sent up?
- 11 A. Yes, ma'am.
- 12 Q. And the diaper bag got sent up?
- 13 A. Yes, ma'am.
- 14 Q. So all of those items were from different places
- 15 and different aspects of the case; is that correct?
- 16 A. That is correct.
- 17 Q. Not just more swabs from the same car; is that
- 18 correct?
- 19 A. That's correct.
- 20 Q. I have --
- 21 MS. SHEALY: Hold on just a second.
- 22 [Whereupon, Ms. Shealy and Mr. Finch confer]
- 23 MS. SHEALY: I have no further questions. Thank
- 24 you.
- 25 MR. PENNINGTON: Modest redirect [sic], Your

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1 Honor.

2 THE COURT: All right. Recross? Any recross?

3 MR. PENNINGTON: Yes, sir, please.

4 RECROSS-EXAMINATION

5 BY MR. PENNINGTON:

6 Q. Detective Milz -- Officer Milz --

7 MR. PENNINGTON: I am tired.

8 Q. [Mr. Pennington] -- no one called you and said
9 -- and asked you to send those to SLED, those -- the
10 fourteen swabs from the white vehicle; is that correct?

11 A. Correct.

12 Q. You're familiar with that there is no policy or
13 any rule that says that that couldn't have been done, is
14 there?

15 A. That is correct.

16 Q. The same with regard to the six swabs that were
17 taken by Beaufort County. No one asked you to send those?

18 A. Correct.

19 Q. If you had been asked, you would have?

20 A. Yes, sir.

21 Q. And if there had been any desire to get that
22 done, the evidentiary significance and importance could
23 have been explained to SLED; correct?

24 A. Yes, sir.

25 Q. And SLED is pretty good at working with the

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1 sheriff's office, especially in big cases like this, in
2 terms of testing important evidence?

3 A. They are. Yes, sir.

4 MR. PENNINGTON: That's all I have. Thank you.

5 THE COURT: Thank you very much. You may step
6 down.

7 [Whereupon, Mr. Milz is excused and exits the
8 witness stand]

9 THE COURT: Call your next witness.

10 MS. SHEALY: Paul McManigal.

11 [Whereupon, Mr. McManigal comes forward]

12 [Whereupon, Mr. McManigal is duly sworn by the
13 clerk of court as follows: do you swear or affirm
14 that your testimony will be the whole truth and
15 nothing but the truth, so help you God]

16 THE WITNESS: I do.

17 [Whereupon, Mr. McManigal takes the witness
18 stand]

19 THE CLERK OF COURT: State your full name and
20 spell your last name.

21 THE WITNESS: Paul David McManigal. M-C-M-A-N-
22 I-G-A-L.

23 - - -

24 - - -

25 - - -

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PAUL D. MCMANIGAL,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. SHEALY:

Q. Sargent McManigal --

A. Yes, ma'am.

Q. -- if you would tell the jury, please, where
you're employed and what you do.

A. I am currently employed with the Charleston
County Sheriff's Office. I am the supervisor of forensic
services.

Q. And does Investigator Milz work under you?

A. Yes, he works for me.

Q. Okay. And also Kathy Kjellman does?

A. Yes, she does.

Q. Is that correct?

Now, you were involved in the investigation of
this case; is that correct?

A. Yes, I was.

Q. And you reported to the scene at Old Jacksonboro
Road?

A. Yes, I did.

Q. And if I understand it, you and Mr. Milz worked
the scene together?

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1 A. Yes, ma'am.

2 Q. And y'all were looking at the tire tracks and
3 the footprints and collecting evidence while you were out
4 there; is that correct?

5 A. Yes, ma'am.

6 Q. Tell me what a Total Station is.

7 A. Total Station is a mapping system. It consists
8 of four basic components. The one section is a prism.
9 It's basically a reflector that's on a pole. The main
10 part of the unit is -- consists of a laser that is able to
11 calculate distance as well as elevation. The second part
12 is an angle encoder which determines the angle or
13 direction. And the last part is the data collector, which
14 gathers all the information and stores it as a numeric
15 database.

16 The way we use it is one person will hold the
17 reflector. The other person will aim the laser at the
18 reflector and then all data is collected by the data
19 collector as a series of points.

20 Q. Okay. And you, that afternoon, engaged in that
21 activity and prepared a map accordingly; is that correct?

22 A. Yes, we did.

23 MS. SHEALY: Okay. Your Honor, at this time I
24 would offer into evidence the Total Map -- Total
25 Station map that they prepared.

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1 THE COURT: What number?

2 MS. SHEALY: This would be number --

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

4 MS. SHEALY: -- 219.

5 THE COURT: Any objection?

6 MR. PENNINGTON: I do, Your Honor.

7 THE COURT: Okay. What's your legal objection?

8 MR. PENNINGTON: The objection is is that it
9 does not accurately reflect -- true and accurately
10 reflect the circumstances as they existed at the
11 scene.

12 The basis is that -- I can go further, if you
13 would like.

14 THE COURT: All right. Lay some foundation.
15 Okay?

16 MS. SHEALY: Okay. I believe that --

17 THE COURT: I'll sustain the objection, based on
18 what I've heard so far. So lay the foundation.

19 MS. SHEALY: Okay. And I think I know, based on
20 my conversation with Mr. Pennington, what area he's
21 interested in.

22 Q. [Ms. Shealy] Sargent McManigal, regarding where
23 the cigarette butt was found --

24 A. Yes, ma'am.

25 Q. -- could you tell me where you diagramed that it

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1 was found? Are you indicating that it was found in the
2 ditch?

3 A. No, ma'am. It was on the roadway near the
4 ditch.

5 Q. Okay. And in the drawing itself where the dot
6 reflects where it was found, is that supposed to represent
7 that it was found in the ditch?

8 A. No, ma'am.

9 The map that you're looking at on that eight-
10 and-a-half-by-eleven sheet of paper is greatly reduced
11 from the actual scale of the image. When you blow it up
12 to actual size, you'll see there's actually a separation
13 between that dot and that -- the outer line of that ditch.
14 The actual point is on the outside of the ditch on the
15 edge of the road.

16 Q. So the cigarette butt was certainly not found in
17 the ditch?

18 A. It was not in the ditch, no, ma'am.

19 Q. Okay. It was found in the roadway?

20 A. Yes, ma'am.

21 Q. And it was found in the roadway how far from
22 where the body was found?

23 A. The distance I measured was a little over 115
24 feet.

25 MS. SHEALY: Your Honor, I would offer it at

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1 this time with that clarification.

2 THE COURT: Let me see what you're offering.

3 Do you still have an objection?

4 MR. PENNINGTON: I do, Your Honor.

5 THE COURT: All right. Let me see what you're
6 offering.

7 [Whereupon, an off-the-record bench conference
8 is held]

9 Q. [Ms. Shealy] Sargent McManigal, we're going to
10 wait until we get the blown-up version. Okay?

11 A. Yes, ma'am.

12 Q. So we're not going to show this to the jury
13 today. But so that they'll understand what it is when
14 they have the blown-up version: when you were depicting
15 things that were found at the scene, could you describe
16 for the jury what is depicted on the Total Station so that
17 when they get the larger version they'll know what they
18 are looking at.

19 A. The Total Station takes data as a series of
20 points. And we can tell the mapping software whether that
21 distance between the points is going to be a curve, a
22 circle, or a straight line.

23 In this case there were several objects of
24 interest that we were -- we had marked off with placards
25 as items number one, item number two. We had several

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1 prints in the dirt that we had marked off with letters as
2 A, B and C. So for those points of interest, we just put
3 the reflector over that particular spot and shot the
4 point, is what we call it. That places a point on the
5 map.

6 For other items, the tire marks that we found in
7 the roadway, we mark those off with a series of points and
8 then told it -- told the mapping software to make that a
9 continuous curve. So there's going to be some curve marks
10 that indicate where the tire tracks were.

11 And then last but not least we did mark the
12 edges of the roads, which we did as a series of points,
13 also. We told it to make that a straight line. So we did
14 the edge of the roads.

15 There was a ditch on either side of the road so
16 we marked the outside of the ditch, as well.

17 Q. Okay. And in looking at what you have labeled
18 in letters, do you have that information before you right
19 now what they represent?

20 A. Yes, I do. I just have to take a second to look
21 it up.

22 [Whereupon, the witness reviews documents]

23 A. The letters represent footprints that we found
24 in the soil.

25 Q. [Ms. Shealy] The letters are footprints. Okay.

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1 A. Yes, ma'am.

2 Q. And then what did the numbers represent? Which
3 items?

4 A. The numbers represent individual items of
5 evidence.

6 Do you want me to go into what each one is?

7 Q. If you could, because I think there are only
8 four.

9 A. Number one was a crushed Bud Lite beer can,
10 number two was a smaller pile of fire debris that we found
11 near the body, number three was a paper napkin, and number
12 four was a plastic wrapper from a Budweiser beer package.

13 Q. Okay. And then number five?

14 A. Number five would be the cigarette butt that we
15 found near the ditch.

16 Q. Okay. Now, did you also -- well, first of all,
17 regarding the position --

18 THE COURT: Let me interrupt. I'm going to
19 admit 219, subject to the blown-up being admitted.

20 MR. PENNINGTON: I understand. I --

21 THE COURT: Do you still object with the
22 blown-up map?

23 MR. PENNINGTON: I do because I haven't seen the
24 blown-up map. So I would like to reserve my objection
25 at this time. I --

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1 THE COURT: That's fine.

2 I'm going to admit 219 to the blown-up map over
3 your objection. Okay?

4 MR. PENNINGTON: Yes, sir.

5 [Whereupon, State's Exhibit Number 219 is
6 admitted into evidence by the Court]

7 THE COURT: All right. Please proceed. 219
8 admitted with objection once we get the blown-up map.
9 Not that little small thing.

10 MS. SHEALY: Right. I understand. Thank you,
11 Judge.

12 Q. [Ms. Shealy] Now, regarding the body when you
13 got there: could you describe how the body appeared when
14 you got there?

15 A. The body was partially clothes, partially
16 burned. It was a white female. She was wearing white
17 shorts, sneakers, and a blue shirt. Her clothing and her
18 skin were slightly charred.

19 She displayed signs of rigor mortis, which is
20 stiffening of the joints, on her right arm and her left
21 leg. Which of particular interest to us was that the
22 rigor mortis had set in a way where her right arm and her
23 leg were actually lifted up off of the ground, which
24 indicates to us that that is not the position the body
25 died in. It was moved later. The body died, rigor mortis

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1 set in, then the body was moved.

2 The ground near her stomach was charred and
3 contained fire debris and ash, indicating that a fire was
4 started near the victim. The charring actually caught to
5 her clothes and her body.

6 And I observed blood transfer around her ankles,
7 which is just basically blood that had been smeared around
8 her ankles.

9 Q. Okay. Now, after your work at the scene, did
10 you actually also attend the autopsy?

11 A. I did.

12 Q. Okay. And regarding that blood transfer that
13 you have described, what if anything did you do about that
14 when you went to the autopsy?

15 A. When we went to the autopsy, we attempted to
16 collect latent fingerprints off of the body that may have
17 been left there by the person who moved her.

18 Tried actually two different techniques. First,
19 we just took photographs of the smears that we found
20 before we did anything. The first technique we tried is a
21 technique called ruthenium tetroxide. The short term is
22 RTX. And it is a chemical that will develop the latent
23 fingerprints, make them visible. We did apply that. We
24 did not observe any ridge detail, which is what we're
25 looking for in a latent fingerprint.

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1 So we went on to another chemical, which is
2 amido black. Amido black will actually stain traces of
3 blood purple. We did observe what we thought was visible
4 ridge detail, indicating that there may have been a latent
5 fingerprint visible, so we photographed that area.

6 Q. And, in fact, was anything ever concluded about
7 any types of prints on her ankle?

8 A. The ridge detail that we photographed was not
9 sufficient for any identification.

10 Q. Now, while you were at the autopsy, did you
11 receive from the pathologist a blood spot of Ms. Lukaitis?

12 A. Yes, we did.

13 Q. And that's for purposes of having her DNA?

14 A. Correct. We call that a victim standard.

15 Q. Okay. And that would have been sent to SLED?

16 A. That was.

17 Q. Along with that, did you also get right- and
18 left-hand fingernail clippings?

19 A. Yes, we did.

20 Q. Oral, rectal, and vaginal swab?

21 A. Yes, ma'am.

22 Q. The victim's clothing?

23 A. Yes, we did.

24 Q. And her shoes?

25 A. Yes, we did.

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1 Q. And was there a hair in her hands?

2 A. There was.

3 Q. Okay. And then you said that you got -- did you
4 get some fingerprints from her while you were there?

5 A. We did.

6 We collected postmortem fingerprints. That was
7 after the hair that you mentioned on her hand. We
8 photographed that in place, collected the hair, and then
9 we obtained fingerprints from her fingers.

10 MS. SHEALY: Your Honor, at this time I would
11 like to enter into evidence 189, the blood spot,
12 without objection.

13 MR. PENNINGTON: That is correct. No objection,
14 Your Honor.

15 THE COURT: Okay.

16 MS. SHEALY: 190, the right fingernail clippings
17 and the left fingernail clippings.

18 MR. PENNINGTON: No objection.

19 MS. SHEALY: 194, hair from the victim's right
20 hand.

21 191, the oral, vaginal and rectal swabs.

22 196, the postmortem inked fingerprints.

23 MR. PENNINGTON: No objections, Your Honor.

24 THE COURT: Okay. Is that it?

25 MS. SHEALY: Yes, sir.

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1 THE COURT: All right. 189, 190, 194, 191 and
2 196 admitted without objection.

3 [Whereupon, State's Exhibit Numbers 189, 190 and
4 191 are admitted into evidence by the Court]

5 [Whereupon, State's Exhibit Number 194 is
6 admitted into evidence by the Court]

7 [Whereupon, State's Exhibit Number 196 is
8 admitted into evidence by the Court]

9 Q. [Ms. Shealy] Did you take some photographs
10 while you were at the autopsy?

11 A. Yes, ma'am.

12 MS. SHEALY: Okay. 193 is the victim's
13 clothing, Your Honor.

14 THE COURT: Any objection?

15 MR. PENNINGTON: May I approach, Your Honor?

16 THE COURT: Yes, sir.

17 [Whereupon, an off-the-record bench conference
18 is held]

19 THE COURT: All right. 193 is admitted with
20 objection.

21 [Whereupon, State's Exhibit Number 193 is
22 admitted into evidence by the Court]

23 MS. SHEALY: And then also, Your Honor, without
24 objection, photographs of the victim's shoes that were
25 taken at autopsy.

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1 MR. PENNINGTON: No objection.

2 THE COURT: What numbers?

3 MS. SHEALY: Those will be 220, 221 and 222.

4 THE COURT: All right. 220, 221 and 222

5 admitted without objection.

6 [Whereupon, State's Exhibit Numbers 220, 221 and
7 222 are marked by the court reporter]

8 [Whereupon, State's Exhibit Numbers 220, 221 and
9 222 are admitted into evidence by the Court]

10 [Off the record momentarily]

11 Q. [Ms. Shealy] Now, Sargent McManigal, these are
12 the items that we've just called out that you received in
13 from autopsy; is that correct?

14 A. That's correct.

15 Q. And this is the victim's clothing that you
16 received?

17 And you can just leave it in the bag, please.

18 A. Yes, ma'am.

19 Q. Now, these are the photographs of the shoes as
20 they appeared at the time of the autopsy?

21 A. That's correct.

22 Q. And when you arrived at the autopsy and when you
23 arrived at the scene, they were on her feet?

24 A. They were.

25 Q. I'm showing you State's 220, that being her left

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1 shoe.

2 A. That's correct.

3 Q. That's how her shoe appeared that day?

4 A. Yes, it did.

5 Q. And 221?

6 A. That is the victim's right shoe.

7 Q. And another view of that shoe?

8 A. That's the victim's right shoe.

9 Q. Now, you also participated in the processing
10 of the vehicle, that came from Bluffton, that belonged to
11 Ms. Lukaitis; is that correct?

12 A. Yes, I did.

13 Q. And did you remove anything from the trunk area
14 of the outside of the vehicle?

15 A. The trunk area I observed a fiber, a hair, near
16 the keyhole of the trunk, which was photographed and
17 collected.

18 Q. And can you describe what the hair looked like?

19 A. One moment, please.

20 [Whereupon, the witness reviews documents]

21 A. It was a long curly hair.

22 Q. [Ms. Shealy] And where on the vehicle was it
23 found?

24 A. It was on the trunk, clinging to the keyhole.

25 MS. SHEALY: I have no further questions.

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1 Please answer any that the defense may have. Thank
2 you.

3 THE COURT: Cross-examination.

4 CROSS-EXAMINATION

5 BY MR. PENNINGTON:

6 Q. Detective McManigal, you said that the cigarette
7 was 115 feet away?

8 A. Yes, sir.

9 Q. Okay. So that's thirty-nine yards?

10 A. I haven't done the math, but I would assume so.

11 Q. I have my trustee --

12 A. Okay.

13 Q. -- calculator. You want to punch in 115 and
14 divide by 3?

15 A. Sure.

16 [Whereupon, the witness complies]

17 A. 38.33, or roughly thirty-nine yards.

18 Q. [Mr. Pennington] Thirty-nine yards. Okay.

19 You took photographs out there that day or there
20 were photographs taken by someone from your department?

21 A. Yes, sir.

22 Q. Okay. And they fairly and accurately depict the
23 -- where the location of items were?

24 A. Yes, sir.

25 Q. Do you recognize what's depicted?

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1 A. That is the roadway.

2 Q. Okay. Was there a picture taken of the
3 cigarette in relation to where the markers are where the
4 body is?

5 A. That picture you showed there showed the --

6 Q. Well, let's not get in -- we're not going to
7 publish this. It's not in evidence.

8 But is -- was there a picture taken like what
9 I've described? Yes or no.

10 A. Can you repeat what you described?

11 Q. Sure. Let's go back.

12 Was there a picture taken, from where the
13 cigarette butt laid, looking back toward where the body
14 was?

15 A. Yes, sir.

16 Q. Does it fairly and accurately depict the
17 distance between the cigarette butt and the location of
18 the body?

19 A. Yes, sir.

20 [Whereupon, Mr. Pennington and Ms. Shealy
21 confer]

22 MR. PENNINGTON: The Court's indulgence just a
23 moment.

24 [Whereupon, Mr. Pennington and Ms. Shealy
25 confer]

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1 Q. [Mr. Pennington] Detective -- or Sargent
2 McManigal, did you swab -- after you looked for that
3 fingerprint area for someone that touched Ms. Lukaitis'
4 ankle --

5 You were looking for fingerprints; correct?

6 A. Correct.

7 Q. -- were you able to take a swab of that blood
8 for purposes of forensic testing from that spot?

9 A. From that spot? No, sir.

10 MR. PENNINGTON: That's all that I have, Your
11 Honor.

12 THE COURT: Any redirect?

13 MS. SHEALY: Very briefly.

14 REDIRECT EXAMINATION

15 BY MS. SHEALY:

16 Q. The picture that Mr. Pennington showed you --

17 THE COURT: Let me see y'all. Come up here just
18 a second, please.

19 [Whereupon, an off-the-record bench conference
20 is held]

21 THE COURT: All right. You want to offer the
22 picture; is that correct?

23 MS. SHEALY: Well, I'm going to ask Sargent
24 McManigal a question about it.

25 THE COURT: Well, he agrees with it.

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1 MS. SHEALY: No, I understand, but I want to ask
2 Sargent McManigal --

3 THE COURT: What number will it be?

4 STATE'S LAW CLERK: 223.

5 THE COURT: What?

6 MS. SHEALY: 223.

7 THE COURT: All right. 223, the picture of the
8 cigarette butt, admitted without objection.

9 Is that correct?

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

11 THE COURT: As soon as we get it developed;
12 right?

13 MS. SHEALY: That's right.

14 [Whereupon, State's Exhibit Number 223 is
15 admitted into evidence by the Court]

16 Q. [Ms. Shealy] The photograph --

17 THE COURT: All right. Go ahead. Ask your
18 question.

19 Q. [Ms. Shealy] The photograph that Mr. Pennington
20 showed you --

21 A. Yes, ma'am.

22 Q. -- that picture shows where that cigarette butt
23 is in relationship to where Ms. Lukaitis's body was; is
24 that correct?

25 A. Yes, ma'am.

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1 MS. SHEALY: And, Your Honor, that's what I will
2 produce tomorrow.

3 THE COURT: Right.

4 MS. SHEALY: Okay. Very good. I have no
5 further questions. Thank you very much.

6 THE COURT: Any recross on the cigarette butt?

7 MR. PENNINGTON: No, sir.

8 THE COURT: Does anybody know what brand it was?

9 MR. PENNINGTON: Do not, Your Honor.

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

11 [Whereupon, Mr. McManigal is excused and exits
12 the witness stand]

13 THE COURT: All right. Mr. Foreman, Ladies and
14 gentlemen of the jury, be back in the jury room at
15 9:30 in the morning and we'll get started.

16 Leave your notepads in the chairs. Please do
17 not talk to anybody about the case. Please do not
18 listen to anything on television or read anything in
19 the paper or get on the internet and do any research
20 on it. I want you to make a decision on what you hear
21 in the courtroom, not what some party puts on a blog
22 or somebody puts on a News [phonetic] and Courier blog
23 or the internet.

24 Have a good evening. See you in the morning at
25 9:30.

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1 [Whereupon, the jury exits the courtroom at
2 6:06 p.m.]

3 THE COURT: Anything from the State before we
4 break?

5 MS. SHEALY: No, sir, Your Honor.

6 THE COURT: All right. As far as the defendant
7 is concerned --

8 And hang on just a second. Let me find my
9 little file in here.

10 [Whereupon, the Court reviews documents]
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DEFENDANT'S RIGHTS

1
2 THE COURT: All right. Mr. Drayton, if you
3 would please stand and raise your right hand.

4 [Whereupon, Mr. Drayton is duly sworn by the
5 Court as follows: do you swear to tell the truth and
6 nothing but the truth, so help you God]

7 MR. DRAYTON: Yes, sir.

8 THE COURT: All right. Mr. Drayton, I don't
9 know how many more witnesses the State is going to
10 have, but at this point in time in the trial I am
11 going to advise you of your fifth amendments rights to
12 remain silent. Okay?

13 MR. DRAYTON: Okay.

14 THE COURT: And I'm going to ask you certain
15 questions. I'm not going to ask you tonight whether
16 or not you're willing to testify, whether you want to
17 testify or you do not want to testify, I just would
18 like to explain that to you. Do you understand?

19 MR. DRAYTON: Yes, sir.

20 THE COURT: Now, sir, during the course of this
21 conversation you and I are going to have, I want
22 you -- if you don't understand my question, please
23 tell me and I'll try to explain it in a different
24 manner. Or if you would like to talk to your
25 attorney about any question that I ask you before you

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1 answer it, I will give you that opportunity. Do you
2 understand?

3 MR. DRAYTON: Yes, sir.

4 THE COURT: All right. Do you understand that
5 no one can compel you to testify against yourself in a
6 criminal trial?

7 MR. DRAYTON: Yes, sir.

8 THE COURT: You have no obligation whatsoever to
9 prove your innocence under the law. It's the State's
10 obligation to prove you guilty beyond a reasonable
11 doubt. No one can compel you to testify. Do you
12 understand?

13 MR. DRAYTON: Yes, sir.

14 THE COURT: Now, you understand that's a
15 personal privilege that you have. Only you can make
16 the decision of whether to testify or not testify.
17 Your attorney can advise you and you can listen to
18 that advice and then make your decision whether you
19 want to testify or not. Do you understand?

20 MR. DRAYTON: Yes, sir.

21 THE COURT: Now, you have the right not to
22 testify, but you also have the right to testify. Do
23 you understand?

24 MR. DRAYTON: Yes, sir.

25 THE COURT: If you elect not to testify, I will

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1 tell the jury they cannot use that as an inference of
2 your guilt and your failure to testify cannot be
3 considered by the jury in any deliberations. Do you
4 understand?

5 MR. DRAYTON: Yes, sir.

6 THE COURT: Now, if you do decide to testify,
7 you'll assume the role of witnesses. Do you
8 understand?

9 MR. DRAYTON: Yes, sir.

10 THE COURT: You've listened to witnesses in the
11 courtroom all day today. Once you take the witness
12 stand, if the question is relevant under the rules of
13 evidence and it's proper under the rules of court,
14 then you would have to answer it. Do you understand?

15 MR. DRAYTON: Yes, sir.

16 THE COURT: It's not like you see on television
17 where they sit up and say -- one question they say I
18 take the fifth and then the next one they answer. You
19 either take the fifth amendment and do not testify or
20 take the witness stand and testify. Do you
21 understand?

22 MR. DRAYTON: Yes, sir.

23 THE COURT: Do you have any questions about what
24 I've told you so far?

25 MR. DRAYTON: No, sir.

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1 THE COURT: Now, this decision on your part has
2 to be freely, voluntarily, and intelligently made. Do
3 you understand?

4 MR. DRAYTON: Yes, sir.

5 THE COURT: Have you had an opportunity to talk
6 to your attorney about your right to testify or not
7 testify?

8 MR. DRAYTON: Yes, ma'am.

9 THE COURT: Have you understood those
10 conversations that you had with your attorney?

11 MR. DRAYTON: Yes, sir.

12 THE COURT: I'm going to -- as I said when we
13 first started, I'm going to give you the opportunity
14 to talk with your attorney, if you so desire, before
15 you make a final decision of whether you want to
16 testify or not testify. Do you understand?

17 MR. DRAYTON: Yes, sir.

18 THE COURT: And he may talk to you tonight and
19 he may talk to you tomorrow. The solicitor still has
20 some more witnesses to go through before she rests, so
21 it will be a while before your opportunity to testify
22 or not testify has to be made. Do you understand?

23 MR. DRAYTON: Yes, sir.

24 THE COURT: All right. Do you have any
25 questions at all about what I've explained to you

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1 about your right to testify?

2 MR. DRAYTON: No, sir.

3 THE COURT: All right. Do you want to discuss
4 it with your attorney further?

5 MR. DRAYTON: Yes, sir.

6 THE COURT: All right. I will give you that
7 opportunity, as I've previously said. Okay?

8 MR. DRAYTON: Yes, sir.

9 THE COURT: All right. I'll see you in the
10 morning at 9:30. Have a good evening.

11 MR. DRAYTON: Yes, sir.

12 THE COURT: Thank you.

13 Anything else from the State before we adjourn?

14 MS. SHEALY: No, sir.

15 THE COURT: Anything from the defendant before
16 we adjourn?

17 MR. PENNINGTON: Your Honor, you asked that we
18 supply -- and I've given a copy to the solicitor --
19 proposed jury charges.

20 [Whereupon, Mr. Pennington proffers documents to
21 the Court]

22 [Off the record momentarily]

23 THE COURT: We don't need any of this on the
24 record. Okay?

25 [JURY TRIAL ADJOURNS AT 6:30 P.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, Jr., on Wednesday, October 3, 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

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

VOLUME 4 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 Thursday, October 4, 2012, Commencing at 9:46 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
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PROCEEDINGS

THE COURT: Are you ready?

MS. SHEALY: Yes.

THE COURT: Will you bring us a jury, please.

[Whereupon, the jury enters the courtroom at
9:47 a.m.]

THE BAILIFF: Jurors are all present, Your
Honor.

THE COURT: Okay. Thank you very much.

If you'll call your next witness, please.

MS. SHEALY: Yes, Your Honor. One housekeeping
matter that we need to take care of from yesterday.

I advised the Court that we were going to bring
in a photograph today --

THE COURT: Right.

MS. SHEALY: -- that we didn't have yesterday,
and that is State's Exhibit 223, that I would like to
publish to the jury at this time, Your Honor --

THE COURT: Okay.

MS. SHEALY: -- as I understand, without
objection.

MR. PENNINGTON: That is correct, Your Honor.

THE COURT: Okay. That's the picture; right?

MS. SHEALY: That's correct, Your Honor.

Well, if I could just show it to the jury, Your

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1 Honor. It's hard to depict on it.

2 THE COURT: That will be fine.

3 MS. SHEALY: Reflecting where the cigarette butt
4 was in comparison to where the body was found.

5 [Whereupon, Ms. Shealy proffers documents to the
6 jury]

7 [Off the record momentarily]

8 MS. SHEALY: We would call Almon Brown.

9 And, Your Honor, I do have a stipulation I need
10 to read into the record.

11 THE COURT: Are you going to read it now?

12 MS. SHEALY: I can, Your Honor, as he's coming
13 to the stand.

14 THE COURT: Or are you going to do it during the
15 middle of testimony?

16 MS. SHEALY: I have two: one that I need to
17 read now; and then one during his testimony.

18 THE COURT: All right. Ladies and gentlemen of
19 the jury, let me explain something very briefly to
20 you.

21 Well, we'll wait until Mr. Brown gets in here.

22 [Whereupon, Mr. Brown comes forward]

23 THE COURT: Go ahead and swear the witness.

24 THE CLERK OF COURT: Place your hand --

25 [Whereupon, Mr. Brown is duly sworn by the clerk

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1 of court as follows: do you swear or affirm that your
2 testimony will be the whole truth and nothing but the
3 truth, so help you God]

4 THE WITNESS: I do.

5 [Whereupon, Mr. Brown takes the witness stand]

6 THE CLERK OF COURT: State your full name and
7 spell your last name.

8 THE WITNESS: [No response]

9 THE COURT: Thank you, Mr. Brown.

10 All right. Mr. Foreman and ladies and gentlemen
11 of the jury, during the trial there's basically -- the
12 evidence that you're to consider in determining the
13 facts of the case are basically the sworn testimony of
14 witnesses on direct and cross-examination, any
15 exhibits that have been entered -- which there are
16 numerous that you see stacked up here -- and the third
17 thing that you are to consider for evidence is any
18 facts agreed to or stipulated to by the lawyers.

19 What has happened in this case: to avoid
20 bringing certain witnesses in to prove what is called
21 a chain of custody, the parties have stipulated to
22 some facts concerning that chain of custody. I
23 instruct you that that stipulation is a fact and you
24 are to receive it as if it came from sworn testimony
25 on the witness stand. And she's going to read the

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1 stipulation or the agreement between the parties.

2 Solicitor?

3 MS. SHEALY: Thank you, Your Honor.

4 Attorneys for the State and the defense agree
5 and stipulate to the following: in Charleston County
6 Sheriff's Office case number 10012983, an item labeled
7 as evidence ID-114596, a while-handled filet knife,
8 was collected and submitted into evidence by James
9 Perkins of the Charleston County Sheriff's Office.
10 Subsequently, that items was taken by Milz to the
11 State Law Enforcement Division, SLED, in Columbia,
12 South Carolina. Kjellman signed the item into Amy
13 Stevens at SLED on March 2nd, 2011. The items was
14 assigned SLED item number 20 for SLED lab number
15 L1009045. The item was then picked up by Doris
16 Yarborough and delivered to Almon Brown. From there,
17 Brown, also of SLED, created sub-items 20.1 and 20.2
18 described as swabs from that knife. Those swabs were
19 picked up by Doris Yarborough and further handled by
20 Patricia Crooks and they were delivered to Catherine
21 Leisy of SLED, who then performed DNA analysis on
22 them. At no time was the item damaged or changed from
23 its original condition from the time of collection
24 until the time of the work done by Catherine Leisy.

25 And we have marked the stipulation as State's

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1 Exhibit 216.

2 THE COURT: Okay.

3 All right. Ladies and gentlemen, under the
4 evidence laws in South Carolina, whenever evidence is
5 collected at a crime scene, for instance blood, you
6 have to establish a chain of custody of that blood
7 until the tests are done, and then even after tests
8 are done, the chain of custody back to the --
9 actually, to the courtroom. And the reason for that
10 is to make sure it hasn't been tampered with. And
11 that's the obligation on a chain of custody.

12 The parties have agreed to some of the chain of
13 custody primarily so we wouldn't have to be calling
14 some of these witnesses to establish a chain. And it
15 speeds it up a little bit. I know some of you -- some
16 of you probably think some of these witnesses aren't
17 important. But they are.

18 Now, a chain of custody doesn't have to be
19 established on a piece of evidence that's been
20 examined if that particular evidence can be identified
21 without a chain, such as a serial number off of a gun.
22 In other words, they collect a gun, they get the
23 serial number, it goes through testing. They don't
24 necessarily have to establish a chain for that because
25 that can be identified independently of the chain,

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1 whereas blood doesn't have a serial number.

2 Please proceed, solicitor.

3 - - - - -

4 ALMON BROWN,

5 Having Been First Duly Sworn,

6 was Examined and Testified as Follows:

7 DIRECT EXAMINATION

8 BY MS. SHEALY:

9 Q. Mr. Brown, would you please tell the jury where
10 you're currently employed.

11 A. With the South Carolina Law Enforcement
12 Division.

13 Q. Okay. And tell the jury a little bit about
14 SLED. That's what we commonly call the South Carolina Law
15 Enforcement Division; is that correct?

16 A. Correct. Yes, ma'am.

17 SLED is -- we are obviously the state police for
18 the state of South Carolina. We operate as an assist
19 agency where we assist other agencies within the state of
20 South Carolina upon request. We also assist federal
21 agencies and also other states.

22 Where I'm currently employed is with the state
23 crime lab and I work in the crime-scene latent-print unit
24 of that lab. And our lab basically analyzes evidence and
25 we also assist other agencies on crime-scene and forensic-

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1 related matters as requested.

2 Q. And what do your duties include in relationship
3 to looking for fingerprints and making swabs for DNA
4 purposes?

5 A. As a special agent in the crime scene and latent
6 print unit, we often receive evidence as a request from
7 other local jurisdictions to process for fingerprint
8 evidence and to look for any other valuable evidence that
9 we may can forward to another department, such as DNA or
10 trace evidence.

11 MS. SHEALY: May I approach the bench, Your
12 Honor, just for a second?

13 [Whereupon, an off-the-record bench conference
14 is held]

15 Q. [Ms. Shealy] Were you provided with a knife in
16 relationship to this case?

17 A. Yes, I was.

18 Q. And showing you --

19 MS. SHEALY: My tag may have come off. Do you
20 have my exhibit number?

21 [Off the record momentarily]

22 THE COURT REPORTER: 170

23 MS. SHEALY: 170.

24 Q. [Ms. Shealy] Could you tell the jury whether or
25 not you were presented with this item?

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1 Let's put it back in there. If you could
2 package that correctly.

3 [Whereupon, the witness complies]

4 A. Yes, I'm familiar with this item.

5 Q. [Ms. Shealy] And tell the jury, if you would,
6 what if anything you did in relationship to that knife.

7 A. Well, this particular knife, I observed it
8 visually and I observed that there was what appeared to be
9 some reddish-brown stains on the knife itself, on the
10 blade of the knife itself. So I wanted to preserve that
11 for any potential biological evidence it may have, so I
12 swabbed that particular item and submitted it as a swab
13 for possible DNA or blood evidence.

14 I also, with this item, with the nature -- just
15 as the nature of being a knife, typically we hold knives
16 by its handle. So sometimes the evidence may be there
17 that we can't see. So swabs are also collected for
18 potential touch DNA from the knife's handle, as well.

19 Q. And is there a certain sequence that you have to
20 do when you're attempting to achieve DNA swabs and also
21 potentially looking for fingerprints?

22 A. Absolutely.

23 As a part of the scientific principles behind
24 collecting fingerprint evidence, we use what's known as a
25 sequence of processing. And essentially what that means

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1 is we always do a visual analysis between each additional
2 process method. So before we manipulate or touch an item,
3 we want to use what we have available, which is our
4 eyesight, to see if we can see anything that's already
5 there before we examine or become more intrusive to the
6 item of evidence.

7 Q. So if you would, I'm going to show you what's
8 been marked as State's Exhibit 33. It's a photograph of
9 the knife. Walk us through what you did first and how the
10 process continued.

11 A. Obviously, this is the knife as its received
12 outside of its packaging, a photograph of it. This
13 particular knife here I examined. Once I removed the
14 packaging, I observed the red stains.

15 THE WITNESS: May I stand up?

16 MS. SHEALY: Yes, you may.

17 THE WITNESS: There's a pointer here. May I use
18 this pointer?

19 MS. SHEALY: Yes.

20 THE COURT: Yes, sir.

21 THE WITNESS: Thank you.

22 A. As you can see as you examine the knife, right
23 here in this area right where the handle connects to the
24 blade, we commonly refer to that as what's known as the
25 hilt of the knife. And it's -- essentially, it's made to

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1 -- if you're using a knife with your hand, it's made to
2 protect your hand from actually sliding onto the blade.

3 What we see right in here just on the edge of
4 the blade between the hilt and the blade, we observe --
5 well, I observed what appears to be a reddish-brown stain.
6 Upon seeing that and examining it, I decided to use
7 sterile swabs to collect a swab of that particular stain
8 to submit for DNA analysis.

9 There was also, in this area of the handle, the
10 wide area, that I observed that it's a very textured-like
11 handle, has a rough texture to it. Therefore, a lot of
12 times that type of texture, it's not essentially conducive
13 for latent prints to be deposited because it's rough and
14 it's texturized. So I decided to, to err on the side of
15 caution, go ahead and collect a swab for touch DNA from
16 that particular area of the handle, as well.

17 MS. SHEALY: Beg the Court's indulgence just a
18 moment.

19 [Whereupon, Ms. Shealy and Mr. Pennington
20 confer]

21 Q. [Ms. Shealy] And showing you what's been
22 previously marked as State's Exhibit 199, I ask you
23 whether these are the swabs that you generated.

24 A. Yes, they would be.

25 Q. How can you tell by looking at the packaging?

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1 A. The packaging -- similar packaging with my
2 initials and the date that they were sealed. The outer
3 packaging has my initials. The outer packaging has my
4 initials and my date. Also, the inner packaging of each
5 individual swab that was submitted also contains my
6 initials and the date and the item description.

7 Q. Okay. And you're our first analyst that's
8 testified, so just to educate the jury: these clear
9 packaging packages reflect that they've been to SLED; is
10 that correct?

11 A. Correct.

12 Q. And since they're going to hear some
13 stipulations: when items come to SLED, if it involves a
14 case are they given one lab number?

15 A. Yes. Typically they are.

16 Q. And so with one lab number, when it goes to
17 different places they all share that same lab number from
18 one single case; is that correct?

19 A. That is correct.

20 MS. SHEALY: Your Honor, at this time I would
21 offer State's Exhibit 199 into evidence.

22 THE COURT: Any objection?

23 MR. PENNINGTON: No objection, Your Honor.

24 THE COURT: Admitted without objection.

25 [Whereupon, State's Exhibit Number 199 is

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1 admitted into evidence by the Court]

2 Q. [Ms. Shealy] Okay. After preparing those
3 swabs, what else did you do with the knife?

4 A. Once the swab's collected, I wanted to try to
5 obtain any fingerprint evidence that may be on the item.

6 As I stated, again, I do another visual analysis
7 using just natural light, what we have available, and I
8 hold the item at various angles and look at it in various
9 lighted conditions to see if I can see any type of
10 fingerprints on the particular knife.

11 In this particular case I did not, at that
12 particular time, so I moved forward to the next part of
13 the sequence in which we use a process called
14 cyanoacralate, which is a fancy word for Super Glue fumes,
15 essentially placing an item in something similar to like a
16 fish tank and you place it with Super Glue fumes and heat
17 -- a heat source and it creates this fumes off the Super
18 Glue that would adhere to a fingerprint on a particular
19 item.

20 Q. Okay. And were you able to depict anything when
21 you did that?

22 A. Not initially with the Super Glue fuming, no,
23 ma'am.

24 Q. What did you do next?

25 A. In the next step, obviously I take it out

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1 individual [phonetic], in which I was able to determine
2 that I did not see nothing with the Super Glue fuming.

3 I next move to our next method, which is a
4 method we commonly refer to as MBD. And that's a long,
5 fancy word and if the Court would like, I would be more
6 than happy to explain the definition of MBD.

7 Q. If you will, you can describe for us what it is.

8 A. Okay. MBD, it is a fluorescent dye stain.
9 That's an acronym. MBD is an acronym for a very, very
10 long word. But essentially it's a chemical fluorescent
11 dye stain that we apply to an item. And in order to see
12 its result, you have to use an alternate light source or
13 what we refer to as an ALS. And using filter-type
14 goggles, you use ALS to use as the light on the -- once
15 the chemical has been applied, then you can see if there's
16 any fingerprints on the items once you're done with that
17 process.

18 Q. And you, in fact, completed that process?

19 A. That is correct.

20 Q. And what happened after that?

21 A. I was able to observe some fingerprint detail on
22 the particular item.

23 Q. And what did you do at that point?

24 A. At that particular point I notified a latent
25 examiner that works in our lab to come and look at the

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1 detail to determine whether it had value as a fingerprint.

2 Q. And what do you mean as to whether or not it had
3 value?

4 A. When you see fingerprints -- fingerprints, you
5 know, they have a lot of detail in them. And sometimes,
6 just because you might have one or two or three ridge
7 characteristics as far as ridges that you can see, it
8 might not be to a quality that a latent examiner can
9 actually do anything with it, do any type of comparison or
10 identify a person by that amount.

11 And so by having a latent examiner who does this
12 day in and day out come in and look at it behind me,
13 they're able to make that determination whether or not it
14 is sufficient or anything can be done to compare it to a
15 person.

16 Q. And who was the latent examiner that you had
17 come take a look at it?

18 A. It was Tom Darnell.

19 MS. SHEALY: Your Honor, at this time I would
20 have another stipulation to read into the record.

21 THE COURT: Okay. Please do.

22 MS. SHEALY: Attorneys for the State and the
23 defense agree and stipulate to the following: that
24 Almon Brown applied MBD to a knife identified as State
25 Law Enforcement Division's SLED item 20 for SLED lab

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1 number L10-09045. From that, Brown developed a part
2 of a fingerprint. Tom Darnell, a latent fingerprint
3 examiner with SLED, looked at the part of the print
4 and determined that there was not enough detail or
5 clarity to make any comparison to anyone or to
6 eliminate anyone.

7 And, Your Honor, at this time I would move our
8 stipulation as State's Exhibit 209 into the record.

9 THE COURT: Okay.

10 [Whereupon, State's Exhibit Number 209 is
11 admitted into evidence by the Court]

12 Q. [Ms. Shealy] Did that complete your processing?

13 A. No, it did not.

14 Q. Okay. What else did you do?

15 A. Once it was determined by latent examiner
16 Darnell that there was -- the ridge prints that were there
17 had no value, I wanted to go beyond that to see if we
18 could try to develop more fingerprints.

19 You know, so the next step I added was I wanted
20 to use black powder. And there again, as a part of the
21 sequencing -- there's a certain sequence of events that
22 you can apply these various components.

23 So once the chemical dye stain was applied and
24 we have a result, now I can go back and try an additional
25 sequence, which in this case would be black powder. In

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1 using the black powder, I did a visual after applying it
2 and I did not see any result then.

3 Q. Okay. So you went through various steps in an
4 attempt to locate fingerprints?

5 A. That is correct.

6 Q. Now, when you told us about getting the swabs
7 from the knife in an effort for DNA to be compared --

8 A. Uh-huh.

9 Q. -- after you did the swabs themselves, what
10 happened to the swabs?

11 A. The swabs, essentially they go into an envelope
12 and they are sealed in that envelope with my initials and
13 signature. I place them into another sealed outer
14 packaging, which was presented earlier as an exhibit, and
15 that packaging is then forwarded to our DNA department by
16 our evidence log-in.

17 Q. Okay. And then that's for the purpose of a
18 scientist to do --

19 A. That's correct.

20 Q. -- run a DNA analysis on it; is that correct?

21 A. That is correct.

22 MS. SHEALY: Thank you, Mr. Brown. I have no
23 further questions. Please answer any that the defense
24 may have.

25 THE WITNESS: Thank you, ma'am.

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1 MR. PENNINGTON: No questions, Your Honor.

2 THE COURT: You may step down, Mr. Brown. Thank
3 you very much.

4 THE WITNESS: Thank you.

5 [Whereupon, Mr. Brown is excused and exits the
6 witness stand]

7 MS. SHEALY: Vicki Hallman.

8 [Whereupon, Ms. Hallman comes forward]

9 [Whereupon, Ms. Hallman is duly sworn by the
10 clerk of court as follows: do you swear or affirm
11 that your testimony will be the whole truth and
12 nothing but the truth, so help you God]

13 THE WITNESS: I do.

14 THE CLERK OF COURT: State your full name and
15 spell your last name.

16 [Whereupon, Ms. Hallman takes the witness stand]

17 THE WITNESS: Vicki Hallman. H-A-L-L-M-A-N.
18
19
20
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23 - - -
24 - - -
25 - - -

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VICKI HALLMAN,

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

DIRECT EXAMINATION

BY MS. SHEALY:

Q. Ms. Hallman, if you would please tell the jury where you're employed.

A. I'm employed in the latent prints crime scene unit of the South Carolina Law Enforcement Division.

Q. And could you tell the jury what your role at SLED includes.

A. I'm a senior agent assigned to the latent prints crime scene department.

In that department we are often called by local agencies to assist in the processing of crime scenes. We also process evidence that's submitted to SLED from local agency crime scenes.

I am qualified to do footwear and tire-tread examinations. I process items for latent fingerprints. I do bloodstain-pattern analysis.

Q. Okay. And you say you work with tire impressions and footwear impressions; is that correct?

A. Yes, ma'am.

Q. Okay. Tell us a little bit about your training. How did you learn to be able to work in those areas?

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1 A. I actually have a bachelor's degree from the
2 University of South Carolina and a masters of criminal
3 justice. I'm an adjunct professor for South University,
4 which is also located in Columbia.

5 I did a two-year internship or training program
6 within SLED for the areas that I'm qualified in. I do a
7 yearly competency in order to maintain those credentials.

8 I attended several training classes specifically
9 designed to do footwear and tire-tread comparison. And
10 usually -- or I keep up with current articles as to things
11 that are changing in those fields.

12 And I'm a member of the International
13 Association for Identification, the International
14 Association of Bloodstain Pattern Analysts, and also a
15 member of the South Carolina Division of the International
16 Association for Identification.

17 Q. And I'm sorry. I may have asked you this
18 already. But if not: how long have you been with SLED?

19 A. I've been with SLED for approximately eight and
20 a half years. But I've been in law enforcement since
21 1991.

22 Q. And how many different impression analyses have
23 you participated in?

24 A. I've probably done several hundred analyses of
25 footwear and tire treads.

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1 Q. And have you testified before in court?

2 A. Yes, ma'am.

3 Q. Approximately how many times?

4 A. On footwear and tire tread, probably somewhere
5 between five and ten times.

6 MS. SHEALY: Your Honor, at this time I would
7 offer Ms. Hallman as an expert in the area of
8 impression evidence.

9 MR. PENNINGTON: I have no questions and no
10 objection, Your Honor.

11 THE COURT: Okay. The Court -- impression
12 evidence. The Court so finds.

13 MS. SHEALY: Thank you, Your Honor.

14 Q. [Ms. Shealy] Regarding SLED lab number L10-
15 09045, were you asked to make a comparison between some
16 inked-tire impressions and some photographs of tire
17 impressions?

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

19 Q. If you would first -- when you're asked to make
20 comparisons between inked-tire impressions and
21 photographs, tell us how you go about doing that.

22 A. One of the first things that I do when I get --
23 And in this case I got like a compact disk with
24 the photographs.

25 And the inked impressions are usually fairly

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1 long boards, because we want to make sure we get a full
2 rotation of the tires. They're sent to our photograph
3 department at SLED so that they can make these impressions
4 one-to-one, which means that they are natural size, so
5 that I can do the comparison so that I have a nice view of
6 it and it's basically full size.

7 Q. Okay. So showing you what has been previously
8 marked as State's Exhibit 180, is that what you would have
9 received?

10 MS. SHEALY: May I, Your Honor?

11 THE COURT: Yes, ma'am.

12 MS. SHEALY: Do you want to -- why don't you
13 step down. You want to come down?

14 [Whereupon, the witness complies]

15 THE COURT: Could one of the bailiffs come help
16 them hold this stuff, if you would?

17 MS. SHEALY: I was going to get -- do you want
18 the bailiff --

19 THE COURT: It doesn't matter. Somebody come
20 help you. I've got the bailiffs available to help.

21 [Off the record momentarily]

22 MS. SHEALY: Does this help you a little bit?

23 THE WITNESS: Yes.

24 A. And, yes, they are, because when evidence comes
25 in, I mark it with a lab number, the item number, and my

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1 initials, which are marked here on this.

2 Q. [Ms. Shealy] Now, what are you saying y'all do
3 once you receive these items?

4 A. They're sent to our photograph department. And
5 basically what he just does is I divide the tires up into
6 sections and he actually just makes -- takes photographs
7 of those.

8 Q. Okay. Once he takes photographs of those, what
9 do you do with that?

10 A. At that point in time, then I would begin my
11 comparison.

12 I would use the photographs that were submitted,
13 also, and I'll basically make like a clear overlay. And
14 what I would do with the overlay is just lay it on these
15 impressions and see if I can find the areas that match up.

16 Q. Okay. Now, do you have an example of your
17 overlays with you?

18 A. Yes. They're in --

19 THE WITNESS: May I get my bag?

20 MS. SHEALY: Your Honor --

21 THE COURT: Yes, ma'am. Please.

22 [Off the record momentarily]

23 A. Basically, in this case, because the unknown
24 impression that I had was easier to deal with than the
25 known impression, what I did is I laid out my photographs

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1 and I just went and basically marked where the little --
2 the ribs and everything are.

3 And basically what I do is just start at one end
4 of the impression and slide it down and see if I can find
5 the areas that match. Because with tires, the
6 manufacturers make these elements large, small, with
7 different --

8 MS. SHEALY: Why don't we move this in a little
9 bit, because it might be a little bit easier if they
10 can see it.

11 A. They make them large and small for different
12 reasons. For one reason is to reduce the noise when you
13 drive down the road, so your tires won't make a lot of
14 noise.

15 So these elements aren't identical all the way
16 through the tire. There's different sections that are
17 spaced out differently. And that's basically what I'm
18 looking for for this.

19 Q. [Ms. Shealy] So you're using your overlay --

20 A. Yes, ma'am.

21 Q. -- the one -- the inked impression.

22 And then how does that compare to the
23 photographs that you get?

24 A. Well, which photographs? Of the unknown?

25 Q. Yes.

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1 A. Basically, this is my test impression from the
2 unknown so this would be the replicate or the duplicate of
3 my unknown impression.

4 Q. So in other words, you put the clear over the
5 unknown --

6 A. Yes, ma'am.

7 Q. -- and mark it?

8 A. Yes, ma'am.

9 And if we do shoes, basically what's easier to
10 do with shoes is I can put a red fingerprint powder on the
11 bottom of a shoe and step with the shoe, and that gives me
12 an overlay and I can overlay with the unknown in that
13 case.

14 I just kind of do it in reverse with these
15 because it's just easier because of the size difference
16 when it comes to dealing with tires.

17 Q. Now, in this case you were not asked to make any
18 shoe comparisons?

19 A. That's correct.

20 Q. You would agree if you have a pair of shoes and
21 you have markings on the ground and it's -- sometimes it's
22 relatively obvious that from the bottom of a shoe that it
23 doesn't match a shoe on the ground?

24 A. That's correct.

25 And you can do the same thing with tires, too.

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1 The first thing that I'll do is start counting the ribs,
2 which are these [indicates]. And if I have an unknown
3 impression that has say three ribs and I know this is a
4 one, two, three, four, five-rib tire, then I can
5 automatically eliminate my -- the known tire from making
6 the unknown impression.

7 Q. Would you tell the jury what type of conclusion,
8 if any, you were able to make in this case.

9 A. There are several different types of conclusions
10 I can render. Of course, the most obvious -- or the two
11 most obvious are yes it did or no it didn't.

12 You can also do what we call a class
13 characteristic, which means that it could have been made
14 by this tire but if there's another tire just like this --
15 because I don't have anything that is totally exclusive to
16 this tire, say like a nail or a cut in a specific area, I
17 could say it is a class characteristic, which means it
18 could have been made by this tire but it also could have
19 been made by another tire that's just like this one. And
20 that is what I found in this case.

21 Q. Okay.

22 A. I could include these as possibly making it but
23 I couldn't say for sure that they were the ones that made
24 these impressions.

25 Q. Because there was nothing unique like a nail or

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1 a tear or something that you saw in the pattern?

2 A. Correct.

3 And plus you have to think about the fact, too,
4 that the unknown impression is not basically a full
5 impression like the tire is. It's only a small section.
6 So there wasn't a random -- and we call it a random
7 identifying characteristic. There was not a random
8 identifying characteristic in the photographs or the
9 unknown impressions, that I was given, that allowed me to
10 match them up to the tires.

11 Q. Now, when you say the same class, is there a
12 better way to define that? What do -- what is included
13 when you say class?

14 A. When we talk about class, we talk about it's the
15 basic -- it's exactly the same size, it's the same shape,
16 and it's the same tread design.

17 Usually, shoes are a little bit easier to
18 understand. You know, if you have an impression -- and we
19 see a lot of Niki Air Force Ones, if you know what those
20 are, with the circles. So I could include a Niki Air
21 Force One as making an impression if I knew that that's
22 what that shoe was, but I could exclude everything else.
23 And we can basically do the same thing with tires.

24 Q. Okay. So when you say it's the same class,
25 you're saying it's the same tread, it's the same size, and

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1 it's the same shape?

2 A. Yes, ma'am.

3 MS. SHEALY: I have no further questions. If
4 you could go take a seat on the stand.

5 MR. PENNINGTON: Cross-examination, Your Honor?

6 THE COURT: Are you finished?

7 MS. SHEALY: Yes, sir.

8 THE COURT: Yes, ma'am. Yes, sir. Cross-
9 examination.

10 MR. PENNINGTON: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. PENNINGTON:

13 Q. Agent Hallman, I note on this exhibit that we
14 have before the jury of the tire impressions that you
15 made, that it says Michelin Symmetry and it has a -- the
16 numbers twenty -- 225 -- and I think that's 60R16. And so
17 is that sort of the identifying quality of this, that this
18 was a Michelin tire?

19 A. To clarify: these were submitted to me. I did
20 not take these myself.

21 That -- the Michelin is the manufacturer,
22 Symmetry is the name on the tire, and the size is the
23 225/60, which denotes -- and the P in front of it denotes
24 that it's a passenger tire, and then the PSI basically
25 tells you how much air you're supposed to have in that

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1 tire for it to be properly inflated.

2 Q. Okay. So what I'm gathering is is that the
3 unknown impressions that you have are similar in the class
4 characteristics for a Michelin Symmetry tire?

5 A. Yes, sir.

6 Q. Is that correct?

7 A. Yes, sir.

8 Q. Okay. And from what we know, there -- certainly
9 there was no distinguishing characteristics that would say
10 that the unknown prints were different; correct? In other
11 words, there was nothing that made them different --

12 A. Correct.

13 Q. -- but there was nothing unique about the
14 impression, the unknown impression, that said that that
15 unique tire is the same tire that's on the car of the
16 victim in this case?

17 A. That's correct.

18 Q. And so we just know, in effect, that it appears
19 that someone that was driving with Michelin Symmetry tires
20 made the same impression as the unknown impressions?

21 A. Correct.

22 Q. Do we know how many of those Michelin Symmetry
23 tires are sold in the United States?

24 A. No, sir, I do not.

25 Q. Or sold in South Carolina?

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1 A. I'm unaware of that.

2 MR. PENNINGTON: I have no further questions,
3 Your Honor.

4 THE COURT: Any redirect?

5 MS. SHEALY: No, sir.

6 THE COURT: Okay. You may step down. Thank you
7 very much.

8 THE WITNESS: Thank you, sir.

9 THE COURT: Ms. Hallman, you may be excused.
10 Thank you very much. Have a safe trip back to
11 Columbia.

12 THE WITNESS: Thank you.

13 [Whereupon, Ms. Hallman is excused and exits the
14 witness stand]

15 MR. FINCH: Verona Gibson.

16 [Whereupon, Ms. Gibson comes forward]

17 [Whereupon, Ms. Gibson is duly sworn by the
18 clerk of court as follows: do you swear or affirm
19 that your testimony will be the whole truth and
20 nothing but the truth, so help you God]

21 THE WITNESS: I do.

22 THE CLERK OF COURT: State your full name and
23 spell your last name.

24 THE WITNESS: Verona Gibson. G-I-B-S-O-N.

25 MR. FINCH: Your Honor, may I start with two

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1 stipulations?

2 THE COURT: Pardon?

3 MR. FINCH: May I start with two stipulations?

4 THE COURT: Yeah. Please do.

5 MR. FINCH: Attorneys for the State and the
6 defense agree and stipulate to the following: the
7 Charleston County Sheriff's Office case number 10-
8 01293, an item labeled as evidence ID 114575, Similac
9 diaper bag, three disposable diapers, wipe cloth, blue
10 pajamas [phonetic], were submitted into evidence by
11 James Milz of CCSO. Subsequently, that item was taken
12 by James Milz to the State Law Enforcement Division,
13 SLED, in Columbia, South Carolina. Milz then signed
14 that item to Amy Stephens at SLED on March 2nd, 2012.
15 At SLED it was re-labeled black Similac diaper bag,
16 red substance on outside, and assigned SLED item
17 number 18 with SLED number L10-09045. Patricia
18 Croates [phonetic] also SLED, delivered that item to
19 Verona Gibson. Verona Gibson made cuttings from that
20 item and re-labeled the items as SLED items 18.1, 18.2
21 and 18.3, and delivered each to Catherine Leisy, SLED,
22 who then performed DNA analysis on them. At no time
23 were these items damaged or changed from their
24 original condition from the time of collection until
25 the time they were worked on by Catherine Leisy.

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1 Attorneys for the State and the defense agree to
2 stipulate to the following: Charleston County
3 Sheriff's Office case number 10-012983, an item
4 labeled as evidence ID 114577, spare-tire cover from
5 truck, was submitted into evidence by James Milz from
6 the sheriff's office. Subsequently, that items was
7 taken by Milz to SLED in Columbia. Milz signed the
8 item into Amy Stephens at SLED March 2nd, 2011. At
9 SLED it was re-labeled tire cover from trunk, red
10 substance, and assigned SLED item number 19 for SLED
11 item number L10-09045. Patricia Brooks, also SLED,
12 delivered that item to Verona Gibson. Verona Gibson
13 made cuttings from that item, re-labeled the cuttings
14 as SLED item 19.1 and delivered it to Catherine Leisy
15 at SLED, who then performed DNA analysis on it. At no
16 time was the cutting damaged or changed from its
17 original condition from the time in question until the
18 time of the work done by Catherine Leisy.

19 Your Honor, at this time I would enter these two
20 items into evidence.

21 MR. PENNINGTON: No objection.

22 THE COURT: What's the numbers?

23 MR. FINCH: It's State's 186 and 188 and also
24 186-A. My understanding is without objection. And
25 these are the cuttings and swabs --

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1 THE COURT: All right. 186, 188 and 186-A --

2 MR. FINCH: Dash A.

3 THE COURT: -- A --

4 MR. FINCH: 186-A.

5 THE COURT: Admitted without objection.

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

7 THE COURT: Thank you, sir.

8 MR. FINCH: Thank you, Your Honor.

9 [Whereupon, State's Exhibit Number 186 is
10 admitted into evidence by the Court]

11 [Whereupon, State's Exhibit Number 186-A is
12 admitted into evidence by the Court]

13 [Whereupon, State's Exhibit Number 188 is
14 admitted into evidence by the Court]

15 MR. FINCH: Good morning, Ms. Gibson.

16 THE WITNESS: How are you?

17 MR. FINCH: I'm doing well.

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1 VERONA GIBSON,

2 Having Been First Duly Sworn,

3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. FINCH:

6 Q. If you would tell the Court where it is you're
7 employed.

8 A. SLED, or the South Carolina Law Enforcement
9 Division.

10 Q. And what is your position at SLED?

11 A. I'm a forensic technician in the DNA department.

12 Q. How long have you been there?

13 A. Approximately four and a half years.

14 Q. And as a forensic technician, what are some of
15 the things you do up at sled?

16 A. I work in the evidence processing department
17 where we take larger items of evidence and process those
18 down into smaller cuttings or swabs that are forwarded to
19 the DNA department.

20 Q. And did you have occasion to analyze and perform
21 some analyses on items for L10-09 -- I'm sorry -- L10-
22 09045?

23 A. Yes, sir, I did.

24 Q. And what were those items?

25 A. Those were a diaper bag and a tire cover, our

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1 item number 18 and 19.

2 MR. FINCH: And --

3 THE WITNESS: I have some.

4 MR. FINCH: Okay. I need some, too.

5 THE WITNESS: Okay.

6 Q. [Mr. Finch] I'm going to show you what's been
7 previously marked and admitted into evidence as State's
8 Number 164. Can you identify that item?

9 A. Yes, sir, I can. It has our item number on it,
10 my initials, and our lab number.

11 Q. And what is that item?

12 A. That is what we refer to as the diaper bag.

13 Q. Okay. And is that generally -- essentially the
14 condition it came to you up at SLED?

15 A. Yes, sir. Minus the cuttings that I performed.

16 Q. And when you get an item such as that, how do
17 you -- what's the process you do to look for areas for
18 cuttings?

19 A. When processing for -- the request was for
20 blood. So when we are looking for blood, we do a visual
21 exam first. When it comes on dark items or black items,
22 we also will use an alternate light source. It's just a
23 different wavelength of light. We have a special one that
24 will indicate the possibility of blood. And which I did
25 use on the diaper bag. And then we would swab those areas

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1 and do a chemical test for the presumptive test for blood.

2 Q. And how many cuttings did you take from the
3 diaper bag?

4 A. I took three.

5 Q. What were the areas that you took those cuttings
6 from?

7 A. One was from the handle, which is here
8 [indicates]; one is from the side of the bag, which is
9 here [indicates]; and then one from the other side of the
10 bag, which is here [indicates].

11 Q. And what's the reason for taking them in those
12 different areas?

13 A. We try to do one sample from the different areas
14 of the bag or the item that we're processing, so front,
15 back, handle was a good representation of the item.

16 Q. And then after you make those cuttings, what do
17 you do with the cuttings?

18 A. They are packaged and put in envelopes, which
19 are sealed and initialed. Those are placed in a heat-
20 sealed pouch and they're forwarded to the DNA department.

21 Q. I'm going to show you what's been previously
22 admitted into evidence as State's 186-A. Can you identify
23 that item?

24 A. Yes, sir.

25 This is the heat-sealed pouch and the cuttings

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1 that I made. They have my initial and the date on the
2 back of the envelopes. It also has my initials and the
3 date and my name and who I sent it to on the bottom.

4 Q. And, now, 164-B?

5 A. Yes. This is another envelope that was inside
6 this envelope that was from item 19, the tire cover. This
7 is the cuttings from that.

8 I sealed that and then dated it, as well, before
9 it was placed into the other heat-sealed pouch.

10 Q. And if we can: about the tire cover, that's the
11 other item that you performed analysis on?

12 A. Yes, sir.

13 Q. And what did you do with the tire cover?

14 A. The request was for blood on that one, as well.
15 It was not a dark item so we just do a visual exam. There
16 were several areas that tested positive for the
17 presumptive test for blood and I cut one of those areas.

18 Q. And you made one cutting from that?

19 A. Yes, sir.

20 Q. And why just one cutting from that item as
21 opposed to three from the other?

22 A. It was covered in carpet on the upper -- on the
23 side that would be up in the car, traditionally, so we
24 just processed for the side that would be affected.

25 [Whereupon, Mr. Finch and Mr. Pennington confer]

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1 Q. [Mr. Finch] Let me show you what's been
2 previously marked and admitted as State's 164-A. Is this
3 the tire cover you had?

4 A. Yes, sir, it is.

5 Q. And how do you know that?

6 A. Because it has our item number, my initials, and
7 the lab number written on the item.

8 MR. FINCH: No further questions, Your Honor.

9 Please answer any questions the defense may have
10 for you.

11 THE COURT: Cross-examination?

12 MR. PENNINGTON: No questions, Your Honor.

13 Thank you.

14 THE COURT: Okay. Ms. Gibson, you may step
15 down. Thank you so very much. You may be excused.

16 [Whereupon, Ms. Gibson is excused and exits the
17 witness stand]

18 MS. SHEALY: Your Honor, I have a couple of
19 stipulations before our next witness.

20 THE COURT: Okay. Do you want to call the
21 witness first?

22 MS. SHEALY: Sure. Catherine Leisy.

23 May I go ahead with the stipulations while she's
24 walking up?

25 THE COURT: Well, let's just bring her up and

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1 swear --

2 MS. SHEALY: Okay.

3 THE COURT: -- her, if you don't mind.

4 MS. SHEALY: That's fine.

5 [Whereupon, Ms. Leisy comes forward]

6 [Whereupon, Ms. Leisy is duly sworn by the clerk
7 of court as follows: do you swear or affirm that your
8 testimony will be the whole truth and nothing but the
9 truth, so help you God]

10 THE WITNESS: Yes, I do.

11 [Whereupon, Ms. Leisy takes the witness stand]

12 THE CLERK OF COURT: State your full name and
13 spell your last name.

14 THE WITNESS: Catherine Leisy. L-E-I-S-Y.

15 THE COURT: All right. Solicitor, if you will
16 read your stipulation, please, ma'am.

17 MS. SHEALY: Your Honor, at this time what has
18 been marked as State's Exhibit 205.

19 Attorneys for the State and the defense agree
20 and stipulate to the following: in Charleston County
21 Sheriff's Office case number 10012983, an item labeled
22 as evidence ID 114356, buccal swab, Bartley, Michael
23 Edwin, 9/22/77, was collected and admitted into
24 evidence by Cathy Kjellman of the Charleston County
25 Sheriff's Office. Subsequently that item was taken by

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1 Brent Roy, of the Charleston County Sheriff's Office,
2 to SLED. Roy signed the item into SLED to Selena
3 Kinard at SLED on August 12th, 2010. The items was
4 assigned SLED item number 1 for SLED lab number L10-
5 09045. Sheree Brown, also SLED, delivered it to
6 Catherine Leisy, of SLED, who did perform the DNA
7 analysis on it. At no time was the item damaged or
8 changed from its original condition from the time of
9 collection until the time of the work done by
10 Catherine Leisy.

11 And, Your Honor, at this time we would move into
12 evidence the buccal swab of Michael Bartley, State's
13 Exhibit 198 and the stipulation, 205.

14 MR. PENNINGTON: No objection, Your Honor.

15 THE COURT: 198 you said?

16 MS. SHEALY: Yes, sir.

17 THE COURT: All right. 198 admitted without
18 objection.

19 Thank you, sir.

20 [Whereupon, State's Exhibit Number 198 is
21 admitted into evidence by the Court]

22 [Whereupon, State's Exhibit Number 205 is
23 admitted into evidence by the Court]

24 MS. SHEALY: And then attorneys for the State
25 and the defense agree and stipulate to the following:

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1 in the Charleston County Sheriff's Office, case number
2 10012983, an item labeled as evidence ID 114970,
3 number one, buccal swab from the defendant Darryl
4 Drayton, the date of birth '77, was collected and
5 -- collected by and submitted into evidence by James
6 Perkins of the Charleston County Sheriff's Office.
7 Subsequently that items was taken by Cathy Kjellman,
8 of the Charleston County Sheriff's Office, to the
9 State Law Enforcement Division, SLED, in Columbia,
10 South Carolina. Kjellman signed the item into Nikki
11 Perry Hughes at SLED on September 8th, 2010. The
12 items was assigned SLED item number 19 for SLED lab
13 number L10-09045. The items was then picked up by
14 Josetta Blair and delivered to DNA, third. From
15 there, Sheree Brown, also SLED, delivered it to
16 Catherine Leisy, of SLED, who did perform DNA analysis
17 on it. At no time was the item damaged or changed
18 from its original condition from the time of
19 collection until the time of the work done by
20 Catherine Leisy.

21 And at this time we would move into evidence
22 State's Exhibit 197, the buccal swab from the
23 defendant, Darryl Drayton, and 208, the stipulation
24 just read.

25 MR. PENNINGTON: No objection, Your Honor.

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1 THE COURT: Okay. 197 admitted without
2 objection.

3 [Whereupon, State's Exhibit Number 197 is
4 admitted into evidence by the Court]

5 [Whereupon, State's Exhibit Number 208 is
6 admitted into evidence by the Court]

7 MS. SHEALY: Good morning, Ms. Leisy.

8 THE WITNESS: Good morning.

9 - - - - -

10 CATHERINE LEISY,

11 Having Been First Duly Sworn,

12 was Examined and Testified as Follows:

13 DIRECT EXAMINATION

14 BY MS. SHEALY:

15 Q. If you would please tell the jury where you work
16 and what you do there.

17 A. I work for the South Carolina Law Enforcement
18 Division, commonly known as SLED. I am a forensic
19 scientist assigned to the DNA and serology unit. My
20 responsibilities include processing forensic cases,
21 generating reports based on the results and conclusions
22 drawn, testifying to those reports as necessary. I also
23 assist in the supervision of newly-hired analysts and
24 assist in their training.

25 THE COURT: Let me interrupt you a second.

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1 Mr. Pennington, do you agree that she's a
2 qualified DNA examiner?

3 MR. PENNINGTON: I do.

4 THE COURT: All right. The Court so finds.

5 Go ahead and introduce her to the jury. Okay?
6 I'm not trying to stop you from doing that.

7 MS. SHEALY: Right. I do want to develop her
8 background just a little bit.

9 THE COURT: Pardon?

10 MS. SHEALY: I do want --

11 THE COURT: Yeah. I mean, go --

12 MS. SHEALY: -- to develop her background.

13 THE COURT: -- into her background --

14 MS. SHEALY: Yes, sir.

15 THE COURT: -- and do it.

16 I just wanted to get that out of the way. Okay?

17 MS. SHEALY: Yes, sir. Thank you. I appreciate
18 that.

19 THE COURT: All right. Go ahead.

20 Q. [Ms. Shealy] Just tell the jury a little bit
21 about your background, if you would. Your education and
22 where you worked previously.

23 A. Yes, ma'am.

24 I have a Bachelor of Science degree in genetic
25 engineering from Cedarcrest College in Allentown,

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1 Pennsylvania.

2 Following graduation, I spent two years working
3 as a research assistant at a gene cloning laboratory in
4 Germantown, Maryland.

5 I then spent four years as a forensic DNA
6 analyst at a private forensic testing facility known as
7 Fourth and Selmark [phonetic] where I performed the same
8 types of testing that I do now.

9 And I've been with SLED for six years. I've
10 received in-house training in all the different types of
11 testing and analysis that my job requires me to perform.
12 And I'm required to participate in annual continuing
13 education to make sure that I'm caught up with the latest
14 trends and the different types of techniques and analyses
15 that are currently available for forensic DNA testing.

16 Q. Would you tell the jury whether or not SLED is
17 accredited for DNA testing.

18 A. SLED is accredited by the American Society of
19 Crime Laboratory Directors, a laboratory accreditation
20 board, also known as ASCLB lab. That's a voluntary
21 program that forensic labs can choose to participate in to
22 show that they meet certain standards and guidelines that
23 help ensure quality and consistency in forensic testing.

24 Q. And how many times have you testified as a DNA
25 expert?

1 A. On approximately forty occasions.

2 Q. Now, would you please describe for the jury what
3 is meant and -- what is DNA.

4 A. DNA stands for deoxyribonucleic acid. It's the
5 genetic material found in all our body cells, with the
6 exception of our red blood cells.

7 DNA is packaged into structures called
8 chromosomes, which contain our genes. And genes are
9 simply strands of DNA that code for our physical
10 characteristics, such as our height or our eye color. We
11 receive half of our DNA from our mother and half from our
12 father and we therefore have two copies of every gene.

13 Approximately 99.9 percent of an individual's
14 DNA is identical to that of everyone else's and it's the
15 variation in that remaining .1 percent that allows us to
16 tell different people apart.

17 Q. Is there any dispute in the scientific community
18 regarding the principles that you've discussed?

19 A. No, there's not.

20 Q. Now, generally, what are you trying to determine
21 through DNA identity testing for a criminal case?

22 A. Basically what I'm trying to do is determine
23 whether or not an unknown biological stain left at a crime
24 scene or on an item of evidence could or could not have
25 been contributed by a known individual whose DNA standard

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1 has been submitted for comparison purposes.

2 Q. What is meant by the term buccal swab?

3 A. A buccal swab is basically just a sterile cotton
4 swab, that looks very much like a Q-tip, that's rubbed
5 against the inside of someone's cheek in order to collect
6 cells from their mouth. We can then develop a DNA profile
7 from those cells and we use that DNA profile as that
8 individual's standard for comparison to profiles obtained
9 from evidence.

10 Q. Is what is known as PCR, STR testing performed
11 at your lab?

12 A. It is.

13 Q. Okay. And could you describe for the jury what
14 that type of testing means?

15 A. PCR stands for polymerase chain reaction. It's
16 a technique that allows us to make copies of the specific
17 locations in DNA that were -- those locations are known as
18 STR, or short tandem repeats.

19 An STR is just a specific location in our DNA
20 where a short core unit of DNA repeats a certain number of
21 times, and it's the number of times that unit repeats that
22 varies from person to person and allows us to tell
23 different people apart.

24 Q. What steps are involved in that type of testing?

25 A. The first step is DNA extraction, where we

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1 isolate and remove DNA from the particular item of
2 evidence that we're testing.

3 We then perform what's called amplification.
4 And this is the PCR step itself where we're copying the
5 STR locations that we're interested in testing. Once we
6 have those locations copied, we can count the number of
7 repeat units and assign DNA type.

8 So a specific STR location, let's say the copy I
9 received from my mom had eight repeat units and the copy I
10 received from my dad had ten. My DNA types at that
11 location are simply eight and ten. The number corresponds
12 to the number of repeat units.

13 And it's the overall collection of DNA types at
14 fifteen STR locations that gives us what we call an
15 individual's DNA profile.

16 Q. What safeguards and controls are used at SLED to
17 ensure the integrity of samples and reliability of the
18 testing procedure?

19 A. When evidence is brought into SLED, it is given
20 a unique SLED lab number and each particular item is given
21 a unique item number so that there will be no mistake as
22 to what item I'm working on at any given time.

23 Only one item will be processed at a time, to
24 prevent any type of sample switch or contamination. We
25 routinely clean all of our lab surfaces. And we wear what

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1 we call personal protective equipment, lab coats,
2 disposable gloves, eyeglasses, not only to protect
3 ourselves from anything potentially dangerous but also to
4 keep from introducing our DNA into the sample and causing
5 it contamination.

6 Q. Okay. Now, regarding this lab number involving
7 this case, were you given three known DNA samples?

8 A. Yes, I was.

9 Q. Okay. And -- just one moment.

10 If you would tell the jury whether you received
11 State's Exhibit 189.

12 A. I don't believe I received this exact container.
13 The SLED case and item number and my initials aren't
14 present.

15 Q. Okay. Did you receive a blood spot for Alexis
16 Lukaitis?

17 A. I did.

18 Q. Okay. And on 198, did you receive a buccal swab
19 from Mike Bartley?

20 A. Yes, I did.

21 Q. Okay. And 197, a buccal swab from Darryl
22 Drayton?

23 A. Yes, I did.

24 Q. Now, did you receive items, then, that were
25 unknown, that you were making comparisons with?

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1 A. I did.

2 Q. And would it be helpful to you if we took those
3 items one by one to discuss your conclusions?

4 A. That would probably be the most clear way, yes.

5 Q. Okay. Now, behind you is a dry-erase board.

6 MS. SHEALY: Your Honor, do you mind if I
7 approach that board?

8 THE COURT: Yes, ma'am, please do.

9 MS. SHEALY: And I think I put some markers
10 right up here.

11 Q. [Ms. Shealy] And in looking at your report from
12 April -- from October 27th, 2010, were you given a
13 cigarette butt from the scene, State's Exhibit 178?

14 A. I received two cigarette butts.

15 Q. The one that we're focusing on is a cigarette
16 butt from the scene Old Jacksonboro.

17 A. I did. That was identified as SLED item
18 number 3.

19 Q. Okay. And could you tell the jury whether you
20 made any comparison -- an analysis on that for DNA
21 purposes?

22 A. Yes, I did.

23 Q. And what was your conclusion regarding that
24 cigarette butt?

25 A. The DNA profile developed from the cigarette but

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1 collected from Old Jacksonboro Road is from an
2 unidentified male individual.

3 Q. Okay. So it did not match Mike Bartley, it did
4 not match Ms. Lukaitis, nor did it match Mr. Drayton?

5 A. That's correct.

6 Q. Okay. Now, were you given some right-hand
7 fingernail clippings from Alexis Lukaitis?

8 A. I was.

9 Q. And left fingernail clippings?

10 A. Correct.

11 Q. And that is State's Exhibit 190?

12 A. That's correct.

13 Q. Okay. Could you tell the jury what conclusion
14 you reached regarding those?

15 A. No DNA profile foreign to Alexis Lukaitis was
16 developed from the right-hand fingernail clippings tested.
17 And the DNA profile developed from the lefthand fingernail
18 clippings is a mixture of at least two individuals.

19 The DNA profile developed from the major
20 contributor to this mixture is consistent with the DNA
21 profile of Alexis Lukaitis. And the partial DNA profile
22 developed from the minor contributor to this mixture is
23 insufficient for reliable interpretation.

24 Q. Okay. So it's a mixture of two people and you
25 can't tell who the second person is?

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1 A. It's at least two, and the secondary contributor
2 is weak enough that I can't make a reliable comparison
3 between that minor profile and any known individual.

4 Q. Now, regarding the oral, vaginal and rectal
5 swabs, State's Exhibit 191, what type of analysis did you
6 do on those items?

7 A. On these particular items, before processing for
8 DNA I performed a preliminary test looking for the
9 presence of semen. There was concern, apparently, that
10 there may have been some type of sexual assault or sexual
11 contact.

12 Those tests were negative, so there was no semen
13 identified and as such I did not perform DNA testing on
14 those items as I didn't believe there was any probative or
15 informative results to be had.

16 Q. Okay. And then SLED number 11, swab from
17 marker one. You have in this package, which is State's
18 Exhibit --

19 MS. SHEALY: Your Honor, do you mind if I
20 approach the witness?

21 THE COURT: Please do.

22 Q. [Ms. Shealy] There were several packages within
23 this package; is that correct?

24 A. That's correct.

25 Q. And --

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1 THE COURT: What's the State's exhibit number?

2 MS. SHEALY: 217.

3 THE COURT: Thank you, ma'am.

4 Q. [Ms. Shealy] Regarding marker one --

5 And that's how you refer to it in your report;
6 is that correct?

7 A. That's correct.

8 Q. Could you tell the jury what conclusion you
9 reached regarding marker one?

10 A. The DNA profile developed from swab marker one
11 matches the DNA profile of Darryl Drayton.

12 The probability of randomly selecting an
13 unrelated individual having a DNA profile matching this
14 item is approximately one in 1.9 quadrillion.

15 Q. Okay. So mark -- the item identified as
16 marker --

17 And who identified it as marker one?

18 A. That's how it was identified.

19 When it was submitted to me, it was actually
20 identified as --

21 Q. Would you put that percentage beside marker one,
22 please.

23 [Whereupon, the witness complies]

24 A. That would represent 1.9 quadrillion.

25 Q. [Ms. Shealy] And what does that percentage

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1 mean?

2 A. It means that if you randomly selected an
3 unrelated individual, developed their DNA profile, the
4 probability that they would have this exact profile is
5 approximately one in 1.9 quadrillion.

6 Q. Okay. Regarding swab from what had been
7 identified as marker thirteen: could you tell the jury --
8 and this is a swab from marker thirteen?

9 A. Uh-huh.

10 Q. Could you tell the jury what your conclusions
11 regarding that were?

12 A. The DNA profile developed from the swab marker
13 thirteen is a mixture of at least two individuals.

14 The DNA profile developed from the major
15 contributor to this mixture matches the DNA profile of
16 Alexis Lukaitis. The probability of randomly selecting an
17 unrelated individual having a DNA profile matching the
18 major contributor to the mixture is approximately one in
19 50 quadrillion.

20 Darryl Drayton cannot be excluded as a possible
21 minor contributor to this mixture and the probability of
22 randomly selecting an unrelated individual who could have
23 contributed to the overall mixture is approximately one in
24 three million.

25 Q. Okay. So Drayton cannot be excluded?

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1 A. As a possible minor contributor. That's
2 correct.

3 Q. Tell us what you mean by that.

4 A. When we have a mixture, it simply means DNA
5 present from more than one individual on a particular
6 item. We can't always make an identification of all of
7 the individuals who contributed. But when I compare the
8 DNA profile developed for Mr. Drayton to the mixture from
9 this particular item, there is enough consistency in those
10 DNA types that I feel it's possible that he is a potential
11 contributor to this mixture.

12 Q. And then what did you tell us about the
13 percentage of -- how did you tell us that about his
14 percentage regarding that?

15 A. The probability of randomly selecting an
16 unrelated individual who could have contributed is
17 approximately one in three million. So the number really
18 works the same as the previous statistic. If you randomly
19 selected an unrelated individual, developed their DNA
20 profile, the probability that they could be included as a
21 possible contributor would be approximately one in three
22 million.

23 Q. Could you write that, please, by marker
24 thirteen.

25 [Whereupon, the witness complies]

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1 Q. [Ms. Shealy] Okay. Your next item on your
2 report refers to a swab from the driver doorframe at the
3 bottom. What were your conclusions there?

4 A. The DNA profile developed from the swab from the
5 doorframe also matches the DNA profile of Darryl Drayton.
6 And the probability, again, of selecting a -- randomly
7 selecting an unrelated individual who could have a profile
8 matching this item is approximately one in 1.9
9 quadrillion.

10 Q. So the same number as up here?

11 A. That's correct.

12 Q. Okay. And then swab from the inside driver-door
13 pull.

14 A. No human DNA was obtained from the swab from the
15 inside driver-door pull.

16 Q. And the swab from the steering wheel?

17 A. That was identified as SLED item 15. The DNA
18 profile developed from the steering wheel is a mixture of
19 at least two individuals. The DNA profile developed from
20 the major contributor to this mixture also matches the DNA
21 profile of Darryl Drayton. And Alexis Lukaitis cannot be
22 excluded as a possible minor contributor to this mixture.

23 Q. So regarding the steering wheel, Darryl Drayton
24 is the major contributor?

25 A. His DNA profile does match that as a major

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1 contributor, yes.

2 Q. He matches the -- as a major contributor.

3 A. Correct.

4 Q. You may need to explain that to us again. Why
5 is he not a match but just matches as a major contributor?

6 A. When we have a mixture with what we call a major
7 contributor, it just means that one individual who left
8 their DNA left significantly more than did the other
9 contributors. The significance of the signal that's given
10 off by that DNA is much stronger, so it's easier for us to
11 basically pull their profile out of this mixture. So I
12 can make a comparison between the major contributor to a
13 known individual and potentially make an identification,
14 but all I can really say is that their DNA profile matches
15 the DNA profile from this item of evidence.

16 Q. So how would you characterize it again regarding
17 the steering wheel?

18 A. That Mr. Drayton's profile does match that of
19 the major contributor to that mixture.

20 Q. So in the car, marker one, marker thirteen, the
21 driver doorframe at the bottom and the steering wheel,
22 this being the mixture?

23 A. That's correct.

24 Q. Okay. And that completed that report; is that
25 correct?

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1 A. Yes, it is.

2 Q. Okay. Now, did you do another report on April
3 12th of 2010?

4 A. I believe it was April 10th.

5 Q. I mean April 10th. I'm sorry. You're right.

6 A. So I have the right one?

7 Q. Now, again, were you still comparing the blood
8 spot of the victim and the two buccal swabs of Mike
9 Bartley and Darryl Drayton?

10 A. Correct.

11 Q. And on that occasion were you given cuttings
12 that had been generated at SLED regarding the diaper bag?

13 A. Yes, I was.

14 Q. Okay. Showing you what has been previously
15 marked as State's Exhibit 186-A. I ask you whether these
16 are the cuttings from the diaper bag that you received.

17 A. Yes, they are.

18 Q. And would you tell the jury, please, what your
19 findings were regarding your DNA analysis on the cuttings.

20 A. The DNA profile developed from the three
21 cuttings taken from the diaper bag matches the DNA profile
22 of Alexis Lukaitis. The probability of randomly selecting
23 an unrelated individual having a DNA profile matching
24 these items is approximately one in 50 quadrillion.

25 Q. Were you also given a cutting from a tire cover

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1 from a trunk?

2 A. Yes, I was.

3 Q. Okay. And showing you what's been marked as
4 State's Exhibit 164-B, I ask you whether this is the
5 cutting that you examined.

6 A. Yes, it is.

7 Q. Okay. Would you please tell the jury the
8 results of your analysis from that cutting.

9 A. The DNA profile developed from the cutting from
10 the tire cover also matches the DNA profile of Alexis
11 Lukaitis with the same statistic of approximately one in
12 50 quadrillion applying to that item.

13 Q. Were you given some swabs that had been
14 generated by Almon Brown, from SLED, on a filet knife?

15 A. Yes, I was.

16 Q. And did you perform an analysis on those swabs?

17 A. I did.

18 Q. Showing you what's been marked as State's
19 Exhibit 199, ask you whether those are the swabs that you
20 performed your analysis on.

21 A. They are.

22 Q. And could you tell the jury, please, what the
23 results of your analyses were?

24 A. No DNA profile was developed from the handle
25 from the knife and no human DNA was obtained from the

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1 blade of the knife.

2 Q. Okay. And when you say no human DNA was
3 obtained from the blade of the knife, does that mean it
4 could have been animal DNA?

5 A. That's correct.

6 I did perform an initial test on that swab that
7 indicated the possible presence of blood.

8 The next test after -- once we've extracted DNA,
9 we then perform a quantitative test which gives us an
10 estimate of how much DNA may be present. That test is
11 specific to humans. That test was negative, indicating
12 that there may have been blood present but that there was
13 no human DNA present.

14 Q. Okay. So meat? It could have come from meat
15 from a knife?

16 A. That's possible, yes.

17 Q. Now, were you also provided with hair from the
18 victim's right hand?

19 A. Yes, I was.

20 Q. Showing you what's been marked as State's
21 Exhibit 194. I ask you whether that includes the hair
22 that you were provided with.

23 A. Yes, it does.

24 Q. Okay. And what were your results of that?

25 A. The DNA profile developed from the hair matches

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1 the DNA profile of Alexis Lukaitis. And, again, the
2 probability of randomly selecting an unrelated individual
3 having a DNA profile matching this item is approximately
4 one in 50 quadrillion.

5 Q. Now, were you provided with a swab from the
6 right shoe of the victim?

7 A. Yes, I was.

8 Q. And showing you what's been marked as State's
9 Exhibit 192-A, I ask you whether that's a swab that you
10 performed an analysis on.

11 A. It is.

12 Q. Okay. And what was the result of your analysis
13 on the right shoe of the victim?

14 A. The DNA profile developed from the swab from the
15 right shoe is a mixture of at least two individuals.
16 Alexis Lukaitis and Darryl Drayton cannot be excluded as
17 possible contributors to this mixture. And the
18 probability of randomly selecting an unrelated individual
19 who could have contributed to this mixture is
20 approximately one in 340 million.

21 Q. So Alexis and Darryl Drayton can't be excluded?

22 A. That's correct.

23 Q. And will you come, please and put the statistic
24 up here as to their not being able to be excluded?

25 A. [Witness complies]

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1 Q. Were you provided with a swab from the victim's
2 left shoe?

3 A. Yes, I was.

4 Q. And showing you State's 192-B. Is that the
5 swab?

6 A. It is.

7 Q. Would you tell the jury, please, what your
8 results were from analyzing the swab from the left shoe of
9 the victim?

10 A. The DNA profile developed from the swab from the
11 left shoe matches the DNA profile of Darryl Drayton.

12 The probability of randomly selecting an
13 unrelated individual having a DNA profile matching this
14 item is, again, approximately one in 1.9 quadrillion.

15 Q. So the same statistic again?

16 A. That's correct.

17 Q. Were you given a swab from a CVS bag?

18 A. I was.

19 Q. Showing you 166-A.

20 A. That is correct.

21 Q. Tell the jury if you would, please, what the
22 results of that analysis was.

23 A. The DNA profile developed from the swab from the
24 CVS bag is a mixture of at least two individuals. The DNA
25 profile developed from the major contributor to this

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1 mixture also matches the DNA profile of Darryl Drayton,
2 and the partial DNA profile developed from the minor
3 contributor to this mixture is insufficient for reliable
4 interpretation.

5 Q. Did you also look at a swab from a spare-tire
6 insert?

7 A. I did.

8 Q. And what were your conclusions? Showing you
9 165-A and ask you if that's what you looked at.

10 A. It is.

11 Q. And what were your conclusions?

12 A. No STR DNA profile was developed from the swab
13 from the spare-tire insert.

14 MS. SHEALY: Beg the Court's indulgence just a
15 moment.

16 [Whereupon, Ms. Shealy reviews documents]

17 MS. SHEALY: Your Honor, I'm looking to see if I
18 have a clean copy of Ms. Leisy's report. I would like
19 to offer her report into evidence. I don't know that
20 I have a clean copy. I may need to substitute that
21 later. It's just a lot of information that I'm unsure
22 they're going to be able to retain without a written
23 document.

24 THE COURT: What number?

25 MS. SHEALY: May I speak to Mr. Pennington for a

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1 second?

2 THE COURT: Yes, sir. Yes, ma'am.

3 Do you know the next number? What's the next
4 number?

5 STATE'S LAW CLERK: 234.

6 THE COURT: 234?

7 STATE'S LAW CLERK: Yes, Your Honor.

8 THE COURT: All right. Mr. Pennington, do you
9 have any objection?

10 MR. PENNINGTON: May I have the Court's
11 indulgence. I think I have one of the reports here.
12 This is the April report.

13 [Whereupon, Ms. Shealy and Mr. Pennington
14 confer]

15 MS. SHEALY: I can get that, Judge. I don't
16 know that we have two clean copies right now. I can
17 actually put them in after I get two copies.

18 THE COURT: I understand. But I'm just trying
19 to see if he's got an objection to it.

20 MR. PENNINGTON: I do not, Your Honor.

21 THE COURT: All right. 234 is admitted without
22 objection, subject to putting in a clean copy that
23 hasn't been written on.

24 [Whereupon, State's Exhibit Number 234 is
25 admitted into evidence by the Court]

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1 MS. SHEALY: Thank you, Judge.

2 MR. PENNINGTON: Just so we clarify: the only
3 report that I see here is the April 10th, 2012. So
4 are you going to put in --

5 THE COURT: She's going to put the others in,
6 but we're going to get clean copies.

7 [Whereupon, Ms. Shealy and Mr. Pennington
8 confer]

9 MS. SHEALY: There are actually two reports: an
10 October 27th, 2010; and an April 10th, 2012.

11 [Whereupon, Ms. Shealy and Mr. Pennington
12 confer]

13 MR. PENNINGTON: I have no objection to both
14 reports, including the chart of the identifying
15 characteristics, going in.

16 THE COURT: All right.

17 Q. [Ms. Shealy] In that we're going to do that --

18 THE COURT: And that's all under State's Exhibit
19 234; is that correct?

20 MS. SHEALY: Maybe we should do 234 and 235,
21 just so it'll be a little more simple.

22 THE COURT: Well, which one is 234? October?

23 MS. SHEALY: 234 should be the October 27th,
24 2010.

25 THE COURT: All right. And 235 will be the

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1 April; is that correct?

2 MS. SHEALY: Yes, sir, that's correct.

3 THE COURT: All right.

4 Q. [Ms. Shealy] Okay. Ms. Leisy --

5 THE COURT: All right. 234 and 235 admitted
6 without objection, subject to putting in clean copies.
7 Okay?

8 MS. SHEALY: Thank you.

9 [Whereupon, State's Exhibit Number 234 is
10 admitted into evidence by the Court]

11 [Whereupon, State's Exhibit Number 235 is
12 admitted into evidence by the Court]

13 Q. [Ms. Shealy] In that they will have your report
14 back there, let's discuss some aspects of the report
15 itself. Okay?

16 Now, you have discussed mixtures. And if you
17 would -- and I know you described it to us, but can you
18 describe it again what we're talking about when there are
19 mixtures of two people?

20 A. Again, mixture just means that you have DNA from
21 more than one individual found on a particular item. And
22 I can tell, when I look at a profile from a piece of
23 evidence, based on how many DNA types are present at each
24 location and the relative intensity of those DNA types,
25 how many people have -- at least how many people have

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1 contributed to a mixture.

2 Q. And when you have mixtures, do you always have a
3 major and a minor contributor?

4 A. Not always. If you have what's closer to maybe
5 fifty-fifty mix of material from multiple people, you
6 can't always determine a major contributor.

7 Q. But if your report reflects a major contributor,
8 that means what?

9 A. It means that one individual contributed
10 significantly more DNA than did the others and that the
11 intensity of the signal given off by their DNA was much
12 stronger so I was able to pull out their individual
13 profile from that mixture.

14 Q. And when you say that someone cannot be
15 excluded, will you describe that to us again.

16 A. To say that someone is not excluded from a
17 mixture means that I've compared their known DNA profile
18 to the profile developed from that piece of evidence, from
19 that mixture. When I compare the DNA types of each of
20 their STR locations, they are consistent with the DNA
21 types found at that location in the mixture from the
22 evidence. That tells me that it's possible that they are
23 the individual that contributed those types to that
24 mixture but I can't necessarily make an identification or
25 make a definitive match. It just means that it's possible

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1 that they contributed.

2 Q. And the chart that accompanies your report, you
3 have told us about how you get one number from your mother
4 and one number from your father. Can you further describe
5 what we're looking at when we look at the table?

6 A. When you look at the table, the row that goes
7 across the top of the table includes the name of all the
8 STR locations that we use. The first column on the very
9 far left is a list of all the items that were tested. So
10 the first item on the table will be item -- SLED item
11 number one, which is the DNA standard for Michael Bartley.

12 MS. SHEALY: Okay. Hold on just a second and
13 let me see if this will show up on the device here.

14 Q. [Ms. Shealy] And this would be a part of --

15 MS. SHEALY: What were my last two numbers?

16 THE COURT: 234 is the October and 235 is April.

17 Q. [Ms. Shealy] Okay. So those would be the
18 back -- the last page of 234.

19 MS. SHEALY: But I'm not sure that this is going
20 to show up, but let's see.

21 Q. [Ms. Shealy] Okay. So this is the table that's
22 at the back of your report. And obviously we can't see
23 the numbers, but just to give the jury an idea of what
24 they're looking at.

25 This column indicates Michael Bartley, Alexis

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1 Lukaitis, Darryl Drayton.

2 A. Correct.

3 Q. And then these are items: cigarette butt,
4 Jacksonboro; right-hand fingernails; left-hand
5 fingernails; marker one; marker thirteen; driver
6 doorframe; steering wheel?

7 A. Correct.

8 Q. Now, what do these numbers across this table
9 mean? The numbers at the top.

10 A. The numbers, as you go across the row to the
11 right of item one, Michael Bartley, those are the DNA
12 types that I developed for Mr. Bartley's profile. If you
13 look at the first box just to the right of Mr. Bartley's
14 name, you'll see the numbers 12 and 14. That means that
15 one copy of Mr. Bartley's DNA had twelve repeat units at
16 that first STR location and the other copy had fourteen.
17 And it just goes on down the row. And the collection of
18 DNA types in that entire row of fifteen locations, plus
19 what we call amelogenin, which is a gender marker, gives
20 us an individual's DNA profile.

21 Once I have profiles from both known individuals
22 and evidence, I can compare the DNA types in each box for
23 a known individual to see if they're consistent with the
24 types in the boxes for the evidence.

25 Q. Okay. Now, Ms. Leisy, looking up here, can you

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1 walk us through -- I'm trying to see if there's a way we
2 could walk through an example. Can you find an example
3 for us to walk through?

4 A. The best example would probably be if we just
5 drop down to number four, right-hand fingernails, and
6 compared that to the profile of item nine from Alexis
7 Lukaitis.

8 Q. Okay.

9 A. So it would be the second item down and the
10 fifth.

11 THE COURT: Why don't we do this: Mr. Foreman,
12 ladies and gentlemen of the jury, why don't we take a
13 break at this time. If you need anything, let the
14 bailiffs know.

15 Please don't discuss the case amongst
16 yourselves. And leave your notepads in your chair.

17 We'll take the morning break. If you'll follow
18 the bailiffs to the jury room.

19 [Whereupon, the jury exits the courtroom at
20 11:06 a.m.]

21 THE COURT: See if you can't go get with the
22 clerk and get something blown up so she can stand in
23 front of the jury and explain it, during this break,
24 please.

25 MR. PENNINGTON: What we could do -- I was --

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1 THE COURT: She can't see that.

2 MR. PENNINGTON: I agree.

3 What if we made duplicate copies of the report?
4 Can we do that?

5 THE COURT: Well, we can make twelve copies and
6 when she --

7 MS. SHEALY: You mean so that they can -- the
8 jury can have it?

9 MR. PENNINGTON: Yeah.

10 THE COURT: The jury can have them and she can
11 stand in front of the jury and explain it. Because
12 this is not accomplishing anything.

13 MS. SHEALY: Well, I just got it clear right
14 before you broke. But --

15 THE COURT: Go ahead and make fourteen copies
16 and I'll give each juror a copy of it and then she can
17 stand in front of the jury and they can follow what
18 she's talking about, because this is accomplishing
19 zero.

20 [Off the record momentarily]

21 THE COURT: When y'all finish, you can take a
22 break. Okay?

23 [Whereupon, a recess is taken from 11:07 a.m. to
24 11:45 a.m.]

25

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IN-CHAMBERS CONFERENCE

THE COURT: Let's go on the record.

All right. During the break, the foreman sent the Judge a note. And juror number 59, who is Stephen A. Costa, approached the foreman and told him -- and I'm reading from the note that was submitted to the Court by the foreman: the juror -- I've been approached by one of the fellow jurors with the following information. The juror stated he saw the victim's husband, Michael Bartley, shake the hand of a witness, Thomas Stephen Seward, and give him money. In the interest of full disclosure, we feel that it is something that should be reported. Signed by the foreman, and that is juror number 273.

I had a bench conference with the attorneys and told the attorneys what the note said. My initial reaction was to declare a mistrial sua sponte; however, after talking with the attorneys and thinking about it, I'm going to do some investigation in private in the jury room concerning Mr. Bartley and the particular juror, as well as Mr. Foreman, and make a determination of what has actually transpired and why it transpired and then make a decision if we can put some jurors on for alternates, or take whatever action is appropriate, and possibly ultimately declare

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1 a mistrial. But I'm going to delve into it first
2 before I make a decision.

3 Anything that the State would like to add?

4 MS. SHEALY: No, Your Honor, other than the
5 State did request that a full investigation be done as
6 to what exactly the juror saw, and who all he spoke to
7 about what he saw, and which witness he is indicating
8 that he saw exchange a handshake with Mike Bartley and
9 if, in fact, it was Mike Bartley that he saw the
10 handshake with, and all facts regarding the exchange
11 of money.

12 THE COURT: Okay. Anything the defense would
13 like to add?

14 MR. PENNINGTON: The only thing I will add,
15 Judge -- and this is because I just want to be -- have
16 us thinking clearly about the situation.

17 We have -- the Court has ordered, off the
18 record, to take Mr. Bartley temporarily into custody
19 with -- in the presence of the bailiff and the
20 sheriff's deputies.

21 It occurs to me, after thirty-plus years of
22 being a defense lawyer, that we are approaching what
23 could be a criminal contempt situation, which could
24 then imply that the Court should Mirandize this man
25 prior to what would be viewed as a custodial

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1 interrogation, because he could well then -- if the
2 Court wants to use what he says as evidence. It may
3 be excludeable from the standpoint that he has a
4 Miranda right not to be -- or not to be questioned
5 prior to Miranda. And the question I have in my mind
6 legally is the fact that you're a judge and that this
7 would be potentially direct contempt, whether or not
8 Miranda would not apply. I sense that it may.

9 THE COURT: Let me interrupt you.

10 I have no intention of finding him in any
11 contempt.

12 MR. PENNINGTON: Okay.

13 THE COURT: I just want to find out what
14 transpired. Okay?

15 MR. PENNINGTON: Okay.

16 THE COURT: I have no intention.

17 MR. PENNINGTON: And I'm not saying that I would
18 prosecute or seek that. I just wanted to make sure we
19 thought that through.

20 THE COURT: That's not my purpose. I have no
21 intention of doing any contempt. Okay?

22 MR. PENNINGTON: Okay. All right.

23 THE COURT: Irregardless of what he did. Okay?

24 MR. PENNINGTON: Fair enough.

25 THE COURT: Go tell them to come on back.

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1 And the only reason I got the deputy to escort
2 him: because I didn't want anybody talking to him.

3 MR. PENNINGTON: And that was the proper thing
4 to do, I believe.

5 But you know me. I'm an old defense lawyer. I
6 think --

7 [Off the record momentarily]

8 [Whereupon, Mr. Bartley enters the conference
9 room]

10 THE COURT: Mr. Bartley, how are you doing
11 today?

12 MR. BARTLEY: I'm okay.

13 THE COURT: All right. Let me tell you what has
14 transpired. Okay? One of the jurors has informed the
15 Court that he saw you shaking the hand of one of the
16 witnesses and giving him some money.

17 Tell me what transpired.

18 MR. BARTLEY: It was Mr. Edwards, the --

19 THE COURT: Speak up so she can hear you.

20 MR. BARTLEY: It was -- it was Mr. Edwards, the
21 gentleman from Bluffton. His cousin. I gave him \$20
22 and said, go get lunch, and shook his hand and walked
23 away.

24 THE COURT: Okay. When was this?

25 MR. BARTLEY: Yesterday.

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1 THE COURT: Yesterday?

2 MR. BARTLEY: Right when we broke for lunch.

3 THE COURT: When we broke for lunch. Okay.

4 MR. BARTLEY: So everybody came out, he was
5 standing there, I gave him that, and we parted ways.

6 THE COURT: Where was it? In the hall?

7 MR. BARTLEY: In the front.

8 THE COURT: Where?

9 MR. BARTLEY: Like when we went downstairs where
10 they have the --

11 THE COURT: Was it outside the courthouse --

12 MR. BARTLEY: Yes.

13 THE COURT: -- completely?

14 MR. BARTLEY: Yes, it was outside.

15 And my family and everybody, they were going to
16 the sandwich shop, and he was leaving, so I just
17 wanted to tell him thank you --

18 THE COURT: How much money did you give him?

19 MR. BARTLEY: Gave him twenty bucks.

20 THE COURT: Huh?

21 MR. BARTLEY: \$20, just to go get lunch.

22 THE COURT: All right. Any questions the State
23 would like to ask Mr. Bartley concerning this?

24 MS. SHEALY: Did you -- prior to trial, had you
25 ever offered him any money?

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1 MR. BARTLEY: I never even met him. Like that's
2 why I was like -- everything he said, I was just like,
3 thank you.

4 THE COURT: Anything else? I'm sorry. I didn't
5 mean to cut the State off.

6 MS. SHEALY: No. That's all.

7 THE COURT: Okay. Anything the defense would
8 like to ask?

9 MR. PENNINGTON: Mr. Bartley, have you offered
10 or paid money to any other witnesses in this case at
11 any time before, including today?

12 MR. BARTLEY: No.

13 MR. PENNINGTON: And do you have any
14 relationship with Mr. Edwards?

15 MR. BARTLEY: Never met him before in my life.

16 MR. PENNINGTON: Did you provide him with
17 anything else, like transportation or other --

18 MR. BARTLEY: [Indicates negatively]

19 MR. PENNINGTON: Okay. That's all.

20 THE COURT: All right. Thank you. You can go
21 take him back to the courtroom.

22 [Whereupon, Mr. Bartley exits the conference
23 room]

24 THE COURT: All right. Let me go get the juror
25 in here and see what he knows.

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1 [Off the record momentarily]

2 THE COURT: Do you need some time to compose
3 yourself?

4 MS. SHEALY: Yeah, let me compose myself for a
5 second.

6 THE COURT: She's got to compose herself.

7 MS. SHEALY: I think he was probably just trying
8 to do something -- you know, I see how it happened.
9 He shouldn't have done it but --

10 THE COURT: Well, I understand how it happened.
11 But it happened.

12 MS. SHEALY: I know, I know, I know, I know.
13 God knows, I should be the one who's maddest of all.
14 But I just -- I see how it happened.

15 THE COURT: Well, at least it didn't happen in
16 the hallway, it happened outside the courthouse.

17 MS. SHEALY: Right. He probably saw him ambling
18 off, you know.

19 THE COURT: Because we were saying --
20 Yeah, come on in.

21 [Whereupon, Mr. Costa, juror number 59, enters
22 the conference room]

23 THE COURT: Hey, Mr. Costa. How are you doing?

24 MR. COSTA: Fine. How are you doing?

25 THE COURT: Have a seat, if you don't mind,

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1 please sir.

2 As you well know, you informed the foreman of
3 seeing Mr. Bartley talking to a witness; is that
4 correct?

5 MR. COSTA: Yeah.

6 THE COURT: I believe yesterday afternoon, when
7 we broke for lunch, outside the courtroom -- I mean,
8 outside the courthouse. Can you sort of tell me what
9 you saw?

10 MR. COSTA: I was, you know, walking down
11 through the building and I seen Mr. Bartley come over
12 to Steve, the witness, reach out and shake his hand.
13 But when he reached out and shook his hand, there was
14 money sitting in the hand and he handed it off to
15 Steve. And then Steve walked off.

16 THE COURT: Which witness was it? What did he
17 testify to in court? Do you remember?

18 MR. COSTA: It's --

19 THE COURT: Which one was it? What was the
20 subject matter that particular witness testified
21 about? .

22 MR. COSTA: Mr. Drayton. His cousin.

23 THE COURT: It was which one? It was a cousin?

24 MR. COSTA: The cousin.

25 MS. SHEALY: Stephen Edwards.

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1 THE COURT: It was the defendant's cousin.

2 MR. COSTA: Stephen Edwards.

3 THE COURT: Stephen Edwards. Because you had
4 put Stephen Seward in the note.

5 But it was Stephen Edwards he handed the money
6 to?

7 MR. COSTA: Yeah. I didn't -- I just told
8 the --

9 THE COURT: Foreman?

10 MR. COSTA: -- foreman.

11 THE COURT: Okay. Have you told anybody else?

12 MR. COSTA: No.

13 THE COURT: Was anybody else with you when this
14 took place?

15 MR. COSTA: I didn't see anybody else.

16 THE COURT: You haven't mentioned it to anybody
17 else, other than the foreman?

18 MR. COSTA: Huh-uh. [Indicates negatively]

19 THE COURT: Is there anything the State would
20 like to ask?

21 MS. SHEALY: How did you react to that when you
22 saw it?

23 I stopped and I kind of like paused for a
24 second --

25 MS. SHEALY: Uh-huh.

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1 MR. COSTA: -- and then I just kept on going.

2 MS. SHEALY: What was your impression about it,
3 though?

4 MR. COSTA: It's --

5 MS. SHEALY: What did it seem like to you?

6 MR. COSTA: I mean, he was thanking him. You
7 know, you look at it and you think he's just -- he's
8 thanking him. But then when you see the money you're
9 thinking, you know, one thing and then --

10 But when the cop went up and said that Stephen
11 Edwards's house was in -- you know, is in dire
12 straights, so I didn't think too much of it. You know
13 what I'm saying? I'm thinking, you know, he's just
14 helping out.

15 MS. SHEALY: Right. Okay.

16 THE COURT: Anything else?

17 MS. SHEALY: I don't have anything.

18 THE COURT: Mr. Pennington?

19 MR. PENNINGTON: Mr. Costa, when did you tell
20 the foreman about this?

21 MR. COSTA: After -- when we got to break.

22 MR. PENNINGTON: This was yesterday?

23 MR. COSTA: No. Today.

24 MR. PENNINGTON: This morning when you first
25 came in?

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1 MR. COSTA: No. Right after the first break --
2 or during the first break.

3 MR. PENNINGTON: So it's not something that
4 you've shared with any of the other jurors --

5 MR. COSTA: No.

6 MR. PENNINGTON: -- just with the foreman?

7 THE COURT: Anybody else?

8 MR. PENNINGTON: No, sir.

9 THE COURT: Mr. Costa, thank you so very much.
10 If you will take him back in that other jury
11 room, please, sir.

12 Be with you very shortly. Okay?

13 [Whereupon, Mr. Costa, juror number 59, exits
14 the conference room]

15 MS. SHEALY: Didn't Stephen Edwards --

16 THE COURT: Now, we can --

17 MS. SHEALY: Wait a minute. Didn't he --

18 THE COURT: Let's go off the record for a
19 second, please.

20 [Off the record momentarily]

21 [Whereupon, Mr. Walker, the foreman, enters the
22 conference room]

23 THE COURT: Hey, Mr. Walker. How are you doing?
24 Have a seat.

25 Now, Mr. Walker, you gave me this note this

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1 morning --

2 MR. WALKER: Yes.

3 THE COURT: -- and I think I called you out of
4 the jury room on two occasions: number one, to tell
5 me who the juror was. And you went back in and found
6 out the juror was number 59. And you knew it was
7 Steve.

8 MR. WALKER: Correct.

9 THE COURT: You didn't know his last name.

10 MR. WALKER: Correct.

11 THE COURT: You gave that to the Court this
12 morning; right?

13 MR. WALKER: Correct.

14 THE COURT: And I called you out the second time
15 and asked you if you had discussed it with anyone
16 else, and you told me no.

17 MR. WALKER: That's correct.

18 THE COURT: Is that correct?

19 MR. WALKER: Uh-huh.

20 THE COURT: Now, you didn't see the -- you did
21 not see Mr. Bartley and Mr. Edwards --

22 MR. WALKER: Edwards.

23 THE COURT: -- when this occurred; is that
24 correct?

25 MR. WALKER: No.

1 THE COURT: All you know about it is what is in
2 the note?

3 MR. WALKER: Correct.

4 THE COURT: Is that correct?

5 MR. WALKER: Correct.

6 THE COURT: The only thing I know to ask you is,
7 Mr. Walker, how do you think that would affect you
8 sitting in on the jury? How is it going to affect
9 your decision-making?

10 MR. WALKER: It won't. I mean, for me, the
11 preponderance of the facts is really the key. So the
12 information that, you know, gained, you know, at the
13 scene and at Mr. Edwards' house or whatnot, I look at
14 it from a standpoint of the factual evidence behind
15 it.

16 So as to what -- I don't know what the true
17 nature of what Steve actually witnessed was all about
18 and if it was truly a hundred percent true, I felt the
19 need to basically bring that to the Court because --
20 yeah.

21 THE COURT: I understand. I appreciate your
22 doing it.

23 MR. WALKER: So, yeah. So it won't affect how I
24 handle the case.

25 THE COURT: Okay. Anything from the State?

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1 MS. SHEALY: Can you tell me what you remember
2 the juror saying to you? I know you put it in the
3 note, but --

4 MR. WALKER: Yeah.

5 MS. SHEALY: -- but just tell us again what --

6 MR. WALKER: So he said --

7 MS. SHEALY: -- he said.

8 MR. WALKER: So he said, you know, something's
9 been eating at me, you know, yesterday -- since
10 yesterday and I've been wondering whether or not --
11 whether or not to bring it, you know, to our attention
12 -- to your attention and to the Court's attention.
13 And he was like, you know, I just -- I want to relay
14 it to you.

15 And he said, I witnessed, you know, the victim's
16 husband, Mike Bartley, you know, shake Steve's hand
17 but also had some money in the hand -- in his hand and
18 actually passed him some money and I'm not sure, you
19 know, what to do about that.

20 And, you know, I just said, I think it's best
21 that we relay that information to the Court and let
22 them decide what they want to do with that
23 information.

24 MS. SHEALY: Did that leave you with any type of
25 bad taste in your mouth --

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1 MR. WALKER: No.

2 MS. SHEALY: And when he said that to you, where
3 were y'all?

4 MR. WALKER: He pulled me aside when we came out
5 of the break, and we were in the little alcove where
6 the restrooms are. So everyone was going towards the
7 jury room and we stepped aside.

8 MS. SHEALY: And like the judge said, you feel
9 like you can still listen to the facts and make your
10 decision independent of what the juror told you?

11 MR. WALKER: Yes.

12 MS. SHEALY: Okay.

13 THE COURT: And you feel confident no one else
14 in the jury room --

15 MR. WALKER: Yes.

16 THE COURT: -- knows anything about it?

17 MR. WALKER: That's correct.

18 THE COURT: Okay. Mr. Pennington, is there
19 anything you would like to ask him?

20 MR. PENNINGTON: No, Your Honor.

21 THE COURT: Okay. Take him back to the jury
22 room.

23 MR. WALKER: Okay. Thank you.

24 THE COURT: Okay. Thank you.

25 [Whereupon, Mr. Walker, the foreman, exits the

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1 conference room]

2 THE COURT: I guess what we need to do, we'll go
3 back in the courtroom and y'all make whatever motion
4 you're going to make and I'll rule on it.

5 I'll just be --

6 Let me get off the record again.

7 [Whereupon, the in-chambers conference
8 concludes]

9 [Whereupon, a recess is taken from 12:00 p.m. to
10 12:28 p.m.]

11 THE COURT: All right. We're going to take a
12 lunch break and we'll adjourn until two o'clock and
13 we're going -- the attorneys are going to wait until
14 we hear from downstairs.

15 MS. SHEALY: Okay.

16 THE COURT: Okay?

17 MR. PENNINGTON: Yes, sir.

18 THE COURT: We'll adjourn until two o'clock,
19 except for the lawyers.

20 MR. PENNINGTON: That's correct.

21 THE COURT: Stay here. Okay?

22 MR. PENNINGTON: Yes, sir.

23 MS. SHEALY: Yes, sir. Thank you.

24 THE COURT: The jury has been excused for lunch
25 and they'll be back at two o'clock.

1 [Off the record momentarily]

2 MS. SHEALY: Your Honor, we would move into
3 evidence at this time State's Exhibit 187, State's
4 Exhibit 200, 201, 202, 203, 204, 207, 210, 211, 211-A,
5 212, 213, 214 and 215.

6 THE COURT: Now, 200 through 206 is already in.
7 Was that what I -- because you've already admitted
8 some.

9 Is that duplicates of what you've already given
10 to the court reporter?

11 MS. SHEALY: Should not have -- should not have
12 been.

13 THE COURT: Okay. Well, we'll just get them
14 together and send them back.

15 Any objection to those?

16 MR. PENNINGTON: No, sir.

17 THE COURT: All right. Admitted without
18 objection.

19 [Whereupon, State's Exhibit Number 187 is
20 admitted into evidence by the Court]

21 [Whereupon State's Exhibit Numbers 200 through
22 204 are admitted into evidence by the Court]

23 [Whereupon, State's Exhibit Number 207 is
24 admitted into evidence by the Court]

25 [Whereupon, State's Exhibit Number 210 is

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1 admitted into evidence by the Court]

2 [Whereupon, State's Exhibit Number 211 is
3 admitted into evidence by the Court]

4 [Whereupon, State's Exhibit Number 211-A is
5 admitted into evidence by the Court]

6 [Whereupon, State's Exhibit Numbers 212, 213,
7 214 and 215 are admitted into evidence by the Court]

8 [Off the record momentarily]

9 THE COURT: All right. Before lunch -- and
10 all of this is on the record, from the jury room,
11 where the Court interviewed the victim's fiancé in
12 this case --

13 Is it Mr. Bartley?

14 MS. SHEALY: Yes, Your Honor.

15 THE COURT: -- Mr. Bartley. And we also
16 interviewed juror --

17 If I can find the information.

18 [Whereupon, the Court reviews documents]

19 THE COURT: -- juror Steven A. Costa, juror
20 number 59. And all of that was taken down on the
21 record. The Court put on the record what was
22 transpiring.

23 As a result of what's transpiring, does the
24 State have any motions concerning the jury or any
25 motions concerning what we covered in the jury room?

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1 MS. SHEALY: Your Honor, the State would agree
2 that the juror who gave the note to the foreman should
3 be taken off the juror -- jury and an alternate
4 replaced and that --

5 It's our opinion that the foreman can remain.
6 We queried him about his ability to remain fair and
7 whether or not that would affect his ability to stay
8 on the jury -- and I'm referring to the foreman -- and
9 he said that would not affect his abilities at all to
10 stay on the jury. So we would ask that the foreman
11 remain on the jury and that the juror --

12 And I'm sorry. What was his name again?

13 THE COURT: Costa.

14 MR. PENNINGTON: The foreman is Mr. Walker.

15 MS. SHEALY: Mr. Costa.

16 THE COURT: Steven A. Costa.

17 MS. SHEALY: We would ask that Steven Costa be
18 removed from the jury and that the foreman remain.

19 THE COURT: All right. What is the defense's
20 position as to juror Steven A. Costa and the foreman,
21 Mr. Lorne G. Walker?

22 And before I forget it, the note that concerned
23 the Court is marked as Court's Exhibit whatever the
24 next number is.

25 MR. PENNINGTON: Your Honor, on behalf of my

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1 client, I've talked to my client. I've discussed it
2 with Mr. Drayton and I've gone over with Mr. Drayton
3 what transpired while we went into a jury room to
4 explore this misconduct and we were -- I think I
5 brought him up to speed with understanding the legal
6 issues.

7 And Mr. Drayton is nodding his head yes.

8 MR. DRAYTON: Yes, sir.

9 MR. PENNINGTON: We have discussed various
10 options on the table. Option A would be for a motion
11 for mistrial, Option B --

12 We're not going to ask for a mistrial, Judge.

13 THE COURT: Okay.

14 MR. PENNINGTON: Option B is that we feel that
15 both jurors should stay on.

16 We didn't make this mess and we feel that the
17 situation is such that my client's right to the jury
18 of his peers that was selected in the normal course of
19 business are the people that he is going to rely on to
20 decide this case.

21 One of the things that jurors have to do is to
22 weigh and observe the credibility of witnesses. We
23 feel like that this is within the bounds of that
24 definition and that, in my view, this issue is going
25 to be out there anyway.

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1 I fully expect and intend to call -- if the
2 juror is excused, he's going to be a witness. But my
3 feeling is is that he observed something that is
4 legitimately out there in the world for purposes of
5 discussion.

6 So we're sort of in the position, Judge, where
7 if we have to sacrifice him as a juror, it will be
8 over our objection. We will be calling him as a
9 witness.

10 THE COURT: Solicitor, do you have any rebuttal
11 as far as Mr. Costa is concerned?

12 Assuming Mr. Costa is called as a witness by
13 either party -- I guess my first question to you: if
14 he's still on the jury, can you call him as a witness.

15 MS. SHEALY: Your Honor, and there's --

16 THE COURT: That's the first question.

17 MS. SHEALY: -- a rule that applies to that.
18 Rule 606 --

19 THE COURT: Okay.

20 MS. SHEALY: -- competency of a juror as a
21 witness. And it says: at trial, a member of the jury
22 may not testify as a witness before that jury in the
23 trial of a case in which the juror is sitting.

24 THE COURT: Any my question is is since you've
25 asked to have him removed, if, in fact, I do remove

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1 him and he's called by a witness either by the State
2 or the defense -- and the defense has indicated on the
3 record he plans to call him if I do dismiss him --
4 what kind of image is that going to put him in, as far
5 as the jury is concerned, not knowing why he was
6 excused?

7 MS. SHEALY: I'm not sure exactly what you're
8 asking, Your Honor.

9 THE COURT: Well, I'm asking this. Assuming I
10 dismiss Juror Costa, okay, he calls him as a witness.
11 I guess through the testimony it will be developed why
12 he was excused. But the jury is going to be sitting
13 there knowing he was on the jury, he's been excused by
14 the Court, indicating possibly to one interpretation
15 of that by the jurors that he did something wrong.

16 MS. SHEALY: Well, that's possible, Your Honor.

17 Could we inquire of the defense as to what level
18 of certainty they have -- and I know they don't have
19 to necessarily commit. But I am curious as to what
20 level of certainty they have in thinking they're going
21 to call him as a witness. For planning --

22 THE COURT: Because, I mean, he's the person
23 that came forward with the information. He's being
24 straight and aboveboard with everything.

25 MR. PENNINGTON: I agree that Rule 606 means

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1 that I can't have him both as a witness and as a
2 juror.

3 THE COURT: Right. I understand.

4 MR. PENNINGTON: That's clear. We don't dispute
5 that.

6 THE COURT: Right.

7 MR. PENNINGTON: And so the State has some
8 options available to them. They can call Mr. Bartley
9 to describe this conduct, if they choose to, to clear
10 the air with the juror as he sits, Mr. Costa,
11 [phonetic] and that would perhaps end the issue right
12 there.

13 If they choose not to go that route, our view
14 is is that Mr. Costa observed something that was fair
15 game. He was on the property of the courthouse
16 right --

17 And I should make it clear for the record we
18 have a video disk. I think I can cue it.

19 But it boils down to --

20 THE COURT: I understand the video has been
21 reduced to a CD; is that correct?

22 MR. PENNINGTON: It has. And it's in my
23 machine. Whether we can get my machine to talk to
24 your courtroom I'm not sure yet. But we can give it
25 to the solicitor if we need to. But the --

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1 THE COURT: At some point in time, I want to
2 mark it as a Court's exhibit.

3 MR. PENNINGTON: Absolutely.

4 Because the conduct occurred immediately after a
5 break, right in the presence of the courtyard of the
6 courthouse, within view of two security cameras, it
7 seems to me that it is something that is within the
8 proximity of this courtroom and is properly
9 considerable for purposes of credibility. It cannot
10 be whitewashed or erased or eliminated from this
11 proceeding.

12 So in my view, Option A is leave the jury as it
13 is and perhaps the solicitor's remedy would be best:
14 to call Mr. Bartley as a witness, to clarify, and deal
15 with it that way. That's Option A.

16 Option B is that if Mr. Costa is going to be
17 excused, then I am highly confident that I will be
18 calling him as a witness.

19 MS. SHEALY: Your Honor, perhaps what we should
20 do is address the first issue.

21 It would be the State's position that Mr. Costa
22 should not remain on the jury.

23 THE COURT: Okay. And that's the issue that I'm
24 trying to decide. Okay?

25 MS. SHEALY: Yes, sir.

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1 THE COURT: And I have not made up my mind.

2 MS. SHEALY: I understand that.

3 But certainly it was something that disturbed
4 him. He brought it to the attention --

5 THE COURT: But my -- I understand. He's done
6 nothing wrong --

7 MS. SHEALY: Oh, he --

8 THE COURT: -- he's been perfectly honest, and I
9 don't want the remaining members of the jury to have
10 any indication that he has done anything wrong.

11 MS. SHEALY: I understand that.

12 THE COURT: Excusing him may could possibly have
13 that interpretation.

14 MS. SHEALY: But we're trying to protect the
15 integrity of this proceeding and I think for both the
16 defendant and the State to have a fair trial, that if
17 this juror was disturbed by what he saw and reported
18 it to the foreman, that it would be inappropriate for
19 him to stay on the jury.

20 THE COURT: All right. I'm going to excuse
21 Mr. Costa, based upon his note.

22 Primarily, I do not want -- I do not want him to
23 be debating the issue of what he saw personally, as a
24 witness, in the jury room. For that reason, I'm going
25 to excuse him and put on the alternate.

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1 Now --

2 MS. SHEALY: But, now, Your Honor --

3 THE COURT: -- as far as --

4 I'm sorry. I didn't mean to interrupt you.

5 What?

6 MS. SHEALY: And I didn't mean to interrupt you.

7 I want to make sure I understand Mr.

8 Pennington's position now. Is he indicating, then, it
9 is the defense's intention to call Mr. Costa as a
10 witness?

11 MR. PENNINGTON: Yes, that is correct.

12 THE COURT: That's what I understood him to say.

13 Now, for purposes of that, Mr. Costa is sitting
14 out back in the hall behind the courtroom, not in the
15 jury room.

16 Where do you want me to tell him to go?

17 MR. PENNINGTON: We have a subpoena. My
18 investigator, Mr. Dajova [phonetic], is here with a
19 subpoena.

20 And if we could simply get a -- I would like for
21 him to stay in proximity. If we had a cell number,
22 then I could be in communication with him, just have
23 him on standby.

24 I think the State has projected that they have
25 the rest of this witness, and two semi-lengthy, so

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1 that we could be done in a couple of hours and perhaps
2 reach our case this afternoon.

3 THE COURT: Okay. Well, let's do this. We'll
4 take a short break.

5 Bring your subpoena around. And I'm going to
6 explain to Mr. Costa I've excused him, and you can
7 serve the subpoena and you can get his cell numbers,
8 and I'll just leave that contact up to you in the
9 future. Okay?

10 MR. PENNINGTON: Yes, sir.

11 THE COURT: We'll just take a short break while
12 I tell the juror that he's excused.

13 MS. SHEALY: Okay.

14 THE COURT: Now, do you want me to do that on
15 the record in the courtroom, or do you want -- what do
16 you want me to do?

17 MS. SHEALY: I think that might be the best
18 course.

19 THE COURT: Okay. Would y'all tell Juror Costa
20 to come in, please? He's sitting right behind in the
21 hall.

22 [Whereupon, Mr. Steven Costa, juror number 59,
23 enters the courtroom]

24 THE COURT: Mr. Costa, how are you doing today?
25 Just have a seat.

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1 [Whereupon, Mr. Costa complies]

2 THE COURT: I want to thank you for your
3 service. I want to thank you for coming forward. And
4 I want to explain to you you've done absolutely
5 nothing wrong. Okay? Absolutely nothing. I
6 appreciate you coming forward with the information
7 that you've given to the Court. But because what you
8 observed, I'm going to excuse you from further service
9 on this jury. Okay? And please don't think I'm doing
10 it because you did anything wrong. Okay?

11 Now, the second problem is this. The defense
12 counsel is going to subpoena you as a witness. They
13 are planning on calling you as a witness. Now, I'm
14 going to let you go talk to him and he's going to get
15 your cell phone number, serve the subpoena on you, so
16 he can get you to come back at the appropriate time to
17 offer some testimony primarily about what you saw.
18 Okay? So you're going from being on the jury to a
19 potential witness. Okay?

20 If you'll come around and talk to the defense
21 counsel he'll get your cell phone number and how to
22 contact you and serve you with a subpoena.

23 MR. PENNINGTON: Thank you, Your Honor.

24 [Off the record momentarily]

25 THE COURT: Mr. Costa, you don't have to leave.

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1 If you want to stay, you're welcome to stay. I'm not
2 forcing you to leave. You're welcome to have a seat
3 out in the audience, or you can go home, do whatever
4 you want to do. Okay?

5 Do you have -- you've got to go get your cell
6 phone; right? Go get your cell phone. And you're
7 welcome to stay if you want to stay.

8 MR. COSTA: Okay.

9 MS. SHEALY: Judge, we do have that
10 sequestration order.

11 THE COURT: Pardon?

12 MS. SHEALY: We do have that sequestration
13 order. The witnesses are sequestered.

14 MR. PENNINGTON: So he's now moved to a position
15 where he has to sit in the hallway.

16 MS. SHEALY: Just reminding the Court.

17 THE COURT: Okay. Go get your cell phone.

18 I'm going to let him sit where he wants,
19 solicitor. Okay?

20 MS. SHEALY: Okay.

21 THE COURT: Irrespective of your sequestration.

22 MS. SHEALY: Okey-dokey.

23 THE COURT: Okay?

24 All right. Now, as to the foreman, as to the
25 foreman, what's the position of the parties?

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1 I believe you want them both excused; is that
2 right?

3 MR. PENNINGTON: I'm happy with the foreman.

4 THE COURT: Are you happy with the foreman,
5 solicitor?

6 MS. SHEALY: Yes, I am.

7 THE COURT: All right. So y'all both agree that
8 the Court does not have to excuse the foreman; is that
9 correct?

10 MS. SHEALY: That's correct.

11 MR. PENNINGTON: That is correct.

12 THE COURT: And is your client in agreement with
13 that, Mr. Pennington?

14 MR. PENNINGTON: Have the Court's indulgence?

15 THE COURT: I'll just ask him.

16 MR. PENNINGTON: Okay.

17 THE COURT: Mr. Drayton, your attorney has
18 explained to you what's transpired and he informs me
19 that you're in agreement not to ask the Court to
20 excuse the foreman.

21 Is that correct?

22 MR. DRAYTON: Yes, sir.

23 THE COURT: Okay. Thank you so very much.

24 All right. The Court will keep the foreman on
25 the jury.

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1 Now, are we ready to proceed with the rest of
2 the trial?

3 MS. SHEALY: Yes, Your Honor.

4 One matter. We're going to resume the testimony
5 of Catherine Leisy. And we have --

6 THE COURT: Is she here?

7 MS. SHEALY: She is.

8 THE COURT: She's sequestered, huh?

9 MS. SHEALY: Well, she currently is sitting in
10 the courtroom.

11 But she -- remember we were going to get clean
12 copies of her reports to --

13 THE COURT: Right.

14 MS. SHEALY: And we've done that.

15 But one of her reports, I hate to say, mentions
16 a cigarette butt that's not relevant in this case. We
17 did not redact it from the report. But Mr. Pennington
18 and I agree that there is a cigarette butt that was
19 found on Lagoon Road that's not relevant. If you
20 don't mind, either you or I can say that to the jury.
21 But there is a reference to a cigarette but that's not
22 relevant.

23 THE COURT: Is this the cigarette butt that is
24 thirty-eight yards away from the body?

25 MS. SHEALY: No, it is not. It's a different

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1 cigarette butt.

2 THE COURT: It's a different cigarette butt.

3 MS. SHEALY: It is different. So do you mind if
4 I just address that?

5 THE COURT: Well, just tell them it's a
6 different cigarette butt so they'll know what butt
7 they're talking about. Okay?

8 MS. SHEALY: Okay. And we also have the copies
9 of the charts that we handed out.

10 THE COURT: Copy of what?

11 MS. SHEALY: The charts.

12 THE COURT: Okay. The big one?

13 MS. SHEALY: It's not big. The copies for --

14 MR. PENNINGTON: That we were going to get for
15 the jury.

16 THE COURT: Okay. Anything else?

17 MS. SHEALY: No, sir.

18 THE COURT: I thought you were talking about
19 the big chart we're supposed to get at some point in
20 time --

21 MS. SHEALY: I have that --

22 THE COURT: -- showing where the cigarette butts
23 was.

24 MS. SHEALY: I have that.

25 THE COURT: Do you have more than one cigarette

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1 butt on that chart, or just the one?

2 MS. SHEALY: No, I do not. Just one.

3 We're ready.

4 THE COURT: You're ready. Okay.

5 Bring us a jury.

6 Well, hold on just one second. One thing I've
7 got to cover I forgot.

8 My understanding of criminal court, by statute,
9 when you put an alternate on you have to put them back
10 and draw them. In civil court, you draw them in the
11 order that they are drawn.

12 What is the preference of the attorneys on the
13 alternate?

14 MR. PENNINGTON: I guess we draw them, as you
15 suggested.

16 THE COURT: Now, if y'all want to just take them
17 in the order we picked them, that's fine.

18 MS. SHEALY: It suits me to do it the way we
19 picked them, but I don't have a strong preference.

20 [Whereupon, the Court and the law clerk confer]

21 THE COURT: Let me see what --

22 MR. PENNINGTON: The Court's indulgence just a
23 moment, Your Honor. I'm having to think back. It
24 feels like last year instead of yesterday or two,
25 three days ago.

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1 THE COURT: The first juror is Charles Sterrett.
2 The second one is Charles Dover. Both of them
3 Charles.

4 MR. PENNINGTON: You're not helping, Judge.

5 THE COURT: Juror number 256 and juror 75.

6 MR. PENNINGTON: Yes, sir. I prefer that we
7 drawn them. Thank you.

8 THE COURT: All right. Take two numbers, a 256
9 number and a 75 number, and put it in some kind of bag
10 or something. Okay?

11 [Whereupon, the clerk of court complies]

12 THE COURT: Who wants to draw them?

13 MR. PENNINGTON: The clerk can draw them.

14 THE COURT: Pardon?

15 MR. PENNINGTON: The clerk may draw, as far as
16 I'm concerned.

17 THE COURT: Okay. I'm sure our jury computer
18 system wouldn't be able to do this.

19 Put them in something to draw them out of. I
20 don't have anything. I guess I need to start bringing
21 a hat with me.

22 [Off the record momentarily]

23 THE CLERK OF COURT: Juror 75.

24 THE COURT: 75. All right. Charles Dover is
25 now on the jury.

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1 Bring us the jury, please.

2 THE BAILIFF: Judge, 54 is not here.

3 THE COURT: Who's not here?

4 THE BAILIFF: Number 54.

5 [Off the record momentarily]

6 [Whereupon, an off-the-record bench conference
7 is held]

8 THE COURT: Whenever she gets here, let me know
9 and we'll get started.

10 Is there anything else we could be doing, while
11 we're waiting, that needs to be done?

12 MR. PENNINGTON: I could see if this little
13 gizmo works.

14 THE COURT: Okay. What -- are you planning on
15 playing it?

16 MR. PENNINGTON: Well, I think it's -- I think
17 it's already --

18 THE COURT: It's what?

19 MR. PENNINGTON: I just want to see if it comes
20 on.

21 THE COURT: Okay. Go ahead.

22 THE BAILIFF: She's here.

23 THE COURT: We've got her?

24 THE BAILIFF: Yes.

25 THE COURT: Okay.

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1 MR. PENNINGTON: We'll do it later.

2 THE COURT: Bring us the jury, please.

3 [Whereupon, the jury enters the courtroom at
4 2:19 p.m.]

5 THE BAILIFF: Your Honor, all jurors are
6 present.

7 THE COURT: Okay. Mr. Dover, Charles Dover.

8 MR. DOVER: Yes, sir.

9 THE COURT: If you'll have a seat in this front
10 row. You are now on the jury.

11 I would like to tell the jury that juror --
12 Steven Costa, juror number 59, has been excused from
13 jury duty. And I would like to emphasize the fact
14 that it's nothing that he's done or nothing that he
15 did wrong. It was just a circumstance that the Court
16 felt that I had to excuse him from further service on
17 this particular case. Nothing that he has done or did
18 anything wrong.

19 Solicitor, please proceed.

20 MS. SHEALY: May it please the Court. Just a
21 couple of housekeeping matters.

22 Judge, over the lunch break, we did get clean
23 copies of Ms. Leisy's report, and it has been marked,
24 one being her report from October 27th, 2010. That
25 has been marked as State's Exhibit 234. And there is

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1 a reference on that report, as number -- number 2, a
2 cigarette butt from Lagoon Road. The defense and the
3 State agrees that is irrelevant in this case, the one
4 from Lagoon Road. And a report from April 10th, 2012,
5 and that is State's Exhibit 235.

6 - - - - -

7 CATHERINE LEISY,

8 Having Been Previously Sworn,
9 was Examined and Testified as Follows:

10 CONTINUED DIRECT EXAMINATION

11 BY MS. SHEALY:

12 Q. Let's go back for a moment. When I showed you
13 State's Exhibit 189, you indicated you didn't think this
14 was the blood spot that you had gotten because you didn't
15 have any of your lettering on this package?

16 A. That's correct.

17 Q. Could you open it?

18 A. [Witness complies]

19 Q. Is that yours?

20 A. Yes, it is.

21 Q. Okay. It was just packaged differently?

22 A. That's correct.

23 I would have just received it in a heat-sealed
24 plastic pouch such as this.

25 Q. Okay. And that's the blood spot of?

MIA PERRON, CVR-CM-M

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1 A. Of Alexis Lukaitis.

2 Q. Okay. Very good.

3 Now, also during the break -- instead of
4 struggling with that machine -- we made copies of the
5 chart that accompanies your report from October, and we're
6 going to hand those out to the jury.

7 THE COURT: Ladies and gentlemen, what we're
8 going to do is hand out to each one of you an
9 individual copy, since we couldn't get it blown up on
10 the screen sufficient for you to look at it, so you'll
11 have it -- so you can at least see it. Before lunch,
12 you couldn't even see it.

13 Q. [Ms. Shealy] And what I'm going to get you to
14 do, Ms. Leisy, looking up at the board --

15 THE COURT: Solicitor, they don't have them yet.
16 They're still passing them out.

17 MS. SHEALY: Okay. That's fine.

18 THE COURT: Give them a second to pass them
19 around.

20 Does everybody have a copy?

21 MS. SHEALY: Judge, would you like one?

22 THE COURT: No.

23 MS. SHEALY: Okay.

24 Q. [Ms. Shealy] And I won't belabor this. But
25 just so that the jury, when they have that report back in

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1 the jury room with them, if they care to engage in this.

2 Let's -- looking up at the board, number one,
3 where it says marker one, and looking at the graft on the
4 very back, will you just show the jury how you work with
5 marker one and what that means as it relates to Darryl
6 Drayton.

7 A. In terms of comparison?

8 Q. Yes.

9 A. I believe we went over it before, but now that
10 you have the chart I'll go over it again.

11 If you look at the very top row across the
12 table, that lists the fifteen STR locations that are
13 tested. So if you look at the second box in from the
14 left, in that top row, you see D8S1179. And that's the
15 specific or official term for that STR location. We just
16 sort of shorthand it and we just call it D8.

17 So if you look at -- if you go down to the box
18 marked 16, Darryl Drayton, if you go right across the
19 table from that Darryl Drayton box, that is Mr. Drayton's
20 profile. So if you move over one box, so now you are
21 under both Darryl Drayton. And under D8, you see the
22 number 15. That indicates that Mr. Drayton's type at that
23 location is fifteen. So both the copy from his mother and
24 the copy from his father was a fifteen and we just
25 indicate it once.

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1 The collection of DNA types going from left to
2 right across from Mr. Drayton, that overall collection is
3 his profile. I can then compare that profile to say the
4 profile from marker one, which you will find farther down
5 on the table under item eleven, SLED item eleven, marker
6 one.

7 Now that I have profiles from both the evidence
8 and Mr. Drayton, I can compare the two. So in that first
9 column, D8, you see that Mr. Drayton again is a fifteen.
10 If you go down to marker one, the box one over under D8 is
11 also a fifteen. It's possible that Mr. Drayton
12 contributed that fifteen, as they are consistent.

13 If you go across the table to the right, the
14 next box would be D21S11, or what we call location D21.
15 Mr. Drayton is a 29,30. If you look under D21 for marker
16 one, you also see a 29,30.

17 I would do that comparison all the way across
18 this table at all fifteen locations. If I see perfect
19 consistency at all of those locations with those types, I
20 would consider that to be a DNA match.

21 Q. Now, when you get the statistics, where do you
22 get the statistic from? How do you figure out the
23 statistic that matches the DNA?

24 A. To generate the statistic I would enter the DNA
25 profile, developed from the particular item of evidence,

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1 into a population database. This database is maintained
2 by the federal government. It consists of population
3 information of four different races: African American,
4 Caucasian, Southeastern Hispanic, and Southwestern
5 Hispanic. It uses the DNA profile that I enter in those
6 databases to determine how rare or how common a particular
7 profile is in those different genetic databases. So
8 that's where we would come up with the one in 1.95
9 billion. It generates different numbers for each of the
10 races, as there will be some slight differences, and we
11 report out what we consider to be the most conservative,
12 meaning the smallest number.

13 And, again, it's just an estimate of how common
14 or rare that particular profile is in the general
15 population.

16 Q. And how does that figure relate to the
17 population of the world, for example?

18 A. 1.9 quadrillion would be significantly larger
19 than the current population of the earth.

20 MS. SHEALY: I have no further questions.
21 Please answer any that the defense may have.

22 THE WITNESS: Yes, ma'am.

23 MR. PENNINGTON: If Your Honor please?

24 THE COURT: Yes, sir.

25 - - -

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CROSS-EXAMINATION

BY MR. PENNINGTON:

Q. Agent Leisy, in terms of the ability of DNA typing to do comparisons with unknowns, it's fair to say, is it not, that what you're looking for is consistencies between the unknown sample and what is the known sample that you're comparing it to?

A. That's correct.

Q. And it's not that you ever arrive at a point where you can say with biological certainty that the DNA came from that person, what you're saying instead is that it's consistent with that person?

A. Well, when I have consistency between the profile of a known individual and an item of evidence, the strongest statement that I can make when I have a match is that within a reasonable degree of scientific certainty, it's my opinion that this individual is the contributor of the DNA obtained from that item of evidence.

Q. And you're basing that on the high number, the high -- the high statistics?

A. Based on the fact that at fifteen locations I have a match and the -- basically how large that number is. Correct.

Q. Okay. But there's not been a way to -- what you're doing is you're doing a statistical analysis and

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1 with those fifteen sites you begin to do the math of how
2 likely is it to have that same similarity; correct?

3 A. That's correct.

4 Q. Okay. Now, in some of these findings you've
5 described, I think that there were -- on four different
6 locations that were submitted to you, you found what you
7 found to be mixtures of DNA; correct?

8 A. That's correct.

9 Q. And so on the steering wheel, item 15, on the
10 driver's side door panel, item 12, on the victim's right
11 shoe and on the CVS bag, each of those you found that
12 there was a mixture of DNA? two people's DNA?

13 A. That's correct.

14 Q. Let's talk about that just a bit.

15 You've mentioned -- and the chart that the jury
16 has on the last page of this report has what are -- if you
17 look at Alexis Lukaitis' DNA profile, you'll see that
18 under marker D8 she is what you would call a 10,11; is
19 that correct?

20 A. Yes, sir.

21 Q. All right. And so what that is telling you is
22 is that at that low side on her DNA her father gave her
23 one of those what we call alleles or one of those
24 combinations and it was in the range of ten, and her
25 mother gave her the eleven, or vice versa. It would have

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1 been either parent. One gave one, one gave the other, at
2 those various links; is that correct?

3 A. Yes, sir.

4 Q. Approximately?

5 A. Yes, sir.

6 Q. All right. Well, let's jot this down.

7 All right. So if we're going to talk about
8 Ms. Lukaitis, for D8, which is on your chart, we've been
9 able to establish -- or you were able to establish that
10 she is what we would call a 10,11, in terms of the two
11 alleles she got from her parents?

12 A. Yes, sir.

13 Q. Okay. And then you were able to determine that
14 Mr. Drayton is a 15; is that correct?

15 A. Yes, it is.

16 Q. Now, that term 15 -- there's only one number
17 there because he's what we call homozygous?

18 A. That's correct.

19 Q. And that means that essentially he got an
20 identical strand or a different -- identical allele from
21 both parents?

22 A. Correct.

23 Both would have contributed a 15 to this
24 profile.

25 Q. Okay. It's 15 -- one 15 is sort of shorthand

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1 for 15,15, I suppose?

2 A. That's correct.

3 Q. Okay. Now, the unknown samples that you got,
4 the four samples that I mentioned that were mixed, each of
5 them had this characteristic, didn't they? They were 10,
6 11 and 15; correct?

7 A. Yes, that is correct.

8 Q. All right. And so you were able to say that, to
9 a degree, it could be consistent with a mixture of Alexis
10 Lukaitis' DNA with Darryl Drayton's DNA?

11 A. That's correct.

12 And with some of the mixtures there is a major
13 contributor, which allows me to make a more direct
14 comparison between those individuals and the major to that
15 mixture.

16 Q. Now, one of the great powers of DNA is also that
17 it has the ability to affirmatively exclude someone if one
18 of those sites is different. Am I right?

19 A. Not necessarily just at one site but in the
20 overall profile if there's not consistency, if the DNA
21 types found from that known individual's profile do not
22 occur in the mixture or from an item of evidence you can't
23 exclude, correct.

24 Q. All right. Now, if the contributor of this DNA
25 in this case was a 10,15, you would get that same result,

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1 would you not?

2 A. When you compared an individual with a 10,15 to
3 this particular location, they would not be excluded at
4 that location as a possible contributor.

5 Q. Okay. And if you knew that the contributor was
6 a 10,15 in my hypothetical that I'm giving you, then you
7 would get exactly that same result that you see there,
8 which is a mixed sample of 10 and 11 from Ms. Lukaitis and
9 15 from the contributor?

10 A. That would be possible, yes.

11 Q. Okay. And that would be -- that means that,
12 looking at that same result, it's consistent with it being
13 Mr. Drayton but it's also consistent with anyone who has
14 that DNA profile 10,15?

15 A. Anyone who had the 10,15 at that particular
16 locus would not be excluded as a possible contributor.
17 But, again, we have to consider the overall profile
18 because we include or exclude someone.

19 Q. Well, you could go through the same analysis
20 with all of the sites where you're dealing with a
21 homozygous situation; isn't that correct?

22 A. Well, really, with any combination of types, if
23 an individual has any of the types in that mixture at that
24 particular locus, they would not be excluded as a possible
25 contributor be they homozygous or heterozygous where they

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1 have two different types of locus.

2 Q. All right. So what we're saying here is is
3 that a different person with a different D8, clearly not
4 Mr. Drayton, could have all the same characteristics as
5 Mr. Drayton but the same D8 and you would get this result?

6 A. Based on this particular location, if someone
7 else had any combination of 10, 11 or 15, they would not
8 be excluded at that location as a possible contributor.

9 Q. Okay. Now, let's turn to -- you cannot say from
10 your vantage point, doing the research and the work that
11 you did on this case, when the DNA got to the location
12 that it was collected? You can't say when it was
13 deposited?

14 A. No, I cannot.

15 Q. And on the left fingernail of Ms. Lukaitis, item
16 5, that's one of the mixed samples?

17 A. That's correct.

18 Q. Okay. And that's clearly her blood?

19 A. It's not necessarily her blood.

20 I did perform preliminary testing on that item.
21 There was the possible presence of blood indicated. But
22 if the sample was taken directly from her body and as
23 scrapings taken from her fingernails, it could actually
24 just be her skin cells present on the sample and another
25 contributor of blood.

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1 Q. Okay. So what you find is an identifiable
2 amount of DNA that's consistent with Ms. Lukaitis?

3 A. That's correct.

4 She would be considered the major contributor to
5 that mixture, and it does match her profile.

6 Q. And then you find another contributor -- we're
7 now looking at what is --

8 MR. PENNINGTON: Get my chart.

9 Q. [Mr. Pennington] We're looking at the report
10 from October where it has left-hand fingernails that's
11 item 5. Do you see where I'm looking on the chart?

12 A. Yes, sir.

13 Q. And what you were able to determine is is
14 that it's clear that that is at least consistent with
15 Ms. Lukaitis?

16 A. Correct. The 10 and 11 that are the major types
17 at that location are consistent with Ms. Lukaitis.

18 Q. And you found more DNA, but it was insufficient
19 for reliable interpretation?

20 A. Correct.

21 Q. However, if you look at the far right-hand
22 corner, right-hand column, you'll see X's and Y's; is that
23 correct?

24 A. Yes, sir.

25 Q. This is the sex component or the gender

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1 component of DNA, is it not?

2 A. It is.

3 Q. And so for those of us like me, the males, you
4 would expect to see an X and a Y chromosome?

5 A. That's correct.

6 Q. And in this instance, all you see is an X
7 chromosome; is that correct?

8 A. Yes, sir.

9 Q. That would not be consistent with a male?

10 A. It would not.

11 The problem with this particular item is that
12 the minor contributor is very weak and when you have such
13 a low level of contribution, it's possible for certain
14 types to drop out. It's possible that there is a Y
15 present, it's just not strong enough to be detected.

16 All I can say in this particular case is that
17 there's not a detectable Y indicating male in this item.
18 It doesn't definitively prove that it's not a male
19 contributor.

20 Q. What further follow-up test did you use to
21 determine if there was this allelic drop-out, that you
22 just referred to, where the Y dropped out?

23 A. There was no further testing done on this
24 particular item.

25 I did what I could with the system that we used

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1 to test for the fifteen particular locations and it just
2 happened that that contributor was very weak and we do
3 have drop-out throughout the profile.

4 Q. But based on the best evidence that we have,
5 your own data came up with only the X chromosome for a
6 female?

7 A. That's correct.

8 I have no real indication of male in that
9 particular item.

10 Q. And then turning to item three, the cigarette
11 butt from Old Jacksonboro Road, that was determined as
12 being an unidentified male subject?

13 A. That's correct.

14 That particular profile did not match any of the
15 individuals that I had known standards for.

16 Q. Including Darryl Drayton?

17 A. That's correct.

18 MR. PENNINGTON: The Court's indulgence just a
19 moment.

20 [Whereupon, Mr. Pennington and Mr. Cooper
21 confer]

22 Q. [Mr. Pennington] Agent Leisy, can you show us
23 where you have compared the DNA from Steven Edwards?

24 A. No standard for a Steven Edwards was submitted
25 in this case.

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1 MR. PENNINGTON: Thank you.

2 THE COURT: Any redirect?

3 MS. SHEALY: Just briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. SHEALY:

6 Q. Regarding all the mixtures that you testified
7 to, you had Alexis and Drayton as being likely
8 contributors, except for the CVS bag; is that correct?

9 A. Correct. As possible contributors, yes.

10 Q. Okay. And when it came to the CVS bag, is it
11 possible that a clerk at a store could have deposited DNA
12 on a bag when handing it to a customer?

13 A. It is.

14 It's possible that there would have been enough
15 transfer of skin cells, or even bodily fluids, that anyone
16 who came in contact with the bag could have contributed.

17 Q. Describe to the jury just briefly the ways in
18 which DNA can be left on items.

19 A. The most obvious form of transfer is through the
20 transfer of bodily fluids.

21 If you leave your blood, saliva, semen,
22 typically you're going to leave large amounts of DNA on
23 whatever item you've left the bodily fluid.

24 It's also possible to have what we call transfer
25 of touch DNA. And that's just like it sounds. To touch

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1 any object, there will be some level of transfer of skin
2 cells to that object and it may be possible that you've
3 left enough cells on an inanimate object that your DNA
4 profile will be developed just simply from being in
5 physical contact with it.

6 Q. And regarding the fingernail clippings, what are
7 the variety of ways that DNA from another person can be
8 left in someone's fingernail clippings?

9 A. Oftentimes we see fingernail clippings collected
10 when we've had a physical alteration. But it can really
11 be a very limited contact.

12 I believe there have been studies that show that
13 very large percentages of the general population would
14 have someone else's DNA under their fingernails if you
15 randomly tested them, be it their spouse, their child,
16 someone they've shaken hands with during the day.

17 It can be very casual contact that causes skin
18 cells or blood to be transferred to underneath someone
19 else's fingernails.

20 MS. SHEALY: Thank you very much. I have no
21 further questions.

22 THE COURT: Any recross?

23 MR. PENNINGTON: Just a moment, Your Honor,
24 please.

25 [Whereupon, Mr. Pennington and Mr. Cooper

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1 confer]

2 RECROSS-EXAMINATION

3 BY MR. PENNINGTON:

4 Q. Alexis Lukaitis -- when you're looking at cases
5 where there's been an allegation fo clawing or scratching,
6 that can be a reason to look under people's fingernails
7 for DNA, can't it?

8 A. Yes, it can.

9 Q. You've had cases where you've been able to
10 identify suspect DNA from a decedent's fingernails,
11 haven't you?

12 A. That's correct.

13 MR. PENNINGTON: Thank you.

14 THE COURT: You may step down. Thank you very
15 much.

16 THE WITNESS: Thank you, sir.

17 THE COURT: You may be excused.

18 THE WITNESS: Thank you.

19 [Whereupon, Ms. Leisy is excused and exits the
20 witness stand]

21 MR. FINCH: The State calls Ken Aycock.

22 [Whereupon, Mr. Aycock comes forward]

23 [Whereupon, Mr. Aycock is duly sworn by the
24 clerk of court as follows: do you swear or affirm
25 your testimony will be the whole truth and nothing but

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1 the truth, so help you God].

2 THE WITNESS: I do.

3 THE CLERK OF COURT: State your full name and
4 spell your last name.

5 THE WITNESS: Kenneth Ray Aycock, Jr. Last name
6 is spelled A-Y-C-O-C-K.

7 MR. FINCH: Your Honor, may I start with two
8 stipulations?

9 THE COURT: Yes, sir.

10 MR. FINCH: Attorneys for the State and the
11 defense agree to stipulate to the following: that
12 Defendant Darryl Drayton's phone number was [REDACTED]
13 [REDACTED], during August 2010.

14 Attorneys for the State and defense agree to
15 stipulate to the following: phone records were sought
16 from the victim and the defendant in this case for
17 analysis of phone usage and cell-tower information.
18 The records were received from Verizon Wireless
19 corresponding to the telephone numbers of the victim
20 and the defendant in this case. The phone records
21 include incoming and outgoing calls, text messages,
22 tower position, and other related data. The records
23 are kept in the ordinary course of business. The
24 records custodian provided the phone records provided
25 by Verizon Wireless, of Alexis Lukaitis's phone, [REDACTED]

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1 [REDACTED] and Defendant Darryl Drayton's phone, [REDACTED]
2 [REDACTED] certified that they are true and accurate.
3 Both the State and the defense agree that the records
4 are true and accurate from the dates August 6, 2010,
5 to August 10th, 2010.

6 And offer this --

7 THE COURT: Mr. Pennington, by agreeing to that
8 stipulation, in no way does that waive your previous
9 objections to the phone records; is that correct?

10 MR. PENNINGTON: Yes, sir, that is correct.
11 Thank you, Your Honor.

12 We do renew our earlier objections, and that
13 stipulation is based on the notion that -- in respect
14 to Your Honor's earlier ruling. We would then just
15 preserve our objection and agree to that stipulation.

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

17 MR. PENNINGTON: Thank you very much, Your
18 Honor.

19 THE COURT: Thank you. Please proceed.

20 MR. FINCH: Offer these into evidence, Your
21 Honor.

22 Your Honor, at this time the State would like to
23 offer into evidence State's 226, 227, 228, 229, 230,
24 231, 232, 233, 236, and 237, all without objection.

25 THE COURT: Is that correct?

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1 MR. PENNINGTON: Yes, sir, that is correct.

2 THE COURT: All right. Admitted without
3 objection.

4 [Whereupon, State's Exhibit Numbers 226, 227,
5 228, 229, 230, 231, 232, 233 are admitted into
6 evidence by the Court]

7 [Whereupon, State's Exhibit Numbers 236 and 237
8 are admitted into evidence by the Court]

9 MR. FINCH: Thank you, Your Honor.

10 Good afternoon, Mr. Aycock.

11 THE WITNESS: Good afternoon.

12 - - - - -

13 KENNETH R. AYCOCK, JR.,

14 Having Been First Duly Sworn,

15 was Examined and Testified as Follows:

16 DIRECT EXAMINATION

17 BY MR. FINCH:

18 Q. If you would tell the Court where it is that
19 you're employed.

20 A. I actually work for the army national guard
21 counter-drug task force and I'm assigned to the FBI safe
22 streets task force in Columbia, South Carolina.

23 Q. And in that capacity with the national guard
24 assigned to the FBI, what is it you do?

25 A. My actual title is I'm a criminal intelligence

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1 analyst and in that --

2 Do you want to go into what I actually do?

3 Q. Please.

4 A. Primarily what I do is cell phone analysis and
5 cell phone tracking for the FBI. I've been doing that for
6 about ten years now.

7 And part of what I do is -- and cases that I
8 work are drug related cases. I get individuals' phone
9 numbers and exploit those phone numbers to find out who
10 they're calling, when they're calling them, who they call
11 most or least, where they were when they made a phone
12 call, that type of information. And, also, I do in-depth
13 background checks to attempt to identify people.

14 MR. PENNINGTON: If Your Honor please, may I
15 interrupt us to, again, for purposes of the record,
16 renew the objections that I made earlier, just for the
17 record.

18 I realize the Court has ruled but I just want
19 to, as we get into the meat of this, restate that
20 objection.

21 THE COURT: Okay. As I've ruled earlier, your
22 motion to suppress is overruled.

23 MR. PENNINGTON: Okay. Thank you.

24 Q. [Mr. Finch] Mr. Aycock, as part of this
25 investigation, were you provided with some cellular phone

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1 records?

2 A. Yes, I was.

3 The records were provided to me through e-mail
4 from -- well, through your office, from Verizon, to
5 myself.

6 Q. And whenever you get -- in your capacity with --
7 on a special assignment to the FBI, et cetera, whenever
8 you get phone records, what are some of the analyses that
9 you go through when you get those to get the information
10 out of them?

11 A. Well, the first thing we do is identify who owns
12 that phone, what the subscriber is for that phone. And in
13 some cases, it might have someone else's name on there
14 because you can -- you know, I can go get my wife a phone
15 in my name or there might be a prepaid phone where it has
16 nobody's name in it. So we try to identify who that phone
17 belongs to. And then the phone records are going to
18 identify -- it's going to give you a date and time of the
19 call.

20 And the reason -- like when you get your phone
21 bill, they're billing you for usage. Okay? So the reason
22 they keep track of your phone calls is for billing. But
23 it will have the date and time of a call. It will tell
24 how long the call took place, whether it was an ingoing
25 phone call, outgoing phone call, the duration of the phone

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1 call, how long were you talking on the phone.

2 It will also give cell-tower data which will say
3 where were you when that phone -- that call started and
4 where were you when the phone -- when you finished your
5 phone call.

6 MR. FINCH: May I approach the witness?

7 THE COURT: Yes, sir.

8 MR. FINCH: Thank you.

9 Q. [Mr. Finch] Show you what's been marked and
10 admitted as State's Numbers 236 and 237. Can you identify
11 those items?

12 A. Yes, sir.

13 These are the phone records for -- one mobile
14 number is [REDACTED], which I believe was identified as
15 the victim's number and the other is [REDACTED], which
16 was identified as the defendant's number.

17 MR. FINCH: And do those spreadsheets have the
18 information you just discussed? Incoming and
19 outcoming?

20 A. Yes, sir.

21 And, again, they do come as an Excel spreadsheet
22 when they were -- when they are sent to a phone -- from
23 the phone company and the spreadsheets. I actually have a
24 database that I put this into, called Pin Link, which will
25 allow further analysis.

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1 But these spreadsheets give all the information.
2 It tells you what network. So all the commercials that
3 you see on TV, you know, you're a part of this network,
4 well, there's a network that your phone call has to go
5 through.

6 And like these show the Columbia network. It's
7 a rather -- it's a real large area. And then it shows the
8 mobile number, which is who -- the number who -- like if
9 it was your phone, it would show your phone number for
10 that mobile number. Dial digits numbers, the call
11 direction, whether it was an ingoing phone call, outgoing
12 call, whether it was voice mail. And sometimes there's
13 numbers and letters that will tell you what type of call
14 that was. There's the date and time of the call. It's
15 going to be -- they're going to have the duration. The
16 duration is in seconds.

17 And then it'll have the first serving cell site
18 and face and the last serving cell site and face. So when
19 you make a phone call -- when it talks about faces, of
20 course --

21 If I can go into the towers and how they work?

22 Q. Certainly. Of course.

23 A. The reason they call a cell phone cell phones is
24 because they break -- you know, a phone is like a radio
25 and it won't work -- you can't call long distances on it

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1 unless there's cell sites.

2 And if you've seen the towers with the big
3 mass -- you know, bit hunks of metal on top of them, those
4 are cell towers. And those cover 360 degrees. There's
5 three sides to those cell sites and each side of it covers
6 120 degrees.

7 So if you're traveling down the interstate and
8 you start making a phone call, it'll tell you you started
9 making this phone call on this side of the tower. And as
10 you move, it'll tell you that you're picking up a call on
11 this next tower on this side as you travel. So that's
12 what the first serving cell site and cell face would tell
13 you. It gives you that information.

14 Q. And then do you have the coordinates, then, for
15 those cell sites?

16 A. The coordinates are not located on your call
17 records.

18 What I have to do is the Verizon -- I have a
19 database at the FBI that I can go to for any phone
20 company, Alltel, T-Mobile, Verizon, it doesn't matter. I
21 can pull all the cell-tower data off of this database.

22 So for instance the -- it gives me a code. One
23 of the codes is seventy-four. So I look through a
24 spreadsheet of thousands of cell towers and look for the
25 number seventy-four and that number would tell me the

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1 physical location of that tower, latitude and longitude,
2 and it will also give you a street address. I like to use
3 the latitude and longitude because it places you right
4 there where that tower is.

5 And then it's also going to tell you if there's
6 three faces to it, one, two, or three, what side of the
7 tower was it on. And if you look at a compass, the tower
8 -- you know you have 360 degrees in a circle. And it
9 might tell me that face one, the center of that face, is
10 at thirty degrees, for instance. So sixty degrees to the
11 left and sixty degrees to the right is where -- an area
12 that you could have been in when you made that phone call.

13 So that's the information that you look for.

14 Q. Let me show you now what's been marked and
15 admitted as State's Numbers 227 through 233. And take a
16 look at those and identify those documents.

17 A. Yes, sir.

18 These are maps that I made, based on the data
19 that was provided to me through the call records and the
20 cell-tower data.

21 And I used the software called Microsoft Map
22 Point to create these maps.

23 Q. And so you created maps, using the tower
24 information to place those on on a geographical map, to
25 show where the towers are?

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1 A. Yes, sir.

2 Q. Okay. And we start with just State's Number
3 228. If you look at the screen behind you, if you can
4 tell us what we're seeing in this.

5 A. Okay. That came from the phone number [REDACTED]
6 [REDACTED] which was identified as Alexis Lukaitis.

7 And these show cell towers, those -- those are
8 actually in the Bluffton area. Those are the cell sites
9 491 and 494 located in the Bluffton area. And it shows
10 the calls that were made on August 8th of 2010.

11 Q. Up to a certain point in time?

12 A. Yes, sir.

13 Q. That's not all of them.

14 Okay. And as you are making these maps, did our
15 office provide you with some other information to include
16 in the maps?

17 A. Yes.

18 You provided the location that the victim's body
19 was located.

20 Q. And but the rest of the maps you generated how?

21 A. Again -- and the mapping software that I use,
22 I'm able -- I made a spreadsheet with the tower name and
23 the latitude and longitude of each tower. And the
24 software does all the work for me. I did an import of the
25 data into the map and it automatically plots the locations

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1 on the map where the tower is located.

2 And then from there, I have -- like if you look
3 at the -- the center of it are little tower icons. Then I
4 look at that and I use a -- basically use a protractor to
5 draw out the isthmus of what side of the tower was used
6 when the phone call was made.

7 Q. So for clarity, then: a phone call would be
8 made -- could be anywhere inside that isthmus, then --

9 A. Yes, sir. And --

10 Q. -- 120 degrees?

11 A. The green-shaded area --

12 THE WITNESS: If I may?

13 A. The green-shaded area is the side of the tower.
14 So for instance if a phone call was made off of tower 494,
15 sector one, then I would cross-reference that with the
16 data for the cell phone towers, which would tell me that
17 that sector one -- and the center of that sector one is --
18 just, you know, looking at it is probably around 120
19 degrees. So I would go sixty degrees in either direction
20 to tell me what side of that tower the phone call was made
21 of -- made from.

22 Q. [Mr. Finch] It'll tell you in that general area
23 that's where that phone was used at that time?

24 A. Yes, sir.

25 And those circles go out to three miles. The

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1 general area that a cell tower will cover will be three
2 miles. So all those circles go out to three miles.

3 And, again, the way a phone works is my phone is
4 looking for the strongest signal to work off of so it's
5 going to -- it's going to -- it's talking to a tower
6 trying to find out what the strongest signal is, you know,
7 for you to communicate off of.

8 Q. And for you to get information about where a
9 cell is being used, it has to be used; correctly -- right?

10 A. Yes.

11 Q. So that would be a call, generally?

12 A. Yes.

13 Your phone is always talking to a tower because,
14 you know, you're getting -- if you -- all the phones, the
15 smart phones with text messages, e-mails, all that stuff,
16 it's always talking to a tower. But the phone company
17 does not record any of your information until you make a
18 phone call because, again, it's for billing purposes. So
19 even though your phone is talking to it, unless you're
20 actually making a phone call it's not going to record the
21 information.

22 Q. Okay. And using this as the start of the day,
23 at least as far as Alexis Lukaitis's phone, can you walk
24 us through the usage that's reflected in this map here?

25 A. Yes, sir.

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1 And when I looked at it, I could tell all the
2 towers that she hit up until -- let me go to August the
3 8th here. So that phone started off on August the 8th in
4 the Bluffton area.

5 And actually, if you have another -- is there
6 another map, you should have, that shows her -- it goes
7 from where the phone -- it starts off in Bluffton, hitting
8 towers in Bluffton, to where the phone was hitting towers
9 in the Charleston area. So this is --

10 Q. Let me interrupt just briefly. This is State's
11 227 you're looking at now.

12 A. Okay. So if you look to the left there, there
13 is where the body was found, the victim's body, if you can
14 see it on the screen there.

15 Q. If you could indicate that with a pointer.

16 A. Yes, sir. Right there.

17 And that information was provided to me by your
18 office.

19 Q. And then you -- did you add that information in
20 the white box?

21 A. Yes.

22 Q. And what is that?

23 A. Okay. So this says calls made by Alexis
24 Lukaitis' phone, [REDACTED], on August 8, 2010. Used
25 cell site 310 from 8:19 p.m. to 9:49 p.m. All remaining

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1 calls after 9:49 p.m. are unanswered calls or voice mail
2 and do not contain cell-site data.

3 So basically what that says is she goes from
4 being in Bluffton to being in the Ravenel area, hitting
5 off that tower, when she makes her phone calls. The
6 green-shaded area were the areas that her calls were made
7 from when she made those calls.

8 And I was able to determine that -- like the
9 codes on the list here show me that like "F", for
10 instance, is a voice mail. So those were all voice mail
11 calls. There's a *86 where she checked her voice mail on
12 here. And all of these calls were made using that cell
13 tower 310 and using those sides of the cell tower.

14 Q. Okay. So on this map you have a call at 8:19 is
15 received, then answered. And that's what creates the
16 information for the tower to receive for the billing --

17 A. Correct.

18 Q. -- to be recorded?

19 A. For instance, at 8:10 p.m. on August 8th, there
20 was an eighty-six second phone call -- so a minute and
21 twenty-six second phone call -- using cell tower 310. And
22 the one side is -- the dark-green area was the side of the
23 tower that phone call was made from.

24 Q. Okay. And then at 9:49 p.m. there's another
25 call. And that one had to be answered in order for it to

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1 register; is that correct?

2 A. The one at 9:49 p.m. is a -- actually, an
3 unanswered call that goes to voice mail. But it does
4 record the cell-site data.

5 Q. Okay. And, now, and that's -- is there anymore
6 other information -- well, all the other calls go
7 unanswered --

8 A. Correct.

9 Q. -- is that correct?

10 A. After 9:49 p.m., all -- everything after 9:49
11 p.m. does not have any cell-site data that would tell --
12 it was basically unanswered calls that went straight to
13 voice mail.

14 Q. And those won't give us tower information?

15 A. No.

16 Q. And those are just on the billing, it would
17 show, just on the spreadsheet you received, that somebody
18 tried to call somebody?

19 A. Yes.

20 Q. Let's switch now to the maps you made using the
21 information from Mr. Drayton's phone. And, again, let's
22 start chronologically. This is State's 229. Can you tell
23 us what we see in this map?

24 A. Just a moment, please.

25 [Whereupon, the witness reviews documents]

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1 A. Okay. Again, these are calls made on August 8th
2 from 9:08 a.m. to 6:36 p.m. And every call made during
3 that time period used the towers in the Bluffton area,
4 used these three towers, which are 74, 85 and 161.

5 Q. [Mr. Finch] Okay. And then as we get to later
6 in the day. This is State's Number 230. If you could
7 tell us what we see here.

8 A. Okay. As I described earlier, when you start
9 making a phone call, as you move you're picking up
10 different towers.

11 So I live in Columbia. So if I start driving
12 home to Columbia today and I call my wife and say, hey,
13 I'm on the way home, and she decides, hey, I'm going to
14 talk for fifteen or twenty minutes, well, the tower that
15 I've started the phone call on in Charleston is going to
16 be different. And it will start picking up towers as I'm
17 moving. So if I get up to Summerville or Orangeburg, I'll
18 -- and I make several different phone calls, then I would
19 be able to track -- I travel up I-26 to get to Columbia.
20 Okay?

21 So as I started going through these phone
22 records, I was able to map these towers. And the towers
23 show that -- probably the way that he traveled, because
24 the last phone call that he made, or that was made in the
25 Bluffton area --

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1 MR. PENNINGTON: Objection, Your Honor, to the
2 statement that "he made" rather than the phone.

3 There's no foundation that it was Mr. Drayton,
4 whether they were mapping his phone, Your Honor.

5 THE COURT: All right. Just disregard the
6 statement he made.

7 Limit the testimony to the particular phone.
8 You can refer to it as the defendant's phone or
9 Drayton --

10 THE WITNESS: Yes, sir.

11 THE COURT: -- phone, okay --

12 THE WITNESS: Yes, sir.

13 THE COURT: -- rather than he.

14 THE WITNESS: Yes, Your Honor.

15 A. When I look at the records -- it took about an
16 hour and a half for the number in question to go from
17 Bluffton to Charleston. And that's about how long it
18 takes to get from Bluffton to Charleston is an hour and a
19 half.

20 So looking at these phone calls, it would -- he
21 hit -- the number hit Highway 17 and all the way up into
22 Charleston. So that's what that map depicts is the towers
23 that were hit by that number.

24 Q. [Mr. Finch] Moving on, again, chronologically.
25 We now have State's 231. Can you tell us what we're

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1 seeing here?

2 A. Okay. What you're seeing there is the number --
3 or the phone in question entering the Ravenel area. And
4 every phone call, it shows the towers that are being hit
5 as it comes into the area at different times there.

6 Q. Okay. And what is the time range we're looking
7 at here?

8 A. Looking at 7:20 -- around seven o'clock, a
9 little after. Between 7:20 and 7:52 p.m. on August the
10 8th.

11 Q. And can you see what highway that -- those are
12 along to show travel? likely travel?

13 A. Likely travel: I believe that's Highway 17.

14 Q. Now show you State's 232. Could you tell us
15 what we're looking at here, please sir.

16 A. All right. Those are towers 310 and 4 -- it's
17 really hard to read -- 449, I believe. One is 31 and
18 one -- it's actually showing the phone calls as it comes
19 into the Bluffton -- or the Ravenel-Hollywood area.

20 Q. Okay. And on -- and as we look at the screen to
21 the far left, what else is noted in that picture?

22 A. The location that the victim's body was located.

23 Q. And if you could point that out with the pointer
24 for the jury, please.

25 A. Right here.

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1 Q. Again, that shows the tower usage by the
2 defendant's phone?

3 A. That's correct.

4 Q. And our final is Number 233. And tell us the
5 time range of the -- and the phone usage and any other
6 pertinent information.

7 A. It's August 8th at 9:03 p.m. And the towers
8 that are being used are 310, 410, 428, 344. And then from
9 9:40 until 11:38 p.m. on August the 8th, all those calls
10 are using tower 310.

11 Q. And can you just point out tower 310 for us,
12 please.

13 A. I believe it's over here in the far right of the
14 screen there.

15 Q. I'm moving it over. Is that the center we're
16 looking at there?

17 A. The far right. That one there. That's 310,
18 yes. And then you've got 410 and 344.

19 Q. And can you show us the location where the
20 victim's located?

21 A. Right here.

22 Q. If you could, Mr. Aycock, let's take another
23 look at State's 233. If you could just break down the
24 different towers and the different times for us. Here
25 again, which towers have been used and which, you know,

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1 sequence?

2 A. All right. At 9:03 --

3 THE WITNESS: Let me get -- look at the records
4 here.

5 [Whereupon, the witness reviews documents]

6 A. All right. At 9:03 p.m. on August the 8th,
7 2010, tower 310 is being used. So tower 310 is the far-
8 right corner over here.

9 Then at 9:13 p.m., tower 410 is used.

10 And 410 is right in the center there, right
11 above where the victim's body was located.

12 And then, let's see, 344 is used at 9:26 p.m.,
13 which is here.

14 And then every call after 9:26 p.m. goes back to
15 using the 310 over here.

16 Q. [Mr. Finch] And if you could help orient us.
17 Is that closer to Charleston or farther away from
18 Charleston?

19 A. That's closer to Charleston.

20 Q. And that -- tower 310, again, is used from what
21 time to what time? The last calls range from what time?

22 A. Let's see. At 9:40 p.m. until -- every call
23 made until 11:38 p.m.

24 And then if you look on August the 9th of 2010,
25 the phone shows back up in the Bluffton area.

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1 Q. At what time does it show up back in Bluffton?

2 A. 6:48 a.m.

3 So the last call in the Ravenel area is at 11:38
4 p.m. and the first call on the 9th is located in the
5 Bluffton area at 6:48 a.m.

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

7 Q. [Mr. Finch] Can you tell what number called
8 Alexis Lukaitis' phone at 8:19 and at I believe it's 9:49?

9 A. At 8:19?

10 Q. Correct. On August 8th, 2010.

11 A. All right. August 8th, 2010, at 8:19 p.m.,
12 there was an incoming phone call from [REDACTED] And
13 at the time that her phone would have received that call,
14 she was -- tower 31 was being used when that call was
15 being made.

16 Q. Okay. And is that the same number that calls at
17 9:49?

18 [Whereupon, the witness reviews documents]

19 A. Yes. And those are -- the calls made at 9:49
20 p.m. are incoming calls. So the call made at 8:19 is an
21 outgoing phone call and the call made at 9:49 p.m. is an
22 incoming phone call.

23 Q. [Mr. Finch] Are there a series of calls from
24 that number, incoming or inbound, to Alexis Lukaitis'
25 phone?

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1 A. Yes. Like over and over again.

2 At 8:20 -- let's see.. Sorry. 8:58, 9:35, 9:36,
3 9:43, 9:48, 9:49, 9:50. And all those calls go to voice
4 mail.

5 Q. So turning back to Mr. Drayton's records, you
6 said that the last calls made in cell tower 310, 11:38,
7 and then the phone's next usage that's recorded is at 6:48
8 down in the Bluffton area?

9 A. That's correct.

10 Q. So there's a gap of seven hours or so?

11 A. Yes.

12 And I actually use that a lot in trying to
13 locate individuals to see where somebody might have spent
14 the night somewhere. So, I mean, that would tell me in
15 this -- 11:38 I was in Ravenel, an hour and a half away
16 from Bluffton, and the next morning at 6:48 I show up back
17 in the Bluffton area from Ravenel.

18 Q. And you also received text message information;
19 is that correct?

20 A. Yes, sir.

21 Q. And you've looked at text message from Ms.
22 Lukaitis's phone --

23 A. Uh-huh.

24 Q. -- correct?

25 A. Correct.

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1 Q. And Mr. Drayton's phone number?

2 A. Yes.

3 Q. If I could, let me show you what's been marked
4 and admitted as State's 226. Let me ask you about the
5 phone records, the tower records, specifically for the
6 next night, August 9th, 2010. Using Mr. Drayton's phone
7 information, were you able to plot a location for calls
8 made the evening of August 9th --

9 A. August 9th -- if I look at all of August 9th,
10 just being familiar with these numbers, all the calls made
11 on August 9th are in the Bluffton area. The majority of
12 those used tower 74 and go on until -- the only time --
13 like tower 499 and 494. All of these are in the Bluffton
14 area.

15 Q. Okay. I would like to turn your attention to --
16 and the text messages, how do those come in? What format
17 do those come in?

18 A. Those come in in a different type of document
19 that -- and, generally, cell phone companies either don't
20 keep text message -- the content of text messages and if
21 they do, they keep them for a very short period of time.

22 But when they provide them, and keep them, and
23 you can get them in time, you can get the information.
24 And it'll provide when the text was sent, who the text was
25 sent from, and who it went to, and the contents of that

1 text message.

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

3 Q. [Mr. Finch] Mr. Aycock, I'm going to show you
4 something. See if that would refresh your recollection
5 regarding August 9th, 2010.

6 A. Okay. On August 9th, the towers that are used
7 are in the Bluffton area. Again, they -- there's one that
8 is used that's in Hardeeville right off of Highway 17.
9 And this tower 461 is in the Hardeeville area.

10 Q. So the defendant's phone was -- recorded usage
11 in Hardeeville that evening?

12 A. Right.

13 And there's a call August 9th at 6:36 p.m., 6:40
14 p.m., 6:43. Pretty much all the calls made used that
15 tower in the Hardeeville area.

16 Q. Okay. And let me get back to the text messages.

17 The information, the data, that's provided by
18 Verizon in this case provides you with what information
19 regarding text messages?

20 A. Again, it's going -- it just -- it comes in a
21 different format than the phone records do. And because
22 text messages are like short blasts of information that go
23 out, they aren't reflected on the call records. And it's
24 going to give you a date and time that the text message
25 was sent. It's going to give you the who was the sender

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1 and who was the receiver of the text message. That's
2 pretty much it. There's more data in there --

3 Q. Will they give you the text, the actual
4 message --

5 A. Yes --

6 Q. -- sent?

7 A. -- it'll give you the content of the text
8 message, yes.

9 Q. And if I could turn your attention to August
10 10th, 2010, at 5:11 p.m., 5:11 and 25 seconds.

11 A. You're referring to August 10th, 2010, at 17:11,
12 which is 5:11 p.m.

13 Q. There's two -- the records reflect how many text
14 messages in that short time frame there?

15 A. There's one at 17:11:25, 5:11:25, and then
16 there's one at 5:11:26.

17 Q. And what's the content of those messages?

18 A. The one at 5:11:25 is -- the originator is [REDACTED]
19 [REDACTED], which is the defendant's phone, and it is sent
20 to [REDACTED] It says, baby, do you have a credit or a
21 debit card to get me a room over the phone. I have eighty
22 bucks and I want to save that so I can get on the road in
23 the morning.

24 Q. And the next?

25 A. The next one is on August 10th at 5:11:26 and 26

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1 seconds. Come up there in the morning. I've got to get
2 away from here.

3 MR. FINCH: I have no further questions at this
4 time. Please answer any questions the defense may
5 have for you.

6 THE COURT: Cross-examination.

7 MR. PENNINGTON: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. PENNINGTON:

10 Q. Agent Aycock, I'm going to refer you to what has
11 been marked as State's Exhibit 232 again. You've already
12 dealt with this. This is the one that's entitled Verizon
13 records made by Drayton's phone, [REDACTED], from 8:09
14 p.m. to 9:03 p.m. on August 8th, 2010. Do you have that?

15 A. What's the time again? 8:09 p.m.?

16 Q. This would be the 8:09 to 9:03 p.m.

17 A. Okay. Yes, sir.

18 Q. Do you have that chart? This is actually a
19 chart that you made up?

20 A. Right.

21 Q. Okay. And to orient the jury and orient you,
22 what you see right here is that this is the town of
23 Hollywood?

24 A. Uh-huh.

25 Q. And this highway right here is 162?

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1 A. Right.

2 Q. And then this highway right here is Highway 17,
3 as we know it, that's going from Charleston up here and
4 this would be going south to the Savannah direction?

5 A. Okay.

6 Q. Is that correct?

7 A. Yes, sir.

8 Q. That's the way you read it?

9 A. Uh-huh.

10 Q. And so what you see is this tower 310 is located
11 somewhere to the east of Hollywood and Ravenel; is that
12 correct?

13 A. That's correct.

14 Q. All right. And then there's this tower 449 and
15 it is on the other side of the water over on Johns Island;
16 is it not?

17 A. Yes.

18 Q. To get to that tower, you would have to go
19 back -- you would have to go up 17 to Main Road and then
20 cross over the island into Johns Island to reach that
21 tower. Am I right?

22 A. You are correct.

23 Q. Okay. What I'm going to turn your attention to
24 is that these green circles that we have, those are using
25 Map Point, Microsoft Map Point. That is a three-mile

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1 radius from those circles, is it not?

2 A. Yes.

3 Q. So if the tower is made --

4 MR. PENNINGTON: I'm going to use this thing
5 again.

6 Q. [Mr. Pennington] If the tower is right here,
7 and that's tower 31 --

8 A. Uh-huh.

9 Q. -- then this radius is three miles; correct?

10 A. Correct.

11 Q. And so the rule of thumb for cell phones is, of
12 course, that the -- it's roughly that they are -- they
13 serve that distance? the tower will serve that distance?

14 A. It can go farther, depending on how strong the
15 signal is on the tower.

16 Q. All right.

17 A. But it generally is.

18 Q. And if you're in a denser area, denser more
19 urban area, then you wouldn't expect that -- you would
20 expect it to jump towers quicker and so that the circle
21 would be smaller?

22 A. Yeah.

23 If you're in a large city like New York City or,
24 you know, a city with tall buildings, the signals get
25 blocked so you might have a tower every corner, you know,

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1 a city with buildings. If you get out into a rural area,
2 it's going to be more sparsely located.

3 Q. All right. Now, all the information you have is
4 relying on the records that you've received. You have to
5 rely on the data that's given to you by Verizon --

6 A. Yes.

7 Q. -- correct?

8 A. Uh-huh.

9 Q. So all the information is only as good as its
10 source, the Verizon company; right?

11 A. Right.

12 Q. Now, turn your attention to what is Mr.
13 Drayton's phone, the 9422 number, and specifically to
14 calls that are at 19:52 hours, which using non-military
15 time that would be 7:52 p.m.

16 A. Right.

17 Q. All right. Now, one of the other documents --
18 it hasn't been put into evidence. But you've, as you
19 said, mapped out where various towers are.

20 A. Right.

21 Q. And that particular 19:52 or 7:52 p.m., call from
22 Mr. Drayton's phone was at tower 89?

23 A. Yes.

24 Q. Okay. And is it fair to say that 89 is south on
25 17? Are you familiar with where 89 is?

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1 A. No, sir, I'm not, not without looking at --

2 Q. Would it refresh you to look at your map?

3 A. Yes, sir. Thank you.

4 [Whereupon, the witness reviews documents]

5 Q. [Mr. Pennington] You can hold onto that --

6 A. Yeah. It's on Highway 17 south of Ravenel, kind
7 of -- it's west of Ravenel.

8 Q. And the very next -- within five minutes of
9 that, to go from what is 7:52 p.m. to 19:57 p.m., which is
10 a five-minute span or what would be 7:57, five minutes
11 later, and the phone pings off of 428?

12 A. Yes, sir. Uh-huh.

13 Q. Now, where is tower 428?

14 A. All right. Now, tower 428 is in Folly Beach.

15 Q. In Folly Beach?

16 A. Uh-huh.

17 Q. More specifically, 510 East Erie Avenue on Folly
18 Beach?

19 A. I've got the latitude and longitude for it. I
20 don't have the street address for it:

21 Q. Did at one point you generate a document that
22 had the addresses of the towers?

23 A. I did.

24 Q. I'll refer this to you to refresh --

25 [Whereupon, the witness reviews documents]

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1 A. Okay. 510 East Erie Avenue.

2 Q. [Mr. Pennington] All right. So this would
3 suggest that you're not joking that four ninety -- 428 is
4 literally Folly Beach?

5 A. Yes.

6 Q. Okay. And then in that same call, it then says
7 that it begins at Folly Beach and it ends at 344, which is
8 in Ravenel?

9 A. Yes.

10 Q. How do we account for that anomaly?

11 A. Actually, sir, I've done some research on this.

12 Q. Okay.

13 A. That phone call is a routed phone call.

14 And if you look at the -- Verizon sends a
15 document that tells you how to interpret the records. So
16 if you look at that phone call at 19:57 where it shows
17 that the tower is in Folly Beach, the 428 and 344 --

18 Q. Right.

19 A. -- if you look at that phone call, the number
20 [REDACTED] is the defendant's number.

21 Q. Yes, sir.

22 A. The next number is [REDACTED].

23 Q. Right.

24 A. And then the number on the far right is [REDACTED]
25 [REDACTED].

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1 The document that Verizon provides tells me that
2 that is a routed number. And then if you look at it
3 further, because it is a routed number, it is not an
4 actual call.

5 Q. You're saying that [REDACTED] is not a real
6 call?

7 A. That is a real call, but it goes through -- and
8 I don't know why. I can't tell you this. But it is
9 a routed number. So the 803 number -- and a routing
10 number --

11 The towers have thousands of numbers that don't
12 necessarily belong to a person. It's a routing number and
13 it will route your phone call through that number to call
14 someone else. So that doesn't necessarily mean that you
15 were at tower 428 or 344 when you made that call.

16 Q. So the information on here about the tower
17 location could be misleading in terms of where the actual
18 location of the cell phone is?

19 A. Yes. Because it was a routed phone call.

20 Q. All right. And so I understand your testimony,
21 you are saying that [REDACTED], which is the calling
22 number in that sequence, that is a real phone number?

23 A. I can't say that without a doubt, sir, no.

24 Q. Okay. But you can see that that number is
25 calling repeatedly over the course of that afternoon and

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1 early evening?

2 A. Yes.

3 Q. Okay. And then the same phenomenon I guess may
4 apply in the next where it goes from where -- in a matter
5 of nine minutes, from what was 7:57 p.m. to what would be
6 8:06. So from 7:57 to 8:06 is nine minutes. In a nine-
7 minute span it shows that he went from Ravenel to the
8 St. Andrews area, cell tower 325?

9 A. Right. Uh-huh.

10 Q. But then within three minutes, he's back at cell
11 tower 310, which we've seen from the chart is actually
12 near Hollywood?

13 A. Yes.

14 Q. So, again, this is a routing --

15 A. This -- and going by how Verizon explains it in
16 their details, that call at 8:06 is not a routed call.

17 Q. So that would suggest that he actually was in
18 what we would call the St. Andrews area, which is 1109
19 Savannah Highway?

20 A. Okay.

21 Q. Would you like to see the chart again?

22 A. Yes, please.

23 Q. Sorry.

24 [Whereupon, the witness reviews documents]

25 A. Talking about 325 now; correct?

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1 Q. [Mr. Pennington] Correct.

2 A. 1109 Savannah Highway?

3 Q. Yes, sir.

4 A. Uh-huh. In Charleston.

5 Q. All right. So that is not a routed call?

6 A. And I need to look --

7 Q. At 8:06 p.m.

8 A. No.

9 Q. And so that would suggest that at least in
10 that -- at that time period, the phone call starts and
11 ends at a tower that's within three miles of 1109 Savannah
12 Highway?

13 A. That's what that -- it would suggest that, yes.

14 Q. And to depict that, that would show him being
15 pretty much the West Ashley area close to downtown?

16 A. Yes.

17 Q. Is it fairly safe to say that at times that you
18 can exceed the three miles in terms of your cell phone's
19 ability to operate beyond three miles?

20 A. It's going to depend on your -- the battery
21 strength of your phone, it's going to depend on how strong
22 the signal is on the tower that you're using.

23 As you get to the outside strength of that tower
24 and get closer to a new one, it's going to start picking
25 up the new tower.

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1 Q. I turn your attention to what would be later the
2 same evening, August the 8th, Mr. Drayton's cell phone,
3 where it appears that at 8:27 p.m. he's at that 310 --
4 that tower 310 that we talked about in Ravenel.

5 A. Yes, sir.

6 Q. That's where the phone would be?

7 A. [No response]

8 Q. And then is it safe to say that five minutes
9 later, at 20:32, he's pinging off of what is the John's
10 Island tower that we talked about?

11 A. The tower 449?

12 Q. Yes, sir.

13 A. Yes.

14 Q. But then two minutes later it's reverted back to
15 tower 310?

16 A. Yes.

17 And that call at 8:32 is a routed call, also.

18 Q. So that would be sort of one of those times
19 where it could use a different tower?

20 A. It would route the call through a switch to that
21 tower. And I don't know why it does that.

22 MR. PENNINGTON: Okay. If I may just have the
23 Court's indulgence a moment, Your Honor.

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

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1 MR. PENNINGTON: Thank you, Mr. Aycock. That's
2 all I have.

3 THE COURT: Redirect?

4 MR. FINCH: Briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. FINCH:

7 Q. Mr. Aycock, is it fair to say that these routed
8 calls happen more often in island or rural areas?

9 A. I don't know, sir.

10 Q. Okay. But in the number of phone calls that you
11 plotted using Mr. Drayton's phone number -- I'm sorry.
12 One, two, three, four, five --

13 Can you look at that? By my count, close to
14 twenty phone calls. There were a couple of occasions
15 intermittently there where there's routed calls, that seem
16 to be outside the normal sphere of the travel you plotted,
17 that Mr. Pennington pointed out?

18 A. Okay. Could you repeat the question, please?

19 Q. Among the twenty-odd phone calls that you
20 plotted out --

21 A. Uh-huh.

22 Q. -- and created that map for, there's just those
23 few random circumstances that Mr. Pennington pointed out
24 of routing calls?

25 MR. PENNINGTON: Objection to the leading.

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1 THE COURT: [No response]

2 A. Yeah. I don't see maybe two or three routed
3 phone calls where the calls were routed through a
4 different tower.

5 Q. [Mr. Finch] And, again, the phone is going to
6 pick up the strongest signal?

7 A. The way the phone works, it's going to pick up
8 the strongest signal.

9 It's also going to use every -- if the
10 frequencies are being used up on that tower, which will
11 never happen unless you're like at a USC football game
12 in Columbia, you would lose all those frequencies, it
13 would go to different tower. But in a rural area, you're
14 generally going to pick up the strongest signal with the
15 most frequency available.

16 Q. And if you're on the edge of that radius, you
17 might be going from tower to tower?

18 A. Yeah.

19 As you go out -- and your phone is always
20 looking. It's like a handoff, I'm handing off a call to
21 another tower, so as you get to the -- as the tower you're
22 talking on gets weaker, it's going to -- your phone is
23 going to start searching for the next tower, the next
24 strongest signal, as you travel.

25 MR. FINCH: Thank you. No further questions,

MIA PERRON, CVR-CM-M

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1 Your Honor.

2 THE COURT: Any recross?

3 MR. PENNINGTON: No recross, Your Honor.

4 THE COURT: Okay. Mr. Aycock, thank you so very
5 much. You may be excused.

6 THE WITNESS: Thank you, Your Honor.

7 [Whereupon, Mr. Aycock is excused and exits the
8 witness stand]

9 THE COURT: Call your next witness.

10 MS. SHEALY: Erin Presnell.

11 [Whereupon, Dr. Presnell comes forward]

12 [Whereupon, Dr. Presnell is duly sworn by the
13 clerk of court as follows: do you swear or affirm
14 your testimony will be whole truth and nothing but the
15 truth, so help you God]

16 THE WITNESS: Yes, ma'am.

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

19 THE WITNESS: [No response]

20 [Whereupon, Dr. Presnell takes the witness
21 stand]

22 MR. PENNINGTON: Mr. Pennington, do you agree
23 that Dr. Presnell is a certified, qualified
24 pathologist, forensic pathologist?

25 MR. PENNINGTON: I certainly do.

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1 THE COURT: All right. Solicitor, the Court so
2 finds.

3 But I don't -- go ahead and introduce her
4 qualifications to the jury. Okay?

5 MS. SHEALY: Thank you, Your Honor.

6 - - - - -

7 SUSAN E. PRESNELL, M.D.,
8 Having Been First Duly Sworn,
9 was Examined and Testified as Follows:

10 DIRECT EXAMINATION

11 BY MS. SHEALY:

12 Q. Dr. Presnell, if you would please tell the jury
13 where you're employed.

14 THE WITNESS: First, I'm Susan Erin Presnell.
15 P-R-E-S-N-E-L-L.

16 I'm sorry. I forgot to do that.

17 A. I'm a forensic pathologist. I work at MUSC, the
18 Medical University, right up the road here.

19 Q. [Ms. Shealy] And what do you do at the
20 University?

21 A. I'm a forensic pathologist and also a teacher.

22 Q. And how long have you been with the Medical
23 University?

24 A. Well, I actually went to MUSC in 1989 for
25 medical school and I stayed on ever since. I stayed

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1 through a pathology residency, which is where I trained in
2 pathology. I stayed there for my forensic pathology
3 subspecialty. And then I was hired on as faculty in 1999.

4 And so I've been doing -- I've been board
5 certified and working at MUSC as a forensic pathologist
6 since 1999. Thirteen years.

7 Q. And what -- your teaching: what do you teach?

8 A. I'm involved with directing the medical school
9 curriculum for the second year. So pathology.

10 Q. What is the other term? Pathology.

11 A. Pathology: you know, more people are getting
12 used to what pathologists -- or at least forensic
13 pathologists do.

14 Pathology itself is a broad field. It's a
15 general field that means the study of disease. So
16 actually, most pathologists are anatomic pathologists,
17 meaning that if you go to your doctor and they like say do
18 a skin biopsy or a breast biopsy or you go to surgery and
19 they take out a gallbladder, if any of that tissue is sent
20 to a pathologist they examine it, look under the
21 microscope, and diagnose a disease, like it's cancer or
22 it's not cancer, it's infection or not infection.

23 So I'm trained in general pathology. But then I
24 did the subspecialty training in forensics where we're not
25 just looking at a piece of tissue or a gallbladder or

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1 something taken out. We're looking at, of course, a whole
2 entire individual, after they've passed, through the
3 process of autopsy. So an external exam, an internal
4 exam. And we'll ultimately -- we're looking for diseases
5 but we're also looking for trauma, evaluating the trauma,
6 and ultimately coming up with a cause and manner of death,
7 which we put together in an autopsy report.

8 Q. Okay. And approximately how many autopsies have
9 you performed?

10 A. Over 2,000.

11 Q. Now, you told us the purpose of autopsies is to
12 look for disease and cause of death; is that correct?

13 A. Yes.

14 And to interpret your findings. I mean, you may
15 know -- you may recognize a certain type of injury, but
16 it's the interpretation of it.

17 Q. And you say that's both an external examination
18 and an internal examination?

19 A. Correct.

20 Q. Did you have the opportunity to perform the
21 autopsy on Alexis Lukaitis?

22 A. Yes. I performed the autopsy on August 10th,
23 2010.

24 Q. And what I would like for you to do is to come
25 forward.

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1 [Whereupon, the witness complies]

2 Q. [Ms. Shealy] And if you could describe your
3 findings to the jury. I'm going to have you diagram them
4 for us, if you would.

5 A. Okay. In any particular order or --

6 Q. I think what we'll do is we'll just start with
7 the body injuries and save the neck and the hands for
8 later.

9 A. Okay.

10 MS. SHEALY: And I've got different-colored
11 markers if you would like to do different type of
12 injury. You've got some, too?

13 THE WITNESS: Well, I've got these in my bag.

14 MS. SHEALY: Okay. So whichever ones work
15 better.

16 And let me pull this up a little closer. Is
17 that comfortable for you or do you want me --

18 [Off the record momentarily]

19 A. This right here is an example of a diagram that
20 I -- a blown-up diagram that I would use on autopsy to try
21 to document injuries.

22 Now, I am not an artist and so we'll -- I'll
23 kind of draw in a general description -- or vague figure
24 of what the injury looked like.

25 Q. [Ms. Shealy] Let's start with this. How tall

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1 is she? Do you have that with you? Sorry.

2 A. She is fifty-one inches, which is just under
3 five foot one inch, and 107 pounds.

4 Q. Go ahead.

5 A. Now, there's three types of injuries that I'm
6 going to draw right now. One is called an abrasion. And
7 think of an abrasion as a scrape, you would scrape off
8 some skin if you fall and scrape your knee. One is a
9 contusion or a bruise. So that's some type of blunt
10 trauma that struck the skin and caused bleeding
11 underneath. So there'll be a bruise. Actually, there's a
12 combination of an abraded contusion. So something struck
13 that's actually caused a bruise but kind of scraped the
14 skin, as well. And then a couple of punctures, which I'll
15 get to later.

16 All right. So first there's several abrasions
17 or scrapes across the face. We have one over the right-
18 cheek area, one over the right-temple area. And that's a
19 little bit contused, as well as a bruise. Three over the
20 forehead, two over the left-temple area, one over the
21 left-cheek area. There's actually also one right here
22 along the left-chin area. I just have a diagram on that.
23 And the left cheek is also vaguely bruised.

24 This bruise kind of vaguely -- and also
25 perforate, I didn't -- really haven't explained that:

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1 which is a laceration. A laceration is caused by blunt
2 trauma, again, but instead of just bleeding under the skin
3 it causes the skin to split so you have a laceration. She
4 has a laceration on the upper and lower left lip.

5 We can get into petechia later.

6 Q. That's fine.

7 A. Then we have -- now, something else: when we're
8 looking at the injuries, sometimes it's really difficult
9 to say, oh, yes, this is a cut or this is a scrape. But
10 sometimes think of it as a cutting instrument just kind of
11 scrapes the skin. And it's difficult to say whether
12 that's just truly caused by scraping against something or
13 if there was a sharp injury -- or sharp instrument
14 involved.

15 And so we have a little aggregate of either
16 abrasions, little scrapes, or little cuts, it's hard to
17 tell which one, right there on the right -- excuse me --
18 the left upper-chest area. We have another abrasion right
19 on the chest area here. We have an area of contusion or
20 bruising around the left upper-arm here. There's also
21 another little bruise on the right forearm. This is right
22 and here is left. Another area -- this is more of a
23 purplish coloration, which kind of looks like a bruise but
24 it may have just been focal coloration but that -- around
25 the wrist area.

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1 On the knees we have a contusion or bruise on
2 both the right and left knee. And, in fact, on the right
3 one, the contusion is abraded. So it's kind of like a
4 hitting with scraping and causing bleeding beneath the
5 skin.

6 THE WITNESS: Am I speaking loud enough?

7 THE COURT: Yes, ma'am.

8 MS. SHEALY: The court reporter is saying no.

9 THE COURT: You're saying no, Mia? Does she
10 need to speak up?

11 MS. SHEALY: Why don't you --

12 THE WITNESS: I'll speak louder.

13 THE COURT: Speak up, if you would, Doctor.

14 THE WITNESS: Yes, sir.

15 THE COURT: If I could hear you, I figured she
16 could.

17 A. Four contusions or bruises on the front of the
18 right-lower leg. And then an area of bruising and
19 abrasion on the left-lower leg.

20 All right. Now, I was going to show you three
21 other injuries which we refer to as really more like
22 punctures. So, again, some kind of pointed object,
23 whether it's the point of a knife, the point of a
24 screwdriver, of an icepick or any -- some kind of pointed
25 object that can puncture the skin.

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1 And so we have that right on the lower chest
2 area here -- red. The right-lower chest there. And,
3 actually, we have a little bit larger one here which
4 actually looks like a cut, an actual cut. So two
5 punctures and a cut. These are both -- all three of them
6 are very superficial. They just go through the skin and
7 into the underlying soft tissue. They don't actually go
8 into the body cavity.

9 Q. [Ms. Shealy] Okay. Now, did you want to
10 discuss the petechia on this diagram?

11 A. Let's do that at the end.

12 Q. Okay. You want to go to the hands?

13 A. All right. So we did the arms, but now we're
14 going to go specifically to the hands.

15 Again, this is the left side. This is left.
16 And right. On the left there's two injuries. There's a
17 cut that goes through the skin right there on the thumb,
18 the web of the thumb. And so it continues on this side.
19 So it's like a cut right through the web of the thumb.
20 This goes down to the bone. Sorry -- kind of in this
21 direction. There's an actual very superficial cut just
22 going through the outer layers of the skin right along the
23 palm. And it really -- it lines up pretty well like it
24 might just be a continuation of this injury here. That's
25 it for the left hand.

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1 On the right hand there's -- on the outside
2 there's a small cut on the thumb area. There is a little
3 abrasion on the right index finger. And then on the what
4 we call palmar surface or palm side, we have multiple
5 incisions. An incision is being cut, a cut from something
6 sharp.

7 And so there's multiple cuts across her -- so
8 most cuts are on the palmar surface of the right hand.
9 The deepest of these cuts -- most of them are pretty
10 superficial, just going through the outer layers of skin.
11 But the deepest cuts are right there on what we call
12 the -- or what I would call the proximal interphalangeal
13 joint, but that's -- it's really a first knuckle on the
14 inside of the finger.

15 It does not mean to say that she -- that she
16 sustained different types at different times. This could
17 easily have been sustained at one or two times, perhaps
18 grabbing the knife. The location of these injuries -- and
19 it's based on location -- are characteristic of defense
20 injuries.

21 Q. What do you mean by defense injuries?

22 A. Meaning that if someone was assaulting a person,
23 that they put their hands up, their arms.

24 If it's a sharp instrument, they might try to
25 grab it to defend themselves and cause -- and because of

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1 that, the injuries are in those characteristic locations.

2 Q. Is that all --

3 A. Concentrate right on this one. These are her
4 fatal injuries. She has three incisions or cuts to her
5 neck. And I'm not drawing them in any particular order.
6 Like I can't tell which came first, second and third. But
7 we actually number them and so --

8 Now, something I did not mention yet is that she
9 had some postmortal dermal injuries to her that caused
10 some shrinking of skin in certain areas. And so these
11 types to her neck were -- appeared gaping. They were
12 opened up. But, anyway, this is kind of what they looked
13 like at the time of autopsy.

14 This incision right here -- and I drew little
15 lines from it. That just means that there were scrapes
16 going -- like there's a path and then they continued on in
17 little superficial extension. Like maybe a knife was
18 drawn across the skin -- either as it's going out or going
19 in.

20 This injury here just goes into the underlying
21 soft tissue and muscle about a .8 inch, not quite an inch.

22 This injury right here also -- this is the right
23 side of the neck -- also went -- entered into the tissue
24 .8 inch, about. But it went through the neck muscle and
25 also through the carotid artery, completely through the

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1 carotid artery.

2 This injury right here goes about .125 inch to
3 one-quarter inch. It's right here. It goes through the
4 skin, through the neck muscles here, the thyroid gland,
5 which is right here over the trachea, through the trachea,
6 through the esophagus, which is behind the trachea, and to
7 the backbone, in that area.

8 Q. I think the term that you used in your report --
9 what is transect?

10 A. Transection means that it's completely cut in
11 half. It's not just cut and open, but completely severed.

12 Q. What all was severed in that one? The trachea?

13 A. The trachea, the esophagus and the carotid
14 arteries were all severed.

15 Not with -- the carotid artery injury is
16 associated with this incision right here. The other ones
17 are associated with this incision.

18 Q. Okay. So with these three injuries, could you
19 describe for the jury which ones caused her death?

20 A. Well, the most fatal would be the carotid
21 arteries being transected.

22 Would she survive a total tracheal transection,
23 esophageal transection? I don't know. I don't know. It
24 just depends on what kind of medical attention she could
25 have got.

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1 But the carotid artery is -- was on the top of
2 the list.

3 Should I explain about the petechia?

4 Q. Yes. Do you need the diagram back?

5 A. No.

6 MS. SHEALY: Your Honor, at this time I
7 would like to move these into evidence as State's
8 Exhibits -- as Exhibits 238, 239 and 240.

9 MR. PENNINGTON: No objection.

10 THE COURT: Which is which?

11 MS. SHEALY: Okay. 238 will be the body
12 diagram.

13 THE COURT: Okay.

14 [Whereupon, Ms. Shealy reviews documents]

15 MS. SHEALY: 239 is the diagram of the hand.
16 And 240 is the diagram of the neck.

17 THE COURT: Okay. 238, 239, 240 admitted
18 without objection.

19 [Whereupon, State's Exhibit Numbers 238, 239 and
20 240 are admitted into evidence by the Court]

21 Q. [Ms. Shealy] Dr. Presnell, you were going to
22 tell us about the petechia.

23 A. Yes.

24 So we went through all of the most obvious
25 injuries. One other type of injury she had were numerous

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1 facial petechia. And petechia are little pinpoint
2 hemorrhages.

3 So across the face and kind of across her eyes
4 there are little tiny pinpoint hemorrhages. And we call
5 those petechia. To me, in this type of situation,
6 indicates some type of compression to the neck area.

7 And just to explain my reasoning, I'll back up.
8 I meant to say think of heart and what it does. It pumps
9 blood, oxygenated blood, away -- away from itself to the
10 rest of the body. It does that in arteries. So here's
11 your heart. Blood is going to your head in an artery.
12 The blood is used -- or the brain uses the oxygen and then
13 the blood comes back to the heart in the vein without
14 oxygen. It's coming back to go back to the lungs and get
15 oxygen. So you have arteries going away from the heart,
16 veins bringing the oxygenated blood back.

17 Arteries themselves are pretty elastic, pretty
18 -- they're not as easily compressible as the veins. The
19 arteries are on a high-pressure system, being pumped away
20 from the heart. The veins are very compressible. They're
21 easily compressed.

22 And so if you think of a situation where there's
23 pressure applied to the neck, what actually compresses
24 first? The veins. The veins are more easily compressed.
25 It closes off the blood flow. So what ends up happening

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1 when you close off blood flow from returning to the heart
2 -- you still have it going into the head, but not being
3 able to get out. And that pressure builds, builds,
4 builds, builds, builds until little tiny, tiny vessels
5 will rupture and cause those little pinpoint hemorrhages.

6 So, again, in this case that's what was present
7 and to me indicated some type of neck compression.

8 Q. When you say neck compression, what can you not
9 rule out, then?

10 A. When I say neck compression, I mean -- another
11 terminology is strangled.

12 You know, in her case I know -- felt pretty
13 comfortable that cause of death as actually being the
14 carotid artery transection from the sharp-force injury.

15 But there may or may not -- there was likely
16 some amount of neck compression or, quote, strangulation.

17 Q. Now, you had mentioned to us that there had been
18 some charring of her body, as well.

19 A. There were some thermal changes, right.

20 Q. Okay. Describe that for us. How did that
21 appear on her body?

22 A. Where on the body? Or what --

23 Q. And how did it look?

24 A. It's kind of darker, firmer, thicker skin. In
25 some areas the skin starts to slip off.

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1 Q. I mean, was it obvious that she had been burned
2 in some way?

3 A. Yes. Yes. Yes.

4 Q. And what did you notice around her ankle area?

5 A. Are you referring to the insect activity?

6 Q. No. To some blood that was -- I can show you a
7 picture to refresh your memory.

8 Do you recall Sargent Manigault having done some
9 work on Ms. Lukaitis before you started the autopsy,
10 looking at --

11 A. Yes.

12 The sargent examined the body for trace evidence
13 and also applied amido black substances to the body. So
14 this appears to be a picture taken --

15 Q. Let me move that into evidence first, please.

16 A. Well, I haven't seen this picture. And it
17 appears to have been taken before I actually examined the
18 body.

19 Q. Well, could you tell us whether or not that's
20 how her leg appeared when you saw it?

21 A. Well, no, because my -- when I saw it, it had --
22 the leg had blue staining all over it.

23 Q. Okay. Well, did you see -- did you see any of
24 the blood on her leg in that area?

25 A. Again, most of the leg area for us was stained

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1 blue with the material that the sargent was using to
2 process the body.

3 Q. Okay. You saw him there working on that?

4 A. Yes, I did.

5 Q. Okay. Very good.

6 Now, as part of your role, did you actually get
7 the fingernail clippings and the swab -- the vaginal,
8 rectal and oral swabs --

9 A. Yes.

10 Q. -- for us?

11 A. Yes, I did.

12 Q. And the blood spot?

13 A. Yes.

14 Q. And, in fact, was there a hair in her hand that
15 was also collected?

16 A. Let's see.

17 [Whereupon, the witness reviews documents]

18 MS. SHEALY: I can find your list.

19 [Whereupon, Ms. Shealy reviews documents]

20 Q. [Ms. Shealy] As a routine part of the autopsy,
21 though, do you usually get the clippings and the smears
22 and the blood spot?

23 A. With this type of autopsy, yes. We don't do
24 fingernail clippings on all types of autopsies.

25 If the hair -- if the hair was associated with

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1 the fingernail area, then it's probably just included in
2 the fingernail clippings.

3 MS. SHEALY: Okay. I think I have no further
4 questions of you right now. Answer any that the
5 defense may have.

6 THE COURT: Cross-examination.

7 MR. PENNINGTON: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. PENNINGTON:

10 Q. Dr. Presnell, just to sort of complete the
11 picture: in addition to the work that you do in examining
12 the body, you also do the test for any blood analysis that
13 might be relevant; correct?

14 A. Correct.

15 On all the cases we'll do toxicology on blood,
16 if we can get it, for drugs and alcohol.

17 Q. What is toxicology?

18 A. It's looking for drugs and alcohol, medicines
19 either legal or illicit, and ethanol or alcohols in the
20 blood.

21 Q. All right. What is buprenorphine?

22 A. It's a --

23 MS. SHEALY: Your Honor, I'm going to object to
24 the relevancy.

25 THE COURT: Let me see the attorneys up here.

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

3 THE COURT: Mr. Foreman, ladies and gentlemen of
4 the jury, I'm going to send you out of the courtroom
5 so I can listen to some of the arguments of counsel on
6 the record.

7 And the reason I do that is I'm not permitted to
8 comment on the facts in the case and in making up my
9 mind or making a decision of whether it's relevant
10 testimony or it should be admissible or not, sometimes
11 I would like to ask questions about the facts and
12 comment on the facts; therefore, I send you out to the
13 jury room so I'll be free to comment on those facts as
14 I'm being appropriate in trying to make a decision
15 whether the evidence is admissible or not admissible.

16 And, also, we've been going for almost -- about
17 an hour and a half, an hour and thirty-five minutes,
18 and I try to take a break every hour and a half. So
19 we'll take our afternoon break.

20 Please don't discuss the case amongst
21 yourselves. Leave your notepads.

22 And the smokers can go to the appropriate
23 location. Thank you very much.

24 [Whereupon, the jury exits the courtroom at
25 4:04 p.m.]

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1 THE COURT: All right. Mr. Pennington, for the
2 record, if you would put on the record what the
3 toxicology report produced.

4 MR. PENNINGTON: The toxicology report yields
5 that she had a blend of different drugs that included
6 not just the kind of opiates that she was allegedly
7 going to look for, but that she had somehow acquired a
8 significant quantity of amphetamines that were in her
9 system at the time and other depressants like -- which
10 is Prozac and marijuana or the residual traces of
11 marijuana that we call THC.

12 The reason that it's relevant is certainly not
13 to impugn her character or her drug use. That would
14 be unfair and improper and prejudicial to the State
15 and also insulting to the family.

16 My purpose is is that the State's theory is
17 specifically that she had a drug habit, that she was
18 out looking for depressants. Their theory is is that
19 she goes up there to acquire those and it's a simple
20 matter that my client somehow kills her.

21 What's conflicting with that theory is the fact
22 that evidently she did not only -- she found drugs,
23 she found multiple kinds of drugs that were in her
24 system at the time of her death that are unexplained
25 and which conflict with the State's theory that it's a

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1 simple case of a woman who's hungry for drugs, hadn't
2 found them, and goes and puts herself in a situation
3 of harm's way.

4 I think that the circumstantial evidence that
5 undercuts the State's circumstantial evidence is
6 perfectly relevant to undercut the State's theory that
7 this is as simple -- as simple as they would like to
8 present it to this jury.

9 These are the findings, reliable findings, that
10 we've had since the beginning of the case, from the
11 medical examiner.

12 THE COURT: Solicitor?

13 MS. SHEALY: Your Honor, we take the position
14 that it's absolutely irrelevant.

15 The facts that are in the case at this point are
16 that she agreed to take her friend, who she thought
17 was her friend at the time, to go pick up some pills
18 and in return he would pay for her gas and give her
19 some.

20 There's nothing in the record at all that
21 suggests that she's dying for the pills, that she's
22 got to get them at that time, et cetera.

23 And the fact that she has pills in her system:
24 the only thing that that would do is it -- it's an
25 effort to turn this jury against the victim, who

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1 obviously was inflicted such great injury that
2 evening. The fact that she had some drugs in her
3 system is completely irrelevant. It's not a fact that
4 has anything to do with anything that happened to her
5 that night. And what it will do is make the jury
6 start trying to figure what that has to do with what
7 happened that evening. We have no idea where she got
8 those drugs from.

9 MR. PENNINGTON: Well, that's exactly my point,
10 Your Honor. They're not comfortable with the facts --

11 THE COURT: Well, wait a minute.

12 MR. PENNINGTON: I'm sorry.

13 THE COURT: I don't know if she's finished --

14 MR. PENNINGTON: I'm sorry.

15 THE COURT: I'll listen to you. I'll give you a
16 chance for rebuttal, okay --

17 MR. PENNINGTON: Yes, sir.

18 THE COURT: -- once she's finished.

19 Go ahead.

20 MS. SHEALY: I think what that does is that it
21 injects something in the record that will allow the
22 jury to speculate.

23 I mean, it is irrelevant. It is not anything
24 that applies to any facts that are in this record.
25 The fact that she has some drugs in her system has

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1 nothing to do with the facts at hand. What's in the
2 record simply is that she agreed to take her friend to
3 Charleston and that he was going to give her a few
4 pills for having driven him and he was going to pay
5 for her gas.

6 This is Sunday afternoon. There is nothing to
7 suggest that the pills that are in her system are the
8 product of that trip. There's nothing to suggest
9 that, in fact, he ever intended to actually pick up
10 drugs when he got there. We have nothing in the
11 record to suggest that they achieved that task or
12 that, in fact, that was ever his ultimate goal.

13 So I just think that all it does in impugn her
14 character and it's irrelevant.

15 THE COURT: Okay. Now, if you want to say
16 something, I'll be glad to hear you.

17 MR. PENNINGTON: Yes, sir.

18 THE COURT: I just --

19 MR. PENNINGTON: The standard of relevance --

20 THE COURT: I can't listen to both of you at the
21 same time, and I want to hear what you have to say,
22 nor can the court reporter take it down.

23 But I'll be glad to hear you now.

24 MR. PENNINGTON: Yes, sir. Thank you so much.

25 I agree with the solicitor that it would be

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1 unfair, foolish, and prejudicial if this relevance was
2 only to impugn her character. And that is in no way
3 my purpose.

4 The State's evidence that is relied on: the
5 first witness was Mr. Bartley who described that he
6 had a report from her that she was going to buy pills
7 and get some pills. And he admitted on cross-
8 examination that she had a drug problem and that she
9 had been using drugs from the street in the past. And
10 our contention is is that their theory was go buy
11 pills, and then something went wrong and she is killed
12 in that process.

13 These drugs suggest something very different:
14 that evidently she was able to actually obtain a
15 variety of drugs on -- in her system at that time at
16 high-dosage levels.

17 I believe the proffer would be that the -- both
18 the amphetamine and the opiates were high. She also
19 had a very high level of Prozac and detectable
20 metabolites of marijuana.

21 So, again -- and I would say that in the reality
22 of this courtroom, there is no way that this jury
23 could be prejudiced. If anything, there is an
24 overwhelming sense, in my view, that this woman was
25 obviously murdered in a cold, brutal, terrible way and

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1 there's no way that that's going to be undone or
2 undercut by my simply pointing out the objective facts
3 that conflict with the State's theory of their case
4 that she was someone that was making a quick drug run
5 and that that's all it was.

6 In terms of speculation, my contention and my
7 defense in this case is is that the State is the one,
8 through circumstantial evidence, that will be asking
9 this jury to speculate.

10 I think this jury is entitled to know the entire
11 picture. If they're going to be asking them to draw
12 conclusions based on their view of the circumstantial
13 evidence, I think I'm entitled to bring out the same
14 circumstances and show that there are conflicting
15 points of view about what this evidence points to.
16 And that's all I'm attempting to do.

17 THE COURT: Okay. Do you want to say something
18 else?

19 MS. SHEALY: One other thing.

20 THE COURT: One other shot. Okay.

21 MS. SHEALY: One other shot.

22 Your Honor, I know that in dealing with experts
23 how difficult it is to date and time when pills were
24 ingested. I don't know that even the pathologist
25 would be able to do so. It all depends on, you know,

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1 how frequently you take medication --

2 THE COURT: Well, if you want to ask her, you
3 can.

4 MS. SHEALY: Well, I -- we can attempt to do
5 that in a just a second.

6 But if you don't know when she took the pills,
7 how does that -- that even weakens any relevance that
8 it could have, you know, how long it stays in the
9 system, et cetera.

10 THE COURT: Do you want to ask --

11 MS. SHEALY: Dr. Presnell. Yes, I will.

12 - - - - -

13 PROFFER

14 BY MS. SHEALY:

15 Q. Dr. Presnell, do you feel comfortable in being
16 able to --

17 MR. PENNINGTON: Objection to leading.

18 THE COURT: Let her lead, okay? There's no jury
19 there. Let's get through it. Overruled. Please
20 proceed. You can lead, too. Okay?

21 MR. PENNINGTON: All right, sir.

22 Q. [Ms. Shealy] Dr. Presnell, would you feel
23 comfortable being able to testify as to when certain
24 medication had been ingested by a person, based on the
25 laboratory results that you have received in this case?

25

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PROFFER

BY MR. PENNINGTON:

Q. Specifically on the buprenorphine, as I see it there appears to be that and then the metabolite. What I was asking you: what is buprenorphine?

A. It's an opioid.

Q. Meaning like a narcotic?

A. Right. Yes.

It's -- you know, and, again, it's just from reading about. It has pain -- or anti-pain or analgesic activity. And there's also actually some antagonists, opioid antagonists, meaning altered or opposite effects of some opioids. So that's why they use that to try -- to treat some of the more heavier opiate addictions.

Q. As part of the report that you get, there is -- there are reference points where they provide not only that it's present but that it has a certain level of -- a certain level, a measurable level, of presence in the blood. Is that correct?

A. Correct.

Q. And going back to this opioid that we just talked about, you find it both as buprenorphine and also as norbuprenorphine, which is the metabolite?

A. Yes. And it's an active metabolite.

Q. So that suggests that it's been in her system,

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1 but that it's still present in her system and still active
2 in her system?

3 A. Correct.

4 Q. You have what is a high level of fluoxetine,
5 which is Prozac?

6 A. Yes. And its metabolite, as well.

7 Q. Which is the norfloxetine?

8 A. The norfloxetine, yes.

9 Q. Norafloxetine.

10 You also have something that could be either
11 adderall or dexedrine, an amphetamine --

12 A. Correct.

13 Q. -- is that correct?

14 A. Yes.

15 Q. And then you have the inactive metabolite of
16 marijuana, which is THC?

17 A. Correct.

18 Q. All those are -- were readily detectable using
19 the process that you used?

20 A. Correct. Or that the toxicologist used.

21 MR. PENNINGTON: That's it, Your Honor.

22 THE COURT: Okay. Thank you very much.

23 All right. I'm going to -- even though the
24 evidence may have some relative value, I think that
25 the probative value does not substantially outweigh

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1 the danger of an unfair prejudice. And the unfair
2 prejudice means the undue tendency suggests a decision
3 on an improper basis; i.e., the use of drugs.

4 And under 403 analysis, the Court is not going
5 to allow the testimony concerning the toxicology
6 report, especially in light of the fact that the
7 doctor said those values will be elevated as a result
8 of where the blood was taken from.

9 All right. Anything else before we take a
10 break? Anything you want to add or argue -- I mean,
11 put on the record? I'm not trying to present --
12 prevent you from saying something --

13 - - - - -

14 FURTHER PROFFER

15 BY MR. PENNINGTON:

16 Q. I would ask the doctor one more question, which
17 is can she say within a reasonable degree of medical
18 certainty which drugs would have been active in her system
19 in the sense of --

20 A. Well, other than the marijuana, they all were
21 active in the system.

22 I mean, I -- when I -- they have the potential
23 for a postmortem redistribution, but it's still there, the
24 active drug is still there.

25 Q. Okay.

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1 THE COURT: And the Court's point is that fact
2 alone takes away the possible value of the credibility
3 of the testimony or the evidence of -- and as to the
4 amount of the drugs. Okay?

5 All right. Anything else before we take a
6 break?

7 MS. SHEALY: Your Honor, just for planning
8 purposes, it's 4:20. She is our last witness. We'll
9 need -- I need to put in the Total Station --

10 THE COURT: Got to do what, now?

11 MS. SHEALY: She is our last witness.

12 THE COURT: Where is that big --

13 MS. SHEALY: That's --

14 THE COURT: -- that big map?

15 MS. SHEALY: I've got it. I've got it.

16 THE COURT: You've got it?

17 MS. SHEALY: I've got it. I need to put that
18 in. And we need a moment to make sure we've got all
19 our evidence.

20 THE COURT: Make sure the cigarette butt is on
21 it.

22 MS. SHEALY: It is on it.

23 MR. PENNINGTON: It's on there.

24 MS. SHEALY: But are you contemplating giving
25 that --

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1 THE COURT: I'm not sure what I'm contemplating
2 at this point in time. Okay?

3 MS. SHEALY: Okay.

4 THE COURT: What are you contemplating?

5 MS. SHEALY: I'm willing to do whichever.

6 THE COURT: What do you want to do? Are you
7 going to -- is this your last witness?

8 MS. SHEALY: Yes.

9 But I'm not sure what Mr. Pennington's thoughts
10 are and --

11 MR. PENNINGTON: We're ready to keep rolling,
12 Judge.

13 I trust that Mr. Costa is still here.

14 THE COURT: I know he was sitting in the back of
15 the courtroom. I do not see him now.

16 MR. PENNINGTON: Why don't we see if we can
17 round him up.

18 THE COURT: He was sitting in the back of the
19 courtroom twenty minutes ago. I don't know --

20 MR. PENNINGTON: Also --

21 THE COURT: -- if he's still here or not.
22 What are your plans?

23 MR. PENNINGTON: My plans are --

24 THE COURT: I mean, it's 4:30. I'll be happy to
25 go to 5:30, but we're quitting at 5:30.

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1 MR. PENNINGTON: My guess is is that we can get
2 done to the point where we close all evidence. That
3 would be my guess.

4 THE COURT: All right. While the jury is out
5 and while you're looking for Mr. Costa and before we
6 proceed: Mr. Drayton, yesterday I had a discussion
7 with you about your fifth amendment rights to testify
8 and I told you I would not ask your decision until
9 today.

10 MR. DRAYTON: Yes, sir.

11 THE COURT: And you wanted an opportunity to
12 talk with your attorney further about the matter; is
13 that correct?

14 MR. DRAYTON: Yes, sir.

15 THE COURT: Have you had that opportunity to
16 talk to your attorney about your right to testify?

17 MR. DRAYTON: Yes, sir.

18 THE COURT: Did you understand those
19 conversations?

20 MR. DRAYTON: Yes, sir.

21 THE COURT: Did he put any undue pressure on you
22 to testify or not to testify?

23 MR. DRAYTON: No, sir.

24 THE COURT: And nobody has forced you to make
25 this decision; is that correct?

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1 MR. DRAYTON: Yes, sir.

2 THE COURT: All right. What is your decision?
3 Are you going to testify or are you not going to
4 testify?

5 MR. DRAYTON: I'm not going to testify.

6 THE COURT: You are not going to testify. Okay.

7 MR. DRAYTON: Yes, sir.

8 THE COURT: All right. Thank you so very much.

9 All right. We'll take about a ten- or fifteen-
10 minute recess.

11 [Whereupon, a recess is held from 4:21 a.m. to
12 4:38 a.m.]

13 THE COURT: Bring us the jury, please.

14 [Whereupon, the jury enters the courtroom at
15 4:39 p.m.]

16 THE BAILIFF: The jurors are all present, Your
17 Honor.

18 THE COURT: Thank you very much. Cross-
19 examination.

20 MR. PENNINGTON: Thank you, Your Honor.

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CONTINUED CROSS-EXAMINATION

BY MR. PENNINGTON:

Q. Dr. Presnell, I'm going to show you what has been marked as State's Exhibit 170 and admitted as evidence. If you would just take a look at that. You're welcome to touch it or not touch it. It's up to you. You have gloves right there.

A. Uh-huh.

Q. Referencing State's Exhibit 170, is it possible that that knife could have inflicted some of the wounds that you see on the body of Ms. Lukaitis?

A. Yes, it is.

The wounds that -- are themselves pretty non specific as far as relaying information about what instrument actually did it. They're consistent with a sharp force or sharp-object injury and the knife is -- qualifies as that, yes.

Q. All right. And you mentioned also that there was evidence of thermal shrinkage due to what were heat injuries to the body. Did you have a chance to study her windpipe and the area of her airways to determine whether or not those thermal injuries occurred before or after she stopped breathing?

A. Right. And so there are a couple of things that we look at to try to determine an injury that happened

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1 before death and after death. You know, now -- well,
2 typically, if something happens after death the heart is
3 not pumping anymore so you don't get bleeding into the
4 injury and so they look real -- a yellow type appearance.

5 Like for instance, she had some insect activity
6 on her, and those little injuries were yellow and were
7 after death.

8 The changes to her skin -- and of course you can
9 get a lot of thermal changes where it doesn't -- and you
10 won't be able to tell before or after. But, you know,
11 they were kind of yellowed. There was no reaction to the
12 injury.

13 And then the other part, component, to that is
14 we'll look in the airways and see if we see sooty type
15 material to indicate that person was breathing at the time
16 of a fire, if that's what the cause of the thermal injury
17 is. And there are -- there was no soot in her airways.

18 Q. And so no soot in the airways indicates that she
19 was not breathing at the time of the fire?

20 A. Correct.

21 MR. PENNINGTON: Thank you. That's all I have.

22 THE COURT: Any redirect?

23 MS. SHEALY: Just briefly, Your Honor.

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REDIRECT EXAMINATION

BY MS. SHEALY:

Q. Dr. Presnell, in your report I think you described the injuries as sharp-force injuries -- is that correct -- in the beginning of your report?

A. I probably did. That's what they -- that's what the injuries to her neck are.

Q. Okay. Well, when Mr. Pennington asked you could a knife like that have caused the injuries, you said -- you used the term nonspecific.

A. Well, I use the term about the cuts to the neck are nonspecific. It's just cuts. It could have been this knife or another knife or a really sharp piece of glass.

I mean, it's -- the injury itself doesn't impart -- like there's no pattern to it. It's not like, you know, showing like if somebody was stabbed with a screwdriver -- and I'm not saying in this case, but -- and it's a phillips head, you might see a nice star -- not nice -- a star pattern. There is no pattern to these cuts on the neck.

Q. I think you -- in fact, when you were in front of the jury earlier had said it could have been a screwdriver, it could have been an icepick?

A. Well, that was referring to the punctures, which were just, in fact, is a puncture.

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1 So, yes, it could have been anything -- the
2 punctures could have be -- be created by anything.

3 Sharp, I wasn't saying that -- what I was
4 getting at is I don't know if it was a knife that were the
5 same -- one instrument used and it was the same one used
6 on the neck and some of her punctures.

7 Q. Okay. So regarding the neck injuries, it could
8 have been a knife or it could have been something else
9 that was sharp?

10 A. Right. It was something sharp.

11 MS. SHEALY: Okay. Very good. Thank you very
12 much. No further questions.

13 THE COURT: Any recross?

14 MR. PENNINGTON: No, sir.

15 THE COURT: Doctor, you may step down. Thank
16 you so very much. You may be excused. Nice seeing
17 you again.

18 [Whereupon, Dr. Presnell is excused and exits
19 the witness stand]

20 THE COURT: Call your next witness.

21 MS. SHEALY: Let me get you your knife.

22 THE COURT: Pardon?

23 MS. SHEALY: I'm going to give you your knife.
24 I'm going to give you your knife.

25 THE COURT: Going to get me my knife. You had a

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1 little baggie for it to go in somewhere.

2 MS. SHEALY: I do. I'm going to find that in
3 just a second. Okay?

4 MR. PENNINGTON: The bag is -- the bag is right
5 up --

6 MS. SHEALY: I think it's right here, actually.

7 THE COURT: Thank you, ma'am.

8 MS. SHEALY: You're welcome.

9 Your Honor, I do have --

10 THE COURT: Ladies and gentlemen, I just don't
11 allow weapons sitting around in the courtroom. If
12 somebody is going to get to it, they've got to come
13 over this bench to get it.

14 MS. SHEALY: And I have State's Exhibit 219,
15 which is the blown-up Total Station, reflecting the
16 scene and the cigarette butt and where the body was,
17 that we would admit into evidence.

18 MR. PENNINGTON: No objection, Your Honor.

19 THE COURT: I think the small copy is already
20 in. This is just a substitute, I believe.

21 What about -- there was something you were going
22 to redact some copies that had writings on them. Have
23 you done -- is that available?

24 MS. SHEALY: All of that is in.

25 THE COURT: All that is in?

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1 MS. SHEALY: All of that is in.

2 And, Your Honor, at this time the State would
3 rest.

4 THE COURT: All right. Mr. Foreman, ladies and
5 gentlemen of the jury, I'm going to have to hear some
6 motions at this time on some legal matters so I'm
7 going to have to ask you to go back to the jury room.

8 Please don't discuss the case. Leave your
9 notepads in the chair. I'll get you back very
10 shortly. It won't be a long break like last time.

11 [Whereupon, the jury exits the courtroom at
12 4:46 p.m.]

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1 MOTION FOR A DIRECTED VERDICT

2 THE COURT: All right. Any motions from the
3 State?

4 MS. SHEALY: No, Your Honor.

5 THE COURT: Any motions from the defendant?

6 MR. PENNINGTON: Yes, sir.

7 At this time the defense would move for a
8 directed verdict of not guilty.

9 Taking the evidence in the light most favorable
10 to the State, we believe that the State has not been
11 able to exclude or provide sufficient evidence,
12 sufficient circumstantial evidence, that would point
13 and exclude other reasonable hypotheses other than our
14 client being involved in the murder of Ms. Lukaitis.
15 We would also -- well, I'll stop there.

16 I would also add that based on our earlier
17 objections, we would renew our objections to the
18 search warrant, the hearsay objections, where the
19 State was able to offer as evidence in their case in
20 chief the testimony of Mr. Bartley that --

21 THE COURT: Is this in conjunction with your
22 directed --

23 MR. PENNINGTON: Yes, sir.

24 THE COURT: -- verdict motion?

25 MR. PENNINGTON: Yes, sir, it is.

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1 THE COURT: All right.

2 MR. PENNINGTON: All one motion.

3 THE COURT: Okay. All right.

4 MR. PENNINGTON: -- that Mr. Bartley was
5 testifying that he heard Ms. Lukaitis tell him on
6 Sunday evening that she was going to Charleston with
7 "D" to acquire drugs.

8 In addition to that, my most recent objection to
9 the Court's refusal to allow me to bring out the drugs
10 that Ms. Lukaitis had on board, which are inconsistent
11 with that version of events.

12 And all the other objections made.

13 THE COURT: Anything else?

14 MR. PENNINGTON: The Court's indulgence.

15 THE COURT: Yes, sir.

16 [Whereupon, Mr. Pennington and Mr. Cooper
17 confer]

18 MR. PENNINGTON: That's it, Your Honor.

19 THE COURT: Motion denied.

20 MR. PENNINGTON: Your Honor, we also have --
21 will proffer to the Court a request for a limiting
22 instruction -- I do have it here -- on the relevance,
23 the limited relevance, of hearsay testimony. That
24 would be that --

25 THE COURT: Are you talking about a charge?

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1 MR. PENNINGTON: A charge.

2 THE COURT: Well, hand it up and let me look at
3 it.

4 All right. Anything else as far as the directed
5 verdict stage?

6 MR. PENNINGTON: No, sir.

7 [Whereupon, Mr. Pennington proffers documents to
8 the Court]

9 MR. PENNINGTON: I would -- before we get
10 started with our case, I can address one of the
11 witnesses.

12 But would you want -- do you want to hear me on
13 this hearsay question, this charge?

14 THE COURT: No, not really.

15 MR. PENNINGTON: We intend, as our first witness
16 in our case --

17 THE COURT: I'll go over the hearsay charge with
18 you when we do an informal charge conference, but I
19 don't need to hear it on the record.

20 MR. PENNINGTON: I understand.

21 THE COURT: You can make your proper motions, to
22 take exception to whatever I charge, at the
23 appropriate time.

24 MR. PENNINGTON: Yes, sir. I understand.

25 Our first witness on behalf of the defense will

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1 be Mike Bartley. And we contend that under Rule
2 611(c) that this is going to be a situation where --

3 THE COURT: You can cross him.

4 MR. PENNINGTON: All right.

5 MS. SHEALY: May I be heard on that?

6 THE COURT: Yes, ma'am.

7 MS. SHEALY: I think, Your Honor, that we need
8 to see how Mr. Bartley responds to Mr. Pennington.
9 There needs to be some showing that he's hostile
10 towards him. He may not be hostile towards him.

11 THE COURT: Well, that's the old rule. I don't
12 -- you don't have to show any hostility under the new
13 rule, just that they're opposing party. The old rule
14 you --

15 MS. SHEALY: -- opposing party.

16 THE COURT: -- had to show surprise and
17 hostility; right? Hostile and surprise.

18 MS. SHEALY: Well, what makes him an opposing
19 party?

20 THE COURT: Well, I think the fact that he is
21 the victim's fiancé would equate to being an opposing
22 party.

23 MS. SHEALY: Okay. Well, I would request that
24 we see how Mr. Bartley -- we've seen Mr. Bartley back
25 in chambers. I don't think there's anything about

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1 Mr. Bartley's demeanor that would suggest that he
2 would be in any way reluctant to answer Mr.
3 Pennington's direct questions.

4 THE COURT: I'm going to allow him to cross.
5 But I appreciate --

6 MS. SHEALY: Thank you, Your Honor.

7 THE COURT: I appreciate your argument. It's a
8 very good argument.

9 MS. SHEALY: Thank you, Your Honor.

10 MR. PENNINGTON: And just because my co-counsel
11 tells me that I wasn't listening closely: did the
12 Court rule on my directed verdict motion?

13 THE COURT: Yeah.

14 MR. PENNINGTON: And it was denied?

15 THE COURT: It was denied. Do you think it was
16 admitted?

17 MR. PENNINGTON: I wasn't sure there was a
18 ruling and I just wanted to make sure.

19 THE COURT: There was a ruling. I thought I
20 said very loud and clear, denied.

21 MR. PENNINGTON: Thank you, Your Honor.

22 THE COURT: Anything else?

23 MR. PENNINGTON: No, sir, not at this time.

24 THE COURT: Are you ready to call your first
25 witness?

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1 MR. PENNINGTON: We are.

2 THE COURT: Bring me the jury --

3 MR. PENNINGTON: Well, I believe that we are.

4 Is Mr. Bartley available?

5 [Off the record momentarily]

6 MR. PENNINGTON: We're ready, Your Honor.

7 THE COURT: Let me see the attorneys up here
8 just a second.

9 MR. PENNINGTON: Your Honor, can we move these
10 exhibits so that we're not --

11 [Off the record momentarily]

12 [Whereupon, an off-the-record bench conference
13 is held]

14 THE COURT: Bring us the jury.

15 [Whereupon, the jury enters the courtroom at
16 4:52 p.m.]

17 [Whereupon, Mr. Bartley comes forward]

18 THE BAILIFF: All jurors are seated, Your Honor.

19 [Whereupon, Mr. Bartley is duly sworn by the
20 clerk of court as follows: do you swear or affirm
21 your testimony will be the whole truth and nothing but
22 the truth, so help you God]

23 THE WITNESS: Yes, I do.

24 THE CLERK OF COURT: State your full name and
25 spell your last name again.

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1 THE COURT: All right. Ladies and gentlemen of
2 the jury, the State has rested, which means that they
3 have presented their case on direct.

4 The defense is going to offer some testimony at
5 this time.

6 MR. PENNINGTON: At this time, the defense calls
7 Michael Bartley.

8 THE COURT: All right. Mr. Bartley has been
9 sworn.

10 - - - - -

11 MICHAEL BARTLEY,

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

14 DIRECT EXAMINATION

15 BY MR. PENNINGTON:

16 Q. Mr. Bartley, you testified yesterday in this;
17 correct?

18 A. Yes.

19 Q. And yesterday you were also in this courtroom
20 when Stephen Edwards testified?

21 A. Yes.

22 Q. You were sitting right over here right behind
23 the solicitor's table?

24 A. Yes.

25 Q. Stephen Edwards was still on the witness stand

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1 when we broke for lunch yesterday, wasn't he?

2 A. Correct.

3 Q. And we were still waiting for the State to
4 finish their direct examination?

5 A. Yes.

6 Q. And then there would be, of course, my cross-
7 examination?

8 A. Correct.

9 Q. During the lunch -- or right immediately before
10 the lunch break, you heard the judge tell Stephen Edwards
11 not to talk to anyone about this case --

12 A. Correct.

13 Q. -- is that correct?

14 So yesterday when we broke, you went downstairs?

15 A. Yes.

16 Q. You went out into the courtyard?

17 A. Yes.

18 Q. And you approached Stephen Edwards?

19 A. Yes.

20 Q. And spoke to him?

21 A. Gave him \$20 and said, thank you.

22 Q. You knew you shouldn't talk to him?

23 A. Well, I told him to get lunch on me.

24 Q. You knew you shouldn't have talked to him?

25 A. And I didn't talk to him about the trial or

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1 anything.

2 Q. You spoke to him and you thanked him?

3 A. Uh-huh.

4 Q. You spoke to him?

5 A. Yes.

6 Q. Yes?

7 A. Yes.

8 Q. You knew you shouldn't have?

9 A. I was told not to talk about the trial --

10 Q. You did it anyway --

11 A. -- not to speak to individuals.

12 Q. More than that, as you approached him you
13 reached in your pocket and took something out, didn't you?

14 A. Yes.

15 Q. And you walked up to him and you spoke to him
16 and you shook his hand, didn't you?

17 A. Yes.

18 Q. And as you shook his hand, in your hand was
19 \$20 --

20 A. Yes.

21 Q. -- is that correct?

22 A. Correct.

23 Q. You live in Bluffton?

24 A. Yes.

25 Q. Stephen Edwards lives in Bluffton; correct?

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1 A. I wouldn't have known until today. I never met
2 him before in my life.

3 Q. Do you know where Geothie Road is?

4 A. Uh-huh.

5 Q. Do you know where [REDACTED] is?

6 A. No.

7 I mean, I know the road. I've never been down
8 there.

9 Q. Your apartment is about, what, five miles away?

10 A. Probably.

11 MR. PENNINGTON: No further questions, Your
12 Honor.

13 THE COURT: Cross-examination.

14 MS. SHEALY: Yes.

15 CROSS-EXAMINATION

16 BY MS. SHEALY:

17 Q. Mr. Bartley, back when this case was getting
18 investigated, did the investigators tell you early on that
19 Darryl Drayton's own cousin came forward and said that he
20 found bloody items in the trash can?

21 A. Yes.

22 Q. Were you appreciative that Stephen Edwards had
23 done the right thing?

24 A. Yes.

25 Q. Okay. And you knew he lived on Geothie Road; is

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1 that correct?

2 A. [No response]

3 Q. Did they tell you that back then?

4 A. They didn't tell me.

5 Q. Okay. Tell the jury: had you ever tried to
6 reach out to Stephen Edwards before?

7 A. No.

8 Q. Okay. But are you appreciative that he, in
9 fact, did the right thing?

10 A. Absolutely.

11 Q. And when you saw him testify, did you get the
12 impression that he may not have had money for lunch
13 yesterday?

14 MR. PENNINGTON: Objection, Your Honor. This is
15 leading.

16 MS. SHEALY: I have a right to lead.

17 THE COURT: He's on cross.

18 A. We all -- we all saw the pictures of the man's
19 house.

20 THE COURT: Hold on a second.

21 THE WITNESS: I'm sorry.

22 THE COURT: I'm going to allow her to lead.
23 She's on cross.

24 Please proceed.

25 Q. [Ms. Shealy] Did you get the impression that

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1 Stephen Edwards may not have had enough money to eat lunch
2 yesterday?

3 A. Yes.

4 Q. When you were outside yesterday, were you and
5 your family heading to go get a sandwich?

6 A. Yes.

7 Q. When you saw Stephen Edwards walking away, was
8 he walking by himself?

9 A. Yes.

10 Q. He didn't have family to walk with?

11 A. Correct.

12 Q. When you walked up with him, did you say one
13 thing about testifying?

14 A. No.

15 Q. Did you say one thing about what had happened in
16 this courtroom?

17 A. No.

18 Q. You had a twenty-dollar bill and you said what
19 to him?

20 A. To -- thank you; go get lunch on me.

21 Q. Had you ever had the opportunity before
22 yesterday to say, thank you, Stephen Edwards?

23 A. No.

24 Q. Did you take that opportunity yesterday?

25 A. Yes.

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1 Q. Did you try to buy his testimony in any way?

2 A. No.

3 Q. You took the opportunity to say thank you to a
4 man who was willing to rat him [indicates] out; is that
5 correct?

6 A. His own family. Yes.

7 MS. SHEALY: I have no further questions.

8 THE COURT: Redirect?

9 MR. PENNINGTON: No, sir.

10 THE COURT: You may step down. Thank you very
11 much.

12 [Whereupon, Mr. Bartley is excused and exits the
13 witness stand]

14 THE COURT: Call your next witness.

15 MR. PENNINGTON: May we approach?

16 THE COURT: Yes, sir.

17 [Whereupon, an off-the-record bench conference
18 is held]

19 MR. PENNINGTON: Your Honor, at this time the
20 defense rests.

21 THE COURT: Okay. Does the State have any reply
22 testimony?

23 MS. SHEALY: No, sir, Your Honor.

24 THE COURT: All right. Let me see the attorneys
25 up here real quick.

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

3 THE COURT: Mr. Foreman, ladies and gentlemen of
4 the jury, is there anybody that cannot be here in the
5 morning at nine o'clock? If you cannot, please raise
6 your hand.

7 [Whereupon, there is no response]

8 THE COURT: All right. Leave your notepads in
9 the chairs. Don't discuss the case with anybody.
10 Don't read anything about the case, don't watch
11 anything on television about the case.

12 The only thing left in the case will be closing
13 arguments in the morning and I'll charge you on the
14 law after that, and then you can begin your
15 deliberations.

16 See you in the morning at nine o'clock.. Have a
17 good evening.

18 [Whereupon, the jury exits the courtroom at
19 5:00 p.m.]

20 THE COURT: All right. Can I see the attorneys
21 up here and we'll have an informal charge conference.

22 MR. PENNINGTON: Your Honor, before we go off
23 the record for the day, there are two things.

24 One was I believe I need to, as a matter of law,
25 renew my motion for a directed verdict essentially

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1 incorporating the motion that I made a few moments ago
2 asking the Court to direct a verdict to not guilty at
3 this time, based upon my motions and based upon the
4 insufficiency of the evidence as a matter of law.
5 Taking the light most -- evidence in the light most
6 favorable to the State, that they have not proven the
7 essential elements of murder by what would be
8 competent circumstantial evidence by eliminating other
9 reasonable hypotheses other than guilt.

10 THE COURT: Okay. Motion denied.

11 Are you going to mark that as a Court's Exhibit?
12 Do we need to?

13 MR. PENNINGTON: I think we do, Judge. And I
14 would ask, before we do, that it be copied so that
15 counsel can have copies of this. So if we could get
16 two copies made and then we would mark it as a Court's
17 Exhibit for the record.

18 THE COURT: All right. For the record, please
19 put on the record what it is.

20 MR. PENNINGTON: This is an unnumbered -- we can
21 number it now --

22 THE COURT: Court's number whatever the next
23 number is.

24 THE COURT REPORTER: Number 11.

25 THE COURT: Number 11. Who is taking it out of

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1 here?

2 MR. PENNINGTON: The clerk.

3 [Whereupon, Court's Exhibit Number 9 is marked
4 by the court reporter]

5 [Whereupon, Court's Exhibit Number 10 is marked
6 by the court reporter]

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

9 THE COURT: All right. That's the CD.

10 MR. PENNINGTON: Yes, sir.

11 This is the Court's 11, which is a CD of the
12 courthouse video from October 3rd, 2012, showing the
13 juror observing Mr. Bartley outside the courthouse.

14 THE COURT: That was juror Steven Costa, who the
15 Court dismissed, juror number 59; is that correct?

16 MR. PENNINGTON: Yes, sir, that is correct.

17 THE COURT: He was identified in the video as
18 court -- I mean, the camera and the video was made; is
19 that correct?

20 MR. PENNINGTON: That is correct.

21 THE COURT: And everybody has observed it. Is
22 that correct, solicitor?

23 MS. SHEALY: That's correct, Your Honor.

24 THE COURT: I'll mark it as a Court's Exhibit.

25 All right. Anything else?

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1. MR. PENNINGTON: Nothing for the record, Your
2. Honor.

3. THE COURT: All right. If y'all want to come up
4. here, we'll have an informal charge conference and
5. then go home or go wherever you're going.

6. JURY TRIAL ADJOURNS AT 5:00 P.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 Thursday, October 4, 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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON) CASE NO.: 2010-GS-10-8551

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

JURY TRIAL

VOLUME 5 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 Friday, October 5th, 2012, Commencing at 9:06 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 31865
 Charleston, South Carolina 29417-1865
 1-706-231-6028

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PROCEEDINGS

THE COURT: Is there anything else that we need to -- are y'all ready for closing arguments?

MS. SHEALY: Yes, Your Honor.

THE COURT: The State ready?

MR. PENNINGTON: Yes, Your Honor.

THE COURT: Defense ready?

MR. PENNINGTON: Yes, sir.

THE COURT: As soon as we all of the jurors, I'll bring them in.

MS. SHEALY: And, Your Honor, Mr. Finch is going to open on the law.

THE COURT: Pardon?

MS. SHEALY: Mr. Finch is going to open on the law.

THE COURT: You are going to open on the law?

MS. SHEALY: Yes. Mr. Finch is.

THE COURT: All right.

[Off the record momentarily]

THE COURT: All right. Let me see the attorneys up here just a second.

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

MR. PENNINGTON: Your Honor, while we're waiting, it occurred to me that we should put on the

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1 record the proposed defense request for a limiting
2 instruction on hearsay testimony.

3 THE COURT: I think you need to do that after
4 you hear my charge when I ask you for exceptions to
5 the charge.

6 MR. PENNINGTON: All right, sir.
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MOTION TO DISMISS JUROR

THE COURT: Now, I guess while we're waiting on this juror we can go ahead and start with your motion. At least put on the record what has transpired.

MR. PENNINGTON: That would be fine.

The defense would call Ben Lewis.

[Whereupon, Mr. Lewis comes forward]

[Whereupon, Mr. Lewis 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 truth, so help you God]

THE WITNESS: I do.

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

[Whereupon, Mr. Lewis takes the witness stand]

THE WITNESS: My name is Benjamin Carter Lewis.
L-E-W-I-S.

- - - - -

BENJAMIN C. LEWIS,

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

DIRECT EXAMINATION

BY MR. PENNINGTON:

Q. Mr. Lewis, where do you work?

A. In the public defender's office.

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1 Q. And what's the address?

2 A. 101 Meeting Street.

3 Q. Okay. Where do you park your car?

4 A. Normally, I park at Cumberland garage.

5 Q. Yesterday, which would have been Thursday, the

6 4th, I believe, where did you park your car?

7 A. In the Cumberland garage.

8 Q. All right. And what time did you leave the

9 office?

10 A. Between 5:05 and 5:10.

11 Q. All right. And so you walked from the 101

12 Meeting Street address, where you work, to the parking

13 garage --

14 A. Yes.

15 Q. -- at Cumberland?

16 A. I walked up the alley up to Meeting Street and

17 then turned left to head down towards what used to be

18 Joseph's.

19 Q. Okay. Joseph's restaurant?

20 A. Yes.

21 Q. On Meeting Street?

22 A. Yes.

23 Q. Tell us what happened.

24 A. Right at about the point that I made it to

25 Meeting Street, a guy was talking on his cell phone and he

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1 passed me. And as he passed me I overheard, closings are
2 tomorrow, it's pretty much open and shut. And then he
3 went on to say, I've used up -- or, no. He said, I've
4 used all my PTOS, or POS, or what -- I don't know what
5 that means, but I interpreted it to mean time -- can I get
6 a half day tomorrow. And then at that point, I assumed it
7 was related to this case and I took his picture. And that
8 was what happened yesterday.

9 Q. Did you see a juror badge?

10 A. I did. On the left side of his chest.

11 Q. Okay. So that got your attention?

12 A. It did. And as soon as I heard closings.

13 That's one of the catch phrases that I'm going to listen
14 to just as a lawyer.

15 Q. Were you trying to listen into his conversation?

16 A. No. Just happened.

17 Q. He was speaking on the phone?

18 A. Uh-huh.

19 It's definitely made me consider how I'm talking
20 on my phone when walking down the street now.

21 Q. All right. You took a picture with your iPhone?

22 A. Yes.

23 Q. Do you recognize that?

24 A. Yes. That's the picture I took.

25 Q. Okay. Does it fairly and accurately show the

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1 person that was on the phone that you heard talking?

2 A. Yes, it does.

3 MR. PENNINGTON: Your Honor, I would mark this
4 as a Court's Exhibit.

5 THE COURT: Let the record reflect all it shows
6 is the back side and not the front side.

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

9 MR. PENNINGTON: I would move the admission of
10 Court's Exhibit Number 12.

11 THE COURT: -- marked as Court's Exhibit.

12 Q. [Mr. Pennington] This juror is a white male?

13 A. Yes.

14 Q. And what would you estimate his age?

15 A. I would say he's probably in his early thirties.

16 THE COURT: Mr. Lewis, can you identify him if
17 you see him again?

18 MR. LEWIS: I'll do my best, Judge. I didn't
19 see his face well. I saw him -- the same image that
20 you've got from the back.

21 THE COURT: All right.

22 MR. PENNINGTON: That's all I have.

23 THE COURT: Anything else? Anything from the
24 State?

25 MS. SHEALY: Just two quick questions.

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CROSS-EXAMINATION

BY MS. SHEALY:

Q. What was the abbreviation, again, that you say he used?

A. It was POS, PTOS, or something like that. It was just three letters.

Q. And then --

A. And I think it started with a P and I think it ended with an S.

Q. And then you heard him ask, can I get a half day tomorrow?

A. Yes.

Q. And you're not sure whether that was asking for a half day off or a half day's work at some point?

A. No, I'm not sure.

Q. And you've indicated that you did not get a good look at his face?

A. You know, not so much that -- I would be a horrible witness in an armed robbery case.

I can't ID -- no, I couldn't ID him.

MS. SHEALY: Okay. I have no further questions.

But, Your Honor, given his testimony, I don't think we should bring the juror in.

THE COURT: I am. I'm going to give him a chance to at least try to identify the juror. Okay?

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1 All right. Mr. Lewis, if you'll go find a
2 vantage position where you can see the jurors when
3 they come in. I'm going to bring the jury panel in
4 and I want you to look, then I'm going to send the
5 jury panel back out to see if you can identify which
6 juror you saw. Okay?

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: Does any -- are they all here?

9 THE BAILIFF: Yes, sir.

10 THE COURT: All right. Bring them in.

11 [Whereupon, the jury enters the courtroom at
12 9:29 a.m.]

13 THE BAILIFF: The jurors are all present, Your
14 Honor.

15 THE COURT: Okay. Thank you very much.

16 If you'll leave your notepads in the chairs.
17 I've got to take up something I forgot with the
18 lawyers, so go back to the jury room. Thank you.
19 Give you a little exercise this morning.

20 [Whereupon, the jury exits the courtroom at
21 9:29 a.m.]

22 THE COURT: All right. Looking at Court's
23 Exhibit Number 12, which is the picture of the juror,
24 there's no question it's the gentleman in the white
25 shirt.

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1 Do you agree, Mr. Lewis?

2 THE WITNESS: Yes, Your Honor. No question.

3 THE COURT: I don't think there's any question,
4 from just watching how they walk and looking -- the
5 Court looking at the picture. I don't think there's
6 any question it's the juror in the white shirt.

7 MR. PENNINGTON: That's correct.

8 THE COURT: Now, we think that is Justin Carr.
9 Is that correct?

10 [Whereupon, there is no response]

11 THE COURT: All right. What I'm going to do --
12 and I'll listen to your motions. I'm going to send
13 the -- I'm going to do this anyhow, I'm just going to
14 do it early. I'm going to send the clerk in to take
15 their lunch orders from Toast. And she writes the
16 name on each order, so she's going to make sure that
17 gentleman's name is Justin Carr.

18 If you'll go do that while I'm listening to
19 these motions.

20 [Whereupon, the clerk of court complies]

21 THE COURT: All right. I think we have
22 identified the -- I hope we've identified the right
23 name. And you've offered the testimony from Mr.
24 Lewis. Anything else you would like to offer and what
25 is your motion?

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1 MR. PENNINGTON: My motion is to excuse juror
2 45, Justin Carr, and to seat the alternate.

3 And my argument is that my client is entitled,
4 pursuant to the federal and state due process clauses,
5 to have a juror -- twelve individuals who are prepared
6 to respect that duty.

7 With all due respect to this juror, what my
8 witness Mr. Lewis heard, it sounded like someone who
9 had indicated to his employer that he was confident
10 enough that the case was open and shut, that he was
11 trying to get work hours for this afternoon, Friday
12 afternoon, and that there was some expression, as I
13 heard it, that there was an issue of whether he was
14 going to lose time, whether he burned too much of his
15 leave time, and that he really needed to be at work.

16 My concern is not -- every juror has to
17 sacrifice in coming here, and I recognize that. I
18 know it's an equal, or maybe not so equal, time burden
19 on these jurors.

20 The reality, though, is is that a juror who has
21 a set agenda that's announced and planned that he's
22 trying to get out of here so he can get to work in a
23 matter of what would now be two and half, three hours,
24 when we have not even begun our closing arguments,
25 he's not heard the charge of this Court, it would be

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1 literally impossible for that event to occur.

2 I believe that his -- he has revealed to us that
3 he has an agenda, which is to cut short the
4 deliberations. I do not believe that he would fairly
5 and accurately participate in the deliberations with
6 the kind of open mind that the Court will instruct him
7 that they need to have to engage in deliberations.

8 I'm also concerned that he will do everything in
9 his power to cut short the deliberations, and try to
10 bring them to a more rapid close, to fulfil his agenda
11 of getting back to work. Therefore, I consider him to
12 be unqualified as a juror at this stage.

13 We have an alternate who appears to be ready,
14 willing, and able to go. The case should conclude
15 today. So I believe it's a relatively safe course to
16 excuse Mr. Carr, let him attend to these pressing
17 matters that are weighing on his mind, and we can have
18 the case heard by twelve jurors that are interested in
19 hearing the arguments and could spend the time
20 necessary to do their responsibilities under the law.

21 THE COURT: Okay. Thank you very much.

22 Solicitor?

23 MS. SHEALY: Your Honor, it's the State's
24 position that there's nothing to suggest that this
25 juror would do anything but deliberate appropriately.

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1 I asked Mr. Lewis if anything was said about
2 what half day he was talking about -- people work all
3 kind of hours on their jobs -- and there was nothing
4 to suggest that he's talking about this afternoon. I
5 asked Mr. Lewis that specifically.

6 We have no reason to believe that this juror is
7 not taking this matter very seriously, and I don't
8 think it's appropriate at this time to take this juror
9 off. Just as we all know, all these jurors have lives
10 outside of this courtroom and he's probably just
11 trying to anticipate whether or not he could get hours
12 today if, in fact, he's freed up from this event.
13 That doesn't mean that he's not going to take it
14 seriously and be a good juror. I don't think it's
15 appropriate at this time to remove him.

16 THE COURT: All right. Let me see the attorneys
17 up here.

18 [Whereupon, an off-the-record bench conference
19 is held]

20 THE COURT: Did you get the order?

21 THE CLERK OF COURT: Yes.

22 THE COURT: Is the number -- is the gentleman
23 we're concerned about juror number --

24 THE CLERK OF COURT: Number 45.

25 THE COURT: -- 45, Mr. Justin Carr?

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1 THE CLERK OF COURT: Yes.

2 THE COURT: All right. Let me put this on the
3 record.

4 And, Madam Clerk, if you will verify it for me,
5 please.

6 I sent the clerk in to take an order for food,
7 for lunch for the jury, to make sure we had identified
8 the right juror as Justin Carr, juror number 45.
9 Before she could take the order, Mr. Carr approached
10 her and asked her two questions: number one, how soon
11 could she get a -- could he get a work excuse for his
12 boss; and when was he going to be able to get out of
13 here. And then she went forward and took the food
14 order and positively identified him.

15 Coupled with Mr. Lewis' testimony and the
16 statement that he is extremely anxious to get out of
17 here, I'm going to grant the motion to remove him for
18 cause and place the alternate on the jury since we are
19 at closing arguments and hopefully in the last day of
20 this trial and I do have an alternate available to
21 place in his position.

22 So I'm going to grant your motion, based upon
23 the last information the clerk gave me.

24 Madam Clerk, is that essentially what occurred?

25 THE CLERK OF COURT: Yes. Yes, sir.

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1 THE COURT: All right. Are y'all ready for
2 closing arguments?

3 MS. SHEALY: Yes, Your Honor.

4 THE COURT: I'm just going to tell the bailiff
5 to keep him in the hall when he comes out of the jury
6 room and just tell him he's excused for the day,
7 please, sir, and send him on his way.

8 Do you know which one?

9 THE BAILIFF: Yes.

10 [Whereupon, the jury enters the courtroom at
11 9:38 a.m.]

12 THE COURT: Mr. Sterrett --

13 MR. STERRETT: Yes, sir.

14 THE COURT: -- you were the alternate. You are
15 now on the jury panel.

16 MR. STERRETT: Yes, sir.

17 THE COURT: Is the State ready for closing --

18 MS. SHEALY: Yes, Your Honor.

19 THE COURT: -- arguments? Okay. Please
20 proceed.

21 MR. FINCH: Thank you, Your Honor.

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CLOSING STATEMENT

MR. FINCH: Good morning.

Ladies and gentlemen, the defendant is charged with murder; therefore the State must prove beyond a reasonable doubt that the defendant killed another person with malice aforethought.

Malice is hatred, ill will, hostility towards another. It's an intentional act -- intentionally doing a wrongful act, not just cause or excuse with the intent to inflict injury under circumstances that the law will infer an evil intent.

Malice aforethought does not require that malice exists for any particular time before the act is committed. Malice aforethought may be express or implied or inferred. You can infer that from the facts and circumstances which surround the event. One of the ways you can infer that is through the use of a deadly weapon. A deadly weapon can be a knife, dagger, or any of the things that -- any sharp instrument used to inflict injury, such as Ms. Presnell -- Dr. Presnell identified yesterday.

And the way the State can prove beyond a reasonable doubt that Mr. Drayton is guilty of murder is through two different types of evidence: direct evidence, circumstantial evidence. Direct evidence is

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1 testimony of witnesses about facts and things of that
2 nature. Circumstantial evidence is proof of a chain
3 of facts around an event that proves that event
4 happened or tends to prove that that event happened.
5 The law doesn't make any distinction between direct
6 evidence and circumstantial evidence. There's no
7 greater degree of certainty required of circumstantial
8 evidence than that of direct evidence.

9 I want to talk briefly just about reasonable
10 doubt. And what I'm doing now is just telling you a
11 little bit about the law. And at the end of this, as
12 the attorneys are finished talking, at the end of
13 argument, the judge is going to instruct you on the
14 law. And if there's any discrepancy from what I tell
15 you to what the judge tells you, go from what the
16 judge tells you. He's the judge of the law, just like
17 he's the judge of the facts.

18 But, briefly, on reasonable doubt. You'll hear
19 the judge's instruction that reasonable doubt is that
20 which causes a reasonable person to hesitate to act.
21 Hesitation, keep in mind, is different than
22 deliberation. That's your job, to deliberate, to take
23 the facts and the evidence as presented and testimony
24 and the exhibits and deliberate. Use that information
25 to help you make a decision. But beyond a reasonable

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1 doubt is that which leaves you firmly convinced of the
2 defendant's guilt. And after considering it,
3 deliberating, all the evidence, if you're firmly
4 convinced of the defendant's guilt you must find the
5 defendant guilty.

6 THE COURT: Mr. Pennington.

7 MR. PENNINGTON: Please the Court, Your Honor.

8 THE COURT: Yes, sir.

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CLOSING ARGUMENT

1
2 MR. PENNINGTON: This indictment is not a charge
3 of covering up a crime. It's a charge of murder.
4 When you look at the indictment, the charge is is that
5 Darryl -- Darryl -- stabbed Alexis.

6 When Ms. Shealy gets up in a few minutes and she
7 starts talking to you, you're going to hear a lot
8 about DNA on her shoes, DNA in her car, Darryl's cell
9 phone pinging off the same towers that her phone is
10 pinging off of. And that's all good, competent,
11 appropriate evidence for you to consider. The trouble
12 is is that all it proves is a cover up. And that's
13 not the charge in this case.

14 The law in our state is perfectly clear. If you
15 are a witness to a crime, you just use your common
16 sense that you had no part in. If you're a witness to
17 the crime and later make the stupid decision to
18 participate in a cover up, that does not make you
19 guilty of a crime that someone else committed. It
20 makes you guilty of a cover up. And under our law we
21 call that accessory after the fact. That's not what
22 Darryl is charged with. He could be charged with it,
23 but he's not. He could be in the future, but he's not
24 yet been.

25 And so you really have a very narrow

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1 responsibility. It's not to say whether or not Darryl
2 deserves a citizenship award for doing the right thing
3 or for being present or involved in this case. The
4 narrow question that your responsibility is is did the
5 State deliver on its burden of proving to you that
6 Darryl stabbed Alexis. That's what this case is
7 about, and that's all that this case is about.

8 I told you in the beginning that no one was
9 going to come into this courtroom and take an oath and
10 swear and testify that they saw Darryl kill someone.
11 The law doesn't require that. But the law does
12 require what we call competent evidence that excludes
13 every other reasonable possibility. If that hasn't
14 been done, if you cannot say that all the alternatives
15 that I'm going to show you today don't show reasonable
16 doubt then you must acquit, because our law protects
17 the innocent and protects those that are accused from
18 what are unproven charges.

19 The evidence in this case is perfectly
20 consistent with a cover up. You can only go along
21 with the evidence that you're given in this case.
22 That's all you have. You came here a few days ago.
23 You've been sitting in this box. You've heard two
24 days of testimony. It's been quick. It's been
25 focused. But I want to caution you that you're not

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1 here to use your imagination, you're not here to use
2 speculation, you're not here to use guesswork and to
3 fill in gaps where the evidence is not present.

4 So what are the reasons why you must find Darryl
5 not guilty? Well, let's go through some of them. The
6 truth is is that there are big reasons to doubt,
7 reasonable reasons to doubt, substantial reasons to
8 doubt. The judge is going to tell you that where
9 there is a real possibility -- listen to this language
10 very closely. The judge, as I understand it, gives
11 you a copy of the law. And he's going to tell you
12 that when you find there's a real possibility that the
13 defendant is not guilty, you must give him the benefit
14 of that doubt and find him not guilty. So I'm going
15 to talk to you about the real possibilities in this
16 case.

17 Think about Mr. Golis, our jeweler. Not a
18 friend of my client, not someone who has any kind of
19 relationship with him, someone who was actually very
20 suspicious and questioning: why do you want to sell
21 this ring so cheap. Kind of got his attention. He
22 paid attention and he noticed the injury on Darryl's
23 hand. But what did he tell you about Darryl's
24 appearance that day? He told you, when the solicitor
25 asked how did he appear, he appeared clean.

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1 Now, ladies and gentlemen, let's think about
2 what the sequence of events were in this case and see
3 how that shows you that Darryl is not the one who was
4 in a fight with Alexis. Let's think about it. What
5 is the State saying happened here, if you're going to
6 go with the theory that he was the one that stabbed
7 her? How does it fit? Well, it implies that he was
8 involved in that big fight you see the physical
9 evidence of. You saw the wounds on Alexis.

10 On Sunday night, sometime after 8:10 p.m.,
11 because that's when she last talked to Mr. Bartley and
12 she said that she was about an hour from home,
13 everything seemed to be fine, turn here. There is
14 this description that my client was scratched and
15 clawed. And we're going to talk more about that claim
16 and how it fell apart right here in this courtroom,
17 right in your presence, yesterday.

18 We do know that Darryl was cut. We do know that
19 he was bleeding. But not only was he cut and
20 bleeding, supposedly, but he was also, if you believe
21 the State's theory -- their theory -- is that he
22 literally was moving her body from point A to point B.
23 Because you remember the pathologist and the officer
24 said that her body was not in the same position in
25 which she had remained after death for a significant

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1 period. It had obviously been moved because her hand
2 was elevated. So it suggested -- and that and the
3 blood in the trunk suggests that there was some
4 movement from point A and point B. And you can look
5 at the photographs that you have that show that there
6 is signs that there's blood on the exterior of the
7 car, even kind of swipe motions, around the corner of
8 the car, would suggest that somebody was doing a lot
9 of lifting and moving. You would have to get filthy
10 doing that, and covered with blood, and DNA.

11 We talked about somebody at least partially set
12 her clothes on fire. And you've got some evidence
13 here of that charring, the dirt, that's connected with
14 that. You've got the version that after he gets his
15 car down to Bluffton, he's the one, according to the
16 State's theory, that then unloads all this nasty stuff
17 and puts it into the dumpster, somehow secretly and
18 quietly so that no one hears it, including Stephen
19 Edwards. We'll talk about that again. Unloading a
20 spare tire, the spare -- the spare tire cover. Then
21 the same person is supposed to have dumped the purse,
22 the cell phone, the car keys.

23 And then this person goes from Stephen Edwards'
24 house on Geothie Road over to Wharf Street, leaves the
25 car, and then walks back at 7:00 a.m. You remember

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1 the description was is that Stephen Edwards said he
2 was awakened at 7:00 a.m., because they got to the
3 hospital at 7:44 a.m. So we're dealing with a pretty
4 tight time frame here of between roughly 9:00 p.m. the
5 night before to 7:00 a.m. All of this is going on in
6 the dark.

7 And so you see Mr. Golis. And he's seeing this
8 fellow after he has been transported to the emergency
9 room to deal with the finger, and then no other stops
10 until they come back to the jewelry store. And he
11 describes Darryl as clean. Where's his clothes?
12 Where's all this hidden evidence? They describe him
13 as homeless and living in a car in the same area.

14 Stephen Edwards throws out that, well, look at
15 this pair of shoes, maybe it's the shoes. Not the
16 shoes. We looked at the shoes and they have a
17 completely different design than the foot impressions,
18 that were left by the perpetrator at the scene, which
19 were those circular designs. We're going to talk
20 about that again in a minute, too.

21 So if you're thinking about what are the reasons
22 why there's doubt in this case, big reasons,
23 substantial reasons, to make a finding of not guilty,
24 one of them is Mr. Golis where he says that Darryl is
25 clean.

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1 Let's move on. I want you to watch out during
2 the State's close. Ms. Shealy is a very honorable and
3 excellent attorney. But this case is not about
4 speculation.

5 And I want to go back to these shoes. There was
6 something that was said yesterday by the SLED agent on
7 the witness stand. Do you remember the lady who was
8 here to talk about tire tread and she talked about
9 footwear? And she just threw something out there.
10 She said, yeah, I see footwear and, you know, I'm
11 familiar with shoes like, you know, Air Force Ones,
12 they're kind of common. Did you hear that? She
13 talked about the Air Force Ones. Yeah, they have
14 those circular patterns. Circular patterns. Where
15 have we seen circular patterns?

16 Don't let the State ask you to speculate that
17 there is a certain brand of shoe that has a certain
18 pattern on the soles when they haven't produced one
19 shred of evidence for you to look at of accurately
20 being able to compare any kind of patterns that is out
21 there in the market place with the what we know is the
22 footwear pattern of the persons that were involved in
23 this. When you look at those big casts, or if you
24 look at the photographs, you'll see this kind of like
25 circle, circle, circle, circle, circle shoe.

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1 And if that is so common, so out there, wouldn't
2 you think that they would produce some evidence from
3 whoever makes Air Force One shoes to show that that's
4 a common tread pattern? You didn't hear that, did
5 you? Don't let them have you sit here and use
6 guesswork in a case where they've charged someone with
7 stabbing somebody to death. That's not what you're
8 here to do.

9 Now, sometimes we know that if you have sort of
10 an expectation that something's going to happen,
11 you'll see what you expect to see. Have you ever had
12 that happen to you? Well, we had this happen in this
13 case with Bradley V. . Do you remember young
14 Bradley, thirteen years old, came in and testified?
15 Son of Tina? His mother, she testified, as well.

16 And you remember the testimony was is that young
17 Bradley -- he was offered to show that my client had
18 these pink scratches on his face that show that he was
19 involved in this fight with Alexis. Do you remember
20 that? And then the way that came to be, ladies and
21 gentlemen, I'll contend, is quite simply this. He
22 told you that he had been told by his mom that Monday
23 morning, after the Sunday night when this occurred,
24 that Alexis was missing. And there was a lot of buzz
25 about it, and supposedly he was with -- she was with

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1 Darryl or "D". And he knew "D". They all knew each
2 other. And he saw "D" or Darryl at the self-help with
3 his bandaged finger. And he tells you that he saw
4 pink scratches on Darryl's face. He imagines he saw
5 pink scratches on his face.

6 Why do I say he imagines? Well, that was
7 Monday. On Wednesday, the crime scene officer from
8 the Beaufort County Sheriff's Office, Sargent Adams,
9 took photographs all over Darryl, up and down and
10 sideways. You'll see the pictures that they chose to
11 offer, the pictures that are kind of pulled back,
12 maybe a chest shot real close, maybe a hand shot real
13 close. I had to go up and show the pictures side this
14 way, side that way, to the officer. And you saw that
15 he had to admit that there was no scratch, not even a
16 single scratch, on the left or on the right of Darryl
17 Drayton's face.

18 That's a problem. But it's really just an
19 illustration of how dangerous cases like this can be
20 where there is so much concern, and legitimate
21 concern, for the crime that's occurred and the desire
22 to bring some sort of closure, some sort of answer, to
23 contain the evil, to identify it, to lock it up, to
24 put it into it. And we begin to see the simple
25 answers that fit so we can move on. And that's what's

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1 going to be -- you're going to be asked to do here.
2 Don't let them do it.

3 They brought you imaginary scratches as evidence
4 in this case. So reasons to doubt: Bradley,
5 imaginary scratches. I'm not a great speller..
6 Imaginary scratches. Totally refuted in this
7 courtroom right before your eyes.

8 Now, there's another phenomenon that can happen
9 in cases like this. Some people might call it tunnel
10 vision. Other people might call not seeing what's
11 right under your nose when you're not looking for it.
12 What am I talking about? You know, it's very, very,
13 very understandable, forgivable, completely justified,
14 that Mr. Bartley would focus entirely and exclusively
15 on "D". That's what he heard from Alexis. You would
16 expect him to just go right with that one thread of
17 this case and that that would be the beginning and the
18 end of the answer.

19 It's harder to understand how the police could
20 do the same thing. Think about what happened in this
21 case. Police are working, they're talking to
22 witnesses, and Stephen Edwards surfaces on Wednesday
23 night. Stephen Edwards calls them and he says, come
24 to my house, I'm going to produce evidence, contents
25 of the back end of the car, bloody items that he's

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1 fished out of his dumpster, his trash can, in his back
2 yard. But more than that, items that he's actually
3 carried into his house.

4 Now, think about what the police are looking at
5 here. Here's a fellow with a record. Here's a fellow
6 who lives, by his own description, even with a
7 handicap leg, a fifteen minute walk from where the car
8 is left, and he's got the stuff.. Fifteen minutes on
9 foot from Wharf Street, a park that he said he knew.
10 The police read him his rights: you have the right to
11 remain silent; anything you say can and will be used
12 against you in a court of law. But then you heard how
13 he acknowledged that Detective Boyd told him, well,
14 you're not really a suspect in our eyes. Why not?
15 Why not? The items are in his house. The speakers,
16 those Alpine or whatever kind of brand of speakers
17 they are in the blue box, they weren't still in the
18 trash, they weren't outside, they weren't on his
19 porch, they were in his bedroom. Tunnel vision.
20 Tunnel vision.

21 You see a bloody CD case. Look at that
22 photograph. A bloody CD case on -- in his stuff. And
23 right underneath the bloody CD case is a knife. But
24 Sargent Calhoun tells you, well, knife -- yeah, we
25 have a stabbing. A knife. Well, we don't really look

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1 for knives in Beaufort County, because people fish
2 here. Come on. Murder investigation, with a knife,
3 so they leave it behind. Leave it behind. Someone
4 later says -- two days later, we best go back and get
5 that.

6 In spite of that they never, ever say, Mr.
7 Edwards, you're so cooperative, you're so helpful, we
8 trust you so much, but let's go ahead and get a buccal
9 swab, a swab of the inside of his cheek to get his
10 DNA, so that we can compare it to all those blood
11 spots that you see on the car, to understand who
12 really was involved in this case. Never did it.

13 And so you saw in court, right here, this same
14 Stephen Edwards could have hardly sat into the witness
15 chair, hardly had been introduced by Ms. Shealy, when
16 he quickly protested: I didn't go to Charleston with
17 Alexis and Darryl. Did you hear that? No one had
18 asked him the question. Me thinks he doth protest too
19 much. He's getting his story out there for you right
20 away. Don't want you to be confused. No one asked
21 him that.

22 The same Stephen Edwards who let you know very
23 clearly that he doesn't like the penitentiary. His
24 words, I don't plan on going back. So when they argue
25 that this is a man who has no agenda, he told you his

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1 agenda. He doesn't plan on going back.

2 This is the same Stephen Edwards who, if you're
3 looking for an index of reliability, trustworthiness,
4 honor and integrity, you come into a courtroom, you
5 take an oath to tell the truth, and you would think if
6 the judge tells you not to talk to people when you're
7 leaving, during the middle of your testimony, before
8 you've been cross-examined. If you need just a little
9 glimpse of how he does business, he's taking \$20 from
10 Mr. Bartley.

11 No matter how well-intentioned it is by Mr.
12 Bartley, no matter how understandable it is that he
13 wants this poor man who's helping him make this case
14 against Darryl Drayton, no matter how understandable
15 it is from the victim's point of view, it is
16 inexcusable from Stephen Edwards' point of view. He
17 knows exactly what he's trying to do here.

18 He's in the courtyard, during a trial, during
19 the testimony, despite a court order, because the
20 rules really don't matter to him. It's all about, I
21 don't plan on going back to prison. And he's got the
22 perfect guy to do it for him.

23 This is the same Stephen Edwards who admitted on
24 cross-examination that he came up with this idea of
25 the class ring that he -- Darryl said it was a class

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1 ring that he was pawning, for the first time, right
2 here. You have to remember he's interviewed for hours
3 at the Beaufort County Sheriff's Office by detectives
4 from Beaufort County, detectives from Charleston
5 County. They listened to everything. And you know
6 they were asking about the ring because the ring was
7 what got this whole thing started: let's go to Mr.
8 Golis' and get the ring. The ring was important.
9 They talked about the ring. Not once did he mention
10 this idea that, oh, he said it was a class ring. This
11 is a fellow that comes up with whatever is convenient
12 to fit the facts. But the problem is is he forgot the
13 lies that he told. So you invent a new lie. Need
14 proof of that.

15 He told another whopper. He says, oh, and
16 Darryl said, I want you to take me to Florida. Again
17 he admits on cross-examination, well, maybe I didn't
18 say that; I don't remember saying that to the police
19 officers. Why not? Why not? Wouldn't that be very
20 important to say that Darryl was anxious to get out of
21 town? He didn't say it then, it wasn't true then,
22 it's not true now.

23 So what does the evidence -- the reasons to
24 doubt that I keep talking about? What does the
25 evidence tell you? Well, you saw for yourself that

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1 the shoes don't match. We've talked about that. You
2 think about all the effort that went into looking at
3 all the various pieces of evidence, all the scrupulous
4 cuttings and looking and looking and looking, and
5 there was this claim -- the CVS bag that was under the
6 shed at Stephen Edwards' house. You remember the one
7 where they identified that there was Darryl's blood on
8 the exterior part of the bag and it was a mixture of
9 his blood and somebody else's blood but it was
10 insufficient for any identification purposes. It was
11 dried blood. Don't know how long it had been there.
12 But they pulled it out and there are these dirty
13 clothes.

14 So you really don't know how long they've been
15 there. But you know perfectly well that if Alexis' or
16 Darryl's blood was on those clothes, that you would
17 know it. There's not a shred or ounce of testimony
18 that there were clothes in there, dirty, filthy
19 clothes, that had something to do with this crime.
20 Because the evidence doesn't show that. There's no
21 DNA. There's no blood on those items.

22 And you know what? If they are the clothes,
23 that's a reason right there to tell you he didn't do
24 it. There's no way you could commit this crime, on
25 God's green earth, without having blood all over your

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1 clothes. You know that, I know that, and the clothes
2 don't have any blood. No blood. They do that
3 presumptive blood first. You remember? And, no DNA
4 either from Alexis or from Darryl.

5 Sort of a side issue -- maybe a side issue. We
6 don't know. You notice the crime scene folks, when
7 they go to a scene they look for everything. They're
8 careful, they're scrupulous. They're trained to be
9 kind of keen observers and pick up on the little
10 things.

11 What did they do? One of the things that they
12 neglected thirty-nine feet -- thirty-nine yards away,
13 115 feet away, was what was viewed as a fresh
14 cigarette butt. Now, what does it mean? Well, we
15 know that it was an unidentified male. It wasn't
16 Darryl's cigarette butt. We know that for certain
17 because they took that little tiny piece of evidence
18 and sent it all the way through the process because
19 they wanted -- because if it had been Darryl's, then
20 we'd go, voila', see, we found him, proof.

21 The fact that it doesn't -- isn't Darryl's,
22 don't let them just dismiss it. They thought it was a
23 fresh cigarette butt. But more important, they
24 collected it. And it just means that you have to be
25 fair. You have to look at both sides of what things

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1 mean. You can't just look at the things that tend to
2 show guilt and then totally ignore those things that
3 point in a different direction. It just doesn't work
4 that way.

5 Fourteen swabs taken by the DNA -- by the DNA
6 expert. Fourteen swabs from around the car starting
7 at what would be the driver's-side back quarter panel
8 and kind of working your way around the car. You
9 remember the photograph of the blood droplet right
10 there at the license plate? Or if you go around the
11 other side you'll see photographs of the blood drops
12 that were on -- it's the right quarter panel. There
13 were several of them. There were two right above the
14 wheel, there was one down the side. Then you go and
15 you look on the passenger-side of the vehicle, open
16 the door, and there's another big blood -- red
17 droplet. All collected because it was important.
18 Because this case is important, because my client's
19 life and freedom are important. And they don't try
20 people and treat this stuff lightly. Do you know
21 where that evidence is? It's right there, after
22 sitting in the sheriff's office's refrigerator for two
23 years plus.

24 It was a big enough deal that even the Berkeley
25 crime scene folks went back over it again to make sure

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1 they had the evidence. And that never got sent.
2 Twenty swabs, different parts of the car. Do you
3 remember the crime scene analyst said, you go and look
4 at different places because you're trying to get the
5 whole picture.

6 I have reason to suspect, based on what we heard
7 yesterday, that you're going to hear about the text
8 that Darryl wrote on Tuesday afternoon at about five
9 o'clock, after this incident, in which he said, I've
10 got to get away from here. But think about it. What
11 was going on down in Bluffton at that time with
12 everybody buzzing and talking and talking about the
13 fact that Alexis went to Charleston with "D"?
14 Everybody was blaming Darryl, right or wrong. It does
15 not show that he killed Alexis that he's saying, I
16 want to get away from here. It just means that
17 everybody's talking, everybody's pointing the finger,
18 including Stephen Edwards.

19 The police were so busy dissecting everything
20 that Darryl was doing, that they completely blew past
21 the other evidence. And so you have them -- they're
22 going to talk to you about, well, look at the
23 different versions that Darryl gave for how he cut his
24 finger. But you really think about it, they're kind
25 of similar. The one that's different is Stephen's.

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1 the similar ones are you have Dr. Delatore on Monday
2 who says that he cut his finger with a saw. He told
3 Mr. Golis he cut it with a saws-saw [phonetic]. Ms.
4 Furchak at the Bluffton pharmacy, he said, well, I cut
5 it on a piece of glass. And he even said, do you want
6 to see it? If you're knowing that you've murdered a
7 woman and that the most prominent evidence that you
8 can't get rid of is your severed finger, do you go to
9 one of your shared friends and say do you want to see
10 it? Does that make sense? So you're going to be
11 asked to go back and use guesswork to fill in all the
12 holes to come up with where and how Darryl Drayton
13 killed Alexis, stabbed her. But I submit to you the
14 evidence is much more believable and much more
15 consistent of a cover up of her death.

16 And the law is also very, very, very, very
17 clear. This is something that I, as a human and as a
18 citizen, sometimes struggle with -- and it's normal
19 and natural for jurors to struggle with -- and that is
20 is that the law says that you shall never and can
21 never and must never consider the silence of the
22 defendant as evidence in any way. You can't talk
23 about it. You're not even supposed to think about it.

24 But I'm going to bring it up, because the judge
25 has to bring it up and tell you that you cannot

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1 consider the defendant's silence. The burden of proof
2 isn't on Darryl to come here and say he's guilty until
3 he convinces you and testifies and tells you what's
4 going on here. That's not the way it works. You may
5 wish that it worked that way. And you'll get back to
6 the jury room and be frustrated, perhaps, and say,
7 wouldn't it have been nice. If you do that, you are
8 violating the law of this land, the law of the state,
9 and the Court's instructions.

10 The burden is on the State to prove this
11 indictment by competent evidence, not by speculation,
12 guesswork, assumptions. And the law is perfectly
13 clear that if you're a mere -- merely present when a
14 crime occurs and then cover it up, you're not
15 responsible for that crime, you're responsible for
16 your cover up. Don't let them imply, don't let the
17 State imply, that somehow the burden moves away from
18 the solicitor's responsibility and the State's
19 responsibility of proving guilt and say that somehow
20 Darryl has to prove innocence. You never have to
21 prove your innocence in a court of law in the United
22 States.

23 I talked in opening statement to you about rush
24 to judgment and I asked you to consider that one of
25 the big questions in this case that's left completely

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1 vacant is that there was no motive presented to you by
2 Darryl Drayton of wanting to hurt Alexis at all. No
3 evidence that he was the one that did this horrible
4 crime.

5 You have a difficult job, because speaking as
6 somewhat the triers of the facts, the judges of the
7 facts, you're not here to make people happy or
8 unhappy. And when you come back out, the only safety
9 -- the only safe place for you as jurors is to come
10 back and say what the evidence proved and what the
11 evidence didn't prove. It's hard to come back out and
12 look at people and say, I know you'll be disappointed,
13 but the evidence is not there. But that is your oath,
14 that is your job, that is your responsibility.

15 The only verdict, based on the evidence that you
16 have, is that Darryl Drayton has not been proven
17 guilty -- and that's what it means -- not been shown
18 to be guilty of murder. No matter how much you may
19 speculate and think that he's guilty of other crimes
20 that are uncharged, like accessory after, covering
21 things up, that's not what this case is about. So my
22 simple request is that you do your duty.

23 THE COURT: Solicitor.

24 MS. SHEALY: May it please the Court. Mr.
25 Pennington, Mr. Cooper.

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CLOSING ARGUMENT

MS. SHEALY: Good morning.

I'm going to agree with Mr. Pennington about one thing. Darryl Drayton, oh, he covered up the murder. He covered up the murder he committed.

Let's look at this by beginning with Alexis Lukaitis. What was her intent on August 8th? She intended to drive "D" to Charleston because she thought he was going to be picking up some drugs. And he agreed to pay her gas and he agreed to give her some pills. That was her intent. But guess what we don't know. We don't know what Darryl Drayton's intent was. There may have never been any pills. He may have had something else in his mind the whole time, something that Alexis Lukaitis never bargained for.

What do we know from Mike Bartley? We know that he went over to his mama and daddy's house that day with the boys. And Alexis told him she was going with Darryl. And we know that when he had that phone call, the girl he had dated and been with for ten years, at 8:19 that night when she was in Charleston and when she told him that she was with "D" and when he heard her say, turn right here, and she said, I'll be home in about an hour. And he never spoke to her again.

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1 No one wears this case like Mike Bartley does on
2 his face. He told you how that evening, phone call
3 after phone call, after phone call, he tried to reach
4 her. He told you he called jails, he called
5 hospitals. It wasn't like her not to come home. And
6 he told you the next morning he immediately woke up in
7 that state of panic. He started calling her friend.
8 Told Tina Johnson that she was with "D": have you
9 seen "D", have you seen Alexis.

10 Now, Mr. Pennington, he wants to make a big deal
11 about little Bradley V. . We're the State. I have
12 a duty to y'all to present the evidence. I couldn't
13 care less if Darryl Drayton had scratches on his face.
14 Let's just say Darryl Drayton didn't have scratches on
15 his face. Okay? But Bradley V. , way back on
16 August 9th, said he had scratches on his face. He was
17 a ten-year-old kid. But what else did he tell his
18 mama that day? He saw him with a hurt finger and he
19 saw him with a hospital bandage. What was important
20 is he's telling that way before Stephen Edwards has
21 told anybody that Darryl Drayton is in town with a
22 hurt, bandaged finger. That's what's important.
23 That's why the police start looking at Darryl Drayton,
24 because when they find a girl on the side of the road
25 in Charleston and her throat has been cut and the last

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1 person she's with is Darryl Drayton, it all starts
2 connecting. So forget the scratches on the face.

3 I have a duty to you to tell you what's being
4 reported. But what's interesting about what John
5 Adams came in and told you about the scratches, he
6 sure had them on his hands, he sure had them on his
7 chest. So these imaginary scratches, Bradley V. , a
8 young boy that day said he saw some pink scratches.
9 Either they were on the face, they were on the chest,
10 or he got them confused. Forget that.

11 What else does Mike Bartley tell you? He tells
12 you that in the back of his wife's car there was a
13 spare tire. It had a cover. His wife kept the spare
14 diaper bag in there. He told you that in that box
15 with those terra cotta pots and the flashlight, that
16 those things used to be at his house, they were their
17 items. And that's important because when the police
18 find that car, none of that stuff is in there. Mike
19 Bartley tells you that.

20 He tells you that late that night, when he tries
21 to call his wife around ten o'clock, he heard a
22 shuffling noise. Interesting that that's at ten
23 o'clock. Because we'll talk about that in a few
24 seconds when we're talking about Dr. Delatore and what
25 Darryl Drayton tells him about what time it happened.

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1 Who else was Mike Bartley trying to call, based
2 on who Alexis said she was with? He's trying to call
3 "D". And what does "D" tell him? Oh, she never
4 picked me up. That's what "D" tells Bartley.

5 Let's talk a minute about what happened the
6 other day with Mike Bartley seeing Stephen Edwards.
7 Stephen Edwards testifies. Mike Bartley, with his
8 family, are heading out to go get a sandwich. They're
9 going together as a family. They've got money to buy
10 a sandwich. He's heard about Stephen Edwards for two
11 years. He knows how important Stephen Edwards has
12 been to this case. He knows the sacrifice that
13 Stephen Edwards has made within his family to rat out
14 his cousin. And he sees Stephen Edwards walking
15 alone. And what was said to Stephen Edwards? Thanks;
16 go get yourself some lunch. Stephen Edwards didn't
17 even say anything. Doesn't that say more about the
18 decency of Mike Bartley than any indecency?

19 And Mr. Pennington wants to think -- tell you
20 that that speaks volumes about Stephen Edwards? A man
21 who literally, literally, lives hand to mouth, who has
22 no electricity, and has no running water? How do we
23 judge a man accepting \$20 from lunch when he's out of
24 town in the same way that you may judge someone else?

25 The judge is going to tell you that each of you

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1 get to judge the credibility of the witnesses. You
2 get to decide whether or not they're believable.
3 Stephen Edwards is a bit of a colorful personality,
4 but you get the feel for whether or not he's
5 believable. And Todd Calhoun, the investigator from
6 Beaufort County, police officer previously in New
7 York, he saw him that day on Geothie Road. He got a
8 feel for him. You think that Stephen Edwards was in
9 Bluffton and went up there with them to Charleston?
10 Come on.

11 Let's talk about Stephen Edwards. And let me
12 say thank goodness for Stephen Edwards. He tells you
13 about the knock on the door that morning very early.
14 He tells us about what happens those days in a row,
15 the 9th, the 10th, the 11th. Because of Stephen
16 Edwards, we know about the Hilton Head trip. We know
17 about Luca Delatore, who testified. Because of
18 Stephen Edwards, we know about him pawning the ring.
19 We know about the plastic surgeon. And because of
20 Stephen Edwards, we know about the evidence. We know
21 about the diaper bag, the tire cover, the spare tire,
22 the tire insert, all of that, because of Stephen
23 Edwards.

24 Do you think for one second if that knife was
25 involved in the stabbing that Stephen Edwards would

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1 have said, oh, whoa, whoa, whoa, that's my knife,
2 that's my knife. Absolutely not. He said take it.
3 That man has his cans of food opened and discarded on
4 his floor. Todd Calhoun assessed the situation that
5 evening and the SLED officer has testified and the
6 SLED DNA officer has testified that knife had nothing
7 to do with this event. Todd Calhoun called it right.
8 Thank goodness for Stephen Edwards.

9 But let's don't lose sight of something. Let's
10 don't get lost in all of that. The items are at that
11 man's cousin's house. Low and behold, the same
12 person, Darryl Drayton, who Mike Bartley's fiancé said
13 I'm going with to Charleston. It's at his cousin's
14 house that the bloodied items are found.

15 Now, let's address this for a second. We don't
16 have the clothes he wore that night when he was
17 stabbing her and stabbing her and stabbing her and
18 choking her. We don't have the shoes he wore when he
19 was putting her in the trunk and dragging her out of
20 the trunk. We don't have her keys. We don't have her
21 pocketbook. We don't have her cell phone. That's
22 because cover-up man got rid of them.

23 And I'll tell you something else. All that time
24 he spent in Ravenel and Hollywood, he cleaned himself
25 up. He got rid of the bloody stuff. The blood we

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1 have from him is when he's still dripping. Golis says
2 he clean? Yeah. He cleaned himself up. He got rid
3 of the shoes, he got rid of the clothes, he got rid of
4 the knife, the glass, whatever sharp object he had
5 used. Forget this [indicates]. Absolutely he cleaned
6 himself up. Nothing motivates you to work fast other
7 than killing somebody. He moved quickly that night.
8 He was dropping her off, getting rid of the bloody
9 knife, getting rid of her pocketbook. But, boy, did
10 he hang onto that ring.

11 Think about something. When he put that body in
12 the trunk, that young woman bled on the diaper bag she
13 had packed for her babies. Her blood rested on the
14 bag where she put diapers and onesies.

15 Let's talk about the car for a second, because
16 the car tells us a lot. There is blood on primarily
17 the driver's side, the back, some on the passenger's
18 side. And we have police agencies who did a great
19 job. We had the Beaufort County Sheriff's Office do a
20 great job, we had the Charleston County Sheriff's
21 Office who did a great job, and we had SLED who did a
22 great job.

23 And when Kim Dinh came out there, she took
24 swabs. Beaufort County Sheriff's Office took a look
25 at it. They took further swabs. But one of the most

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1 important things that Kim Dinh told you was this:
2 they knew at this point that they had a woman's
3 vehicle and that her neck had been cut -- and that
4 vehicle had been driven after her death and that what
5 they needed to know was who drove it.

6 So the swabs they were interested in were in the
7 driver area -- the driver's area. And who did they
8 come back to? Darryl Drayton. The DNA proves it. I
9 put those reports into evidence because it can get
10 kind of confusing because sometimes there are
11 mixtures. The mixtures are great. But there are
12 enough of just him. He's on the window on the outside
13 and he's on the inside right on the driver's side.
14 Darryl Drayton drove that car after he killed her.
15 He's dripping blood. He's dripping blood. And as Kim
16 Dinh told you, that trunk had been cleared out. No
17 spare tire, no diaper bag, nothing in that trunk when
18 she processed the scene.

19 But there is something else interesting about
20 that vehicle. And I don't know how many of you have
21 young children. But the back seat didn't have any
22 blood, but it had the two children's seats, the child
23 seats, in the back. There hadn't been a third person
24 in that car. Stephen Edwards couldn't have fit in
25 that car to have ridden there from Bluffton. There

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1 was only enough room in that vehicle for two people to
2 have been in. But just forget about Stephen Edwards.
3 Drayton's blood paints a picture.

4 When you get back here and you have those
5 pictures to look at, look at the tail light and look
6 at that trunk area. And I think it was Sargent
7 McManigal that expressed it this way. Remember Kim
8 Dinh told you, too. Just to think of that young
9 girl's dark, long, curly hair clinging to the trunk
10 bottom. He's just putting her in and pulling her out,
11 her bloody body. I don't know if she was alive or
12 dead when he put her in the trunk initially, if she
13 died in the trunk or later. But her hair grabbed on
14 stuff in the trunk, lay clinging. And you'll see the
15 blood swipe of hair along the car. Drayton on the
16 inside; Drayton on the outside.

17 Let's think about Drayton's injury itself. Dr.
18 Delatore. You saw the pictures. When you get back
19 there -- for some reason it's a little hard to see
20 everything. But you'll have the actual photograph.
21 It is so injured, it is so lacerated, that it went to
22 the bone, that it fractured the bone. He was using
23 such force on her that in the fray, he hurt himself
24 that bad the act itself was so violent, so excessive.

25 Let's look at the words the defendant used.

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1 What did he tell Stephen Edwards? Yeah, three guys
2 jumped me and cut me. Three guys jumped me and cut
3 me. What did he tell Dr. Delatore fifty minutes
4 later? About ten o'clock last night I hurt my finger
5 on the saws-saw [phonetic]. What's harrowing about
6 that time is where they were around ten o'clock that
7 night. Look at the maps from Ken Aycock. Probably
8 about the time it happened. We don't know exactly
9 where it happened. We know it was in Charleston
10 County because neither of their phones leave
11 Charleston County. Somewhere there's a bloody scene.
12 Maybe he covered that up, too.

13 So Dr. Delatore, he says a saws-saw at ten
14 o'clock last night. Maggie Furchak, who knew him:
15 oh, it happened this morning on a piece of glass.
16 Now, is Mr. Pennington saying that the saws-saw and
17 the piece of glass aren't that far apart? Last night
18 at ten, this morning, isn't that far apart? A piece
19 of glass? A saws-saw? What did he tell Mr. Golis? I
20 was working on a chain-link fence. He doesn't even
21 make an attempt to get his stories straight. He's
22 that cold.

23 Well, what are some of his other words? He
24 tells Stephen, can you take me to Florida; this girl
25 will get you set up if you can take me to Florida.

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1 Oh, he wanted to get out of town. And he did tell
2 Stephen, I've got a class ring I want to sell.

3 What else did he tell Mr. Golis? That he found
4 the ring at Chevron. That he found the ring at
5 Chevron. Let's talk about the event at the jewelry
6 store, because it stuck out in Mr. Golis's mind. It
7 was a nice enough ring that Mr. Golis felt like he was
8 taking advantage of him: look, you'll do better if
9 you tried to sell it on e-bay. No; I just found it at
10 the Chevron. Well, then, why don't you go back there
11 and see if you could offer a reward; you'd make more
12 money off of a reward than what I'll give you. And
13 what are the words of Darryl Drayton hours after he
14 had done what he had done? I don't care. I don't
15 care. He just wanted some quick money. Doesn't that
16 really say it all?

17 And that text message that Mr. Pennington just
18 wants to sort of dismiss. He wanted some money for a
19 room. I want to get on the road early tomorrow, I've
20 got to get out of here, I've got to get out of here.

21 Let's focus on the scene. What does the scene
22 tell us? Well, it absolutely tells us she got dumped.
23 She got dumped on the side of the road like a bag of
24 trash. Look at the path of the tire tracks. And
25 you'll have it back there so you can see it a little

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1 bit better. But this is swinging in, dumping, and
2 moving on from whichever way. In and out.

3 Now, you may be asking, well, why did you bring
4 in the beer can and the Budweiser package if they
5 really didn't have anything to do with this? To show
6 you that when crime scene goes out there, they don't
7 know all the facts of the case and so when they
8 approach the scene and they see items nearby, they
9 collect them. And they do what they're supposed to
10 do. They see if there are fingerprints on it that
11 have any evidentiary value.

12 I will tell you I do not think for one second
13 that when Darryl Drayton was getting that body out of
14 the trunk, and just throwing it on the ground, that he
15 stopped and had a beer. And I certainly don't think
16 that when he drove out this way or out that way that
17 he was smoking a cigarette down the road. This
18 cigarette has absolutely nothing to do with this case.
19 You see where it is in relationship to the body.

20 But both Mr. Milz and Sargent McManigal told you
21 how the body was positioned. And that just shows us
22 that she was in the trunk. Her legs were bent up a
23 little bit and her arms are bent up a bit because
24 that's how she was in the trunk. Then she's put on
25 the ground. She's stiffened while she was in the

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1 trunk. And she had been set on fire. That's what the
2 scene showed.

3 Let's talk about those shoe prints. I brought
4 the shoe prints, the mold in, because they took them
5 all. Absolutely -- I'm going to put this up here for
6 just a second. Absolutely that mold print does not
7 match the shoes that Stephen Edwards told them, when
8 they came back to get the knife, were in the car. And
9 it's obvious. I never suggested they matched. We
10 didn't even send that to SLED because it's so obvious.
11 And, again, we know that he got rid of the bloody
12 shoes. He got rid of the bloody clothes. But, ladies
13 and gentlemen, they're the same size.

14 Her pocketbook, her keys, her cell phone, her
15 clothes, her shoes, shoes that are in the mold,
16 whatever he used to cut her, I don't know if he burned
17 them, I don't know if he put them in the trash can, I
18 don't know if he put them in the ground. But he put
19 them somewhere.

20 And Sargent McManigal told you, and as did
21 Mr. Milz, how her ankles looked. His bloody hand on
22 her ankles. If Sargent McManigal and Mr. Milz knew
23 then what we know now, that he was bleeding, they
24 probably would have swabbed them instead of focusing
25 on fingerprints. But at the time, they could tell

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1 that someone had touched her getting her in and out of
2 the trunk.

3 One of the most telling things, one of the most
4 telling things, is her shoes. Her shoes. The right
5 shoe is a mixture of her and him. And the left shoe,
6 Darryl Drayton. How else did Darryl Drayton's blood
7 get on her shoes? Alexis Lukaitis hadn't been walking
8 around Bluffton with Darryl Drayton's blood on her
9 shoe. It got there when he was strangling her and
10 cutting her. He got that blood when she got bloody,
11 when she got punctured, when she got cut and cut and
12 cut.

13 What does Dr. Presnell tell you? This is the
14 evening of August the 8th, early-morning hours of
15 August 9th, for Alexis Lukaitis. This is what she
16 endured. Puncture wounds, bruises, abrasions. This
17 is how she responded to the sharp object that Darryl
18 Drayton yielded towards her. She tried to defend
19 herself. Look at the cuts on her hands trying to
20 prevent being cut. Here are the slices to her neck.
21 One, two, three. At some point he put his hands
22 around her neck, tried to strangle her. And that
23 third one cut the trachea, cut it through. Cut
24 through the thyroid, cut through the esophagus, the
25 hands of Darryl Drayton.

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1 I think it's safe to say that what Darryl
2 Drayton wanted to happen in Charleston, Alexis
3 Lukaitis didn't and she paid the price.

4 The phone records set it all out. They were
5 both in Bluffton. They both traveled to Charleston.
6 And here is the path. You can see when she stops
7 answering phone calls. You can see when she never
8 picks up again. You can see where they are in
9 relationship to where her body is found. He killed
10 her. He hoped to get rid of the body. She tries to
11 defend herself. He silenced her. But what speaks
12 volumes is her ring. When did he pry it off her
13 finger? Did he do it when he put her in the trunk?
14 Did he do it when he took her out of the trunk? When
15 he put her on the ground? Did he think, well, maybe I
16 can get a little cash for that?

17 We are asking for a verdict of guilty. Ladies
18 and gentlemen, we've addressed this about the shoes
19 don't match. He hid the shoes. He hid the clothes.
20 We don't have the clothes because his cover-up was
21 successful as to that. But God knows we've got the
22 DNA where it counts. We want you to base your
23 decision on what you've heard from here [indicates],
24 what you've seen here [indicates]. But primarily we
25 want you to base it on what he did, Darryl Drayton,

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1 "D".

2 THE COURT: All right. Mr. Foreman, we've been
3 going for about an hour and a half. We're going to
4 take a short restroom break, no smoke breaks.

5 We'll take a short restroom break and then I'll
6 charge on the law and after that you can begin your
7 deliberations. So don't discuss the case amongst
8 yourselves.

9 We'll take about a short ten- or fifteen-minute
10 break.

11 [Whereupon, the jury exits the courtroom at
12 10:54 a.m.]

13 THE COURT: All right. We'll take about a ten-
14 minute break.

15 [Whereupon, a recess is taken from 10:55 a.m. to
16 11:01 a.m.]

17 THE COURT: All right. Bring us a jury, please.

18 [Whereupon, the jury enters the courtroom at
19 11:04 a.m.]

20 THE BAILIFF: All jurors are seated, Your Honor.

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

22
23 - - -
24 - - -
25 - - -

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CHARGE OF THE COURT

THE COURT: All right. Mr. Foreman, ladies and gentlemen of the jury, I'll instruct you on the applicable law in this case at this time.

And I want to first tell you about the defendant exercising his right to remain silent.

I instruct you and emphasize that the fact that the defendant did not elect to testify on his own behalf is not a factor to be considered by you in any way in your deliberations and in your consideration on the question of guilt or innocence of the defendant. It must not be considered by you in any manner whatsoever. A defendant has a constitutional right to remain silent and the assertion of this right must not be considered by you in your deliberations. I repeat: under your oath you are to draw no conclusion whatsoever from the fact the defendant in this case did not testify. The fact that this defendant did not testify should not even be discussed in the jury room. The burden of proof, as I will explain to you later, is on the State. The defendant is not required to prove his innocence. The burden of proof remains on the State to prove the defendant guilty beyond a reasonable doubt.

Now, I've allowed you, some of you, to take notes during the course of the trial, but you've not been

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1 obligated to take notes. But if you have taken notes,
2 these should not -- should be used only as memory aids.
3 You should not give your notes precedent over your
4 independent recollection of the evidence. If you have
5 chosen not to take notes, you should rely on your own
6 independent recollection of the proceedings and you should
7 not be influenced by the notes of other jurors. I
8 emphasize that notes are not entitled to any greater
9 weight than the recollection and impression of each juror
10 as to what the testimony may have been. Now, these are
11 your personal notes. You may keep them or you may give
12 them to the clerk and the clerk will destroy them for you.

13 I will give you a copy of these instructions in
14 written form. During your deliberations you may refer to
15 the instructions to guide your decision-making. You must
16 consider the instructions as a whole and not follow some
17 and ignore others.

18 Mr. Foreman, please return the instructions to
19 the Court after you have reached a verdict.

20 The defendant has pled not guilty to this
21 indictment, which places the burden on the State to prove
22 the defendant guilty. A person charged with committing a
23 criminal offense in South Carolina is never required to
24 prove himself innocent.

25 I charge you that it is a vital, important rule

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1 of law that a defendant in a criminal trial, no matter
2 what the seriousness of the charge may be, must always be
3 presumed to be innocent until his guilt has been proven
4 beyond a reasonable doubt. This presumption of innocence
5 remains with the defendant at all times from the moment he
6 appears in court, throughout the trial, until you the jury
7 reach a verdict of guilt beyond a reasonable doubt based
8 on the testimony and evidence that's been presented. A
9 presumption of innocence is a substantial right to which
10 every defendant is entitled and until you've reached a
11 verdict of guilt beyond a reasonable doubt, if you, the
12 jury, cannot find a defendant guilty beyond a reasonable
13 doubt, it is your duty to acquit the defendant.

14 Now, what is reasonable doubt. A reasonable
15 doubt is the kind of doubt that would cause a person or a
16 reasonable person to hesitate to act. The State has the
17 burden of proving the defendant guilty beyond a reasonable
18 doubt. Some of you may have served as jurors in civil
19 cases where you were told that it's only necessary to
20 prove a fact that's more likely true than not true, such
21 as the greater weight of the evidence or preponderance of
22 the evidence. In criminal cases, the State's proof must
23 be more powerful than that. It must be beyond a
24 reasonable doubt. Proof beyond a reasonable doubt is
25 doubt that leaves you firmly convinced of the defendant's

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1 guilt. There are very few things in this world that we
2 know with absolute certainty and in criminal cases the law
3 does not require proof that overcomes every possible
4 doubt. If based on your consideration of the evidence
5 you're firmly convinced the defendant is guilty of the
6 crime charged, you must find the defendant guilty. On the
7 other hand, if you think there's a real possibility the
8 defendant is not guilty, you must give the defendant the
9 benefit of the doubt and find the defendant not guilty.

10 There are two types of evidence which are
11 generally presented during trial. Direct evidence is
12 the testimony of a person who claims to have actual
13 knowledge of a fact, such as an eyewitness. It is
14 evidence which immediately establishes a fact to be
15 proven. Circumstantial evidence is proof of a chain of
16 facts and circumstances indicating the existence of a
17 fact. It is evidence which immediately establishes
18 collateral facts from which the main fact may be inferred.
19 Circumstantial evidence is based on inference and not on
20 personal knowledge or observation. The law makes
21 absolutely no distinction between the weight or value to
22 be given to either direct or circumstantial evidence, nor
23 is a greater degree of certainty required of
24 circumstantial evidence than of direct evidence. You
25 should weigh all of the evidence in the case. After

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1 weighing all the evidence if you're not convinced of the
2 guilt of the defendant beyond a reasonable doubt, you must
3 find the defendant not guilty.

4 The evidence or lack of evidence from which you
5 are to decide the facts include the following: the sworn
6 testimony of a witness, both on direct and cross-
7 examination, regardless of which side called the witness;
8 the exhibits that have been received into evidence by the
9 Court; and any facts agreed or stipulated to by all the
10 parties. The following things are not evidence and you
11 may not consider them in deciding the facts. Arguments
12 and statements made by the lawyers are not evidence. The
13 lawyers are not witnesses. Their opening statements,
14 closing arguments, and other statements are intended to
15 help you interpret the evidence but are not evidence. If
16 the facts as you remember them differ from the lawyer's
17 statements, your memory controls. Questions and
18 objections by lawyers are not evidence. Lawyers have a
19 duty to their client to make objections when they believe
20 a question is not -- is improper under the rules of
21 evidence. You should not allow any objections, or the
22 Court's ruling on the objections, to influence you.
23 Testimony that has been stricken or that you've been
24 instructed to disregard is not evidence and must not be
25 considered. Anything you may have seen on television,

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1 read in the newspaper or on the internet or heard from
2 others while court is not in session is not evidence. You
3 should base your decision solely on the sworn testimony of
4 the witnesses, exhibits received into evidence by the
5 Court, and any facts agreed or stipulated to.

6 The fact that the defendant was arrested,
7 charged, and indicted in this case is not evidence and
8 cannot be considered as evidence of guilt, nor does it
9 create any presumption or inference of guilt. The
10 indictment is simply the formal written instrument which
11 contains the charges made against the defendant.

12 A defendant's mere presence where the crime is
13 being committed does not make the defendant guilty of that
14 crime.

15 Hearsay is a statement, other than one made by
16 the declarant while testifying at the trial or hearing,
17 offered to prove the truth of the matter asserted. An
18 exception to the rule against hearsay is a statement of
19 the declarant's then existing state of mind.

20 Expert witnesses: the rules of evidence
21 ordinarily do not permit witnesses to testify to opinions
22 or conclusions. An exception to this rule exists for
23 witnesses called expert witnesses. Witnesses who by
24 education, training or experience have become expert in
25 some art, science, or profession are permitted to give

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1 their opinion in certain areas if the Court qualifies them
2 as expert witnesses. An expert witness may also give the
3 reasons for their opinion. An expert opinion is evidence
4 for you to use in any way you see fit. You should give
5 the evidence the weight and credibility you believe is
6 appropriate. If you decide that the expert's opinion is
7 not based on sufficient education or experience, or you
8 decide that the reasons given in support of the opinion
9 are not sound or that the opinion is outweighed by other
10 evidence, you may disregard the opinion entirely.

11 Now, under our constitution and code of laws
12 only you, the jury, can make findings of facts in this
13 case. I'm not permitted to indicate to you how I may feel
14 about the testimony evidence which has been presented.
15 Throughout this trial it's been my intention to be fair
16 and impartial towards each of the parties involved.

17 Necessarily, you must determine the credibility
18 of the witnesses who have testified in this case.
19 Credibility simply means believability. It's your duty as
20 jurors to analyze and evaluate the evidence and determine
21 which evidence convinced you of its truth. As you decide
22 whether to believe a witness' testimony about a particular
23 matter, you may consider the following. The manner and
24 appearance of the witness while on the witness stand:
25 was he or she straightforward or hesitant in answering.

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1 The testimony of the witness: was it consistent or
2 inconsistent. How the witness came to know the facts that
3 he or she testified to: was the witness present during
4 the incident or did the witness happen on the scene after
5 the incident occurred. A reason the witness would want to
6 give testimony which would help or hurt one side or the
7 other: has the witness exhibited to you any interest,
8 bias, prejudice, or other motive in the case. Thus you
9 may consider whether a particular witness may gain some
10 reward, payment, personal advantage or vindication through
11 his or her testimony. The strength of the witness or the
12 testimony of the witness: was the testimony of the
13 witness strengthened or weakened by other testimony or
14 evidence. The duration or length of time between the
15 incident and when they were reported: would the duration
16 and length of time weaken or strengthen a witness' memory.
17 All prior statements: were prior statements made by the
18 witness consistent or inconsistent with the witness's
19 testimony.

20 In determining the believability of the
21 witnesses who have testified, you may believe one witness
22 over several or several over one. You may believe a part
23 of the testimony of a witness and reject the remaining
24 part of the testimony of the witness. You may believe the
25 testimony of a witness in its entirety or reject the

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1 testimony of witnesses in its entirety. Of course, you
2 should not determine the truth by merely counting the
3 number of witnesses presented by each side. Throughout
4 the process you have but one objective: to seek the
5 truth, regardless of its source.

6 The same constitution which designates and make
7 you the finders of the facts make me the sole instructor
8 of the law. It's my duty to charge you the law applicable
9 to this case and it's your duty as jurors to accept and
10 apply the law as I state it to you. The lawyers are the
11 not instructors of the law. You must accept the law and
12 apply the law exactly as I state it to you. You must not
13 base your decision-making on your idea of what the law is
14 or what you think the law should be.

15 Murder: the defendant is charged with murder.
16 The State must prove beyond a reasonable doubt that the
17 defendant killed another person with malice aforethought.
18 Malice is hatred, ill will, or hostility towards another
19 person. It is the intentional doing of a wrongful act
20 without just cause or excuse and with an intent to inflict
21 an injury or under circumstances that the law will infer
22 as evil intent. Malice aforethought does not require that
23 malice exists for any particular time before the act is
24 committed but malice must exist in the mind of the
25 defendant just before and at the time that the act is

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1 committed; therefore, there must be a combination of the
2 previous evil intent and the act. Malice aforethought may
3 be express or inferred. These terms express and inferred
4 do not mean different kinds of malice but merely the
5 manner in which malice may be shown to exist. That is by
6 either direct evidence or by inference from the facts and
7 circumstances which are proved. Express malice is shown
8 when a person speaks words which express hatred or ill
9 will for another or when a person prepared beforehand to
10 do the act which was later accomplished. For example,
11 lying in wait for a person or any other acts of
12 preparation going to show that the deed was -- in the
13 defendant's mind would be express malice.

14 The use of a deadly weapon permits you to infer
15 malice, but it does not require you to infer malice. A
16 deadly weapon is any object, instrument or substance which
17 is likely to cause death or great bodily harm. Whether an
18 instrument has been used as a deadly weapon depends upon
19 the facts and circumstances of each case. The following
20 examples are instruments which may be deadly weapons: a
21 pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a
22 slingshot, metal knuckles, a razor, gasoline, a firebomb,
23 a Molotov cocktail, lighter fluid. A gun may be a deadly
24 weapon, even if it is not operating.

25 Now, you've been selected as fair and impartial

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1 jurors sworn to impartially try and determine the facts of
2 this case and when you comply with your oath to do so,
3 then no one will have the right to criticize your verdict.
4 You have fully discharged your duty as jurors if you
5 decide this case according to the testimony you've heard
6 from the lips of the sworn witnesses, along with other
7 evidence introduced.

8 I charge you as jurors you must make your
9 decision in this case without bias and without prejudice
10 to any party. You cannot allow yourself to be governed by
11 sympathy, prejudice, passion, public opinion, or any other
12 arbitrary factor. Both the State and the defendant have a
13 right to expect that each of you will carefully and
14 impartially consider all the evidence in the case and that
15 you will follow the law as I've explained it to you.

16 Nothing I may have said or done during the
17 course of this trial has been in any way to indicate,
18 express or suggest a view of this case or an opinion as to
19 the facts, the weight of the evidence, or the credibility
20 of the witness. If you believe any of my acts or words
21 have indicated otherwise, you must disregard such and form
22 your own view of this case or your own opinion as to the
23 facts, the weight of the evidence, and the credibility of
24 the witnesses.

25 Mr. Foreman, I have prepared a verdict form and

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1 the verdict form has the caption of the case with the case
2 number. And it says: as to indictment number 2010-GS-10-
3 8551, we, the jury, by unanimous consent, find the
4 defendant guilty of murder or not guilty. There's a place
5 for the foreperson to sign and date it.

6 As the form says, your verdict has to be
7 unanimous. All twelve of you have to agree. I will tell
8 you this is an collective-reasoning process. I would ask
9 you to respect each others opinions. If your opinions are
10 different, please listen to each others opinions, possibly
11 reevaluate your opinion if necessary. But as I said, it's
12 a collective reasoning and a collective decision on all
13 twelve of your part.

14 Now, Mr. Foreman, there's a lot of exhibits
15 here, well over 200. They will all be in the jury room
16 with you. Some of these bags with some of this old blood,
17 I would -- we're going to send some -- if you -- if any of
18 the jurors want to handle this or look at it or take it
19 out of the bags, there are some plastic gloves that will
20 be with you. Please use the plastic bags, don't handle --
21 excuse me -- the plastic gloves. Don't be handling any of
22 this without using the gloves, if you decide to handle any
23 of it. If any of it gets the odor too bad, give it to the
24 bailiffs and I'll keep it for you in the courtroom.

25 Now, Mr. Foreman, ladies and gentlemen of the

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1 jury, I'm going to have to go over my charge with the
2 lawyers. I may have left something out. I may have to
3 change something. I may have to bring you back and
4 correct my charge or change my charge, so please don't
5 begin your deliberations until the bailiffs have brought
6 you the verdict form, the charge book, and all of the
7 exhibits, and instruct you to begin your deliberations. I
8 hope that will be very shortly.

9 Mr. Foreman, if you and the jurors will go to
10 the jury room. I believe your order for lunch has already
11 been taken and hopefully that will be here around 12:00 or
12 12:30. You may take your notes with you to the jury room.

13 [Whereupon, the jury exits the courtroom at
14 11:21 a.m.]

15 THE COURT: All right. Any exceptions to the
16 charge from the State?

17 MS. SHEALY: No, Your Honor.

18 THE COURT: All right. The State had requested
19 a limited instruction on hearsay testimony. The Court
20 felt like that was fact-specific. I did give a charge
21 on hearsay testimony.

22 And I'll mark your specific request as Court's
23 Exhibit whatever the next number is.

24 [Whereupon, Court's Exhibit Number 13 is marked
25 by the court reporter]

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1 THE COURT: Mr. Pennington, I'll be glad to hear
2 you on any exceptions to the charge, other than the
3 one that we just mentioned.

4 MR. PENNINGTON: All right, sir.

5 I'll turn to the circumstantial evidence charge
6 first. And my objection is that --

7 THE COURT: Do you have -- do you have a
8 proposed charge that I can mark? I know you had one,
9 but I do not have a clean copy of it.

10 MR. PENNINGTON: I can pass up this one, Judge,
11 but I'm going to have to look over your shoulder to
12 make the argument.

13 THE COURT: Well, go ahead and make the argument
14 and we'll pass it up afterwards.

15 MR. PENNINGTON: All right. What I've done,
16 Judge, is that I have proposed, on circumstantial
17 evidence, both a charge with a short memorandum of
18 law.

19 In reading recent cases like State v. Hernandez,
20 which was reported in May of this year -- actually,
21 May of '09, but there are other cases since then --
22 that the trend seems to be moving back to giving what
23 had been the old circumstantial evidence charge. And
24 I base that on the notion that the cases that removed
25 this idea that the jury should be told that

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1 circumstantial evidence is to point conclusively to
2 the guilt of the accused to the exclusion of every
3 other reasonable hypothesis was struck down by Grippon
4 and Cherry, two decisions that were three-to-two
5 decisions, with Justice -- Chief Justice Toal offering
6 the dissent in both of those cases.

7 Since then, in all of the directed verdict cases
8 that we see they continually go back to this analysis
9 that there is an actual difference between direct and
10 circumstantial in how the Court approaches
11 understanding it, saying that they find that all the
12 circumstances -- for you to get past on a
13 circumstantial evidence case, all the circumstances
14 have to point and be proven to be consistent with each
15 other and, taken together, point conclusively toward
16 the whatever the matter that's intending to be proved,
17 intended to be proved, to the exclusion of every other
18 reasonable hypothesis.

19 Why I'm concerned is that during this period
20 where we're in the Grippon, Cherry era, the jury is
21 being told that no -- there is -- nor is a greater
22 degree of certainty required of circumstantial
23 evidence than of direct evidence, which I think from a
24 lay perspective and from a lawyer's perspective is
25 patently misleading in that there is this analysis the

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1 Courts have accepted. I believe that the Cherry and
2 Grippon cases were all about the fear of burden
3 shifting, that the defendant would have to come up
4 with a reasonable hypothesis or if he failed somehow,
5 that that would mean that he would be found guilty.

6 In no way do I feel, given your other charge,
7 the rest of your charge, the arguments of counsel,
8 that there's any risk that the jury would think that
9 the burden was on Mr. Drayton to prove the reasonable
10 hypothesis. But it is incumbent on the jury to sift
11 the circumstances to see if the circumstances are
12 proven beyond a reasonable doubt and are they
13 consistent with each other, taken together and
14 pointing conclusively to the guilt of the accused to
15 the exclusion of every other reasonable hypothesis.

16 So I would pass that up. And that would be my
17 tendered charge.

18 What I've done is I have underlined that
19 language in this document. You'll note I also go
20 further and say the old language that it's not
21 sufficient that they create a probability, though a
22 strong one, if assuming they be true they may be
23 accounted for by any reasonable hypothesis which does
24 not include the guilt of the accused, the proof has
25 failed.

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

3 MR. PENNINGTON: That may be climbing out on a
4 limb. I would be satisfied if the Court would
5 consider simply this first sentence, which I think is
6 an accurate statement of the law and points out the
7 essential salient difference between how we approach
8 circumstantial evidence as opposed to direct evidence.

9 THE COURT: You're talking about the first
10 sentence?

11 MR. PENNINGTON: The first sentence that I've
12 underlined with my pen.

13 THE COURT: You're talking about every
14 reasonable hypothesis?

15 MR. PENNINGTON: Yes, sir.

16 THE COURT: That request is denied.

17 And I'll mark this as a Court's Exhibit. Okay?

18 MR. PENNINGTON: Thank you, sir.

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

21 THE COURT: All right. Anything else?

22 MR. PENNINGTON: Your Honor, I think you've said
23 that my request for --

24 THE COURT: The request on the --

25 MR. PENNINGTON: Hearsay?

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1 THE COURT: -- hearsay is denied.

2 I did give a hearsay charge, but I did not do
3 the one you requested. I have marked that as a
4 Court's Exhibit.

5 Do you take exception to the hearsay charge I've
6 charged?

7 MR. PENNINGTON: I do, Your Honor. --

8 THE COURT: To what I charged, or what I didn't
9 charge?

10 MR. PENNINGTON: To what you charged, in that I
11 feel that the charge is incomplete insofar as there is
12 the risk that the jury is going to take the hearsay as
13 substantive evidence of Mr. Drayton's behavior as
14 opposed to -- and I think that my charge
15 differentiates. I believe your charge talked about
16 the notion that you shall take it as proof of the
17 state of mind, but to a lay point of view, that
18 doesn't mean necessarily that that's where it stops.
19 And I would ask the Court to indicate that it is
20 improper to charge -- or to allow that evidence to be
21 used as substantive evidence of what other actors did.

22 THE COURT: Well, I had proposed originally that
23 I would charge that such a statement is permitted;
24 however that statement does not prove anyone's conduct
25 or show that that particular activity occurred.

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1 You objected to that language. So now you're
2 asking basically for that language?

3 MR. PENNINGTON: I am. I am essentially
4 reversing myself. Given your ruling, I feel like your
5 charge, the original charge, was the proper charge,
6 the one that we talked about yesterday in which I have
7 now confused the Court by asking the Court to charge.

8 THE COURT: Because I removed it at your
9 request.

10 MR. PENNINGTON: That is correct. I think I was
11 in error, Your Honor.

12 THE COURT: Okay.

13 MS. SHEALY: Judge, may I look at that, please?

14 THE COURT: Well, I'm going to have to -- let me
15 get a clean copy, okay --

16 MS. SHEALY: Okay.

17 THE COURT: -- and I'll give you a clean copy.
18 Okay?

19 [Whereupon, the Court and the law clerk confer]

20 THE COURT: If you want to come up, I'll show
21 you. He's going to type it out on a clean copy for
22 me.

23 [Whereupon, the Court and the law clerk confer]

24 THE COURT: It's a good effort, Mr. Cooper. I
25 appreciate your endeavors.

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1 Come up here just one more minute, please.

2 I don't need this bench conference on the
3 record, Mia.

4 [Whereupon, an off-the-record bench conference
5 is held]

6 THE COURT: Are y'all ready?

7 Let me state for the record: on your request
8 for hearsay, the reason the Court rejected that,
9 because the Court feels like that was fact-specific
10 and it was telling the jury how to interpret a fact.
11 That's the reason the Court rejected that proposed
12 charge.

13 Now, I will bring the jury back out and I will
14 read this to them concerning hearsay: hearsay is a
15 statement other than one made by the declarant, while
16 testifying at the trial or hearing, offered to prove
17 the truth of the matter asserted. An exception to the
18 rule against hearsay is a statement of the declarant's
19 then existing state of mind such as ones plan or
20 intent. However, that statement does not --

21 Take that out, undisputedly approved. Take that
22 word undisputedly out.

23 -- does not prove anyone's conduct to show that
24 particular activity occurred.

25 [Off the record momentarily]

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1 THE COURT: All right. Any exceptions to that
2 charge? I know you still want your original charge.
3 But any exceptions to that charge?

4 MR. PENNINGTON: I think that's where we need to
5 be, Your Honor --

6 THE COURT: Any from the --

7 MR. PENNINGTON: -- given your earlier ruling.

8 THE COURT: Any from the State?

9 MS. SHEALY: No, sir.

10 THE COURT: I'm not asking you to give up your
11 request to that other charge.

12 MR. PENNINGTON: Yes, sir.

13 THE COURT: I just asked do you have any --

14 MR. PENNINGTON: I have no new objection.

15 THE COURT: -- exceptions to this.

16 MR. PENNINGTON: No new objection, Your Honor.

17 THE COURT: All right. Bring us the jury,
18 please.

19 [Whereupon, the jury enters the courtroom at
20 11:36 a.m.]

21 The BAILIFF: Jurors are all present, Your
22 Honor.

23 THE COURT: Thank you very much.

24 - - -

25 - - -

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FURTHER CHARGE OF THE COURT

THE COURT: I'm going to add something to my charge on the hearsay charge and I will read it to you at this time. Okay?

Hearsay is a statement other than one made by the declarant, while testifying at the trial or hearing, offered to prove the truth of the matter asserted. An exception to the rule against hearsay is a statement of the declarant's then existing state of mind, such as ones plan or intent. However, that statement does not prove anyone's conduct or show that a particular activity occurred.

Now, Mr. Foreman, you and the -- may go to the jury room and the bailiff will be bringing you the charge, the verdict form, and all of the exhibits and the rubber gloves very shortly and you can begin your deliberations. Thank you very much.

[Whereupon, the jury exits the courtroom at 11:38 a.m.]

THE COURT: All right. I believe yesterday afternoon late, everybody went through all the exhibits and the State is in agreement that all exhibits are present; is that correct?

MS. SHEALY: That's correct, Your Honor.

THE COURT: And also the defendant?

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1. MR. PENNINGTON: Yes, sir.

2 THE COURT: And I believe also the court
3 reporter.

4 THE COURT: All right. If y'all would come
5 gather the exhibits, the charge book. And here's the
6 knife. And make sure to take those gloves back to
7 the -- for the jury. Do y'all want the stipulations
8 to go back with this evidence or not?

9 MS. SHEALY: Yes, sir.

10 MR. PENNINGTON: Yes, sir. That's fine.

11 THE COURT: Yes, we'll send them back. That's
12 the only written testimony you're sending back, huh?

13 MR. PENNINGTON: I've never done that before,
14 but it's fine with me. I don't --

15 THE COURT: I mean, I think you can do it either
16 way. I mean, it doesn't matter to me. Whatever y'all
17 want.

18 [Evidence goes to the jury at 11:40 a.m.]

19 THE COURT: All right. We'll stand at ease
20 awaiting the jury verdict.

21 [Whereupon, a recess is taken from 11:40 a.m. to
22 1:08 p.m.]

23 THE COURT: Would you bring us a jury, please.

24 [Whereupon, the jury enters the courtroom at
25 1:12 p.m.]

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VERDICT

1
2 THE COURT: Mr. Foreman, I understand you've
3 reached a verdict; is that correct?

4 THE FOREPERSON: Yes, Your Honor.

5 THE COURT: Would you hand the verdict form to
6 the bailiff, please, sir.

7 [Whereupon, the foreperson complies]

8 THE COURT: Thank you very much.

9 [Whereupon, the bailiff proffers documents to
10 the Court]

11 [Whereupon, the Court reviews documents]

12 THE COURT: Mr. Foreman, I have written on the
13 indictment the jury's decision and I'm going to give
14 it to the bailiff and ask you to sign your name --
15 I've dated it today, October the 5th, 2012 -- and ask
16 you to sign it, please, sir.

17 [Whereupon, the foreperson complies]

18 THE COURT: Thank you very much.

19 THE CLERK OF COURT: Case number 2010-GS-10-
20 8551, the State of South Carolina v. Darryl Drayton,
21 as to indictment 2010-GS-10-8551, we, the jury, by
22 unanimous consent, find the defendant guilty of
23 murder. Signed foreperson, Lorne Walker.

24 Mr. Foreman, ladies and gentlemen of the jury,
25 if this is your verdict, please raise your right hand.

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1 THE COURT: All right. Let the record reflect
2 all twelve jurors raised their right hand to the
3 clerk's question.

4 Y'all may sit down, please.

5 Do you have a sentencing sheet?

6 But before we get to that, are there any motions
7 concerning the jury?

8 MR. PENNINGTON: We would request the jury be
9 polled, Your Honor.

10 THE COURT: All right. Do you have a sentencing
11 sheet --

12 MS. SHEALY: Yes, Your Honor.

13 THE COURT: -- you could pass up I could be
14 looking at while she's polling the jury?

15 MS. SHEALY: Just one second, Your Honor.

16 THE COURT: Please, if you would explain to them
17 what you're doing and go ahead and poll the jury.

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POLLING OF THE JURY

THE CLERK OF COURT: Starting with the foreman,
I'm going to ask each of you a question. Please
answer those questions.

Juror number 273, Lorne Walker. Is this your
verdict?

MR. WALKER: Yes.

THE CLERK OF COURT: Is this still your verdict?

MR. WALKER: Yes.

THE CLERK OF COURT: Juror Number 47, Shaun
Chambers. Is that your verdict?

MR. CHAMBERS: Yes.

THE CLERK OF COURT: Is this still your verdict?

MR. CHAMBERS: Yes.

THE CLERK OF COURT: Juror number 24, Katherine
Blume. Is this your verdict?

MS. BLUME: Yes.

THE CLERK OF COURT: Is this still your verdict?

MS. BLUME: Yes.

THE CLERK OF COURT: Juror number 196, Emily
O'Connor. Is this your verdict?

MS. O'CONNOR: Yes.

THE COURT: Is it still your verdict?

MS. O'CONNOR: Yes.

THE CLERK OF COURT: Juror number 11, Keith

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1 Bartleson. Is this your verdict?

2 MR. BARTLESON: Yes.

3 THE CLERK OF COURT: Is this still your verdict?

4 MR. BARTLESON: Yes.

5 THE CLERK OF COURT: Juror number 202, Glenda

6 Patierno. Is this your verdict?

7 MS. PATIERNO: Yes.

8 THE CLERK OF COURT: Is this still your verdict?

9 Ms. Patierno: Yes.

10 THE CLERK OF COURT: Juror number 253, Maurice

11 Stanley. Is this your verdict?

12 MR. STANLEY: Yes.

13 THE CLERK OF COURT: Is it still your verdict?

14 MR. STANLEY: Yes.

15 THE CLERK OF COURT: Juror number 103, Michelle

16 Greene.

17 MS. GREENE: Yes.

18 THE CLERK OF COURT: Is this your verdict?

19 MS. GREENE: Yes.

20 THE CLERK OF COURT: Is this still your verdict?

21 MS. GREENE: Yes.

22 THE CLERK OF COURT: Juror number 96, Tamara

23 Gilliard. Is this your verdict?

24 MX. GILLIARD: Yes.

25 THE CLERK OF COURT: Is it still your verdict?

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1 MS. GILLIARD: Yes.

2 THE CLERK OF COURT: Juror number 8, Reynoldson
3 Bannerman. Is this your verdict?

4 MR. BANNERMAN: Yes.

5 THE CLERK OF COURT: Is this still your verdict?

6 MR. BANNERMAN: Yes.

7 THE CLERK OF COURT: Juror number 256, Charles
8 Sterrett.

9 MR. STERRETT: Yes.

10 THE CLERK OF COURT: Is this your verdict?

11 MR. STERRETT: Yes.

12 THE CLERK OF COURT: Is this still your verdict?

13 MR. STERRETT: Yes.

14 THE CLERK OF COURT: And juror number 75,
15 Charles Dover.

16 MR. DOVER: Yes.

17 THE CLERK OF COURT: Is this your verdict?

18 MR. DOVER: Yes.

19 THE CLERK OF COURT: Is this still your verdict?

20 MR. DOVER: Yes.

21 THE CLERK OF COURT: Your Honor, the jury has
22 been polled and --

23 THE COURT: All twelve of you have been polled
24 and answered in the affirmative.

25 Do you want to file written motions? Post-trial

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1 motions?

2 MR. PENNINGTON: I would imagine I would, yes,
3 sir.

4 THE COURT: All right. I'll give you the time
5 to do that. Okay?

6 MR. PENNINGTON: That would be great.
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SENTENCING

1
2 THE COURT: All right. And as far as the
3 sentencing is concerned, I mean, the Court doesn't
4 have any choice because notice was served. Do you
5 question anything about the validity of the notice or
6 the prior record that the defendant had justifying the
7 notice for life without parole?

8 MR. PENNINGTON: No, I don't Your Honor. The --
9 he has the predicate prior conviction of a most
10 serious offense under 172545, I believe.

11 MS. SHEALY: That's correct.

12 MR. PENNINGTON: Which would make it a first
13 strike. This would be a second strike, meaning that
14 we agree that the sentence is automatic.

15 THE COURT: All right. Do you have the notice?

16 MS. SHEALY: I do, Your Honor. I just have --

17 THE COURT: Would you mark it as a Court's
18 Exhibit.

19 MS. SHEALY: Yes.

20 I would like to hand up the notice of intention
21 to seek a sentence of life without parole. Have that
22 marked as a State's Exhibit. It is accompanied by an
23 acknowledgment signed by Ashley Pennington, attorney
24 for the defendant; the acknowledgment of service by
25 the defendant, Darryl Drayton; and the service by my

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1 investigator, Keith Hair [phonetic].

2 And then, Your Honor, also to supplement the
3 record, I have a certified conviction of his having
4 been convicted of armed robbery and of his having been
5 convicted with possession with intent to distribute
6 cocaine within the proximity of a school that I would
7 like to have marked.

8 A second possession with intent to distribute
9 cocaine within the proximity of a school.

10 And then an assault and battery of a high and
11 aggravated nature charge. I have a certified
12 conviction for that, as well, Your Honor.

13 THE COURT: Okay.

14 MS. SHEALY: And those last three charges would
15 also factor in, independent from the armed robbery,
16 for purposes of an LWOP notice.

17 He also has additional charges, Your Honor,
18 including a lewd act upon a minor.

19 THE COURT: Okay. Mr. Pennington, normally I
20 would listen to you and your attorney and whoever you
21 wanted to hear from from a mitigation standpoint,
22 because under a normal murder I could do thirty to
23 life. In this situation, it's out of my control. I
24 mean, by state statute, once the notice is offered I
25 don't have any choice. So I don't know why I need to

STATE V. DRAYTON
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1 listen to anything.

2 MR. PENNINGTON: I agree.

3 THE COURT: All right. Indictment number --

4 MS. SHEALY: Your Honor, I'm so sorry, but --

5 THE COURT: I don't want to hear from the
6 victims. I mean, I don't have a choice in the matter.

7 MS. SHEALY: I understand that it would be
8 cathartic for the victim to be able to address the
9 Court, Your Honor.

10 THE COURT: Why? I've heard the testimony. I
11 understand it's a sad situation. I'm awful sorry for
12 it. Okay? But, I mean, the sentencing process, I
13 have to give him life without parole.

14 MS. SHEALY: He's fine with that, Your Honor.

15 THE COURT: Okay? I mean, I've heard him
16 testify, I've listened to --

17 MS. SHEALY: The father didn't testify.

18 THE COURT: -- the testimony.

19 MS. SHEALY: The father didn't testify.

20 THE COURT: Do you want me to hear from the
21 father? I'll be glad to hear from the father, out of
22 deference to the victim's family. Okay?

23 MS. SHEALY: Thank you, Your Honor.

24 MR. LUKAITIS: Joseph A. Lukaitis, Sr.

25 THE COURT: Thank you so very much for being

STATE V. DRAYTON
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1 here.

2 MR. LUKAITIS: I'm sorry, Your Honor. But --

3 THE COURT: Let me say I'm sorry for your loss.
4 Okay?

5 MR. LUKAITIS: Thank you, sir.

6 THE COURT: It's a tragic situation for both
7 families.

8 MR. LUKAITIS: This is my daughter and myself
9 and my two grandchildren -- I apologize -- the last
10 time we got to be together while I was down here on my
11 vacation.

12 And I don't know what happened. As a man, as a
13 father, she was supposed to bury me, I'm not supposed
14 to bury her. And I just want to say that as crazy as
15 it sounds, she's finally at peace today because a
16 verdict -- and that gentleman there, and I'm not going
17 to use any other words than gentleman -- he can't hurt
18 nobody else, Your Honor.

19 And I just want to thank everybody for your
20 support while we were down here. Thank you.

21 THE COURT: Okay. Thank you so very much. I
22 appreciate your being here.

23 Anybody else you would like for me to hear from?

24 MS. SHEALY: No, sir. Thank you.

25 THE COURT: Since I've given the defense that

STATE V. DRAYTON
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1 opportunity, is there anybody the State would like --
2 I mean, excuse me -- gave the State the opportunity,
3 anything the defense would like to say?

4 MR. DRAYTON: No, sir.

5 THE COURT: Anyone else you would like for me to
6 hear from, Mr. Pennington?

7 MR. PENNINGTON: No, sir.

8 THE COURT: All right. Indictment number 8551,
9 charged with murder, Darryl L. Drayton, sentenced to
10 the State Department of Corrections for a period of
11 life.

12 Thank you very much.

13 MS. SHEALY: Thank you, Your Honor.

14 MR. PENNINGTON: Thank you, Your Honor.

15 THE COURT: All right. Mr. Foreman, members of
16 the jury, follow the bailiffs to the jury room,
17 please.

18 [Whereupon, the jury exits the courtroom at
19 1:32 p.m.]

20 MR. PENNINGTON: Your Honor, you're going to
21 give me a week?

22 THE COURT: Well, ten days, isn't it?

23 MR. PENNINGTON: That's fine.

24 THE COURT: Isn't it ten --

25 MR. PENNINGTON: -- ten days is the statutory --

STATE V. DRAYTON
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1 THE COURT: Isn't it ten days under the statute?

2 MR. PENNINGTON: Yes, sir, that's correct.

3 THE COURT: I'll give you ten days to file what
4 you want. That will give you time to think about it.

5 MR. PENNINGTON: Thank you very much.

6 THE COURT: Okay?

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

9 [Whereupon, Court's Exhibit Number 16 is marked
10 by the court reporter]

11 [Whereupon, Court's Exhibit Number 17 is marked
12 by the court reporter]

13 [Whereupon, Court's Exhibit Number 18 is marked
14 by the court reporter]

15 [Whereupon, Court's Exhibit Number 19 is marked
16 by the court reporter]

17 [JURY TRIAL CONCLUDES AT 1:34 P.M.]

18

19

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24

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STATE V. DRAYTON
Jury Trial - Volume 5 of 5
October 5th, 2012

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 Friday, October 5, 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

-913-

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Full name and prison number (if any) of Applicant.

DARRYL L DRAYTON 238403

State of South Carolina

2016-CP-10-2633

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2016 MAY 20 AM 11:56
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention CHARLESTON COUNTY DETENTION CENTER
2. Name and location of Court which imposed sentence THE COURT OF GENERAL SESSIONS FOR THE NINTH JUDICIAL
3. Name(s) of co-defendant(s) (if any) 101 Broad Street Charleston SC Circuit
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

- (a) 2010 BS 1008551
- (b) MURDER 16-03-0010, 0020
- (c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) October 5, 2012
- (b) Life with out the possibility of Parole

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒ _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____ SOUTH CAROLINA COURT OF APPEALSii. _____ SOUTH CAROLINA STATE SUPREME COURT

iii. _____

(b) the result in each such Court to which you appealed:

i. _____ COURT OF APPEALS: Affirmed my convictionii. _____ Supreme Court: Vacated in part, Affirmiii. _____ IN RESULT.

(c) the date of each such result:

i. _____ FEB. 4, 2015ii. _____ DEC. 23, 2015

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: INEFFECTIVE OF COUNSELVIOLATION OF MY FOURTH Amendment
Rights, STATE Constitutional Rights

- (a) _____
 (b) _____
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) _____ *Counsel was ineffective numerous times through out the trial. 15 swabs of DNA*
 (b) _____ *never got tested. Fail to call expert witness*
 (c) _____ *on my behalf. There are many more. Fourth Circuit Court of Appeals has ruled that obtaining the state*

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? ☒ *Cal. All State Data without a warrant IS VIOLATION OF Const. Rights*
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____ *Court of Appeals*
 ii. _____ *Petition for a Rehearing*
 iii. _____ *Writ of Certiorari State Supreme Court*
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____ *S.C. Court of Appeals Columbia, S.C.*
 ii. _____
 iii. _____ *STATE Supreme Court Columbia, S.C.*
 iv. _____

(c) the disposition thereof:

- i. _____
 ii. _____
 iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? ✓
- (c) your sentencing? ✓
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? ✓

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. ASHLEY Pennington Charleston County
 - ii. Public Defender. 101 Broad Street
 - iii. Debra Hackett Division of Appellate Defense
- (b) the proceedings at which each such attorney represented you:
 - i. ASHLEY Pennington P.O. Box 11589
 - ii. Trial Counsel Columbia, SC 29211
 - iii. Debra Hackett Appellate Lawyer

19. State clearly the relief you seek in filing this application:

New Trial

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA

County of

VERIFICATION

I, DD, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Donald Duglo

SWORN to and subscribed before me this 3rd
day of May, 2011.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2016

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, D.D., hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Darryl D. Drayton
Applicant

SWORN or affirmed to and subscribed before me this
3rd day of May, 2016

Lushena Bryant
Notary Public

My Commission Expires: May 26, 2020

1. Counsel was ineffective by waiving my Preliminary Hearing. * Counsel stated to me that he didn't want the press eating it up more than they already had.
2. Counsel was ineffective by using a cover up defense. Counsel did not discuss with me before trial, that we were using that type of defense. I stated to Counsel that I had nothing to do with the murder. After the trial was over. I Ask Counsel why did he use that type of defense, when I told him I was innocent. Counsel finally then stated that I was up to him to decided what type of defense we use.
3. Counsel was ineffective by Allowing the Judge to Allow my phone Records As Evidence. The Fourth Circuit Court of Appeals

8225 Ruled that obtaining historical cell site DATA without a warrant, IS A VIOLATION OF YOUR Fourth Admendment Rights. The State Supreme Court Ignored my argument and vacated It. The STATE Supreme Court Also Ruled that The Trial Judge and the Court OF Appeals ERred.

4. Counsel was ineffective by not getting the other 15 SWABS OF DNA tested.

5. Counsel was ineffective by not filing a motion for a mistrial. When the Juror Saw misconduct by one of the state witness, Tr p 672-701. Also Counsel Stated that would give the state time to test the DNA, that didnt get tested.

6. Counsel was ineffective for not getting our own expert witness pertaining to

923
My Historical Cell Site Data and the Victim's
Toxicology Report.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Darryl L. Drayton, #238403,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2016-CP-10-2633

RETURN

In response to the post-conviction relief application filed on May 20, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. Applicant was indicted by the December 2010 term of the Charleston County Grand Jury for murder (2010-GS-10-8551). D. Ashley Pennington, Esquire, represented him. Jennifer K. Shealy, and Timothy Finch, Esquires, prosecuted the case. On October 1, 2012, Applicant proceeded to trial before the Honorable J.C. Nicholson, Jr. and a jury. Applicant was found guilty as indicted. Judge Nicholson sentenced Applicant to incarceration for life without the possibility of parole.

Applicant filed a timely notice of appeal. An appeal was perfected by Susan B. Hackett, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence State v. Drayton, 411 S.C. 533, 769 S.E.2d 254 (Ct. App. 2015). Applicant filed a petition for writ of certiorari in the South Carolina Supreme Court. The South Carolina Supreme Court granted certiorari, dispensed with further briefing, and vacated the portion of the Court of Appeals' opinion addressing Applicant's expectation of privacy in his historical cell site location data. State v.

Drayton, 415 S.C. 43, 780 S.E.2d 902 (2015). The Court affirmed Applicant's conviction and sentence. Id. The Remittitur was returned on January 12, 2016.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective of Counsel"
 - a. "Counsel was ineffective numerous times throughout the trial. 15 swabs of DNA never got tested, failure to call expert witness on my behalf. There are many more. Fourth Circuit Court of Appeals has ruled that...without a warrant is violation of Cons. Rights."
 - b. "Counsel was ineffective by waiving my preliminary hearing. Counsel state to me that he didn't want the press eating it up more than they already had."
 - c. "Counsel was ineffective by using a cover up defense. Counsel did not discuss with me before trial, that we were using that type of defense. I stated to Counsel that I had nothing to do with the murder. After the trial was over, I ask counsel why did he use that type of defense, when I told him I was innocent. Counsel finally then state that I was up to him to decided what type of defense we use."
 - d. "Counsel was ineffective by allowing the judge to allow my phone records as evidence. The Fourth Circuit Court of Appeals has ruled that obtaining historical cell site data without a warrant is a violation of your Fourth Amendment Rights. The State Supreme Court ignored my argument and vacated it. The State Supreme court also ruled that the trial judge and the Court of Appeals Erred."
 - e. "Counsel was ineffective by not getting the other 15 swabs of DNA tested."
 - f. "Counsel was ineffective by not filing a motion for a mistrial. When the juror saw misconduct by one of the state witness. Tr. P. 672-701. Also, Counsel stated that would give the state time to test the DNA that didn't get tested."
 - g. "Counsel was ineffective for not getting our own expert witness pertaining to my historical cell site data and the victim's toxicology report."

For the purpose of this Return, Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records, the trial transcript, and appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the

record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

To the extent Applicant is alleging additional DNA testing is required, Respondent directs Applicant's attention to the Access to Justice Post-Conviction DNA Testing Act. S.C. Code Ann. § 17-28-10 to -120. The act provides:

A person who pled not guilty to at least one of the following offenses [including murder], was subsequently convicted of . . . the offense, is currently incarcerated for the offense, and asserts he is innocent of the offense may apply for forensic DNA testing of his DNA and any physical evidence or biological material related to his conviction or adjudication[.]

S.C. Code Ann. § 17-28-30(A).

Respondent submits any DNA testing should be pursued by way of the Access to Justice Post-Conviction DNA Testing Act in General Sessions court rather than through discovery in this PCR action.

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VI.

With respect to Applicant's allegation of juror misconduct, Respondent moves for a more definite statement. Applicant has failed to set forth any facts to support this claim or to explain with any specificity whatsoever the facts upon which this claim is based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which this allegation is based.

VII.

Applicant's allegation that Counsel was ineffective for allowing the judge to allow his phone records as evidence must be dismissed. Counsel made appropriate and timely objections to this evidence at trial, and this allegation was addressed on the merits in Applicant's appeal from his conviction. The appellate courts affirmed the trial judge's denial of the motion to suppress. Therefore, with respect to this claim, Respondent is entitled to judgment as a matter of law.

VIII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

IX.

Each and every allegation contained within the application not expressly admitted, qualified, or explained above is hereby denied.

X.

WHEREFORE, the Respondent requests that an evidentiary hearing be held solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE
Assistant Attorney General

By: *Alicia A. Olive*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 15, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2016-CP-10-2633
DARRYL L. DRAYTON,	)	
S.C.D.C. No. 238403,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
234 Seven Farms Drive, Suite 128
Charleston, SC 29492

DATED this 15th day of May, 2017.


 Brianna Arnone, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON NINTH JUDICIAL CIRCUIT
2016-CP-10-2633

DARRYL DRAYTON,	)	TRANSCRIPT OF
	)	RECORD
APPLICANT,	)	
	)	
VS.	)	
	)	DECEMBER 6, 2017
	)	CHARLESTON, SC
THE STATE OF SOUTH	)	
CAROLINA,	)	
	)	
RESPONDENT.	)	

B E F O R E:

HONORABLE MICHAEL NETTLES

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

JUSTIN HUNTER, ESQUIRE
Attorney for the Respondent

CHRIS MURPHY, ESQUIRE
Attorney for the Applicant

* * * * *

Ruth C. Weese, RDR
Official Court Reporter
Ninth Judicial Circuit

I N D E X

Page

POST-CONVICTION RELIEF HEARING 3

WITNESS DX CX RDX

Darryl Drayton 7 14

Ashley Pennington 16 28

CLOSING ARGUMENT: PAGE

BY MR. MURPHY 39

BY MR. HUNTER 44

CERTIFICATE OF REPORTER 52

NO EXHIBITS INTRODUCED

1
2 (The following proceedings were held
3 December 6, 2017, Charleston County, South
4 Carolina, @ 10:05 a.m.)

5 MR. HUNTER: The next case is Darryl
6 Drayton versus State of South Carolina,
7 2016-CP-10-2633. Your Honor, he was indicted
8 December 2010 in Charleston County for murder. He
9 was represented by Mr. Ashley Pennington. On
10 October 1st, 2012, he proceeded to a jury trial
11 before Judge Nicholson. He was found guilty and
12 after being noticed by the State and sentenced to
13 life without parole. He did a file of notice of
14 appeal. The Court of Appeals affirmed his decision
15 on February 4th, 2015. Rehearing was filed and
16 subsequently denied. He then appealed to the
17 Supreme Court on December 23rd, 2015, which
18 ultimately vacated in part, but affirmed in result
19 -- affirmed his convictions. He filed this current
20 action May 20th, 2016. He is present today
21 represented by Mr. Chris Murphy.

22 THE COURT: Mr. Murphy, you are
23 recognized. I'm going to ask you if you could to
24 delineate the claims for post-conviction relief.

25 MR. MURPHY: Thank you, Your Honor. We

1 have four issues that we will be raising. Three of
2 them we are going to rest solely on the record and
3 I will go through them. The first is we are
4 alleging error with his trial counsel not objecting
5 to testimony that three individual witnesses gave
6 as to how Mr. Drayton had a cut on his finger. The
7 testimony from each witness was that he gave each
8 of them a different story which the State used --
9 presented to show that he was lying about the
10 actual cut on his finger. And our argument is that
11 his stories did not qualify as a statement against
12 admission or a statement against interest. So it
13 was not a party admission or a statement against
14 interest, therefore, it should have been excluded
15 and should have been objected to.

16 The second issue we are raising on the
17 record, this was an odd case where one of the
18 witnesses during the trial was seen by a juror
19 giving a \$20 bill to one of the other witnesses.
20 And there was a hearing about it with the judge on
21 the matter and the judge frankly --

22 THE COURT: A \$20 bill was being
23 exchanged from who?

24 MR. MURPHY: Between one of the victims
25 father -- a family member of the victim and one of

1 the witnesses that took the stand. So the witness
2 took the stand, they went to lunch, broke for lunch
3 and they were seen that one of the family members
4 was giving a \$20 bill to the other witness. And
5 the judge really didn't know what to do at that
6 point. It was kind of an odd situation. And there
7 was discussion about moving for a mistrial, but
8 ultimately there was no movement for mistrial by
9 Mr. Drayton's trial counsel which we have alleged
10 is error. And the reason that that's error is
11 because if you go through the transcript, the
12 evidence was pretty overwhelming. It was likely
13 that he was going to get convicted and therefore we
14 think that moving for a mistrial based on that
15 issue it would have been prejudicial and not only
16 was it an error, but it was highly prejudicial.

17 The third issue that we are resting on
18 the record deals with the opening statements. In
19 the opening statements Mr. Pennington argued
20 circumstantial evidence jury charge under State v.
21 Edwards. And although -- and he argued that the
22 judge at the end of this case is going to charge
23 circumstantial evidence under State v. Edwards.

24 When it came to charging the judge
25 denied that request. Mr. Pennington preserved the

1 record and submitted the charge, but ultimately
2 denied the request. So therefore we're alleging
3 not only error by arguing something, jumping the
4 gun and making an argument that ultimately wasn't
5 agreed on or decided by the Court, which and then
6 prejudiced because based on the facts in this case
7 it would have -- that would have diminished the
8 credibility of Mr. Drayton. And those are the
9 three issues that we rest solely on the record for.

10 The final issue will require testimony
11 from Mr. Drayton and that's the failure to
12 communicate a defense and communicate trial
13 strategy with Mr. Drayton and I would call him as
14 the only witness to discuss that as well.

15 THE COURT: All right. Yes, sir.
16 Please come forward. I'm going to ask you if you
17 could come over here and approach the bible, place
18 your left hand on the bible and raise your right
19 hand so the clerk can administer his oath.

20 DARRYL DRAYTON

21 having been duly sworn, testifies as follows:

22 THE CLERK: Please state your full name
23 for the record, spelling your last name for us,
24 please.

25 THE WITNESS: Darryl Lavar Drayton,

1 D-R-A-Y-T-O-N.

2 THE COURT: Mr. Drayton, I'm going to
3 ask you to pull up real close to the microphone and
4 speak loudly and clearly and slowly in order that
5 we can hear everything that you have to say. Thank
6 you, sir.

7 DIRECT EXAMINATION

8 BY MR. MURPHY:

9 Q. Mr. Drayton, you were convicted of
10 murder in Charleston County, correct?

11 A. Yes, sir.

12 Q. And you were represented by Mr. Ashley
13 Pennington?

14 A. Yes, sir.

15 Q. Now, I want to talk to you about your
16 representation or his representation of you, okay?
17 Now, first of all, can you tell the Court how many
18 times you met with Ashley Pennington prior to going
19 to trial?

20 A. Well, I was in the county jail maybe
21 like two years or I would say in two years maybe
22 five times.

23 Q. And in those five times do you recall
24 how long each of those visits lasted?

25 A. Maybe an hour.

1 Q. Okay. And can you tell me what you
2 discussed in those visits?

3 A. We basically just went over -- it was
4 no strategy. Mr. Pennington never discussed with
5 me about the defense.

6 Q. Let's talk about that. I will get to
7 that, but just tell the Court what was the
8 substance of your conversations that you recall
9 with Mr. Pennington?

10 A. Stuff like DNA, giving me the DNA
11 results, not too much of nothing.

12 Q. Let me ask you this: Did you talk to
13 Mr. Pennington about your defense in this case?

14 A. Yes, I stated to Mr. Pennington that I
15 had nothing to do with this matter.

16 Q. All right.

17 A. Repeatedly.

18 Q. Now, and at trial Mr. Pennington argued
19 that you were involved in some type of cover-up
20 with this crime; is that correct?

21 A. Yes, he used the cover-up defense.

22 Q. Now, prior to -- we are going -- I am
23 jumping around here, but let's go back to you said
24 you had nothing to do with this crime, these
25 charges, correct?

1 A. Yes.

2 Q. And did you give Mr. Pennington any
3 names to follow up to prove where you were?

4 A. Well, yes, I gave Mr. Pennington some
5 people that he could go and talk to on my behalf.
6 He never got back with me and told me whether or
7 not he went and talked to anyone, no kind of
8 investigation or anything like that.

9 Q. Now, did he talk to you about how to
10 present the defense that you weren't involved in
11 these crimes?

12 A. No, he didn't.

13 Q. Did he talk to you about whether or not
14 you needed to take the stand and give your own
15 version of what happened?

16 A. No, because he never discussed that we
17 was using this defense. I found out once the trial
18 had started.

19 Q. And when you talk about this defense,
20 you are talking about the cover-up defense?

21 A. Yes, sir.

22 Q. Now, had you had any conversations with
23 him before trial or before the closing arguments
24 that he was going to claim that you were involved
25 in some type of cover-up?

1 A. Well, once the -- when the trial
2 started and we broke for recess, that's when I was
3 like well, why are you using this type of defense
4 when I told you repeatedly that I had nothing to do
5 with this matter. He stated to me that it was up
6 to the trial counsel to decide whether or not --
7 what kind of defense we use.

8 Q. And based on -- you would have had some
9 type of discussions with the judge about whether or
10 not you had the right to take the stand; do you
11 recall that?

12 A. Yes, sir, I do.

13 Q. Okay. And you obviously chose not to
14 take the stand; do you recall that?

15 A. Yes.

16 Q. Did you have any discussion with Mr.
17 Pennington about the pros and cons of you taking
18 the stand or good versus the bad?

19 A. He asked me, he said they can use my
20 criminal record against me.

21 Q. All right. And what was the prior
22 criminal record that they could use against you?

23 A. I have a -- well, they enhanced my life
24 without parole when -- I got convicted of an armed
25 robbery back in 1996 when I was 17 years old. They

1 give me a youthful offender act I maxed out in
2 2002.

3 Q. But in terms of -- you are talking
4 about the youthful offender act. Did you have any
5 discussions with him about taking the stand or you
6 talked -- you said you weren't going to take the
7 stand because of your prior record. Was that
8 youthful offender act the only prior charge you
9 had?

10 A. No, sir, I had other charges.

11 Q. All right. And did you discuss with
12 him whether or not to take the defense in light of
13 this cover-up defense he was going to argue at
14 closing?

15 A. Say that one more time.

16 Q. Did you talk to him about taking the
17 stand in response to a cover-up argument that he
18 would do at closing?

19 A. No, sir, because I never knew nothing
20 about the cover-up defense.

21 Q. Now, let me ask you this: Did you have
22 any offers to plea to your case for less than the
23 life in jail?

24 A. When I first got there it was -- I
25 think it was a plea for like 30 years or something

1 like that.

2 Q. All right.

3 A. And I told him I was not going to take
4 it.

5 Q. All right. And you mentioned this YOA
6 with the enhancement. Did you receive notice for
7 life without parole sentence, that the State would
8 be seeking a life without parole sentence?

9 A. Yes, I did.

10 Q. And did you have any discussions with
11 Mr. Pennington about what that meant?

12 A. Yes, we talked about it. He explained
13 that two serious crimes can -- I guess they can
14 give you the life without parole. But which my
15 conviction that they used was a 1996 conviction.

16 Q. And you're alleging that that armed
17 robbery conviction was not properly applied?

18 A. Yes, I am.

19 Q. All right. Now, you talked about DNA.
20 You mentioned DNA. Did you discuss the DNA
21 findings with Mr. Pennington at all?

22 A. Yes, we did.

23 Q. Okay. And what discussions did you
24 have?

25 A. Well, you know, he explained to me that

1 -- I got the paperwork also that they found my
2 touch DNA inside the victim's car and also I think
3 maybe a drop of blood somewhere. I can't remember
4 exactly where. But I explained to Mr. Pennington
5 that I'm known to be around this victim and also
6 known to be driving this vehicle.

7 Q. Now, did you have any -- did you -- do
8 you believe -- let me ask you this: Did you
9 discuss hiring your own DNA expert with Mr.
10 Pennington at all?

11 A. No, we didn't.

12 Q. Now, you said that you were known to be
13 around this vehicle and the victim prior to this
14 crime, correct?

15 A. Yes.

16 Q. And did you tell Mr. Pennington that?

17 A. Yes, I had.

18 Q. And did you tell him about -- we
19 already talked about witnesses that might have
20 supported that you weren't there. Did you tell him
21 about any other witnesses that you wanted to call
22 for your defense?

23 A. No, I didn't.

24 MR. MURPHY: That would be all I have,
25 Your Honor.

1 THE COURT: Cross-examination.

2 CROSS-EXAMINATION

3 BY MR. HUNTER:

4 Q. So when you met with Mr. Pennington I
5 think you testified that you gave him the names of
6 some witnesses to contact; is that correct?

7 A. I think it may have been one or two
8 people that I told him that he can go out and
9 speak. He did state to me that he spoke with my
10 ex-girlfriend and that's about it.

11 Q. What other names did you give him?

12 A. I have to look through my notes.

13 Q. Would they have been alibi witnesses?

14 A. Sir?

15 Q. Would they have been alibi witnesses?

16 A. Could have been.

17 Q. And you said it was maybe one or two
18 people?

19 A. Yes.

20 Q. And did Mr. Pennington ever tell you
21 the reasoning behind this why he was using the
22 cover-up defense?

23 A. No, he didn't because I never knew
24 about it until once the trial started.

25 Q. So going into the trial what did you

1 think the defense was going to be? Did you know?

2 A. I didn't know.

3 Q. And did you ever tell him that you
4 wanted to testify?

5 A. No, I didn't.

6 Q. Did you want to testify?

7 A. Well, as from what he was explaining to
8 me that they could use my criminal records against
9 me so we discussed it that I was going -- that it
10 is not in my best interest to take that stand.

11 Q. The judge went over that with you, too,
12 right?

13 A. Yes, sir.

14 MR. HUNTER: That's all I have for this
15 witness.

16 MR. MURPHY: Nothing further, Your
17 Honor.

18 THE COURT: You may step down. You may
19 call your next witness.

20 MR. MURPHY: We will rest, Your Honor.

21 THE COURT: Very good. Mr. Hunter, you
22 are recognized.

23 MR. HUNTER: Your Honor, the State
24 would call Mr. Ashley Pennington.

25 THE COURT: Please come forward.

ASHLEY PENNINGTON

having been duly sworn, testifies as follows:

THE COURT: I would ask you if you could pull up real close to that microphone, speak loudly, clearly and slowly in order that we can hear everything that you have say. Let's start with your full name and spell your last name for the court reporter.

THE WITNESS: My full name is David Ashley Thurman Pennington. And the last name is spelled P-E-N-N-I-N-G-T-O-N.

DIRECT EXAMINATION

BY MR. HUNTER:

Q. Good morning, Mr. Pennington. Where are you currently employed?

A. I am the Ninth Circuit Public Defender.

Q. Was that your position and title back in 2012?

A. Yes.

Q. Please explain how you became involved in Mr. Drayton's case.

A. When the case arose it arose in 2010. And I monitor all the arrests in Charleston and Berkeley County for homicide, particularly ones that have aggravating circumstances because I

1 handle cases that are potentially death eligible.
2 So I took this case personally and worked it from
3 the beginning as his counsel.

4 Q. And how many times would you say you
5 met with him from his arrest to or from your
6 representation to his trial?

7 A. Probably every other month or so from
8 the time of his arrest until we got to trial.

9 Q. And would y'all meet in jail or video
10 conference?

11 A. Jail and video conference. Although I
12 can't say for certain about the video conference.
13 I can't recall when actually we got it set up here
14 in Charleston County. It may have just been
15 strictly visits at the booths in the jail.

16 Q. And during those meetings about how
17 long would y'all meet together?

18 A. There were various meetings for
19 different purposes at different stages of the
20 litigation so they could have varied from
21 15 minutes to more than an hour or two.

22 Q. And can you explain I guess best you
23 can summarizing what you talked about during those
24 meetings?

25 A. We prepared the case. We would go

1 through the evidence and talk about the charges and
2 I guess the best way to describe it that in the
3 beginning I was interested in finding out
4 everything I could about the circumstances of the
5 charges and what the State's evidence looked like.

6 That then progressed to getting
7 Darryl's description of where he was, his
8 relationship with the decedent, Ms. Lukaitis who
9 was a friend of his and who he had spent some time
10 with in the days preceding her death. And then
11 backtracking to witnesses that were friends of hers
12 and friends of his that were connected to the
13 various events that were described in the incident
14 reports. I could get into more detail if you need
15 it, but those are the things we did in the
16 beginning.

17 As the case proceeded, I became
18 increasingly concerned that this was a
19 circumstantial evidence case that was going to rely
20 very, very heavily on cell phone records and DNA
21 and other kind of corroboration because there was
22 pieces of evidence that were found at a piece of
23 property that he frequented in Bluffton. The
24 decedent in this case also came from Bluffton,
25 South Carolina. And that her vehicle was found

1 within about a hundred yards of where his -- this
2 residence was that I just referred to. So we went
3 out and investigated and talked to witnesses there
4 and looked specifically for I believe it was a
5 cousin or nephew of his that was a source of these
6 items. He was in the residence asleep when the
7 police came along and found those items. So we
8 were looking for ways to understand the physical
9 case.

10 As the case proceeded we then learned
11 that the evidence was very clear that his cell
12 phone was pinging here in Charleston County where
13 the victim's body was located on Highway 17 south
14 in kind of the Parkers Ferry area of Charleston
15 County off of a side road. And I became concerned
16 and he became concerned and we discussed ways to
17 potentially explain that he had been in this area
18 at the time that she had gone missing. And he gave
19 me names of witnesses to try to seek out in the
20 Hollywood area of our community. We went looking
21 for them and trying to establish if we could show
22 that he was elsewhere.

23 So those are a lot of concerns and this
24 all culminated in April of 2012 with a lengthy
25 meeting with Mr. Drayton at the detention center

1 where we discussed sort of the composite picture of
2 this case and my concerns of the strength of the
3 circumstantial evidence case and what options we
4 had with regard to case resolution. That was about
5 six months before trial.

6 Q. Just to go back, you said that he did
7 give you names of alibi witnesses; is that correct?

8 A. He gave me the names of relatives that
9 he would see in this area in Hollywood and it was
10 his suggestion that perhaps he had been in the area
11 just visiting with them. But as conversations
12 continued it became clear that his position was
13 sort of as he stated here today. I did not do this
14 crime. I don't have anything to do with it. And
15 that's the way he wanted it left.

16 Q. So his defense is ultimately or his
17 defense theory is that he didn't do it. How did
18 you come up with your defense theory that you
19 pursued at trial?

20 A. It was very clear in my conversations
21 with Mr. Drayton that he wasn't engaging very
22 seriously with the fact that there was his blood
23 DNA on the steering wheel of the vehicle of the
24 victim that had been at the scene of the homicide
25 and then somehow abandoned as I said about a

1 hundred yards from where the other physical
2 evidence was left at a residence that was connected
3 to him. So the challenge was to deal with the fact
4 that he had physical DNA. There was also his blood
5 on a bag I believe that was left with the victim's
6 items at that residence. So it appeared that he
7 was bleeding. And then it was the unfortunate fact
8 for him that there was -- a he had a very cut
9 finger, severely cut finger that witnesses noticed
10 that had arisen in the day following this woman
11 went missing. And there were -- the government had
12 focused heavily on the fact that there were a
13 series of statements where he had described how
14 this had occurred to about five different witnesses
15 that were variable which they contended to be false
16 exculpatory evidence, but which would have been an
17 important source of the blood that you see in the
18 photographs from the crime scene and from the car.

19 Q. And while we are on that subject, I
20 believe like you said, several different witnesses
21 testified as to what Mr. Drayton said about how he
22 cut his finger; is that correct?

23 A. Yes, sir.

24 Q. And after that testimony did you see
25 any reason to object?

1 A. No. I felt that they were clearly
2 false exculpatory statements that would be
3 admissible under our evidentiary rules.

4 Q. And was his blood found on the victim
5 at all?

6 A. The -- I can't recall. There were
7 many, many, many spots of blood and I believe that
8 the most probative and important pieces of evidence
9 was his blood in the car rather than on the person
10 of the decedent. I do not recall blood -- his
11 blood on the decedent who was left there at a scene
12 here in Charleston County.

13 Q. Okay. And let's just backtrack a
14 little bit to your defense theory. Did you inform
15 him before trial that this was what we are going to
16 do?

17 A. I told him that that's what I thought
18 would be the best theory. He -- to the extent that
19 he was following what I was saying he didn't really
20 say much. When we did get to trial and I made my
21 opening statement where I began to suggest that
22 there had been a rush to judgment by the
23 investigators because the boyfriend of the victim
24 knew that they knew each other, called his name,
25 that there had been a leap to make him the only

1 suspect and that you could look at all the
2 evidence, including the evidence of his blood in
3 the car as being equally consistent with just mere
4 presence or perhaps a cover-up. And so that was
5 the -- was basically that there were alternate
6 interpretations of the physical evidence that did
7 not establish at all that he was perpetrator of the
8 murder. That was the theory.

9 At one point in the trial he said why
10 are you saying this? I'm saying I am trying to
11 explain the evidence. He was not happy with that.
12 And when he refers to the Court by saying well, how
13 is it that you can do that? Why isn't that my
14 choice? And I did say to him that it is the
15 lawyer's prerogative to argue essentially the
16 evidence in a way that's consistent with the goal
17 of the defense which is to be found not guilty and
18 I said was it was the lawyer's prerogative on how
19 to argue the case.

20 Q. And during trial did he ever or prior
21 to trial did he ever indicate to you that he wanted
22 to take the stand?

23 A. He did not.

24 Q. And do you believe during trial that he
25 was informed on the risk and benefit or the cost

1 and benefits of taking the stand?

2 A. I noticed -- I have not read the
3 transcript, but over the weekend I noticed a
4 section where Judge Nicholson did a colloquy on
5 that subject prior to the time that he would have
6 been called I think at the break of the day. That
7 fit in with our discussions. I was not surprised
8 that he did not want to take the stand. He did not
9 seem -- he did not wish to take the stand.

10 Q. Just a couple of specific things. Do
11 you recall the incident where the juror saw Mr.
12 Bartley shake hands and hand money to Mr. Edwards?
13 Do you recall that?

14 A. Yes, sir, I did. I reviewed that. You
15 asked me to take a look at that transcript and I
16 have looked at that.

17 Q. Okay. And can you say the reason why
18 you did not move for a mistrial?

19 A. Yes. I think Mr. Murphy's assessment
20 that this was a case where we were up against it in
21 terms of strong circumstantial evidence scenario
22 and I was very concerned about the possibility of
23 conviction in this case. Therefore, I was looking
24 for a way in which perhaps there could be a monkey
25 wrench in the case. And sure enough the surviving

1 boyfriend, Mr. Bartley, when we broke for lunch
2 during one of the trial days, right after Stephen
3 Edwards who was the relative of Mr. Drayton who had
4 been -- was at the house where all these
5 incriminating items were, he had testified that he
6 had just awakened and discovered this stuff sort of
7 like when the police arrive. We were clearly
8 implying that maybe he was much more involved, not
9 being forthcoming.

10 It was fortuitous from my point of view
11 that for reasons I guess I don't know why, I can't
12 speak for Mr. Edwards -- Mr. Bartley, but Mr.
13 Bartley was seen by a juror in the courtyard
14 downstairs approaching Mr. Edwards shaking hands
15 and then giving him some money. And Mr. Bartley
16 was later called in the trial and testified he had
17 given him \$20 to buy lunch and I think he actually
18 testified before the jury to that effect if I am
19 not mistaken. Because they were concerned about
20 doing damage control. I frankly hoped from a
21 strategic position that the jury would be so
22 shocked by the conduct that they would buy into my
23 theory that there was a rush to judge against
24 Darryl and that Mr. Edwards had things to hide and
25 that the boyfriend, Mr. Bartley, was sort of

1 complicit in this sort of trying to sell the
2 State's theory regardless with blinders on to any
3 other alternates. So I thought it actually helped
4 our defense.

5 Q. And the juror was dismissed, correct?

6 A. That juror was dismissed, yes. I think
7 it was. I'm not totally clear about that.

8 Q. And let's touch on the opening
9 statement. In your opening you used the reasonable
10 hypothesis language on circumstantial evidence.
11 Can you explain that language and how you utilize
12 it during trials?

13 A. Sure. You know, this is an area where
14 I have a real interest because when the Cherry case
15 came down I was concerned because no one ever said
16 that the proper analysis for the consideration of
17 getting either past directed verdict or for
18 argument to a jury, no one has ever said that it is
19 not a correct statement of the law that the
20 litigant, the proponent of evidence must remove
21 every reasonable hypothesis other than guilt in a
22 situation involving relying entirely on
23 circumstantial evidence.

24 What the court had done, I prepared an
25 instruction for Judge Nicholson where there had

1 been a case in 2012 just before the trial where
2 Justice Toal had opined in a directed verdict case
3 that we need to go back to that analysis. Trial
4 judges need to go back to that analysis in a case
5 where they're ruling on whether the State had met
6 its burden of proof based solely on circumstantial
7 evidence for purposes of DV, directed verdict.

8 This to me opened the door that the
9 Court would reconsider the Cherry decision which is
10 the one that says that it is not error not to
11 charge that language. In my view it's still a
12 correct statement of the law. I think it's helpful
13 to the litigant. Judge Nicholson declined to
14 follow my interpretation and reintroduce -- I don't
15 have the name of the original case, but it's the
16 case referred to a moment ago, the one that was
17 overruled by Cherry. He didn't do that. My hope
18 was that that issue would be a part of this case
19 for purposes of appeal, but it was not.

20 Q. So at the outset of the case during
21 your opening, did you have any idea that the judge
22 was eventually going to deny your ability to use
23 that in the charge?

24 A. I can't recall clearly whether or not
25 we had any kind of meaningful charge conference

1 before openings or not.

2 Q. Do you recall if the judge gave the
3 standard instruction that opening statements are
4 not evidence? Do you recall if that was given?

5 A. I don't recall, sorry.

6 Q. Do you recall if the judge gave the
7 standard instruction that the judge is the sole
8 authority on the law?

9 A. That would be logical, but again I
10 don't remember.

11 MR. HUNTER: Okay. Beg the Court's
12 indulgence one more second. That's all I have for
13 you. Appreciate your time.

14 THE COURT: Yes, sir, Mr. Murphy.

15 CROSS-EXAMINATION

16 BY MR. MURPHY:

17 Q. May it please the Court, Mr.
18 Pennington, you said you saw Mr. Drayton about once
19 every other month. Do you have any notes or
20 records or logs of these visits with Mr. Drayton?

21 A. They would be reflected by the notes in
22 my file. I will make -- like on a legal pad I will
23 make a note of the date and the substance of what's
24 going on so it would be kind of scattered
25 throughout the file. That's the record I have.

1 Q. All right. Is there any way that you
2 could pinpoint those notes in your file right now
3 or too lengthy a process?

4 A. It would take me probably 30 minutes to
5 go through and pull them out and I do have a memo
6 that I can put my hand on about that April meeting
7 that I testified about which was sort of the --
8 pretrial sort of bring it all together.

9 Q. And could you pull that out of your
10 records for us?

11 A. Sure.

12 Q. Now, let me ask you next, did you try
13 to seek any offers for a plea deal or any
14 negotiations with the State on behalf of Mr.
15 Drayton?

16 A. I did not search my file to determine,
17 but I will tell you what I do recall. As I said,
18 from that memo I clearly recall that I felt that we
19 were in trouble as far as winning the case at trial
20 and that we should seek some sort of negotiated
21 settlement of this case that would result in a
22 result other than LWOP. So we were -- I talked to
23 him about other aggravated murder cases that I had
24 handled. I talked about seeking a plea. I also
25 talked about just a straight up plea in front of

1 Judge Tommy Hughston here in Charleston where I had
2 done that where the State has sort of soft peddled
3 -- not soft peddled, but not asking for the max.
4 And Judge Hughston had a philosophy that said that
5 in these cases where people were contrite ready to
6 take responsibility that he will impose even in an
7 aggravated murder 35 years or so of active time. I
8 couldn't promise that we could get that, but I
9 remember that we examined together, Mr. Drayton and
10 I, the calender of the upcoming terms of court and
11 what our options were. I believe that there was a
12 thoughtful consideration to the fact that we could
13 get this matter heard in that context by Judge
14 Hughston sometime around April and that then we
15 wouldn't see Judge Hughston again so essentially
16 that opportunity would be lost forever before
17 trial.

18 So it was in that context that I met
19 with him to discuss whether we could either try to
20 negotiate something or try to work out a plea with
21 Hughston.

22 Q. Do you recall any attempts by yourself
23 to try and negotiate a lower charge with the
24 solicitor that was prosecuting?

25 A. My recollection is that to the extent

1 we had conversations Ms. Shealy, the solicitor, was
2 not interested in making any plea offers lesser
3 than murder.

4 Q. Now, let's talk about witnesses and
5 defenses. Did you explain to him potential
6 defenses to these charges?

7 A. Yes.

8 Q. Okay. Did he give you the names of
9 witnesses to contact to support his defense?

10 A. Yes.

11 Q. Okay. And did you go and attempt to
12 track those witnesses down?

13 A. Yes. I have an investigator so I used
14 my investigator Art Dajovna to go and look for
15 witnesses and actually contact witnesses in
16 Bluffton and I believe that we also looked for
17 people in Hollywood.

18 Q. And his defense was that he didn't do
19 it; is that correct?

20 A. That is right..

21 Q. And did his defense of I didn't do it
22 ever change during the course of your
23 representation?

24 A. No.

25 Q. Now, did you have any discussions with

1 him about you mentioned some DNA, about hiring a
2 DNA expert to testify for the defense. Do you
3 recall any discussions about that?

4 A. Yes, we did.

5 Q. What was the nature of those
6 discussions?

7 A. I hired Ron Ostrowski who is a Ph.D.
8 specialist in this field of DNA examination and
9 provided him with access to the State's materials,
10 reports, et cetera. And we confirmed that as far
11 as we could find there was nothing in error and
12 therefore I reported to Mr. Drayton that it looked
13 like the DNA evidence was not something that we
14 could take on.

15 Q. Now, in addition there was some talk
16 about Mr. Drayton taking the stand to testify in
17 his own defense. Did you -- do you recall any
18 discussions with him about the pros and cons of
19 testifying for his own behalf?

20 A. We did.

21 Q. And how many times or how long did
22 those discussions take place?

23 A. I believe that we had conversations in
24 the months leading up to trial in terms of
25 assessing what is our defense and are you going to

1 testify. And that time I had the distinct
2 impression that he did not want to testify and that
3 seemed to be confirmed when we got to trial. I was
4 wondering whether or not at the last minute he was
5 going to pivot and indicate that he just wanted to
6 testify. But that did not happen.

7 Q. Now, you also testified you were
8 concerned about the evidence against him. I know
9 you have tried a great deal of jury trials over
10 your career. Did you have an opinion or did you
11 have thoughts that he is going to get convicted
12 based on this evidence that is going to be
13 presented to the jury?

14 A. I was very concerned.

15 Q. And when you -- do you recall arguing a
16 cover-up defense or a mere presence defense at --
17 during your closing argument? Do you recall that?

18 A. I don't understand the question.

19 Q. Well, let me ask you this: Did you
20 discuss with Mr. Drayton your closing argument or
21 what you intended to argue at closing prior to
22 actually performing the closing?

23 A. I would imagine that we did, but to be
24 more fair to Mr. Drayton, I think he raised the
25 question like probably after the opening about

1 something about things that he raised before about
2 I wasn't there so how are you going to argue that
3 I'm just maybe an accessory after the fact or
4 something like that. And that led to the
5 discussion I alluded to earlier on direct.

6 Q. And would you agree that the stories or
7 the admission of his giving different stories to
8 the five witnesses as to how he cut his finger was
9 very damaging evidence against him?

10 A. Yes.

11 MR. MURPHY: That's all I have. Thank
12 you.

13 THE COURT: Any redirect?

14 MR. HUNTER: No, Your Honor.

15 THE COURT: Just one second. Was the
16 issue with regard to the circumstantial evidence
17 charge, was that brought before the appellate
18 courts or not?

19 THE WITNESS: We haven't touched on the
20 two big issues that were before the appellate
21 courts which was the cell phone search warrant
22 issue. I'm trying to remember. I don't recall
23 clearly, Your Honor.

24 THE COURT: Okay.

25 THE WITNESS: I do know that I wrote a

1 memo to Bob Dudek saying I thought this was
2 something should be raised. And I just don't know
3 where it got in terms of review of those opinions.
4 I think they are available.

5 MR. HUNTER: Your Honor, if I may, you
6 should have the appellate documents.

7 THE COURT: Was the issue about the
8 circumstantial evidence raised by the appellate-
9 court?

10 MR. HUNTER: Yes, Your Honor, that
11 issue was -- jury charge issue was raised and the
12 cell phone issue was raised. And that's actually
13 what was overturned or vacated on the Supreme Court
14 level was the -- how the court of appeals
15 approached the cell phone data. The circumstantial
16 evidence charge was not touched by the Supreme
17 Court.

18 THE COURT: Okay. Mr. Pennington,
19 could you sort of summarize the evidence that
20 appears to be somewhat overwhelming against the
21 Defendant, circumstantial evidence? Could you just
22 delineate the most difficult things that y'all had
23 to overcome?

24 THE WITNESS: Yes, sir. I will do my
25 best.

1 THE COURT: That sort of sealed his
2 fate?

3 THE WITNESS: Yes, sir. May I refer to
4 my notes?

5 THE COURT: You can or I'm sure you
6 have a good idea what the problems -- just what the
7 problems were.

8 THE WITNESS: The big problems were
9 this: The State was able to produce evidence that
10 the decedent in this case was -- called her
11 boyfriend who said and told her -- him that she was
12 going out of town with the Defendant to score some
13 drugs here in the Charleston area. She ended up
14 dead as I have described here off of 17 in
15 Charleston County. Her vehicle is not there. Her
16 vehicle is then discovered at a boat landing not
17 far from the Defendant's residence in Bluffton.

18 Law enforcement goes to that site and
19 finds all this evidence from her car that's got
20 blood on it. That is items from the trunk of her
21 car, incriminating things that reflect it would
22 have been tied in with her disappearance. And then
23 the car is parked as I said probably five or ten
24 doors down at this boat landing.

25 The Defendant had surfaced the next day

1 in Bluffton, had spoken to his -- I believe cousin
2 or nephew Stephen Edwards saying that he had been
3 in a fight with some guys. There were other
4 reported statements that he had cut his hand
5 repairing a vehicle or using a sawzall. And he was
6 interested in going and pawning a ring and they did
7 go pawn a ring that was the decedent's ring at the
8 pawn shop. The jeweler was there and testified
9 about that.

10 The -- when they did the collection of
11 evidence what they were able to show was that there
12 was blood spots all around the car, but the ones
13 that stick out in my mind was that there was a
14 smear of blood on the driver's -- on the steering
15 wheel and on the driver's side door frame that they
16 said conclusively pointed to the Defendant. And
17 then the sort of greater problem was the fact that
18 they pulled the Defendant's cell phone records
19 which show that he had that afternoon, I believe
20 this was a Sunday afternoon going into a Monday
21 morning, that you could see both his and the
22 victim's cell phone sort of pinging along coming
23 from Bluffton up the highway up 17 toward where her
24 body is found. And so therefore it put his phone
25 right there in juxtaposition at the time of her

1 death.

2 THE COURT: Okay. All right. You may
3 step down. Thank you.

4 MR. MURPHY: We would just, Your Honor,
5 have --

6 THE COURT: I assume there's no more
7 evidence from the State.

8 MR. HUNTER: Correct, Your Honor.

9 MR. MURPHY: We would just recall Mr.
10 Drayton for one question, Your Honor.

11 THE COURT: All right. Yes, sir. You
12 can stand right there.

13 MR. MURPHY: I will remind you that you
14 are still under oath

15 BY MR. MURPHY:

16 Q. Now, Mr. Drayton, you heard Mr.
17 Pennington talk about why he did not move for a
18 mistrial on that alleged -- juror misconduct. Do
19 you recall that?

20 A. Yes..

21 Q. And did you have a conversation with
22 him at the time as to why he did not move for a
23 mistrial?

24 A. Yes.

25 Q. What was the reason he gave you?

1 A. Mr. Pennington explained to me that
2 that would give the State time to test the DNA that
3 was not tested because there was 21 swabs of DNA.
4 Seven got tested, the other 14 never went and got
5 tested to the lab. I feel -- the DNA was crucial
6 in my case because at the crime scene they found a
7 cigarette butt that was 39 yards away from the
8 body. Now, they collected this evidence hoping
9 that this would incriminate me, but the evidence
10 when they tested the DNA, it was an unidentified
11 male. And also when they tested the DNA under the
12 victim's fingernails it was inconclusive.

13 Q. Let me ask you, did you want the DNA
14 tested?

15 A. Yes, I did want the DNA tested.

16 MR. MURPHY: Thank you. That's all I
17 have.

18 THE COURT: Mr. Murphy, be glad to hear
19 remarks from you.

20 MR. MURPHY: Thank you, Your Honor.
21 Very briefly, Your Honor. Three of the issues are
22 I believe solely legal issues. The first is the
23 objections. And I think that's solely as a matter
24 of law whether or not they qualify as statements
25 against interest or exculpatory false statements or

1 whether they should have been objected to.

2 THE COURT: I think the general rule is
3 when a Defendant says something generally that's an
4 admissible statement of a party opponent Defendant.

5 MR. MURPHY: I think that is the
6 practice.

7 THE COURT: That is the practice. I
8 practiced law for 20 years and been on the bench
9 for 12. Generally speaking if the Defendant says
10 something it's admissible.

11 MR. MURPHY: And I certainly agree
12 that's the practice. I think if you unpeel that
13 onion, we as attorneys a lot of times don't really
14 look at the -- we get it in there. But when you
15 analyze it whether or not to the hearsay exception
16 is a party admission or statement against interest,
17 and these don't have anything to do with the actual
18 crime. It dealt with something else. So again
19 it's solely a legal issue and there's really not
20 much more we can say about it, Your Honor.

21 THE COURT: All right.

22 MR. MURPHY: The next issue would be
23 failure to move for a mistrial. Mr. Pennington's
24 testimony was he was very concerned about the
25 evidence, that he wanted to throw a monkey wrench

1 into the jury deliberations and get them to acquit
2 him or find him guilty of a lesser included charge.
3 But I can't think of any better way to throw a
4 monkey wrench into it than to ask for a mistrial
5 and preserve that issue for the record. And again
6 that's solely a legal issue.

7 The next legal issue we have deals with
8 the circumstantial evidence charge. He did argue
9 the Edwards standard in his opening statement. It
10 ultimately was not accepted by the judge. And the
11 reason we think that's not only error but is
12 prejudicial is because of the overwhelming evidence
13 or circumstantial evidence against Mr. Drayton that
14 was presented. Any chink in his credibility would
15 prejudice his arguments even further. Again that
16 is a legal issue.

17 Finally, Judge, we are talking about
18 whether or not Mr. Drayton understood his defenses
19 and how he was going to go forward. His defense
20 was I didn't do it. There's no question about
21 that. And at closing arguments there was argument
22 that he was maybe a cover-up or he was at the scene
23 of a mere presence, but that certainly makes it
24 difficult for him to not knowing that defense or
25 that argument really impact whether or not he was

1 going to take the stand.

2 THE COURT: Let me ask you this: You
3 have heard the evidence. Mr. Pennington sort of
4 laid it out in summary fashion that was against
5 him. And do you think a reasonable strategy would
6 be to argue he had mere presence, because we got
7 the blood in the car, we got the pings, we have got
8 all the circumstance that has been played out on
9 the record? Do you think that was a better defense
10 than just simply saying he didn't do it without the
11 ability for him to take the stand?

12 MR. MURPHY: I think Ashley had a
13 better defense of -- arguing a cover-up I think or
14 mere presence is a better defense. But I think in
15 this case with the circumstantial evidence you had
16 to present something to show that he knew this was
17 a cover-up or he was present.

18 THE COURT: Do you think it would be
19 ineffective to take a trial strategy, stand up in
20 front of the jury and say he didn't do it? With
21 him not being able to take the stand because of
22 prior convictions? Just how would you have
23 listened?

24 MR. MURPHY: I personally believe that
25 and I have tried a lot --

1 THE COURT: You believe what?

2 MR. MURPHY: I believe that it is
3 ineffective when you have a defense saying I didn't
4 do it and not putting your Defendant on the stand
5 to explain his story I think is ineffective. I
6 know there's the old school is if you have prior
7 convictions you can't let the jury hear about them.
8 But I think that the prior conviction is a very
9 nominal issue when you are talking about a defense
10 like this. Looking at this case everything had to
11 go right for Mr. Pennington.

12 THE COURT: Do you think it was a
13 legitimate trial strategy for him to argue mere
14 presence and cover-up versus the strategy of he
15 didn't do it and put him on the stand? Both of
16 them are legitimate.

17 MR. MURPHY: I think they are
18 legitimate.

19 THE COURT: What do you think is more
20 reasonable or more viable?

21 MR. MURPHY: I am not trying to be
22 evasive, but I think the argument of mere presence
23 or cover-up is better for Mr. Drayton. But I think
24 he had to go a step further. If you are going to
25 take that position you got to put him up on the

1 stand to explain it. Otherwise you're throwing a
2 hypothesis out there without any testimony.

3 THE COURT: Wouldn't you agree that the
4 issue is whether or not a reasonable -- reasonable
5 trial strategy, wouldn't you agree?

6 MR. MURPHY: I do agree with that, yes.
7 And what I am arguing here is I think it's kind of
8 an accumulation of things. Standing alone I don't
9 think there's any doubt that this would not be an
10 issue to -- that I could argue prejudice for. But
11 when you look at the facts of the case and look at
12 the other statements that came in and the
13 overwhelming evidence against you, I think that you
14 -- it kind of piles up and it gets to the point
15 where it gets to cumulative error.

16 THE COURT: Very good. Thank you, Mr.
17 Murphy. Mr. Hunter.

18 MR. HUNTER: Yes, Your Honor. Just to
19 go over a few things. About the testimony that was
20 elicited about how he cut his hand, the different
21 stories he gave, that State would argue that's
22 admissible. I believe it's 801(d)(2)(a) and (b)
23 and all that says it is not hearsay if given by a
24 Defendant there.

25 As far as the mistrial goes, the juror

1 issue, after reading everything the State would
2 argue that was probably in the Defendant's best
3 interest -- essentially we have the two closest
4 State's witnesses, the closest to the crime that
5 seem to be colluding with each other. The defense
6 certainly used that to their advantage and I
7 believe the defense actually even called Mr.
8 Bartley to the stand and have him tell what he did
9 to the jury. So the State certainly thinks that
10 was good trial strategy to not ask a for mistrial
11 but to show what these two, the strongest witnesses
12 are out of here. On the issue of the
13 circumstantial charge, Your Honor, it seems that it
14 was unsettled law at the time, certainly no call
15 for Mr. Pennington to argue that. And I say argue,
16 mention it in his opening, certainly not realizing
17 that later on his request would be denied. And as
18 far as --

19 THE COURT: Is that a reasonable trial
20 strategy to introduce an issue like that in the
21 event he is convicted and might secure a reversal
22 on appeal?

23 MR. HUNTER: Well, it seems that how it
24 is introduced and the exact -- get the page number,
25 I would argue that it was briefly mentioned in his

1 opening. It wasn't really a big argument of his in
2 the greater scheme of things in his entire opening.
3 Like I said, the judge did give his introductory
4 remarks that the opening is not evidence in the
5 case, that the judge was the sole decider of the
6 law.

7 So looking at the opening as a whole, I
8 would argue that it is not deficient, there was no
9 prejudice given, that it was simply one sentence,
10 just a few words out of his entire opening, merely
11 setting up the case. So as far as --

12 THE COURT: Do you think that the
13 nuances of circumstantial evidence charge lawyers
14 like to talk about and the appellate entities like
15 to talk about a whole lot, the jurors really don't
16 pay much attention to, the differences in the
17 circumstantial evidence charge?

18 MR. HUNTER: Yes.

19 THE COURT: You would say yes on that?

20 MR. HUNTER: The jurors don't pay
21 attention to those?

22 THE COURT: Well, I am just saying
23 quite often the nuances of the difference between
24 the circumstantial evidence charges quite often
25 will be lost on a jury.

1 MR. HUNTER: Right. I think that goes
2 to the fact that wasn't prejudicial because they
3 are not paying attention to the legal jargon anyway
4 at that point. He's simply setting out his case.

5 THE COURT: Some could say that.

6 MR. HUNTER: And let me continue, the
7 communication of the defense trial strategy. I
8 think it is apparent in this case you have a
9 Defendant who has kind of his own version of how
10 his defense wants to go and you have one of the
11 most experienced defenders in the State saying
12 based on evidence that is what we need to do, this
13 is the best route to take. There was no telling if
14 he hadn't pursued it that way we would be here on
15 those allegations. I think it is up to the defense
16 to ascertain given the evidence what their trial
17 strategy would be. I think in this case since he
18 was biologically attached to the scene, to both
19 scenes, that saying I wasn't there was not their
20 strongest argument because he is clearly attached
21 somehow. So I think it was a reasonable trial
22 strategy for Mr. Pennington to say yes, given the
23 DNA evidence it is clear that he was biologically
24 attached somehow. So given those facts we had to
25 pursue this route that well, it shows is a

1 cover-up. That's essentially what he's saying in
2 his closing. He argues well, yes, his DNA is
3 there, but that doesn't show he murdered her. That
4 just shows if anything maybe he covered it up. So
5 regardless the State would argue that is a valid
6 trial strategy and I would argue that Mr.
7 Pennington would know best based on his vast
8 experience how to approach this scenario given the
9 evidence involved.

10 THE COURT: All right. Anything
11 further?

12 MR. MURPHY: Nothing, Your Honor.

13 THE COURT: I'm going to address -- Mr.
14 Hunter, I'm going to ask you that you prepare an
15 order to this effect. The first thing that I am
16 going to address are the issues about ineffective
17 assistance with regard to preparation and
18 investigation.

19 I think the record should reflect that
20 trial counsel brought two banker boxes forward.
21 That was indication of the work and the paperwork
22 that had been done on this case. Trial counsel
23 testified that he saw him at least 12 times either
24 at the jail or the video. There were a number of
25 discussions. The discussions progressed as the

1 evidence became available. The very beginning of
2 it had to do with the fact of the investigations.
3 A factual investigation and how it related to the
4 prosecution, the elements of the charge and any
5 defense they might have. There was a tremendous
6 discussion about circumstantial evidence. And it
7 was a discussion about how cell phone pings were
8 going to work against him. And Mr. Pennington and
9 his investigator investigated his request with
10 regard to an alibi. When asked on the witness
11 stand who were his alibi witnesses, first of all,
12 the applicant responded to questions from his
13 lawyer did you give him any witnesses to
14 investigate. He said yeah, I did. The question
15 was asked were they alibi witnesses, he related
16 that it could have been. So it really wasn't a
17 firm alibi defense asserted by the Defendant.
18 However, this possible defense was investigated by
19 Mr. Pennington and his investigator.

20 I find that there was an in depth
21 discussion about life without parole. There was a
22 discussion about trial strategy. There was a
23 meeting which Mr. Pennington has detailed notes
24 with regards to how all this stuff came together.
25 I'm sure based on his testimony they discussed all

1 of the circumstantial evidence, how the State was
2 intending to prove that he was guilty of the
3 offense charged and how it all came together.

4 I specifically find that there was a
5 tremendous amount of investigation. There was an
6 allegation about ineffectiveness with regard to the
7 DNA. Mr. Pennington did, in fact, hire his own
8 independent DNA expert to evaluate whether there
9 was any method to object to the DNA evidence. I
10 specifically find that the statements that the
11 Defendant made, conflicting statements about how
12 his finger was cut is indeed admissible. There was
13 nothing that could be done to legitimately object
14 to that. I think it would probably be ineffective
15 for him to do that because when there is evidence
16 such as that that comes forward and you object to
17 it and there is no legitimate objection then it
18 calls undue attention to the evidence as it comes
19 out.

20 As far as the issue with regard to the
21 witnesses colluding, an exchange of money, I think
22 it was a legitimate trial strategy to not request a
23 mistrial and that as Mr. Pennington indicated would
24 cause a reasonable juror to hesitate with regard to
25 evidence that key witnesses were colluding.

1 As far as the opening statement, I find
2 in reviewing the transcript of the opening
3 statement, it was a minor part of his opening
4 statement. It was a general discussion with regard
5 to circumstantial evidence and given the
6 overwhelming evidence, overwhelming circumstantial
7 evidence, I find that it would not have made a
8 difference had the opening statement been given in
9 a different fashion.

10 Have I now addressed everything?

11 MR. MURPHY: That was everything, Your
12 Honor.

13 THE COURT: Now, Mr. Drayton, I wish
14 you the best of luck. Obviously the
15 post-conviction relief is denied.

16 (These proceedings were concluded at
17 11:09 a.m., December 6, 2017, Charleston County,
18 South Carolina.)
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3 CERTIFICATE OF REPORTER

4 I, Ruth C. Weese, Registered Diplomate
5 Reporter for the State of South Carolina at Large,
6 do hereby certify that the foregoing transcript is
7 a true, accurate, and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 16th day of March, 2018 at
13 Charleston, Charleston County, South Carolina.

14 *Ruth C. Weese*

15
16 _____
17 Ruth C. Weese

18 Registered Diplomate

19 Reporter
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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
OF THE NINTH JUDICIAL CIRCUIT

Darryl Drayton,
S.C.D.C. No. 238403,

2016-CP-10-2633

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

2016 FEB -1 11:10:21
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed May 20, 2016. An evidentiary hearing into the matter was convened on Wednesday, December 6, 2017, at the Charleston County Courthouse in Charleston, South Carolina before the Honorable Michael G. Nettles. Applicant was present at the hearing and represented by Christopher L. Murphy, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Ninth Circuit Public Defender D. Ashley Pennington, Esquire, also testified. This Court had before it a copy of Applicant's PCR application, the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's appellate records, Respondent's Return, and the trial transcript.

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. Applicant was indicted by the December 2010 term of the Charleston County Grand Jury for murder (2010-GS-10-8551). D. Ashley Pennington, Esquire, represented him. Jennifer K. Shealy, and Timothy Finch, Esquires, prosecuted the case. On October 1, 2012, Applicant proceeded to trial before the Honorable J.C.

Nicholson, Jr. and a jury. Applicant was found guilty as indicted. Judge Nicholson sentenced Applicant to incarceration for life without the possibility of parole.

Applicant filed a timely notice of appeal. An appeal was perfected by Susan B. Hackett, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence State v. Drayton, 411 S.C. 533, 769 S.E.2d 254 (Ct. App. 2015). Applicant filed a petition for writ of certiorari in the South Carolina Supreme Court. The South Carolina Supreme Court granted certiorari, dispensed with further briefing, and vacated the portion of the Court of Appeals' opinion addressing Applicant's expectation of privacy in his historical cell site location data. State v. Drayton, 415 S.C. 43, 780 S.E.2d 902 (2015). The Court affirmed Applicant's conviction and sentence. The Remittitur was returned on January 12, 2016.

Allegations

In his application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective Assistance Counsel"
 - a. "Counsel was ineffective numerous times throughout the trial. 15 swabs of DNA never got tested, failure to call expert witness on my behalf. There are many more. Fourth Circuit Court of Appeals has ruled that...without a warrant is violation of Cons. Rights."
 - b. "Counsel was ineffective by waiving my preliminary hearing. Counsel state to me that he didn't want the press eating it up more than they already had."
 - c. "Counsel was ineffective by using a cover up defense. Counsel did not discuss with me before trial, that we were using that type of defense. I stated to Counsel that I had nothing to do with the murder. After the trial was over, I ask counsel why did he use that type of defense, when I told him I was innocent. Counsel finally then state that I was up to him to decided what type of defense we use."
 - d. "Counsel was ineffective by allowing the judge to allow my phone records as evidence. The Fourth Circuit Court of Appeals has ruled that obtaining historical cell site data without a warrant is a violation of your Fourth Amendment Rights. The State Supreme Court ignored my argument and vacated it. The State Supreme court also ruled that the trial judge and the Court of Appeals Erred."

- e. "Counsel was ineffective by not getting the other 15 swabs of DNA tested."
- f. "Counsel was ineffective by not filing a motion for a mistrial. When the juror saw misconduct by one of the state witness. Tr. P. 672-701. Also, Counsel stated that would give the state time to test the DNA that didn't get tested."
- g. "Counsel was ineffective for not getting our own expert witness pertaining to my historical cell site data and the victim's toxicology report."

At the PCR hearing, Applicant's attorney informed the Court that he was proceeding on the following allegations:

1. Ineffective Assistance Counsel

- a. Counsel failed to object to testimony from three of the State's witnesses concerning how Applicant cut his hand.
- b. Counsel failed to move for a mistrial when a juror witnessed the victim's husband (Michael Bartley) give money to a State's witness (Stephen Edwards) during a lunch break at trial.
- c. Counsel referenced specific circumstantial evidence language in his opening, (from State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989)) that the trial judge did not use in his ultimate charge to the jury.
- d. Counsel failed to communicate the defense and trial strategy.

II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in

order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Counsel failed to object to testimony from three of the State's witnesses concerning how Applicant cut his hand.

Applicant alleged that Counsel was ineffective for failing to object to testimony from three of the State's witnesses where they explained how Applicant cut his hand. During Applicant's trial, the State presented the theory that Applicant cut his finger while committing the crime, had to go to the emergency room to get stitches, and gave conflicting stories about how he cut his finger See Transcript pp. 871. Applicant's cousin, Stephen Edwards, testified at trial that Applicant saw him the morning after the incident and told asked him to take Applicant

to the emergency room because he got in a fight with three guys from Beaufort. Transcript 374. Dr. Luca Delatore testified that he treated Applicant for his finger laceration and Applicant told him it was the result of a saw injury. Transcript 416. Bluffton Pharmacist Maggie Furchak testified at trial that Applicant came in to her pharmacy to fill prescriptions from the ER, and told her that he cut his hand that morning at work on a piece of glass. Transcript 424. Jeweler Chris Golis testified at trial that Applicant sold him the victim's ring and told him that he cut his hand with a saw on a chain link fence. Transcript 432. At the PCR hearing, Counsel testified he saw no reason to object to this testimony because Applicant's false exculpatory information would have been let in at trial.

This Court finds Counsel was not ineffective for failing to object to the above testimony as it did not violate hearsay rules. Rule 801 of the South Carolina Rules of Evidence states that a statement is not hearsay if offered against a party and "(A) is the party's own statement in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth." Rule 801(d)(2)(A)-(B), SCRE. "As a general rule, statements or declarations made by one accused of a crime are admissible against him." State v. Beck, 342 S.C. 129, 134, 536 S.E.2d 679, 682 (2000) (citing State v. Plyler, 275 S.C. 291, 270 S.E.2d 126 (1980)). The statements at issue are not hearsay because they were offered against Applicant and consist of Applicant's own statements to the particular witnesses. This Court finds Counsel was not deficient for failing to object because there was no legitimate objection to be made to the statements. This Court finds any objection from Counsel would have caused undue attention to the witnesses' statements. This Court further finds the outcome of Applicant's trial would not have been different had Counsel objected to this testimony. Accordingly, this allegation must be dismissed.

Counsel failed to move for a mistrial when a juror witnessed the victim's husband (Michael Bartley) give money to a State's witness (Stephen Edwards) during a lunch break at trial.

Applicant alleged Counsel was ineffective for failing to move for a mistrial when a juror witnessed the victim's husband (Michael Bartley) give money to a State's witness (Stephen Edwards) during a lunch break at trial. During the trial the jury foreman informed the court that Juror 59 told him that during a lunchbreak he saw Mr. Bartley shake the hand of Mr. Edwards and give him money. Transcript 672. The court questioned Mr. Bartley, who told the court he gave him \$20 for lunch money, shook his hand, and walked away. Transcript 675. The court also questioned Juror 59 concerning his observations. Transcript 679. Juror 59 told the court he did not think much of the interaction and thought Mr. Bartley was just helping Mr. Edwards out because his house was in dire straits. Transcript 681. The court then questioned the jury foreman who told this information would not affect his decision making and no other juror knew of this interaction. Transcript 684-686.

Before the trial judge made a decision concerning Mr. Bartley's actions, he allowed Counsel to make his argument. Counsel informed the court he discussed the incident with Applicant and decided he would not ask for a mistrial. Transcript 691. Counsel argued that the juror should stay on the case because "[the defense] didn't make this mess" and the incident in question would call into question the credibility of the State's witnesses. Transcript 691. Ultimately, the trial judge excused Juror 59 and Counsel later called Mr. Bartley as a witness to have him explain his actions toward Mr. Edwards during the lunch break.

At the PCR hearing, Counsel testified he did not ask for a mistrial because he wanted to throw a wrench in the State's case. He testified he wanted to imply to the jury that Mr. Edwards was more culpable than the State made him seem. Counsel further testified he wanted the jury to be shocked, see the rush to judgment on behalf of the State, and see that Mr. Edwards and Mr.

Bartley had things to hide.

This Court finds Counsel was not deficient for failing to ask for a mistrial after Juror 59 witnessed a money exchange between two State's witnesses during a lunch break at trial. This Court finds Counsel articulated a valid trial strategy in not asking for a mistrial because he wanted to use the situation to the defense's advantage and cause the jury to hesitate and think that the State's main witnesses were colluding. This Court finds Counsel's actions were not deficient, especially considering he was able to call Mr. Bartley as a witness and question him about the interaction and attack Mr. Edwards' credibility during closing argument based on his taking of \$20 from Mr. Bartley. See Transcript 853.

Furthermore, this Court finds Applicant has failed to prove he was prejudiced by Counsel's failure to move for a mistrial. Granting a mistrial is a serious and extreme measure which should be taken only where an incident is so grievous that the prejudice can be removed no other way. State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999). After lengthy discussion and investigation into the incident by the trial court, all parties involved agreed the best course of action would be to dismiss Juror 59 and replace him with an alternate. This Court finds a motion for a mistrial would have been unsuccessful because any prejudice that would have resulted from Juror 59 was removed upon his removal from the jury. As Applicant has failed to meet his burden of proving Counsel was ineffective in this regard, this allegation must be dismissed.

Counsel referenced specific circumstantial evidence language in his opening, (from State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989)) that the trial judge did not use in his ultimate charge to the jury.

Applicant alleged Counsel was ineffective for using circumstantial evidence language in his opening statement that was not used in the trial judge's jury charge. During Counsel's opening statement he stated,

To convict, the law says that you, as a juror, have to rule out every reasonable alternative that explains the evidence other than guilt before you -- and it's only when you can rule out innocent explanations that you can begin to rely and conclude that this is true evidence of guilt of murder.

Transcript 299. This particular "reasonable hypothesis" language is found in State v. Edwards, 298 S.C. 272, 275, 379 S.E.2d 888, 889 (1989). At the end of the trial, the court charged the jury but did not use this "reasonable hypothesis" language in its charge on circumstantial evidence. Counsel objected to the court's charge and argued the court should charge the jury with the Edwards language on circumstantial evidence:

But it is incumbent on the jury to sift the circumstances to see if the circumstances are proven beyond a reasonable doubt and are they consistent with each other, taken together and pointing conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis

Transcript 893. The trial court ultimately denied Counsel's objection and request to charge.

Transcript 894.

At the PCR hearing, Counsel testified he believed the "reasonable hypothesis" language to be correct because the courts have not ruled that a judge cannot give this instruction and a recent trend showed courts going back to using the "reasonable hypothesis" language. He testified he prepared a proposed jury instruction with this language but the judge denied his request.

This Court finds Counsel was not ineffective for using this language in his opening statement. This Court finds that Counsel's actions were not deficient, as Counsel had no way of knowing the trial court would later deny his request for this language to be included in the jury instruction. This Court finds Counsel acted reasonably in using this language as he later objected to the court's jury instruction and moved to include his own requested instruction on circumstantial evidence, which the trial judge ultimately denied. Counsel also protected this issue

for appellate review by the Court of Appeals.¹

This Court further finds Applicant was not prejudiced by Counsel's actions as this one sentence was a minor part of his opening statement. This Court finds the outcome of Applicant's trial would not have been different had Counsel employed different language in his opening, given the overwhelming circumstantial evidence in this case including the victim traveling with "D" the night of the incident, Applicant's conflicting stories about how he cut his finger and hand, Applicant's blood DNA found on the victim's car, the victim's blood found on the victim's car, Applicant's blood DNA found on the victim's shoe and belongings, the victim's belongings being discarded at Applicant's cousin's house, Applicant pawning the victim's ring the morning after the incident, and cell phone data showing Applicant's phone being used the night of the incident near the location of the victim's body. Additionally, the trial judge charged the jury that opening statements by attorneys are not the evidence. Transcript 882. Applicant has failed to prove that the outcome of the trial would have been different had Counsel used different language in his opening statement. As Applicant has failed to meet his burden of proving Counsel was ineffective in this regard, this allegation must be dismissed.

Counsel failed to communicate the defense and trial strategy.

Applicant alleged Counsel was ineffective for failing to communicate the defense and trial strategy and whether Applicant should testify in his own defense. Applicant testified he was in jail for two years prior to trial and only met with Counsel five times. He testified Counsel did not discuss any defense strategy with him. Applicant testified they went over the DNA results from the State, but testified that he was known to be around the victim and her car prior to this incident. Applicant testified he told Counsel he had nothing to do with the crime. Applicant

¹ The Court of Appeals ultimately found no reversible error in the trial judge's circumstantial evidence charge, holding the charge as a whole properly conveyed the applicable law. See State v. Drayton, 411 S.C. 533, 546, 769 S.E.2d 254, 261 (Ct. App.), cert. granted in part, judgment vacated in part, 415 S.C. 43, 780 S.E.2d 902 (2015).

testified he gave Counsel the name of potential alibi witnesses and was not sure if Counsel got in touch with them. Applicant testified Counsel spoke with Applicant's ex-girlfriend and maybe one or two other witnesses. Applicant testified he was not aware Counsel would be using a "cover up" defense at trial, where Counsel argued that the evidence only showed that Applicant may have covered up another person's crime.

Applicant testified he did not talk to Counsel about whether he should take the stand and testify at trial. Applicant testified he had a colloquy with the trial judge about his right to testify. He testified he had discussions with Counsel about the advantages and disadvantages of Applicant testifying. Applicant testified Counsel told him the State could use his prior record against him. He testified he was served with the State's notice to seek a sentence of life without parole and he discussed this Counsel.

Counsel testified he met with Applicant every other month prior to the trial. He testified their meetings would last one to two hours. He testified they discussed all of the evidence and tried to get as much information as he could on the circumstances and any witnesses he had in common with the victim. He testified they discussed potential defenses Applicant could have against the State's evidence. Counsel testified he discussed with Applicant the pros and cons of testifying at trial in the months leading up to the trial date. He testified Applicant did not want to testify at trial and was concerned he would get convicted. Counsel presented a memo he sent to Applicant on April 5, 2012 detailing their conversations.

Counsel testified he was concerned about Applicant's case because of the cell phone and DNA evidence against Applicant. He testified Applicant maintained he was not involved, but did not realize his blood was at the scene of the crime. He testified he discussed the strength of the State's case. Counsel testified the defense's main challenge was Applicant's DNA, including his

blood found on a bag containing items belonging to the victim. Counsel testified he hired a Ph.D. expert to review the State's DNA evidence and the expert found there were no errors with the DNA analysis.

Counsel testified he went out to the scene of the crime and tried to contact Applicant's cousin, Mr. Edwards. He testified Applicant gave him the names of witnesses, who mostly consisted of Applicant's relatives who lived in his area. He testified he was able to track these witnesses with investigators in Bluffton and Hollywood.

Counsel testified he told Applicant a "cover up" defense was the best theory given the evidence. He testified Applicant was not happy with the defense at trial, but as Applicant's attorney he has to argue the best evidence to achieve a not guilty verdict. Furthermore, Counsel testified the judge properly conducted a colloquy about Applicant's right to testify and he was not surprised that Applicant chose not to take the stand.

This Court finds Counsel was not deficient for failing to communicate defenses and a defense strategy. This Court further finds Counsel was not deficient in his preparation for trial and his communication with Applicant concerning his right to testify. This Court finds Counsel saw Applicant at least twelve times in jail or via video prior to trial and discussed with Applicant the evidence, facts, investigation, elements of the charge, circumstantial evidence, DNA, and cell phone data. Counsel also discussed the State seeking life without parole, his trial strategy, the defense's challenges (outlined in detailed notes from their last meeting), and how the State could prove their case. This Court finds Counsel undertook a tremendous amount of investigation including hiring his own DNA expert and looking for alibi witnesses with his investigator. This Court finds although Applicant did not have a firm alibi defense, Counsel fully investigated. This Court finds Applicant has failed to show Counsel's communication was deficient as he

thoroughly went over all aspects of Applicant's case, including his defense strategy. This Court finds Counsel articulated a valid trial strategy to argue the evidence only showed a cover-up, since Applicant was biologically tied to the scene of the crime. This Court finds Applicant has failed to show how Counsel's communications with him were deficient or that the outcome of his trial would have otherwise been different.

This Court further finds Counsel was not deficient in his advice to Applicant concerning his right to testify. This Court finds Counsel did discuss the pros and cons of testifying with Applicant and the trial judge conducted a full colloquy as well to ensure Applicant's decision was made knowingly and voluntarily. See Transcript 590-594, 794-795. This Court finds Applicant has failed to show that Counsel's advice was deficient and that he relied on the advice to his detriment. This Court finds Applicant has failed to show the outcome of his trial would have otherwise been different and this allegation is dismissed.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

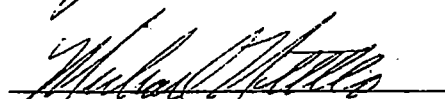
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial

of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 23 day of Jan., 2018.


MICHAEL G. NETTLES
Presiding Judge
Ninth Judicial Circuit

Florence, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

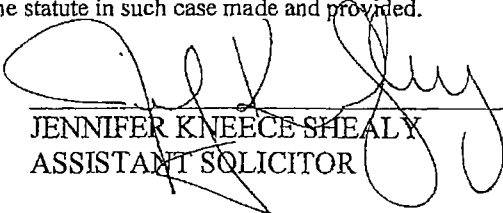
INDICTMENT

At a Court of General Sessions, convened on December 6, 2010 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about August 9, 2010, with malice aforethought, ^{DCN, Darryl} DAROLD L DRAYTON did kill and murder Alexis Lukaitis by means of stabbing her, and that Alexis Lukaitis did die in Charleston County as a proximate result thereof on August 9, 2010; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

JCS20100804530

WITNESSES

JAMES B. PERKINS
Charleston County Sheriff

AGENCY CASE NUMBER

2010012983B

ARREST WARRANT NUMBER

K304936

DATE OF ARREST

August 27, 2010

ACTION OF GRAND JURY

TRUE BILL

Randall R. Smith
Foreperson of Grand Jury
Date: 10/5/12

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury
Date: 10/5/12

INDICT

DOCKET NO. 2010GS1008551

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

December Term 2010

THE STATE

vs.

[Signature]
DAROLD L DRAYTON

DOB: [REDACTED]
B/M

Indictment for
Murder