

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2013-001680

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SC Court of Appeals

Marcus Bailey,.....Appellant,

v.

The State of South Carolina,.....Respondent.

SUPPLEMENTAL RECORD ON APPEAL

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1 the jury about that meeting?

2 A About when we met?

3 Q Yes.

4 A When we met, he was paying for some clothes, and he
5 seemed happy. So I asked him -- he was singing along with
6 a song. I was talking. Then we exchanged numbers.

7 Q Okay. So he was happy singing along to a song. You
8 were kind of attracted to do, and you exchanged numbers
9 at --

10 A Right.

11 Q -- that point?

12 A Yes.

13 Q Did you know him before that time?

14 A No, ma'am. That was the first time I ever met him.

15 Q And once y'all exchanged numbers, did he stay in the
16 store? Did he leave? When was your next interaction?

17 A I don't recall him staying in the store. I think he
18 bought his clothes and he left, and then after I got off,
19 I think that maybe the next day, we was talking on the
20 phone.

21 Q Okay. And what did y'all talk about?

22 A He was saying it was his birthday, and he was out of
23 town and he was headed back. We was talking on the phone
24 while he was heading back from being out of town.

25 Q Okay. Did you actually know where he went, or did

1 you just know that he was out of town?

2 A I think he said he went to the mall, Charlotte maybe.

3 Q Charlotte?

4 A Yes.

5 Q And when he spoke with you on the phone, he was on
6 his way back?

7 A Yes, ma'am, it was -- it was night.

8 Q It was nighttime?

9 A Yes.

10 Q Was he by himself, or could you hear other people in
11 the background?

12 A When I was talking him, he said there were some
13 people in the car, but I didn't really -- you didn't hear
14 them laughing or talking. So maybe some people would be
15 quiet when people are on the phone, so I'm not sure.

16 Q So you talked to him. Do you actually sets up a time
17 to meet, or what happens with respect to your
18 conversation?

19 A Yes. We was scheduled to meet up with each other
20 after he got back from being out of town.

21 Q So even though --

22 A After.

23 Q It would have been after, so when he got back?

24 A Yes, when he got back from being out of town.

25 MR. MYERS: Objection to leading, Your Honor.

1 THE COURT: Sustained.

2 BY MS. SIMPSON:

3 Q When did -- when were you supposed to meet with him?

4 A The day after.

5 Q Okay. And it was his birthday weekend?

6 A Yes, ma'am.

7 Q And did you, in fact, meet with Marcus Bailey?

8 A Yes, ma'am.

9 Q Can you tell the jury about that meeting and where
10 you went?

11 A Well, I met with him at his house. You know, we
12 decided to watch a movie, so he brought the laptop from
13 upstairs and we watched a movie.

14 Q Okay. So you met him at his house. Do you recall
15 where that was located?

16 A I know it was off Longtown Road, but that's -- I
17 can't remember the right or the left, but I know it was on
18 Longtown Road.

19 Q Okay. And he indicated to you that this was his
20 house when you came?

21 A Yes.

22 MR. MYERS: Objection, leading.

23 BY MS. SIMPSON:

24 Q Whose house did he say it was?

25 A His house.

1 Q Did he mention whether he lived there with anyone or
2 had any roommates?

3 A I can't remember.

4 Q Okay. So you arrived. Do you recall about what time
5 in the day you arrived or evening?

6 A It was after four o'clock. I remember the sun kind
7 of coming down, so I know it wasn't early on that day, so
8 I know around four or five o'clock.

9 Q Okay. And when you got there, what did you do?

10 A We watched a movie, and then we had intercourse.
11 Then I left.

12 Q Okay. And did y'all talk for a bit?

13 A Yes, we talked.

14 Q And where -- where were you in the home when you had
15 that conversation -- or conversations?

16 A Downstairs.

17 Q Downstairs. And with the movie, you said he went to
18 go get a laptop. Why did he have to go get one?

19 A Something was wrong with the TV. I'm not sure what
20 was wrong with it, but I guess we couldn't watch TV on the
21 TV, so we decided to watch a movie.

22 Q And where did he go to get the computer?

23 A Upstairs.

24 Q Went upstairs.

25 A Yes, ma'am.

1 MR. MYERS: Thank you, Your Honor.

2 CROSS-EXAMINATION:

3 BY MR. MYERS:

4 Q Good morning, Ms. Perkins.

5 A Good morning.

6 Q How are you doing today?

7 A I'm good.

8 Q You and I met briefly earlier this week?

9 A Yes.

10 Q I know this is a hard time, but I just want to ask
11 you a couple of questions. You obtained the rank of First
12 Sergeant?

13 A Yes.

14 Q Which is the top level enlistment in the military.

15 A Second, yes.

16 Q I'm sorry, Command Sergeant Major is the top.

17 A Right.

18 Q You were right there next to Command Sergeant Major
19 so congratulations, and oftentimes, when you're in
20 leadership roles in this military, you oftentimes take on
21 mentorship roles, as well, to the younger soldiers, right?

22 A Yes.

23 Q Because these younger soldiers, most of them are
24 right out of high school, right?

25 A Yes.

1 Q And most of them don't know a whole lot even though
2 they think they do, right?

3 A Right.

4 Q So sometimes it takes an experienced officer or
5 experienced enlisted personnel to basically take them
6 under their wing, right?

7 A Yes.

8 Q And I'm pretty sure just as all mentorships
9 relationships go in the military, they don't always listen
10 to what that mentor has for them to do, right?

11 A Yes.

12 Q Sometimes the mentor can talk with them, pray with
13 them, tell them not to do but they still do it, right?

14 A Yes.

15 Q No matter what they do, counting your best efforts,
16 they still do things that displease you, right?

17 A Yes.

18 Q And all you can do is just offer the best advice you
19 can, right?

20 A Yes.

21 Q And Ms. Smith, she was no exception to that, was she?

22 A No, not all the time.

23 Q I mean, she didn't always adhere to your
24 instructions, did she?

25 A Not always.

1 Q She didn't always do what you wanted her to do, did
2 she?

3 A No.

4 Q In fact, when she started dating Marcus, you didn't
5 know very much about Marcus, if anything, did you?

6 A No.

7 Q You were basically saying, "Look, Almanita, you need
8 to be careful with anybody you come in contact with,"
9 right?

10 A I told her not to date at all at that particular
11 time.

12 Q Okay. Because I mean, she was a young family out on
13 her own away from her family, correct?

14 A That wasn't my reason. My reason was because she
15 needed to focus on her career.

16 Q Sure, but she didn't see it that way, right?

17 A No.

18 Q In fact, you mentioned this matter about Craigslist.
19 Despite your best efforts to not have her talk to someone
20 from Craigslist, she still did it, didn't she?

21 A I don't know if she did or didn't after I talked to
22 her, but I told her once she told me -- and he shortly
23 after she told me that, I had saw a Dr. Phil show stating
24 horrible things that dates do to the person that they took
25 out.

1 Q Sure.

2 A And she -- and I just told her not to do it anymore.

3 Q Sure, and -- because as you said, just as Dr. Phil,
4 you hear all sorts of horror stories of who you could meet
5 online, right?

6 A Right.

7 Q I mean, online dating is not the safest way to go
8 about meeting someone, right?

9 A Right.

10 Q But you know that she didn't meet Marcus Bailey on
11 Craigslist, right?

12 A Right.

13 Q You know she didn't meet him in any capacity in
14 online dating, right?

15 A Right.

16 Q I mean, she met him when they both were in a combat
17 zone, right?

18 A I know she was his instructor.

19 Q Okay. And -- but they did meet while they were in
20 the combat zone, and she was in Iraq, right?

21 A She was in Iraq.

22 Q That was a designated combat zone, right?

23 A Yes.

24 Q And you understood that that's when she and Marcus
25 first met, right?

1 A I understood that she gave him a Mail Handler's cap.

2 Q Okay. But you know that she didn't first come in
3 contact with Marcus from Craigslist.

4 A Correct. She did not.

5 Q But you know that she would oftentimes look for
6 individuals on Craigslist?

7 A No. I don't know that she oftentimes did.

8 Q Just that one time --

9 A Just I know she did do it.

10 Q But after you admonished her and told her not do, you
11 don't know whether or not she heeded your instructions or
12 not, do you?

13 A Correct.

14 Q I mean, she hadn't heeded all of your instructions
15 before, right?

16 A Not all of my instructions.

17 Q All right. So the fact that you told her not to
18 associate with someone on Craigslist doesn't mean that she
19 didn't listened and she didn't do it, right?

20 A Does not mean that, no.

21 Q Okay. Did you raise -- when you talked to law
22 enforcement, did you give law enforcement any names from
23 any individual that she might have met on Craigslist?

24 A No.

25 Q Do you know whether or not law enforcement did any

1 investigation into talking with someone that she might
2 have met from Craigslist?

3 A I'm not aware.

4 Q Now, I believe you testified that when Marcus moved
5 in, that Almanita provided him financial support, right?

6 A I know she helped him out sometimes.

7 Q Monetarily wise, right?

8 A Yes.

9 Q Financial support, right?

10 A I don't know if it was support or if it was borrowed
11 money. I just know that she helped him out sometimes.

12 Q Okay. And he was living in the house, right?

13 A Yes.

14 Q And she didn't tell you every single thing that was
15 going on in the relationship between she and Marcus, did
16 she?

17 A No.

18 Q And you didn't like Marcus a whole lot and
19 necessarily get any information from him, right?

20 A Correct.

21 Q And when you went by there, though, on August 22,
22 2012, you stated that Marcus was there, right?

23 A Yes.

24 Q He came to the door?

25 A Yes.

1 Q He gave you his telephone number, didn't he?

2 A Yes, when I asked for it.

3 Q Sure. I mean, you didn't necessarily care for him
4 too much, so you weren't expecting for him to just offer
5 it to your, were you?

6 A I don't know. I wasn't thinking that way.

7 Q Sure, but he gave it to you when you asked, right?

8 A Yes.

9 Q And you didn't ask to necessarily go inside the
10 house, did you?

11 A No.

12 Q And he wasn't -- he didn't come out and just say hey
13 look, you can't come in.

14 A No.

15 Q I mean, he just basically came there to the door
16 frame, and he talked to, right?

17 A Yes.

18 Q And you said that conversation lasted for about ten
19 minutes?

20 A Approximately, sometime like that.

21 Q All right. And -- but he didn't stop you in any way
22 from coming in. You just didn't ask, right?

23 A I didn't ask, and I didn't try.

24 Q Okay. But you said that later on that day or that
25 evening, you actually called him on two occasions, right?

- 1 A Correct.
- 2 Q And he picked up on the second time, didn't he?
- 3 A Yes.
- 4 Q So you didn't have to leave a voice mail message for
5 him the second time, right?
- 6 A Right.
- 7 Q Because he answered the call?
- 8 A Yes.
- 9 Q And he talked to you, right?
- 10 A Yes.
- 11 Q On that next morning, the individual that you -- that
12 called you when you first learned about Almanita's death
13 was Marcus, wasn't it?
- 14 A Yes.
- 15 Q And now, you weren't there to see him personally when
16 he made that phone number, were you?
- 17 A No.
- 18 Q Now, he basically just called you and told you what
19 had happened, didn't he?
- 20 A Yes.
- 21 Q I know you're probably not as used to the South
22 Carolina heat as the residents are, but do you recall that
23 last summer was an untypically hot summer?
- 24 A Yes.
- 25 Q I mean, temperatures were in excess of 100 degrees,

1 right?

2 A It was hot.

3 Q Hot and humid, wasn't it?

4 A Yes.

5 Q Were you aware that Marcus had a child with
6 Ms. Kalisha Purvis?

7 A I know he had a child.

8 Q Did you know that child was under the age of five?

9 A I didn't know how old the child was.

10 Q Did you also know the child was also about to start
11 school?

12 A I remember Marcus saying something about the child's
13 first day of school is tomorrow.

14 MR. MYERS: Thank you. Thank you, Ms. Perkins. No
15 further questions.

16 THE WITNESS: Yes.

17 THE COURT: Redirect?

18 REDIRECT EXAMINATION:

19 BY MS. CAVANAUGH:

20 Q Defense counsel just asked you why you didn't like
21 Marcus. Why didn't you like Marcus?

22 A Because he lied to Almanita.

23 Q Can you explain that?

24 A He told her that he got out of the Army --

25 MR. MYERS: Objection, Your Honor.

1 At this point -- I don't -- but I think at this
2 point, the only way that she would know -- just as the
3 Court sustained a previous objection -- was the basis --
4 the only way she would know that is what the victim
5 stated, if she doesn't have any personal knowledge on it.

6 THE COURT: Do you want to be heard on this?

7 MS. CAVANAUGH: I can. She actually does have
8 personal knowledge, if I could finish the question.

9 THE COURT: You can finish the question.

10 BY MS. CAVANAUGH:

11 Q Did you actually have personal knowledge of his
12 military history?

13 A Yes.

14 Q Can you please tell us what that was?

15 THE COURT: Hold on. You have personal knowledge of
16 this, ma'am?

17 THE WITNESS: Of some of his military history, yes.

18 THE COURT: Okay. I'll overrule the objection.

19 BY MS. CAVANAUGH:

20 Q Go ahead.

21 A What was the last question? Say it again.

22 Q What was your -- why -- was the reason that you
23 didn't like Marcus related to his military history?

24 A Because I am the supervisor of Strength Management
25 for Fort Jackson, and I handled Drill Sergeant Management.

1 The reason that he told Almanita that he got out of the
2 Army was not --

3 MR. MYERS: Objection.

4 THE WITNESS: -- a true statement.

5 MR. MYERS: Your Honor, she is basically saying what
6 he told her -- What he told Almanita, I don't see how she
7 is saying that's her personal knowledge.

8 MS. CAVANAUGH: I can direct her to what I'm trying
9 to get from her.

10 THE COURT: Okay.

11 BY MS. CAVANAUGH:

12 Q Did you later use resources at Fort Jackson to find
13 out how he was discharged?

14 A Yes.

15 Q Can you please explain what you found out?

16 A I found out that he was discharged under Chapter 14,
17 Bad Conduct Discharge. He was relieved from drill
18 sergeant duty due to AWOL and other disciplinary actions.

19 Q And in order to get actually discharged --

20 MR. MYERS: Objection, Your Honor. We do have a
21 point of law on that.

22 THE COURT: All right. Let's take a break. Ladies
23 and gentlemen of the jury, head to your jury room. Do not
24 discuss the case. We'll be back with you in just a
25 moment.

1 (WHEREUPON, the jury left open court at approximately
2 10:08 a.m.)

3 THE COURT: Yes, sir.

4 MR. MYERS: Yes, sir. Your Honor, just -- Your
5 Honor, certainly we have never put any sort of character
6 evidence on behalf of Mr. Bailey, any sort of credibility
7 issue on Mr. Bailey into evidence.

8 In fact, my cross-examination of Ms. Perkins was not
9 even tailored toward that. What they are attempting to do
10 to acknowledge the bad conduct discharge is put in bad
11 character evidence.

12 It's inadmissible. It's irrelevant to what we have
13 got going on here. It has absolutely nothing to do with
14 the facts of this case that have been presented before
15 this jury.

16 We've done absolutely nothing to introduce Mr.
17 Bailey's character or his credibility, but when she states
18 that he -- that she went on this personal mission to
19 conduct some type of investigation as far as his conduct
20 or the discharge, certainly that's inadmissible character
21 evidence and it's irrelevant.

22 At this point, the only grounds that we know of, or
23 the only remedy, is a mistrial.

24 THE COURT: Yes, ma'am.

25 MS. CAMPBELL: Your Honor, under State vs. Dunlap, in

1 his opening statement -- I was actually shocked -- went
2 into his entire stellar military career, how he had done
3 two tours in Iraq, and he was a good soldier and things of
4 that nature. That's what he put in his opening statement.

5 Pursuant to State vs. Dunlap, that alone is enough
6 for us to get into this material, which we were going to
7 do at a later time. However, he is the one that then
8 posed the question to her, knowing what the answer is,
9 because she knows he's lying to Almanita, and he knows
10 that.

11 But basically, he just throws it out there in a
12 vacuum that, "Oh, you didn't like him, did you?" Like she
13 is some kind of bad person for not liking him. At that
14 point, he then opens the door beyond what he did in
15 opening statement as far as what she can testify to is the
16 reason that she didn't like him.

17 This jury has a right to know. Once he throws it out
18 there, he asked the question. He opens the door, and they
19 have the right to know exactly why she doesn't like him.

20 I think the reason is -- again, he tries to bootstrap
21 it to a hearsay exception. At that point, he is the one
22 that asked her, "You don't like him."

23 At that point, the jury has a right to know why. In
24 addition to that, Your Honor -- and I would ask the court
25 reporter if you would like -- I mean, you heard it, what

1 he said in opening statement. That alone opens up his
2 entire character as far as his military career.

3 MR. MYERS: Judge, obviously --

4 MS. CAMPBELL: He could have --

5 MR. MYERS: -- the opening statement is not even in
6 evidence, not even evidence, and -- but in addition to
7 that, Your Honor, we never put any sort of witness on the
8 stand to put his evidence or his character in question.

9 Her testimony is the fact that, as I recall her
10 cross-examination was simply that she didn't even know
11 enough to necessarily -- to even dislike or not like the
12 individual. She clearly stated that.

13 To go into whether or not he was a bad conduct
14 discharge when she is not even the custodian of records at
15 Fort Jackson at that particular time is inadmissible
16 hearsay. It's bad character evidence.

17 MS. CAMPBELL: Your Honor, I have a copy of Dunlap.
18 May I approach?

19 THE COURT: You may.

20 MS. CAMPBELL: Thank you.

21 MR. MYERS: Additionally, Your Honor, if I recall, in
22 my opening statement, my conversation to that jury was
23 simply that Mr. Bailey was a former soldier of the
24 military. I indicated also --

25 THE COURT: You said he was a fine and decent young

1 man. He was a former soldier. He had -- did two combat
2 tours in Iraq, did very well and did outstanding.

3 MR. MYERS: That's all very true, Your Honor, but
4 that has nothing -- I mean, I also acknowledged that he
5 was discharged from the military.

6 Basically calling him fine and decent young man isn't
7 the same thing as saying that well, his military career
8 should come in as to whether or not he was discharged on a
9 bad conduct, a general discharge or a -- other than an
10 honorable discharge.

11 THE COURT: Hold on, let me read this case. I'm
12 going to let y'all -- I'm not trying to cut anybody off.
13 Just let me read this case, please.

14 MS. CAMPBELL: Your Honor, may I approach with United
15 States vs. Thomas Rollinson?

16 THE COURT: Yes, ma'am.

17 Where am I reading?

18 MS. CAMPBELL: Your Honor, I believe in Rollinson,
19 there was some language about how the prosecutor then
20 commented, said -- that came from closing argument.

21 Dunlap is more on point, but in Rollinson, basically,
22 the prosecutor commented on the fact, the reason he didn't
23 testify or wasn't allowed to do something is because the
24 defense actually brought it up in their closing argument;
25 therefore, it was proper for the State to be able to rebut

1 that inference.

2 I believe Dunlap is more on point as to the facts in
3 this case.

4 THE COURT: All right. Proffer the rest of her
5 testimony on this issue.

6 MS. CAVANAUGH: Ms. Perkins, did you have personal
7 knowledge of why the defendant was discharged from the
8 military?

9 THE WITNESS: Yes.

10 MS. CAVANAUGH: Can you explain that?

11 THE WITNESS: Because I am -- I keep all the records
12 of Drill Sergeant Management, and I have access to all
13 soldier records. I account for every soldier so when he
14 is removed, I have to read that information, and I have to
15 put it away.

16 MS. CAVANAUGH: Okay. And what information were you
17 able to find out about the defendant?

18 THE WITNESS: That he was chaptered out of the
19 military. He was AWOL. He was admitted to the hospital.
20 He admitted himself, but he didn't stay in there for a
21 PTSD; that he was AWOL.

22 He missed several formations. He was never where he
23 was supposed be, and as a drill sergeant, you have to be
24 there. I know because I was one. That's about it.

25 MS. CAVANAUGH: And was he discharged other than

1 honorable conditions?

2 THE WITNESS: I don't recall.

3 MS. CAVANAUGH: You don't know that aspect of it?

4 THE WITNESS: Exactly, but I know -- oh, it was
5 dishonorable, I'm sorry. It was dishonorable.

6 MS. CAVANAUGH: That's it.

7 MR. MYERS: No.

8 (Pause.)

9 MS. CAVANAUGH: That last portion about being
10 dishonorable is not -- I don't believe is an accurate
11 statement, so I won't ask that question, but the rest of
12 it is accurate.

13 MS. CAMPBELL: It was --

14 MR. MYERS: Judge.

15 MS. CAMPBELL: It was general discharge under
16 dishonorable conditions.

17 MR. MYERS: This was no such --

18 MR. MOORE: There is no such thing. It's a general
19 discharge.

20 MR. MYERS: Judge, there is such thing as a general
21 discharge under dishonorable conditions. It's a general
22 discharge, an other than honorable discharge, or bad
23 conduct discharge.

24 She testified on direct examination -- on redirect
25 that it was a bad conduct discharge. Now she is coming

1 back, and she said she didn't know. Now, they're trying
2 to basically say it was a dishonorable discharge, and it
3 wasn't.

4 MS. CAVANAUGH: I will actually refer to the record
5 about that, Your Honor.

6 THE COURT: Do you have his DD 214?

7 MR. MYERS: Yes, Your Honor.

8 THE COURT: Can I see it?

9 (Complies).

10 Okay. All right. What the DD 214 says is that he
11 was discharged under honorable conditions. The reason for
12 separation was a pattern of misconduct.

13 Now, my understanding of what this witness said to
14 the jury was that he was taken out of the Army under
15 Chapter 14, and she referred to it as a bad conduct
16 discharge.

17 MS. CAMPBELL: That's correct.

18 THE COURT: And then she mentioned him being AWOL and
19 other offenses.

20 MS. CAVANAUGH: Which is also an accurate statement,
21 Your Honor.

22 THE COURT: I'm sorry. I didn't hear you.

23 MS. CAVANAUGH: The fact that he was AWOL is included
24 in a huge stack of records that we have from --

25 THE COURT: Okay.

1 MS. CAVANAUGH: -- Fort Jackson.

2 THE COURT: The first issue is did Mr. Myers open the
3 door to this in his opening statement.

4 In his opening statement, Mr. Myers said, "Marcus is
5 also a former soldier of this great nation having served
6 two combat tours in Iraq. Marcus grew up in the San Diego
7 area, California, didn't necessarily have a whole lot, but
8 saw a need to defend his country. So at the young age of
9 18, 19, he joined the military, did very well: Two combat
10 tours to Iraq, several metals, several meritorious awards,
11 did outstanding, achieved the rank of Staff Sergeant and
12 basically was here at Fort Jackson until January 2012
13 after he was discharged."

14 The first issue we have to undertake is was there a
15 door opening into the defendant's conduct based on
16 Mr. Myers' opening statement and based on the authority of
17 State vs. Dunlap which is a 2003 State Supreme Court case
18 where the defense attorney, where his client was on charge
19 for a drug case, basically said that his client was merely
20 an addict. Based upon that, the State was allowed to
21 introduce evidence of his prior convictions.

22 So let's talk about the door opening first.

23 MS. CAMPBELL: May it please the Court, Your Honor.

24 THE COURT: Yes, ma'am.

25 MS. CAMPBELL: And based on what you just said, he

1 basically said he was promoted to Staff Sergeant. The
2 part that Mr. Myers did not put the before the jury was
3 that he was promoted to that -- an E-6 rank in the year
4 prior to his discharge under -- for a pattern of
5 misconduct. He was demoted down to E-1; is that correct?

6 MS. SIMPSON: Yes.

7 MS. CAMPBELL: E-1; that he was voluntarily
8 hospitalizing himself because he threatened his commanding
9 officer on at least one occasion that I can recall.

10 I have got the records if you want them, Judge, that
11 he had a pattern of misconduct as noted in his discharge
12 that caused him to be discharged. I believe he was --
13 there was a Chapter 14.

14 Do I have that right, a Chapter 14?

15 MS. CAVANAUGH: Yes.

16 MS. CAMPBELL: A Chapter 14 proceeding against him,
17 and that's what led to his discharge, I believe, in
18 January of 2012.

19 THE INVESTIGATOR: That's correct.

20 MS. CAMPBELL: January 20th, 2012.

21 Your Honor, based on what Mr. Myers said in his
22 opening statement, that's simply misleading to this jury
23 about his service.

24 We understand the limitations of character evidence
25 and what we're allowed to get into. However, once he puts

1 that out there -- and that's in front of this jury -- by
2 his own opening statement -- and that's what he chose to
3 say. Quite frankly, I was surprised. Then at that point,
4 I think we just have the right, too, to a limited degree
5 go into the fact of what his real service was, his
6 completes service.

7 Of course, they can go into the fact he served two
8 tours of duty. You haven't heard us object to any of
9 that. That is true.

10 All we're trying to do is get the truth in front of
11 this jury. Granted, we can't go into his character until
12 he goes there. We agree with that. Then with this
13 witness, knowing the reason she didn't like him was
14 because of his military issues, he says basically -- throw
15 it out there, "Oh, well, you didn't like him" like, you
16 know, there is something wrong with her.

17 At this point, the jury has the right to know, "I
18 didn't like him, you know, because he lied." Basically,
19 she has a right to know he had lied and that she checked
20 his military history.

21 He was far less than honorable at the end of his
22 military career which directly contradicts what they chose
23 to put in their opening statement about this defendant.

24 I don't know how much clearer it could get as far as
25 opening the door to that fact. You have already put into

1 the record exactly what was said, and basically, that was
2 just partially true. But it totally is misleading and
3 totally opens the door to us being able to just let the
4 jury know the whole truth about this man and his
5 character.

6 MR. MYERS: Thank you, Your Honor.

7 Your Honor, if there is any surprise, it's because of
8 the uninitiated. Now, here is the problem, everything
9 that I stated in my opening statement is true. He served
10 two combat tours in Iraq. He joined. I told the jury
11 that he was discharged. All of that is true.

12 THE COURT: It's also true that he was discharged as
13 an E-1 based on a pattern of misconduct.

14 MR. MYERS: And, Judge, he is -- he received an
15 honorable -- a general discharge under honorable
16 conditions. That is distinctly important because to the
17 uninitiated who hear a bad conduct discharge, they
18 basically refer that to him to say, "Oh, he must be a bad
19 person," but they're not the case. He is receiving VA
20 benefits because of his general discharge under honorable
21 conditions.

22 THE COURT: But the reason for the separation on the
23 DD 214 is a pattern of misconduct.

24 MR. MYERS: Judge, the DD 214, that DD 214 that
25 you're referring to, that document has been amended before

1 his got his VA disability benefits.

2 So the fact that he might have gotten discharged, and
3 it says that on the DD 214, the fact that he is getting
4 his benefits from the VA would certainly mean that he got
5 a discharge under honorable conditions.

6 They would not have given him the honorable
7 conditions that they felt true that -- that he went AWOL
8 and all the patterns of misconduct. So any sort of
9 comment and any sort of conversations they're having about
10 whether or not they're surprised, this witness testified
11 that he received a bad conduct discharge, which is a
12 completely different matter than him being just discharged
13 from the military, whether it be honorable or other than
14 honorable, but in this case, we know that it was honorable
15 under honorable conditions.

16 And, Judge, it's certainly two different things when
17 you start talking about a -- when you characterize a
18 matter in the military as a discharge, everybody knows
19 that there is a clear distinction between a dishonorable
20 or an honorable discharge.

21 This witness stated that she was the individual
22 looking for records. She is basically trying to bolster
23 her credibility because she would be the individual who
24 could look at it. All of the sudden, she characterizes it
25 as a bad conduct discharge which is not correct.

1 MS. CAMPBELL: Which he can basically go back and
2 impeach her with anything he wants to if that's not
3 correct.

4 Your Honor, I would also -- can I approach with more
5 documents?

6 THE COURT: Yes, sure.

7 MS. CAMPBELL: This is also -- they have his records,
8 and here are some of the records she would have reviewed
9 about his conduct which we're referring to.

10 THE COURT: Okay. My question at this point in the
11 discussion of the legal argument is how was the door not
12 opened based upon the opening statement of defense? You
13 said, "He did very well. He did outstanding."

14 MR. MYERS: Yes, sir. And that's true, Judge,
15 because the only --

16 THE COURT: But I'm not saying it's not true. I
17 don't --

18 MR. MYERS: Yes, sir.

19 THE COURT: I can see. I mean, I'm looking at his DD
20 214. I can see his metal badges, citations, campaign
21 ribbons. I can see all that. I'm not saying you lied.

22 MR. MYERS: Right.

23 THE COURT: I'm not saying -- what I'm saying is it's
24 just not the whole story, so the jury is left with the
25 impression that this guy had a stellar military career

1 when in truth, he got discharged and got bumped down five
2 grades because of his behavior and his conduct.

3 MR. MYERS: But, Judge, again in my statement --

4 THE COURT: So -- and I want you to read State vs.
5 Dunlap, because in Dunlap, I mean, the defense attorney,
6 the guy's on trial for distributing crack cocaine, okay.

7 He has got a prior criminal history for drugs, and
8 the defense attorney in his opening statement says, "He's
9 been in trouble with the law before. He's a young man
10 addicted to drugs and don't convict -- we could convict
11 him right now because he's a young man hooked on crack and
12 had a problem with it. He never sold it but used it."

13 Judge Floyd at that time went in and said the opening
14 statement created -- or the Supreme Court says the opening
15 statement created the impression that the petitioner, that
16 would be the defendant, had no prior connection to the
17 sale of narcotics. In reality, petitioner was not a mere
18 drug user, but an individual who sought to elevate his
19 status to that of a drug dealer.

20 We therefore agree that defense counsel opened the
21 door to the introduction of evidence rebutting the
22 contention that the petitioner was merely an addict," and
23 they let in his entire prior -- his entire drug criminal
24 history which had three drug convictions.

25 And I mean, how is the jury given the full and

1 complete picture of his military service? I mean,
2 throughout this trial, the defense has gone into, again
3 and again, that Mr. Bailey is a former -- is a veteran of
4 the Army; that he served two combat tours and has gone
5 into his metals, his awards and his outstanding
6 achievement and how well he did in the military.

7 In fact, yesterday, defense counsel used that in the
8 cross-examination of the State's informant as to judge the
9 informant's credibility versus the defendant's credibility
10 in cross-examination. So why are we to leave the jury
11 left with the impression -- an impression about his
12 military service which is not accurate?

13 I mean, Mr. Moore yesterday in his cross-examination
14 of Mr. Walker basically said, "So we're supposed to
15 believe you over a combat veteran?"

16 MR. MYERS: Your Honor, beg the Court's indulgence.
17 (Pause.)

18 And, Judge, I do not believe that we opened the door.
19 I certainly understand the Court -- I'm following the
20 Court's rationale.

21 I do not believe that we opened the door enough to
22 get in character evidence that has been announced to this
23 witness.

24 THE COURT: Now, I'm coming to this witness. So
25 let's just --

1 MR. MYERS: Yes, sir.

2 THE COURT: We're going to deal this witness in a
3 second.

4 MR. MYERS: In Mr. Moore's cross-examination of
5 Mr. Walker, he was unable to go into the underlying facts
6 of Mr. Walker's case. His hands were tied.

7 We understand the Court's rationale behind that, but
8 if we were unable to go into the facts of Mr. Walker's --
9 about his crime, then we believe that at this point in the
10 court interpreting that we opened the door just in what we
11 said during opening statement, just what we said in
12 opening statement, that it would be unfair for the State
13 now to then go into all the character evidence that they
14 want to go into regarding his military service.
15 Particularly if she has told this jury it was a bad
16 conduct discharge.

17 We have don't believe, Your Honor, that we opened the
18 door sufficiently to allow them to go into what the State
19 intends to go into.

20 THE COURT: Okay. Let's deal with the issue that
21 we're -- what are we going to do with this witness? She
22 has now provided information to the jury that is -- I'm
23 going to say partially incorrect?

24 MS. CAMPBELL: We'll be glad to show her. I think we
25 can sure that by saying you mentioned a discharge. In

1 fact, this is a discharge under these conditions that you
2 reviewed, and that would cure any prejudice. But what she
3 said was wrong, actually, because he did get a general
4 discharge, and it's for a pattern of misconduct. That's
5 in the DDSN [sic].

6 THE COURT: She said a bad conduct discharge.

7 MR. MYERS: Yes, sir.

8 MS. CAMPBELL: Well, misconduct or bad conduct. I
9 mean, we can clear that up without a problem.

10 MR. MYERS: Judge, that can't be cured without a
11 problem. I mean, a bad conduct discharge, again, this is
12 all to the uninitiated.

13 When you basically mention a bad conduct discharge in
14 front of a jury, that is completely different than a
15 discharge based on misconduct. Those are two separate
16 things.

17 When you talk about a bad conduct discharge, you then
18 get into court martial. What he did was chaptered --
19 either under -- he was chaptered under Chapter 14. There
20 are two chapters in the military, either ten or 14.

21 When she states a bad conduct discharge, the only way
22 you can get a bad conduct discharge is through a trial by
23 a court martial. This wasn't a court martial.

24 So when she states a bad conduct discharge in this
25 situation here, that can't be cured, and Ms. Campbell

1 knows that.

2 THE COURT: I don't know what Ms. Campbell knows but
3 go ahead.

4 MS. CAMPBELL: Not much about the military. However,
5 I do know in this part, she mentioned chapter 14. She
6 said it was a mis -- bad conduct, and we're quibbling with
7 words here, misconduct or bad conduct. And, of course,
8 they have the right to impeach her.

9 We will be glad to show her the actual DDSN and say
10 basically it was a general discharge for a pattern of
11 misconduct to make sure that the record is clear so we do
12 not mislead this jury.

13 They have absolutely every right to impeach her, just
14 as they do any other witness, but we're talking about the
15 word misconduct versus bad conduct. That's the only words
16 we're quibbling about here because that's it.

17 He was Chapter 14. They admit that. He was demoted
18 from E-6 to E-1, and he was the -- there are letters which
19 we've handed up to the court where he asked to be
20 discharged from the Army because of his misconduct, bad
21 conduct, whatever you want to say.

22 It wasn't his idea to get out of the Army. It was
23 the Army's idea to get rid of him, and luckily in this
24 case, she actually has the background and can explain that
25 to the jury.

1 THE COURT: Would you be willing to stipulate that he
2 was discharged from the Army under honorable conditions
3 based upon a pattern of misconduct?

4 Let's say I stopped this witness from testifying
5 about this. I'm going through potential solutions --

6 MR. MYERS: Yes, sir.

7 THE COURT: -- I'm not saying I'm doing this, but I'm
8 throwing this out there for everybody to think about.
9 What about I tell -- ma'am, this doesn't have anything to
10 do with you, okay. I promise. Okay.

11 I tell her the conversation about the military
12 history is over, and we enter into a stipulation that
13 Mr. Bailey was discharged from the Army under -- a general
14 discharge under honorable conditions based upon a pattern
15 of misconduct, and we stop it. I tell them to disregard
16 anything she said about a discharge.

17 MR. MYERS: Judge, if I can approach and take a look
18 at that DD 214.

19 THE COURT: Yes, sir.

20 (Pause).

21 MR. MYERS: Thank you.

22 MR. MOORE: Judge, while he's doing that, and he has
23 got this witness, might I be excused for just one second?

24 THE COURT: Yes, sir. Yes, sir.

25 MR. MYERS: Judge, here is the problem with doing it

1 that way.

2 THE COURT: Okay.

3 MR. MYERS: When -- when you characterize the
4 discharge -- and there's only the characterization of the
5 discharge -- and it's only general under honorable
6 conditions, the confusion is that when individuals look at
7 paragraph 28 of DD 214, and they see the narrative and the
8 reason for separation and it says the pattern of
9 misconduct, that doesn't include to be a characterization.

10 What the Army, and what military branches do, is that
11 when they characterize the discharge, they specifically
12 put the characterization under a specific paragraph.

13 Then just for purposes of whether or not the veteran
14 can obtain any sort of benefits under VA or whatever, then
15 they put a separate paragraph so that they can basically
16 determine whether or not that veteran can get it.

17 But as far as the characterization, it's not correct
18 to say that he was characterized as a general discharge
19 under honorable conditions a pattern of misconduct because
20 the pattern of misconduct is simply the nature.

21 The characterization, which is only general, the bad
22 conduct, or other than honorable. So those are the only
23 three characterizations that can be done or recognized in
24 the military.

25 So the fact that they basically want to then add on a

1 pattern of misconduct is not a true representation of the
2 characterization of his discharge.

3 THE COURT: If he wasn't discharged for a pattern of
4 misconduct, then what was he discharged for?

5 MR. MYERS: Well, if I can just...

6 THE COURT: And I -- I understand. I mean, there's a
7 learning curve here --

8 MR. MYERS: Yes, sir.

9 THE COURT: -- because I don't understand all the
10 terminology, but the records that are behind the DD 214
11 which you're looking at go into north of 20 different
12 separate instances where he behaved improperly in the
13 military, and how that -- is that the pattern of
14 misconduct?

15 MR. MYERS: Yes, sir.

16 THE COURT: Is there another reason why he was
17 discharged other than the pattern of misconduct?

18 MR. MYERS: Yes, sir. The way it works, Your Honor,
19 is that the entire military is governed by regulations.
20 Even if there were one or two, the Chapter 14 discharge,
21 the only way the Army can discharge at that particular
22 time would be as an E-1 which is why you would oftentimes
23 have high ranking enlisted soldiers that would actually
24 get bucked down all the way to an E-1 based on what
25 Chapter 14 has.

1 So it's the regulation that is specific. It's not as
2 specific as we would have in the civilian courts, and that
3 the problem. When you have those discharges and you have
4 those misconduct, it doesn't necessarily mean that the
5 service member created all of these egregious errors, it's
6 because the military's hands are tied with regards to the
7 regulations that are in place.

8 The problem that you have is that when the witness
9 testifies that well, he was under honorable discharge or a
10 general discharge and honorable conditions and then she
11 refers to paragraph 28 to put in the pattern of
12 misconduct, that's not being truthful to the jury.

13 That's not -- that's just simply not the
14 characterization.

15 THE COURT: So why was he discharged from the
16 military?

17 MR. MYERS: Because of an AWOL. All that happened,
18 Judge, is that he went AWOL because he did not show up at
19 a medical treatment.

20 THE COURT: Is an AWOL misconduct?

21 MR. MYERS: It depends. That's all I can tell the
22 court under the Uniform Code of Military Justice. It
23 depends. I mean, Judge, I would almost have to put
24 together a five-hour Power Point presentation to explain
25 why it depends.

1 THE COURT: Yes, ma'am.

2 MS. CAMPBELL: Respectfully, Your Honor. That's
3 disingenuous. It states on the DD -- on his -- whatever
4 that number is.

5 THE COURT: DD 214.

6 MS. CAMPBELL: Thank you, the reason that he is
7 charged. He didn't get charged because the Army got sick
8 of him.

9 To say it wasn't as a pattern of misconduct that is
10 on that form, it's part of the official form.
11 Basically -- and I've handed up to Your Honor, the reason
12 to say that it was because he didn't report one time AWOL
13 is simply not true.

14 As is explained on his DD...

15 MR. MYERS: 214.

16 MS. CAMPBELL: 214, it's because he has given a --
17 and they gave him the benefit of the doubt because he was
18 claiming PTSD. So they give him the honorable discharge,
19 but they say it's a pattern of misconduct. It's outlined
20 in the materials we handed up to you.

21 For him to get up here and argue that it was just
22 because he was AWOL one time is simply not true, and he
23 knows that.

24 MR. MYERS: Simply, she just doesn't understand the
25 rule, but Judge, simply, DD 214 states under paragraph 24,

1 specifically the military all about paragraph, there's
2 a -- one second, please.

3 I mean, there's a reason that it states under
4 paragraph 24 the characterization, but when we're trying
5 to put a specific characterization on a discharge, it is
6 vitally important that only the characterization outlined
7 in that particular paragraph is what is -- if we basically
8 allow her to say that it was a general discharge other
9 than honorable conditions and then reference paragraph 28,
10 that's not a -- that's not a true characterization of his
11 discharge under the regulations because there are only
12 three.

13 THE COURT: Can I see that?

14 MS. CAMPBELL: Yes, sir.

15 THE COURT: I mean, have you read this December 7th,
16 2011 memorandum, Mr. Myers?

17 MR. MYERS: Yes, sir, from the Department of the
18 Army?

19 THE COURT: Yes, from Captain Parker.

20 MR. MYERS: Captain Parker, I believe, was the
21 commander.

22 THE COURT: Is that his company commander?

23 MR. MYERS: Yes, sir.

24 THE COURT: Okay.

25 MR. MYERS: That, Your Honor -- if I can just very

1 briefly, Captain Parker submitted that memorandum, but
2 just simply because it says from the Department of Army,
3 all --

4 THE COURT: I understand that.

5 MR. MYERS: Yes, sir, but that --

6 THE COURT: Here's my -- here is my -- this
7 memorandum and the commander's report is a proposed
8 separation under Chapter 14, and then it says, "Specific
9 factual reasons for action recommended." Then it lists 18
10 separate things.

11 MR. MYERS: Yes, sir. And what happened, Your Honor,
12 is that during an administrative separation, you have an
13 actual board that the separation hearing is held before.
14 All the commander does is just put together a memo to put
15 forth his recommendations for any sort of discharge.

16 THE COURT: Okay. So the next memo is from Colonel
17 Sheffield also dated the same day --

18 MS. SIMPSON: Yes, sir.

19 THE COURT: -- December 7th, 2011, subject:
20 Separation under Chapter 14 which says, "I reviewed the
21 enclosed separation packet, and after careful
22 consideration, I recommend this soldier be separated
23 pursuant to Charter 14."

24 MS. SIMPSON: Yes, sir.

25 THE COURT: Under other than honorable conditions.

1 MR. MYERS: Yes, sir, and Colonel Sheffield --

2 THE COURT: So would Captain Parker's memo be part of
3 what Colonel Sheffield reviewed?

4 MR. MYERS: What Colonel -- it could have been if the
5 board accepted it. I don't -- I don't know whether or not
6 that board accepted it, but Colonel Sheffield was the
7 Brigade Commander. So what happens is that the board,
8 that company's manager is the lowest level of the chain of
9 command basically makes a recommendation to the next hike,
10 and that position is --

11 THE COURT: To Colonel Sheffield for the --

12 MR. MYERS: So the Colonel then looks at that
13 memorandum, and then he may make a recommendation to the
14 board.

15 THE COURT: To the board.

16 MR. MYERS: We don't know necessarily know whether or
17 not the board -- now, Judge, on that, there may be some
18 particular document out there. I'm not representing that
19 I know exactly what that board indicated.

20 THE COURT: All right.

21 MR. MYERS: I just do not know.

22 THE COURT: I got you.

23 MS. CAMPBELL: And we're looking for that right now.

24 THE COURT: So I guess my question is, Mr. Myers, in
25 the procedural hierarchy of the Army, so the Captain makes

1 a recommendation to the Colonel or I guess the Commanding
2 Officer of the Battalion; is that right?

3 MR. MYERS: Yes, sir.

4 THE COURT: And the Colonel -- in this case, Colonel
5 Sheffield is going to make a recommendation to the board;
6 is that right?

7 MR. MYERS: Yes.

8 THE COURT: And then the board is going to institute
9 some type of action.

10 MR. MYERS: Yes, sir.

11 THE COURT: Okay. Now, here is my question. Is the
12 -- do -- where do they get this information on the DD 214?
13 From the board?

14 MR. MYERS: I don't know. I don't know with that --
15 on paragraph 28, I do not know where the board gets that
16 or where the board puts it on there, Judge. That's my
17 problem.

18 THE COURT: I mean, certainly, certainly, they
19 wouldn't give the final document of somebody's military
20 career with written on it "pattern of misconduct" if that
21 wasn't true or the board didn't go along with that, did
22 they?

23 MR. MYERS: Judge, I --

24 THE COURT: Don't answer that.

25 I mean, do you -- I mean, one option is I tell

1 them -- with your consent, obviously, that he was
2 discharged under honorable -- a general discharge under
3 honorable conditions with a pattern of misconduct. That's
4 one option. One option is I let you cross-examine this
5 witness on how she was wrong on the information that she
6 has provided.

7 Of course, you go down that road, you could end up in
8 the scenario of...

9 MR. MYERS: All his character.

10 THE COURT: At least 18 different things that he did
11 wrong while he was in the Army. Another option is to keep
12 it out all together and find that the prejudicial effect
13 outweighs the probative value under South Carolina Rule of
14 Evidence 403.

15 My problem with option number three is that the jury
16 right now is given an impression that the defendant's
17 military career is not what the truth in reality of his
18 military career was.

19 I'm not saying that you lied or that you
20 misrepresented in any way, shape, or form. I'm merely
21 saying they are left with an impression of his military
22 career that is not the complete and accurate impression
23 based upon opening statements and questioning of witnesses
24 throughout the trial.

25 All right. Let's take a ten-minute break.

1 Ma'am, don't discuss your case with anybody. You get
2 up and move around.

3 THE WITNESS: Yes, sir.

4 THE COURT: You can talk about it, Mr. Myers,
5 Ms. Campbell. Why don't you come back in chambers in
6 about ten minutes.

7 (WHEREUPON, a short break was taken.)

8 (WHEREUPON, State's Exhibits Nos. 236 - 250 were
9 marked for identification only.)

10 (WHEREUPON, Court's Exhibits Nos. 4, 5 were marked
11 for identification only.)

12 THE COURT: All right. Let's start with your
13 mistrial motion.

14 MR. MYERS: Thank you, Your Honor. If it please the
15 Court.

16 Your Honor, we would -- based on arguments prior to
17 the break, we would renew our motion for a mistrial based
18 on the Perkins testimony. We believe that it is improper
19 character evidence; that it is inadmissible.

20 Ms. Perkins mischaracterized the State of
21 Mr. Bailey's discharge from the military, so we would
22 renew our motion for a mistrial based on inadmissible
23 character evidence under Rule 404.

24 THE COURT: Under Rule 404.

25 Yes, ma'am?

1 MS. CAMPBELL: May it please the Court, Your Honor.
2 We would again rely on State vs. Dunlap and other case
3 law.

4 The defense did open the door to this evidence in
5 their opening statement. In addition to that, numerous
6 witnesses they have cross-examined, asking witnesses who
7 would have no knowledge about whether or not he had served
8 this country or done combat tours -- I'm not sure of the
9 exact language, Your Honor. I don't want to misquote.

10 He had brought that up repeatedly in the opening
11 statement. Mr. Myers characterized the defendant's
12 service to this country as outstanding, and there is other
13 verbiage in there, Your Honor, which you've already put on
14 the record. Based on that, we do feel like this is
15 admissible at this point. So therefore, Your Honor, we do
16 not feel like a mistrial would be warranted.

17 Then on his cross-examination, in addition to that,
18 he asked this witness, "You don't like him, do you?"

19 All we were following up on was the reasons why we
20 feel like -- even if it were character evidence, he opened
21 the door to, "You do not like Mr. Bailey, do you?"

22 We then allowed -- the witness is then allowed to
23 testify to why she didn't like him, and that was the
24 purpose of that coming in for this witness. That was the
25 limited purpose for which we were offering him.

1 THE COURT: All right. I'm going to deny your motion
2 for a mistrial. I find that based on the facts and
3 circumstances before the Court at this time, that it does
4 not manifest necessity that a mistrial be granted in the
5 case.

6 I am going to instruct the jury that they are to
7 disregard the testimony of Ms. Perkins in regards to any
8 information about Mr. Bailey's discharge from the
9 military.

10 I'm going to read to them, "Ladies and gentlemen, I
11 instruct you to disregard the testimony of Ms. Perkins
12 regarding a discharged from the military. I have
13 determined that it is not proper evidence, and you should
14 not consider it for any purpose during your
15 deliberations."

16 I'm further going to instruct the jury after that
17 point, I believe with the consent of the parties, that
18 Mr. Bailey was discharged from the United States Army, and
19 that his term of service will be characterized as general
20 under honorable conditions.

21 Any objection to that?

22 MR. MYERS: No, sir.

23 THE COURT: Any objection to that?

24 MS. CAMPBELL: No, sir.

25 THE COURT: Okay. Now, in our in-chambers meeting,

1 we had discussed the testimony of Captain Parker, who was
2 a Company Commander, I believe, for Mr. Bailey and the
3 admissibility of him testifying to a pattern of misconduct
4 by the defendant and also the defendant being able to get
5 into the positive aspects of his military career.

6 My understanding is that there is no objection to
7 that testimony based upon the limiting instructions that I
8 am providing the jury in regards to Ms. Perkins'
9 testimony; is that correct?

10 MS. CAMPBELL: Yes, Your Honor. Captain Parker,
11 whoever would be appropriate to get that information in,
12 yes, sir.

13 THE COURT: Mr. Myers?

14 MR. MYERS: That's correct, Your Honor.

15 THE COURT: Okay. Bring the jury back in.

16 (WHEREUPON, the jury came into open court at
17 approximately 11:51 a.m.).

18 (WHEREUPON, Court's Exhibit No. 6 was marked for
19 identification only.)

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

21 THE COURT: Thank you very much, Mr. Dye.

22 Ladies and gentlemen, as to the notes which were
23 sent, marked as Court's Exhibit, my best guess based on
24 the conversations with the attorneys is that we will be
25 towards the middle to the end of next week before

1 completion.

2 One individual provided me with information about a
3 non-refundable ticket issue. If I could have some more
4 information provided concerning when the return is from
5 that, that would be much appreciated at the appropriate
6 time. It doesn't have to be right now.

7 Ladies and gentlemen, prior to the break, we were in
8 the middle of Ms. Perkins' testimony. I'm going to
9 instruct you to disregard any testimony from Ms. Perkins
10 in regards to a discharge from the Army.

11 I have determined that this is not proper evidence
12 from this witness, and that you should not consider it for
13 any purpose during your deliberations.

14 The parties have entered into a stipulation. The
15 stipulation is when both sides agree that this information
16 should be submitted to you. That information is that
17 Mr. Bailey was discharged from the United States Army in
18 January of 2012, and that his term of service was
19 characterized as general under honorable conditions.

20 Thank you very much. You may continue with
21 Ms. Perkins' redirect, if necessary.

22 MS. CAVANAUGH: Nothing further, Your Honor.

23 THE COURT: Okay. Recross?

24 MR. MYERS: No, sir, Your Honor.

25 THE COURT: Okay. Thank you, Ms. Perkins. You may

1 step down.

2 THE BAILIFF: Watch your step, ma'am.

3 THE COURT: You may call your next witness.

4 MS. CAVANAUGH: Thank you, Your Honor. The State
5 calls Latasha Rawls.

6 LATASHA RAWLS, after being duly sworn,
7 testified as follows:

8 THE COURT: Thank you, ma'am. Please take the stand
9 and spell your full name for the record.

10 THE WITNESS: My name is Latasha Rawls.

11 DIRECT EXAMINATION:

12 BY MS. CAVANAUGH:

13 Q Ms. Rawls, where do you live?

14 A In Charlotte, North Carolina.

15 Q And where are you employed?

16 A I'm -- it's called the Body Bar. I own my own
17 business.

18 Q You own it?

19 A Uh-huh.

20 Q And I'm going to take your attention to August 2012.
21 Were you still -- were you living in Charlotte at that
22 time?

23 A Yes.

24 Q And where were you working in August of 2012?

25 A Part-time at Caviar Night Life.

1 Q Okay.

2 A It was a club and bar. I was a bartender there.

3 Q Okay. And were you working there on the night of

4 August 19th to the early morning of August 20th, 2012?

5 A I'm not sure of the exact date. I know it was --

6 when was that, Sunday or Saturday?

7 Q Did you provide a statement to law enforcement?

8 A Yes.

9 Q Would that help refresh your memory?

10 A Yes.

11 (Pause).

12 Yes, that was that date.

13 Q So it was August 19th and August 20th?

14 A Yes, ma'am.

15 Q And you stated you were the bartender at Club Caviar?

16 A Uh-huh.

17 Q Did an investigator actually come speak to you on

18 August 24th, 2012?

19 A Yes.

20 Q And did you speak to him about what you remembered

21 the night of August 19th into the early morning of

22 August 20th?

23 A Yes, ma'am.

24 Q And what did you tell him? What stuck out in your

25 memory about that night?

1 A It was numerous things. It was three people that
2 came in. It was a female, and she had issues with her ID.
3 So the thing that stuck to me about that night is because
4 I'm not going to serve somebody if I'm not sure. Even
5 though they're not supposed to be in the club, but I
6 wasn't sure how they handled the ID thing. Then the cards
7 that were used were declined and other cards. They asked
8 can they use the other card that they had.

9 Q Okay. I'll stop you just a second.

10 A Okay.

11 Q How many individuals was the female that you just
12 referred to with?

13 A Two others.

14 Q Are there photos taken in Club Caviar?

15 A Yes.

16 Q And are they available for purchase?

17 A Uh-huh.

18 (WHEREUPON, State's Exhibit No. 251 was marked for
19 identification only.)

20 BY MS. CAVANAUGH:

21 Q I'm going to show you what's been marked as State's
22 Exhibit 251. Do you recognize that photograph?

23 A Yes.

24 Q And are those the three people that you're referring
25 from the night of August 19th?

1 A Yes, ma'am.

2 MS. CAVANAUGH: Your Honor, at this time I'd move to
3 introduce State's Exhibit 251 into evidence.

4 MR. MOORE: May I see it?

5 (Pause).

6 We certainly have no objection to it.

7 THE COURT: That's number 251.

8 (WHEREUPON, State's Exhibit No. 251 was admitted into
9 evidence.)

10 THE COURT: 251 without objection.

11 BY MS. CAVANAUGH:

12 Q And, again, these are -- this is a photograph of the
13 three individuals that you remembered from that night?

14 A Yes, ma'am.

15 Q That the investigator was asking you about?

16 A Uh-huh, yes.

17 Q Other than the ID problem, do you remember anything
18 else about the young lady?

19 A How she was dancing. At that type of club, it's 25
20 and up, but she seemed like what she was young because
21 what she was doing, they don't normally do that.

22 Q And I'm going to -- first of all, did you know any of
23 these --

24 A No.

25 Q -- people before that night?

1 A No.

2 Q Okay. What do you remember about the shorter guy in
3 the picture?

4 A He was the one buying the bottles.

5 Q Okay. Buying the bottles?

6 A Yes, ma'am.

7 Q Okay. And did he say anything to you about why --
8 about that night as far as --

9 A He said he was celebrating his birthday, and one of
10 the -- he wanted to use his card and said it was him and
11 his mother's. Well, his mother was putting money in his
12 account so he could celebrate his birthday.

13 Q Okay. And what did -- was he able to use that card?
14 Was he able to use a card to buy a bottle at first?

15 A He used it -- yeah, to buy a bottle at first, and
16 then once that card got declined, when he wanted to buy a
17 second or either a third bottle, that's when he asked,
18 "Could we use the American Express?"

19 Q And were you -- was he allowed to use the American
20 Express?

21 A No. It's funny because the week before we used to
22 take it, but we stopped taking it due to how American
23 Express was run. So he asked if I could get my manager so
24 we could override it.

25 Q How many times did he ask you to use that card?

1 A Probably two or three times. I told him, "We're not
2 able to use it." He asked me to get my manager.

3 I said, "It's still not going to work." I said,
4 "He's going to say no."

5 He said, "Please go get him."

6 I went to get my manager, told my manager. My
7 manager said, "No. It's not going to work out," and that
8 was that.

9 Q And as far as the -- what you just spoke of regarding
10 what he said about his mom putting money into the account,
11 which card was that in reference to?

12 A That was in reference to the debit card, but the
13 American Express card didn't even have his name on it.

14 Q And that was the debit card that had just gotten
15 declined after he bought the bottle?

16 A Right.

17 Beg the Court's indulgence.

18 (Pause.)

19 Thank you, Ms. Rawls. No further questions.

20 THE WITNESS: Uh-huh.

21 CROSS-EXAMINATION:

22 BY MR. MOORE:

23 Q Good morning, Ms. Rawls.

24 A Good morning.

25 Q I believe it's actually afternoon.

1 Q And where do you live?

2 A I live in Columbia; Columbia, South Carolina.

3 Q Are you from here?

4 A Nope; no, ma'am.

5 Q Where are you from?

6 A I'm from New York originally.

7 Q And when did you come down to Columbia?

8 A About four-and-a-half years ago.

9 Q And are you currently working?

10 A Yes, ma'am.

11 Q Where do you work?

12 A I work at Jet Nightlife in the Vista.

13 Q Okay. And what type of work do you do for Jet?

14 A I do all the marketing promotions for Jet.

15 Q And how long have you been with Jet Nightlife?

16 A About two years.

17 Q Two years. What exactly is Jet?

18 A Jet is like a club, bar, atmosphere in the Vista.

19 It's like night life entertainment. People come in. It's

20 a dance club. They drink, entertain, go home.

21 Q So you do the marketing and stuff for them?

22 A Yes, ma'am.

23 Q Do you know the defendant in this case, Marcus

24 Bailey?

25 A Yes, ma'am.

1 Q Can you tell the jury how and when you met him?

2 A I met Marcus probably about roughly -- I want to say
3 about two years ago, and I met him through a friend of
4 mine. He was in the military then, and he helped us like
5 get liquor and stuff from like Fort Jackson.

6 Q Okay. And who is his friend that you met him
7 through?

8 A A guy named Chris Etheridge.

9 Q Chris Etheridge?

10 A Uh-huh.

11 Q And you say you met Mr. Bailey about two years ago?

12 A Yes, ma'am.

13 Q What club were you working at then?

14 A It was Pure.

15 Q Pure. And where is that located?

16 A Fourteen Berry Hill Road.

17 Q And that's here in Columbia?

18 A Yes, ma'am.

19 Q The defendant just kind of helped you with some of
20 the business for the club?

21 A Yes, ma'am.

22 Q Okay. How would you describe your relationship with
23 Marcus Bailey at that time when you met him?

24 A At that time when I met him, it was pretty good.

25 Q And at some point, did Mr. Bailey move in with you?

1 A Yeah.

2 Q How long was that after you met him?

3 A Probably like a couple of months, like two months.

4 Q Okay. And without telling me the exact circumstances
5 of why he moved in with you, did he -- how did he come to
6 move in with you? Who told him? Who told you?

7 A The same guy that introduced me and him.

8 Q Okay. So Chris kind of hooked you all up --

9 A Yes.

10 Q -- up as far as him being there?

11 A Uh-huh.

12 Q And how long did he actually live with you?

13 A Pretty long time. About maybe six, seven months.

14 Q So he moved in with you. Would that be 2011, 2012?

15 A He moved in -- we're in 2012 now. 2013 now. So he
16 moved in 2011.

17 Q Okay.

18 A Until 2012.

19 Q Okay. And what timeframe, about April 2012 you moved
20 out?

21 MR. MYERS: Objection, leading.

22 THE COURT: Sustained.

23 BY MS. SIMPSON:

24 Q When did he move out?

25 A He moved out it around April, April 2012.

1 Q And while he was living with you, did he have a job,
2 to your knowledge?

3 A No.

4 Q Okay. Did he pay for anything?

5 A No.

6 Q So he didn't pay rent?

7 A Huh-uh.

8 Q Did he buy the food?

9 A I mean, I had a roommate, and me and my roommate took
10 care of everything.

11 Q Another roommate --

12 A Yes.

13 Q -- outside of Mr. Bailey?

14 A Yeah.

15 Q Okay.

16 A Like a roommate, roommate on the lease.

17 Q And without telling me the circumstances, at some
18 point did you kick the defendant out?

19 A Yes.

20 Q And when was that again?

21 A April 2012.

22 Q All right. And when was the next time you saw
23 Mr. Bailey?

24 A Around his birthday in August.

25 Q Of what year?

1 A 2012.

2 Q 2012. Can you tell us when you ran into him, about
3 the time that you ran into him?

4 A I mean, I seen him at a strip club called -- named
5 LaRoice. Like he told me -- like we didn't have a good
6 relationship at that time.

7 Basically, like come to a mutual agreement about our
8 relationship, and he was like his birthday is coming up.
9 He doesn't have any friends in town. He concerned me a
10 friend. He wanted to celebrate his birthday with me, and
11 I was okay with it. That's when he came to the club.
12 That was the same week he came to the club. I seen him on
13 Thursday, I think, so -- and then I seen him again at the
14 nightclub on Saturday.

15 Q Okay. So you had seek him in the first time in a few
16 months at Club LaRoice, correct?

17 A Yeah.

18 Q And his birthday was coming up that weekend?

19 A Uh-huh.

20 Q Did y'all talk for very long, or was this a pretty
21 brief conversation at LaRoice?

22 A It was pretty brief. I didn't have much to say
23 because I was...

24 Q And then you saw him again on Saturday of that
25 weekend?

1 A Yes, ma'am.

2 Q Tell the jury what you were doing when you ran into
3 him.

4 A On Saturday?

5 Q Yes, sir.

6 A I was doing -- I was working at Jet, and I bumped
7 into him at Tsunami next door to Jet. He offered, I
8 guess, to buy our food. He bought our food. After that,
9 he went inside Jet. That's when he bought the table. The
10 table usually comes with bottles of alcohol. He bought
11 two bottles that night, and we celebrated his birthday.

12 Q Okay. You say our, our dinner. Who also was with
13 you?

14 A It was me, I think Chris and a couple of girls.

15 Q Okay. So kind of a group of people, and he
16 approached you?

17 A Yeah.

18 Q About paying for dinner and going to the club?

19 A Yeah.

20 MR. MYERS: Objection to leading.

21 THE COURT: Sustained.

22 BY MS. SIMPSON:

23 Q And when y'all went to Jet Nightlife -- it is Jet,
24 correct?

25 A Yes.

1 Q What happened there?

2 A I was busy, but he had a section towards the wall of
3 the club, the back of the club. He was by himself, and he
4 had two bottles. So he basically said bring some girls
5 over here. We're going to drink, have a good time. It
6 was my birthday.

7 Q And do you know Ashlee Jones?

8 A Yes.

9 Q Who is she?

10 A She doesn't work no more for Jet, but she used to
11 work for Jet. She was the VIP waitress, VIP, basically,
12 waitress.

13 Q Was she working that night?

14 A Yeah.

15 Q In the section where, I guess, you and Mr. Bailey
16 were?

17 A Uh-huh.

18 Q And this is the same club you work for?

19 A Yes.

20 Q So did you, in fact, drink with Marcus?

21 A Yeah, I had a couple of drinks with him.

22 Q And hang out with him?

23 A Uh-huh.

24 Q And at some point, did you approach Ms. Jones?

25 A Yeah. At the end of the night, I approached her

1 because I know what kind of person Marcus is. I was like
2 the table is paid for. That's when she told me, oh --

3 MR. MYERS: Objection.

4 THE COURT: You can't say what she said.

5 THE WITNESS: Oh, my bad.

6 THE COURT: Objection is sustained. Do not testify
7 what this witness told you.

8 BY MS. SIMPSON:

9 Q As a result of your conversation with Ms. Jones, what
10 did you do?

11 A What did I do?

12 Q Yes.

13 A Can you ask the question again?

14 Q After you talked with Ms. Jones, you can't tell me
15 what she said to you --

16 A Uh-huh.

17 Q -- but what did you do in response to that
18 conversation?

19 A Well, I don't know how to answer that without saying
20 what she said.

21 Q Okay. Let me back up just a little bit.

22 A Uh-huh.

23 Q What was that conversation about?

24 MR. MYERS: Objection.

25

1 MS. SIMPSON: Your Honor, I'm not -- may we approach?

2 THE COURT: Yes.

3 (WHEREUPON, a bench conference was held in the
4 Presence but not within the hearing of the jury).

5 BY MS. SIMPSON:

6 Q After you talked with Ms. Jones, who did you go talk
7 to?

8 A I talked to Ardis.

9 Q Okay. And what did you and Marcus talk about?

10 A Basically, I asked Marcus whose card did he use to
11 pay for the bottles because I know it wasn't his.

12 Q And what did he tell you?

13 A He said, basically, don't worry about it. He got it.
14 It's taken care of.

15 Q And what did you think at this time?

16 A At this time, basically I didn't think much of it. I
17 just knew it wasn't him who paid for it. I was like okay,
18 just make sure it's not a charge back.

19 Q What's a charge back?

20 A A charge back is when -- it's like somebody -- it
21 happens all the time. Like someone swipes the card at the
22 club, and it won't be your card. The person realized that
23 their card was swiped at the club, will call the bank and
24 say that wasn't them who did it. Then it will go back to
25 the account, and the money gets taken away from the club.

1 We'll lose money.

2 Q Okay. So you were worried about that happening in
3 this case?

4 A Uh-huh.

5 Q And at some point, did you actually see the receipt
6 for the card that Marcus paid for?

7 A Yes.

8 Q Tell the jury about that the, please.

9 A The receipt said Almanita David -- oh, Al Smith, I'm
10 sorry.

11 Q And that stuck out to you at that time?

12 A Yes.

13 Q What else happened that night, if anything, with you
14 and Marcus? Did y'all stay, or did you just leave?

15 A We parted ways, but he said if you wanted to come to
16 Charlotte with me to celebrate our birthday. I was okay
17 with that. At that time, it was getting better and
18 better, so we went to Charlotte the next day.

19 Q Okay. So you had seen him that Thursday before and
20 hung out with him at Jet?

21 A Uh-huh.

22 Q So what happened the next day?

23 A The next day, he picked me up from my apartment, and
24 we had a girl with us, whatever and...

25 Q Did he tell you to bring this girl or bring someone?

1 A I mean, he was like -- basically, I mean, boys will
2 be boys. We wanted to hang out with girls, so we had --
3 he invited -- he told me to invite some girls to his
4 birthday. So I had a girl, and she was supposed to bring
5 a friend but she didn't bring a friend. So it was like us
6 all together.

7 Q And how was this Charlotte trip going to be paid for?

8 A I mean, he said he would take care of everything.

9 Q Take care of everything?

10 A Yes.

11 Q And who was this other girl that you brought with
12 you?

13 A Just a girl I brought.

14 Q Just some girl?

15 A Uh-huh.

16 Q So when Marcus picked you up, where did y'all go?

17 A We went to Charlotte. We stopped. We had a pit
18 stop, and then we went to Charlotte.

19 Q What was the pit stop for?

20 A I had to get girl an ID to get in the club, so she --
21 wouldn't have an ID to get in the club.

22 Q So you stopped somewhere. Was that here in Columbia
23 or somewhere else to get an ID?

24 A No. It was in York; York, South Carolina.

25 Q Okay. Do you remember what car Marcus was driving?

1 A Not the exact car, but I know it was that car that I
2 hadn't seen before. I had never seen him with before. It
3 was a -- I don't want to guess, but it wasn't a car that I
4 was familiar with.

5 Q Okay. So -- and you knew him at one point to have
6 his own car?

7 A Yes.

8 Q But this was a different car?

9 A Uh-huh.

10 Q And what did y'all do after you got the ID and went
11 on to Charlotte?

12 A We went to a night spot called Caviar.

13 Q Club Caviar?

14 A Uh-huh.

15 Q And what is that? What all goes on there?

16 A Basically, the same thing as Jet, but we got a table
17 over there, too, also. It came with bottles, and after
18 that, we just partied and drank for his birthday.

19 Q At any point during this time, had he mentioned
20 Almanita to you?

21 A No.

22 Q Do you know who Almanita Smith is?

23 A No.

24 Q Had you ever met her before?

25 A No. All I know is that he was staying with his

1 girlfriend at the time, but I never knew who she was. I
2 don't think I ever met her.

3 Q Okay. And did he bring her up at all, really, during
4 this trip?

5 A I mean, not really. Our focus was on other girls at
6 that time. It wasn't really anything he was saying about
7 that.

8 Q Okay. So y'all were just partying, drinking --

9 A Uh-huh.

10 Q -- talking to other girls, and club caviar, about
11 what time do you think y'all left?

12 A When it closed, when the lights turned off. It
13 closed at two.

14 Q It closed at two?

15 A Uh-huh.

16 Q Who paid? What did you have there, and who paid for
17 it?

18 A A bottle of Ciroc, and Marcus paid for it.

19 Q So he paid for the table and everything there?

20 A Uh-huh.

21 Q Where did y'all go after you left club Caviar?

22 A We went to my homeboy's apartment in Charlotte.

23 Q Okay. And who is your homeboy?

24 A A guy named Hershell Forbes.

25 Q And what did y'all do while y'all were there?

1 A We had a good time. I mean, we could -- I don't know
2 how to say this. We had -- we just hung out, basically.

3 Q You just hung out. You drank?

4 A No, no drinking. We just hung out.

5 Q You smoked, hung out?

6 A No, huh-uh.

7 Q What's good time? What's hang out?

8 A I mean, it was girls and us. We had a good time.

9 Q You hung out with the girls, have a good time.

10 A Uh-huh.

11 Q I mean, did you have sex? I mean...

12 A I mean, there was some sexual activity going on.

13 Q So some sexual activity at your friend's house?

14 A Uh-huh.

15 Q And then did y'all when you left there?

16 A We went to the diner, the Midnight Diner.

17 Q And what's the Midnight Diner?

18 A It's located in Charlotte. It's open, I think, 24/7.

19 Like, they served like chicken and waffles, a whole bunch
20 of stuff.

21 Q And who -- who paid for that?

22 A Marcus.

23 Q Marcus. And after y'all left the diner -- and let me
24 back up just a little bit. At Club Caviar, how expensive
25 is this club? Did you spend a good amount of money?

1 A We spent about 200. I don't know how much the
2 bottles is, like 200, 210, maybe 275, somewhere around
3 there.

4 Q Several hundred dollars?

5 A Yes.

6 Q And Marcus paid for all of it?

7 A Uh-huh.

8 Q You have to say yes or no.

9 A Oh, yes.

10 Q So she can understand what you're saying.

11 So what time would you say you were at the Midnight
12 Diner?

13 A About four o'clock.

14 Q A.M.?

15 A Yes, ma'am.

16 Q And this is after Sunday, so August 20th?

17 A Yes.

18 Q That morning?

19 A Uh-huh.

20 THE COURT: Please say yes or no.

21 THE WITNESS: Yes.

22 THE COURT: Thank you.

23 BY MS. SIMPSON:

24 Q And where did y'all go after you left the Midnight
25 Diner?

1 A Back to Columbia.

2 Q Back to Columbia?

3 A Yes.

4 Q And what happened after you got back to club?

5 A He dropped me off at my apartment with the girl, and
6 he went about his way. He was going home, and then that
7 was it.

8 Q Okay. Did he mention anything about getting up with
9 you at a later time? Are y'all hanging out anymore?

10 A The next day we spoke on the phone just reminiscing
11 about what happened.

12 Q And what happened? What do you mean when you say
13 what happened?

14 A Like after the club, at my homeboy's apartment, we
15 basically was like -- at this time, the relationship was
16 pretty good. You know, okay, come by the house because he
17 was going to give me a little bit of money. We could hang
18 out this week, whatever on Wednesday, whatever.

19 Q Okay. So after you got off the phone with him, when
20 did you -- or when did you see him again?

21 A It was either the Monday or Tuesday. It was real
22 close. I want to say Monday.

23 Q Well, so he talked to you after you get back from --

24 A Yeah.

25 Q -- Charlotte and tells you he wants to give you some

1 money.

2 A Uh-huh.

3 Q So sometime after that, you got up with him and he
4 gave you money?

5 A Yes.

6 MR. MYERS: Objection leading.

7 BY MS. SIMPSON:

8 Q What did you do?

9 A I got the money. I got the money from him.

10 Q Where did you go?

11 A To Heron Glen -- Heron Drive, yeah, something like
12 that. It was on the northeast side. It was a house.

13 Q Okay. And how did you know to get there?

14 A He gave me the directions.

15 Q Okay. Did you -- what impression were you under with
16 respect to that location?

17 A I mean, I came there with the objective to get money
18 from him, so my girlfriend at that time had drove me over
19 there. I went inside the house. I went inside the house.
20 I knocked on the door. He opened the door. He said,
21 "Come inside. Come inside."

22 He is saying, "Okay. Give me a second." He goes
23 upstairs. He comes back downstairs. I'm sitting in the
24 kitchen. He says, "Let's go to the ATM machine," and
25 that's when we went to the ATM machine.

1 Q So about how long do you think you were actually
2 inside?

3 A Maybe two minutes.

4 Q Two minutes, and you were in what area of the home?

5 A I walked through the living room and walked through
6 the kitchen, the right-hand side.

7 Q Okay. Did you notice anything at that time?

8 A I seen pictures on the fridge and stuff like that.
9 There was like a bowl of candy and stuff in there. That's
10 all I really noticed.

11 Q And what was your focus again about why you were
12 going over there?

13 A To get the money.

14 Q To get the money. Did you go upstairs at all?

15 A No.

16 Q Did he invite you to come upstairs?

17 A No.

18 Q And when you left the house, where did you go?

19 A He went to the ATM machine by the CVS on the
20 northeast side almost by Killian Road.

21 Q Okay. And did he get money out of the ATM machine?

22 A The first ATM machine wasn't working. Then we went
23 to a second one down the street. He did that and had to
24 get change, and he brought it to me.

25 Q Okay. Do you recall about how much money he gave you

1 at that point?

2 A I think it was like \$50.

3 Q Fifty dollars?

4 A Yes.

5 Q And after y'all went to the ATM machine, what did you
6 do?

7 A At this time, I invited him somewhere. He said, "Oh,
8 on Wednesday we're going to go back to Charlotte to hang
9 out," whatever.

10 Q And this was the Wednesday right after you got back
11 from Charlotte?

12 A Yes.

13 Q Okay.

14 A I basically said we can do it, but there's a capital
15 party going on that Wednesday. We can stay over here.
16 That the time we're cool with each other. I invited him
17 out to a party. I said, "Come on out. Don't worry about
18 nothing. We'll have a good time."

19 Q And did you hear from him again?

20 A On that Wednesday, it slipped my mind. I didn't
21 really hear from him. He called me. I didn't pick up
22 because -- and then it was like I forget all about it
23 until Thursday when I seen him on the news. That was it.

24 Q Okay. So that's how you learned about what happened?

25 A Yeah.

1 (WHEREUPON, the jury left open court at approximately
2 1:01 p.m.)

3 THE COURT: All right. Mr. Coroner, you are not to
4 discuss your testimony with anybody in any way, shape, or
5 form.

6 You are allowed to leave the witness stand. If you
7 would be seated back up here about ten till two or so.
8 Thank you.

9 THE WITNESS: All right.

10 THE COURT: All right. Court is in recess.
11 Yes, sir?

12 MR. MOORE: Your Honor, may I put one thing on the
13 record?

14 THE COURT: Yes, sir.

15 MR. MOORE: I want to make positive that I again move
16 to strike the testimony of Mr. Pearrow on several grounds.
17 First of all, the court has qualified the gentleman as an
18 expert when again he has testified under oath that he is
19 not.

20 So we would certainly have to except to any finding
21 of expertise on a person who does not claim to be an
22 expert.

23 Second of all, we accepted his testimony on the
24 grounds that there is no recognized scientific field such
25 as finding where the bodies previously have been.

1 Thirdly of all, even if the man was an expert, he is
2 an experts of dog handling, and this animal was only
3 trained in finding cadavers or human remains. There is no
4 evidence that there were any human remains found in any of
5 the places upstairs where this dog searched.

6 The dog indicated, apparently now the den, which is
7 the first time anyone has ever heard that. The dog
8 indicated at three places upstairs -- four places
9 upstairs. Not one thing was ever found in those places.

10 So here is what we have: The dog only being trained
11 to find human remains is in the house, apparently some
12 seven to eight hours after the body was moved and alerted
13 to something. We don't know what. There is no indication
14 of any object to which this dog ever indicated or alerted
15 to.

16 The dog is not trained to do anything except find
17 human remains. There have been no human remains, the
18 testimony is entirely too speculative to just be allowed
19 in evidence.

20 Then when we look at the probative value of the
21 evidence compared to the propensity to prejudice, the
22 prejudicial value highly outweighs any type of probative
23 evidence.

24 Here is what this testimony is: This dog is trained
25 to find one thing, human remains. The dog indicated five

1 separate places and found nothing.

2 So we now have evidence of an indication meaning
3 what? We don't know. The dog can't speak, and the dog
4 basically alerted five times to nothing.

5 What conceivable proof is that of anything that the
6 dog alerted to nothing? Well, now, you may say, gee, the
7 dog may have alerted to some odor or something that had
8 been there eight hours before, maybe.

9 It's really speculative considering this other
10 testimony that the gentlemen prefaced it, but even with
11 that, the dog is not trained to find where the body had
12 been.

13 He is trained to find human remains, found none. So
14 in what this dog was trained for, we have none, zero. So
15 the testimony is what the dog was looking for, there
16 wasn't nothing there.

17 Now, if they had -- if they had old blood or
18 something of that nature where they could say, "Here is
19 DNA. This is it," okay fine, but they don't.

20 The dog alerted to nothing, and the dog is -- so the
21 indication is, "Well, there must have been something."
22 Well, the question becomes what, because the dog has not
23 alerted -- is not trained to alert to nothing. It's
24 trained to find human remains. That's all. There were
25 none.

1 Therefore, you have -- you have this speculative
2 evidence with this incredible tendency to prejudice which
3 is the dog made five mistakes or you can speculate that
4 maybe, maybe there had been something there eight hours
5 earlier, and that's why the dog would do that.

6 When you're look at the probative value compared to
7 prejudice, there isn't any way this should come in. Plus,
8 the dog is only trained to find human remains.

9 The dog was called to search for something. The dog
10 was called to search for not human remains but where the
11 body may have been. So the dog was even put in to focus
12 to do something the dog wasn't even trained to do.

13 So even if the dog is an expert and the handler is an
14 expert, they're experts in something other than what they
15 were asked to do.

16 The remains were in the yard, but there was nothing
17 found. So how in the world is the testimony relevant to
18 anything other than speculation. We're all complete
19 unmitigated speculation.

20 Unless I can cross-examine a dog about, "Hey dog,
21 what did you smell?" The answer so far is nothing.

22 THE COURT: Anything from the State on that?

23 MS. CAVANAUGH: Yes, Your Honor. We believe that
24 Deputy Pearrow was properly qualified as an expert under
25 702, as well as Stated v. White.

1 Even though he stated he was not an expert, he
2 clarified that. He meant in layperson's terms he doesn't
3 claim to know every single thing about everything.

4 As far as Mr. Moore continuing to say that the dog
5 was not trained to detect on -- was only trained to detect
6 on human remains, Deputy Pearrow stated over and over when
7 describing his training, and when I clarified several
8 times with Deputy Pearrow that the dog, Mia, was also
9 trained to detect the scent that emanates from a deceased
10 human body.

11 Then as far as Deputy Pearrow stated that the dog
12 alerted and/or indicated, which he explained were
13 different times, there were four at the house and one at
14 the sheriff's department. So we believe that Deputy
15 Pearrow was properly qualified as an expert in this case,
16 Your Honor.

17 THE COURT: All right. I find under Rule 702, the
18 South Carolina Rules of Evidence, that this was a
19 specialized knowledge that would assist the trier of fact
20 to understand the evidence and determine a fact at issue.

21 I find that this witness, even though by his own
22 testimony -- and I understand that the record cannot
23 reflect emotions, but on Monday when he stated his
24 statement about -- you can -- when he made his statement
25 about not being an expert, it was one that was given with

1 a sense of humility about it; that he is qualified as an
2 expert by knowledge, skill, experience, training and
3 education.

4 He may, thereto, form an opinion or otherwise give
5 that opinion. Further under State vs. White, which was
6 decided by our Supreme Court at 642 SE2d at around 614, I
7 think this is the only case that provides us any guidance
8 on this.

9 While White dealt with a dog tracking case, that's
10 the only case -- and for the record, the defense has shown
11 no case from anywhere that shows that this is inadmissible
12 other than argument on the rules that the evidence shows
13 that the dog handler did satisfy the qualifications of an
14 expert under 702, which I've already found; that the
15 evidence shows the dog is of a breed characterized by an
16 acute power of scent which was testified to.

17 In the White case -- it was a tracking case -- but it
18 goes into the training, which I believe that Deputy
19 Pearrow testified to. The experience of the dog was found
20 to be reliable, and of course, I don't believe that number
21 five in White applies to this situation, and the trail was
22 not otherwise contaminated.

23 I'm not sure how that applies or doesn't apply in
24 this situation other than the defense was allowed to
25 cross-examine Deputy Pearrow on potential contamination by

1 somebody when we do not know how many, nor do we know
2 other than one foot from one picture and one piece of
3 evidence that was close to the body, and we do not even
4 know -- there is no certainty in the record that that foot
5 in that picture even went into that house. The rest of
6 that information is pure speculation based on the record
7 before this court.

8 Further, as to a 403 analysis, I find that the
9 probative value of this outweighs the prejudicial effect.
10 Mr. Deputy Pearrow was cross-examined for an extensive
11 period of time, and the defense was fully allowed to make
12 its case as to the credibility of that witness.

13 They have done that even to the point of the witness
14 testifying that it is a possibility that the dog alerted
15 to transfer, was all emitted to this jury and goes
16 directly to the witness's credibility.

17 On top of all of that, I have informed the jury -- as
18 they are to with every witness, it is their job to judge
19 the credibility and believability of every single witness.

20 I gave them the standard expert witness instruction
21 that they are not to give this -- this witness any
22 extra -- anything just because he is an expert in there to
23 judge the credibility and believability, as they are with
24 every witness that appears in front of them.

25 Mr. Moore, I do believe you are protected for the

1 record, and I appreciate you putting all of that on the
2 record again. I think your argument is very clear. I
3 understand exactly what it is, and I hope you -- hope I --
4 for the record, I even allowed you to voir dire him again
5 during the middle of testimony even though we had already
6 done that for an extended period of time on Monday because
7 I wanted to make sure that you were protected on the
8 record in that issue.

9 MR. MOORE: Thank you so much, Your Honor.

10 THE COURT: Thank you so much.

11 MR. MOORE: Be back around two, Your Honor?

12 THE COURT: A little bit before two. We'll see where
13 they are on eating and will let everybody know.

14 Thank you. Court is in recess.

15 (WHEREUPON, a lunch break was taken.)

16 THE COURT: Mr. Myers, are you ready?

17 MR. MYERS: Yes, sir, Your Honor.

18 THE COURT: Okay. You can bring them in.

19 (WHEREUPON, the jury came into open court at
20 approximately 1:59 p.m.)

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

22 THE COURT: Thank you, sir.

23 Welcome back, ladies and gentlemen. We'll continue
24 now with the testimony of Coroner Watts.

25 Ms. Campbell?

1 to do is a mixture of perhaps the victim and someone she
2 scratched.

3 Q And if there is anything blocking the area where she
4 scratched, such as clothing, would that inhibit the
5 ability to get skin cells under --

6 A Yes, it would.

7 Q Item number 38, I'll step here, get back to that and
8 the buccal swab, the brown sheet, items 38, 39 and 40, did
9 you test for the presence of blood?

10 A Yes.

11 Q And was any good found?

12 A No.

13 Q And then getting to item number 42, which are some
14 black pants, is blood indicated?

15 A Yes -- I mean, no.

16 Q And 43 and 44 --

17 A Yes, I tested it. No blood was indicated.

18 Q Any blood on that?

19 A No blood.

20 Q Now, getting to item number 52, which was the blanket
21 found in the dryer --

22 A Yes.

23 Q -- did you do any testing on that?

24 A Yes, I did.

25 Q And what testing did you do, sir?

1 A I found a couple of areas that I believed could be
2 blood. One of them tested positive. The other did not.
3 So I did do DNA testing on both of them because in certain
4 cases where you could have -- you could still have DNA
5 from someone like you have tissue or a decomposing body or
6 whatever, you could have other body fluids. That would
7 also give me DNA. So it was tested for DNA, as well. In
8 the area that I did not find any blood, I did not find any
9 DNA profile, which is 52.2.

10 Q It says blood indicated.

11 A Right. Oh, excuse me. There was blood indicated
12 there, but I didn't get any DNA.

13 Q And that's item 52.2. Without pulling out the
14 blanket, is that marked on the blanket, the cutting?

15 A Yes.

16 Q Okay. I'll get back to that. You indicate blood was
17 indicated, but you weren't able to get a DNA profile.
18 What can cause that to test positive for blood, but you
19 can't get a DNA profile?

20 A Well, since it was in the dryer, you might assume it
21 had been washed. That would do it.

22 Q And in fact, if an item had been in contact --
23 washing it can destroy all results sometimes?

24 A Yes, it can. With our testing, the blood test itself
25 is much more sensitive than a DNA test. As a matter of

1 fact, we can take an item that's wiped down, and it still
2 may test positive for blood even though you don't see
3 anything. But the DNA itself could be destroyed
4 particularly by washing because we use detergents in the
5 laboratory to destroy DNA make sure we don't have any
6 contamination. So we know that detergents will destroy
7 DNA.

8 Q And in this case, on item 52.2, you found it tested
9 positive for blood?

10 A Yes.

11 Q But you weren't able to get a DNA profile?

12 A Correct.

13 Q Item 52.1, what was the test for blood?

14 A It tested positive for blood and indicated there was
15 blood. In this case, I found what I call a partial
16 profile.

17 When you do DNA testing, you're testing 15 -- well,
18 at the time we were doing this, it's 15. It's more than
19 that now, but 15 points in the DNA molecule that are used
20 for human identification.

21 You might test the whole DNA molecule itself. It's
22 quite a large molecule and quite extensive testing. As a
23 matter of fact, it took years to be coded, but I did find
24 while the they were decoding the DNA, there were certain
25 portions that we used for human identification. That's

1 where we target.

2 In targeting those, there's 15 points. We call them
3 loci in scientific lingo, but there are points on the DNA
4 molecule that were copied and then determined what size or
5 genotype they are, or you get half your DNA from your mom,
6 half your DNA from your dad.

7 So half of that DNA is from that site. You get from
8 your mom and half is from your dad. That would be what we
9 call a genotype. Not every locus or every single point on
10 that DNA molecule gave me any results, only a few of them
11 did.

12 The few that I did find are what we call smaller
13 fragments, smaller fragments. So very often, we find DNA
14 that is partially destroyed or degraded. The smaller
15 fragments will linger where the larger fragments will be
16 the first to go.

17 So in a partial profile, it's not uncommon for us to
18 get results of smaller fragments of DNA but no results
19 from the wider, but it does give some results. We can
20 compare what we do find with individuals that we receive
21 in the lab to compare it to.

22 We can determine if it's matching with what we have
23 to whichever person. In this case, we have three people,
24 and I determined that it did not match based upon the
25 results we did have.

1 Ms. McCallum or Marcus Bailey, but it did -- this
2 partial profile did match the same loci on Almanita Smith
3 that the evidence showed they matched each other.

4 Now, that statistic would be much smaller than a
5 complete profile, so I cannot say with absolute certainty
6 that is her blood. But what I do have does match her, and
7 I can give you some weight to that. The weight to it is
8 that in the African-American population, which is we're
9 dealing with, correct?

10 Q Uh-huh.

11 A It is about one in 730. So you would expect to see
12 those DNA results in one out of every 730 African
13 Americans. That is the frequency in which it would occur.

14 So since it is just a partial profile, those numbers
15 are minimal. The more numbers we get results for, the
16 loci will increase, and they will increase to the point
17 where it's many, many times, thousands of times beyond the
18 population of plant earth, which is approximately
19 six-and-a-half billion.

20 So you can see that number is much smaller than that,
21 so, it but it does give some weight to it. So we can
22 certainly eliminate 729 people picked at random in the
23 population, the African-American population.

24 Q And you mentioned earlier that washing an item or
25 using detergents with an item can inhibit your ability to

1 MR. MYERS: Your Honor, can we approach?

2 THE COURT: Sure.

3 Let's do this, ladies and gentlemen. Let's take a
4 short break, less than ten minutes, and then we're going
5 to do this witness for tonight, and then we're going to
6 stop for the night, just to give you some kind of game
7 plan on where you are.

8 We'll take about a ten-minute break and be right back
9 with you.

10 Captain, hold on a second, sir.

11 THE WITNESS: Yes, sir.

12 (WHEREUPON, the jury left open court at approximately
13 5:24 p.m.)

14 THE COURT: We're not taking a break.

15 Tell me what the objection is now because my
16 understanding based on what happened last week is that
17 there wasn't an objection to this testimony?

18 MR. MYERS: Yes, sir. Your Honor, our objection -- I
19 think that when we last left it, we never waived our
20 objection.

21 THE COURT: The objection that you did not waive is
22 your objection to a mistrial based on the comment that
23 Ms. Perkins made about a bad conduct discharge.

24 MR. MYERS: Yes, sir. In talking with Captain Parker
25 over the weekend, I had an opportunity to talk. From what

1 THE COURT: All right.

2 Based on my review of Court's Exhibit 6 and the
3 information that was provided last week concerning the
4 information that a board obtained in Mr. Bailey's
5 discharge, also based on the information Captain Parker
6 has provided here to the Court today concerning the
7 information that was presented to that board, I am going
8 to admit that testimony.

9 I find that the defense has opened the door on this
10 issue based upon their opening statement and their
11 questioning of witnesses.

12 Further over the weekend, I spent some significant
13 time with Moi's Rules of Evidence and on door opening. I
14 do believe this clearly fits within that, and it deems
15 evidence that is otherwise inadmissible or irrelevant
16 admissible based on certain factors that occur.

17 All right. Bring the jury back in.

18 MS. CAMPBELL: Did I hand that up?

19 THE COURT: You did.

20 (WHEREUPON, the jury came into open court at
21 approximately 5:30 p.m.)

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

23 THE COURT: Thank you, Mr. Tolbert.

24 Captain Parker, please come forward and be sworn.

25 THE BAILIFF: Place your left hand on the Bible,

1 A Which would have been September 28th, 2012.

2 Q So for that period of time at least from August 23rd,
3 2012 until September 28th, 2012, does it appear from your
4 records that Marcus Bailey and Edward Walker were in the
5 same dorm?

6 A Yes, ma'am, it does.

7 Q What was that dorm?

8 A Unit Lima.

9 MS. CAVANAUGH: Beg the Court's indulgence.

10 (Pause).

11 Thank you, Captain Moye. No further questions.

12 THE WITNESS: Okay.

13 CROSS-EXAMINATION:

14 BY MR. MYERS:

15 Q Good morning, Captain Moye.

16 A Good morning.

17 Q How are you today?

18 A Good.

19 Q Captain Moye, I understand that you may have had
20 previous discussions with Ms. Cavanaugh prior to your
21 testimony today?

22 A Informing me of the records that was requested.

23 Q Okay. Did she also ask you to -- or did she give you
24 a subpoena asking you to bring records related to an
25 inmate by the name of Fred Wise?

1 A Investigator Josh Mauldin.

2 Q Did he return to the scene with a search warrant, a
3 signed search warrant, did you have the legal right to
4 enter the house?

5 A Yes.

6 Q And at that point, had the house already been cleared
7 for any kinds of signs of danger or anything of that
8 nature?

9 A The responding officers responded to the body in the
10 front yard. I guess Mr. Bailey wasn't able to get much
11 information as to what had happened or what was going on
12 inside the house.

13 So for general safety to see if, one, we have someone
14 inside that's armed, dangerous, murdered, whatever, they
15 went ahead and entered that unit, systematically went
16 through it to make sure there were no threats inside the
17 residence.

18 Q And as far as law enforcement on the scene that day,
19 as well as the coroner's office, were they tromping on the
20 body?

21 A No.

22 Q And, in fact, were they trained not to tromp on the
23 body?

24 A Yes.

25 Q Once the search warrant had been secured and it was

1 there at the scene, did you enter the residence after it
2 had been photographed?

3 A Correct, after it had been photographed. The lab was
4 on the scene. They're the ones that are going to collect
5 almost all the evidence initially and process all of our
6 photography. We allow them -- as I say, it's an agreement
7 that they're going to go in first, photograph everything
8 as they see it, see if there's anything that's significant
9 to them as they walk through before we go in just because
10 you don't want a bunch of people trampling through the
11 house.

12 Q And once they had done their initial assessment in
13 photographing, did you then enter the residence to assist
14 in some search?

15 A I did.

16 Q And when you entered the residence, what's the first
17 thing you noticed?

18 A It was like a slap in the face. There was so much
19 air freshener and scents going on inside the residence
20 that it was offensive.

21 It was just a bunch of different fragrances competing
22 with each other. Investigator Martin alluded to the fact
23 of like a Yankee Candle or store. You walk in, just an
24 overbearing smell of air fresheners.

25 Q And during the course of your search, did you see

1 those air fresheners located at various points throughout
2 the house?

3 A Yeah. They were visible. I believe some of them
4 were empty. They were just stationed throughout the house
5 in different places. There was incense. There were Plug
6 Ins. There were automatic air fresheners that worked off
7 of a timer or an industrial kind of system. There were
8 candles, just lots and lots of air fresheners going on in
9 that place, scents.

10 Q And there's been some question about Wal-Mart. I
11 want to show you what's been in evidence, some air
12 fresheners marked as State's 188, and then I show you
13 State's Exhibit 33, 34, 25, and 41. Do those show some of
14 the air fresheners you're talking about?

15 A Yeah. These are the more commercial grade air
16 fresheners that were inside the home.

17 Q And are those available at Wal-Mart?

18 A There is something similar but not this grade. These
19 are like janitorial supply, in my opinion.

20 Q And, in fact, on the actual item itself, what does
21 this writing down here say?

22 A "Hospital Specialty Company." It's got a logo for
23 hospital.

24 Q And in State's Exhibit No. 25, does that show what
25 area of the house?

1 A It's the living room. I think it goes toward the bar
2 and what would be traditionally like a dining room or a
3 dinette area.

4 Q And that's where you found the hospital grade?

5 A Yes. With the bars, it would be almost centrally
6 located inside the downstairs bathroom.

7 Q And then there were more in State's Exhibit 41, an
8 additional one?

9 A Yeah. There was another package behind the bar.
10 There was a used canister. These things work off an
11 aerosol canister with a unique top that's used as a
12 mechanical device. It had been empty and was located
13 inside the trash. Investigator Mauldin spotted it first.

14 Q I'm showing you these items packaged together.
15 That's what we're talking about.

16 A That's what we're talking about.

17 Q Did you also notice incense holders that appeared to
18 have been burned?

19 A Yes. I remember two distinctly. I think there was
20 also one on the kitchen counter, but I know two for sure
21 on the bar. I believe there was also one upstairs on the
22 railing of the stairs.

23 Q I'm showing you, for example, State's Exhibit 75. Is
24 that what you're looking at?

25 A That's correct. That's the one of the rail.

1 Q And that's just one of the ones that you observed?

2 A I think it's near a candle there also, but they were
3 all similar, the wooden base with the ash arm where the
4 incense had been burned.

5 Q Were there also canisters of air fresheners found in
6 the trash can?

7 A Yes.

8 Q Was anything else located in the trash that later
9 became significant as far as information?

10 A Yes, there was. There was a used condom and a condom
11 wrapper located inside the trash. It's known that condoms
12 are intimate objects. They're worn by one person and used
13 for sexual intercourse with another, so there is a good
14 chance for there to be some kind of DNA evidence on that
15 item. So we collected it.

16 Q Once you had surveyed the downstairs area, in the
17 downstairs area in the kitchen, did you also note the
18 presence of -- beg the Court's indulgence.

19 (Pause.)

20 Let me ask you, State's Exhibit 64, what does that
21 show?

22 A A bunch of liquor bottles. This was in the kitchen
23 area on the way to the laundry room, and the other is
24 going back where that dining table would be and that bar.

25 Q State's Exhibit 53?

1 A That's the sink.

2 Q And what?

3 A In the kitchen.

4 Q What do the glasses in the sink look like?

5 A Those are shot glasses and possibly some kind of a --
6 not really a water glass but another glasses with a
7 rounded bottom.

8 Q And then State's Exhibit No. 39, you mentioned these
9 incense?

10 A Yeah.

11 Q It's hard to see in that one picture.

12 A Yeah. There's two on them. They're on the corner of
13 the bar. I believe there's a candle on there, but there's
14 lot of different scents going on right there.

15 THE COURT: Investigator Martin, would you scoot a
16 little bit closer to the microphone for me?

17 THE WITNESS: Yes, sir.

18 THE COURT: Thank you.

19 BY MS. CAMPBELL:

20 Q Also located in the downstairs area there were
21 certain items of significance. I show you State's Exhibit
22 No. 26. Do you recognize that?

23 A I do.

24 Q And what does that show, sir?

25 A That's the -- when you walk in the door, that's the

1 living room. The TV is over the fireplace. The chair is
2 in there. There's a laptop computer laying on the arm of
3 that chair.

4 Q I'm going to show you State's Exhibit No. 24. Does
5 that show that better?

6 A It is and that was found to be Almanita's laptop.

7 Q Almanita's laptop?

8 A Correct.

9 Q And that was located in what part of the house?

10 A It was downstairs in the living room area.

11 Q And during the course of your investigation, did the
12 you become aware of whether or not that was encoded in any
13 way, or is that what Mr. Dove addressed?

14 A Mr. Dove, yes. He processed the computer. He
15 actually goes through and finds that information out.

16 Q State's Exhibit No. 23, what does that show?

17 A That's another computer bag, backpack, and another
18 bag inside it. Those are -- you can actually see the
19 corner of that chair. The laptop would be on the arm
20 right there.

21 Q Okay. Did you also go in the upstairs area of the
22 house?

23 A I did.

24 Q And did you basically look through the upstairs area,
25 as well?

1 A Yes. We went through the whole house.

2 Q But crime scene would have been the ones responsible
3 for collecting the items there?

4 A They did.

5 Q At some point, did you make entry into the laundry
6 room?

7 A I did.

8 Q And what did you notice when you went into the
9 laundry room?

10 A The dryer was open. Tim Lee had already been in the
11 room. He was one of our crime scene investigators who
12 testified. When he was in there, he asked if I could
13 smell it. I could pick it up, as well. There was a smell
14 of -- it smelled like decomposition or rotting flesh
15 inside the area of the dryer which seemed to be connected
16 to this dark blanket that also had been in the dryer with
17 several -- excessive amount of laundry sheets.

18 Q I show you what's been marked as State's Exhibit No.
19 184. Is that the laundry room area?

20 A Yes, ma'am.

21 Q And does that show the blanket that was found in the
22 dryer?

23 A Yes, ma'am.

24 Q Once the dryer was opened?

25 A Yes, ma'am.

1 Q And that ended up being the same blanket that ended
2 up testing positive for Almanita's blood?

3 A That is correct.

4 Q There were also questions about the state of the
5 washing machine. I show you State's Exhibit No. 68.

6 A Yes, ma'am.

7 Q And about whether or not this was dry by the time it
8 was photographed.

9 A It was. It appeared to be dry. However, I did some
10 testing at my own house and ran my washer, and as soon as
11 the load was done, took out the loading, I actually took a
12 napkin and wiped it on the inside. It seemed just the way
13 that thing is designed. It's to pull that water out so
14 there was no pooling water. It would appear wet.

15 Q Did you then proceed into the garage area?

16 A I did.

17 Q And was the victim's vehicle there?

18 A It was.

19 Q Were there any other vehicles on the property?

20 A No.

21 Q And once you went into the vehicle, did you find
22 certain items belonging to the victim in this case?

23 A I believe Investigator Martin noted inside the --
24 where your fingers would go to open the door, close the
25 door on the driver's side were identification and credit

1 cards belonging to Almanita Smith.

2 Q Including the cards that you later got records for
3 that were used in that week that she was missing?

4 A Correct, the USAA about the American Express.

5 Q As well as her military ID, I believe?

6 A That is correct.

7 Q And were you able to locate the keys to that car?

8 A They were -- one set was inside the house. The other
9 set was in that bag that was located next to the chair in
10 the living room.

11 Q And who did the bag, located next to the chair,
12 belong to?

13 A Marcus Bailey.

14 Q And that's the picture we just showed the jury?

15 A That's correct.

16 Q Beside the car in the garage area, did you note
17 anything?

18 A Yeah. We kind of looked in the garage. There were
19 some military items that were stacked in a box. There
20 were garage items inside the garage, but next to the car
21 were several bags that had clothing and personal items in
22 them. They all appeared to be men's clothing, which later
23 was found out to be Marcus Bailey's clothing. So all of
24 this stuff was packed up in little plastic bags like what
25 you get in the grocery or American Eagle bags from the

1 store.

2 Q Okay. I'm going to show you State's Exhibit No. 135.

3 Back up for a minute. Is that the area where those cars
4 were located we just talked about?

5 A That's correct. They're by there.

6 Q And in State's Exhibit No. 136 shows what?

7 A The credit cards and the door handle and the military
8 ID.

9 Q And that's how they appeared when you located them;
10 is that right?

11 A That's correct.

12 Q And the cards and the ID we're talking about are
13 shown in State's Exhibit...

14 A Yes, ma'am.

15 Q 137?

16 A Correct.

17 Q And at a later date, were you able to retrieve
18 records belonging to these two cards, which were
19 significant?

20 A Yes.

21 Q The bags you're talking about -- and there are other
22 pictures, as well -- but on State's Exhibit 138, where are
23 those bags located you're talking about now?

24 A When the car is parked in the garage, it's nosed in.
25 The front of the house is here. It's nosed in the garage.

1 The items were located on the driver's side of the car
2 from the garage door up to the driver's door.

3 Q And, again, what type of clothing were in these bags?

4 A Men's clothing, and like I said, the clothing
5 belonging to Marcus Bailey, personalized.

6 Q Specifically, one of those bags that's later
7 associated in more ways than one to Marcus Bailey was what
8 type of American?

9 A American Eagle, I believe, American Outfitters. It's
10 a chain clothing store.

11 Q In the upstairs area -- let me hook at this, were
12 various items located in what appeared to be -- or what
13 was later identified as Marcus Bailey's bedroom?

14 A Yes.

15 Q And I show you what's been marked as State's
16 Exhibit 96.

17 A That's the laptop that was laying on the bed in that
18 room.

19 Q Again, in State's Exhibit 80, are those items located
20 on the bed?

21 A Yeah, those are cargo pants and a shirt and a belt.

22 Q What type of bag is that on the bed?

23 A I believe it's either American Eagle or American
24 Outfitter. I get them confused.

25 Q Okay.

1 A The chain store. The same store that Cocoa worked
2 in.

3 Q And the laptop that's shown in State's Exhibit No.
4 96, who did that belong to?

5 A Marcus Bailey.

6 Q But when you entered the home, both laptops were in
7 there?

8 A Yes.

9 Q And the clothing that was found in the various bags
10 in the garage area, did Marcus Bailey later acknowledge
11 those were his?

12 A He did. What made it significant from the beginning
13 is that when we go through the house, we're looking for
14 identification of the rooms, who else is there, who stays
15 there.

16 Like I said, Marcus Bailey was not on the scene. He
17 made an identification to either the initial officers or
18 the EMS responding crew that that was Almanita Smith in
19 the front yard.

20 I didn't know who that was until we started going
21 through the house and trying to figure out where everybody
22 was. Something was significant on that. As we went into
23 that room that was later identified to be Marcus Bailey, I
24 opened all the drawers. There was nothing in those
25 drawers. The drawers were empty.

1 There were personal items. There wasn't clothing
2 there. The laptop was in there, and there was like one or
3 two articles just barely hanging in the closet, but as far
4 as having a -- to say that was his spot, it didn't appear
5 to be so. All these belongings were packed up neatly
6 outside next to the car.

7 Q While you were there at the scene, did you also
8 interview Ms. Crystal Bailey?

9 A I spoke to Ms. Crystal Bailey. I think I had her
10 statement actually taken by Joey Bass.

11 Q As well as Mr. and Mrs. Postell?

12 A Correct. I spoke to them initially and had their
13 statement given to another investigator.

14 Q While you were at the scene after it had been
15 photographed and evidence collected such as the hair, did
16 you -- was the body thing rolled over, and you were able
17 to see further what state of decomp.?

18 A Yeah, we didn't touch the body until -- we wanted to
19 make sure we had a search warrant in place, didn't know
20 exactly -- just to be on the up and up with everything.
21 We wanted to have all the documentation correct.

22 Then when they rolled the body, it was ever apparent
23 that that body had been dead for several days. It wasn't
24 fresh. It wasn't -- I've seen several dead bodies in my
25 time. It did not appear that it had -- it had been more

1 than three days, I would say, a long period of time.

2 Q While there at the scene, did you also get
3 information about when the last time was that Mr. Bailey
4 claimed to have seen the victim?

5 A While I was there, I knew we had Marcus Bailey.
6 Because he was the only one there at the scene.
7 Initially, he was a person of interest. I called out to
8 Joe Clarke who was at the hospital with Marcus Bailey. He
9 had been transferred there before.

10 I just asked pretty much what was he saying? What
11 did he say had happened? Joe had told me, which is later
12 documented, is that it was being alleged that she was
13 alive and walking around at 11:30 in the afternoon the day
14 before. That's not possible. That didn't happen.

15 He made that allegation that this is -- that she was
16 up, moving alive. I also became concerned that he made a
17 positive ID on that body walking out and seeing it, and I
18 saw that body.

19 I don't think that was possible at all to make a
20 positive ID to say that somebody you saw yesterday at
21 11:30 was that body that was laying in the front yard
22 badly decomposition.

23 I did not know Almanita, but I couldn't match that to
24 any picture. I went through and looked in all the rooms
25 trying to figure out what room was hers. There was

1 about things that happened that morning.

2 Q In fact, were you there when they went back over the
3 statement, the typewritten statement, about what he knew
4 about Almanita?

5 A I did. I was there. Prior to that, I had been
6 called away for a second. Anna Clem--- Anna Cavanaugh --
7 she just got married, I'm sorry -- Anna Cavanaugh came
8 over. She had some concerns about some stains that were
9 on Marcus' clothing, so we asked Marcus to kind of reenact
10 or show us how -- when he approached the body, what way he
11 went to it and what contact he actually made. Then, like
12 I said, we went over the statement that Joe had taken.

13 Q Okay. I'll get back to that in a minute. Did
14 Mr. Bailey give you any information about he and Almanita
15 and their relationship?

16 A He did. He -- he would kind of double speak on some
17 efforts of it. First of all, they were boyfriend and
18 girlfriend, and then that they weren't anymore; that it
19 was more of an open relationship.

20 She could see who she wanted to see. He could see
21 whoever he wanted to see. They would agree to -- if they
22 both felt a desire to have sex, they would have sex. If
23 they didn't want to have sex, they would have -- it seems
24 that they had completely separate rooms.

25 By going through the house, I knew that she had her

1 room with all of her belongings in it which clearly had
2 nothing but women's clothes in it, and then his own room.
3 So they lived separately but stayed in the same house to a
4 degree.

5 She was -- let's see. That sometimes she would be
6 controlling, and I asked him if that was a problem. He
7 said no, it wasn't a problem. He didn't mind it, but she
8 would sometimes interject how she felt he should live his
9 life. He took offense to it.

10 When I would ask him about that, he would change and
11 said he wasn't offended by it. Then when I asked what he
12 was doing, he would talk about going out and having these
13 sexual relations. That would be farther than you wanted
14 me to go, but these sexual relations --

15 Q That's further. Let me back up.

16 Did he give you some information about his intimate
17 relationship with the victim and when that last occurred?

18 A He stated he had sex with her on the 16th.

19 Q And he was specific about the date, the 16th?

20 A Yeah. That question came up because there was a
21 condom in the trash can. I asked if that was tied to her.

22 Q He was the first one to bring up the day of the 16th,
23 the last time he had sex with her?

24 A Correct.

25 Q And did he say that he was worried about their open

1 been doing over the weekend?

2 A Yes. He said he had already -- he had gone to a
3 place called -- he references XXX which had been changed.
4 It's now, I think, Jet Nightlife, or it was Jet Nightlife
5 when he went there. It used to be this other club. He
6 went there and met up with some people, purchased some
7 alcohol, spent most of the night there.

8 Q What day did he indicate he had gone there?

9 A I believe it was Saturday night.

10 Q And did he state where Almanita was while he went out
11 to celebrate his birthday?

12 A He acted like she was going to stay home; that she
13 wasn't going to go. She had to be -- if I remember
14 correctly, she had to go to something for her education,
15 some class.

16 Q Class?

17 A Uh-huh.

18 Q But she indicated what about the car?

19 A That he allowed her to use the car. The car had some
20 kind of mechanical trouble. There was something wrong
21 with either the power steering pump or something along
22 those lines. He had to put fluid in it on a regular
23 basis.

24 Q So he indicated while he was out celebrating his
25 birthday, Almanita had stayed home or was in a class?

1 A Yes. We asked him about -- at this time, we had
2 known that there were receipts there with transactions
3 that had taken place at these other places. Again, going
4 through the process where things were found and
5 photographed were these receipts from Jet Nightlife and
6 Club Caviar, a midnight diner, and again, looking at the
7 body and realizing that she had been dead for a
8 considerable amount of time, these became significant. We
9 were trying to follow up on where she might have been.
10 Her name was on these receipts. I mean, these were her
11 credit cards and her bank cards.

12 Q I'm going to show you what's being mark as State's
13 Exhibit No. 78, the receipts you're referring, too.

14 A Correct.

15 MS. CAMPBELL: Is this in evidence?

16 THE COURT REPORTER: No, it's not in evidence.

17 MS. CAMPBELL: Your Honor, at this time, we would
18 offer it into evidence.

19 THE COURT: What's the number?

20 MS. CAMPBELL: Seventy-eight.

21 MR. MYERS: No objection, Your Honor.

22 THE COURT: Seventy-eight without objection.

23 (WHEREUPON, State's Exhibit No. 78 was admitted into
24 evidence.)
25

1 A No.

2 Q What's his date of birth?

3 A I don't have that in front of me.

4 Q Beg the Court's indulgence.

5 (Pause).

6 I show you his booking form. Do you recognize that?

7 A I do. It refreshes my memory. It was the 17th.

8 Q What is his date of birth?

9 A Seventeenth of August, 1985. I'm sorry, the 19th of
10 August, 1985.

11 Q August 19th?

12 A Correct.

13 Q Of 1985?

14 A Yes; that's correct.

15 Q You also mentioned earlier about that third phone.
16 During the course of your investigation, when was it last
17 used by anyone?

18 A I recall it being used August 11th.

19 Q August of 2011?

20 A 2011, I'm sorry, August of 2011.

21 Q There had been some questions about Edward Walker.
22 Are you familiar with him?

23 A I am.

24 Q And was he -- did you actually have an investigation
25 where he was charged with murder?

1 A I did.

2 Q Were there any other codefendants in that case?

3 A There were four other codefendants.

4 Q In that case, was he forthcoming?

5 A He was.

6 Q As far as his involvement with anyone else?

7 A He told on himself, and he told on the other four,
8 which is instrumental in the other case. It's already
9 caused three of the total defendants to be adjudicated
10 including the shooter, the one that had the gun and
11 actually killed the victim.

12 Q As far as your interactions with him, he's been
13 forthcoming. However, what are his mental...

14 A He's slow. His attorney has advised me his IQ is in
15 the 70s --

16 MR. MYERS: Objection.

17 MS. CAMPBELL: You can't say how much it was.

18 THE COURT: Sustained.

19 THE WITNESS: Low.

20 BY MS. CAMPBELL:

21 Q In the course of discovery, during your
22 investigation, did you take that statement from him?

23 A I did.

24 Q Was that in October?

25 A It was.

1 not making any sense with him seeing her alive and moving
2 at 11:30, we felt it prudent to see if that body had been
3 stored inside to verify that one way or the other to see
4 if that body had been stored.

5 The dog --

6 Q Go ahead.

7 A The dog did present and went inside and found some
8 locations inside the house.

9 Q And in the locations in this house, were those
10 significant as to findings -- were there certain items
11 that were kind of damp in this case that you found?

12 A Yes. Another thing that didn't make a whole lot of
13 sense were the pants that matched Almanita's outfit she
14 was wearing, the shirt that she was found in the front
15 yard, those matching pants were wet and hanging in her
16 closet.

17 For her being dead for as long as she had, it didn't
18 make sense for them to still be damp inside the house, but
19 the dog alerted in that area where those pants were found.
20 The pants had been removed, so the dog alerts in that room
21 saying that they're -- the presence of...

22 Q Because the pants were in the closet with other cloth
23 materials?

24 A Correct. Everything is going to absorb. It's all
25 the scent coming from -- and the dog alerted on the scent

1 of decomposition.

2 Q There's also been some testimony here today that she
3 had a hysterectomy at some point?

4 A She did. In 2010, October, she had a hysterectomy.

5 Q There's also been some questions about some Oxycodone
6 that was found in her house?

7 A Yeah. And her records -- which are pretty well
8 documented through the military, she had been prescribed
9 the Oxycodone in 2010.

10 Q And the upstairs area, I believe there's one room in
11 this house -- excuse me -- I'm going to show you State's
12 Exhibits Nos. 1 through 5. Do these show the upstairs
13 area with the TV, the futon, as well as other bedroom
14 areas upstairs?

15 A Yes.

16 Q And these actually show areas where the dog actually
17 found certain things, as well as the front of the house?

18 A Yes.

19 MS. CAMPBELL: Your Honor, at this time we'd offer
20 State's Exhibits 1 through 5 into evidence. They just
21 weren't in.

22 THE COURT: I'm sorry. I missed the number.

23 MS. CAMPBELL: 1 through 5.

24 MR. MYERS: No objection, Your Honor.

25 THE COURT: Okay.

1 A It had been -- quite a bit of time had passed from
2 the time the body was discovered and the EMS had been
3 responding to where officers were able to go inside with a
4 search warrant to pop open the dryer to find the blanket.
5 So --

6 Q Sir, the answer to my question is you have no idea,
7 do you?

8 A I have an idea. I just gave you my idea, sir.

9 Q Okay. Now, with regards to the boxes that the
10 cadaver dog alerted to, there were three boxes, I believe,
11 right?

12 A Yes, sir.

13 Q Only one of the three boxes had the blanket, right?

14 A Yes, sir.

15 Q So your testimony is that this keen-scent dog alerted
16 to one out of three boxes but only one box had the
17 blanket?

18 A Yes.

19 Q The other two boxes had absolutely nothing.

20 A I believe that's correct.

21 Q And that's your testimony that that body was wrapped
22 in that blanket based on the dog alerting to one of three
23 boxes with only one of them having the blanket?

24 A I would base that opinion on the fact that there was
25 her blood on that blanket. The fact that the blanket

1 the issues in that case was the fact that -- whether or
2 not there was enough circumstantial evidence to -- to
3 convict both defendants.

4 In that case, Your Honor, the law basically states
5 that the trial court failed to grant a directed verdict
6 based on circumstantial evidence, and the Supreme Court
7 found that to be in error.

8 The Supreme Court stated that the trial court has a
9 duty to submit the case to the jury where the evidence is
10 circumstantial if there is substantial circumstantial
11 evidence which reasonably tends to prove the guilt of the
12 accused or from which his guilt may be fairly and
13 logically deduced.

14 The trial judge should grant a directed verdict when
15 the evidence merely -- or should grant a directed verdict
16 motion when the evidence merely raises a suspicion that
17 the accused is guilty.

18 In this case, Your Honor, we have no evidence that
19 Mr. Bailey murdered Ms. Smith. We have no evidence that
20 there was an unlawful killing. In fact, the evidence is
21 to the contrary.

22 The evidence suggests today, as Dr. Bradley Marcus
23 indicated, that she could have died by way of natural
24 causes. The evidence also suggests that she could have
25 died from a number of other things, but there has been no

1 evidence that she actually died from the result of a
2 homicide.

3 Dr. Amy Durso testified that her conclusion which
4 should have been based upon a reasonable degree of medical
5 certainty was, in fact, based on suspicion. Certainly,
6 that -- you would not even get to her level of her
7 standard of proof when it comes to an expert testifying.

8 So in that regard, the only individuals that could
9 put together a time or cause of death and label this to be
10 a homicide certainly did not do so.

11 We believe that any sort of evidence regarding the
12 use of credit cards, any sort of evidence regarding cell
13 phone usage would have arisen after this young lady,
14 according to the State, had been dead. Those sorts of
15 things as far as malice aforethought cannot arise after,
16 so there has been absolutely no evidence that would
17 suggest that anything was done beforehand or that anything
18 was done to actually cause Ms. Smith's death by way of a
19 homicide.

20 We certainly have contradicting testimony from the
21 two experts here. Not contradicting testimony, but we
22 have the two witnesses or the two experts who cannot,
23 beyond a reasonable degree of medical certainty, say that
24 this lady was killed by way of a homicide.

25 Based thereon, based on the fact that there has not

1 been not enough circumstantial evidence presented to this
2 jury, we would respectfully ask that the Court grant our
3 motion for a directed verdict.

4 THE COURT: Ms. Campbell?

5 MS. CAMPBELL: At this point, Your Honor --

6 THE COURT: Yes, ma'am.

7 MS. CAMPBELL: -- there has been overwhelming
8 evidence in this case, circumstantial as well as direct,
9 the testimony of Edward Walker alone is enough to support
10 in which the defendant indicated that he had choked her
11 out, I believe was the terminology he used. He didn't
12 mean to kill, if he did kill her.

13 There was also evidence in the record that the
14 defendant went above and beyond in efforts to cover up
15 this murder; that he actually he hid the body in the house
16 for a number of days.

17 In addition to that, Your Honor, he gave conflicting
18 testimony and lied about when he had last seen the victim
19 in this case.

20 When he ran out of the house, he runs up to the body
21 and immediately tries to pick up the body in order to make
22 the body get on him. He goes in the house, gets a blanket
23 in order to cover-up any fiber evidence.

24 There's a history of when they entered the house,
25 there are fresheners everywhere. When the dog goes in the

1 house and hits on several spots where the decomposing body
2 would have been.

3 There's also additional evidence in the record that
4 on a prior occasion, he had told another friend of his,
5 actually a good friend of his, about how he wanted to kill
6 her and how he would go about doing it which bears a
7 remarkable resemblance to the actual facts in this case
8 and what happened.

9 Your Honor, we say that there is circumstantial
10 evidence, Your Honor. I think the evidence supports that
11 there was more than circumstantial evidence.

12 The fact that they handed up Commander, Your Honor --
13 I had forgotten about that case. It was tried here in
14 Richland County. The actual facts in that case are
15 remarkably similar to this.

16 Basically, the body had been found. There were text
17 messages afterwards where the defendant was gone. He was
18 using her credit cards, in a manner similar to this. He
19 went to New Orleans and basically was found there; that
20 they had lived together prior to that.

21 He actually sent text messages, just as the computer
22 was used here, to her family members trying to relate
23 that, in fact, she was alive during the period of time
24 that she was actually dead, according to the autopsy.

25 Your Honor, I do feel like the State has presented

1 more than sufficient evidence at this point to get beyond
2 a directed verdict.

3 THE COURT: All right. Based on my review of Rule 19
4 of the South Carolina Rules of Criminal Procedure and the
5 adjoining case law, at this point, I'm supposed to view
6 the evidence in the light most favorable to the State
7 based on the indictment that has been charged.

8 I'm also to consider only the existence or the
9 nonexistence of the evidence and not its weight or the
10 credibility. Therefore, your motion for a directed
11 verdict is denied.

12 All right.

13 MR. MYERS: Thank you, Your Honor.

14 THE COURT: Thank you.

15 Tell me where you are on who you're calling.

16 MR. MYERS: Your Honor, we -- we have no witnesses.

17 THE COURT: Okay. All right.

18 Stand up for me, sir.

19 All right. Place Mr. Bailey under oath.

20 MARCUS BAILEY, after being duly sworn,
21 testified as follows:

22 THE COURT: All right, Mr. Bailey. I have to advise
23 you of your rights. I'm literally going to read this
24 verbatim, so I mean no disrespect when I'm not looking at
25 you, but this is a very crucial part of your case and of

Certificate of Counsel

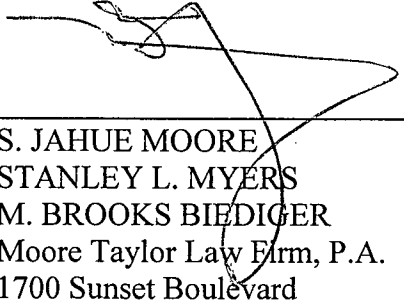
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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

SC Court of Appeals

January 29, 2015



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