

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Paul M. Burch, Circuit Court Judge

RECEIVED
MAY 15 2013
S.C. SUPREME COURT

FRANKIE LEE MCGEE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002146

APPENDIX

TAYLOR D GILLIAM
Appellate Defender

ALAN WILSON
Attorney General

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

LINDSEY MCCALLISTER
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

PAGES 501-1000

INDEX

INDEX	i
TRANSCRIPT DATED MARCH 23, 2010	1
TRANSCRIPT DATED MAY 25, 2011	10
TRANSCRIPT OF TRIAL DATED AUGUST 1-3, 2011	27
TRANSCRIPT OF TRIAL DATED AUGUST 8-10, 2011	809
FINAL BRIEF OF APPELLANT	1320
FINAL BRIEF OF RESPONDENT	1358
OPINION NO. 5227 S.C. CT. APP. FILED APRIL 30, 2014	1392
PETITION FOR REHEARING.....	1400
ORDER DENYING PETITION FOR REHEARING	1404
PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS	1405
RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS.....	1420
ORDER DENYING CERTIORARI PETITION.....	1446
APPLICATION FOR POST-CONVICTION RELIEF FILED MAY 18, 2014	1447
RETURN AND MOTION TO DISMISS WITHOUT PREJUDICE	1456
ORDER OF DISMISSAL WITHOUT PREJUDICE.....	1459
APPLICATION FOR POST-CONVICTION RELIEF FILED JANUARY 13, 2015	1461
RETURN.....	1488
AMENDED APPLICATION FOR POST-CONVICTION RELIEF DATED NOVEMBER 2, 2015.....	1494
TRANSCRIPT OF POST-CONVICTION RELIEF HEARING DATED AUGUST 30, 2017	1497

ORDER OF DISMISSAL.....	1563
INDICTMENTS	1607

1 THE COURT: Thank you, sir. You may step down.

2 THE BAILIFF: Watch your step.

3 THE COURT: Next witness?

4 MS. GARFIELD: The State calls Patricia Weed.

5 PATRICIA WEED,

6 after being duly sworn, testified as follows:

7 THE CLERK: Thank you. Have a seat in the
8 witness stand. State your name for the record.

9 THE WITNESS: Patricia Weed.

10 DIRECT EXAMINATION:

11 BY MS. GARFIELD:

12 Q Deputy Weed, where are you employed?

13 A Richland County Sheriff's Department in the
14 evidence room.

15 Q And were you also with the evidence room back in
16 2009 and 2010?

17 A Yes, ma'am.

18 Q And is your duties with the evidence room to
19 maintain the evidence?

20 A Yes, ma'am.

21 Q To keep it secure?

22 A Yes.

23 Q Do you accept any evidence that's not packaged
24 properly?

25 A No.

1 Q If there is evidence that's not packaged
2 properly, what do you do?

3 A We call the officer and have them come fix it
4 before we take it into the evidence room.

5 Q Okay. Specifically, in this case that we're in
6 court today involving the victim, Reverend
7 Eichelberger, were you in possession of any evidence
8 pertaining to this case?

9 A Yes.

10 Q And I'm specifically referring to a pair of
11 socks. Are you familiar with those socks?

12 A Yes, ma'am.

13 Q Did you transfer those socks to a Mr. John
14 Barron back on March 1st, of 2010?

15 A Yes.

16 Q And were those packaged properly?

17 A Yes, ma'am.

18 Q And was there any other evidence that you
19 assisted with containing --- concerning this case?

20 A The socks was the only thing I had to deal with.

21 MS. GARFIELD: Thank you, Deputy Weed. Please
22 answer any questions the defense has for you.

23 THE COURT: Anything from the defense?

24 MR. STRICKLER: Your Honor, I have no questions
25 for the witness.

1 THE COURT: Thank you. You may step down.
2 Your next witness?

3 MS. CAMPBELL: The State would call Tena Goff.

4 TENA GOFF,

5 after being duly sworn, testified as follows:

6 THE CLERK: Thank you. Have a seat in the
7 witness stand. State your name for the record.

8 THE WITNESS: Tena Goff.

9 DIRECT EXAMINATION:

10 BY MS. CAMPBELL:

11 Q Ma'am, where are you employed?

12 A The Richland County Sheriff's Department
13 evidence room.

14 Q And how long have you worked with Richland
15 County?

16 A Over 18 years.

17 Q And what do your duties include in the evidence
18 room?

19 A Help to log in, accept, store evidence, maintain
20 the chain of custody for evidence and also the
21 purging process.

22 Q And we've all been referring to documents in
23 this case as to your chain of evidence document by
24 computer?

25 A Yes, it is.

1 Q And that was done in this case?

2 A Yes, ma'am.

3 Q And, specifically, were you involved in the
4 chain involving several items that were ultimately
5 tested by the DNA lab in this case?

6 A Yes, I was.

7 Q And I want to look at items one through four.
8 What are those items?

9 A Item one is a buccal swab from Tryon
10 Eichelberger. Item two is a buccal swab from David
11 Williams. Item three is a buccal swab from Michael
12 Allen Johnson. Item four is a pair of white socks.
13 Item five is two white K-Swiss shoes, and item six is
14 a stainless steel rod.

15 Q Those are items that were initially submitted
16 with assisting another agency case?

17 A Yes.

18 Q And when you have that label in a case,
19 "assisting another agency", what does that mean?

20 A That means another agency has brought us their
21 evidence, because it means they need our help in
22 testing it.

23 Q Okay. And is that pretty standard procedure?

24 A Yes.

25 Q And those items, I believe, were taken in by you,

1 all those items we just mentioned, items one through
2 six, from Investigator Nelson on June 4th, 2009?

3 A I brought them in --- yes. I accepted them on
4 June 4th.

5 Q And at that point --- and that was in 2009,
6 correct?

7 A Yes.

8 Q And at that point, what was done with them by
9 you?

10 A Before they were accepted, I made sure that they
11 were packaged and labeled properly and sealed
12 properly. Once that had been done, then I logged
13 them in and put them on our shelves in the back.

14 Q And when you log in items --- as we go through
15 talking about all of these items, you check to make
16 sure everything is proper, nothing has been tampered
17 with or looks like it has been altered in any way?

18 A That is correct.

19 Q And everything was properly submitted in this
20 case?

21 A Yes.

22 Q And as far as the initial submission in this
23 case of items one through six, when you secured them
24 into your evidence room, they were properly stored
25 and maintained?

1 A Yes, they were.

2 Q And would have been kept --- would anybody have
3 any access to them during that time they were there?

4 A No.

5 Q And y'all have a protocol in place to make sure
6 that doesn't happen?

7 A Yes, ma'am.

8 Q Then in items that were checked back out were
9 items one through four then returned back to CPD back
10 on September 11th, 2009?

11 A Yes. I released them to Deputy Nelson, or
12 Arthur Nelson, from CPD.

13 Q In this case, there was a pair of socks we keep
14 referring to. Originally, they were item number four;
15 is that correct?

16 A Yes.

17 Q And they were later resubmitted the next year
18 for further testing. Would they have been given a
19 different number?

20 A Yes, they were. They were given item number ten.

21 Q And that didn't affect them being a different
22 item. It was just because it was resubmitted, it was
23 assigned another number; is that correct?

24 A Yes.

25 Q Okay. And at that time, also, in 2010, were

1 additional items, 11 and 12, submitted?

2 A Yes, there was.

3 Q By Investigator Nelson to your department?

4 A Yes.

5 Q What items were those?

6 A Item 11 was an oral swab from Frankie Lee McGee.

7 Item 12 was four swabs from the interior side vehicle.

8 Q And those were properly submitted to your
9 department on, I believe, on July 9th, 2010?

10 A Yes. They were.

11 Q And secured in the evidence room?

12 A Yes, they were.

13 Q And did you actually personally transfer those
14 to the DNA analyst in this case, John Barron?

15 A I transferred them on July 15th, 2010, at
16 8:37 in the morning.

17 Q Okay. And during the time period they were kept
18 in your evidence room, did anyone tamper with them,
19 alter them or do anything to them?

20 A No, ma'am.

21 Q And they were submitted to --- as all the other
22 items in this case, when they were submitted to be
23 tested, were they sealed properly and properly
24 submitted?

25 A Yes, ma'am.

1 Q Beg the Court's indulgence.

2 (Pause)

3 And when those items were transferred for
4 testing during the time period there, y'all hadn't
5 resealed them or changed the seals or anything like
6 that. They were submitted the way they were
7 submitted to your evidence room for further testing?

8 A If they're not packaged in our packaging, we
9 have them repackaged. But no, there's no tampering
10 or altering of the evidence at all.

11 Q You don't break the original seal. You just
12 repackage them later?

13 A No, ma'am, we do not.

14 MS. CAMPBELL: Thank you. Nothing else.

15 THE COURT: Anything from the defense?

16 MR. STRICKLER: Thank you, Your Honor. I have
17 no questions for this witness.

18 THE COURT: All right.

19 MR. STRICKLER: Thank you.

20 THE COURT: All right. You may step down.

21 Next witness?

22 MS. GARFIELD: The State calls Christine
23 Barrickman.

24 CHRISTINE BARRICKMAN,

25 after being duly sworn, testified as follows:

1 THE CLERK: Thank you. Have a seat in the
2 witness stand.

3 THE WITNESS: Christine Barrickman.

4 DIRECT EXAMINATION:

5 BY MS. GARFIELD:

6 Q Ms. Barrickman, where are you employed?

7 A Richland County Sheriff's Department.

8 Q If you'll please tell the jury what your duties
9 are with the sheriff's department.

10 A I work in the DNA lab. I assist the analyst
11 with the processing of cases.

12 Q And what is your prior education and experience
13 to allow you to do so?

14 A I have a criminal justice degree, Bachelor of
15 Science, criminal justice. I've had numerous
16 in-house training disciplines. I attended outside
17 agency --- I mean, outside classes, and we go through
18 training every year.

19 Q How long have you been with the sheriff's
20 department?

21 A Five years.

22 Q And has all five years been in the DNA
23 department?

24 A Yes, it has.

25 Q Specifically, on this case, or any case, what do

1 you when you come in possession of evidence?

2 A I first make sure that the case numbers, the
3 paperwork, all the information on the packaging is
4 correct; that it is packaged and sealed properly, and
5 then I would actually open the evidence and process
6 the evidence.

7 Q And when you say process the evidence, can you
8 explain to the jury what you mean?

9 A It depends on what kind of evidence it is. If
10 it's a swab where something has already been swabbed,
11 I would cut that and put it into a tube, and then the
12 tubes, the cuttings that are in the tubes are turned
13 over to the analyst.

14 If it needs to be tested --- if we think it
15 might be possible blood or, you know, possible semen,
16 something like that, we run those kinds of tests.

17 If it's clothing, depending on what they want
18 with the clothes, we may examine those for blood,
19 semen, saliva. Then if we were to find something, we
20 would take a cutting or a swab from that.

21 Q Ms. Barrickman, did you have the opportunity to
22 have control of any of the evidence in this case that
23 we're in court with today?

24 A Yes, I did.

25 Q And, specifically, did you come in contact with

1 a pair of tennis shoes on June 11th, 2009?

2 A Yes, I did.

3 Q And did you have the opportunity to come into
4 contact with a steel rod on June 11th, 2009?

5 A Yes.

6 Q And also, did you come into contact with a pair
7 of socks on June 11th, 2009?

8 A Yes.

9 Q And did you come into possession, also, of three
10 separate buccal swabs belonging to Tryon Eichelberger,
11 David Williams, and the defendant, Mr. Frankie McGee?
12 I'm sorry, not Mr. McGee. Did you have a chance to
13 come into contact with three swabs? Sorry, it's
14 getting late.

15 A Yes.

16 Q Okay. And let's just go through them one by one.
17 Starting with the buccal swabs, what did you do
18 initially when you came into possession of those?

19 A Again, the buccal swabs, I would have just
20 strictly cut a piece of the swab and put it into a
21 tube. The white socks, I examined them. I swabbed
22 the inside of the socks to get any DNA from that.

23 There was a stain on the outside of the socks
24 that I tested with a chemical presumptive test called
25 phenolphthalein for the presence of blood. That was

1 positive, so I did take a cutting from that.

2 There were two socks. I did same thing on both
3 of those. There was a pair of tennis shoes. There
4 was a couple spots that could have possibly been
5 blood, in my opinion, so I tested those. They were
6 negative.

7 I did take a swab from the inside of the shoes
8 just to get any possible DNA evidence. And then the
9 metal bar, I swabbed one end of the bar for possible
10 DNA. The other ends of the bar had a stain on it
11 which I tested, and it was positive for blood. I
12 swabbed that and ---

13 Q When you say swabbed --- they don't do this
14 every day. Would you explain to the jury what,
15 physically, you do?

16 A Right. The swab is basically like a Q-tip. You
17 take a Q-tip, and you add distilled water to it,
18 which makes the swab wet, which helps you, you know,
19 get the stain up off of the item that you're trying
20 to swab.

21 Q And you did that with this item that you
22 previously testified to?

23 A Correct.

24 Q And after you did those swabs and took the
25 cutting, what did you do with the physical evidence?

1 A The evidence and the cuttings are then passed
2 over to whichever analyst is working the case.

3 Q Do you recall the analyst that worked this case?

4 A John Barron.

5 Q And did you give the items to John Barron?

6 A I did.

7 Q And they were not tampered with in any way?

8 A No.

9 Q And was that the extent of your working on this
10 case?

11 A Yes.

12 MS. GARFIELD: Thank you. Please answer any
13 questions the defense counsel may have.

14 THE COURT: Defense?

15 MR. STRICKLER: Just a couple of things please,
16 sir.

17 CROSS-EXAMINATION:

18 BY MR. STRICKLER:

19 Q Good afternoon, ma'am.

20 A Hi.

21 Q My name is Doug Strickler. I'm one of the
22 attorneys representing Mr. McGee here. Just a couple
23 of questions.

24 The solicitor was asking you about coming into
25 contact with the items on June 11th. You actually

1 came into contact with the items first on June 8th,
2 correct? They were transferred to you by William
3 Cedarstaff on June 8th?

4 A Yes, you're correct. The date is June 8th,
5 correct.

6 Q Okay. And then on June 11th, you transferred
7 those items that she had been talking about to
8 Mr. Barron, who is with the DNA department, correct?

9 A That's correct.

10 Q Okay. And you've been referring to some notes?

11 A Uh-huh.

12 Q May I take a quick look at them, please?

13 A Sure. These are my notes, and then this is the
14 property report.

15 Q Okay. You do --- you do the preliminary testing
16 on items submitted to the DNA department?

17 A Correct.

18 Q Is that correct? You testified about
19 phenolphthalein test, which is the presumptive test
20 for the presence of human blood?

21 A Correct.

22 Q And depending on the nature of the things that
23 are submitted to you, there might be other
24 presumptive tests that you might do?

25 A Correct.

1 Q For the presence of other --- other bodily
2 fluids, correct?

3 A Correct.

4 Q And then you take samples of areas that --- that
5 you get a positive result on; is that right, you
6 talked about clipping, taking clippings from socks in
7 this particular case?

8 A Right. If there was a stain on the socks, I
9 would test that. If it was positive, then I would
10 cut where I swabbed and where it was positive.

11 Q And that --- that's what happened in this
12 particular case, correct?

13 A Correct.

14 Q Okay. Because what you've done is a presumptive
15 test, which means it's not for sure that there's
16 blood there, human blood there, and it needs to be
17 tested further?

18 A Correct.

19 Q If you do the presumptive test and nothing comes
20 up, then you don't have to worry about testing it
21 further.

22 A I generally don't test it, correct.

23 MR. STRICKLER: Thank you very much, ma'am.
24 That's all I have.

25 MS. GARFIELD: Just briefly, Judge.

REDIRECT EXAMINATION:

BY MS. GARFIELD:

Q You can get DNA, however, from the swab, correct?

A Correct.

Q You couldn't make a cutting of that rod though,
right?

A Right.

MS. GARFIELD: Thank you.

THE COURT: Anything further?

MR. STRICKLER: Oh, no, sir.

THE COURT: You may step down.

Next witness?

MS. CAMPBELL: The State would call Teresa Hines.

TERESA HINES,

after being duly sworn, testified as follows:

THE CLERK: Thank you. Have a seat in the
witness stand.

THE WITNESS: Teresa Hines, that's H-I-N-E-S.

MS. CAMPBELL: Your Honor, may we approach just
to clarify?

THE COURT: Yes.

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

DIRECT EXAMINATION:

1 BY MS. CAMPBELL:

2 Q Agent Hines, where are you employed?

3 A I'm employed with the South Carolina Law
4 Enforcement Division, also known as SLED.

5 Q What do you do there, ma'am?

6 A I'm a DNA analyst assigned to the database
7 department.

8 Q Tell the jury a little bit about your education
9 and training in the field of DNA analysis.

10 A I started off in the DNA case work department as
11 an analyst. I had to go through two years of
12 training up under a court-qualified analyst. I had
13 extensive training outside of SLED. That's for cases
14 work and for the database itself.

15 I've also attended training through the FBI for
16 the department I am currently assigned to. I have a
17 Bachelor Degree in biology from the University of
18 South Carolina, and I do have four of the classes
19 that are required in order to be a DNA analyst.
20 That's cellular and molecular biology, genetics
21 registry (phonetic) and statistics.

22 Q And how long have you worked with the DNA
23 department?

24 A Whenever I started, I was an intern, that was in
25 2005. It was actually one department known as DNA.

1 Since then, it's actually been split from case work
2 into CODIS.

3 Q CODIS?

4 A Uh-huh.

5 Q And are you currently assigned to ---

6 THE COURT: If you'll slide the mic towards ---
7 toward the left some, since you're looking that way
8 when you're speaking.

9 THE WITNESS: Sorry.

10 BY MS. CAMPBELL:

11 Q And what is CODIS?

12 A CODIS is basically an acronym. It's the
13 Combined DNA Index System. It's basically a
14 repository of DNA database samples from forensic
15 laboratories. It's used by the state, local, and
16 federal agencies to assist in investigations.

17 Q And are you currently assigned to the CODIS
18 division?

19 A I am.

20 Q Do you have any specialized training as far as
21 what you do for the CODIS division?

22 A That was part of the training that I had to go
23 through for the FBI, and I also have to attend
24 training every year to continue to be qualified as an
25 analyst in the DNA database department.

1 Q And your expertise is in DNA analysis, along
2 with your specialty as CODIS.

3 A Correct.

4 Q Is that a correct way to put it?

5 A Yes?

6 MS. CAMPBELL: Your Honor, at this time, we'd
7 offer her as an expert in those fields.

8 MR. STRICKLER: Which field?

9 MS. CAMPBELL: DNA analysis with an expertise in
10 CODIS.

11 MR. STRICKLER: I'd like the opportunity to voir
12 dire Ms. Hines.

13 THE COURT: You may.

14 MR. STRICKLER: Thank you.

15 Good afternoon, Ms. Hines.

16 THE WITNESS: Hi.

17 MR. STRICKLER: Your position at SLED with CODIS,
18 are you actually involved in DNA testing and analysis
19 in that position?

20 THE WITNESS: Yes. We have proficiency testing,
21 not only in case work, but also in the DNA database.

22 I don't specifically handle evidence samples,
23 because that is a casework thing. However, because I
24 do case work, as well as the database department, we
25 do analyze, and we have to be qualified to do that,

1 the same as casework.

2 MR. STRICKLER: Okay. So you were actively
3 involved in, as part of your job, analyzing DNA
4 samples and coming up with DNA profiles?

5 THE WITNESS: Correct.

6 MR. STRICKLER: All right.

7 That's all I have, Judge. Thank you. I have no
8 objection.

9 THE COURT: All right. She is so qualified.

10 BY MS. CAMPBELL:

11 Q Thank you.

12 What does CODIS stand for?

13 A CODIS, again, is an acronym for the Combined DNA
14 Index System.

15 Q And tell this jury how, if someone has a ---
16 what kind of sample would you receive as part of
17 CODIS?

18 A There are several different types of samples
19 that we would receive. The vast majority of our
20 samples are from convicted offender samples. There
21 is basically a log, and it's outlined in ---
22 basically, it's Title 23, chapter 3, article 9 ---

23 Q Okay. Let me stop you there.

24 A Okay.

25 Q Basically, there are known standards that are

1 collected from certain individuals across the state?

2 A Correct.

3 Q And those are sent to you and maintained within
4 in your database, which is called CODIS?

5 A Correct.

6 Q Is that simplifying it a little bit?

7 A Yes, it is.

8 Q Are there certain regulations and policies and
9 protocols in place to ensure the integrity of your
10 results?

11 A Absolutely.

12 Q And if a certain agency, such as the Richland
13 County Sheriff's Department DNA lab has an unknown
14 sample, is there --- do they have the ability to send
15 it to your CODIS unit to see if it would match any of
16 the known offenders that you have within your unit?

17 A Yes.

18 Q How does that work? Explain that whole
19 procedure.

20 A The analyst at Richland County will pretty much
21 process their case. They will come up with an
22 unidentified profile. As long as that profile meets
23 certain requirements, it can be uploaded.

24 I'll have to go into certain levels. There's
25 three different levels of CODIS. There is the LDIS,

1 which is the local level. An example of that is
2 Richland County. They are their own local DNA
3 database.

4 Then we have SDIS. That's the state level.
5 That's SLED. We house all the offender samples.
6 There's the national DNA. That's where all the
7 samples from the local and the state are basically
8 maintained at the national level.

9 So in a particular case, you can have a profile
10 that's developed from evidence at Richland County.
11 They can then submit it to SLED, and we can search it
12 to see if there's been a hit in the database.

13 Q And can just any sample be submitted for a CODIS
14 hit, or does it have to have a certain number of
15 alleles that actually show up?

16 A There are certain requirements that each profile
17 must meet in order for it to be submitted for
18 searching.

19 Q And that's something you reviewed prior to
20 searching through your system?

21 A With a case like this, it would be Richland
22 County's responsibility to ensure that the profile is
23 eligible to be searched.

24 Q Okay. And in this case, specifically, I want to
25 turn your attention --- did you receive a submission

1 of a sample from John Barron with the Richland County
2 Sheriff's Department?

3 A Yes.

4 Q Was that entered into the CODIS system?

5 A He would have entered it, yes.

6 Q He can enter it in himself?

7 A Yes, he can.

8 Q And your responsibilities and your duties once
9 that profile --- and I'll get back to that in a
10 minute --- is entered into the system. Then you
11 report out the findings? Is that one of your duties?

12 A Yes.

13 Q And in this case, in March of 2010, did
14 Investigator Barron put a profile into your system?

15 A He did.

16 Q And were you able to match that profile from
17 evidence that he was testing to the name and identity
18 of a certain person whose DNA profile was stored in
19 your system?

20 A Yes, I was.

21 Q And what was the name of the person who matched
22 that DNA profile?

23 A The name of the person that matched the DNA
24 profile is a Frankie McGee.

25 Q Frankie McGee?

1 A Uh-huh.

2 Q And when this information --- how does this
3 information come to your attention?

4 A When the search is actually ran through CODIS,
5 the program is able to pull up any of the associated
6 matches, and pretty much, we have to go through ---
7 we analyze the samples initially when they come
8 in-house.

9 Once there is a hit, that sample must be
10 reanalyzed again. Fingerprints also must be verified
11 with other information on the collection card that is
12 submitted. Once that is done, a report can be
13 written, but it has to be tech reviewed, and it also
14 has to go through an admin review.

15 Q And were all the proper procedures and
16 everything you just outlined followed as far as
17 procedure goes in this case?

18 A Yes, they were.

19 Q And were you able to report out, I believe, it
20 was March 11th ---

21 A Yes, I was.

22 Q Am I right?

23 A Yes, it was.

24 Q Of 2010 ---

25 A Yes, it was.

1 Q --- to Investigator Barron of the Richland
2 County Sheriff's Department the results of your CODIS
3 hit?

4 A Yes, it was.

5 Q I've shown you some --- it's not been marked ---
6 a copy of the letter that would have been forwarded
7 to that agency?

8 A Yes.

9 Q And does that reflect the information you just
10 testified to?

11 A Yes, it does.

12 Q And the sample that was loaded into the system
13 and submitted by John Barron from this case matched
14 whom?

15 A It was a Frankie McGee, M-C-G-E-E.

16 Q And you took all the proper procedures and
17 everything as far as forwarding that information
18 prior to forwarding it?

19 A Yes, I did.

20 MS. CAMPBELL: Thank you. Nothing further.

21 THE COURT: Cross-examination?

22 CROSS-EXAMINATION:

23 BY MR. STRICKLER:

24 Q Good afternoon, again. Just a few questions, if
25 I could, please.

1 You indicate that Mr. Barron would enter the
2 information that he had developed into CODIS ---

3 A Correct.

4 Q --- correct? On the person he was searching.

5 What is the nature of the information that is
6 entered?

7 A Could you be more specific?

8 Q Well, what does he put into the system?

9 A He is basically putting in a specimen number,
10 which should be associated with the lab number and
11 their item number.

12 Q Okay.

13 A That's the way that SLED does it. That's ---
14 I'm assuming because I'm not exactly sure how they
15 name it, but that's how they do theirs, as well.

16 There should be some type of identifying
17 information to match the case with an item. There's
18 also alleles, which are basically --- alleles are
19 basically just a set of numbers that are uniquely
20 identified to a particular person.

21 In DNA 99.9 percent of our DNA is unique. It's
22 pretty much the same between individuals. It's
23 that .1 percent that makes each and every one of us
24 different.

25 There are the exceptions with identical twins,

1 of course. In this case, what would have been
2 entered in are the alleles from that profile that was
3 developed. That was the information that would have
4 been entered in.

5 Q Okay. And then if I understand you, your
6 testimony, you compare the alleles that he's entered
7 into the system with the database, the alleles in the
8 database that you have?

9 A With Richland County ---

10 Q Right.

11 A --- they will actually notify SLED and let us
12 know if they want the profile confirmed. So they
13 actually make the comparison.

14 We will look at it, but they actually tell us if
15 they want it confirm or not. So Richland County
16 would actually --- pretty much makes the determining
17 decision on if they consider this to be a hit.

18 Q Okay. And Richland County, in making that
19 determination, is comparing the questioned sample
20 with --- with samples in their local database?

21 A With the state database.

22 Q State database?

23 A State database.

24 Q So they directly compare with the database that
25 y'all maintain; is that correct?

1 A Through searching, yes.

2 Q Okay. They don't compare with the national
3 database?

4 A They could.

5 Q Okay.

6 A I'm not sure if they've done that in this
7 particular case. Again, there are certain
8 requirements.

9 We actually don't handle Richland County's
10 searches for the national level. It's kind of like
11 where there is --- you have to go from the local to
12 the state and the state to the national, but with the
13 local database, they actually can communicate ---
14 once it's all received, all the information is
15 received ---

16 Q Right.

17 A --- they look at their own stuff. We don't make
18 their determinations on their cases.

19 Q But they asked for a confirmation from you?

20 A On this particular case, yes.

21 Q Okay. And your --- this --- this letter that
22 you just testified about ---

23 A Yes, sir.

24 Q --- right here?

25 A Uh-huh.

1 Q Okay. This hasn't been marked for --- when you
2 make that confirmation, what do you tell the agency?

3 A When we make the confirmation --- okay. Let me
4 take a step back. I was asked how do we do
5 confirmations.

6 The sample originally comes in-house. It's
7 analyzed once. If there is a hit on the case, it has
8 to be reanalyzed. In this particular case, it was
9 reanalyzed.

10 The fingerprints also have to be verified. Once
11 all that is done, the information that's released is
12 information you just looked at on this letter, which
13 basically states --- would you like for me to read it?

14 Q Sure.

15 A It basically states that a search of the State
16 DNA Index System, which is SDIS, which that SLED
17 maintains resulted in match number SA0000062909.

18 What I'd like to specify with that, so that
19 there is no confusion there, when CODIS does a search,
20 it basically assigns each individual hit a number.
21 So that it can be associated with the information
22 that we're providing, so that number is associated
23 with a hit.

24 So there is that match number that says,
25 "Between specimen number 09060316-10," that is

1 Richland County's information that they put in. "In
2 offender specimen number 04-10917," that information
3 is what we put in. That information comes from our
4 collection cards. "Enclosed is a copy of the CODIS
5 hit match report. Basically, this match is to inform
6 you of a possible investigative lead related to your
7 specimen.

8 "The offender specimen has been examined, and
9 the match has been confirmed. It is recommended that
10 your agency obtain an additional biological specimen
11 from the subject, and that the sample is examined in
12 your laboratory."

13 The reason for this, the CODIS samples that I
14 analyze for the database that are required to come
15 in-house by convicted offenders do not have chain of
16 custody on them. Therefore, that's why it's
17 investigative information only and additional
18 standards must be submitted for analysis.

19 The letter says, the offender information is
20 Frankie McGee, that's M-C-G-E-E. There is an FBI
21 number associated with that individual, which is
22 204263DB9.

23 There is also a South Carolina SID number
24 associated with that. That is [REDACTED]. At the
25 bottom, it says "The South Carolina DNA Database Unit.

1 If we can be of further assistance, please call us
2 803-896-7383, Sincerely, Teresa Hines, DNA Database
3 Unit."

4 Q Okay. And the SCCID SID number is an identifier
5 from the Department of Corrections?

6 A It's an identifier from whichever agency
7 actually submitted the samples.

8 Q Okay.

9 A We have several agencies that submit samples to
10 SLED for this particular purpose.

11 Q Okay. And the FBI number doesn't relate to
12 anything other than the fact that there is a record
13 that the FBI has maintained on him, correct?

14 A On our collection card, there are certain fields
15 that we ask to be filled in. The SID number and the
16 FBI number, are two of the main fields, along with
17 the name, the fingerprint, things of that sort.

18 Those are on there for additional identifying
19 markers so that when we get that in-house, we can
20 look at the tube of blood, and we can look at the
21 collection card to verify that each one of those
22 match. If they don't match, then we will actually
23 request a redraw, and that particular sample will not
24 be entered into the database.

25 Q Okay. And you indicate "enclosed is a match of

1 the CODIS match report."

2 A Yes, sir.

3 Q Correct?

4 A Uh-huh.

5 Q And let me show you the document I have and ask
6 you if I'm referring to the same thing.

7 A Let me take a look at them. I actually have to
8 make sure that everything is correct on that. Give
9 me just a second.

10 (Pause)

11 This is a State match detail report. That is
12 what would have been enclosed.

13 Q Okay. That is the match report in this case?

14 A Let me take a look at what I actually have, if
15 you don't mind.

16 Q Sure.

17 A Sorry.

18 (Pause)

19 Q All right.

20 A This is a copy of the State match detail report.
21 The copy that I have, there are a few differences
22 where it says source ID, no, for the Richland County
23 case. On mine it, actually says source ID, yes,
24 because there was a hit.

25 Q Okay.

1 A And they were able to change that, but yes, that
2 looks like mine.

3 Q All right. Now, you say there is --- without
4 getting too involved in DNA testing at this point,
5 okay, you indicated there was a match. In DNA
6 testing, you examine DNA at a number of different
7 places.

8 A Yes, sir.

9 Q Loci would be in the vocabulary, okay. In
10 particularly --- in particular, you all, in your
11 comparisons, are doing a 14-loci comparison; is that
12 correct?

13 A There's actually 16 loci.

14 Q I understand.

15 A Are you referring to this one?

16 Q Yes, ma'am, uh-huh.

17 A If you're talking about any comparisons, you
18 probably want to address that to Richland County,
19 because they would have the ones to actually look at
20 it and say they want it confirmed. We wait on them
21 to give us to give us the okay to confirm it.

22 Q Okay. Because I notice on the --- you have two
23 copies. You have target.

24 A Right.

25 Q And you've got candidate?

1 A Correct.

2 Q The target is the question --- the questioned
3 sample, what's being submitted to you by Richland
4 County, correct?

5 A Correct.

6 Q And then the candidate is the information that
7 y'all have in your database from --- from your
8 records, correct?

9 A Correct.

10 Q Okay. Now, it looks to me like the target, the
11 question sample has 16 loci in it, and the convicted
12 offender sample has 14?

13 A I can explain that, if you'll let me look back
14 at yours.

15 Q Okay.

16 A Because mine actually has those two additional
17 loci in there.

18 Q Okay.

19 A When the sample came in --- this was a 2004
20 sample. Back then, the type of technology that was
21 used was a kit called Profiler Cofiler.

22 It did not include two of those loci ---

23 Q Right.

24 A --- which were D2 and D19. However --- and I'm
25 assuming --- I'm looking just from hearing the

1 current testimony, this is a newer case, or a newer
2 --- pretty much when Richland County analyzed this
3 case, they used a different kit which actually
4 included that D2 and D19.

5 Q Identifier?

6 A Yes.

7 Q All right.

8 A Now, I don't know exactly what they used, but
9 the identifier included D2 and D19.

10 Q Yes, ma'am.

11 A The current --- actually, the State matched
12 detail report that I have, which is one that I
13 printed from 7/26/2011, it actually does include D2
14 and D19 because the sample was ran an additional time
15 with an identifier kit.

16 Q Okay.

17 A Does that answer your question?

18 Q It sure does. Thank you.

19 A Okay.

20 Q And, again, without getting into too much detail
21 as far as DNA at this point in time, in essence, what
22 you would look for at any one of these locations at
23 any loci ---

24 A Uh-huh.

25 Q --- you would expect to find --- for one

1 individual, you would expect to find one allele or
2 two alleles; is that correct?

3 A It depends on what type of profile they put in.
4 If you're looking at a single-source profile, you're
5 expecting to find one, or you're expecting to find
6 two. However, if you're putting a profile in that
7 may have a major, you may have one or two.

8 If you're doing a profile that may be a mixture,
9 you can have more than two.

10 Q Okay.

11 A So, for instance, I think you're referring to
12 probably D2F1338 that has three alleles, but if
13 you'll look at the top where it says target, it
14 specifically says it's a forensic mixture. So you
15 can have possibly more than two alleles.

16 Q Okay. Well, if you would look two down from
17 there.

18 A Sure.

19 Q At the ---

20 A VWA.

21 Q Locus term VWA.

22 A Yes.

23 Q The forensic mixture indicates an allele 16.

24 A Yeah.

25 Q Correct?

1 A Correct.

2 Q Now, the forensic mixture, that's what Richland
3 County is looking at, correct?

4 A Correct.

5 Q So at that one spot, the forensic mixture is
6 16 ---

7 A Correct.

8 Q --- and what you have listed for Frankie McGee,
9 the record that you have that you associate with
10 Frankie McGee, is 16 and 19, correct?

11 A That's correct. Also, look at the bottom of
12 that target specimen, and you'll see down there where
13 it says partial profile. They have it marked as yes.

14 A partial profile may mean that there is an
15 alleles that dropped out. It basically means that
16 all the alleles may not have typed. Therefore,
17 that's probably the reason why they have a partial.
18 Again, I don't have the report.

19 It's not something that I've been involved in
20 tech reviewing. This is something that John Barron
21 would actually be able to answer better, but I'm
22 assuming there is probably an allele that dropped out
23 at that specific location. That's why it says
24 partial profile.

25 Q Well, and that's why your cover letter says,

1 "This report is to inform you of a possible
2 investigative lead related to your specimen," correct?

3 A The reason why it says possible is because, as I
4 stated before, that CODIS is an investigative tool.
5 It is used to actually aid in investigations. It's
6 not used to solve investigations. That's why an
7 additional standard must be submitted. So that
8 number, one, there is a chain of custody to it, and
9 that there is evidence that it came from that
10 particular individual that the sample is being taken
11 from.

12 Q All right, ma'am.

13 Now, part way down your report "matched summary,
14 14 locus candidates, two, total candidates, two."
15 Frankie McGee is one candidate. Who is the other
16 candidate for a match of that?

17 A That is --- there could have been --- whenever
18 it says 14 loci candidates, mine actually has one.
19 Yours has two. So basically, if you look at the
20 side --- this may get a little complicated, if it
21 hasn't already, where you see the locus matched
22 stringency.

23 Q Yes.

24 A Can you see where a lot of these say high?

25 Q Yes.

1 A And then you may have one that probably says
2 moderate?

3 Q Correct.

4 A Others say high. We searched, and we're looking
5 at the high ones. Anywhere where it says high, there
6 is a definitive match there. Like if you look at the
7 first one, there is a 13, 13. The match frequency is
8 high.

9 Anytime you get below a high stringency --- say,
10 for instance, VWA, that's where you mentioned that
11 16-19.

12 Q Okay.

13 A Or 19.

14 Q That's a moderate.

15 A That's a moderate.

16 Q Correct.

17 A If you get below that, that's a low. You could
18 have other possible things in there, but in other
19 words, you're looking at this, and you're taking the
20 best.

21 Q Okay.

22 A That's what this is.

23 Q Well ---

24 A Every single one of these matched with a --- at
25 a high stringency, with the exception of that VWA.

1 Q Well, can you tell me what the profile was of
2 the other one of the two candidates?

3 A I do not have that. No, I do not. I cannot
4 tell you that.

5 Q So when you ran the --- when John --- when
6 Mr. Barron ran the information regarding Frankie
7 McGee --- and if I understand you, it's basically
8 inputting like the 16 and the 19 at the very --- for
9 each locus, you input the allele site, correct?

10 A With the target, yes.

11 Q So you got --- there were two matches that came
12 up ---

13 A With ---

14 Q --- and somehow, we end up with one being
15 reported?

16 A Without me having additional information with me
17 or being able to look at CODIS itself, I cannot
18 definitively say that.

19 What I can say is if there were other hits
20 associated with this, we weren't asked to confirm
21 them. We report out what we are asked to confirm,
22 unless it's our own case, then we make that
23 determination.

24 It is also possible that this offender could
25 have been in the database as a duplicate, then it

1 would hit twice.

2 Q We don't know.

3 A That's --- it's a possibility but no, at this
4 current time, I do not know.

5 Q You do agree that you get two total candidates.

6 A Without being able to look at CODIS ---

7 Q Two total candidates were reported out.

8 A With what your information specifies, yes, I
9 agree.

10 Q Two candidates were reported out. Mr. McGee is
11 a candidate that was selected by Mr. Barron and that
12 you confirmed, as I understand it.

13 A He would have been the one that asked me to
14 confirm it.

15 Q Okay.

16 A I actually didn't particularly confirm this
17 profile in this case, because it was already
18 confirmed because of another CODIS hit.

19 Q Okay. But we don't know what the nature of the
20 profile --- of the other profile was ---

21 A Which ---

22 Q --- whether it was duplicate entry for Mr. McGee,
23 whether it was someone else. If it was someone else,
24 whether it was a high, moderate or low matching, just
25 know that it reported a second match.

1 A Without having access to the CODIS computer and
2 only with the paper that you have, no. Right now I
3 cannot state anything else other than a match of what
4 I have.

5 MR. STRICKLER: All right. Thank you.

6 MS. CAMPBELL: Just a couple of questions.

7 THE COURT: Yes.

8 REDIRECT EXAMINATION:

9 BY MS. CAMPBELL:

10 Q Does anything he asked you've affect your
11 confirmation that this is a match to Frankie McGee?

12 A Absolutely not.

13 Q And so the information that you gave them was
14 confirmed and correct; is that correct?

15 A Absolutely.

16 Q And he showed you a different piece of paper,
17 but as far as your information, there was only one
18 reported out? I'm confused.

19 A There may be --- it may be a possible duplicate
20 in the system. Basically, what a duplicate means is,
21 say for instance --- I'll use this as an example ---

22 Q Okay.

23 A --- if you're arrested as a juvenile, and you're
24 arrested for a particular crime that you must be
25 included in our database, use must submit your sample

1 as a juvenile.

2 As a juvenile, you don't have something called
3 an SID number. You would have something called an
4 MIS number. We enter that into our system, and
5 that's how we track all of these. If you're then
6 arrested again later as an adult, you're assigned an
7 SID number.

8 It may have been, and this is a possibility ---

9 MR. STRICKLER: Objection to possibilities as to
10 what it might be.

11 THE COURT: The objection is overruled.

12 MS. CAMPBELL: Okay. Go ahead.

13 THE WITNESS: It's a possibility that there was
14 a duplicate sample in the system, because there could
15 have been more than one arrest.

16 Somebody on the submitting agency side didn't
17 catch the fact that the sample was already at SLED
18 and another sample was submitted.

19 BY MS. CAMPBELL:

20 Q And this matched to McGee, which would have been
21 confirmed by Richland County. It would be unique to
22 him.

23 A Yes, it would.

24 Q Thank you.

25 THE COURT: Redirect?

1 MR. STRICKLER: Very briefly.

2 THE COURT: Yes, sir.

3 RECROSS-EXAMINATION:

4 BY MR. STRICKLER:

5 Q You're referring to something that shows one
6 match. You ran that particular report when --- the
7 one that shows one match?

8 A That shows one --- I actually printed this out
9 on 7/26 of 2011.

10 Q Okay. So last week?

11 A Yes.

12 Q Okay. And assuming what I have was what was
13 sent to Mr. Barron, we can ask him about that. That
14 would have been what was reported out back on
15 March 12th, 2010?

16 A Yes.

17 MR. STRICKLER: Okay. All right. Thank you
18 very much.

19 THE COURT: All right. Thank you. You may step
20 down.

21 And ladies and gentlemen, that will be it for
22 this day. We will start tomorrow at 9:30. Thank you
23 very much. Have a good evening. Please do not
24 discuss the case. We'll need you back at 9:30 a.m.

25 (WHEREUPON, the jury left open court at

1 approximately 5:39 p.m.)

2 THE COURT: Any other matters before we leave?

3 MS. CAMPBELL: No, sir.

4 THE COURT: From the defense?

5 MR. STRICKLER: No, sir. Thank you.

6 THE COURT: All right. 9:30 tomorrow morning.

7 (WHEREUPON, There was an overnight recess).

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

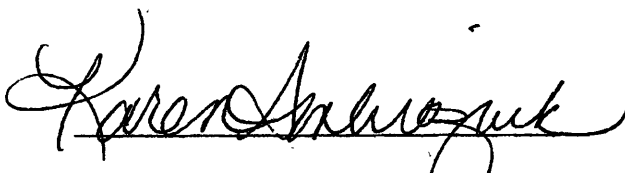
25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and Partial Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the General Sessions Court for Richland County, South Carolina, on the 1st and 2nd days of August, 2011.

December 30, 2011

A handwritten signature in cursive script, reading "Karen Ambroziak", written over a horizontal line.

Karen Ambroziak, Court Reporter

My Commission Expires: 04/01/14

I N D E X

WEDNESDAY, AUGUST 3, 2011

DAY 3 OF TRIAL

<u>Witness/Description</u>	<u>Page No.</u>

Neil vs. Biggers Hearing

Temika Ashford

Examination by Ms. Campbell 9

Examination by Ms. Pringle 23

Kevin Reese

Examination by Ms. Campbell 23

Examination by Ms. Pringle 31

State's Case Resumes

James Morrison

Voir Dire Examination by Ms. Simpson 44

Direct Examination by Ms. Simpson 46

Steve Griffey

Direct Examination by Ms. Garfield 65

Curtis Burnett

Direct Examination by Ms. Garfield 68

1	John Barron	
2	Voir Dire Examination by Ms. Campbell	70
3	Direct Examination by Ms. Campbell	73
4	Cross-examination by Mr. Strickler	114
5	Redirect Examination by Ms. Campbell	169
6		
7	Gray Amick	
8	Voir Dire Examination by Ms. Campbell	181
9	Direct Examination by Ms. Campbell	182
10	Cross-examination by Mr. Strickler	186
11		
12	Joyce McDonald	
13	Direct Examination by Ms. Campbell	192
14	Cross-examination by Mr. Strickler	195
15	Redirect Examination by Ms. Campbell	196
16		
17	Earl Lee Brown	
18	Direct Examination by Ms. Garfield	198
19	Cross-examination by Ms. Pringle	204
20		
21	Neil vs. Biggers Hearing	
22	Michelle Perry	
23	Examination by Ms. Campbell	207
24	Examination by Ms. Pringle	212
25	Examination by the Court	217

State's Case Resumes

Michelle Perry

Direct Examination by Ms. Campbell 222

Cross-examination by Ms. Pringle 230

Clarence Sumter

Direct Examination by Ms. Simpson 240

Cross-examination by Ms. Pringle 247

Redirect Examination by Ms. Simpson 256

Certificate Page 262

E X H I B I T S

	<u>No.</u>	<u>Description</u>	<u>I.D.</u>	<u>Ev.</u>
1				
2				
3	S-4	Photograph Lineup		245
4	S-108	DNA Swab		107
5	S-116	DNA Swab		108
6	S-119	Photographic Lineup	18	
7	S-120	Photographic Lineup	18	
8	S-121	Photographic Lineup	18	
9	S-122	Photographic Lineup	22	
10	S-123	Photographic Lineup	29	
11	S-124	Enlarged Chart	90	91
12	S-125	Enlarged Chart		108
13	S-126	Certified Copy of Indictment	193	194
14	S-127	Certified Copy of Indictment	193	194
15	S-128	Photograph	197	201
16	S-129	Photograph	198	201
17	S-130	Photograph	130	
18				
19				
20				
21	D-1	Handwritten Statement	33	
22	D-2	Enlarged Chart	114	119
23	D-3	Enlarged Chart	114	119
24	D-4	Enlarged Chart	114	119
25	D-5	Enlarged Chart	114	119

				6
1	No.	Description	I.D.	Ev.
2	D-6	Enlarged Chart	114	119
3	D-7	Enlarged Chart		114
4	D-8	Enlarged Chart		114
5	D-9	Enlarged Chart		114
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 WEDNESDAY, AUGUST 3, 2011

2 (COURT RESUMES AT 9:36 A.M.)

3 THE COURT: Good morning. Issues, concerns?

4 MS. CAMPBELL: Your Honor, one of witnesses we
5 anticipate could go up today is Ms. Ashford. She was shown
6 a series of I believe were six sets of lineups from which
7 she would identify people. She never positively identified
8 anybody, but she would say this looks like him. He has the
9 same type of face, the same build, things of that nature.

10 The final lineup she was shown did contain Frankie
11 McGee. She narrowed it down to two people in that one and
12 said that it was similar to those two people in that one as
13 well.

14 She is not going to be able to make any kind of
15 in-court identification. The most she's going to be able
16 to say is that he has the same general build and general
17 shape as the person she saw that night. I don't know that
18 that would require -- since, since we aren't getting an
19 in-court ID, I don't know, and the state's position would
20 be I don't think that requires a hearing on the matter.
21 However, I think the defense is requesting one.

22 THE COURT: All right.

23 MS. CAMPBELL: And I didn't know if you wanted to take
24 that up now or later. It doesn't matter to us.

25 THE COURT: All right, now is good.

1 Ms. Pringle.

2 MS. PRINGLE: Thank you, Your Honor. May it please
3 the court? We would object to the photo lineup including
4 the picture of Frankie McGee, which is the final lineup
5 that she's shown. The preceding lineup that she's shown,
6 she doesn't ever -- she, she says this looks like, this
7 looks like. I don't have any objection to those. But the
8 final lineup that she's shown does include his picture.
9 And what she says on that is that it could be this one, or
10 it could be that one, one of which is Mr. McGee.

11 I think we would need a *Neil vs. Biggers* hearing on
12 that. That would be an identification since she does
13 initially select him. I understand that she wouldn't be
14 indicating any certainty, but I think that's the purpose of
15 *Neil vs. Biggers*.

16 THE COURT: Okay. Call your first witness.

17 MS. CAMPBELL: The state calls Temika Ashford.

18 (A PAUSE.)

19 MS. CAMPBELL: There's a little technical difficulty,
20 Your Honor. Apparently they've misplaced the lineups.

21 (A PAUSE.)

22 TEMIKA ASHFORD, BEING DULY SWORN,
23 TESTIFIES AS FOLLOWS:

24 CLERK OF COURT: State your name for the record.

25 WITNESS: My name is Temika Ashford.

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

9

1 EXAMINATION BY MS. CAMPBELL:

2 Q. Ms. Ashford, how old are you?

3 A. Thirty.

4 Q. And do you live here in the Columbia area?

5 A. Yes, ma'am.

6 Q. And how long have you been living in Columbia?

7 A. All my life.

8 Q. Did you know the Reverend Eichelberger?

9 A. Yes, ma'am.

10 Q. And did you have an occasion to go over and see him in
11 his house?

12 A. Yes, ma'am.

13 Q. Sometimes would he give you money to help you out with
14 some of your bills?

15 A. Yes, ma'am.

16 Q. And I want to turn your attention to the night of May
17 the 3rd. That evening, were you over at his house that
18 night?

19 A. Yes, ma'am.

20 Q. And did you actually go in his house?

21 A. Yes, ma'am.

22 Q. And tell the judge what happened when you got in the
23 house, and where did Reverend Eichelberger go?

24 A. We sat in the living room for a while. While we was
25 in the living room, I guess maybe a couple, like, thirty,

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

10

1 forty-five minutes later, I heard a noise. I heard the
2 first noise. The first noise, he didn't hear. I said you
3 didn't notice? He said ain't hear nothing, girl. You just
4 hearing things.

5 Q. Okay, you've got to slow down a little bit. You
6 nervous here today?

7 A. Yes, ma'am.

8 Q. Okay. Slow down and speak real clearly for me. You
9 said what?

10 A. I asked him did he hear the first noise. He said I
11 don't hear anything. You just hearing stuff, girl. And so
12 the second time around, noise got a little louder. He
13 heard the second noise, and he say sit here. I'll come
14 around -- go around there and see what's going on.

15 Q. What part of the house were y'all in?

16 A. We was in the front room.

17 Q. In the front room?

18 A. Uh-huh.

19 Q. Is that kind of the living room area?

20 A. Yes, ma'am.

21 Q. And could you tell what room or area of the house the
22 noise was coming from? A different room?

23 A. A different, yes, ma'am.

24 Q. Not in the room where you were?

25 A. No, ma'am.

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

11

1 Q. And so then he went to another part of the house?

2 A. Uh-huh.

3 Q. And could you tell what part of the house he went to?

4 A. No, ma'am. He went -- he couldn't go no further.

5 Then -- not too far from me because I could hear. I heard
6 a noise again. Like when the sound, the person I guess
7 came in, you could hear it.

8 Q. Okay, and then what happened?

9 A. And then when he went around, he said how did you get
10 in here. And from there, I just heard like a lot of
11 scuffling, so I ran.

12 Q. You ran out of the house?

13 A. I tiptoed to the front door and I ran.

14 Q. And once you got out of the house, where did you go?

15 A. I got in my car and went around the block. Went back
16 up, came around, and my first time coming around I seen
17 this guy standing outside.

18 Q. Okay. So, you didn't actually see anything that
19 happened in the house between he and somebody else?

20 A. No, ma'am.

21 Q. And it didn't happen in your presence?

22 A. No, ma'am.

23 Q. And you went outside, and so you went and got in your
24 car?

25 A. Yes, ma'am.

1 Q. And you actually started your car up and it started
2 moving?

3 A. Yes, ma'am.

4 Q. And the reverend's house is on Isaac Street?

5 A. Yes, ma'am.

6 Q. And where was your car parked?

7 A. It was parked on the side road.

8 Q. On the side road?

9 A. Uh-huh.

10 Q. Not Isaac but the side road?

11 A. Yes, ma'am.

12 Q. Because it's right there on the corner.

13 A. Uh-huh.

14 Q. And when you got in your car, you said you saw
15 somebody come out the front?

16 A. No, ma'am, not when I got in my car. When I went
17 around the corner.

18 Q. You went around the corner?

19 A. Uh-huh, and came back down.

20 Q. Isaac Street?

21 A. But I kept calling his phone. He wouldn't answer,
22 yes, ma'am.

23 Q. Okay.

24 A. When I came back down, that's when I seen the guy
25 standing on the porch.

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

13

1 Q. On the porch?

2 A. Yes, ma'am.

3 Q. And how far away from you was he? You were on the
4 road.

5 A. I was, yes, ma'am. I was on the road.

6 THE COURT: You asked the question. Then you answered
7 the question. Let the witness answer. You asked the
8 question. Then you answered the question.

9 MS. CAMPBELL: I'm sorry.

10 THE COURT: Let the witness answer.

11 BY MS. CAMPBELL:

12 Q. Where were you?

13 A. I was sitting by the road. I wasn't sitting. I was
14 just riding by real slowly.

15 Q. Okay, and you saw somebody up on the porch?

16 A. Yes, ma'am, just standing there.

17 Q. And what happened next?

18 A. I rode back around. Called the police the second time
19 around after I seen the person, and I rode back around
20 again. I went further up to wait till the police come
21 because I didn't want to go there, go back and stop. So, I
22 went back around. Then I went back around. I seen the
23 same guy as I saw coming back around walking up Farrow
24 Road.

25 Q. Okay. Let me ask you this. When you saw the guy on

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

14

1 the porch, could you tell the judge what he looked like or
2 what you noticed about him?

3 A. He was -- his body weight was kind of built. He was
4 big framed, and he was a, you know, kind of big guy.

5 Q. Did you notice anything else about him and his
6 clothing?

7 A. A pot belly, yes, ma'am.

8 Q. Did you notice anything about his clothing, what he
9 was wearing?

10 A. He had a white T-shirt and some khakis.

11 Q. What else did you notice about him?

12 A. He was real sweaty.

13 Q. Okay. Were you able to see his hands?

14 A. Yes, ma'am.

15 Q. What did you notice about those?

16 A. I seen gloves.

17 Q. And what color were the gloves, what you thought were
18 gloves?

19 A. They were, like, I guess maybe plastic gloves.

20 Q. That's what you thought?

21 A. Yes, ma'am.

22 Q. What color were they?

23 A. They were white.

24 Q. Okay. What was the lighting like that night when you
25 were looking at him?

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

15

1 A. It was real dark.

2 Q. It was dark?

3 A. Yes, ma'am.

4 Q. But you were able to notice that much about him?

5 A. Yes, ma'am.

6 Q. And then you said you saw the same guy walking down
7 Farrow road?

8 A. Uh-huh. He was walking along the sidewalk. Was a
9 bunch of trees. That he was walking real fast.

10 Q. Was he walking towards the -- do you know where the
11 Gaz-Bah is?

12 A. Yes, ma'am. He was not that far up. He was like
13 maybe just turned off of Ivy Street maybe a little bit.
14 Wasn't really that far up.

15 Q. You said you called the police?

16 A. Yes, ma'am.

17 Q. And that's all you saw on that night. Is that
18 correct?

19 A. Yes, ma'am.

20 Q. Okay. When you called the police, did they respond?

21 A. Yes, ma'am.

22 Q. And when they responded, did you talk to them?

23 A. Yes, ma'am.

24 Q. And when you talked to them, did you give them a
25 description of the guy?

1 A. Yes.

2 Q. That you saw on the porch?

3 A. Yes, ma'am.

4 Q. And what else did you tell them? Do you remember?

5 A. No, ma'am.

6 Q. Were you upset that night?

7 A. I was nervous, yes, ma'am.

8 Q. Did you ever go back in the house?

9 A. No, ma'am.

10 Q. That night, did you go and did the police take you to
11 look at somebody that they had stopped?

12 A. That was around the corner, yes, ma'am.

13 Q. And what did you tell them about that person?

14 A. The person that they caught around the corner do not
15 have on the same clothes.

16 Q. Did you actually go down and did you give a statement
17 that night?

18 A. I don't think it was that night. I think was the next
19 day.

20 Q. Okay, and when you gave that statement, what was your
21 frame of mind?

22 A. I was nervous.

23 Q. Did the police bring you back in at a later date and
24 actually record a statement from you?

25 A. Yes, ma'am.

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

17

1 Q. And did you tell them, to the best of your ability,
2 what you could remember?

3 A. Yes, ma'am.

4 Q. On a number of occasions, did the police show you
5 photo lineups?

6 A. Yes, ma'am.

7 MS. CAMPBELL: Beg the court's indulgence.

8 (A PAUSE.)

9 BY MS. CAMPBELL:

10 Q. And I believe the first time they showed you a photo
11 lineup was on August the 25th, or do you remember the date?

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

13 Q. And I show you what's been marked as State's Exhibit
14 Number 3. Do you remember seeing that lineup the first
15 time they showed you a lineup?

16 A. Yes, ma'am.

17 Q. But did you recognize anybody?

18 A. No, ma'am.

19 Q. Nobody in this one?

20 A. No, ma'am.

21 Q. And that's what you told the police on that date?

22 A. Yes, ma'am.

23 Q. And then later they showed you some more photo lineups
24 later on in the fall. Is that correct?

25 A. Yes, ma'am.

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

18

1 Q. And I what to show you ---

2 MS. CAMPBELL: Your Honor, I'm going to mark these.

3 (PHOTOGRAPHIC LINEUP MARKED AS STATE'S EXHIBIT NUMBER
4 119 FOR IDENTIFICATION.)

5 (PHOTOGRAPHIC LINEUP MARKED AS STATE'S EXHIBIT NUMBER
6 120 FOR IDENTIFICATION.)

7 (PHOTOGRAPHIC LINEUP MARKED AS STATE'S EXHIBIT NUMBER
8 121 FOR IDENTIFICATION.)

9 MS. CAMPBELL: Beg the court's indulgence.

10 (A PAUSE.)

11 BY MS. CAMPBELL:

12 Q. And I'm going to show you State's Exhibit Number 119.
13 Do you recognize that?

14 A. Yes, ma'am.

15 Q. And does that have some of your handwriting on it?

16 A. Yes, ma'am.

17 Q. And when you looked at this photograph or the set of
18 photos, did it have any handwriting on it? Do you
19 remember?

20 A. No, ma'am.

21 Q. And when you looked at it, what did you tell the
22 police? Do you remember?

23 A. Yes, ma'am.

24 Q. And what did you tell them?

25 A. The one that I marked looked similar to the guy.

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

19

1 Q. Looked similar to the guy?

2 A. Uh-huh.

3 Q. But you couldn't positively identify anybody?

4 A. No, ma'am.

5 Q. Okay, but you initialed where -- the ones that looked
6 similar?

7 A. Yes, ma'am.

8 Q. And wrote it down at the bottom?

9 A. Yes, ma'am.

10 Q. And did you actually sign this?

11 A. Yes, ma'am.

12 Q. And that's the one they showed you on that occasion.
13 Is that correct?

14 A. Yes, ma'am.

15 Q. I want to show you what's been marked as State's
16 Exhibit Number 120 and 121, and they showed you these
17 photographs?

18 A. Yes, ma'am.

19 Q. And in this one, did it -- did you circle one when you
20 were shown this photograph, and I believe the date on this
21 one is January 22nd?

22 A. Yes, ma'am.

23 Q. What did you say when you saw that photograph?

24 A. That he had the head shape and the body shape.

25 Q. And other than that, were you able to say anything?

1 A. I wasn't positive that was him.

2 Q. So, you couldn't identify anybody?

3 A. No, ma'am.

4 Q. But you mentioned in -- did you write on there what
5 you recognized about that person?

6 A. Yes, ma'am.

7 Q. And down at the bottom, what does it say?

8 A. The head shape and the body build.

9 Q. And you didn't recognize State's Exhibit Number 121?

10 A. No, ma'am.

11 Q. Finally on March the 13th, did they show you some
12 photographs?

13 A. Yes, ma'am.

14 Q. And when they showed you these photographs in State's
15 Exhibit 121, none of those writing was on there, was it, or
16 was it?

17 A. No, ma'am.

18 Q. And when they showed you the photographs, and each
19 time they showed you the photographs, did they tell you who
20 to pick?

21 A. No, ma'am.

22 Q. Did they influence you in any way?

23 A. No, ma'am.

24 Q. And did they just let you look at the photographs?

25 A. Yes, ma'am.

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

21

1 Q. And when you looked at those photographs, what did you
2 decide?

3 A. That the guys that I picked looked similar to the guy.

4 Q. Looked similar to the guy?

5 A. Yes, ma'am.

6 Q. And which one did you narrow it down to that time?

7 A. 31 and 1.

8 (PHOTOGRAPHIC LINEUP MARKED AS STATE'S EXHIBIT NUMBER
9 122 FOR IDENTIFICATION. SECOND LINEUP INCORRECTLY MARKED
10 AS STATE'S 121 AND LATER CORRECTED ON THE RECORD AS 123.)
11 BY MS. CAMPBELL:

12 Q. And once you have done that, did you initial it?

13 A. Yes, ma'am.

14 Q. And State's Exhibit 121, the two that you thought it
15 looked like.

16 A. Yes, ma'am.

17 Q. And down at the bottom, what does it say? Can you
18 read that?

19 A. Yes, ma'am: Witness states the subject, she saw him.

20 B-3 and plus one. She picked 3 first but started
21 -- stated both of the suspects because of the
22 hand shape and the body build.

23 Q. And I've got to back up for a minute because I missed
24 something. In State's Exhibit 122, back in January they
25 showed you three sets of pictures. Is that right?

1 A. Yes, ma'am.

2 Q. Was this is one of them?

3 A. Yes, ma'am.

4 Q. And again you said -- did you positively identify
5 anybody?

6 A. No, ma'am.

7 Q. Okay, but did you indicate one of them looked like
8 him?

9 A. Yes, ma'am.

10 Q. And is that here in State's Exhibit 22?

11 A. Yes, sir.

12 Q. Each time the police showed you a set of photographs,
13 at any time did they tell you who to pick?

14 A. No, ma'am.

15 Q. Did they influence you in any way?

16 A. No, ma'am.

17 Q. And you were never able to make a positive
18 identification?

19 A. No, ma'am.

20 Q. And you just talked about the things were talked about
21 here today?

22 A. Yes, ma'am.

23 Q. Which are what that you recognized or thought were
24 similar?

25 A. The body build, and the pot belly, and the head shape.

T. ASHFORD - EXAMINATION BY MS. PRINGLE

23

1 MS. CAMPBELL: Your Honor, I may approach?

2 THE COURT: Yes.

3 (A PAUSE.)

4 BY MS. CAMPBELL:

5 Q. Other than the person that you saw on the front porch
6 from when you were in your car.

7 A. Yes, ma'am.

8 Q. And then you later saw him on Farrow Road.

9 A. Yes, ma'am.

10 Q. Did you ever see that person again?

11 A. No, ma'am.

12 MS. CAMPBELL: That's all I have on this matter, Your
13 Honor.

14 THE COURT: Ms. Pringle.

15 MS. PRINGLE: Thank you, Your Honor. May it please
16 the court?

17 CROSS-EXAMINATION BY MS. PRINGLE:

18 Q. Good morning, Ms. Ashford.

19 A. Good morning.

20 Q. In the photo lineups that you were shown, specifically
21 the last one, you couldn't say for sure if that was the
22 person that you saw that night?

23 A. No, ma'am.

24 Q. In fact, you didn't tell them that that was the guy
25 that night, that you ---

T. ASHFORD - EXAMINATION BY MS. PRINGLE

24

1 A. But they looked ---

2 Q. --- saw that night?

3 A. Yes, ma'am.

4 Q. But they looked alike, all right.

5 A. Similar.

6 Q. Exactly the same as what you had said about the other
7 individuals that you saw on the other lineups, and that's
8 all you could say, right?

9 A. Yes, ma'am.

10 Q. You can't say that that was the person?

11 A. No, ma'am.

12 Q. But on this one, you do have next to number 3, which
13 the record will reflect that's a picture of my client, you
14 do have circled and your initials ---

15 A. Yes, ma'am.

16 Q. --- on that picture in addition to number 1, right?

17 A. Yes, ma'am.

18 MS. PRINGLE: I have no further questions, Your Honor.

19 THE COURT: Anything further?

20 MS. CAMPBELL: No, sir.

21 THE COURT: Thank you. You can step down.

22 (THE WITNESS EXITS THE STAND.)

23 THE COURT: Next witness?

24 MS. CAMPBELL: State would call Investigator Kevin
25 Reese.

K. REESE - EXAMINATION BY MS. CAMPBELL

25

1 KEVIN REESE, BEING DULY SWORN,
2 TESTIFIES AS FOLLOWS:

3 (A PAUSE.)

4 MS. CAMPBELL: Sorry, Your Honor. Just making sure of
5 sequestration.

6 EXAMINATION BY MS. CAMPBELL:

7 Q. Investigator Reese, where are you employed?

8 A. Columbia Police Department.

9 Q. How long have you worked there, sir?

10 A. Since -- this is my second tour around. Since 1991.

11 Q. Since 1991?

12 A. Uh-huh.

13 Q. And were you actually the lead investigator in the
14 case involving the murder of Reverend Eichelberger?

15 A. I was.

16 Q. At some point over the court of several months, did
17 you develop a number of suspects?

18 A. I, yeah, I did, persons of interest, suspects, yeah.

19 Q. Persons of interest?

20 A. Uh-huh.

21 Q. And during the course of that, were you aware, were
22 there any eyewitnesses to the actual assault?

23 A. No, not the actual assault.

24 Q. But was there a witness who saw someone on the front
25 porch right after this happened?

1 A. Yes, it was.

2 Q. And who was that?

3 A. Temika Ashford.

4 Q. And did you make contact with her on multiple
5 occasions?

6 A. I did.

7 Q. To get statements, as well as to show certain lineups?

8 A. Yeah, Your Honor. We had, you know, every -- when we
9 had different questions to ask her, we would locate her,
10 ask her, you know, times we had photo lineups that we had
11 put together, we needed to ask her about.

12 Q. August 25th, did you make contact with her to show her
13 a lineup, which is State's Exhibit Number 3?

14 A. Yes, I did.

15 Q. And on that occasion, was that the only photo lineup
16 that was shown to her?

17 A. On this occasion, yes, it was.

18 Q. And what, if anything, did you say to her prior to
19 showing her that lineup?

20 A. I told her what I tell everybody. The person may or
21 may not -- that she seen may or may not be in this lineup.
22 If she sees that person, recognize them, would you pick
23 them out.

24 Q. And was she able to recognize anybody or say they
25 looked similar?

K. REESE - EXAMINATION BY MS. CAMPBELL

27

1 A. No, she did not. Don't have anything marked on this
2 one, so she didn't.

3 Q. I want to turn your attention September 30th of 2009.
4 Did you make contact with Ms. Ashford again?

5 A. I did, myself and Investigator Thomas.

6 Q. And at that point, were you also asking her to look at
7 a series of photos again?

8 A. Yes, I was.

9 Q. And in State's Exhibit 119, is that the photo lineup
10 you showed to her?

11 A. Yes. Yes, it is.

12 Q. And when you showed her that lineup, did it have any
13 writing on it like it does now?

14 A. No, it did not.

15 Q. What, if anything, did you say to her prior to showing
16 her that lineup?

17 A. The person that she saw that night may or may not be
18 in this lineup. If she would look at the lineup and she
19 can recognize the person that she seen, point him out for
20 us.

21 Q. And was she able to identify anyone or make any
22 statement about any of the people in the lineup?

23 A. She couldn't positively identify anybody, but photo
24 number 3 and photo number 5, she picked them out. She said
25 it looks like those subjects.

1 Q. And did you have her initial that, those two photos?

2 A. Yeah. That's her, her handwriting. I had her initial
3 it, put -- and put that day's date in it. Also sign off on
4 it, sign her name.

5 Q. And she did that?

6 A. Yeah.

7 Q. And then moving on to January 22nd of 2010, did you
8 show her another series of pictures that are State's
9 Exhibits 120 through 122?

10 A. Yes, ma'am.

11 Q. And was she shown all three of those arrays of photos
12 on that day?

13 A. Yeah. I showed her these photos.

14 Q. And were they shown individually?

15 A. Yeah. They were shown individually.

16 Q. And what, if anything, was she able to say about those
17 photos that were shown to her on January 22nd?

18 A. Okay, on State's Exhibit Number 122, she pointed out
19 number 2. I don't know what, what she said about this one.
20 I would have to look at my case notes, but she initialed
21 number, photo number 2.

22 Q. For the record, was she ever able to positively
23 identify anybody?

24 A. No. She did not possibly identify these people.

25 Q. State's Exhibit Number 120, and that's a six-photo

K. REESE - EXAMINATION BY MS. CAMPBELL

29

1 array as well?

2 A. It is.

3 Q. And was she able to positively identify anybody in
4 that?

5 A. She picked out photo number 3. She didn't positively
6 identify him, but it's the same thing. She -- I made a
7 note that she said that head -- she picked him out because
8 of the head shape, the body build, kind of receding
9 hairline.

10 Q. Finally, the single photo, State's Exhibit Number 121,
11 did you also show her that?

12 A. I showed her this photo.

13 Q. And?

14 A. I basically showed her this, and it wasn't in the form
15 of a lineup. Just to see whether she knew this person or
16 had ever seen this person. He wasn't necessarily a
17 suspect.

18 Q. Okay, but she didn't recognize him?

19 A. She didn't recognize him, no.

20 Q. Finally moving to State's Exhibit Number ---

21 MS. CAMPBELL: We have two 121s. We can make this
22 make this -- I apologize, Your Honor.

23 (PHOTOGRAPHIC LINEUP MARKED AS STATE'S EXHIBIT NUMBER
24 123 FOR IDENTIFICATION.)

25 MS. CAMPBELL: Your Honor, the March lineup will now

K. REESE - EXAMINATION BY MS. CAMPBELL

30

1 become State's Exhibit 123. I apologize.

2 BY MS. CAMPBELL:

3 Q. Did you make contact with Ms. Ashford again?

4 A. Yes, I did.

5 Q. And did you show her this lineup?

6 A. I did.

7 Q. When you showed her the lineup, did it have any
8 writing on it?

9 A. No, it did not.

10 Q. And what, if anything, did you say to her when you
11 showed her the lineup?

12 A. Your Honor, this lineup was showed to Ms. Ashford on
13 March the 13th, 2010. I told her the same thing I told her
14 about every other lineup. The person that she saw that
15 night may or may not be in this lineup. If she'll look at
16 the lineup, if she'll recognize that person, please pick
17 him out for us.

18 Q. And was she able to positively identify anyone?

19 A. No. She didn't positively identify anybody. She
20 picked out two of the photos.

21 Q. And what was she able to say about those?

22 A. In my notes here I have written on this photo lineup,
23 I said:

24 The witness states that the subject she saw, saw
25 on 5/3/09 could be number 3 and number 1.

K. REESE - EXAM BY MS. CAMPBELL / EXAM BY MS. PRINGLE

31

1 She picked out number 3 first and stated that both
2 resembles the suspect because of the head shape and the
3 body build.

4 Q. And did you have her memorialize that much?

5 A. I did.

6 Q. By initialing?

7 A. She initialed it and dated it.

8 Q. And was that the extent of the photographs that were
9 shown to Ms. Ashford?

10 A. That, that was all.

11 MS. CAMPBELL: And, Your Honor, at the appropriate
12 time, I'd like to hand those up, but I don't know if they'd
13 want them for cross.

14 MS. PRINGLE: I'd like to see them.

15 (COUNSELORS CONFER.)

16 MS. CAMPBELL: I think she wants to use one on cross,
17 Your Honor. I'd hand them up at the appropriate time.
18 That's all I have, Your honor.

19 THE COURT: Yes, ma'am.

20 MS. PRINGLE: Please the court?

21 EXAMINATION BY MS. PRINGLE:

22 Q. Good morning, Investigator Reese.

23 A. Good morning. How are you?

24 Q. Good, thank you. So, she, Ms. Ashford, at no time
25 makes a positive identification of anyone in any of these

1 lineups at no time? I'm sorry, she doesn't make any
2 positive identification of anyone in these lineups,
3 correct?

4 A. No, ma'am.

5 Q. And she did make a positive identification the night
6 of this incident of someone else during a show-up
7 identification procedure, correct?

8 A. She, I think she told the officer that was him, but
9 she said he did have on the same clothing.

10 Q. You are familiar with her subsequent written
11 statement?

12 A. Yeah, I am. I'd have to have a look at it if you're
13 going to ask me questions about it.

14 Q. Certainly.

15 A. But I'm familiar with it.

16 THE COURT: Now, is the purpose of this line of
17 questioning to deal with the issue before the court
18 regarding whether it's suggestive lineup proceeding, and to
19 just review testimony ---

20 MS. PRINGLE: Well, just ---

21 THE COURT: --- in general?

22 MS. PRINGLE: It just goes to reliability of what took
23 place. The fact that she did actually choose someone else
24 and identify someone else that evening.

25 THE COURT: The reliability of her testimony?

K. REESE - EXAMINATION BY MS. PRINGLE

33

1 MS. PRINGLE: No. Reliability of -- it would be my
2 position that they're sort of straddling the fence here.
3 That this, that this is an identification and it's not an
4 identification.

5 And I understand that it's a little more complex than
6 the usual situation we have. But while they say that she
7 doesn't identify anyone, she does circle his picture on the
8 lineup.

9 THE COURT: So, this is on the reliability of the
10 identification?

11 MS. PRINGLE: Yes, sir.

12 THE COURT: Is that an issue for me to decide with
13 regard to whether it's a suggestive lineup procedure?

14 MS. PRINGLE: I think it goes to prong two. I'm -- I
15 don't think I would be arguing that the process was unduly
16 suggestive, but whether or not the out-of-court
17 identification, if you deem it an identification, was not
18 reliable under all the circumstances, if you look at all
19 the various factors you have to look at.

20 THE COURT: Okay.

21 (HANDWRITTEN STATEMENT MARKED AS DEFENDANT'S EXHIBIT
22 NUMBER 1 FOR IDENTIFICATION.)

23 BY MS. PRINGLE:

24 Q. Investigator Reese, I hand you what's been marked as
25 Defense Exhibit for identification purposes only at this

1 time Number 1. Do you recognize that?

2 A. It, it in is a handwritten statement. It looks like
3 by Ms. Ashford, taken by Investigator Pegram on March 4th
4 about 12:15 in the morning.

5 Q. All right, and on the second page, if you would turn
6 to the second page, would you agree that her written
7 statement does indicate that she picked someone else that
8 evening as being the person who had the stick in his hands
9 and the gloves on his hands in the driveway of Reverend
10 Eichelberger?

11 A. Well, by this statement, yeah.

12 Q. Thank you, and on State's Exhibit 123, this is the
13 photo lineup that includes Mr. McGee, correct?

14 A. Right.

15 Q. That's the last lineup that you showed her?

16 A. Yes.

17 Q. And the handwriting, that's her signature on there?

18 A. That's her signature.

19 Q. That's circled?

20 A. Uh-huh.

21 Q. And she actually initials and circles two pictures?

22 A. That's correct.

23 Q. One of which is Frankie McGee?

24 A. That's right.

25 Q. And the handwriting at the bottom that I believe you

1 read on direct, that's your handwriting?

2 A. That's mine.

3 Q. So -- I'm sorry, and that would be your statement?

4 A. These are my notes, yeah. I wrote ---

5 Q. Your notes? I'm sorry.

6 A. --- based on what she said.

7 (A PAUSE.)

8 MS. PRINGLE: No further questions.

9 THE COURT: Anything else?

10 MS. CAMPBELL: No, sir.

11 THE COURT: All right, you may step down

12 WITNESS: Thank you, Your Honor.

13 (THE WITNESS EXITS THE STAND.)

14 THE COURT: Any other witnesses?

15 MS. CAMPBELL: No, sir.

16 THE COURT: All right, anything else?

17 MS. CAMPBELL: Nothing from the state.

18 THE COURT: Ms. Pringle?

19 MS. PRINGLE: Thank you, Your Honor. Please the
20 court? We would object to admission of the final lineup
21 under *Neil vs. Biggers*, and also because South Carolina
22 cases addressing *Neil vs. Biggers* issues as to prong two,
23 not under prong one.

24 But I would argue to the court that the out-of-court
25 identification, that it is, in fact, an identification

1 simply because she does circle, and it is circled on his
2 picture. The investigator's notes also indicate that she
3 chose him first, which I think exacerbates the problem. We
4 would, therefore, argue to suppress ---

5 THE COURT: Exacerbate what problem?

6 MS. PRINGLE: Well, because I think, I guess the
7 state's position is that it's not an identification, but
8 yet you have him emphasizing that she did, in fact, circle
9 that one first, which I think ---

10 THE COURT: Who? You have Reese. You need to give
11 complete thoughts to me so I can be sure and follow you.

12 MS. PRINGLE: Your Honor.

13 THE COURT: The him and hes and hers and all of that.
14 Go ahead

15 MS. PRINGLE: Yes, sir. Investigator Reese at the
16 bottom of the photo lineup indicates that she chose that
17 number. That she chose -- let me get it. If I could hand
18 up to the court State's Exhibit Number 123?

19 THE COURT: All right.

20 MS. PRINGLE: Those are Investigator Reese's notes at
21 the bottom, and he indicates that she selected number 3
22 first, and that is the photo of my client.

23 THE COURT: Okay.

24 MS. PRINGLE: So, we would move on those grounds to
25 exclude.

1 I would also renew my motion respectfully, Your Honor,
2 with regards to *State vs. Traylor*. It would be my position
3 that those are mug shots, and they are obviously mug shots.
4 That's my position. I understand the court ---

5 THE COURT: They are obviously mug shots based on
6 what?

7 MS. PRINGLE: I just think the images, when you look
8 at them -- perhaps I've seen too many of them. I don't
9 know, but to me, they're obviously mug shots.

10 THE COURT: They just seem pictures to me. They're
11 just photographs.

12 MS. PRINGLE: I understand, Your Honor.

13 THE COURT: People are -- one guy has a jacket on.
14 One has a t-shirt. One has a shirt with a collar. One
15 looks like he's dressed to go to a party. I mean, I don't
16 know. There's a -- the cases distinguish between photo
17 lineups and photo lineups containing mug shots. These are
18 photos. These are not mug shots, but go ahead.

19 MS. PRINGLE: I understand.

20 THE COURT: Aside from your *Traylor* argument, let's
21 focus on -- which I rejected -- let's focus on that, on the
22 other.

23 MS. PRINGLE: Yes, sir.

24 THE COURT: Others.

25 MS. PRINGLE: I've stated my grounds.

1 THE COURT: But I think I missed your -- if you could
2 tell me your grounds again because I missed something in
3 which your -- whatever you were emphasizing, I missed. So,
4 if you could tell me that again to highlight it.

5 MS. PRINGLE: Well, that -- it is my position that
6 they're seeking to introduce into evidence an out-of-court
7 identification. And while they are presenting it as not a
8 positive identification, in fact what you have is a same
9 lineup sheet that has my client's photograph circled. And
10 I think that that is what *Neil vs. Biggers* is intended to
11 prohibit.

12 She had not -- if you look at the totality of the
13 circumstances, the court is required to consider: one, was
14 the identification process unduly suggestive; two, was the
15 out-of-court nevertheless so reliable that no substantial
16 likelihood of misidentification existed. And I think that
17 it's not reliable.

18 She talks about it being darker. That she didn't --
19 she wasn't really able to see him. But I think the bottom
20 line is that she doesn't pick him, but you have her yet
21 circling him, and so it should not come in. It's
22 unreliable.

23 THE COURT: All right, says the state?

24 MS. CAMPBELL: Your Honor, she is not able to make a
25 positive identification. I understand her argument if he

1 were -- she were to come in here in court today and say she
2 can't say. All she can say is that he is similar, as she
3 did with the other ones. That is reflected in the photo
4 lineups.

5 We don't know of anything in the manner in which the
6 lineups were shown that that would be unduly suggestive.

7 As far as her argument, I think that goes to the
8 weight, not the admissibility, of the actual photo lineups.
9 We are introducing all the lineups where she thought people
10 were similar to make sure we keep it in context and to be
11 fair. So, put it in context, and he is just one of many
12 that she did.

13 We do not see anything in the way that the photo
14 lineups were presented that would be suggestive or was
15 suggestive in this case. And it goes to the weight, not
16 admissibility.

17 THE COURT: Well, I don't think she's arguing that the
18 procedure was suggestive. Are you arguing that as well?

19 MS. PRINGLE: No, sir.

20 THE COURT: She's not claiming it was suggestive.
21 She's claiming prong 2: that the identification is not
22 reliable. I believe that's supposed to be the essence of
23 it.

24 MS. CAMPBELL: Your Honor.

25 THE COURT: That she is circling this person, circling

1 that person. She doesn't know who it is. That is
2 suggestive, unduly suggestive.

3 MS. CAMPBELL: That it's unduly ---

4 THE COURT: Not -- I'm sorry, not suggestive. It's
5 unreliable.

6 MS. CAMPBELL: And I think that goes to the weight,
7 not the admissibility and the actually -- what she's shown
8 and was able to say. That's certainly something I think
9 she could argue to the jury and everything else. However,
10 there is -- she is shown people that are similar to that.
11 And we think we would have the right just to go into it for
12 that purpose.

13 THE COURT: Ms. Pringle, you, didn't you tell the jury
14 in the opening that the person there picked someone else
15 out of a lineup and identified someone differently?

16 MS. PRINGLE: Yes, sir. She did.

17 THE COURT: And you don't think she should have an
18 opportunity to explain or talk about what you told the
19 jury, that the wrong person was identified and all that?

20 MS. PRINGLE: That person isn't in any of those. That
21 was a person on the scene that night.

22 THE COURT: Well, is that the person you asked Reese
23 about just a minute ago?

24 MS. PRINGLE: Yes, sir. That was, that, that person
25 is David Williams, and he was caught running on the scene.

1 And they just, they did a show-up I.D. there, which she
2 chose him there.

3 THE COURT: Well, you've in effect told the jury
4 through your opening statement that this witness identified
5 someone else. The state wants to introduce evidence that
6 the defendant looked like the person who committed the
7 crime, though she is not positive about her identification.

8 You don't question the process used by law
9 enforcement, but you are questioning the reliability of the
10 witness. In *State vs. Simmons*, the -- which occurred, the
11 robbery at McDonald's out on Decker Boulevard case, the
12 court allowed the identification though the witness was not
13 absolutely certain of the identification. And the
14 appellate courts found no problem with that. How do you
15 distinguish that, if you do?

16 MS. PRINGLE: Well, she's not certain at all. She
17 says could be.

18 THE COURT: Well, she picked him. She picked him out
19 of the lineup, didn't she?

20 MS. PRINGLE: She says it could be him. It could be
21 the other guy, and she says similar things on other -- with
22 respect to others.

23 THE COURT: Well, in *Simmons* she said the witness,
24 third eyewitness testified that Simmons looked like the
25 robber, and the appellate court found no problem with the

1 testimony, no error in allowing her testimony. How is that
2 different from this case?

3 MS. PRINGLE: I think it's weaker here.

4 THE COURT: Well, to what degree? Does that mean that
5 when -- you consider you've told the jury that some third
6 person was identified. So, therefore, we have this witness
7 that you've said has picked someone else. That would
8 suggest to the exclusion of your client that she picked
9 someone else. And now you're seeking to prevent the state
10 from asking her any questions concerning her
11 identification.

12 MS. PRINGLE: I've only seeking to exclude that final
13 lineup. I'm not objecting, and I don't think that I could
14 object to the other lineups. I'm only objecting to the one
15 that includes his photo.

16 THE COURT: You want to exclude the lineup in which
17 she picked your client?

18 MS. PRINGLE: Yes.

19 THE COURT: Well, they'd have no point in calling her
20 as a witness, then, if she had nothing of value to testify
21 to as far as the state's position.

22 I think that the purpose of *Neil vs. Biggers* is for
23 the court to certainly review both prongs, but also to
24 ensure that the testimony given is, is open to challenges
25 by lawyers on both sides. The witnesses are examined and

1 cross-examined, and then the jury weighed the -- weighs the
2 evidence.

3 But for me to start suggesting the jury can hear this
4 but not hear that, how will they -- what will they have to
5 base their decision on?

6 I certainly understand your point of view in the case.
7 These are not absolutely clear issues one way or the other
8 because every case, there's a different nuance in every
9 matter presented. No two circumstances are generally
10 identical.

11 But I think on balance, the testimony is sufficiently
12 reliable to be introduced during the course of the trial
13 and for the jury to evaluate all of it. Evaluate what you
14 told them in opening statements, and what the witnesses
15 said, and what -- she is, after all, the only, apparently
16 the only witness to the case who saw the perpetrator
17 standing on the man's front porch immediately after the
18 crime, and she can talk about it. So, I deny the motion.

19 Well, did you get all those jurors? All right, we'll
20 take a two-minute stretch, and then we'll be ready to bring
21 the jury.

22 (OFF THE RECORD.)

23 THE COURT: You may bring in the jury.

24 (THE JURY ENTERS AT 10:29 A.M.)

25 BAILIFF: Jurors are seated, Your Honor.

J. MORRISON - VOIR DIRE EXAMINATION BY MS. SIMPSON

44

1 THE COURT: All right. Good morning. Your next
2 witness, please.

3 MS. SIMPSON: The state calls Dr. James Morrison.

4 JAMES E. MORRISON, BEING DULY
5 SWORN, TESTIFIES AS FOLLOWS:

6 CLERK OF COURT: Have a seat in the witness box, and
7 state your name for the record, please.

8 WITNESS: My full name is Dr. James Edward Morrison,
9 M-O-R-R-I-S-O-N.

10 VOIR DIRE EXAMINATION BY MS. SIMPSON:

11 Q. Good morning, Dr. Morrison. What do you do?

12 A. I am a full-time trauma and critical care surgeon at
13 Palmetto Health Richland, which is the level one trauma for
14 the Midlands of South Carolina.

15 Q. And how long have you been licensed to practice in
16 this state?

17 A. I moved here approximately nine years ago for the
18 State of South Carolina. Prior to that, I was licenced in
19 California.

20 Q. And can you tell us a little bit about your education
21 and training?

22 A. Yes, ma'am. To become a physician, you have to
23 complete college, so you do four years of college. After
24 college, you do four years of medical school; that's a
25 general medical education. After medical school, you can

J. MORRISON - DIRECT EXAMINATION BY MS. SIMPSON

45

1 choose a specialty training. I chose surgery. Surgery is
2 a six year training program called a residency. At the end
3 of those six years, you take both a written and an oral
4 exam, and those then help you become a board certified
5 general surgeon, which is what I am.

6 I then also did a one year specialty training in
7 addition in surgical critical care, which I also took a
8 test for which then qualifies me to work in intensive care
9 units and take care of surgery patients who are critically
10 ill.

11 And my focus of practice since the thirteen years
12 after graduation have all been in trauma and critical care,
13 predominately involving injured patients.

14 Q. And, Doctor, how many patients would you say you've
15 seen in the course of your years?

16 A. I would have to say ---

17 Q. Can you even put a number on it?

18 A. I can say thousands. Palmetto Health Richland sees
19 over 2000 trauma patients per year, and I round regularly
20 either on the floor or in the intensive care unit. So, I
21 have some exposure to essentially all of them.

22 Q. And have you testified before?

23 A. I've testified in this court and been certified as an
24 expert witness.

25 MS. SIMPSON: Your Honor, at this time the state would

J. MORRISON - DIRECT EXAMINATION BY MS. SIMPSON

46

1 seek to qualify Dr. Morrison as an expert in general
2 surgery, as well as trauma and surgical critical care.

3 MR. STRICKLER: No objection.

4 THE COURT: He's admitted.

5 DIRECT EXAMINATION BY MS. SIMPSON:

6 Q. Now, did you have occasion to see the victim, Tryon
7 Eichelberger, professionally?

8 A. Yes, ma'am.

9 Q. And when was that?

10 A. That was in May of 2009. He came in late in the
11 evening, or if you prefer early in the morning. Part of my
12 job involves staying in a hospital kind of like firemen
13 stay in a fire department overnight. I stay in the
14 hospital overnight and then see anyone who comes in who is
15 severely injured. And he came in on my call shift.

16 Q. Do you have any personal recollection about this case?

17 A. My recollection is more from when he was discharged
18 than when he came in. When he came in, he was, to me, any
19 of many assaulted patients that I see. But I do
20 specifically remember discharging the pastor, preacher to
21 long-term care with the expectation that he was not going
22 to do well. And I have very specific memory of that.

23 Q. Okay, and did you review any medical records in
24 preparation for this case here?

25 A. I have the medical records that were sent to me by

J. MORRISON - DIRECT EXAMINATION BY MS. SIMPSON

47

1 your office.

2 Q. Where did you see Mr. Eichelberger?

3 A. Mr. Eichelberger was brought in as a critical trauma
4 patient. He is what we call a 911 alert. So, when someone
5 is so badly injured that the paramedics fear that they are
6 dying from their injuries, they call ahead. We page out
7 what's called a 911 alert, and an entire team of surgeons,
8 technicians, nurses, emergency room physicians all convene
9 in the emergency room to meet that patient as they arrive.
10 And he arrived in that circumstance. He was what we call a
11 911 trauma.

12 Q. Backing up just a little bit. You said it's a team.
13 What is your role with respect to this team?

14 A. I am the lead surgeon. I'm often called an attending
15 because I oversee residents. There are surgery residents
16 who are in their surgical training that are on call with
17 me. So, they arrive. There's also emergency room
18 physicians that are certified as such. They have their
19 trainees there as well. And then there, again, there are
20 multiple nurses, technicians, people doing X-rays -- even
21 the chaplain comes -- all to help support the evaluation of
22 the critically injured patient.

23 Q. But you're the lead, so are you responsible ---

24 A. Yes, I am. I am responsible.

25 Q. --- essentially for this force? How did he arrive on

1 May the 4th?

2 A. He was brought in by paramedics, and then if you'll
3 look at the record, what they'll say is he came in in what
4 they call full C-spine precautions. And what that means is
5 they put him on a backboard to keep him stiff and straight
6 in case he's got a spine injury. They put a collar on his
7 neck so that he doesn't move his neck in case there's a
8 neck injury. He had most likely put some sort of dressing
9 on his head. That I don't specifically recall, and then
10 they may or may not put an IV in him as they bring him in
11 if they have time.

12 Q. And do you recall about what time this would have been
13 on May 4th of 2009?

14 A. It was in the area of midnight. I know that my
15 resident's note that was done on computer was timed in at
16 just past midnight on the 4th of May 2009.

17 Q. In emergency situations, can initial info regarding
18 how the patient presents be beneficial to you?

19 A. All that information is beneficial. I take the
20 paramedics at their word. So, when they bring me someone
21 that's crashed in a car, I believe they were at a scene
22 that looked like a car cash. When they bring me someone
23 who's been assaulted, I believe the paramedics were at a
24 scene that looked like someone could have been injured or
25 beaten up. They tell me that when they arrive, and I

J. MORRISON - DIRECT EXAMINATION BY MS. SIMPSON

49

1 take that into account as I consider what the injuries
2 might be.

3 Q. And how did Mr. Eichelberger arrive? Under what
4 circumstances?

5 A. He was reported as someone, reported to me as someone
6 who had been assaulted. He was found in a very large pool
7 of blood. And the reason that the paramedics had him
8 brought in as a critical trauma was due to the amount of
9 blood at the scene, and their concern that he could be
10 bleeding to death.

11 Q. So, there was a large amount of blood at the scene?

12 A. I heard as much as 2 liters reported. A liter is
13 about a quart, so maybe 2 quarts of blood, half gallon of
14 blood, somewhere in that neighborhood, but it was a large
15 pool, enough to make the paramedics nervous.

16 Q. And when he arrived, what was his condition?

17 A. He was head injured in that he could not make sense,
18 and he cannot follow commands. He could say some random
19 words, but not a full sentence that made sense. He would
20 pull at things, but he couldn't follow commands. He had a
21 large cut on the top of his head which was bleeding which
22 we had to sew, and those were his main -- initial injuries
23 that we identified as he came in the door.

24 Q. So, in that state, was he able to provide any
25 information to you as far as his background or happened?

1 Was he very helpful at all in that respect?

2 A. He was unable to give us any information himself.

3 Q. And can you describe for us his movements with respect
4 to when he came in?

5 A. When people come in where their head's been injured,
6 we do what's called a Glasgow Coma Scale Score, and it's a
7 number we give and we kind of grade things. We grade how
8 well you open your eyes, we grade how well you speak, and
9 we grade how intentionally you move.

10 He couldn't follow commands. He would grab at things,
11 pull at things, but could not follow commands. He would
12 not open his eyes, and he would say random but nothing that
13 made sense or even meant a sentence.

14 Q. And I want to back up to the visible injuries that you
15 observed. Can you tell us a little bit about that? I
16 believe you said a laceration. What is a laceration?

17 A. A laceration is a cut. The scalp is extremely
18 vascular. If you cut your, cut your head shaving, just
19 like when you cut you face shaving, it bleeds a lot.

20 If you get a cut where I gesture on the top of my head
21 where his was -- his was on the top left of his head --
22 you've got a large cut there, that can bleed profusely.
23 You can loose an extremely large amount of blood from that
24 area. His cut was 7 centimeters, which is just short of 3
25 inches in length, so it was a pretty good gash, and it was

J. MORRISON - DIRECT EXAMINATION BY MS. SIMPSON

51

1 actively bleeding.

2 Q. And would that have -- injury, absent any care, been
3 potential life-threatening on its own?

4 A. I know of patients in the literature who have bled to
5 death from a scalp laceration.

6 Q. And did you happen to note whether there were any
7 defensive wounds? I guess first tell us what a defensive
8 wound would be.

9 A. A defensive wound is something that if someone is
10 striking you, if you raise up your hands to block a knife
11 or a bat or a stick, then your hands get struck. So, those
12 -- I'm going to put my hands in front of my face. But if
13 you put your hands in front of your face to block yourself,
14 they're going to get hit first. So, those are considered
15 defensive wounds.

16 I do not recall any on him. I have not seen any
17 pictures of any on him.

18 Q. And can you describe for the jury the nature of the
19 examinations, if any, that you did at that time?

20 A. We do two examinations when somebody arrives in the
21 emergency department. We do a quick head to toe. It's
22 actually called the ABCs, but there's something we check
23 that starts with an A, something that starts with a B kind
24 of as an algorithmic way to fix quickly life-threatening
25 things.

1 C is circulation. He was bleeding. I've got to stop
2 the bleeding, so that was part of the quick head to toe
3 looking for life-threatening, immediately, I'm dying kind
4 of injuries.

5 And then once we've got that settled, we go back. We
6 do a very careful head to toe exam looking at every hair,
7 every cut, every bruise, and your eyes and your ears and
8 your nose, listening to your lungs, et cetera. Complete,
9 complete head to toe exam. And then from there we pick
10 what X-rays and scans we want to get to further look for
11 injuries.

12 Q. And did you actually do any scans on that day, May the
13 4th?

14 A. He has a full set of CAT scans and some regular
15 X-rays. A CAT scan is special kind of X-ray which in many
16 ways takes the body part and turns it into, like, slices of
17 bread. So, if you were going to look at a whole loaf of
18 bread that was sliced, you could look at each little slice
19 of bread.

20 The CAT scan, when I gesture like in lines across my
21 head, it will take little slices of each area of your body,
22 and I can look internally at your brain, at the bones in
23 your neck, at your heart and lungs, at all your internal
24 organs, and look for injury or bleeding that could
25 positively -- possibly cause someone to die.

J. MORRISON - DIRECT EXAMINATION BY MS. SIMPSON

53

1 Q. And on May 4th, what were the clinical impressions?

2 A. The immediate impression was that he had a head injury
3 because he had a large injury on his head, and he couldn't
4 make sense and couldn't cooperate with our exam. So, we
5 quickly followed that with a CAT scan of his brain.

6 The CAT scan showed several things. It showed that
7 his skull was cracked. It also showed that there was a
8 collection of blood that was collecting between his skull
9 and his brain, pressing on the brain. It showed some blood
10 that was mixed in with the cerebrospinal fluid, and it
11 showed some very faint punctate, little spot-like bruises
12 to the brain itself.

13 Q. And at that point, were there any decisions made with
14 -- regarding the course of his treatment?

15 A. The immediate decision we made was to consult a
16 neurosurgeon to decide if that blood had to be drained, if
17 it was pressing too much on his brain. The initial
18 decision was to hold off and wait. And what the
19 neurosurgeon usually has me do, put the patient in
20 intensive case, and we get several CAT scans over the next
21 hours and days to look and see if that bleeding is getting
22 worse.

23 Q. And in this case, was he actually, I guess, referred
24 over to the trauma ICU?

25 A. He went to the trauma ICU, yes, ma'am, under my care.

1 Q. And I believe he had anywhere in the course of 13
2 CT scans. Tell us again what the purpose of that would
3 have been between, I believe, May the 4th and early June,
4 June the 12th.

5 A. Yes, ma'am. We do consecutive CAT scans, again to
6 look and see how the blood collection is doing -- if it's
7 getting bigger or smaller -- and to look at the brain to
8 see if it's having any more swelling. So, if you smack
9 your thumb, I can look at your thumb and you can tell me if
10 it's getting bigger or smaller. I can't see the brain
11 through the skull. So, the only way I have to see the
12 brain is to do a CAT scan. So, we do quite a few CAT scans
13 to look and see how things evolve over time.

14 Q. And in this case, what happened with respect to Mr.
15 Eichelberger?

16 A. Two things happened that were concerning. One is he
17 had progressive trouble breathing and had to be placed on a
18 breathing machine. And he was on a breathing machine for,
19 I believe, approximately fourteen, fifteen days until we
20 were able to take it out.

21 And the second thing that happened is where the blood
22 and injury were, he started collecting cerebrospinal fluid.
23 The name for that collection of fluid is a hygroma,
24 H-Y-G-R-O-M-A. But that collection of fluid became
25 progressively large, and he became less and less

J. MORRISON - DIRECT EXAMINATION BY MS. SIMPSON

55

1 responsive. So, for that reason the neurosurgeon, Dr.
2 Sweet, did what's called a burr hole, basically drilling a
3 hole in the skull to release that fluid and relieve the
4 pressure.

5 Q. And backing up just a little bit, the fluid on the
6 spine, what would have happened if that would have
7 continued without the surgical procedure?

8 A. If a large amount of fluid collects, it can actually,
9 it can actually put so much pressure on the brain that you
10 can die. So, we ideally drain the fluid before that much
11 collects.

12 You've got a closed space in your skull. Your skull
13 have no give to it. You've got brain in there, you've got
14 CSF in there, and if you start adding extra fluid or extra
15 blood, something's got to get squashed or give. There's
16 only so much space inside your skull. So, when too much
17 blood or too much fluid collect, that's a problem.

18 Q. Mr. Eichelberger actually had, I believe, a number of
19 surgical procedures while under your care during May 4th of
20 2009 to June 12th of 2009. I want to turn your attention
21 to that, and let's talk about some of those.

22 On May the 19th, I believe he had bilateral frontal
23 burr holes. Was that the procedure ---

24 A. That is ---

25 Q. --- that you were just discussing?

1 A. Yes, ma'am. That is drilling holes in the skull to
2 drain out the fluid to relieve the pressure.

3 Q. Okay, and what other procedures did he have?

4 A. He had an artificial feeding tube placed. Early in
5 his hospital course, we would have threaded a tube through
6 his nose down into his stomach to feed him since he could
7 not be awake and physically eat. And then when it became
8 clear that he was not ever going to wake up and be able to
9 take nourishment himself, we surgically placed a tube that
10 went through his belly wall straight into his stomach.

11 Q. And was he on this feeding tube the entire time?

12 A. We would have started feeding him several days after
13 his arrival. He was fed throughout his stay. When we sent
14 him to Life Care, which is the long-term care facility
15 where he first went, he was getting artificial feeding.
16 When he returned later with his urinary tract infection and
17 pneumonia, he was still getting artificial feeding. I do
18 not know if the family chose to continue the feeding when
19 they sent him home for hospice care when he was going to go
20 home and die.

21 Q. But at no point during that was he able to pick up a
22 fork and eat food. He had to be fed through the tubes?

23 A. He was never able to feed himself. He was always fed
24 artificially through a tube.

25 Q. And was he on bed rest the entire time?

J. MORRISON - DIRECT EXAMINATION BY MS. SIMPSON

57

1 A. He was not awake enough or coherent enough ever to sit
2 up and walk. So, he was in bed essentially and, in fact,
3 was a developing a bed sore when he came to us from Life
4 Care the last time.

5 Q. And what was his -- how was his ability to respond to
6 you? Was he able to communicate at all with, I guess,
7 yourself or family members?

8 A. He could do what we call localize things. So, if you
9 came in his room and yelled his name, he might turn towards
10 you. We felt like he responded a bit more to family than
11 to us since families' voices are familiar somewhere in the
12 back of his brain, but he was not conversant. He wasn't
13 watching TV programs and talking about them. He didn't
14 know who was in his room. He just knew that there was
15 things going on around him that he might be drawn towards.

16 But he could not consciously, actively interact with
17 them, could not feed himself, could talk, couldn't walk,
18 couldn't go to the bathroom. Would soil himself and have
19 to be cleaned. So, he was getting full care and artificial
20 feeding.

21 Q. And during that time, was he still responsive to
22 pain?

23 A. Yes, ma'am.

24 Q. We've talked a lot about some of the procedures as
25 well as scans and some of the complications. Were there

1 any additional complications that you recall regarding Mr.
2 Eichelberger?

3 A. As a physician, anything we do can have a
4 complication. You can go to the doctor to get your blood
5 drawn for a yearly physical and get a bruise. One of the
6 things we do to patients that are unable to control their
7 body activities is we will put in what's called a foley
8 catheter, and that is where you thread a tube in a male
9 through the penis into the bladder to drain out the urine,
10 and also to be able to measure it and see how much is
11 coming out.

12 Unfortunately, being in his eighties, this gentleman
13 had a large prostate. We had trouble with bleeding from
14 his prostate, and he had to undergo cystoscopy in order to
15 remove a clot from his bladder. That was an added
16 procedure due to the foley we placed, which we placed due
17 to the fact that he was head injured.

18 In addition, he had bleeding from around the
19 artificial feeding tube we placed, which required an
20 additional procedure to control the bleeding.

21 Q. And of his care, any complications that arose, were
22 these secondary to the assault or head trauma that he
23 suffered?

24 A. The head trauma is what brought him to the hospital,
25 and the things we did to him were all to support him

J. MORRISON - DIRECT EXAMINATION BY MS. SIMPSON

59

1 through his head trauma, so yes.

2 Q. And I want to back up a little bit. He was actually
3 in your care, I believe, until June the 16th. What was the
4 course of action after that?

5 A. Towards the end of his stay, it was very clear that he
6 was not waking up. He had a living will which said that he
7 did not want to be kept alive artificially if meaningful
8 life was hopeless. And for that reason, we had him first
9 seen by what is called a palliative care team. That's a
10 group of doctors and nurses whose job is to figure how to
11 keep someone comfortable if they're not quite going to die
12 but are in a very bad circumstance. So, Dr. Charles Petit
13 saw him with his team when we subsequently discharged him
14 to a facility called Life Care where they would provide
15 his day-to-day feeding through the tube. Also turn him,
16 bathe him, clean him, and whatever else might be necessary
17 for his case.

18 Q. But he required full care?

19 A. Yes, ma'am.

20 Q. And I want to back up. You said something about the
21 quality of life being hopeless. Tell us a little more
22 about that.

23 A. Head injuries in the elderly are not as hopeful as
24 when someone young is hurt, and he was in his eighties.
25 So, it was not our expectation that he would ever wake up

1 and be normal to where he could interact at a high degree.

2 Initially, he was not sick enough to die on his own.
3 We could have starved him to death. We could have stopped
4 the feedings, and at the point we first discharged him, his
5 family was not at that point. So, he went to Life Care,
6 receiving food through a tube to maintain him long term.

7 Q. And did he have to come back to the hospital at some
8 point?

9 A. He came back to the emergency room and was readmitted
10 a short time later. I want to say it was about ten days,
11 but I can confirm the record for you, but it was not a long
12 time.

13 When he returned, he had two things. He looked
14 globally infected, like he had something infected, some
15 bacteria or infection in his system. We call that sepsis.
16 So, if somebody shows you notes from a hospital status says
17 sepsis, that just means there's infection all over your
18 body. He has a urinary tract infection, so his urine was
19 infected.

20 And also the fear was that he had aspirated. The
21 nurses recalled a time one or two days before that brought
22 him in where either some saliva went down his windpipe,
23 or possibly he had burped up or thrown up some of his
24 feeding and sucked it down his windpipe. So, he had an
25 irritated and infected lung, he had infected urine, and

J. MORRISON - DIRECT EXAMINATION BY MS. SIMPSON

61

1 that infection was taking over his entire body.

2 Q. And I believe he came back on July 1st of 2009. Do
3 you recall when he was actually released to hospice care?

4 A. I've reviewed the records for that. I did not admit
5 him the second time. When he came in with pneumonia, he
6 was admitted by the hospital internal medicine service. He
7 spent somewhere between ten and fourteen days on that
8 service.

9 Dr. Petit came back to see him. He knew the family,
10 he knew the patient, wanted to make sure that things were
11 going as the family had hoped. And at that point, the
12 decision was made that instead of sending him back to Life
13 Care, they would send home with hospice.

14 When you go home with hospice, hospice is a group of
15 nurses and doctors who help people die. Basically, it
16 takes care of them in the last days of their life.

17 So, he went home from the hospital that second time in
18 July with the expectation that he would die.

19 Q. I want to show you what's already in evidence as
20 State's Exhibit 8, State's Exhibit 12, and State's Exhibit
21 14. Have you seen these before?

22 A. Yes, ma'am. I've seen these photos before. These are
23 pictures that were taken most likely in the trauma bay. I
24 have a picture of our patient.

25 Q. And if we could, just kind of -- we'll go through them

1 one at a time, and if you can just tell the jury what we're
2 seeing there?

3 A. I'm looking at the first picture. What you see is a
4 picture of a man lying on a gurney. He's got a large gash
5 on his head with some blood around it. There are staples
6 in the wound, and that is something we would have done very
7 quickly and very urgently to stop bleeding. That's that 7
8 centimeter laceration or cut on his scalp where he was
9 bleeding.

10 The thing around his neck is called a cervical collar.
11 That's basically a plastic collar to keep his neck still
12 because at that point, we didn't yet know if he had a neck
13 injury as well.

14 And then he's in a hospital gown. We didn't note it
15 initially, but he does have an abrasion or scrape on his
16 shoulder, and there's a little measuring device from where
17 the police officer or forensic officer took a picture of
18 that.

19 The next picture I can show you ---

20 Q. And I believe that's State's Exhibit 12? Yes.

21 A. The next picture I can show you is a picture of his
22 scalpel wound. So, it's a close-up shot of the cut on his
23 head. You can still see there's some dried and clotting
24 blood around it. There are staples in the wound. And
25 again we said it was approximately 7 centimeters, and

J. MORRISON - DIRECT EXAMINATION BY MS. SIMPSON

63

1 they've got a 5 centimeter measuring device there. It may
2 have been a bit longer than 7 centimeters. But again 7
3 centimeters is about 3 inches, so kind of use that as your
4 global length. And again, later we found that there was a
5 cracked skull beneath that and blood around the brain, but
6 that was the site of the injury.

7 The third picture I'm going to show you is state's
8 evidence ---

9 Q. 14.

10 A. 14, thank you. Don't know which number you're looking
11 at, and that was a close-up picture of the scrape on the
12 patient's shoulder. We didn't note that on our initial
13 history and physical, but he would have still had some of
14 his own clothes on. It's possible his open shirt was
15 pulled over his shoulder and we didn't see it. But he
16 clearly has an injury to his shoulder that looks like a
17 scrape. That would also be consistent with being
18 assaulted.

19 Q. Okay, and based on the medical records as well as
20 pictures and the injury, would you agree that he had been
21 struck at least twice?

22 A. I can see at least once or twice. Whether the blunt
23 object bounced off his skull down onto his shoulder,
24 whether it was two blows, I can't say. But he clearly has
25 two separate injuries, a very bad one on his scalp and one

1 on his shoulder.

2 Q. And again, no defensive wounds?

3 A. No, ma'am.

4 Q. What kind of force would it actually take to crack a
5 skull?

6 A. From my level of training and my expertise, I will
7 tell you a lot. An exact pounds per square foot would need
8 to come from a forensic pathologist, which I am not. But
9 to crack your skull -- bone is very dense. Skull bone is
10 very thick. It takes a hard blow to crack your skull.

11 Q. And his conditions, were they all the result of the
12 assault that cracked his skull?

13 A. Yes, ma'am.

14 MS. SIMPSON: Thank you, Doctor.

15 WITNESS: Thank you.

16 THE COURT: Defense.

17 MR. STRICKLER: No questions, Your Honor.

18 THE COURT: Thank you, Doctor. You may step down.

19 WITNESS: Thank you, sir.

20 (THE WITNESS EXITS THE STAND.)

21 THE COURT: Next witness.

22 MS. GARFIELD: Thank you, Your Honor. The state calls
23 Captain Steve Griffey.

24 STEVE GRIFFEY, BEING DULY SWORN,

25 TESTIFIES AS FOLLOWS:

S. GRIFFEY - DIRECT EXAMINATION BY MS. GARFIELD

65

1 CLERK OF COURT: Have a seat in the witness box.

2 State your name for the record, please.

3 WITNESS: Stephen Griffey, G-R-I-F-F-E-Y.

4 DIRECT EXAMINATION BY MS. GARFIELD:

5 Q. Captain Griffey, can you share with the jury where
6 you're employed?

7 A. Richland County Sheriff's Department, ma'am.

8 Q. How long have you been employed with the sheriff's
9 department?

10 A. Sixteen years.

11 Q. And what are your duties currently with the sheriff's
12 department?

13 A. I work for the Sexual Offender Registry Program.

14 Q. Were those your duties back in May, back in 2009?

15 A. No, ma'am. I was working as an evidence custodian of
16 the department.

17 Q. Did you have the occasion -- and working as the
18 evidence as an evidence custodian, are you in charge of
19 securing the evidence?

20 A. Yes, ma'am.

21 Q. And do you collect evidence?

22 A. Yes, ma'am.

23 Q. And would you collect any evidence that's not properly
24 packaged?

25 A. No, ma'am.

1 Q. In this particular case, *State vs. Frankie McGee*, did
2 you have the opportunity to come in contact with some
3 evidence?

4 A. Yes, ma'am. I did.

5 Q. In particular, did you come into contact with a swab
6 taken from the defendant?

7 A. Yes, ma'am.

8 Q. And can you explain to the jury how you came into
9 contact with that?

10 A. The item was brought in by another agency. They would
11 bring it in. We would review it, ensure that the evidence
12 itself was properly packaged, properly labeled, and we
13 would check all that before we would enter it into the
14 evidence room.

15 Q. And did you do so in this case?

16 A. Yes, ma'am.

17 Q. If the evidence had not been properly packaged, would
18 you have accepted it?

19 A. No, ma'am.

20 Q. Did you also come into contact with some other swabs
21 that were taken from a vehicle?

22 A. Yes, ma'am.

23 Q. And again did you take those the same day?

24 A. Yes, ma'am.

25 Q. And were those properly packaged?

S. GRIFFEY - DIRECT EXAMINATION BY MS. GARFIELD

67

1 A. Yes, ma'am.

2 Q. And once you collected these items that we're
3 referring to, what did you do then?

4 A. At that point, if everything is correct when I take
5 them in, they are entered into our computer system; they
6 are placed into our inventory. The way the system is
7 designed, we each have a particular password. So, when we
8 enter those passwords, we ensure that the items are
9 entered, and entered by ourselves, and that's how we track
10 them.

11 Q. Is that the extent of your involvement in this case?

12 A. Yes, ma'am.

13 MS. GARFIELD: Thank you, Captain. Please answer any
14 questions the defense counsel may have.

15 WITNESS: Thank you.

16 MR. STRICKLER: No, sir.

17 THE COURT: Thank you, sir. You can step down.

18 WITNESS: Thank you, sir.

19 (THE WITNESS EXITS THE STAND.)

20 THE COURT: Next witness.

21 MS. GARFIELD: The state calls Curtis Burnett.

22 CURTIS L. BURNETT, BEING DULY
23 SWORN, TESTIFIES AS FOLLOWS:

24 CLERK OF COURT: Have a seat in the witness box.

25 State your name for the record, please.

C. BURNETT - DIRECT EXAMINATION BY MS. GARFIELD

68

1 WITNESS: My name is Curtis Lee Burnett. That's
2 B-U-R-N-E-T-T.

3 DIRECT EXAMINATION BY MS. GARFIELD:

4 Q. Investigator Burnett, where are you employed?

5 A. I'm employed part time with Richland County Sheriff's
6 Department in the evidence room.

7 Q. And what do you do on your other part time?

8 A. My other job is full time. It's with Fort Jackson
9 dispatch, 911 dispatch center.

10 Q. As your duties with Richland County Sheriff's
11 Department, what do you do?

12 A. I work as an evidence technician.

13 Q. And that's in the evidence room at the sheriff's
14 department?

15 A. Yes, ma'am.

16 Q. And are you also responsible for collecting and
17 booking evidence?

18 A. Yes, ma'am.

19 Q. And when you collect evidence, do you make sure it's
20 properly packaged?

21 A. Yes, ma'am.

22 Q. And in this particular case, the *State vs. Frankie*
23 *McGee*, did you have the opportunity to come into contact
24 with some of the evidence collected?

25 A. Yes, I was.

C. BURNETT - DIRECT EXAMINATION BY MS. GARFIELD

69

1 Q. And specifically I'm referring to some socks that were
2 taken into evidence. Are you familiar with that item?

3 A. Yes. It's, it's item number 4.

4 Q. And where did you obtain those -- that item?

5 A. I got it out of the storage locker. We have a storage
6 locker that's -- if there's no one in the evidence room at
7 the time they bring it in, put it in the locker and turn
8 the knob and push a button. Once they do that, they cannot
9 retrieve it. Only the evidence techs, technicians have the
10 key to actually open the locker.

11 Q. And you would have such possession of a key?

12 A. Yes, ma'am.

13 Q. And did you, in fact, take possession of what was in
14 that locker?

15 A. Yes, ma'am.

16 Q. And did you find that item to be packaged properly?

17 A. Yes.

18 Q. If it was not packaged properly, would you have
19 accepted it?

20 A. No.

21 Q. Once you obtained that item, what did you do with it?

22 A. I would have brought it back in, meaning that I would
23 re-enter it back into the system by scanning it into our
24 database, and then by properly placing it in the storage
25 bin it was located in.

J. BARRON - VOIR DIRE EXAMINATION BY MS. CAMPBELL

70

1 Q. Was that the extent of your work on this case that
2 you're aware of?

3 A. Yes, ma'am.

4 Q. Thank you. Please answer any questions defense
5 counsel has.

6 MR. STRICKLER: No questions.

7 THE COURT: You may step down.

8 WITNESS: Thank you, sir.

9 (THE WITNESS EXITS THE STAND.)

10 THE COURT: Next witness.

11 MS. CAMPBELL: May it please the court? State calls
12 John Barron.

13 JOHN BARRON, BEING DULY SWORN,
14 TESTIFIES AS FOLLOWS:

15 CLERK OF COURT: Have a seat in the witness box.
16 State your name for the record, please.

17 WITNESS: My name is John Barron, B-A-R-R-O-N.

18 VOIR DIRE EXAMINATION MS. CAMPBELL:

19 Q. Sir, where are you employed?

20 A. Richland County Sheriff's Department.

21 Q. What do you do there?

22 A. I'm a DNA analyst.

23 Q. Can you tell this jury, as a DNA analyst, what do your
24 duties include?

25 A. My duties include to receive evidence and analyze them

J. BARRON - VOIR DIRE EXAMINATION BY MS. CAMPBELL

71

1 for the presence of body fluids, such blood or semen in the
2 case of sexual assault, or any other type of evidence or
3 biological material that could have DNA. To recover that
4 DNA, to determine the quantity of the amount of DNA I
5 recovered, and then to develop DNA profiles from that
6 evidence.

7 In addition to that, I receive known samples from
8 various individuals to compare their profile with the
9 evidence.

10 I also am charged with entering profiles into a
11 database that is housed at our department, as well as
12 uploading those unknown profiles to SLED, which houses a
13 larger database which in turn uploads the profiles to the
14 FBI for a comparison throughout the United States of those
15 unknown profiles to see if they can match anybody.

16 Q. Can you tell this jury a little bit about your
17 education and your training in the field of DNA analysis?

18 A. Yes. I have a Bachelor of Science degree in
19 microbiology from Clemson University. Upon completion of
20 that, subsequent to that, I became employed at SLED, or
21 South Carolina Law Enforcement Division, as a forensic
22 scientist. There I was trained in several areas of
23 forensic scientist -- forensic science, excuse me.

24 One of those areas initially was forensic serology,
25 which is the identification of body fluids and the

1 serological typing of those body fluids for comparison in
2 criminal cases. At that time, DNA technology was not in
3 existence.

4 Subsequent to that, I became employed in the trace
5 evidence department, where my main focus was examining
6 evidence for foreign hairs and fibers, compare them to
7 individuals, as well as other duties.

8 In 1999 -- by the way, I started at SLED in the late
9 1970s. In 1999, I transferred to the DNA department to be
10 trained in the latest DNA technology, which is PCR,
11 polymerase chain reaction, DNA science. There I trained
12 under Dr. Gray Amick, who was the individual who was
13 responsible for developing and writing the protocols at
14 SLED for PCR DNA analysis.

15 After about a year of training and during that year of
16 training, actually, I attended the University of South
17 Carolina graduate school and completed two additional
18 gradual level courses, one in molecular biology and one in
19 statistics. After a year, I completed a, successfully
20 completed a competency test and was declared able to
21 perform DNA analysis with this technology at SLED.

22 In 2004, Dr. Gray Amick and myself came to Richland
23 County Sheriff's Department and established the DNA
24 laboratory there. I've been there ever since.

25 Over that eleven year period of time, I have testified

J. BARRON - DIRECT EXAMINATION BY MS. CAMPBELL

73

1 approximately forty times, probably over forty times as an
2 expert in DNA science.

3 MS. CAMPBELL: Your Honor, at this time we would offer
4 him as an expert in DNA analysis.

5 MR. STRICKLER: I have no *voir dire*, Your Honor.

6 THE COURT: He's admitted.

7 DIRECT EXAMINATION BY MS. CAMPBELL:

8 Q. The laboratory that you established at Richland County
9 Sheriff's Department, you and Dr. Amick were there to
10 actually set up the DNA lab?

11 A. Yes, we were.

12 Q. And as part -- over the years, were there further
13 steps taken as part of the laboratory as a whole, including
14 the DNA department, to make sure you met certain standards?

15 A. Yes. As part of the system in the Unites States, the
16 crime laboratory system in the United States, we had to
17 meet certain criteria in order to upload those unknown DNA
18 profiles to the FBI database. And they are housed with
19 the responsibility of making sure that the laboratories
20 that do submit profiles are qualified. They meet certain
21 minimum standards. The FBI has qualified our laboratory in
22 two thousand -- late 2004, and subsequent to that, every
23 year we are inspected by an independent inspector outside
24 of our laboratory to determine if we maintain those
25 standards.

1 Q. Are you familiar with the term ASCLD?

2 A. Yes.

3 Q. What's that mean?

4 A. It's American Society of Crime Laboratory Directors.
5 It is a certifying agency, and one of the two certifying
6 agencies in the United States that are charged with the
7 duty of inspecting laboratories to make sure they meet FBI
8 standards.

9 Q. And is your laboratory ASCLD accredited?

10 A. It is.

11 Q. And every year, you mentioned that there are certain
12 protocols in place to ensure the quality of your results?

13 A. That's correct.

14 Q. And is there also testing that's done on each of the
15 analysts there at Richland County to ensure your ability to
16 perform your duties?

17 A. Yes. Subsequent to a competency test, every year I
18 have to take two proficiency tests. I took proficiency
19 tests while at SLED and every year I've been at Richland
20 County as well and have successfully completed the
21 proficiency testing, which is a blind sample, or several
22 samples that are submitted. And I develop a DNA profile,
23 submit those results to -- offsite to an independent agency
24 who gives us the samples. And they correct them and see if
25 they're -- the profile is correct. And I've successfully

J. BARRON - DIRECT EXAMINATION BY MS. CAMPBELL

75

1 completed every proficiency test since I've been qualified
2 as a DNA analyst.

3 Q. And to be ASCLD accredited -- is every DNA laboratory
4 ASCLD accredited, or is that a high standard?

5 A. The goal of every DNA laboratory is to be accredited
6 by either ASCLD or another agency called FQS. ASCLD
7 certifies the majority of those laboratories. There are
8 laboratories who are not yet certified, but if they wish to
9 upload unknown DNA profiles to the national database, they
10 have to be certified before they can do that.

11 Q. And that's pretty much the highest level of
12 accreditation a laboratory can get?

13 A. Yes, it is.

14 Q. I want to talk to you a little bit about how you
15 actually test evidence when it comes to you. Are you
16 familiar with the term of a buccal swab?

17 A. Yes. The term buccal swab is taken from the fact that
18 inside of your mouth are certain types of skin cells called
19 buccal cells. They're actually referred in common layman's
20 terminology cheeks cells. So, inside your mouth, then, are
21 plenty of cells that contain DNA, and it's used to -- as
22 opposed to sticking a needle in your arm drawing blood.
23 It's a lot less invasive and painless to swab the inside of
24 your mouth.

25 Q. And is it necessary or is it ideal, at least, to get

1 certain known standards via a buccal swab from people that
2 may or may not be of interest in the case?

3 A. Yes. That is what we suggest. That way,
4 you do not need medical personnel to draw blood, although
5 you can do it that way, and it has been done that way
6 before. But since buccal swabs are less invasive, we
7 suggest that that's what they do.

8 Q. In testing items that may have been found at a crime
9 scene, can you just go through generally how DNA evidence
10 may be collected from an item, either via a cutting or a
11 swab or the difference, or how you go about doing that?

12 A. Yes. When evidence is brought in, such as clothing,
13 and in the case of an assault where bleeding is occurring,
14 then we would search the items for blood. There are
15 preliminary testing we do in the laboratory to determine
16 whether or not blood is present. If that particular stain
17 is positive for a screening test for blood, then we just
18 simply cut out a small portion of it and put it into a tube
19 to extract for DNA.

20 Another way evidence comes in is just through general
21 swabbing of various items by crime scene individuals that
22 actually go to the crime scene, which I do not normally do.
23 Those swabs then are clean, sterile swabs that are
24 moistened with clean, distilled water, and swab the area
25 for the presence of potential DNA.

J. BARRON - DIRECT EXAMINATION BY MS. CAMPBELL

77

1 Q. You also mentioned earlier that you can get DNA from
2 certain body fluids you mentioned. Is that correct?

3 A. That's correct.

4 Q. And is that the only way you can get DNA is the
5 current testing?

6 A. No. Any type of cell from your body that has a
7 nucleus which contain the DNA can be extracted for DNA
8 analysis. That type of material, of course, would include
9 blood which contains plenty of DNA. A case of sexual
10 assault, the semen from the male individual or even the
11 vaginal cells from the female can be involved in a sexual
12 assault case.

13 Another type of evidence would be like, for instance,
14 we'll get a buccal swab from the inside of your mouth.
15 Then it makes sense then whatever you put your mouth on
16 may contain enough DNA as well, enough of those cells from
17 the inside of your mouth to type your DNA profile. So, if
18 you were to smoke a cigarette and drop a cigarette butt, if
19 you were to drink a drink, or take a bite of an apple, or
20 anything that you could put your mouth on, then we could
21 potentially develop your DNA profile from it.

22 Another way is simply the technology has become so
23 sensitive that even items that you touch or wear may
24 contain enough of your DNA present, based upon the fact
25 that your skin cells are sloughing off. You're familiar

1 with dandruff, of course. That is simply dried skin cells
2 that are sloughing off of your body. So, if you were to
3 wear a hat, then enough of your dry skin cells may be
4 deposited on the inside of that hat to determine whether or
5 not that you were one of the people or the person wearing
6 that hat.

7 Q. Okay. I notice you've used the words potentially you
8 could get a result, or you may get a result, and especially
9 with touch DNA. Can you explain that to a jury?

10 A. Yes. In the forensic world, it is not ideal. In the
11 hospital, you can collect a pristine sample, and you expect
12 to get a result from various chemical or serological
13 testing. But in the forensic world when you leave
14 evidence, it's not always ideal. So, that, that evidence
15 could be degraded over time. Or it may or may not be
16 enough there for us to develop a DNA profile.

17 In the case of touch DNA, there is no way for us to
18 chemically test or visualize that if there are any skin
19 cells at all present. So, basically it's kind of a shot in
20 the dark if you will be tested and see if there's DNA
21 present. If there is, we go ahead with the developing of a
22 DNA profile. So, it's kind of a hit and miss type of thing
23 when it comes to touch DNA.

24 Q. And can be even true of blood evidence as well?

25 A. It can be true of blood evidence. Blood evidence

J. BARRON - DIRECT EXAMINATION BY MS. CAMPBELL

79

1 usually contains plenty of cells for DNA typing. However,
2 the quantify can be so small or it can be degraded, in
3 which we do not get any results.

4 Q. And if -- when you get evidence, say an item of
5 evidence such as a sock or a shirt or something, it contain
6 -- can it contain more than one person's DNA?

7 A. Oh, yes.

8 Q. And can you explain that to the jury?

9 A. Well, if someone else is involved, in your household,
10 say, you know, you and your brother share clothing, then
11 you and your brother's DNA may be present. Or anyone else,
12 say your mom does your laundry and she touches your
13 clothes, puts them in the dresser for you or takes them out
14 of the drier for you. Anybody you come in contact with
15 that, that article of clothing can deposit their DNA.

16 So, even an incidental contact like, you know, in the
17 jury room you may bump up against each other, you may
18 incidentally transfer a little DNA. Usually it's that type
19 of contact doesn't transfer enough to identify you, but it
20 may transfer enough to where we see something.

21 Q. Okay, and is it unusual to get I guess what's called a
22 mixture of DNA, be it skin cells and blood, or it could be
23 semen and skin, or that type of situation going?

24 A. Yes, of course, and like, like I was explaining
25 earlier. In the forensic world out there when crimes

1 occur, not all samples are, you know, pristine from single
2 sources. You can have mixtures, and it's a common thing
3 that we see in the laboratory is to see mixtures.

4 Q. You also mentioned the term, I believe, of degradation
5 or degraded DNA?

6 A. Correct.

7 Q. What does that mean, sir?

8 A. Over time or through action by bacteria or a
9 combination of heat and moisture can over time degrade
10 the sample or the DNA to where it's not identifiable
11 anymore.

12 Q. So, it simply destroys what DNA may be there or
13 destroys your ability to get results?

14 A. That's correct.

15 Q. Can it change that person's DNA to look like somebody
16 else's?

17 A. No, it won't change your DNA to look like somebody
18 else's. It will just make it go away.

19 Q. When you get evidence from crime scenes and stuff, can
20 you actually date how long the DNA has been on that item?

21 A. No, you cannot.

22 Q. You mentioned specifically, though, you can test for
23 the presence of semen?

24 A. Yes.

25 Q. Blood?

J. BARRON - DIRECT EXAMINATION BY MS. CAMPBELL

81

1 A. Correct.

2 Q. And that can be significant in your evaluations?

3 A. Yes. I mean, we've, we have a particular type of
4 extraction technique for, for blood and semen that may be
5 a little different from touch DNA. But, so, we -- and
6 also it's of forensic value to identify body fluid if
7 possible.

8 Q. Can you tell this jury a little bit about the process
9 you go through when you receive either a swab or a cutting
10 that may have been processed prior to you getting it in
11 order -- how you run it through in order to get a result?

12 A. Well, yes. Once you determine that you have a sample
13 that you want to attempt to develop a DNA profile, the
14 process is put a small piece of that sample into a clean,
15 sterile tube, and then you add the reagents necessary to
16 extract that DNA from the cell, and that material includes
17 perionasis. In other words, material to break the protein
18 that is binding that DNA in that cell, as well as
19 detergents to break down cell walls and to basically free
20 the DNA from its natural environment.

21 So, once that process has taken place, then you want
22 to purify the DNA, and we have techniques in the laboratory
23 in which we eliminate all that extraneous material and
24 leave pure DNA. Once that is done, then we want to
25 determine how much DNA is present.

1 If we extract a sample and there is no DNA, then the
2 process stops at that point because there's no sense in
3 trying to develop a profile if there's no DNA present.

4 So, if there is DNA, then the process of DNA
5 amplification occurs, which to a layman's term is basically
6 biological copy machine. What the instrument does over a
7 period of about three hours or so is to copy certain
8 portions of the DNA molecule that has been determined by a
9 scientist to be linked to identification. Most of the DNA
10 molecule is used just to show that you are a human being.
11 But there are small portions obviously where there are
12 differences -- in this room, you can look around -- of the
13 DNA molecule that differentiates us and makes the
14 individual to us. By the way, DNA is unique to you unless
15 you have an identical twin.

16 And so those portions of the DNA molecule that are
17 used for human identification are copied, and then another
18 instrument is used to separate those copied fragments of
19 DNA and to develop your profile.

20 Q. When you talk about profile, there's been some
21 reference in the testimony about alleles or DNA profiles.
22 Can you explain that to the jury?

23 A. Yes. In your DNA or in each individual's DNA, there
24 is a portion of it that comes from your mom and a portion
25 that comes from your dad. The portion that comes from your

J. BARRON - DIRECT EXAMINATION BY MS. CAMPBELL

83

1 mom is referred to as an allele; the portion that comes
2 from your dad is another allele. So, at each of those
3 locations that we copy on the DNA molecule, ideally in a
4 single source -- in other words, it only comes from one
5 person -- it would be one or two alleles. So, if your mom
6 and dad gave you different alleles, you would have two. If
7 they actually gave you the same allele, you would -- there
8 would only be one allele present.

9 Q. And as part of your process and everything to make it
10 reviewable, are actual numbers assigned to certain alleles?

11 A. Yes. When the alleles are copied, we do not know how
12 long the fragment is. So, part of the process is to
13 determine the length of that fragment, or basically
14 separate it based upon the length of that fragment. So, if
15 the fragment is longer, it's going to be heavier, and if
16 it's smaller, it's going to be lighter. And each fragment
17 is assigned a number as it comes through the instrument
18 detection system. And so smaller numbers would be the
19 lighter fragments, and the larger numbers will be heavier
20 fragments.

21 Q. And once you are able to basically get what we've
22 referred to as a DNA profile, can you compare it to another
23 DNA profile to see if it's the same source?

24 A. Correct. Your, your profile will be basically a
25 series of numbers that could entered into a computer. So,

1 if -- your profile then would be compared to the series of
2 numbers that are produced from the evidence profile. And
3 if they're consistent, then you call it a match.

4 Q. And if anything is different as far as the profile is
5 considered, would that eliminate the person as being a
6 contributor?

7 A. Well, if the, the determination of the profile that
8 we're interested in comparison, if the profile doesn't
9 match, then it's considered to be not the individual. If
10 it does, then we develop a statistical weight to that
11 profile. In other words, how, how frequent do we expect it
12 to occur in the population, the general population? So,
13 the rarer that -- those alleles that are present, then the
14 rarer that profile will be.

15 Q. So, once -- the person has to be a match every time
16 before ---

17 A. Correct.

18 Q. --- you can put a statistical probability to it?

19 A. That's correct.

20 Q. And are you familiar with the term partial profile?

21 A. Yes.

22 Q. What does that mean?

23 A. Again in the forensic world, not everything is ideal.
24 So, you may get enough DNA to get part of a profile and so
25 you, in essence, have a partial profile. Partial profile

J. BARRON - DIRECT EXAMINATION BY MS. CAMPBELL

85

1 could be a match as well. It's just that statistical
2 weight of that match would be less than a full profile.

3 Q. When you are testing DNA, do you have, I guess, reason
4 to make it come out a certain way or to try and bias that?
5 What's your role?

6 A. Well, in the science world, we are objective. In
7 other words, we deal with objective facts. If the profile
8 matches an individual, then it matches an individual. We
9 state that objectively. If the person of interest does not
10 match the evidence, then we so state, and we -- I have been
11 involved in actually exonerating people through DNA
12 analysis. It's not my role to develop a biased opinion
13 based upon interrogation or beliefs in the investigation.
14 It's simply to state objective, scientific facts.

15 Q. In your laboratory, too, are there certain protocols
16 in place to prevent any kind of cross contamination or
17 anything of that nature?

18 A. Yes. That is part of our ASCLD certification is to
19 make sure that we have procedures in place to prevent such
20 a thing happening.

21 Q. To preserve the integrity of the actual evidence. Is
22 that ---

23 A. That's correct.

24 Q. I want to turn your attention now specifically to this
25 case. Initially, did you receive certain items of evidence

1 in this case?

2 A. Well, yes. Certain items of evidence came into the
3 laboratory in this case, yes.

4 Q. And I believe there is a Ms. Barrickman that assists
5 you in preparing items for testing?

6 A. Yes. Ms. Barrickman is one of our DNA assistants in
7 our laboratory. She often times does preliminary work of
8 getting the evidence from the evidence room, inventorying
9 it, and screening it, and cutting out swabs or cuttings
10 from samples.

11 Q. And is she also trained to make sure that she observes
12 the protocols to ensure the integrity of the evidence?

13 A. Yes, and she's also proficiency tested in, in the
14 actual type of analysis that she does. And she has
15 successfully completed her proficiency testing as well.

16 Q. We've heard some reference in this case to certain
17 tests. Is there a certain test, a preliminary test to test
18 for the presence of blood?

19 A. Yes, there is.

20 Q. What is that test?

21 A. There are several screening tests out there in the
22 forensic world. We use one called a phenolphthalein test.
23 It uses a reagent called phenolphthalein that when it is
24 not oxidized is clear. And when it oxidizes, it turns a
25 bright pink. So, in the presence of blood and hydrogen

J. BARRON - DIRECT EXAMINATION BY MS. CAMPBELL

87

1 peroxide, which we add as well, if it is positive for an
2 indication of blood, then it will turn bright pink
3 immediately. Not after a few minutes but upon the addition
4 of the hydrogen peroxide, it will turn a very bright pink.
5 It's a very clear, distinct color that you as a layman
6 would clearly be able to identify as well.

7 Q. And that testing in and of itself, say if it's done on
8 a spot on a piece of clothing of some sort that does test
9 positive for blood, does that affect any further testing
10 that may be done on that spot of blood?

11 A. No, it does not.

12 Q. So, that wouldn't skew any results or anything like
13 that as far as whose blood may be on the sock?

14 A. No.

15 Q. In this case, sir, did you receive three -- when did
16 you initially receive evidence in this case? What month?

17 A. We received evidence in this case in June of '09.

18 Q. June of '09?

19 A. Correct.

20 Q. And did you receive actually three buccal swabs in
21 this case initially?

22 A. Yes, I did.

23 Q. And how were those labeled, sir?

24 A. I received a buccal swab from the victim in this case,
25 Mr. Eichelberger, Reverend Eichelberger, and also one from

1 a David Williams and Michael Johnson.

2 Q. In addition to that, were there certain items of
3 evidence that were processed by Ms. Barrickman and then the
4 swabs and/or cuttings were then forwarded to you?

5 A. Yes.

6 Q. And what were those items?

7 A. There was a pair of white socks, a pair of tennis
8 shoes, and a metal bar.

9 Q. When you received the cuttings and/or swabs in this
10 case to compare to the buccal swabs that had been --
11 were they submitted properly to you? Was there any
12 evidence in the history of those items in the chain of
13 custody of any evidence of any tampering or altering in
14 this case?

15 A. No.

16 Q. When you received those items, did you do DNA testing
17 in this case?

18 A. Yes.

19 Q. And are you familiar with how -- I believe you
20 mentioned that there was a pair of tennis shoes?

21 A. Correct.

22 Q. And a swab from either end of a metal bar?

23 A. Yes. A metal bar was submitted in Ms. Barrickman's
24 swabs, each end of a metal bar.

25 Q. And when you tested those swabs, those would have been

J. BARRON - DIRECT EXAMINATION BY MS. CAMPBELL

89

1 tested separately, correct?

2 A. Say that again?

3 Q. The swabs from each end of the bar, those would have
4 been tested separately. Is that correct?

5 A. Yes, they would. One end of the bar contained stains
6 that resembled blood, and indeed tested out to be blood.
7 And the other stain was -- I mean, the other end of the bar
8 was no stains. It's presumed that if the metal bar was
9 used to assault Reverend Eichelberger, then the bloody end
10 would be the end that came in contact with him, and the
11 other end would be held by the person who was hitting the
12 reverend.

13 Q. And then there is also a pair of socks?

14 A. Yes.

15 Q. And what evidence did you receive from each, from the
16 socks separately?

17 A. I received a cutting that was presumed to be blood
18 from each of the socks, as well as samples that were
19 cuttings from swabs from the inside of the socks in an
20 attempt to identify the person who the socks belonged to.

21 Q. You received a cutting and then a swab from inside of
22 the socks?

23 A. Correct.

24 Q. And at that point, what kind of testing were you using
25 in the laboratory, DNA testing?

J. BARRON - DIRECT EXAMINATION BY MS. CAMPBELL

90

1 A. DNA testing, we were using PCR DNA testing.

2 Q. PCR which you've referred to?

3 A. Yes.

4 Q. Which has developed over the years. Is that correct?

5 A. Yes. It came onboard at SLED in the late 1990s, early
6 2000s. It is the technique I was trained in initially in
7 DNA analysis. There are -- there were earlier techniques,
8 but this is the one that is the best, most sensitive, and
9 the most discriminatory.

10 Q. Okay, and I want to show you.

11 MS. CAMPBELL: I want to get this marked.

12 (ENLARGED CHART MARKED AS STATE'S EXHIBIT NUMBER 124
13 FOR IDENTIFICATION.)

14 COURT REPORTER: 124 for ID.

15 BY MS. CAMPBELL:

16 Q. State's Exhibit Number 124, is this a chart showing
17 the result of your findings?

18 A. Yes, it is.

19 Q. It's been blown up?

20 A. Yes.

21 Q. And would this assist you in explaining things to the
22 jury?

23 A. Sure.

24 MS. CAMPBELL: Your Honor, at this time we'd offer
25 State's Exhibit 124.

J. BARRON - DIRECT EXAMINATION BY MS. CAMPBELL

91

1 (A PAUSE.)

2 MR. STRICKLER: No objections.

3 THE COURT: Without objection.

4 (ENLARGED CHART MARKED INTO EVIDENCE AS STATE'S
5 EXHIBIT NUMBER 124.)

6 BY MS. CAMPBELL:

7 Q. When you initially got this case, were each of these
8 items tested separately and ultimately compared to the
9 three buccal swabs you got?

10 A. Yes.

11 Q. If you can step down, and if you'll come on this side,
12 please, and talk.

13 (A PAUSE.)

14 Q. Does this is summarize the testing that was done on
15 June the 15th of 2009?

16 A. Yes.

17 Q. And was reported out by you?

18 A. Yes.

19 Q. And I notice the first three items, 1, 2, and 3, what
20 are those?

21 A. Those are the buccal swabs from Reverend Eichelberger,
22 David Williams, and Michael Johnson.

23 Q. And those were used or collected and submitted to you
24 for comparison purposes?

25 A. That's correct.

1 Q. What does that mean?

2 A. That means that these, at that point in time -- of
3 course the victim was at the crime scene. These other two
4 people were potential suspects to the crime. Their profile
5 or their buccal swab was submitted so that I could develop
6 a known DNA profile from each of these individuals, compare
7 it to any unknown DNA profiles from the evidence to see if
8 any of the unknown evidence profiles matched any of these
9 people.

10 Q. And then the first item of evidence is labeled as item
11 4.1, which is the white sock?

12 A. Correct.

13 Q. Is that then just delineated with an additional number
14 in order for you to differentiate between the two?

15 A. Yes. Each, each sock was given a sub item number so
16 that item number 4 represented a pair of socks. One sock
17 was 4.1 and the other is 4.2.

18 Q. And the item 4.1, there was a swab as well as a
19 cutting from the stain, the swab from the inside of the
20 sock that was submitted?

21 A. Yes.

22 Q. And then the cutting from the stain on the sock?

23 A. Yes.

24 Q. Was the stain tested for blood?

25 A. It was.

J. BARRON - DIRECT EXAMINATION BY MS. CAMPBELL

93

1 Q. And did it come back positive or negative?

2 A. It was positive for blood.

3 Q. And were you able to extract DNA?

4 A. Yes, I was.

5 Q. From item 4.1.1 from the swab from the inside of the
6 sock, were you able to -- I'm sorry. I was backing up on
7 you. From the swab on the inside of the sock, 4.1.1 from
8 one of the white socks, were you able to extract any DNA?

9 A. There was no DNA extracted from that swab taken from
10 the inside of the sock.

11 Q. And as a result of that, were you able to do any
12 further testing?

13 A. No. As I explained earlier, if there's no DNA, no
14 further testing is done.

15 Q. But on that same sock, the cutting from the stain on
16 the sock that tested positive for blood, were you able to
17 get DNA from that?

18 A. Yes.

19 Q. And what was the result?

20 A. The result of the stain on the socks was that it was a
21 DNA mixture. In other words, the DNA from the blood and
22 possibly the person wearing the socks or touching the socks
23 in some way was present.

24 The major contributor -- now, when I say a major
25 contributor of mixture, if you're walking through a room

1 that is, for instance, like if you have an NBA team and a
2 groups of midgets in it, you'd be able to pick out which
3 ones were the NBA team by looking at them because they're
4 taller. All right, in the case of a major contributor,
5 then, the major contributor to the DNA profile creates more
6 intense or taller peaks on our graph. So, that way we can
7 tell which is the major contributor to that DNA profile.

8 So, in the case of the stain from the sock, the major
9 contributor matched Reverend Eichelberger.

10 Q. And in that case, it having tested positive for blood,
11 do you have an opinion as to whose blood was on that sock?

12 A. Yes. In the case where we cut out a blood stain, we
13 expect a major contributor. And indeed it is my expert
14 opinion that the major contributor is that of the blood.

15 Q. And that would be the victim's blood, in this case,
16 would have been on those socks?

17 A. Correct.

18 Q. And you also mentioned that there was a minor
19 contributor. Is that unusual?

20 A. Not usual, especially in a pair of socks. In working
21 with socks, somebody else's socks could potentially have
22 other people's DNA on that sock.

23 Q. And in this case, were you able to do any
24 interpretation from the minor contributor?

25 A. No. In the case of a minor contributor, if there's

J. BARRON - DIRECT EXAMINATION BY MS. CAMPBELL

95

1 not enough there to identify an individual, what we, we
2 state is it was too weak to reliably interpret as far as
3 matching the individual.

4 Q. Okay, and statistically you mentioned that once you
5 make a match -- like in this case, the blood matched
6 Reverend Eichelberger's. In your opinion, it's his?

7 A. Correct.

8 Q. Do you put a statistical probability to that?

9 A. I do.

10 Q. And in this case, what was that probability?

11 (A PAUSE.)

12 Q. Are you referring to your notes?

13 A. Yes, I am.

14 Q. Okay.

15 (A PAUSE.)

16 A. In the case, we, we break down our statistics based
17 upon population type. In the Caucasian population, the
18 frequency may be a little different than that in the
19 African-American. Since the Reverend Eichelberger is
20 African-American, I used that statistic. The frequency is
21 1 in 461 quadrillion.

22 Q. Quadrillion?

23 A. Correct.

24 Q. Is that more people, significantly more people than
25 there are on earth?

1 A. Yes. There's approximately 6 and a half billion
2 people on Earth. So, it would be about a million times
3 bigger.

4 Q. And a million times bigger than Earth's population?

5 A. Correct. That's correct.

6 Q. So in your opinion, whose blood is it?

7 A. That, that's -- the basis of our capability to say
8 that it belongs to an individual, if the frequency of that
9 profile is so rare it would go beyond the number of people
10 on planet Earth by many fold, then we're able to say
11 statistically speaking that DNA is Reverend Eichelberger's.

12 Q. There was also a swab taken from the second sock, as
13 well as a cutting from the second sock?

14 A. Yes.

15 Q. And what were the results from the swab on the inside
16 of 4.2.1, which is the other sock?

17 A. Again, no DNA was extracted from that swab.

18 Q. So, therefore, no further testing?

19 A. Correct.

20 Q. And 4.2.2, what was that?

21 A. Another stain on the socks, which was blood, and I got
22 identical results. It was Reverend Eichelberger's blood on
23 the sock.

24 Q. So, your expert testimony is here today is that whose
25 blood was on both of those socks?

J. BARRON - DIRECT EXAMINATION BY MS. CAMPBELL

97

1 A. Reverend Eichelberger's blood is on those socks.

2 Q. And at that point, you weren't able to do any further
3 testing based on the swab that had been collected?

4 A. Correct.

5 Q. There was also a pair of tennis shoes, and I show you
6 State's Exhibit Number 115. What was the result as far as
7 any testing that had been done on them as for the presence
8 of blood on those tennis shoes?

9 A. I believe Ms. Barrickman tested these shoes for blood,
10 and she did not find any blood. However, we still tested
11 to see if we could possibly determine the wearer of the
12 socks -- I mean, the wearer of those shoes in this case,
13 could boost enough DNA for us to identify.

14 Q. And were you able to get any DNA from either one of
15 the shoes?

16 A. No.

17 Q. And so, therefore, you were not able to get any
18 further DNA results?

19 A. That's correct.

20 Q. But it was negative for blood?

21 A. Right.

22 Q. The final item that was initially submitted is item
23 number 6.

24 A. It's a metal bar. This is presumed to be the murder
25 weapon. One end of the bar had bloodstains on it. Again

1 it was the blood of Reverend Eichelberger.

2 Q. And again it was a mixture?

3 A. It was. Very, very, very minor contributor present.
4 So, anybody who touched that bar may have left a little
5 bit of DNA there, but it was not enough to identify
6 anybody.

7 Q. Not enough to identify anybody by?

8 A. Correct.

9 Q. And those were the initial findings you had when you
10 did your initial testing in June in 2009?

11 A. Correct.

12 Q. I want to turn your attention -- and that was all the
13 testing you did in 2009. Is that correct?

14 A. That's correct, and the summary of that testing was
15 submitted in a formal report on June 15, 2009.

16 Q. I will turn your attention back to late winter, early
17 spring of 2010. And just for the record, too, the socks,
18 while they were in your laboratory, no one altered them or
19 changed them in any way. Is that correct?

20 A. No.

21 Q. In the spring of or the late winter, early spring of
22 2010, did you meet with Investigator Kevin Reese of the
23 Columbia Police Department?

24 A. I did.

25 Q. And can you tell this jury what conversation you had

J. BARRON - DIRECT EXAMINATION BY MS. CAMPBELL

99

1 with him?

2 A. Investigator Reese approached me concerning the
3 Reverend Eichelberger case and the testing that I had done
4 on it. He had heard that we had developed further, more
5 sensitive abilities or techniques that could possibly give
6 him some results. He was concerned, very concerned about
7 solving this case, and he wanted to exhaust all
8 possibilities in the case to -- in an attempt to develop a
9 suspect.

10 Q. And the initial swab that had been done on the socks
11 by Christine Barrickman when they were initially submitted,
12 did you make any attempt to go back to see if you could
13 actually extract DNA that may be useable?

14 A. I did. Since the Reverend Eichelberger's blood is on
15 the socks, and Investigator Reese had reason to believe
16 that the socks were worn by the perpetrator, it'd be
17 reasonable then to attempt again to see if I could find
18 some DNA from those socks that could be attributable to a
19 person who was wearing the socks at one point in time.

20 Q. And did you have those socks resubmitted to your
21 laboratory for you to try to get further information from
22 those?

23 A. I did. I told Investigator Reese that -- upon his
24 insistence. I told him the initial results, but I did
25 say that I would try again. We had further DNA

1 capabilities that we didn't have at the -- two years or a
2 year before. And so, therefore, I told him I would attempt
3 again.

4 Q. And I show you what's been marked as State's Exhibit
5 Number 104. Were those the socks that were resubmitted to
6 you?

7 A. Yes, they were.

8 Q. And when those were resubmitted, tell this jury
9 exactly what steps -- you actually processed the socks
10 yourself this time. Is that correct?

11 A. Yes, I did.

12 Q. What steps did you take to try to get a result to
13 enable -- to help in this investigation?

14 A. Well, in the case of someone wearing a piece of
15 clothing, we're hoping or assuming that they do slough some
16 skin cells in that article of clothing. Originally the
17 socks were -- inside of the socks were swabbed. So, that
18 means the surface of them, inside the socks were swabbed
19 for the presence of DNA.

20 I reason personally, based upon my experience as a
21 trace evidence person, that scraping a sample may loosen
22 material that may not be on the surface. Something I did
23 on a consistent basis in the trace evidence laboratory was
24 scrape clothing for hairs and fibers. So, I would recover
25 hairs and fibers that I was -- that weren't necessarily on

J. BARRON - DIRECT EXAMINATION BY MS. CAMPBELL

101

1 the surface but may be imbedded in the material itself.

2 So, logically speaking, then, if you were wearing an
3 article of clothing, those skin cells can work their way
4 within the fibers of the material itself and be bound in
5 there, and yet the surface may not contain enough cells to
6 recover for DNA analysis.

7 So, what I did was I took the inside of the socks. I
8 took a sterile scalpel, and I began to scrape the socks
9 onto a clean, white exam paper. And I did notice that
10 there was dirt and debris that was being pumped out of the
11 socks as i scraped them. I could not see any skin cells
12 there. Again, all I could do is take that dirt and debris,
13 put it into a tube, and extract it to see whether or not
14 there was enough DNA present.

15 In this case, based -- with that more stringent
16 examination of the socks, there were enough skin cells
17 inside of the socks to find enough DNA to develop a
18 profile.

19 Q. And so you were able to get enough DNA to test. Did
20 you have to use the more sensitive testing, or what testing
21 did you use?

22 A. Well, we did have the more sensitive test available.
23 The more sensitive test is designed to develop DNA profiles
24 in what we call the gray area of the amount of DNA.

25 The technique that we used originally was able to

1 develop a DNA profile with, you know, approximately a
2 certain amount of DNA, whereas between zero and that amount
3 was an area where we weren't getting any DNA profiles. So,
4 we developed further -- we put online another technique
5 which was able to develop profiles in that range.

6 In the case of this case where I scraped the socks, I
7 was able to recover plenty of DNA to use the original
8 testing. I did not need to go to a more sensitive test.

9 Q. And that's the same testing you've been doing the
10 last, well ---

11 A. Since 2004. Well, even back at SLED, yeah, since
12 2000.

13 Q. When you did the testing, were you able to get a DNA
14 profile from the scraping from the inside of those socks?

15 A. I was.

16 Q. And once you got the DNA profile, what did you do?

17 A. Well, again, the results was a mixture, but there was
18 a major contributor. The major contributor is the alleles
19 that stand out, and I entered those alleles into the
20 database.

21 Q. That's the CODIS database?

22 A. Well, the CODIS database. That's the term that is
23 describing that database.

24 Before I entered the profile, I had Dr. Gray Amick go
25 over the profile, and he agreed with my ascertainment of what

1 the major contributor was.

2 I put that profile into CODIS. Then I called SLED,
3 who houses the database that contains a large amount of
4 individuals in it, and asked them to do a quick search for
5 me, which they will do and which we do in the case of
6 murder cases or severe sexual assault cases where it's
7 imperative to find the name right away. And as soon as we
8 get a potential for that, we want to, to see if there is
9 someone in that database that matches what we put in there.
10 So, that's what I did.

11 Q. Let me ask. At that point, you did have the three
12 buccal swabs that had been originally submitted?

13 A. Yes.

14 Q. And did this DNA profile match any of those three?

15 A. No.

16 Q. Go head.

17 A. So, the major contributor to this profile did not
18 match anybody that I had. It was, as far as I'm concerned
19 at that point, an unknown profile that was qualified to put
20 into the CODIS database system to be searched, not only in
21 South Carolina but throughout the United States, to see if
22 it matched anybody in that database.

23 Q. And is that the proper protocol when you have what was
24 referred to as an unknown sample that's not matching any of
25 your known samples that may be involved with the case?

1 A. Yes. That is the purpose of CODIS. We put unknown
2 profiles in there to see if they match anybody in that
3 database.

4 Q. And just so they know, at that point you'd never heard
5 of Frankie McGee?

6 A. No.

7 Q. And when you put it in the database, you don't control
8 who it searches or who it matches, do you?

9 A. No.

10 Q. And that's all done through a computerized system to
11 match to known samples that are in that system?

12 A. Correct.

13 Q. And when this CODIS was uploaded and you followed
14 protocol doing that, was it able to make a hit?

15 A. Yes, it was. I was informed by SLED that it did hit
16 an individual.

17 Q. And there's been reference to an actual letter. I
18 believe it's dated March the 11th of 2010. Was that the
19 date you received the information?

20 A. Yes.

21 Q. As to the hit?

22 A. Yes.

23 Q. And whose DNA profile did your sample in the inside of
24 the socks match?

25 A. I received a report from SLED. It stated the DNA

J. BARRON - DIRECT EXAMINATION BY MS. CAMPBELL

105

1 profile that I uploaded matched Frankie McGee.

2 Q. Frankie McGee?

3 A. Correct.

4 Q. And that's the first time his name had ever come up
5 with any evidence or anything that had been submitted to
6 you?

7 A. Yes.

8 Q. And that was done by the independent computer system
9 through SLED that's nationally recognized?

10 A. Yes.

11 Q. At that point, what did you do with that information?

12 A. At that point, I informed Investigator Reese that we
13 had a potential perpetrator in this case, and gave him the
14 information from SLED. Gave him a copy of the faxed letter
15 from SLED that stated his -- that this was their result.

16 Q. And when you say you have a potential perpetrator, you
17 aren't there to judge what the evidence may or may not
18 mean. Is that correct?

19 A. That is correct.

20 Q. And you can -- it can be used to exonerate as well as
21 implicate someone?

22 A. That is true. The scientific fact is that the profile
23 put in matched Frankie McGee.

24 Q. Whenever there is a CODIS hit, is it proper protocol
25 for you to later retest that profile against a known sample

1 that's been collected?

2 A. Correct.

3 Q. And is that because of chain of custody issues, or may
4 be an issue or may not be an issue?

5 A. It's obviously a legal issue because I did not test
6 the sample that is in the database at SLED. SLED tested
7 that sample, and so it is proper procedure for me to test a
8 known sample as well to confirm the match.

9 Q. And later was a known sample from Frankie McGee
10 submitted to you?

11 A. It was.

12 Q. In the form of what?

13 A. A buccal swab.

14 Q. And as well as, I believe, some additional swabs that
15 are shown in State's Exhibit Number 116 for your testing as
16 well, for additional testing?

17 A. Yes.

18 Q. And I show you State's Exhibit Number 105. Was that
19 the buccal swab from Frankie McGee?

20 A. This has David Williams's name.

21 Q. I handed you the wrong one. I apologize. I have the
22 wrong exhibit. Number 108, thank you.

23 A. Yes, this is the buccal swab submitted with Frankie
24 McGee.

25 Q. And the other one I showed you was one that was

J. BARRON - DIRECT EXAMINATION BY MS. CAMPBELL

107

1 submitted with David Williams's name on it. Is that
2 correct?

3 A. Correct. That was one of the ones submitted earlier.

4 Q. Those two items, items 108 and I believe the other
5 swabs are item -- State's Exhibit 116?

6 A. Yes.

7 Q. When those were submitted to you, were they properly
8 submitted for your analysis?

9 A. Yes.

10 Q. Did they have the appearance of being tampered with or
11 altered in any way?

12 A. No.

13 Q. And did you, while you had them, tamper with them or
14 alter them in any way?

15 A. Well, I did alter them because I cut out the sample.

16 Q. And you tested. Other than the testing, though, you
17 didn't cross contaminate or allow contamination of these
18 items?

19 A. No.

20 MS. CAMPBELL: Your Honor, at this time we'd offer
21 these two into evidence.

22 MR. STRICKLER: Without objection.

23 THE COURT: Admitted without objection.

24 (DNA SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT
25 NUMBER 108.)

1 (DNA SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT
2 NUMBER 116.)

3 BY MS. CAMPBELL:

4 Q. Once you received the known sample from Frankie McGee
5 as well as additional swabs from, I believe, a Ford truck,
6 did you do testing on those items and compare it, and do
7 comparisons?

8 A. Yes.

9 Q. And I show you a chart that's been prepared showing
10 results. Do you recognize this?

11 A. Yes. That's the chart of my subsequent results of
12 this case.

13 Q. And would that aid you in explaining things to the
14 jury?

15 A. Sure.

16 MS. CAMPBELL: Your Honor, at this time after I mark
17 it, we would offer -- I'll get you a number.

18 (A PAUSE.)

19 MR. STRICKLER: Without objection, Your Honor.

20 THE COURT: Admitted without objection.

21 MS. CAMPBELL: State's Exhibit Number 125.

22 (ENLARGED CHART MARKED INTO EVIDENCE AS STATE'S
23 EXHIBIT NUMBER 125.)

24 BY MS. CAMPBELL:

25 Q. If you can step down one more time?

J. BARRON - DIRECT EXAMINATION BY MS. CAMPBELL

109

1 The additional items, the socks were actually a
2 resubmisson of item 4?

3 A. Correct. When they were resubmitted -- they had
4 actually left Richland County evidence room, gone back to
5 Columbia Police Department, and they were resubmitted.
6 They were given a new item number, which is now item 10.
7 So, item 4 originally now is item 10, but it's the same
8 piece of evidence, the two socks.

9 Q. And when you compared on your independent -- and do
10 you do an independent comparison when you get a known
11 sample?

12 A. Correct.

13 Q. And it's not influenced by the first CODIS hit?

14 A. No.

15 Q. And when you did that and I believe that it was
16 submitted, you did your report in July 20th of 2010?

17 A. July 20, 2010, I submitted a supplemental report from
18 this case.

19 Q. And what were the results of your testing the
20 scrapings from the inside of those socks?

21 A. The major contributor to the mixture that was
22 recovered from the inside of those socks matched Frankie
23 McGee.

24 Q. It matched Frankie McGee?

25 A. Correct.

1 Q. And that was your independent finding, in addition to
2 the CODIS hit?

3 A. Correct. The buccal swab from Frankie McGee matched
4 the sample that SLED had matched that said it was Frankie
5 McGee. This was simply confirmation. It always is the
6 same person; I've never had a case where it's not.

7 Q. And in that case, once you had determined that it was
8 an actual match, do you put a number to that, a statistical
9 number?

10 A. Yes, I can.

11 Q. And what would that number be in this case?

12 A. Again I'm referring to my notes.

13 Q. Okay.

14 A. Indication of Caucasian population is 1 in 640
15 trillion, and in the African-American population 1 in 17.5
16 quadrillion.

17 Q. In the African-American population, 1 in 17.5
18 quadrillion?

19 A. Quadrillion, yes.

20 Q. And how many zeros is that?

21 A. That would be 1, 7, 5 then 00,000,000,000. One more
22 time. Comma 000.

23 Q. And as far as in comparison to the number of people on
24 Earth, what does this number reflect?

25 A. It reflects a much larger number than the population

J. BARRON - DIRECT EXAMINATION BY MS. CAMPBELL

111

1 of planet Earth.

2 Q. Planet Earth has a billion?

3 A. It's 6 and half billion approximately.

4 Q. Approximately, and this is how many times that?
5 Approximately?

6 A. All right, it would be approximately a million or so
7 times more.

8 Q. So, in your opinion, based on the quality of the
9 results you got and the statistical probability of it being
10 someone else, can you say whose DNA was scraped from the
11 inside of the socks as a major contributor?

12 A. It is Frankie McGee's DNA.

13 Q. Did you also do -- and item 11 is just the buccal swab
14 which was the known comparison unit?

15 A. Correct.

16 Q. Item number 12, the swabs from the interior, were
17 those tested for blood?

18 A. Yes.

19 Q. And it was negative?

20 A. Negative.

21 Q. And were you able to get DNA however?

22 A. Yes. Even though it was negative for blood, for
23 whatever reason -- I'm not familiar with the investigation
24 involving the Ford truck -- but I did go ahead and proceed
25 to extract some DNA to see whether or not -- to see if we

1 could match anybody.

2 There was a mixture on the swab between the floorboard
3 and the rocker panel, and I excluded Eichelberger. I
4 believe the intent was to see if Reverend Eichelberger was
5 -- DNA was in the vehicle.

6 12.2, passenger side rocker panel, was partial profile
7 and did not match Eichelberger. 12.3 was a floorboard
8 interior rocker panel near the seat bracket. Mixture.
9 Eichelberger excluded. 12.4 interior passenger front near
10 seat. Partial profile did not match Eichelberger.

11 Q. And you just accept the evidence. You don't know when
12 or where it was collected. Is that correct?

13 A. Correct.

14 Q. Okay. You can step back up. Let me ask you this. As
15 far as your ability in the forensic world to get evidence
16 from certain things, if a crime scene, say if a cleanup is
17 involved or an item of clothing is washed or things of that
18 nature, can that affect your ability to get results?

19 A. Oh, yes. Of course it would.

20 Q. But it won't change it to make it look like someone
21 else's?

22 A. No.

23 Q. And as time passed, say in an automobile or other
24 place, depending on if the person was even there on the
25 night in question, that affects also your ability to get

J. BARRON - DIRECT EXAMINATION BY MS. CAMPBELL

113

1 results. Is that correct?

2 A. I'm sorry. I didn't get the full intent of your
3 question.

4 Q. Time passes with DNA. Exposure to other people, other
5 people in and out, say, of a vehicle or other thing, or
6 if a cleanup is done, can that affect your ability to get
7 DNA?

8 A. Yes.

9 (A PAUSE.)

10 Q. All the testing that was done in your laboratory, all
11 the items were properly submitted? There was no evidence
12 of any altering or change or a problem with the chain of
13 custody?

14 A. There was no evidence of any altercations or anything
15 that could have contributed to contamination.

16 Q. And in your opinion, the results from the inside of
17 the socks, the scrapings you got from the socks, that is
18 Frankie McGee's?

19 A. Yes. The major contributor of that mixture from that
20 -- those socks is matches Frankie McGee.

21 MS. CAMPBELL: Beg the court's indulgence.

22 (A PAUSE.)

23 MS. CAMPBELL: That all I have.

24 THE COURT: All right, ladies and gentlemen, we'll
25 take a break now before cross-examination. Please go to

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

114

1 the jury room. Please do not discuss the case.

2 (THE JURY EXITS AT 11:57 A.M.)

3 THE COURT: All right, we'll take about ten minutes.

4 Doctor, please do not discuss your testimony.

5 (OFF THE RECORD.)

6 THE COURT: If you would bring the jury, please.

7 You can resume the stand, Doctor.

8 (THE JURY ENTERS AT 12:19 P.M.)

9 BAILIFF: The jury is seated, Your Honor.

10 THE COURT: I see an empty chair. How many are here?

11 Let me stand up and look.

12 (LARGE CHARTS MARKED INDIVIDUALLY AS DEFENDANT'S

13 EXHIBITS 2, 3, 4, 5, 6, 7, 8, 9 FOR IDENTIFICATION.)

14 COURT REPORTER: Defendant's 2 through 9 for ID.

15 BAILIFF: Jury is seated.

16 THE COURT: Thank you, sir.

17 Cross-examination.

18 MR. STRICKLER: Thank you. Please the court?

19 CROSS-EXAMINATION BY MR. STRICKLER:

20 Q. Good afternoon, Mr. Barron.

21 A. Good afternoon.

22 Q. I have a few questions I'd like to ask you, please.

23 I'd like to talk with you a little bit about DNA as a
24 general concept, and talk with you some about DNA and the
25 Richland County Sheriff's Department, and then talk about

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

115

1 items in this case, okay? If I go about it as I usually
2 do, I'll mix them all up, talk about them all at once, but
3 I'll try not to.

4 First thing I'd like to do, do you have your report
5 with you?

6 A. I do.

7 Q. Okay, I'd like to show you the eight items that I have
8 here and ask if you can recognize them and identify them,
9 okay?

10 A. Uh-huh.

11 Q. Defense for ID 2?

12 A. Yes, this is a -- what we in the laboratory call an
13 electropharogram. To the layman, it's a DNA profile.

14 Q. Is this related to this particular case?

15 A. Yes, it is.

16 Q. It is the electropharogram for item 6.2?

17 A. Yes.

18 Q. Okay, and that, as you've testified, that's the item
19 that would be the blood from one end of the bar in this
20 case?

21 A. Correct.

22 Q. Okay. This is taken straight from your report,
23 correct? You see it's enlarged?

24 A. It's enlarged, and it's from, you know, from the data
25 that we record in our laboratory, at our laboratory and

1 make available to anyone to examine.

2 Q. Defense for ID 3.

3 A. Yes.

4 Q. This is what?

5 A. That is the electropharogram of the DNA profile of Mr.
6 McGee.

7 Q. From this particular case?

8 A. Yes.

9 Q. From the work you did in this case?

10 A. Yes.

11 Q. And this is the actual known profile of my -- I
12 believe you testified about getting a profile from item 10,
13 and then later July of last year testing a known sample
14 from a buccal swab of his, and that's this sample?

15 A. That's that sample.

16 Q. Okay. Defense for ID 4.

17 A. Yes.

18 Q. And what is this, sir?

19 A. That's the DNA mixture profile I developed from the
20 socks.

21 Q. Okay, and this, that would be item 10?

22 A. Item 10.

23 Q. And that's when you tested the socks, as you testified
24 to, on the second occasion, I believe, in March of 2010,
25 correct?

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

117

1 A. That's correct.

2 Q. Okay. Two of them at this point. Sorry. One more at
3 this point actually. ID 5.

4 A. Yes. That is the remainder of the profile of item 10.

5 Q. It's the ---

6 A. It's the socks.

7 Q. --- only one -- I'm sorry. It's the one that had
8 carried over onto the second sheet of paper, correct?

9 A. Exactly.

10 Q. Okay. Item ID 6.

11 A. Yes. That's the electropharogram of the blood from
12 one of the two socks that was originally tested.

13 Q. Labeled 4.2.2?

14 A. Correct. That profile matches the Reverend
15 Eichelberger.

16 Q. Right. Item 7 for ID.

17 A. Yes.

18 Q. What is this?

19 A. That is the Reverend Eichelberger's DNA profile.

20 Q. And defense for ID 8.

21 A. Yes.

22 Q. And what is this, sir?

23 A. That's the electropharogram of the other sock and the
24 blood off of it.

25 Q. Okay. So, when you initially tested the socks, you

1 tested blood from a sample taken individually from each
2 sock?

3 A. Correct.

4 Q. When you -- and you swabbed each sock individually,
5 correct?

6 A. I didn't. Ms. Barrickman did it.

7 Q. Right. The swabs were submitted to you?

8 A. Correct.

9 Q. Right. Those would be items 4.1.1 and 4.2.1 were the
10 swabs from the socks, correct?

11 A. Correct.

12 Q. Then when you retested them, just item 10, you didn't
13 do them individually? You did them altogether, right?

14 A. Exactly.

15 Q. Okay. Lastly, sir, ID 9.

16 A. Yes. That's the electropharogram of Mr. Williams, his
17 DNA profile.

18 Q. Okay. So, among the items that you tested, 1 through
19 6, this is ---

20 A. Item 2.

21 Q. Item 2 among the items that you initially tested in
22 this case, correct?

23 A. Correct.

24 MR. STRICKLER: Your Honor, at this point I'd go ahead
25 and move these into evidence.

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

119

1 MS. CAMPBELL: No objection.

2 THE COURT: They are admitted without objection.

3 MR. STRICKLER: Thank you.

4 (LARGE CHARTS MARKED INDIVIDUALLY INTO EVIDENCE AS
5 DEFENDANT'S EXHIBITS 2, 3, 4, 5, 6, 7, 8, 9.)

6 BY MR. STRICKLER:

7 Q. Now, sir, you ended up giving this report here, this
8 conclusion here as far as the likelihood of the scrapings
9 you did on item 10, the profile you developed from those,
10 likelihood that it could be someone other than ---

11 A. No, that's not what I testified.

12 Q. No? What did you ---

13 A. I said the frequency of that.

14 Q. --- testify to?

15 A. The expected frequency of that DNA profile.

16 Q. Okay, and actually that would be the expected
17 frequency of that profile among an unrelated population?

18 A. That's correct.

19 Q. Correct? So, well, that frequency, quadrillion?

20 A. That is 17.5 quadrillion.

21 Q. Yes, quadrillion, is applicable for the general
22 population. It could be, and in all likelihood would be,
23 different for someone who was related to Mr. McGee. Is
24 that correct?

25 A. It would be.

1 Q. And that would be because, as you testified, everyone
2 gets one of these alleles from mom and one from dad, right?

3 A. That's correct.

4 Q. So that you're more likely to share an allele, to
5 share part of the profile with someone with whom you're
6 related to than you are with a stranger?

7 A. Correct. I would share, you would share alleles with
8 any siblings you might have because you have the same mom
9 and dad.

10 Q. Okay. Wouldn't share all the alleles?

11 A. Correct.

12 Q. But you would share some of them?

13 A. It's expected you would share some of them.

14 Q. Which would alter that number there.

15 You, you testified that these areas that you all test
16 in are for identification. Let me ask you this. Do we
17 know at this point in time whether the specific areas that
18 you test for in your testing control any trait or any
19 characteristic of any human being?

20 A. No, they do not.

21 Q. Do we know that they do not, or do we, are we unaware
22 of whether they do?

23 A. As far as scientists are concerned, at the present
24 time these are areas of the DNA molecule that do not
25 control any particular trait.

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

121

1 Q. So, what we know of right now says they don't control,
2 correct?

3 A. That's correct.

4 Q. What we knew of before Columbus hit the New World was
5 the world was flat. At least it was the general consensus,
6 and we know that's not true, right?

7 A. The world is not flat. You're correct.

8 Q. Okay. So, the point only being that we don't know
9 what we'll find out in the future as our knowledge expands
10 regarding these things, do we?

11 A. Knowledge is always expanding, particularly in the
12 world of molecular biology.

13 Q. Yes, sir, but what you do know is that they don't code
14 for, they don't control hair color, right?

15 A. Correct.

16 Q. They don't control eye color, right?

17 A. No.

18 Q. They don't control, in fact, any physical
19 characteristic that you are or that the science is aware
20 of, correct?

21 A. That is correct.

22 Q. So, as far as being able to look at them and say they
23 can identify someone from physical characteristics, they
24 don't, right?

25 A. These particular markers do not do that. Scientists

1 are searching for DNA markers that could perhaps identify a
2 person's hair color or race or some -- something of that
3 nature, but that is still in the works and it's in the
4 future.

5 Q. Okay. Now as I understand your testimony, it was to
6 the effect that DNA is contained in every cell in which
7 there is a nucleus. Is that correct?

8 A. That's correct.

9 Q. Okay, and that would include blood cells?

10 A. It would include white blood cells.

11 Q. Right. Skin cells?

12 A. Yes.

13 Q. Cells from the inside of your cheek?

14 A. Yes.

15 Q. Okay. A wide variety of cells, and the DNA is
16 contained in the nucleus in the cell, correct?

17 A. Correct.

18 Q. Okay. How large is the nucleus of a cell?

19 A. How large?

20 Q. Yes, sir.

21 A. I would have to look that up.

22 Q. How large is a cell?

23 A. I would have to look that up, but it's pretty small.
24 You have to look at it under a microscope.

25 Q. And then the nucleus is a small portion of a cell,

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

123

1 correct?

2 A. Correct. If you would imagine like a fried egg. You
3 know, the whole egg would be the cell, and the yoke would
4 be the nucleus.

5 Q. Okay. Fair to say that you can't see the, see the
6 nucleus with the naked eye, right?

7 A. Correct.

8 Q. Looking through that microscope and seeing the cell,
9 can you discern the DNA in a cell at that point in time?

10 A. There may be particular types of microscopes that
11 actually visualize the DNA.

12 Q. What type would that be?

13 A. I don't recall right off, but I've seen micro
14 pictures, microscopy pictures in scientific papers and
15 textbooks that show pictures of DNA.

16 Q. And what power of resolution would those microscopes
17 have to have to see the DNA?

18 A. I'm not really sure.

19 Q. Okay. Now, those microscopes are visualizing the
20 individual strands of the DNA? Is that what you're seeing
21 pictures of?

22 A. Correct. I think perhaps many of you have seen what's
23 called the double helix. You can actually visualize that,
24 yes.

25 Q. With an extremely powerful microscope?

1 A. Exactly, and particular types of stain, et cetera.

2 Q. Okay, and jumping just a second. When you do testing,
3 how much DNA do you need in order to go ahead and do the
4 kind of -- the PCR test that you're testifying about?

5 A. We -- it's sensitive now to somewhere around 50 to 60
6 picograms.

7 Q. I'm sorry, which grams?

8 A. Picograms.

9 Q. How do you spell that, please?

10 A. P-I-C-O-G-R-A-M-S.

11 Q. Okay, and how much is that?

12 A. That is a very, very small amount.

13 Q. And how small is that?

14 A. It is 50 to 60 picograms. That's how small it is.

15 Q. Okay, what's a picogram?

16 A. That is a unit of measure.

17 Q. I understand.

18 A. Of how -- the weight of a substance.

19 Q. Well, how many zeros do you put after something to
20 make it a picogram?

21 A. Well, first of all, you would have to go to milligram,
22 which would be a thousand.

23 Q. Thousand.

24 A. Then you could go to a microgram, which is a million.
25 Then you'd go to a nanogram and then the picogram.

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

125

1 Q. So, somewhere in that many zeros?

2 A. Right.

3 Q. Except going the other direction?

4 A. Correct.

5 Q. Okay.

6 A. Ten to the minus twelve.

7 Q. Ten to the minus twelve. So, that's how much you have
8 -- how much DNA you need in order to go ahead and amplify.

9 Is that correct?

10 A. That's correct.

11 Q. Okay. How many cells would that be?

12 A. Not many.

13 Q. A few?

14 A. A few.

15 Q. Okay. So, the technology, technology that you're
16 talking about, this PCR DNA technology, can deal with
17 extremely small amounts of DNA, correct?

18 A. Yes. I've already previously testified to that.

19 Q. Yes, sir, and the way in which it's able to do that is
20 by amplifying, making those copies you talked about
21 earlier, the DNA that is present, right?

22 A. Correct.

23 Q. That's what you call polymerized chain reaction,
24 right?

25 A. Correct.

1 Q. Now, if you have a mixed sample, which you've
2 testified in forensic cases you often have.

3 A. Yes.

4 Q. If you have a mixed sample, you will not necessarily
5 have the same amount of DNA present, correct, from the two
6 or more contributors to the sample?

7 A. Exactly. I mean, that's why we come up with the major
8 contributor profile if there's much more of one individual
9 versus another.

10 Q. Okay. So, you might have a lot from one person, one
11 person, and less from another person, or even more than one
12 other person, correct?

13 A. Correct.

14 Q. Okay. When the sample is amplified, duplicated, when
15 the copies are made, you start off with more DNA in the
16 large sample than you do in the small samples, right?

17 A. Correct.

18 Q. So, each time you copy it, you get more than you have
19 in the small samples, right?

20 A. That's the theory behind it. Excuse me. There are
21 other dynamics involved as well, but generally speaking if
22 you start out with more, you wind up with more.

23 Q. Okay, which accounts for differing sizes that you'll
24 find, right?

25 A. Correct.

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

127

1 Q. And just by way, just by way of illustration,
2 Defendant's Exhibit 4.

3 A. Yeah.

4 Q. Okay. I direct your attention to loci D8S or locus
5 D8 S1179.

6 A. Okay.

7 Q. You see there three alleles listed, correct?

8 A. Yes, I -- yes, I do.

9 Q. Okay, and you see one that is substantially higher,
10 13, that the other two, 14 and 15, correct?

11 A. That is obvious from the electropharograms.

12 Q. And item 10 is an example of a mixture, correct?

13 A. Item 10 is an example of a mixture.

14 Q. These are the socks that the scraping was taken from,
15 right?

16 A. Correct.

17 Q. Okay, and you've testified about the retesting that
18 was done in this case on a new technique. When was what's
19 been termed touch DNA, when was that technique developed?

20 A. It's been a progressive development. As the tests
21 became more and more sensitive, it became obvious to people
22 who work in forensic labs like myself that we could get DNA
23 from apparently items that had no evidence of blood or any
24 other type of biological material, yet there was DNA there.

25 We did some experiments. For instance, on steering

1 wheels of vehicles, we tested steering wheels of vehicles
2 of various people in Richland County. Was able to
3 determine their DNA off the steering wheel of a vehicle.
4 Obviously they didn't bleed on it or anything like that, so
5 they were touching. Also, the same thing is true with
6 other types of touch evidence or items that are worn.

7 Q. So, when was that, that that was developed?

8 A. I can't give you a specific date. Like I said, it's
9 been a progressive thing. As testing became more and more
10 sensitive, then we can't -- then you very much -- we were
11 able to -- we realized we were able to get results from
12 more and more types of materials that could be associated
13 with skin cells or touch DNA. That's what we're talking
14 about when we say touch DNA.

15 Not only our laboratory but laboratories throughout
16 the United States as I attended various seminars, heard
17 people present talks on their experiences in their
18 laboratories as well. So, it's becoming more and more
19 prominent in the forensic world to deal DNA from items that
20 are, quote, touched.

21 Q. Okay. When did you all start employing that at
22 Richland County Sheriff's Department?

23 A. Couldn't give a specific date.

24 Q. This year?

25 A. No.

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

129

1 Q. Last year?

2 A. Well, our laboratory has been in operation in Richland
3 County since 2004. We're noticed obviously minor
4 contributors in mixtures ever since that time.

5 Q. How often have you reported out the results of touch
6 DNA?

7 A. The returns of touch DNA has been reported out as we
8 were able to develop it in the laboratory as we were able
9 to see profiles that were interpretable.

10 Q. When was the first time you personally reported out
11 there results of touch DNA?

12 A. I couldn't tell you exactly when that is.

13 Q. Now, you talked about quality control and talked about
14 various accrediting organizations. Well, just -- when --
15 I'm going to throw Defendant's 4 up again, item 10, okay?

16 A. Yes.

17 Q. Each of these little spikes here that's labeled
18 represents an allele. Is that correct?

19 A. Not -- yeah, in that particular profile, it is.

20 Q. Right. Okay, and the height of this spike or this. I
21 call it spike. That's a technical term. The height of
22 that particular allele relates to how much of the DNA is
23 present, as you testified to, correct?

24 A. Correct. That's, that's simply an electronic
25 detection system that records the intensity of the amount

1 of the DNA fragment that is copied. So, the higher the
2 peak or spike, the more intense or the more that particular
3 allele is copied.

4 Q. So, you know, after you, after you break it and clean
5 it and all the other steps, steps, then you run it through
6 electrophoresis. Is that correct?

7 A. Correct. Electrophoresis is simply a term used, and
8 the method is we separate DNA fragments. DNA is an
9 electrical charge. So, if we put it in an electric field,
10 it will migrate.

11 Q. Okay, and you run these things, this substance that
12 you can't see with the naked eye, through an electric
13 field, and do what in order to get these peaks that you
14 see?

15 A. Well, I simply put it in the, the amplification
16 instrument -- a thermacycler as it is called -- with the
17 proper reagents that are necessary to copy DNA. Each of
18 those DNA fragments that are copied are also tagged with a
19 fluorescent dye. And so the detector is, detector is a
20 laser and excites the fluorescence, and it gives off a
21 certain wavelength of light, and that is detected and
22 interpreted by the instrument itself.

23 Q. Okay, and it is reflected in what is called, or
24 indicated in what's called RFUs. Is that correct?

25 A. Yes. That's Relative Fluorescent Units is what he's

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

131

1 talking about there.

2 Q. So when you see this number right here, 21.25, that's
3 21.25 RFUs?

4 A. Correct.

5 Q. And these numbers here, 173 and 198, again those are
6 RFUs, correct?

7 A. Yeah, and obviously, you know, approximately ten times
8 less than the others.

9 Q. Right. You don't do anything for that. You just have
10 it run through this tubing that has a point at which this
11 is detected electronically?

12 A. Well, I make sure it's not contaminated, but the
13 instrument does do the work.

14 Q. All right. As far as generating these numbers go?

15 A. Correct.

16 Q. Because the instrument is measuring things that we
17 can't see?

18 A. Yes.

19 Q. Now, each of these blocks -- D8 S1179 we've talked
20 about. you've got D21, S11. D7 SA20, CFF, CSF1P0 and on
21 down. That, those are separate places, separate spots on
22 DNA, incorrect?

23 A. That's correct.

24 Q. Each is a, each is a locus, referred to as a locus,
25 and collectively or plurally they're referred to as loci,

1 correct?

2 A. That is correct.

3 Q. Okay. So, at each loci, one of the reasons you have
4 -- these have been chosen is there's a lot of variation in
5 the population as to how these alleles appear. Is that
6 correct?

7 A. Yes. Those loci are chosen based upon the fact that
8 they are polymorphic. In other words, they have a degree
9 of discrimination. In other words, only a certain
10 percentage of the population will have a certain type of
11 that particular locus, and there's a lot of variability in
12 the population.

13 Q. Okay, and you actually have two things when you're
14 looking at this. You've got the peak here which reflects
15 the amount of DNA present. And then you've got -- in this
16 particular one again it's 13, 14, 15. They are further
17 along the horizontal axis here, correct?

18 A. Correct. The larger numbers are the heavier fragments
19 in this column.

20 Q. Okay. So, the material travels, and then the further
21 it travels, the heavier number, the heavier fragments?

22 A. On that scale, the heavier fragments are to the right;
23 the lighter fragments are to the left.

24 Q. Okay. These are all fragments at one particular spot
25 on one strand of DNA, but they're different between

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

133

1 individual people. Is that right?

2 A. Yes.

3 Q. Okay. Now, you've described this procedure. It is a
4 sophisticated scientific procedure, is it not?

5 A. You have to be pretty well trained in order to perform
6 the procedure and to understand and interpret the results.

7 Q. And in the same way that you have to go ahead and be
8 proficiency tested, et cetera, in order to upload stuff to
9 the FBI, in order to be accredited, you'll need to have a
10 protocol, correct?

11 A. Correct.

12 Q. Okay, and that's a set of written instructions
13 detailing how you go about doing the testing, right?

14 A. Correct.

15 Q. Each of the stages that you talked about, how you go
16 about arriving at your conclusions, right?

17 A. Yes. A protocol is simply a procedure manual. You
18 have a job where you have to follow a certain procedure,
19 and that procedure is written somewhere so that you can
20 refer to it if necessary.

21 Q. Okay, and Richland County has such a protocol, right?

22 A. Yes, we do.

23 Q. And it, it's not just a general if you feel like doing
24 something one way, do it one way. It is you have to follow
25 these steps, right?

1 A. Yes. We, we follow the same steps so that if someone
2 else were to interpret the results or to do the testing
3 themselves, they would get the same thing.

4 Q. You familiar with *DNA Technology and Forensic Science*?
5 This is the first, the '92 edition, not the '96.

6 A. I'm not familiar with the '92 edition, no, sir.

7 Q. Are you familiar with the National Research Council?

8 A. Yes.

9 Q. What would that National Research Council be?

10 A. It's a national board that is funded by the federal
11 government that does research for scientists.

12 Q. Okay, and they come out with recommendations?

13 A. They do. I believe those recommendations in that book
14 have been supplanted by a more recent volume.

15 Q. Right. Let me ask you this. As a recommendation:

16 An essential element of any clinical or forensic
17 DNA typing method is a detailed, written
18 laboratory protocol.

19 That hasn't been changed by the more recent addition,
20 has it?

21 A. No. We follow those guidelines. We have a detailed,
22 written protocol in our laboratory.

23 Q. And:

24 When new technical are -- must -- new technical
25 procedures are thoroughly tested to demonstrate

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

135

1 their efficacy and reliability for examining
2 material before being implemented in case work.

3 A. New technical procedures.

4 Q. Yes, sir.

5 A. Yes, sir. Any new technical procedure that's
6 implement in the laboratory has to follow certain
7 guidelines in which we test it with known samples, et
8 cetera, prior to implementation into actual case work.

9 Q. Okay. Your protocol doesn't contain any procedures
10 relating specifically to this touch DNA, does it?

11 A. It contains, contains procedures in the ability to
12 develop DNA profiles. As to the source of that DNA, that,
13 that's totally, you know, just whatever we can get. You
14 don't have to necessarily address each particular type of
15 evidence that you might recover DNA off of in a protocol.

16 Q. Well, referring you to 4, section from 4.1, sample
17 preparation for DNA extraction, cuttings and swabs,
18 envelope flaps/stamps, cigarette butts -- we talked about
19 that here -- unmounted hairs, mounted hairs. These are
20 procedures contained in y'all's protocol, are they not?

21 A. Yes. Those are types of evidence that you may
22 encounter in the forensic laboratory. We cannot list every
23 type of evidence, piece of evidence in a protocol manual
24 because many of them are just similar types of extractions.
25 So, those are taken as representative of the different

1 types of extractions you may run into in the laboratory.

2 Q. Okay. So, there's not one there for procedures to
3 employ in scraping various items to obtain the touch DNA,
4 right?

5 A. Scraping a particular item is just a method of
6 recovery. It has nothing to do with the analysis of the
7 DNA.

8 Q. What we just went through has nothing to do with the
9 analysis of the DNA?

10 A. That's correct. It's just a recovery technique.
11 Swabbing would be a recovery technique. Scraping would be
12 a recovery technique. Cutting would be a recovery
13 technique.

14 Q. And cutting and swabbing are covered in 4.1 of your
15 procedure manual. Scraping is not, correct?

16 A. It's not talking about how you collect it; it's just
17 talking about what type of sample you might run into.

18 Q. All right.

19 A. How you collect it is done basically not only in the
20 laboratory but out in the field by the crime scene
21 individuals.

22 Q. Also contained in your protocol, a bunch of rules as
23 far as interpreting the results, correct?

24 A. There are some interpretation guidelines in the
25 protocol, yes.

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

137

1 Q. Okay. Keep coming back to the same one, Defense 4.

2 You've already talked about it, the difference in the
3 height between and 13 and 14 and 15.

4 A. Correct.

5 Q. Allows you, your rules say, you can go ahead and say
6 one's a major contributor. The other's a minor
7 contributor, right?

8 A. That's correct.

9 Q. There's a rule in your protocol that says that you can
10 do that, right?

11 A. Yes. Those are -- obvious difference between the two
12 that even a layman can tell that the bigger peak is
13 different than the other two smaller ones.

14 Q. And likewise, there is a rule that says that you can
15 associate these two alleles with one another?

16 A. You may associate those two.

17 Q. Okay, and that rule says if you have two alleles in a
18 single sample -- it's not a single sample here. If you
19 have two alleles in a single sample, they have to be within
20 60 percent. The smaller has to be within 60 percent of the
21 weight of the larger, correct?

22 A. Generally speaking, that's the, that's the rule, but
23 all rules can be broken.

24 Q. All rules can be broken?

25 A. For example, in a single source sample from an

1 individual, we have run across two peaks that do not fit
2 that rule, but we know it belongs to that person. And that
3 is because the process of amplification is somewhat random.

4 For instance, if you were to have a bag of M&M's and
5 you knew there were fifty red ones and fifty blue ones and
6 you were given twenty opportunities to draw out an M&M, are
7 you going to draw out exactly fifty/fifty? Probably not.
8 You may even draw out just two red ones and eighteen blue
9 ones. So, therefore, they're not really balanced. But
10 statistically speaking, if you were to draw out a number,
11 you should get a half and half because there is fifty of
12 each in the bag.

13 But in the process of copying DNA, it's similar to
14 that. It's a random process. So, sometimes you may get a
15 balance; sometimes you may get slightly off-balance. In
16 rare situations, you can have two alleles associate with
17 the same person that do not fit that particular rule.

18 Q. Okay. In your -- your protocol recognizes that fact.
19 There's a specific section in it which says that should be
20 60, within 60 percent. Occasionally, it's found to be
21 outside that, correct?

22 A. Yes. The 60 percent rule is basically for statistical
23 purposes. So, if they do not balance, then we won't use it
24 for statistical calculation. We give it the benefit of the
25 doubt that perhaps they do -- they are not associated with

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

139

1 each other even though they may very well be.

2 Q. And similarly, if you're dealing with a single source,
3 you expect to find one or two alleles as you testified,
4 correct?

5 A. That is the expectation, yes, sir.

6 Q. You get one from mom and one from dad. If you happen
7 to get the same one from mom as you get from dad, then
8 it'll show as one allele, right?

9 A. Thank you for repeating what I've already said, sir.

10 Q. Okay. However, there are occasions when you see a
11 tri-allele pattern, correct?

12 A. That is a rare circumstance, yes.

13 Q. Reflected in your manual or protocol, correct?

14 A. Correct. I have seen it occasionally. It's the
15 process of copying the DNA that actually copies three
16 fragments instead of two. That's because the way it's done
17 actually is with a primer, and the primer finds three sites
18 to bind to instead of two like it's supposed to.

19 Q. Okay. Now, your protocol which you're required to
20 have and which you have to use in order to make your
21 reports has some rules about how large these peaks have to
22 be in order for you to go ahead and use them in your
23 reports, correct?

24 A. To use for statistical purposes, yes.

25 Q. Yes. Have to be between 75 RFUs and 5000 RFUs,

1 correct?

2 A. Well, in order to refer to it, that's a scale that is
3 the general scale. You can have higher than 5000 and
4 still, still call it.

5 Q. Okay, and you can have lower than 75, but you can't
6 call it at that point, correct?

7 A. We set our limitation at 75. There are some labs that
8 actually go to 50, but we would not interpret an allele
9 below 75.

10 Q. And, in fact, you have special rules for alleles that
11 are between 75 RFU and 150 RFU, correct?

12 A. Correct.

13 Q. They have to be interpreted with extra care, correct?

14 A. That's correct because at that low level, then you may
15 have that -- let's say in that bag of M&M's I talked about.
16 Let's say there were three green ones, all right? Well,
17 that, those green ones may or may not be picked, or they
18 may all three get picked. So, that's a random process.

19 So, in this region that Mr. Strickler is referring to
20 is our region where you can have that phenomenon. It's
21 called a stochastic effect. I don't expect you to remember
22 that term, but that's when you can have an imbalance.

23 Q. Stochastic effect is the impact of random occurrences?

24 A. Right.

25 Q. On the procedure?

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

141

1 A. Right.

2 Q. Okay, and we have some which are down towards the 150
3 level, but this particular chart doesn't show any that are
4 below 150 or anywhere near 75, right?

5 A. I can't ---

6 Q. I don't want to test your vision. Sorry.

7 A. Well, I have it in front of me. No, those are on --
8 no, there's one, the 93. On D16 S39, there's a 93.

9 Q. Okay.

10 A. And that's the region where we expect this stochastic
11 effect to occur, although it can occur higher than that.
12 But we expect it to occur in that region.

13 Q. Okay, but you can't say whether what you have there is
14 a stochastic effect or something, but that's real?

15 A. Well, that's a real, that's a real allele, but there
16 may be something else to go with that.

17 Q. Right.

18 A. That's not showing.

19 Q. Okay.

20 A. So, for instance, if the other person, the minor
21 contributor, is an 11, 12.

22 Q. Right.

23 A. The 12 is not showing because only the 11 was picked.
24 When they reached into the bag and pulled out those M&M's,
25 only the green ones were picked. The number 11s were

1 picked, you see, or up there are the bingo balls or
2 whatever. That's 11s and 12s. Where there's so few of
3 them and that it only copies the 11 -- it didn't copy the
4 12 -- that is a stochastic effect.

5 Q. Okay.

6 A. The thing about it is I don't know what the other
7 allele is, or if that one's alone by itself because when
8 you get in that region, interpretation becomes a little
9 more difficult.

10 Q. Okay. Now I'll deal with this one right here since
11 we've had it up here. Allele CSF1PO.

12 A. Yes.

13 Q. Okay. You list those as being, or you include those
14 in your conclusion that this is Frankie McGee, right?

15 A. That's correct because I look at Frankie McGee's DNA
16 profile, look at CSF1PO, and he is a 10, 12.

17 Q. Okay. 10. Within 60 percent of 12?

18 A. Yes, it is.

19 Q. It is?

20 A. Without a calculator, I think it is.

21 Q. And similarly on WVA.

22 A. VWA.

23 Q. VWA, I'm sorry, which two alleles are Frankie McGee's
24 because that's a mixture, right? No question?

25 A. I'm going to look at the miniature version of what

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

143

1 you've got there.

2 Q. I apologize. Please.

3 A. Okay, Frankie McGee is a 16, 19.

4 Q. Okay, and the smaller of the two alleles, the smaller
5 in amplitude, is 19 at 338?

6 A. Correct.

7 Q. And 16 is 605?

8 A. That is correct. That is an example of a peak
9 imbalance. That occurs in mixtures as well.

10 Q. Okay. So, you called this as Frankie McGee. You
11 agree with me that 16 and 19 are not within -- 338 is not
12 within this 60 percent or more of 605, correct?

13 A. That locus was not used in the statistical calculation
14 because of that imbalance. But Frankie McGee is in that
15 locus. He's a 16, 19 and 16, 19 is present. So, I cannot
16 exclude Frankie McGee from that locus. But to be fair, to
17 be conservative in our estimation of frequency, that locus
18 was not used.

19 Q. Any other locus that you did not use?

20 A. Yes.

21 Q. Frequency. Which are they?

22 A. Why don't I tell you the ones I did use? Would that
23 work?

24 Q. Okay.

25 A. All right, I used D8.

1 Q. Right.

2 A. The 13, and Mr. McGee is a 13. That is the major
3 contributor. It obviously is -- the height is too intense
4 to be associated with other of the other alleles.

5 I used D21, which is a 29, 30. Mr. McGee is a 29, 32.
6 There's no evidence of any other peaks there. So, that
7 obviously can be used.

8 I used D7, which is a 9, 11. And again, Frankie McGee
9 is a 9, 11, and there's no evidence of any other peaks
10 present.

11 And CSF, I did not use. So, that may have fallen out
12 of the 60 percent. Just looking at it, it's pretty close.
13 But Mr. McGee is a 10, 12, so I cannot exclude Mr. McGee
14 there, but I'm going to be fair and conservative. I'm not
15 going to include that locus in my calculations.

16 Q. Okay.

17 A. But even the ones I did use was sufficient to effect a
18 positive identity.

19 All right, D3 14, 17 I did use because Mr. McGee is a
20 14, 17 and 14, 17 is the major contributor to that locus.

21 0169.3 is a major contributor to that locus, and that
22 was used, and Mr. McGee is a 69.3.

23 D13 8, 12. Mr. McGee is an 8, 12 and it's obvious
24 that 8, 12 is the only two present at that locus.

25 D16, I used the 9, 13 and 9, 13 is a major

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

145

1 contributor. There is a 13 there, but it's very, very weak
2 and 9, 11 -- 9, 13 is the major contributor there.

3 D2 I did not use.

4 D19.

5 Q. That's D2 S1338?

6 A. Correct

7 Q. And you didn't use that because?

8 A. Because there are three peaks. They are relatively
9 equal to each other. And even though Mr. McGee an 18, 23
10 -- which is present, so I cannot exclude him -- I'm not
11 going to use that for statistics because there is another
12 22 there that's showing up as well. So, I cannot say
13 beyond a reasonable doubt that 18, 23 is the major
14 contributor there. So, I'm not going to use that locus,
15 but I can't exclude Mr. McGee, so I have to continue on.

16 D19 is a 12, and D19 was used in the calculation. Mr.
17 McGee is a 12, and that's the only allele he produces at
18 that locus, and that is the major contributor there.

19 We already talked about the WA.

20 TPOX, I used 11 in the calculation because Mr. McGee
21 is an 11 and the major contributor is an 11.

22 D18 17, Mr. McGee is a 17, so I used that one as well.
23 Then you have to go to your next chart to continue on.
24 Unfortunately these mixtures, it takes up more than one
25 page.

1 D5 10, 11. Mr. McGee is a 10, 11 and 10, 11 is a
2 major contributor at that locus.

3 FGA 19, 23, and Mr. McGee is a 19, 23 and 19, 23 is a
4 major contributor to that locus.

5 Q. Okay. So, you end up not including?

6 A. Two loci.

7 Q. Two or three?

8 A. Three, yeah.

9 Q. Three, three. Okay.

10 A. Only in the calculations, but Mr. McGee is present at
11 all of those loci.

12 Q. Still on these socks, back to D8S 1179, Mr. McGee is
13 13?

14 A. Correct.

15 Q. Who is 14 and 15?

16 A. I do not know. In a mixture when you have a minor
17 contributor, you have to look at first of all not only at
18 each individual locus. You have to look at the overall
19 profile.

20 In this case, there is up to three people that could
21 be in this profile, or two minor contributors, looking at
22 the profile in general. So, if there's two more people,
23 there could be up to four more loci at each locus, or four
24 more alleles at each locus.

25 Q. Okay.

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

147

1 A. And some of them may be there. Some may have dropped
2 out. So, in my report I said the minor contributor is too
3 weak to reliably interpret because of that phenomenon
4 that's going on.

5 Q. Okay. Do you have anyone else who is a 14, 15 at that
6 location?

7 A. Well, if you want to assume that the 14, 15 is from
8 the same person.

9 Q. If you want to assume that, yeah.

10 A. But since there's three people in the mixture, it
11 could be somebody could be a 14, and somebody else could be
12 a 15.

13 Q. Okay. Let's take a given then. Let's take as a
14 given that these socks are Frankie McGee's, okay? You got
15 his ---

16 A. I think it's a given that his DNA is in those socks.

17 Q. Right.

18 A. Whether they actually belong to him or not, he at
19 least wore them at one time.

20 Q. Okay. His DNA is certainly there stronger than
21 someone else's, right?

22 A. Correct. There is some -- there is two other people
23 who have contributed DNA, at least two other people, and --
24 but their, their DNA is too weak.

25 Based upon the intensity, as you can look on the graph

1 and this is entered into evidence, so you'll be able to
2 look at it in your deliberation room. You'll see that
3 those major intensity peaks do match Mr. McGee.

4 Q. Okay, but there are these two other people whose DNA
5 is present?

6 A. There could be two or more other people present.

7 Q. Could be two or more other people present?

8 A. Well, there's at least two more based upon D19.

9 Q. Based upon D19?

10 A. Correct.

11 Q. This allele right here?

12 A. Yes. You have three alleles that are minor
13 contributors.

14 Q. Right.

15 A. Unless you have the rare circumstance you mentioned
16 before where you have a tri-allele there.

17 Q. Right.

18 A. Tri-allele do not normally occur at D19.

19 Q. Could it be three or could it -- two additional, or
20 could it just be one additional? If, if you have someone
21 who is -- there are none. I see what you're saying.

22 So, the less contact you have with an item, the less
23 likelihood that you're going to leave skin cells. That's
24 a ---

25 A. That's a reasonable assumption.

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

149

1 Q. That's a reasonable assumption?

2 A. Yeah.

3 Q. And the less skin cells you leave -- just take that as
4 an example of what you could leave. The less of it that
5 you leave, the less amplified it gets, the weaker these
6 little peaks are, smaller they are, right?

7 A. Correct. As, as I've used in my illustration before,
8 that would be the fewer number of your color M&M's in the
9 bag.

10 Q. And indeed as you've said, when you amplify this
11 stuff, it amplifies at different rates independent of the
12 amount that's there. You could get what's called
13 differential amplification, right?

14 A. I'm not familiar with what you're talking about.

15 Q. Okay. You've testified that when DNA is amplified, it
16 doesn't amplify necessarily consistently.

17 A. No, it is a random process. So, the more you have of
18 one person there, the more likely their DNA is going to be
19 copied versus somebody who has less DNA. Just like if you
20 have more of a certain color of M&M's in a bag, it's more
21 likely you're going to pick that color versus that's just a
22 few in the bag.

23 Q. Well, and even when you only have your single sample
24 and it's amplifying, what you have from a single sample
25 won't amplify necessarily at the same rate. That's why you

1 have the rule that says it only has to be -- the smaller of
2 the, of the values only has to be within 60 percent of the
3 larger, right?

4 A. Well, with a known sample, we, we try to make sure we
5 have enough DNA where that phenomenon doesn't occur.
6 However, it still can occur. It's rare, but it does.

7 Q. And, and if a known sample, if you have a known sample
8 -- this is Defense 9, Mr. Williams.

9 A. Okay.

10 Q. I'd like to refer to the one right in front of you.

11 A. Okay. Let me get Mr. Williams.

12 Q. Yes, sir. Okay. Okay.

13 A. I have Mr. Williams.

14 Q. In fact, the same one at the top we talked with
15 before, this D8 S1179, that's -- it's always going to be
16 the same place, right? Here. It's going to be here,
17 right?

18 A. Right.

19 Q. When you look at it?

20 A. Everybody's DNA profile is tied to the same loci, and
21 there's 15 of them plus the sex chromosomes. So, we can
22 tell what sex the sample comes from.

23 Q. Okay. If you'll look at Mr. Williams, what you see
24 here is at this loci, or locus, allele 14 and allele 15,
25 right?

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

151

1 A. That is correct.

2 Q. Okay. Allele 14 is 1611 in size. Allele 15 is 1733,
3 right?

4 A. That is correct.

5 Q. Okay. Well, that's a known sample.

6 A. That is a known sample.

7 Q. Okay.

8 A. And based on how DNA is put in that sample, I can vary
9 that intensity.

10 Q. Right, and each of these alleles was amplified the
11 same number of times?

12 A. Correct.

13 Q. Right?

14 A. That is going to be Mr. Williams's DNA profile at that
15 locus. He is a 14, 15. If I amplified it a thousand
16 times, I'm going to get 14, 15.

17 Q. But you won't get necessarily -- it's highly unlikely
18 that you'll get 16 and 11 for -- as a size and also 16, 11
19 with the other one. They won't be exactly the same size.

20 A. They won't be exactly the same. That's why. Because
21 there's always a randomness involved in copying DNA.

22 Q. Okay. So, when you're talking -- and he's 14 and 15
23 at that locus right there?

24 A. That's correct.

25 Q. D8S 1179. D8S 1179 14, 15 on this pair of socks.

1 Now, if you have someone who pick up socks, has them
2 on his hands for a very short period of time, discards
3 them. Socks have been worn previously by Mr. McGee. Then
4 you'll get a mixture, if you have anything, a mixture of
5 that person's DNA with Mr. McGee's DNA, right?

6 A. Yes. Let me just go ahead and concede the fact that
7 at that locus, the 14, 15 does match Mr. Williams. So, if
8 I were just to look at that locus alone and I had Mr.
9 Williams and Mr. McGee's profile, I would not eliminate Mr.
10 Williams from that DNA profile at that locus.

11 Q. Yes, sir, and I'll go ahead and concede the fact that
12 the same is not true all over the place, okay? You don't
13 find Mr. Williams at every one of these spots, all right?
14 All right, I understand that.

15 A. Well, you're doing the testifying now, but I'll let
16 you go ahead.

17 Q. Well, thank you, sir.

18 THE COURT: All right, at this point we will take a
19 break then so that we'll have the witness testify. We will
20 break for lunch.

21 Ladies and gentlemen, we'll start back at ten after 2,
22 2:10.

23 (THE JURY EXITS AT 1:24 P.M.)

24 THE COURT: Be back 2:10.

25 (OFF THE RECORD.)

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

153

1 THE COURT: All right, Doctor, you may resume the
2 stand. All right, bring the jury if they're ready to come.

3 (A PAUSE.)

4 THE COURT: The court will be at ease for a moment as
5 they're coming in.

6 (OFF THE RECORD.)

7 (THE JURY ENTERS AT 2:15 P.M.)

8 BAILIFF: Jury is seated, Your Honor.

9 THE COURT: Very good. You may continue.

10 MR. STRICKLER: Thank you, Your Honor.

11 BY MR. STRICKLER:

12 Q. All right, here we are here once again with
13 Defendant's 4. 14 and 15 at D8S 1179, those matched with
14 -- those are the same alleles that are present at that
15 location for David Williams, correct?

16 A. David Williams does have both of those alleles in his
17 profile.

18 Q. Okay.

19 A. However, since this is a three-person mixture, that
20 may or may not be consistent with him.

21 Q. Okay.

22 A. It could be 14, 14 mix with a 15, 15 as well. That's
23 just as equal a possibility, as a heterozygous, two alleles
24 from one person, right.

25 Q. It could be in 13, 14. Don't know?

1 A. Yeah.

2 Q. All right, and then referencing D19, S433. Frankie
3 McGee is a 12, you testified.

4 A. He is. He is a 12.

5 Q. Okay. So, he is not the 11. He's not the 13. He's
6 not the 15.

7 A. That is correct.

8 Q. None of those are him?

9 A. He is a 12, and major contributor is a 12.

10 Q. Okay. D3, S1358.

11 A. Okay.

12 Q. D is 14 and 17?

13 A. Correct.

14 Q. He is not 15 that's also present, correct?

15 A. You're pointing out the minor contributor of the
16 alleles.

17 Q. Right. TH1, McGee is a 69.3?

18 A. Correct.

19 Q. He is not the second?

20 A. Correct.

21 Q. D13, S317. Mr. McGee is 8, 12?

22 A. Uh-huh.

23 Q. Correct? What's the bump here close to the 12?

24 Doesn't have a number associated with it.

25 A. Well, if it doesn't have a number associated with it,

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

155

1 I couldn't tell you what it is. This is an electronic
2 printout, and as you may know, there is background noise in
3 any type of electronics. So, your point is nothing as far
4 as I'm concerned.

5 Q. There's not a bump there?

6 A. There should ---

7 Q. There's not a ---

8 A. --- be a bump there.

9 Q. --- minor peak there? There is, correct?

10 A. Oh, are you interpreting the profile now.

11 Q. No. I'm asking is there, is there not a fluctuation?
12 It's not flat there?

13 A. I see what could be an ink blob, or it could be just
14 an electronic blip.

15 Q. Okay.

16 A. To try to interpret that is totally irrational and,
17 and improper.

18 Q. Well, can you tell me whether it's in the position
19 that -- on the allelic ladder for D13?

20 A. I can't tell you anything about a blip.

21 Q. Other than it is present on what you're looking at,
22 right?

23 A. There is a blob there. If you want to try to
24 interpret that, that's ludicrous.

25 Q. D16. Mr. McGee's 9 and 13. Mr. McGee is not 11,

1 correct?

2 A. That is correct.

3 Q. D2. Mr. McGee is what?

4 A. He's a 18, 23.

5 Q. With a 22 present. This is McGee's?

6 A. 22 is determined not to be a true allele. It's what
7 we call a stutter peak.

8 Q. It's not a true allele on each of these?

9 A. On that one it is true because it does not exhibit
10 stutter characteristics.

11 Q. Okay. So, it's not Mr. McGee?

12 A. It's not Mr. McGee.

13 Q. DWA. Mr. McGee is 16 and 19, as you testified to. He
14 is not 14 or 15, correct?

15 A. Correct.

16 Q. TPOX. Mr. McGee is an 11? He is not the 6?

17 A. Correct.

18 Q. D5. Mr. McGee is a 10, 11, correct?

19 A. And he's not the 12.

20 Q. He's not the 12. And FGA, Mr. McGee is 19, 23? He's
21 not the 21?

22 A. Correct.

23 Q. Correct? Now, your testimony is that this spot right
24 here on D13 is, looks like just a blot, a hand ink blot,
25 something?

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

157

1 A. It could be. I can't tell you what it is.

2 Q. But you can tell me that this is 21. It doesn't come
3 up any more than the other? You can't tell me that this is
4 an allele?

5 A. That 21? It's called an allele, yes.

6 Q. Yes.

7 A. That other thing is not called anything.

8 Q. I understand. Now I'm referring to Defense 8. This
9 is the blowup of the results on 4.1.2.

10 A. Okay.

11 Q. VWA, what alleles are present there?

12 A. There is a 15. I have to pull that one out.

13 Q. If you will, please.

14 A. 4.1.2.

15 Q. Yes, sir.

16 A. Okay. There's a 15 and a 19 and what is called --
17 labeled a O.L., which I believe is a 14.

18 Q. Okay, and right next to it, TPOX?

19 A. Correct.

20 Q. Okay. You have present, what, 6, allele 6 ---

21 A. 8 and 11.

22 Q. --- 8 and 11?

23 A. Correct.

24 Q. All right. At that location, what allele does Mr.
25 McGee have?

1 A. TPOX.

2 Q. Yes, sir.

3 A. He's an 11.

4 Q. Okay. At that location, what alleles does Mr.
5 Eichelberger, did Mr. Eichelberger have?

6 A. Mr. Eichelberger is an 8, 11.

7 Q. Is an 8, 11?

8 A. Yes. No, that's Williams. Pardon me.

9 Q. 6, 11?

10 A. I've got to find Mr. Eichelberger's profile. You've
11 got it there somewhere, don't you?

12 Q. It's right here, sir.

13 A. Yeah, he's a 6, 11.

14 Q. He's a 6, 11. So, at this location, now this is the
15 4.1.2, is the cutting that was taken of -- was suspected to
16 be a blood stain which tested positive for blood in the
17 presumptive testing, correct?

18 A. That's correct.

19 Q. Okay. So, at TPOX location from that cutting, Mr.
20 McGee is an 11, Mr. Eichelberger is a 6 and 11, and allele
21 8 is present, correct?

22 A. Correct.

23 Q. That's the minor allele?

24 A. That's a minor allele.

25 Q. That allele is not associated with Mr. Eichelberger or

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

159

1 with Mr. McGee, correct?

2 A. Correct.

3 Q. These are from the socks, one of the socks?

4 A. Yes. This is from the blood off the socks.

5 Q. Okay. Well, you take a cutting from the sock where
6 the blood is, you will have blood present. You could also
7 have DNA that is not associated with the blood present,
8 correct?

9 A. Yeah. That's what causes a mixture, yes, sir.

10 Q. Yeah. Turning to 4.2.2, okay?

11 A. Okay.

12 Q. The other sock.

13 A. The other sock?

14 Q. At -- let's see here. What is the significance of the
15 34 with the line drawn through it?

16 A. It's ---

17 Q. I have D2, D21.

18 A. 34 is in the stutter position to the 35, which is a
19 phenomenon when you're copying DNA. It actually drops --
20 well, let me explain it this way so the jury understand it.

21 These fragments are composed of short tandem repeats,
22 which would be like a train pulling a bunch of boxcars,
23 okay? Each boxcar represents a repeat unit. When the DNA
24 is copied, sometimes particular loci, one of those boxcars
25 doesn't get copied and causes a stutter phenomenon. It's a

1 common phenomenon; it happens everywhere when you amplify
2 DNA. And so you may get a little peak at that position,
3 which is exactly four units, which is each unit. Each
4 repeat unit is four DNA units. So, that -- it shows up in
5 that position. So, if it is a certain percentage of the
6 big peak, it's considered to be a stutter peak versus a
7 real peak.

8 And so all DNA analysts then will look at the profile.
9 And just because the computer calls it something doesn't
10 mean it really is. So, we have to go back in and interpret
11 it.

12 Q. Okay. You interpret that as a stutter?

13 A. I do.

14 Q. It is in the location of another known allele,
15 correct?

16 A. Correct.

17 Q. That's why the computer tagged it with 34?

18 A. Right.

19 Q. Right, but in your opinion, this 34 is not an allele.
20 It's a stutter, correct?

21 A. It's a stutter allele. That's my opinion,
22 interpretation of that profile because it does fall in the
23 stutter position, and it is very, very minor to the larger
24 peak and does fit the definition of a stutter peak.

25 Q. Right, and if it's not a stutter, then it would be an

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

161

1 allele that's not associated with Mr. Eichelberger, who's a
2 30, 35 there, correct?

3 A. Mr. Eichelberger is a 30, 35.

4 Q. Okay, and what is Mr. McGee at that location?

5 A. Mr. McGee is -- where, D21?

6 Q. D21, SOL.

7 A. 29, 30.

8 Q. 29, 30, okay. Neither one of them is 34?

9 A. Correct.

10 Q. Understand your opinion is that that's a stutter.

11 A. Right.

12 Q. 6.2, which is the swab from the bar, from what was --
13 tested positive presumptively for blood on the bar,
14 correct?

15 A. Correct.

16 Q. Okay. At D2, S1338.

17 A. Okay.

18 Q. You've got 19 and 22 as the major alleles at that
19 location?

20 A. Correct, and that's with Eichelberger.

21 Q. Okay, and you have 21 also present?

22 A. Yes.

23 Q. So, Mr. Eichelberger's own were 19 and 22, correct?

24 A. Right.

25 Q. What are Mr. McGee's alleles at that location?

1 A. 18, 23.

2 Q. Not 21?

3 A. Correct.

4 Q. So, at this location on the blood, on the bar that's
5 the weapon used in this case, you have Mr. Eichelberger's
6 blood present or DNA present. You don't have Mr. McGee's
7 DNA present, and you have DNA from another source present,
8 correct?

9 A. I have a fragment of DNA that's not matching any of
10 those people.

11 Q. Okay. Defense 7, which is the known sample from Mr.
12 Eichelberger.

13 A. Correct.

14 Q. From a buccal swab.

15 A. Yes.

16 Q. Just a couple of things on here. D5, S818.

17 A. Okay.

18 Q. There is a minor allele indicated struck through says
19 O.L. What does that mean?

20 A. That's a peak that the computer recognized because of
21 its -- of the -- of its intensity of at least 122 RFUs.
22 However, that's not a true DNA peak.

23 Q. And it's not a true DNA peak because?

24 A. It's an artifact.

25 Q. Well, is it not a true peak because it's off the

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

163

1 ladder?

2 A. Well, it's off the ladder, but there can be off ladder
3 alleles, but ---

4 Q. Exactly.

5 A. --- that is not a true peak based upon other criteria.

6 Q. What other criteria?

7 A. Peak shape.

8 Q. Okay. Now, when you did the testing on sample 10, the
9 sample, you got the result and you entered that into CODIS?

10 A. I entered the major, major alleles into CODIS, yes.

11 Q. Okay, and you got a report back from SLED regarding
12 that?

13 A. That's correct.

14 Q. How long after the fact was it that you got that
15 report?

16 A. Well, I initially put in the profile and asked them to
17 do an immediate, what we call a keyboard search. In other
18 words, they put the profile and let me know something as
19 soon as possible. And subsequently the profile is
20 uploaded. That's done routinely once a week, and so it hit
21 again.

22 So, we do that on rare occasions when dealing with a
23 very important murder type case or big sexual assault case
24 or something like that. We'll ask them, and they, they
25 have no suspects and they're trying to find a potential

1 suspect immediately because other lives may be in danger as
2 a potential murderer is still on the loose. And so we get
3 that name as soon as possible. So, I got the keyboard
4 search where they told me a match, Mr. McGee. Identity
5 profile is automatically uploaded once a week, and then
6 they hit him again.

7 Q. Okay, and do you have the state match detail report?

8 A. Yes, I do.

9 Q. And how was that provided to you?

10 A. It's a computer-generated match detail report that I
11 received via the CODIS terminal.

12 Q. Okay.

13 A. And also could receive it from SLED as well because
14 they give it -- they see the same thing I do.

15 Q. And I see in handwriting at the at top: Previous
16 keyboard search.

17 A. Correct.

18 Q. Is that your handwriting, or is that SLED's
19 handwriting?

20 A. That's mine.

21 Q. That's yours? Okay.

22 A. Right.

23 Q. Just what you talked with us about. Do a keyboard
24 search, and then come back and get the second hit
25 displayed, right?

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

165

1 A. Right. If you'll notice, at the top it has a: Not
2 match ID number.

3 Q. Right.

4 A. And so the keyboard search has a different number than
5 the normal, routine search.

6 Q. Okay, and then you've got listings of all these
7 various loci and the alleles there. Then with: Have a
8 match summary. Says: 14 loci candidates, two.

9 A. Yes.

10 Q. Well, I would assume Mr. McGee is one of them.

11 A. Right. The target is the other. You have two
12 profiles there. There's some case where I can get multiple
13 hits. For instance, if the -- an offender is put into a
14 database twice, which has happened before if the evidence
15 profile occurs in other crime scenes. Very often we link
16 multiple crime scenes together because the same evidence is
17 at multiple crime scenes. So, you could have a serial
18 burglar or a serial rapist, and he's leaving his DNA in
19 multiple places.

20 Q. Right.

21 A. So, therefore, you would have more than two at that
22 point, position, on that report.

23 Q. I want to talk with you briefly about this 17
24 quadrillion, 500 trillion number that you have up there.
25 That is arrived at by multiplying the frequency of these

1 alleles at one location and getting a result?

2 A. Yes.

3 Q. And then repeating it in the additional location?

4 A. Yes. Each of those locations on DNA molecule are
5 independent of each other. So, therefore, in determining
6 statistics, their frequencies can be multiplied together.
7 For instance, if you have two dice and you roll them, the
8 frequency of rolling a 6 on one of them is 1 out of 6. The
9 frequency of rolling a 6 on the other is also 1 out of 6.
10 But the frequency of rolling both of them at the same time
11 and coming up with two 6s is 1 out of 36: 1 out of 6 times
12 1 out of 6.

13 Q. All right, and there -- are there -- there are
14 slightly different rules for how you go about determining,
15 determining the frequency for when it's a 2 allele as
16 opposed to a 1 allele site, correct?

17 A. Yes. It's a slightly different calculation, yes, sir.

18 Q. But once you do that, then you multiply the sites
19 together?

20 A. Right. Each site is determined independently of each
21 other, and then multiply to the total profile frequency.
22 Then they're all multiplied together. That's why you come
23 up with such a rare number, and that's why you need, you
24 know, 13 to 15 loci. Some labs use 13; we use 15.

25 Q. And you then, as you testified, consult the population

J. BARRON - CROSS-EXAMINATION BY MR. STRICKLER

167

1 numbers that are known, and you come up with the number
2 that you reported to the court, correct?

3 A. Correct. Actually, I come up a much rarer number than
4 that. What we do is we make a conservative estimate of
5 the, of the real number because these are estimates. So,
6 what we do is the real number that previously was spit out
7 was actually ten times larger than that. But what we do,
8 to be conservative, we subtract a power of two off of that.
9 So, we take off one of those zeros to account for any type
10 of population data study error that may occur.

11 Q. Okay. Now, item 10, that's the scraping from the
12 socks?

13 A. Yes.

14 Q. That you've testified is -- there are multiple sources
15 on, right?

16 A. Correct. There are.

17 Q. Your statistics report, do you have that before you?

18 A. Yes.

19 Q. And that's, that's the computations that you go
20 through to arrive at the number that's reported?

21 A. Yes, sir.

22 Q. What's the case type listed?

23 A. Hold on now. Pull that one out.

24 (A PAUSE.)

25 A. Sorry. I have too many pieces of paper up here. It's

1 hiding.

2 Q. You got it?

3 A. I have it.

4 Q. All right, sir. What is the case type listed?

5 A. Are we looking at the same piece of paper? Case type,
6 okay. I see. Forensic single sample.

7 Q. Forensic single sample?

8 A. Correct.

9 Q. And this is a forensic mix sample?

10 A. Well, this is not a mixture calculation statistic
11 wide. That would be a totally different printout. So,
12 what I'm doing is I'm deducing the major contributor and
13 since the major contributor is a single source, I'm doing a
14 single course calculation.

15 Q. Okay, you're deducing the major contributor?

16 A. Correct, based upon the peak height.

17 Q. Okay. It is true that there's an entirely different
18 calculation involved when you compute a mixture
19 calculation?

20 A. A calculation can be performed in the situation where
21 you don't have a major contributor. Let's say for instance
22 you had three or four alleles at a locus and they're all
23 approximately the same height. Then you don't know which
24 to associate together. So, then you would do a different
25 type of statistic, which is called a mixture statistic

J. BARRON - REDIRECT EXAMINATION BY MS. CAMPBELL

169

1 calculation.

2 Q. And you test for DNA. You have -- and to your
3 knowledge, no one associated with this case has tested
4 those socks, item 10, for athletes foot, correct?

5 A. No. We wouldn't do any fungus type of analysis in our
6 laboratory.

7 MR. STRICKLER: Thank you.

8 THE COURT: Redirect.

9 MS. CAMPBELL: May it please the court?

10 REDIRECT EXAMINATION BY MS. CAMPBELL:

11 Q. And if fungus were present on those socks, it could
12 cause the actual -- it could cause it -- it could affect
13 the DNA?

14 A. Well, I'm not aware of any fungus studies on its
15 affect on DNA. But any type of material like fungus and
16 bacteria will begin to degrade biological material.

17 Q. That's the word I couldn't think of, degrade.

18 A. Correct.

19 Q. It wouldn't change the results to look like somebody
20 else, but it could degrade?

21 A. Right. It would make let's say what normally should
22 be 5000 RVU and may knock it down to 1000. So, it's still
23 the same peak.

24 MS. CAMPBELL: Your Honor, the bailiff is getting my
25 attention. We may need a break.

1 BAILIFF: One of the jurors needs a break, Your Honor.

2 THE COURT: All right, we'll take a break. Please do
3 not discuss the case.

4 (THE JURY EXITS AT 2:46 P.M.)

5 (OFF THE RECORD.)

6 THE COURT: Bring in the jury.

7 (THE JURY ENTERS AT 3:01 P.M.)

8 THE COURT: Juror Number 56, Ms. Cole, I'm going to
9 appoint you to serve as the foreperson of the jury. And as
10 the foreperson, it will be your responsibility to serve as
11 the spokesperson for the jury, to preside over the jury
12 deliberations, and to complete the verdict form at the end
13 of the case, representing the unanimous verdict of the
14 jury. You up to the task?

15 FOREPERSON: Yes, sir.

16 THE COURT: I think so. So, if you will take, switch
17 with the gentleman here. That's the foreperson's seat, and
18 he will sit that right there, and that will be your spot.

19 And you may proceed.

20 MS. CAMPBELL: Thank you, Your Honor.

21 BY MS. CAMPBELL:

22 Q. As far as the passage of time, if something is
23 properly stored and it's not subject to mold, mildew,
24 fungus, or things of that nature, even if say in this case
25 where about ten months or so passed, you could still get

J. BARRON - REDIRECT EXAMINATION BY MS. CAMPBELL

171

1 accurate results. Is that correct?

2 A. Yes. Very -- DNA is a very stable molecule. It's
3 been shown to be around for years.

4 Q. As long as it's not washed or mildew or mold or fungus
5 or something?

6 A. That's correct. As long as the biology of the
7 environment is conducive, it will remain intact.

8 Q. And again in your testimony here today, I understand
9 that you've used the word exclude a good bit. Why do you
10 use that word? And explain that to the jury.

11 A. Yes. One of the primary -- I think the primary job is
12 try to exclude people and if I can't, then I include them
13 and then if possible give a statistical result.

14 Q. So, one of your duties is the duty to exclude. You
15 mentioned before you try to be conservative in what you do.
16 Is that to the benefit of the defendant?

17 A. Well, it's the benefit of the defendant. He has to be
18 -- to give him all benefit of the doubt.

19 Q. There also, there were some questions in the beginning
20 that Mr. Strickler asked you, excuse me, and he asked you
21 about the kind of testing you do. And the PCR testing
22 we're talking about here, that's the same PCR testing
23 that's been in place since you started, I believe, at SLED?

24 A. Yes.

25 Q. And it's been reviewed and published, and guidelines

1 have been established. Is that correct?

2 A. That's correct.

3 Q. And those are, in fact, the guidelines you used in
4 this case. When we're talking about DNA testing on, say,
5 blood versus DNA testing on saliva versus DNA things on
6 what we call touch, is that different kind of testing or
7 different kind of DNA?

8 A. No, it's not a different kind of DNA. The amount of
9 DNA may be different. But even on touch samples, sometimes
10 we get plenty of DNA that we don't, that we don't have to
11 go in -- have any type of ultra sensitive test. We do have
12 those as well, but the testing done in this case was
13 normal, routine DNA test that is done on the known focus
14 swabs.

15 Q. And it's the same type of testing, that PCR testing,
16 that's done on all the -- in this case?

17 A. It's all, it's all PCR, DNA, STR type.

18 Q. And when we refer to it as touch DNA versus DNA from
19 blood sample, it's not a different kind of DNA itself. The
20 DNA would be -- is all the same, what you're testing?

21 A. Correct, the source.

22 Q. The source, that's what I'm talking about.

23 A. The source of the cell is different. Touch DNA tends
24 to be more the skin cells, whereas blood is blood, and
25 saliva is saliva. Saliva actually in and of itself doesn't

J. BARRON - REDIRECT EXAMINATION BY MS. CAMPBELL

173

1 have DNA. But if you were to isolate saliva, it's the
2 cells that are carried in the saliva. They have the DNA.

3 Q. Okay, and he asked you about your procedure book and
4 things, and whether or not you followed procedure in this
5 case, and he referred to 4.1 of your procedure book. Is
6 that correct, and asked you about cuttings and swabs. Did
7 you have a protocol for an envelope flap and stamps?

8 A. Yes.

9 Q. But he skipped over the part at the beginning which
10 talks about how -- collecting samples and things, what's
11 appropriate. Just so they'll know, you followed protocol
12 here?

13 A. Yes. You want me to read this?

14 Q. Yes, sir.

15 A. Due to the variety and lack of uniformity of
16 forensic evidence, references to size, sample
17 sizes are provided as guidelines for the
18 examiner. Sampling is a function of the
19 handler's evidence and his training and sample
20 limitations.

21 Q. Experience and training?

22 A. Yes.

23 Q. And as Mr. Strickler brought out, it takes a lot of
24 experience and training in order for you to be able to do
25 DNA analysis?

1 A. Yes, it does.

2 Q. And you've had extensive training, and you've been
3 qualified how many times before and testified as an
4 expert ---

5 MR. STRICKLER: Objection, Your Honor. Asked and
6 answered on his direct testimony. Incorrect, improper
7 redirect.

8 THE COURT: The objection is overruled.

9 BY MS. CAMPBELL:

10 Q. Go ahead.

11 A. As far as a DNA analyst, approximately forty times.

12 Q. Forty times?

13 A. Yes.

14 Q. And as part of your training, too, he asked you about
15 your procedure book and the interpretation of samples, what
16 some people call the 60 percent rule. And at the very
17 beginning of the protocol, just so we'll be clear, what
18 does it say about interpretation?

19 A. All loci must be considered during interpretation. Is
20 that what you're referring to?

21 Q. Uh-huh, and as far as the 60 percent rule he's
22 referring to, as far as your protocol there, you follow the
23 guidelines?

24 A. Yes.

25 Q. In interpreting it, and I believe you didn't simply

J. BARRON - REDIRECT EXAMINATION BY MS. CAMPBELL

175

1 use those for statistical purposes that they talked about?

2 A. Yes. That is this what we -- our, that is our
3 standard procedure. If the loci do not fall within a
4 certain criteria, we don't use them for statistical
5 purposes, but we do use them for inclusion or exclusion.

6 Q. And again, it's inclusion or exclusion because part of
7 your job is not only to indicate a person's guilty, but
8 it's too ---

9 MR. STRICKLER: Objection to the form of the question,
10 Your Honor. She's leading.

11 THE COURT: Don't lead the witness.

12 BY MS. CAMPBELL:

13 Q. What does your job include?

14 A. My job is to be objective. I scientifically assess
15 the evidence and report objectively to that. And if it
16 leads to guilt, then so be it. If it leads to innocence,
17 so be it.

18 Q. Did you do that in this case?

19 A. Yes, I did.

20 Q. And he also went through a number of questions
21 involving the actual testing itself, and these are the
22 actual charts that you generated in this case?

23 A. Yes. These are blowups of them.

24 Q. And you have a copy of your case jacket up there?

25 A. Yes.

1 Q. And obviously that was provided to the defense?

2 A. Yes, it was.

3 Q. And they are from your data? This is the data you
4 produced, correct?

5 A. It is my data, yes.

6 Q. And it can be reviewed by anyone, correct?

7 A. Yes.

8 Q. And in this, he talked about the major contributor,
9 the minor contributor. Anything that he asked you that
10 affects in any way your determination in State's Exhibit
11 Number 10 -- as shown in State's Exhibit Number 125, item
12 number 10? Who is the major contributor?

13 A. Frankie McGee.

14 Q. And as far as the minor contributor in that case, he
15 asked you a lot of questions about Mr. Williams and
16 individual alleles, specifically one with a 14 and a 15.
17 Is that correct?

18 A. 14, 15 D8 location.

19 Q. At D8 location, and I'm asking you in your review of
20 the entire sample. Could you, even on minor contributor,
21 could you eliminate Mr. Williams?

22 A. Well, what I say is that the minor contributor is too
23 weak to rely on and interpret. But what I mean by that was
24 I can't associate it with any one particular individual.
25 But I can look at each locus and look at the alleles that

J. BARRON - REDIRECT EXAMINATION BY MS. CAMPBELL

177

1 someone had and include or exclude that person at that
2 particular locus.

3 Q. And can you exclude Mr. Williams?

4 A. I believe I can.

5 Q. You can?

6 A. Yes.

7 Q. And that's your expert opinion?

8 A. Yes, it is.

9 Q. But that's based on your view of the entire profile
10 for this gentleman. Is that correct?

11 A. That's correct.

12 Q. For example, he asked you specifically just about that
13 one D8?

14 A. Right.

15 Q. But if you look at, say D3, is he eliminated?

16 A. Yes.

17 Q. If you look at TH1, is he eliminated?

18 A. I remember D3. I'll have to look at the other one.
19 Which one?

20 Q. TH1.

21 A. The other one, okay.

22 Q. Well, there were a number. Let me go through first.
23 There were a number where there was simply no minor -- no
24 information to be had?

25 A. Correct.

1 Q. Say at D21?

2 A. D21, there was only two alleles found, and they were
3 of sufficient size to indicate as a major contributor.

4 Q. Frankie McGee?

5 A. Correct.

6 Q. D7?

7 A. D7, there's only two alleles present, and they're both
8 of significant size and indicate a major contributor, and
9 they match Frankie McGee.

10 Q. TSI?

11 A. Again, two alleles present, and the major contributors
12 match Frankie McGee. There was a minor 15 allele. That
13 would be inconsistent with Mr. Williams; he's a 16.

14 Q. So, he would be eliminated on that allele?

15 A. Yes, he would.

16 Q. TH1?

17 A. Along with another comment along with D3, Mr. Williams
18 is 16 by itself. That means there's a double contribution
19 of 16. That means his mom gave him 16, and his daddy gave
20 him 16. So, that is additive. In other words, we expect
21 to see a double amount when the person gets a double dose
22 from -- the same dose from both mom and dad. I'm sure that
23 makes sense to you.

24 And then D3, with a double dose expected from -- if
25 you want to try to include Mr. Williams, I would expect to

J. BARRON - REDIRECT EXAMINATION BY MS. CAMPBELL

179

1 see something at a 16 with a double dose there,
2 particularly a locus of that small and easy to amplify.
3 So, there is no indication of a 16. So, that's a strong
4 indication that Mr. Williams is not present there.

5 Q. And that's just on that one allele alone?

6 A. Correct.

7 Q. But we can go further. TH1?

8 A. Yes. That is major contributor 69.3. That matches
9 Frankie McGee, and there's a 7 by itself.

10 Q. Moving on to D2, D19, VWA, T5, and I can go on.

11 A. Yes, you can go on.

12 Q. And as a result of looking at the entire profile on
13 the major and/or the minor contributor on those socks
14 that you did that next year in 2010, can you eliminate
15 Williams?

16 A. Yes. In my opinion, Williams is not there.

17 Q. Moving on to Defendant Exhibit -- that was Defense
18 Exhibit Number 4, which is item number 10. Let's move on
19 and look at the entire Defense Exhibit 8, which is 4.1.2
20 from the blood.

21 A. Correct.

22 Q. You talk about the minor contributor here.

23 A. Yes. There's a couple of minor alleles present in
24 that profile.

25 Q. Can you eliminate Williams?

1 A. I would have to ---

2 Q. I can get that.

3 A. --- look at it.

4 Q. And again, but it's important as an analyst -- or is
5 it, I'm asking you -- to look at the entire profile? Can
6 you ever make a determination from one single allele?

7 A. No. It's important to look at the entire profile. If
8 you just looked at one locus, you could have alleles that
9 are common to a lot of people.

10 Q. However, when you look at the minor contributor on
11 State's Exhibit Number 10, when you scraped it and redid
12 it, is it consistent with someone else's blood who was
13 there?

14 A. No. It's not consistent with somebody else's blood
15 being there.

16 Q. Excuse me, not blood but someone else's DNA. I
17 apologize. I misspoke.

18 A. Yes, there is someone else's DNA, at least two other
19 people.

20 Q. And as far as whether Reverend Eichelberger's is a
21 minor contributor, would it be consistent with that?

22 A. If you look at the alleles and also the alleles of
23 Eichelberger, you see a lot of commonality there. And
24 knowing the fact that Eichelberger's DNA is on the socks,
25 that would be the most logical explanation for those extra

G. AMICK - VOIR DIRE EXAMINATION BY MS. CAMPBELL

181

1 alleles that are -- most of them do line up with
2 Eichelberger.

3 Q. Did anything else he asked you affect your opinion on
4 this case in any way?

5 A. No.

6 MS. CAMPBELL: Thank you, sir. That's all I have.

7 THE COURT: Any recross?

8 MR. STRICKLER: Beg the court's indulgence one moment,
9 Your Honor.

10 (A PAUSE.)

11 MR. STRICKLER: No, sir. Thank you.

12 THE COURT: You may step down, sir.

13 (THE WITNESS EXITS THE STAND.)

14 THE COURT: Next witness.

15 MS. CAMPBELL: May it please the court? The state
16 calls Dr. Gray Amick.

17 GRAY AMICK, BEING DULY SWORN,
18 TESTIFIES AS FOLLOWS:

19 CLERK OF COURT: Have a seat in the witness box.
20 State your name for the record.

21 WITNESS: My name is Grey Amick, A-m-i-c-k.

22 VOIR DIRE EXAMINATION MS. CAMPBELL:

23 Q. Dr. Amick, where are you employed?

24 A. Richland County Sheriff's Department.

25 Q. What do you do there, sir?

1 A. I'm the DNA technical leader in the forensic DNA
2 laboratory.

3 Q. Can you tell this jury a little bit about your
4 education, your training in the field of DNA analysis?

5 A. Yeah. I have a bachelor of science, 1989 in biology,
6 and in 1993 I got a Ph.D. in biochemistry from USC. I was
7 hired at the State Law Enforcement Division, commonly known
8 as SLED, and worked there for eleven years. And in 2004 I
9 was asked to start a DNA lab up with John Barron over at
10 Richland County Sheriff's Department, which we did.

11 Every year in the field of DNA and serology, been
12 involved in methods development, validation, continuing
13 education in the fields of forensic DNA analysis.

14 Q. And have you been qualified before as an expert in DNA
15 analysis?

16 A. I have.

17 Q. And approximately how many times have you been
18 qualified in the area?

19 A. Over seventy times.

20 Q. Over seventy times?

21 A. Yes.

22 MS. CAMPBELL: Your Honor, at this time I'd offer him
23 as an expert in DNA analysis.

24 MR. STRICKLER: I have no *voir dire* for the gentleman.

25 THE COURT: He's admitted as an expert.

G. AMICK - DIRECT EXAMINATION BY MS. CAMPBELL

183

1 DIRECT EXAMINATION BY MS. CAMPBELL:

2 Q. Your role in this case, or let me back up a minute.

3 In every case, is it proper protocol, per your protocol, to
4 have ---

5 MR. STRICKLER: Objection to the leading.

6 THE COURT: I haven't heard the question.

7 BY MS. CAMPBELL:

8 Q. What is the proper protocol about case review?

9 A. Every case is 100 percent technically reviewed and
10 administratively reviewed, which means after an analyst
11 finishes their results and offers a report, it's given to
12 another qualified analyst, and they have to basically agree
13 with the entire report, and then they sign off on that.

14 Q. And in this case, were you actually able to review
15 Investigator Barron's findings?

16 A. Yes. I was the reviewer on the supplemental report.

17 Q. And have you had an opportunity to look at that case
18 file?

19 A. I did.

20 Q. And in your review of the case file, what conclusions
21 did you come to?

22 A. The same ones John Barron came to.

23 Q. And looking specifically far as the major contributor
24 of item number 10, which was the resubmission of the socks,
25 who was the major contributor match?

1 A. I agreed with the way it was reported and that Frankie
2 McGee was the contributor, the major DNA contributor on the
3 socks.

4 Q. Did you also look at the minor contributor
5 information?

6 A. I did.

7 Q. Data rather.

8 A. I did.

9 Q. And in doing that, in reviewing that, were you also
10 aware there was a buccal swab submitted on a Mr. Williams,
11 I believe?

12 A. Yes.

13 Q. Was this item number 2 -- hang on. David Williams,
14 item number 2 in your thing. Did you look at the minor
15 contributor, and can you make any determination in
16 comparing those?

17 A. I would agree that David Williams, his DNA profile
18 would be eliminated or excluded from that minor contributor
19 on item 10.

20 Q. And comparing it with item number 1, which is the
21 victim's DNA, what would your determination be as the minor
22 contributor?

23 A. Again I would, I would agree with the analyst on this
24 in that -- actually, the way it was reported, that the
25 minor contributor, it cannot be reliably interpreted. So,

G. AMICK - DIRECT EXAMINATION BY MS. CAMPBELL

185

1 it didn't meet certain thresholds to actually call it a
2 match.

3 But if you look at it, if you're asked to look at it
4 again, majority of the alleles are consistent with the
5 victim in this case, I think, Eichelberger.

6 Q. Are you aware that his blood was found on the socks at
7 an earlier date?

8 A. I had heard that, yes.

9 Q. In looking at the minor contributor from 4 point --
10 excuse me, 1.2, is Mr. Williams eliminated there?

11 A. Looking back at that profile, yes. I would, I would
12 -- my opinion would be he would be eliminated there.

13 Q. And then finally as to the profile taken from the bar,
14 the blood from the bar?

15 A. 6.2, I think.

16 Q. Yes, sir, 6.2. Thank you.

17 A. What's the question?

18 Q. Mr. Williams, was he eliminated?

19 A. Again, yes, you could eliminate him. Both of those
20 profiles, the minor contributor is, is so weak it would --
21 that, that type of result is not going to appear in a
22 report because it's just too weak of a profile. But if you
23 ask me my opinion looking at it here from locus to locus, I
24 would eliminate that, yes.

25 Q. You have protocols within your laboratory?

G. AMICK - CROSS-EXAMINATION BY MR. STRICKLER

186

1 A. Yes.

2 Q. And I believe there was some reference to them
3 earlier?

4 A. Yes.

5 Q. And were those protocols followed in this case?

6 A. Yes, they were?

7 MS. CAMPBELL: Thank you, sir. I have nothing
8 further.

9 THE COURT: Cross-examine.

10 CROSS-EXAMINATION BY MR. STRICKLER:

11 Q. Good afternoon, Mr. Amick.

12 A. Hi.

13 Q. Do you have any of the data in front of you?

14 A. I do. Which one?

15 Q. We'll be dealing with item 10, socks that were scraped
16 and tested.

17 A. Okay.

18 Q. And Mr. Eichelberger's, okay? I understand your
19 testimony, the minor alleles in item 10, majority of them
20 correspond to Mr. Eichelberger's. If I can, if I can, D8,
21 item 10, 13, 14, and 15, and Mr. Eichelberger's 13 and 15,
22 correct?

23 A. Correct.

24 Q. So, he's present there?

25 A. He could be.

G. AMICK - CROSS-EXAMINATION BY MR. STRICKLER

187

1 Q. Or arguably?

2 A. Could be, could be present.

3 Q. Okay. D2 -- D21, that's 11. 29 and 30 on the
4 question sample, Mr. Eichelberger 30 and 35, correct?

5 A. Correct.

6 Q. So, he is not present there?

7 A. Correct, just the major contributor.

8 Q. D7, S820. 10 and 11 on item 10?

9 A. The ---

10 Q. Oh, it's 9 and 11, pardon me. Sorry.

11 A. Correct.

12 Q. Okay. 10 and 12 for Mr. Eichelberger?

13 A. Correct. Again, only the major contributor is showing
14 up at that locus.

15 Q. Okay. So, there's no minor contributor showing up?

16 A. Correct. That's correct.

17 Q. CSF, 1P0, item 10. Alleles 10 and 12. Mr.
18 Eichelberger 8 and 12, correct?

19 A. Correct.

20 Q. So, he is not present there?

21 A. Correct.

22 Q. One of them's not present there anyway.

23 A. Because you're only seeing the major contributor
24 there, correct.

25 Q. And D3, S1358. 14, 15, and 17. Present on 10. Mr.

1 Eichelberger 15 and 18, correct?

2 A. Correct.

3 Q. There is a 15 as a minor contributor?

4 A. Correct.

5 Q. There is no 18 as a minor contributor?

6 A. Correct.

7 Q. Not present there where there's a minor contributor
8 present?

9 A. No, I would disagree with that because 15 is there.

10 Q. Right.

11 A. There's no 18. So, if you go back to the argument
12 about stochastic effects and low levels -- we're talking
13 about the minor contributor here.

14 Q. Right.

15 A. So, it's a potential that the 18 could drop out.

16 Now, again I want to emphasize the report that I
17 reviewed of John Barron's doesn't say the minor contributor
18 matches Eichelberger and, and you're seeing the reason why.
19 What, what I said earlier and I think what was testified to
20 earlier, earlier, most of the minor contributor allele line
21 with Eichelberger -- but that's different from saying like
22 in the report he matches the minor contributor. We haven't
23 said that.

24 Q. Well, in the plain -- as we go through this, how many
25 alleles or how many loci are there in item 10 in which

G. AMICK - CROSS-EXAMINATION BY MR. STRICKLER

189

1 there's a minor contributor? You got 16 total we're
2 looking at.

3 A. About 10.

4 Q. 10 was a minor contributor?

5 A. Uh-huh.

6 Q. Okay. TH1. 6,7, and 9.3 on item 10?

7 A. Correct.

8 Q. And Mr. Eichelberger plus 7?

9 A. It's a 7, correct.

10 Q. That is present as a minor allele there?

11 A. Correct.

12 Q. D13. S317. 8 and 12 on item 10?

13 A. Correct.

14 Q. 11 and 12, Mr. Eichelberger?

15 A. Correct.

16 Q. No other allele present?

17 A. That's correct. No minor contributor present.

18 Q. D16. S539. You got 9, 11, and 13 with 11 being the
19 minor contributor?

20 A. Correct.

21 Q. You got 9 and 11 for Mr. Eichelberger?

22 A. Correct.

23 Q. D2, S1338. You have 18, 22, and 23 on item 10?

24 A. That's correct.

25 Q. You have all 19 and 22 ---

1 A. That's correct.

2 Q. --- for Mr. Eichelberger?

3 A. Uh-huh.

4 Q. But there's no minor contributor there?

5 A. No, there is a second contributor there, yeah. The 22
6 is considered the minor there. It's so close, it was so
7 close to the 18 and 23, I believe that's -- that locus was
8 not used for statistics. But there is a second person
9 there, and it does line up with Eichelberger's 22.

10 Q. But not with the 19?

11 A. That's correct.

12 Q. So, not present at that one?

13 A. I don't know what you mean when you say not present.
14 That allele is not present, correct.

15 Q. Right.

16 A. Okay.

17 Q. My understanding is that he -- that his alleles are
18 present at the majority of the sites at which there's a
19 minor contributor.

20 A. No. What I said was the minor contributor alleles --
21 that is, the ones that are there, not the ones that aren't
22 there, but the ones that are there -- most of them line up
23 with Eichelberger.

24 Q. Okay. So, so, it doesn't have to be a complete
25 agreement between the alleles there and Mr. Eichelberger's

G. AMICK - CROSS-EXAMINATION BY MR. STRICKLER

191

1 profile. Is that correct?

2 A. For what?

3 Q. To be part of what you just said. For the alleles
4 that are present there, they match Mr. Eichelberger's, but
5 they don't necessarily match his entire profile at that
6 particular spot?

7 A. That's correct, and that's why I reiterate why we
8 reported it the way we do. We didn't report it as a match
9 of Eichelberger and the minor contributor. But this
10 discussion of, you know, looking at these low level minor
11 contributor alleles, if you're going to ask me who they
12 mostly line up with, in doing what we were doing, they
13 mostly line up with Eichelberger.

14 But again I want to emphasize the report was written
15 to say that it was too weak to interpret, and you can see
16 why. You go through and see, oh, one of his alleles is
17 there but one's not. It's dropped out. So, they're level.
18 So, that the -- while -- that's why we report it the way we
19 do. But if you sit here and force me what's your opinion
20 as to what these alleles match up with, well, most of that
21 matches up with Eichelberger.

22 Q. Okay. As long as -- you are saying the alleles that
23 are present, even though they are not a complete -- not
24 necessarily a complete profile at that particular spot, the
25 ones that are present line up mostly with Mr. Eichelberger?

J. McDONALD - DIRECT EXAMINATION BY MS. CAMPBELL

192

1 A. Correct. The minor contributor alleles, they are
2 lining up with Eichelberger.

3 MR. STRICKLER: All Right. Thank you, sir.

4 THE COURT: You can step down, sir.

5 (THE WITNESS EXITS THE STAND.)

6 THE COURT: Your next witness.

7 MS. CAMPBELL: Thank you, Your Honor. The state would
8 call for Joyce McDonald.

9 THE COURT: Let's stand for a moment as the next
10 witness is coming.

11 (A PAUSE.)

12 JOYCE McDONALD, BEING DULY SWORN,
13 TESTIFIES AS FOLLOWS:

14 CLERK OF COURT: Have a seat in the witness box.
15 State your name for the record, please.

16 WITNESS: My name is Joyce McDonald.

17 DIRECT EXAMINATION BY MS. CAMPBELL:

18 Q. Ms. McDonald, where you employed?

19 A. For Kershaw County. I'm the Kershaw County Clerk of
20 Court.

21 Q. Clerk of Court there?

22 A. Yes, ma'am.

23 Q. And what are your duties as the Court of Court for
24 Kershaw County?

25 A. The biggest part is filing documents and keeping

J. McDONALD - DIRECT EXAMINATION BY MS. CAMPBELL

193

1 records.

2 Q. And typically, are some of the documents that you keep
3 in the normal course of business records of indictments and
4 dispositions of indictments?

5 A. Yes. Yes, ma'am.

6 Q. And I want to show you. Let me get them marked.

7 (CERTIFIED COPY OF INDICTMENT MARKED AS STATE'S
8 EXHIBIT 126 FOR IDENTIFICATION.)

9 (CERTIFIED COPY OF INDICTMENT MARKED AS STATE'S
10 EXHIBIT 127 FOR IDENTIFICATION.)

11 COURT REPORTER: 126 and 127 for ID.

12 THE COURT: All right.

13 MS. CAMPBELL: Thank you.

14 BY MS. CAMPBELL:

15 Q. I want to show you what's been marked as 126 and 127,
16 and are these some of the documents that you kept -- or
17 actually a certified copy of the documents you keep in the
18 normal course of business?

19 A. Yes, ma'am.

20 Q. And did you actually get those copies for us and
21 certify them, because you have the actual originals with
22 you today, but those are court documents, correct?

23 A. Yes, ma'am. I personally did these myself.

24 Q. Okay, thank you.

25 MS. CAMPBELL: Your Honor, at this time I'd offer them

1 into evidence.

2 (A PAUSE.)

3 MR. STRICKLER: That's without objection, Your Honor.

4 THE COURT: They are admitted without objection.

5 (CERTIFIED COPY OF INDICTMENT MARKED INTO EVIDENCE AS
6 STATE'S EXHIBIT NUMBER 126.)

7 (CERTIFIED COPY OF INDICTMENT MARKED INTO EVIDENCE AS
8 STATE'S EXHIBIT NUMBER 127.)

9 BY MS. CAMPBELL:

10 Q. I hand you what's been marked as State's Exhibit
11 Number 126, and who is that the state versus?

12 A. *State vs. Frankie Lee McGee.*

13 Q. And on the document that is attached to that, does it
14 have identifying information for Mr. McGee?

15 A. Yes, it does.

16 Q. And what's the date of birth that's indicated on that?

17 A. [REDACTED].

18 Q. And does it also have a Social Security number?

19 A. Yes, ma'am.

20 Q. And does it say whether he was found guilty on a
21 burglary charge?

22 A. Yes.

23 Q. And that's the indictment that's attached to that?

24 A. Yes, ma'am.

25 Q. And secondly I want to hand you State's Exhibit Number

J. McDONALD - CROSS-EXAMINATION BY MR. STRICKLER

195

1 127. Is that another indictment for burglary?

2 A. Yes, ma'am.

3 Q. And who is it against?

4 A. Frankie Lee McGee.

5 Q. And does it show whether or not on the disposition
6 page, does it have the identifying information?

7 A. Yes, ma'am.

8 Q. And does it show whether or not he was convicted on a
9 burglary?

10 A. Yes, ma'am.

11 Q. And these are records you keep in the normal course of
12 business, and are known to be true and correct? Is that
13 correct?

14 A. Yes, ma'am.

15 MS. CAMPBELL: Thank you, ma'am. I don't have
16 anything further.

17 WITNESS: Okay.

18 THE COURT: For the defense.

19 MR. STRICKLER: Thanks, Your Honor. Please the court?

20 CROSS-EXAMINATION BY MR. STRICKLER:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. I'm usually in your courtroom. I don't think I've
24 ever seen you over here. It's good to see you.

25 A. Thank you.

J. McDONALD - REDIRECT EXAMINATION BY MS. CAMPBELL

196

1 Q. Just a couple of things, if I could, please?

2 A. Yes, sir.

3 Q. Referencing State's Exhibit 127, the sentencing sheet
4 or disposition down here.

5 A. Yes, sir.

6 Q. How does that reflect this case was disposed of, if
7 you could, please? By trial or by plea?

8 A. By a plea.

9 Q. By a guilty plea?

10 A. Yes, ma'am.

11 Q. Okay. Thank you, and referring to State's 126, again
12 same question. How does it reflect this case being
13 disposed of?

14 A. By a guilty plea.

15 MR. STRICKLER: Thank you very much. Thank you,
16 ma'am.

17 WITNESS: You're welcome.

18 MS. CAMPBELL: Just a couple of questions, Your Honor.

19 THE COURT: All right.

20 REDIRECT EXAMINATION BY MS. CAMPBELL:

21 Q. And did he plead as charged, or did he plead to a
22 lesser included in State's Exhibit Number 126?

23 A. As a lesser charge.

24 Q. Of burglary, I believe, in the third degree?

25 A. Correct.

J. McDONALD - REDIRECT EXAMINATION BY MS. CAMPBELL

197

1 Q. And then finally in State's Exhibit Number 127, as
2 charged or to a lesser?

3 A. To a lesser degree.

4 Q. Burglary in the third degree?

5 A. Right.

6 MS. CAMPBELL: Thank you, ma'am.

7 THE COURT: Anything further?

8 MR. STRICKLER: No, sir. Thank you.

9 THE COURT: Thank you, Ms. McDonald

10 WITNESS: Thank you, Your Honor. Pleasure to see you.

11 THE COURT: Good to see you.

12 (THE WITNESS EXITS THE STAND.)

13 THE COURT: Next witness, please.

14 MS. GARFIELD: Thank you, Your Honor. State calls
15 Earl Lee Brown.

16 EARL LEE BROWN, II, BEING DULY
17 SWORN, TESTIFIES AS FOLLOWS:

18 CLERK OF COURT: Have a seat in the witness box, and
19 state your name for the record, please.

20 MS. CAMPBELL: Your Honor, may we briefly approach?

21 THE COURT: Yes.

22 WITNESS: Earl Lee Brown, II.

23 (OFF-THE-RECORD BENCH CONFERENCE.)

24 MS. GARFIELD: Beg the court's indulgence.

25 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 128 FOR

E. BROWN - DIRECT EXAMINATION BY MS. GARFIELD

198

1 IDENTIFICATION.)

2 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 129 FOR
3 IDENTIFICATION.)

4 COURT REPORTER: State's 128 and 129 for ID.

5 MS. GARFIELD: Thank you.

6 DIRECT EXAMINATION BY MS. GARFIELD:

7 Q. Good afternoon, Mr. Brown.

8 A. Hello.

9 Q. Mr. Brown, where are you from?

10 A. Here in Columbia.

11 Q. How long have you lived here in Columbia?

12 A. All my life.

13 Q. And what kind of business are you in?

14 A. The tow service, towing.

15 Q. And particularly what company?

16 A. Happy Daddy Towing Service.

17 Q. And how long have you been involved with Happy Daddy
18 Towing Service?

19 A. Pretty much all my life. The business was my
20 grandfather's, but I've been down there eleven years.

21 Q. And it was your grandfather's business?

22 A. Yes, ma'am.

23 Q. It's a family business?

24 A. Yes, ma'am.

25 Q. And specifically where is your business located?

E. BROWN - DIRECT EXAMINATION BY MS. GARFIELD

199

1 A. On [REDACTED] in Columbia.

2 Q. And is that in the Green View area?

3 A. Yes, ma'am.

4 Q. And the victim in this case we're here for, Reverend
5 Eichelberger, are you familiar with him?

6 A. Yes, ma'am.

7 Q. And how are you familiar with him?

8 A. He worked for Blue Ribbon Taxicab, and we tow for that
9 business, and he stays diagonally from my granddad.

10 Q. And are you familiar with where he resided?

11 A. Yes, ma'am.

12 Q. And you're familiar that's where he was assaulted?

13 A. Yes, ma'am.

14 Q. Mr. Brown, can you share with the jury the proximity
15 to Reverend Eichelberger's house and your business?

16 A. It's probably a mile, maybe a mile and a half. I'd
17 say about a mile.

18 Q. Close?

19 A. Yes, ma'am, it's real close.

20 Q. And I'm going to take you back to May 3rd of 2009.

21 Did you have the occasion to go to your business and find
22 anything unusual that day?

23 A. There was a rig, a rig parked beside our tow trucks on
24 the side of our building.

25 Q. And was it on your property?

E. BROWN - DIRECT EXAMINATION BY MS. GARFIELD

200

1 A. Yes, ma'am.

2 Q. I'm going to show you what's been marked as State's
3 Exhibits 128 and 129. First I'm going to show you 128. Do
4 you recognize those photographs?

5 A. Yes, ma'am.

6 Q. And can you explain to the jury what those are
7 photographs of?

8 A. This is the truck that was parked on the side of the
9 building. It's the truck part of a eighteen-wheeler
10 without the cab.

11 Q. How many pictures are in that particular document?

12 A. There's two.

13 Q. And I'm going to also show you State's Exhibit Number
14 129. Can you explain to the jury what that's a document
15 reflecting?

16 A. This is, this is just a different angle of the truck,
17 in front of the truck, and a side view of the truck.

18 Q. And again, how many pictures are in that document?

19 A. There are two pictures.

20 Q. And those, that is a picture of the truck that was on
21 your property?

22 A. Yes, ma'am.

23 Q. As well as the photographs in number 128?

24 A. Yes, ma'am.

25 MS. GARFIELD: Your Honor, at this time I'd like to

E. BROWN - DIRECT EXAMINATION BY MS. GARFIELD

201

1 move State's Exhibits Number 128 and 129 into evidence.

2 (A PAUSE.)

3 MS. PRINGLE: No objection.

4 THE COURT: Admitted without objection.

5 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
6 NUMBER 128.)

7 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
8 NUMBER 129.)

9 MS. GARFIELD: Thank you, Your Honor. May I publish
10 them to the jury?

11 THE COURT: You may.

12 BY MS. GARFIELD:

13 Q. Mr. Brown, you found this tractor-trailer truck on
14 your property?

15 A. Yes, ma'am.

16 Q. And did it belong to you?

17 A. No, ma'am.

18 Q. Had it been there the day previously?

19 A. I don't know. I know when I showed up that morning it
20 was there, and that's when I noticed it.

21 Q. But it had not been there the last time you were at
22 your business?

23 A. Oh no, ma'am.

24 Q. And once you found this truck on your property, what
25 did you do?

E. BROWN - DIRECT EXAMINATION BY MS. GARFIELD

202

1 A. I called the city. Before we move any vehicles, we're
2 supposed to call them to see if it's reported stolen or
3 anything. And they told us, Happy Daddy, you're good to
4 go. They didn't have a report of it, and we just went
5 ahead and put it on our lot.

6 Q. And when you say the city, what are you referring to?

7 A. Oh, the city police, and City of Columbia Police
8 Department.

9 Q. And, in fact, it was on your property?

10 A. Yes, ma'am.

11 Q. So, what did they instruct you to do?

12 A. They said since it was on our property, go head and
13 tow it.

14 Q. Okay, and then what did you do after that?

15 A. We, we got the truck out of the gear for the doors
16 unlock, and we went ahead and towed it into the lot.

17 Q. On your property?

18 A. Yes, ma'am, back around in the main lot on the, on the
19 property, yes, ma'am.

20 Q. Was there a name of a business on this truck?

21 A. I believe so. It was in yellow or white writing. I
22 believe so, yes, ma'am.

23 Q. Okay, and where was that business located?

24 A. It was in Camden.

25 Q. Camden, and did you to attempt to make contact with

E. BROWN - DIRECT EXAMINATION BY MS. GARFIELD

203

1 that business?

2 A. Yes, ma'am. I called them and left a message.

3 Q. Did you ever hear back from that business?

4 A. Yes, ma'am. The Monday, they, they had called and it
5 was either that same day or the next day they came and got
6 it, but I did make contact.

7 Q. Did you notice anything unusual about the condition of
8 this eighteen-wheeler?

9 A. It had a bunch of scratches on it, and it had a lot of
10 fence wrapped around the front driver side axle.

11 Q. And when you refer to fence, what type of fencing?

12 A. It was a chain link fence.

13 Q. And it was actually located where on the truck?

14 A. It was around the, around the wheel. It's -- wound
15 itself around the wheel.

16 Q. And did the owners from Camden come to your place of
17 business?

18 A. Yes, ma'am.

19 Q. And did you assist them in any way?

20 A. Yes, ma'am. I had to get the bolt cutters to cut the
21 fence off because they couldn't drive it any further. It
22 wouldn't turn, there was so much wrapped around the wheel.

23 Q. And you assisted them in that process?

24 A. Yes, ma'am.

25 Q. And then at that point, what did they do?

E. BROWN - CROSS-EXAMINATION BY MS. PRINGLE

204

1 A. They just took care of the tow bill. Then they drove
2 it off. They brought some, brought some keys. Cranked it.

3 Q. And did you have any other -- anything else to do
4 regarding this eighteen-wheeler?

5 A. No, ma'am. We just towed it and helped them, and they
6 just drove it off. That was it.

7 Q. At some time later after this incident, finding the
8 truck, did you become aware of the assault on Reverend
9 Eichelberger?

10 A. Yes, ma'am. It was -- we saw it on TV, and then we --
11 shortly after, we saw the video where the truck went
12 through the fence that they had on TV.

13 MS. GARFIELD: Thank you, Mr. Brown. Please answer
14 any questions the defense counsel may have.

15 WITNESS: Yes, ma'am.

16 CROSS-EXAMINATION BY MS. PRINGLE:

17 Q. Good afternoon, Mr. Brown.

18 A. Hello.

19 Q. So, the truck was actually -- it was on your property
20 more or less when you located it, found it?

21 A. Yes, ma'am. It was on the side. It was on my
22 property on the side of the building, yes, ma'am.

23 Q. You towed it into the interior or your -- I guess you
24 have fencing?

25 A. Yes, ma'am. We put it physically into the lot with

E. BROWN - CROSS-EXAMINATION BY MS. PRINGLE

205

1 the other cars that we tow.

2 Q. And so that process, once you tow it in, do you do
3 anything else with the truck? Or you just, you tow it in,
4 you secure it, and you contact the owner?

5 A. Yeah. Well, pretty much we towed it in and secured
6 it, and I just happened to contact the owner because it
7 was, it was kind of weird we had it. I was just placing a
8 professional courtesy call.

9 Q. Okay. You didn't take those photographs, did you?

10 A. No, ma'am.

11 Q. And you didn't take any photographs of the interior of
12 the truck?

13 A. No, ma'am.

14 Q. And did you -- you didn't -- you don't have an
15 inventory of the contents of the truck, do you?

16 A. No, ma'am.

17 Q. And you don't have any inventory, any items that might
18 have been, or been missing on the exterior of the truck or
19 in any lock boxes?

20 A. No, ma'am.

21 MS. PRINGLE: Thank you. No further questions.

22 THE COURT: Anything else?

23 MS. GARFIELD: No, sir.

24 THE COURT: All right, thank you, sir.

25 WITNESS: Thank you.

1 (THE WITNESS EXITS THE STAND.)

2 THE COURT: Next witness.

3 MS. CAMPBELL: The next witness is Michelle Perry, and
4 I believe there's a motion.

5 THE COURT: All right, we'll have you go to the jury
6 room. Madame Forelady, members of the jury, please do not
7 discuss the case.

8 (THE JURY EXITS AT 3:47 P.M.)

9 (A PAUSE.)

10 THE COURT: All right, yes.

11 MS. CAMPBELL: Your Honor, the next witness is
12 Michelle Perry. Basically, her information to the police
13 was -- after they had identified Frankie McGee as a
14 possible suspect in the case, they did go by the church or
15 somewhere and met up with her. At that time, officers
16 showed her a photograph. She had seen him on at least two
17 prior occasions at -- attending service at the reverend's
18 church service which he conducted on Sunday. And I believe
19 they want to have a *Biggers* hearing as far as far as being
20 suggestible, or if it was -- if she had a basis, I guess,
21 for the identification.

22 THE COURT: All right, is that right, Ms. Pringle?

23 MS. PRINGLE: That is correct, Your Honor.

24 THE COURT: Okay, a *Biggers* hearing concerning the
25 identity of -- by someone who knows him?

M. PERRY - EXAMINATION BY MS. CAMPBELL

207

1 MS. CAMPBELL: She had seen him attending church
2 services on prior occasions.

3 THE COURT: All right, and ---

4 MS. CAMPBELL: I don't think she knew his name or
5 anything.

6 THE COURT: Is there police involvement in this or no?

7 MS. CAMPBELL: There was police involvement in that
8 they showed her a single photograph, and I believe that
9 would be the basis for that.

10 THE COURT: All right.

11 MICHELLE PERRY, BEING DULY SWORN,
12 TESTIFIES AS FOLLOWS:

13 CLERK OF COURT: Have a seat in the witness box, and
14 state your name for the record, please.

15 WITNESS: My name is Michelle Perry.

16 EXAMINATION BY MS. CAMPBELL:

17 Q. Ms. Perry, you live here in the Columbia area?

18 A. Yes, ma'am.

19 Q. How long you been living here?

20 A. All my life.

21 Q. All your life?

22 A. Yes, ma'am.

23 Q. And where, back in May of 2009, where were you
24 attending church?

25 A. At Covenant Community Fellowship.

1 Q. Covenant Community. Were you familiar with Reverend
2 Eichelberger?

3 A. Yes.

4 Q. Tell the judge how you knew Reverend Eichelberger.

5 A. I've been employed for the Original Blue Ribbon Cab
6 Company for ten years.

7 Q. You've been employed by Blue Ribbon Cab Company for
8 ten years?

9 A. Yes, ma'am.

10 Q. And what was the reverend's affiliation with the Blue
11 Ribbon Cab Company?

12 A. Well, he was a driver. He was a former employee, and
13 he held church services every Sunday in the banquet room.

14 Q. In the banquet room?

15 A. Yes, ma'am.

16 Q. And did you have occasions to participate in the
17 church services there?

18 A. No, ma'am. I usually was working.

19 Q. You were working?

20 A. Yes, ma'am.

21 Q. And on that, those Sundays when he would hold church?

22 A. Yes, ma'am.

23 Q. And being an employee there at the Blue Ribbon Cab
24 Company, did you have an occasion to see some of the people
25 that would attend his services?

M. PERRY - EXAMINATION BY MS. CAMPBELL

209

1 A. Yes, ma'am.

2 Q. And do you remember back in March of 2010 when the
3 police came around and was asking people questions?

4 A. Yes, ma'am.

5 Q. And specifically did they show you photograph?

6 A. Yes, ma'am.

7 Q. And I want to show you this item here, and do you
8 recognize that?

9 A. That, wasn't quite the picture they showed me.

10 Q. Was it a picture like this?

11 A. Yes, ma'am.

12 Q. And when they showed the picture to you, what, if
13 anything, did they ask you?

14 A. Did I recognize this person.

15 Q. Okay. Did they tell you you had to recognize him or
16 anything or why you would recognize him?

17 A. No, ma'am.

18 Q. And when you saw that photograph that they showed you
19 on that day, did you recognize the person?

20 A. Yes, ma'am.

21 Q. And can you tell the judge how you knew him, and how
22 you'd -- you didn't know his name, did you?

23 A. No, I don't.

24 Q. But how you knew him by sight.

25 A. Early, it was -- he came for church service earlier

1 than usual one Sunday morning, and I was working. And I
2 informed him that the church service didn't start until 11,
3 and they would have to sit outside.

4 Q. Okay, and you had actual face-to-face contact with
5 him?

6 A. Yes, ma'am.

7 Q. And at that point, you observed. Did you ever see him
8 on any other occasion?

9 A. One other time, I think, for a Bible study. This was
10 maybe on a Tuesday.

11 Q. On a Tuesday?

12 A. Yes, ma'am.

13 Q. And again were you working at the Blue Ribbon Cab
14 Company when you saw that?

15 A. Yes, ma'am.

16 Q. And again where was he?

17 A. He was attending the services.

18 Q. And you saw him on that occasions as well?

19 A. Yes, ma'am.

20 Q. And you recognized him from when you'd seen him
21 before?

22 A. Yes, ma'am.

23 Q. And how long before the police came around and showed
24 you the picture do you remember it was you saw him?

25 A. I can't exactly remember.

M. PERRY - EXAMINATION BY MS. CAMPBELL

211

1 Q. But it would have had to have been before Reverend
2 Eichelberger was assaulted because it was when he was
3 holding services?

4 A. Yeah.

5 Q. Okay, but it was some time prior to that?

6 A. Yes, ma'am.

7 Q. And did you, other than that one face-to-face
8 conversation you had with him and then on the prior
9 occasion you'd seen him, had you ever seen him before?

10 A. No, ma'am. Never.

11 Q. And the police didn't tell you that you had to
12 recognize him, or why they were asking you if you
13 recognized him?

14 A. Yeah. They just asked me had I seen him.

15 Q. Had you ever seen him?

16 A. I informed them that I seen him, you know, coming to
17 the services.

18 Q. When Reverend Eichelberger used to hold them?

19 A. Yes.

20 Q. And you're basing your recognition of him based on
21 your memory of seeing that person on those two occasions?

22 A. Yes, ma'am.

23 MS. CAMPBELL: Your Honor, that's all I have.

24 THE COURT: Ms. Pringle.

25 MS. PRINGLE: Please the court?

1 EXAMINATION BY MS. PRINGLE:

2 Q. And I'm sorry, Ms. Perry, is this the photo that you
3 were shown?

4 A. Just a few minutes go, but not at the moment.

5 Q. What were ---

6 A. It was another photo the other investigator showed me
7 when he came to Blue Ribbon.

8 Q. And what was that photo? Describe that photo.

9 A. It was just like that one, but I don't exactly what --
10 you know, where was it from, but it was -- I know it was a
11 picture.

12 Q. Okay. Did it have anything like driver record that
13 ---

14 A. No.

15 Q. --- you remember?

16 A. No. Just the picture.

17 Q. Did it have any another -- no other writing?

18 A. No. Just the picture.

19 Q. And when you -- when the police came to see you, they
20 showed you just the one photo, right?

21 A. Yeah.

22 Q. They didn't show you a bunch of pictures or six
23 pictures or a line of pictures?

24 A. No.

25 Q. And when they came to see you, this was about fourteen

M. PERRY - EXAMINATION BY MS. PRINGLE

213

1 months after when you thought you might have seen this guy?

2 Is that right?

3 A. Yes.

4 Q. So, you thought you might have seen him in January or
5 February or '09?

6 A. I'm not -- I know it was still cold because he had on
7 a big jacket.

8 Q. So, in any event, at least a year prior?

9 A. Yeah.

10 Q. Is that fair?

11 A. Yeah.

12 Q. A year prior, and when they came to see you, you also,
13 you gave them a written statement, too?

14 A. Yes.

15 Q. And what you told them at the time that they showed
16 you the picture was that that picture seems to favor a
17 gentleman that used to attend church services?

18 A. Yeah. I told him I recognized him seeing him come.
19 He didn't come too many times because usually regular
20 members from the church, they know me. I don't know
21 anyone's name, but they know me from sitting at the
22 dispatch board.

23 Q. And when they showed you this picture, this, the image
24 of this man just came to mind?

25 A. Yes.

1 Q. Is that right?

2 A. That's the, that's the -- that's what my memory went
3 back to.

4 Q. That's what you thought of when you saw the picture?

5 A. Yes.

6 Q. And you said that it seems to favor him?

7 A. Yes. I mean, it looked like him. If not, he got a
8 twin.

9 Q. And that it looked like him?

10 A. Yes, ma'am.

11 THE COURT: What's -- would you repeat your answer?
12 What did you say?

13 BY MS. PRINGLE:

14 A. I said the picture seemed to look -- and when they
15 showed me the picture, I said well, yeah, I recognize the
16 gentleman from -- he attended a church service or two. And
17 I remember him because we had a conversation about when the
18 church service will begin.

19 Q. I understand. Yes, ma'am. Am I correct? Do you
20 recall using the language it seems to favor the gentleman
21 in a written statement?

22 A. Yes, ma'am.

23 Q. And you're a dispatcher?

24 A. Yes, ma'am.

25 Q. And how many other dispatchers work there?

M. PERRY - EXAMINATION BY MS. PRINGLE

215

1 A. I'd say at least eight.

2 Q. When this gentleman walked up, were you inside?

3 A. Yes, ma'am.

4 Q. And where did you come into contact with him, inside
5 or outside?

6 A. He came inside the building.

7 Q. Okay, and was -- he was -- was he alone?

8 A. No. There was a young lady with him.

9 Q. All right, and that young lady was -- how would you
10 describe her?

11 A. Brownish short, short hair. I'd never seen her before
12 either.

13 Q. Okay, and did she seem like a street person to you
14 maybe, a homeless person?

15 A. Yeah, to me.

16 Q. And it wasn't unusual for people -- there as a church
17 operating out of that business, right?

18 A. Yes, ma'am.

19 Q. And so it wasn't usual for people to show up that you
20 didn't recognize? Or no?

21 A. No, ma'am. It wasn't unusual.

22 Q. And it wouldn't be any, any reason for you to
23 particularly take note of someone showing up for a church
24 service?

25 A. Well, if he -- I mean, if someone comes early and

1 they're not aware of the services, then they'll have to ask
2 us or whoever is present at work at the time. They'll have
3 to inquire about what time the services start.

4 Q. I understand, and that happens quite a bit with an
5 active church going on out there?

6 A. Yes, sometimes.

7 Q. You didn't, you didn't attend church there at all?

8 A. No.

9 Q. You attend -- you have a different church?

10 A. Yes, ma'am.

11 Q. And so you wouldn't have seen him in the service.

12 Just that moment when you told him that he was too early?

13 A. Yes, ma'am. Well, when Reverend Eichelberger pull up,
14 him and the young lady and Reverend Eichelberger, they all
15 proceeded to go to the banquet hall.

16 Q. So, your encounter with him was just, would it be fair
17 to say, just a matter of seconds?

18 A. Yeah.

19 Q. Just long enough to tell him you're too, you're too
20 early?

21 A. Well, yeah. Well, he was visually sitting in front of
22 me for about twenty-five minutes because the service --
23 they got there between I'd say maybe 10:30, 10:40. So, I
24 mean, we wasn't conversating, but I seen him.

25 Q. All right, and are you absolutely positive it was him?

M. PERRY - EXAMINATION BY THE COURT

217

1 A. It looks like him, ma'am.

2 Q. It looks like him?

3 A. Yes, ma'am.

4 Q. So, it's fair to say it looks like him?

5 A. Yes, ma'am.

6 Q. Can't say absolutely positive?

7 A. No, ma'am.

8 MS. PRINGLE: I don't have anything further, Your
9 Honor.

10 EXAMINATION BY THE COURT:

11 Q. Do you see the individual in the courtroom today?

12 A. Yes, sir.

13 Q. And where is he?

14 A. Over there.

15 Q. Ma'am, you need to talk so we can hear you.

16 A. He's over there.

17 Q. Over there where?

18 A. He's sitting right there, sir.

19 Q. You need to talk where everyone can hear you. Pull
20 the mic to you.

21 A. Can you hear me now?

22 Q. Yes, ma'am.

23 A. Okay. He's sitting right there at the table.

24 Q. And can you describe what he has on?

25 A. A blue shirt.

M. PERRY - EXAMINATION BY THE COURT

218

1 Q. All right, and what do you base that identification of
2 him on?

3 A. Excuse me? Could you repeat the question?

4 Q. What do you base that indication of him on? How is it
5 that you can identify him?

6 A. Because I've seen him before.

7 Q. And where did you see him before?

8 A. At the Original Blue Ribbon Cab Company.

9 Q. And how many times did you see him there?

10 A. Only twice to my recollection.

11 THE COURT: All right, by the state?

12 MS. CAMPBELL: Nothing further, Your Honor.

13 THE COURT: By the defense?

14 MS. PRINGLE: No, Your Honor.

15 THE COURT: All right, ma'am, you can step down

16 WITNESS: Thank you.

17 (THE WITNESS EXITS THE STAND.)

18 THE COURT: Anything for the state or the defense?

19 MS. CAMPBELL: Your Honor, I believe that her

20 testimony was she based her identification on her seeing

21 him on two prior occasions. She was specific that she

22 remembered the one specifically because he came in early.

23 That she recognized him again after that as the same

24 person, and that she had the opportunity to observe him.

25 I believe originally they went past her for just a few

1 seconds, but then she observed him for a twenty-five minute
2 period. She recalled it specifically because he came early
3 that day and came in the company. She had a face-to-face
4 encounter with him. And she later testified that she
5 identified him on a separate occasion attending church.

6 Based on what she had seen before, obviously the basis
7 for identification is good. She indicated that she
8 recognized the person as being the same and it looked like
9 him, and then she identified him in court. We would say
10 that the basis for her identification is reliable.

11 THE COURT: Ms. Pringle.

12 MS. PRINGLE: Thank you, Your Honor. We would of
13 course move to suppress the in-court identification. Our
14 argument would be that the out-of-court identification was
15 a product of an unduly suggestive presentation -- single
16 photograph -- and that it is not reliable. Any
17 identification of this gentleman is not reliable in the
18 totality of the circumstances.

19 With respect to the unduly suggestive nature of this,
20 I think that a single photo or show up is unduly
21 suggestive. The cases that -- in which it has been allowed
22 have been cases in which it's necessary. And I would refer
23 the court to *Stoval vs. Denno*, *Simmons vs. U.S.*, *Simmons*
24 *vs. United States*.

25 In those cases, there were situations where there was

1 some imminent need to use a photograph or conduct a show-up
2 identification. I think that gets us past the first prong,
3 Your Honor.

4 Secondly, her opportunity to observe him was once or
5 twice. There was nothing in particular about this
6 gentleman as far as her degree of attention that would have
7 called note to him other than that he showed up early for
8 church, which was something that -- there were people
9 coming to church services all the time. It had been
10 fourteen months since she's seen him. And then of course
11 her degree of certainty is, it would be my opinion,
12 vacillates from very, very weak to certain. But she said
13 ultimately that she can't be positive. I think under the
14 totality of the circumstances it should be excluded.

15 THE COURT: All right. Well, she said under her
16 breath it's him unless he has a twin. Then I asked her to
17 repeat her answer, and she gave a, rather than repeating
18 her answer, she gave a different answer.

19 Single-person show ups are disfavored because they are
20 suggestive in nature. However, the courts in the state
21 have held that they may be reliable under the totality of
22 the circumstances if the state shows that the
23 identification was nevertheless so reliable that no
24 substantial likelihood of misidentification exists.

25 In this instance, she saw him on two occasions. She

1 says she saw him for a period of twenty-five minutes or so.
2 That it was an unusual circumstance that he arrived
3 unusually early for their church services. She said she
4 saw him. She says she recognized him. She says that she
5 can identify him. I find that the motion to suppress
6 should be denied, and I deny it.

7 We'll take a few minutes and then press on. Five
8 minutes.

9 (OFF THE RECORD.)

10 THE COURT: All right, is the next witness in here?

11 MS. CAMPBELL: No, Your Honor. I can get her in here.

12 THE COURT: All right.

13 MS. CAMPBELL: Here she is.

14 THE COURT: You may bring the jury.

15 (THE JURY ENTERS AT 4:19 P.M.)

16 BAILIFF: Jury is seated, Your Honor.

17 THE COURT: All right. Madame Forelady, how is the
18 jury doing?

19 FOREPERSON: Just fine.

20 THE COURT: Just fine, good.

21 All right, next witness.

22 MS. CAMPBELL: May it please the court?

23 THE COURT: Yes.

24 MS. CAMPBELL: State would call Michelle Perry.

25 MICHELLE PERRY, BEING DULY SWORN,

M. PERRY - DIRECT EXAMINATION BY MS. CAMPBELL

222

1 TESTIFIES AS FOLLOWS:

2 CLERK OF COURT: Have a seat in the witness box.

3 State your name for the record, please.

4 WITNESS: My name is Michelle Perry.

5 DIRECT EXAMINATION MS. CAMPBELL:

6 Q. And, Ms. Perry, do you live here in the Columbia area?

7 A. Yes, ma'am.

8 Q. How long have you been living in Columbia?

9 A. All my life.

10 Q. And are you employed?

11 A. Yes, ma'am.

12 Q. Where do you work?

13 A. The Original Blue Ribbon Cab Company.

14 Q. The Blue Ribbon Cab Company?

15 A. Yes, ma'am.

16 Q. And where is the Blue Ribbon Cab Company located?

17 A. At 64 North Main.

18 Q. Is that near Greenview?

19 A. Yes, ma'am, not too far.

20 Q. Not too far?

21 A. Yes, ma'am.

22 Q. Did you know Reverend Eichelberger?

23 A. Yes, ma'am, I did.

24 Q. Tell this jury how you knew Reverend Eichelberger.

25 A. We were -- we worked together.

M. PERRY - DIRECT EXAMINATION BY MS. CAMPBELL

223

1 Q. And you worked together at Blue Ribbon?

2 A. Yes, ma'am, and I knew him before from a lot of
3 programs he had done, gospel programs.

4 Q. Gospel programs?

5 A. Yes, ma'am.

6 Q. And would Reverend Eichelberger have a service on
7 Sundays near the Blue Ribbon Cab Company?

8 A. Yes. It was actually held in the banquet hall at the
9 -- in the back of Blue Ribbon.

10 Q. In the banquet hall at the back of Blue Ribbon Cab
11 Company?

12 A. Yes, ma'am.

13 Q. Right there off North Main?

14 A. Yes, ma'am.

15 Q. And on some of those Sundays, was it unusual for you
16 to work on Sunday while he was holding church?

17 A. No, ma'am.

18 MS. PRINGLE: Objection to the leading form of the
19 question.

20 THE COURT: Don't lead the witness.

21 MS. CAMPBELL: Yes, sir.

22 BY MS. CAMPBELL:

23 Q. Did you ever have an occasion to have the police come
24 and show you a photograph?

25 A. Yes, ma'am.

M. PERRY - DIRECT EXAMINATION BY MS. CAMPBELL

224

1 Q. Well, let me back up for a little bit. Were you aware
2 that Reverend Eichelberger was assaulted in his home?

3 A. Yes, I was aware of that.

4 Q. And subsequent to that, I believe several months
5 later, he died as a result of that?

6 A. Yes, ma'am.

7 Q. And some several months later in March of 2010, did
8 the police come to Blue Ribbon Cab Company and talk to you?

9 A. Yes, ma'am. They did.

10 Q. And when they came and talked to you, did they show
11 you a photograph?

12 A. Yes, ma'am. They did.

13 Q. And I'm going to show you a photograph. This is
14 smaller than the one you saw, but do you recognize this?

15 A. Yes, ma'am.

16 Q. Does that look like the photograph -- it was larger at
17 the time -- that they showed you?

18 A. Yes.

19 MS. PRINGLE: Objection to the leading, Your Honor.

20 THE COURT: Don't lead the witness.

21 BY MS. CAMPBELL:

22 Q. What does this look like?

23 A. A mug shot.

24 Q. Is it a version -- is it similar to the photograph you
25 saw?

M. PERRY - DIRECT EXAMINATION BY MS. CAMPBELL

225

1 A. Yes, ma'am.

2 MS. PRINGLE: Your Honor, may we approach?

3 THE COURT: Yes.

4 (COUNSELORS CONFER BUT DO NOT APPROACH THE BENCH.)

5 MS. PRINGLE: Withdrawn, Your Honor.

6 THE COURT: All right.

7 BY MS. CAMPBELL:

8 Q. And when they showed you the photograph, what did they
9 ask you?

10 A. They asked me have I -- do I recognize this person.
11 Have I ever seen that person.

12 Q. And when you saw this photograph, when they showed it
13 to you in March of 2010, did you recognize this person?

14 A. Yes, ma'am, I did.

15 Q. And tell this jury why you recognized the person in
16 this photograph.

17 A. He attended a couple of church services at the Blue
18 Ribbon.

19 Q. Specifically, was there a specific reason why you
20 remembered him from attending a church service, and that
21 would have been one of Reverend Eichelberger's services?

22 A. Yes, ma'am. He, him and another young lady came early
23 for service one Sunday morning, and I was there.

24 Q. Okay, and did you have an opportunity on that date to
25 actually have a face-to-face conversation with that man?

1 A. Yes, ma'am. He asked me what time the services start
2 or...

3 Q. And was he close enough for you to see him at that
4 point?

5 A. Yes, ma'am.

6 Q. And did you get the good look at his face?

7 A. Yes, ma'am.

8 Q. And did you have a conversation with him about the
9 services at that point?

10 A. Yes, ma'am, I did.

11 Q. That day, was -- do you know? Was he early or late,
12 or was he on time for the service, or what?

13 A. He was early. About twenty-five to, about
14 twenty-five, twenty, twenty-five minutes early.

15 Q. Okay, and once you had the conversation about when the
16 service would start, where did he go? Were you able to see
17 him?

18 A. Yes. I informed them that they had to wait outside
19 because the service, the service hadn't started yet.

20 Q. And did you continue to observe him during that time
21 period he was waiting outside?

22 A. Yes, ma'am.

23 Q. And eventually what happened that day?

24 A. Reverend Eichelberger pull up and everybody, they went
25 on to service.

M. PERRY - DIRECT EXAMINATION BY MS. CAMPBELL

227

1 Q. Reverend Eichelberger pulled up?

2 A. Yes, ma'am.

3 Q. And then who all went on to the service?

4 A. Him, the young lady, Reverend Eichelberger, and...

5 Q. But definitely he and the Reverend Eichelberger?

6 A. Yeah.

7 Q. Did you have an occasion to recognize him again at
8 another church service when he came by?

9 A. Yes, ma'am. It had to be like the following Tuesday
10 or -- because they have like Bible study or -- they was
11 having a special program. I'm not sure what it was, but I
12 remember him again, but I didn't see the young lady, but I
13 remember him.

14 Q. Okay, and were these services where Reverend
15 Eichelberger participated?

16 A. Yes, ma'am.

17 Q. So, that would be before his assault?

18 A. Yes, ma'am.

19 Q. And when the police showed you this photograph, did
20 they -- they just asked you if you recognized him? They
21 didn't tell you who he was or anything like that?

22 MS. PRINGLE: Objection to leading.

23 A. Yes, ma'am.

24 THE COURT: Objection sustained.

25 BY MS. CAMPBELL:

M. PERRY - DIRECT EXAMINATION BY MS. CAMPBELL

228

1 Q. What did they tell you?

2 A. They just asked me did I recognize this -- did I
3 recognize the person in that photo.

4 MS. CAMPBELL: And at this time, we would mark it and
5 offer it into evidence.

6 MS. PRINGLE: I object, Your Honor. It's not the
7 photograph that she recognizes or that she saw; she said
8 it's not the photograph that she was shown. It has no
9 relevance to this proceeding.

10 THE COURT: All right, the objection is sustained.
11 Will be marked for identification only.

12 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 130 FOR
13 IDENTIFICATION.

14 BY MS. CAMPBELL:

15 Q. For clarification, State's Exhibit Number 130 for
16 identification, this is a smaller version ---

17 MS. PRINGLE: Objection. Leading.

18 BY MS. CAMPBELL:

19 Q. Is this picture the same size as the one you saw?

20 A. Actually, it was like two pictures side-by-side.

21 Q. And was it larger?

22 A. Yeah. It was larger.

23 COURT REPORTER: Keep your voice up, please.

24 A. Yes, a little larger.

25 Q. Did you also give the officers a short statement about

M. PERRY - DIRECT EXAMINATION BY MS. CAMPBELL

229

1 recognizing the person?

2 A. Yes, ma'am.

3 Q. And that's a copy of that statement?

4 A. Yes, ma'am.

5 Q. And the person that you recognized in the picture that
6 was shown to you that day, the person you recognized from
7 attending church services with the reverend, do you see him
8 here in the courtroom?

9 A. Yes, ma'am.

10 Q. Would you mind pointing him out for the jury?

11 A. (THE WITNESS COMPLIES.)

12 Q. And what is he wearing?

13 A. A blue shirt.

14 Q. And where is he in the courtroom?

15 A. He's sitting next to the -- the defendant's table.

16 Q. Over there?

17 A. Yes.

18 Q. At the table?

19 A. Yes.

20 Q. In the blue shirt?

21 A. Yes.

22 MS. CAMPBELL: Your Honor, may the record reflect
23 she's identified the defendant?

24 THE COURT: It does.

25 MS. CAMPBELL: I don't have anything further. Thank

1 you, Ms. Perry.

2 THE COURT: Defense.

3 MS. PRINGLE: May it please the court?

4 CROSS-EXAMINATION BY MS. PRINGLE:

5 Q. Good afternoon, Ms. Perry.

6 A. Good afternoon.

7 Q. Ms. Perry, on the day that the investigators came to
8 see you back in March of 2000, at that point of course you
9 knew that Reverend Eichelberger was deceased?

10 A. Yes, ma'am.

11 Q. And you knew why the investigators had come to see
12 you?

13 A. Yes, ma'am.

14 Q. You knew that the individual, the pictures that they
15 were showing you, was someone that they were investigating
16 as a suspect?

17 A. Not at the time. Not when they showed me the photo.
18 They didn't disclose any of that information until after I
19 said I recognized this person.

20 Q. So, after you said you recognized him, they told you
21 that that's him?

22 A. I can't remember the conversation, but they didn't
23 disclose any information. They asked me how did I know
24 this person, where have I seen this person, can I -- do I
25 recognize this person. They didn't disclose any other

M. PERRY - CROSS-EXAMINATION BY MS. PRINGLE

231

1 information to me at the time.

2 Q. At the time that they asked you? Before they asked
3 you to write ---

4 A. Yeah, when I was at Blue Ribbon.

5 Q. Okay, and so -- but you, you learned afterwards that
6 that's the person that they were investigating or had
7 arrested or ---

8 A. Yeah.

9 Q. --- was a suspect?

10 A. Yeah.

11 Q. In a homicide, and of course you are -- you testified
12 in here previously today, correct?

13 A. Yes, ma'am.

14 Q. And you, you're aware of which gentleman is -- that's
15 on trial here today, correct?

16 A. Yes, ma'am.

17 Q. You work dispatch?

18 A. Yes, ma'am.

19 Q. Blue Ribbon, and you work full time?

20 A. Yes, ma'am.

21 Q. Forty hours a week?

22 A. Thirty-two to forty.

23 Q. Thirty-two to forty. How many other dispatchers work
24 over there?

25 A. It's seven or eight.

1 Q. How many will be on the job at a time?

2 A. Two at the most, two.

3 Q. And on the day that the investigators came down there
4 to show you this picture, were there any other dispatchers
5 working or other employees that were there working that
6 day?

7 A. Yes, ma'am.

8 Q. About how many?

9 A. Well, at the dispatch, it was just me and another
10 young lady.

11 Q. And did the investigators show that photo to the other
12 people that were there?

13 A. Yes, ma'am.

14 Q. And so you and the other lady and who, who else?

15 A. Management, and that's just all basically it.

16 Q. How about how many people?

17 A. I'd say at least six maybe.

18 Q. So, this is a pretty busy operation, pretty busy
19 business?

20 A. Yes, ma'am.

21 Q. And your job is to take calls?

22 A. Yes, ma'am.

23 Q. They come in pretty rapidly?

24 A. Yes, ma'am.

25 Q. Never a dull moment in that job, is there?

M. PERRY - CROSS-EXAMINATION BY MS. PRINGLE

233

1 A. No, ma'am.

2 Q. And it's not just, it's not just a business but of
3 course -- let me ask you this. The business, the Blue
4 Ribbon Taxicab Company, is it open seven days a week?

5 A. Yes, ma'am. No, it's closed on weekends, Saturday and
6 Sunday, the business office is, but dispatch is open
7 twenty-four hours.

8 Q. Okay. So, your, the area that you work in is open ---

9 A. Twenty-four hours.

10 Q. 24/7, right?

11 A. Yes, ma'am.

12 Q. And so there's not just the business, but there's the
13 church there at the same place?

14 A. Yes, ma'am.

15 Q. And so there are often times different people coming
16 and going?

17 A. Yes, ma'am.

18 Q. Y'all stay -- it's probably a lot like the courthouse.
19 You stay kind of busy?

20 A. Yeah, pretty much.

21 Q. Lots of folks in and out?

22 A. Yes, ma'am, but not usually on a Sunday.

23 Q. And the second day, that was Tuesday?

24 A. Yes.

25 Q. And I know you didn't attend the church, so if you

1 don't know the answer to this question, just tell you don't
2 know. But that church was open to anybody that wanted to
3 come, and the doors were open to anyone that wanted to
4 come, right?

5 A. Yes, ma'am.

6 Q. And Reverend Eichelberger wanted to extend that
7 invitation or to help anybody that needed it or wanted to
8 attend?

9 A. Yes, ma'am.

10 Q. And that would include folks that were homeless. Is
11 that right?

12 A. Yes, ma'am.

13 Q. And folks that might be in trouble?

14 A. Yes, ma'am.

15 Q. Maybe people from shelters. Sometimes wouldn't he
16 pick up people from shelters?

17 A. I'm not aware of that, but I know he, he would help a
18 lot of people.

19 Q. And that would sound like something that, that he
20 would have done?

21 A. Yes, ma'am.

22 Q. And some folks, some folks came because they needed
23 something, but some folks came just to attend the church,
24 right?

25 A. Yes, ma'am.

M. PERRY - CROSS-EXAMINATION BY MS. PRINGLE

235

1 Q. Not because they needed anything but just to have a
2 church service to go to?

3 A. Yes, ma'am.

4 Q. And would assume that you would interact with some of
5 those people but not all of them, right?

6 A. Yes, ma'am.

7 Q. And some people would come in, and you wouldn't even
8 have occasion to speak with them?

9 A. Yes, ma'am.

10 Q. But many of them you would?

11 A. Yes, ma'am.

12 Q. In March of 2010 when the police came to see you, the
13 time that you're saying that you remember seeing this
14 individual would have been over a year, at least a year
15 before when the police came, right?

16 A. Yes. I'm quite sure it was.

17 Q. All right. Well, they would have -- the police came
18 in in March of 2010, right? Does that sound about right?

19 A. Yes.

20 Q. Okay, and when you, you told them that the person that
21 came to your mind that you thought might be this person,
22 this individual, that that was in January or February of
23 2009. Does that sound right?

24 A. Yes. I just remember it was just cold.

25 Q. It was cold? I'm sorry, it was cold?

1 A. Yeah. It was a, it was a winter month.

2 Q. Okay. So, about a year before or just sometime in
3 the ---

4 A. Yes, ma'am.

5 Q. --- winter months, and they only showed you the one,
6 just the one picture?

7 A. Yes, ma'am.

8 Q. They didn't show you a series of them or six of them
9 side by side, did they?

10 A. No. No, ma'am.

11 Q. So, you didn't have any choices to look at, did you?

12 A. No, ma'am.

13 Q. You just had the one?

14 A. Yes, ma'am.

15 Q. And you knew that they were homicide detectives?

16 A. No, I didn't know what kind of detectives they were.

17 Q. You knew they were police?

18 A. Yeah, I knew they were investigators, but I wasn't
19 aware of what they were investigating.

20 Q. I understand, but you did know what had happened to...

21 A. Yes, ma'am. I was aware of that.

22 Q. The reverend. And they asked you about seeing this
23 individual, and this is a guy -- you don't, you don't know
24 him at all?

25 A. No, I don't.

M. PERRY - CROSS-EXAMINATION BY MS. PRINGLE

237

1 Q. You don't know his name?

2 A. No, I don't.

3 Q. Don't know anything about him?

4 A. No, I -- no.

5 Q. Other than that. You said that you were certain that,
6 or you thought that there was one occasion. Then when you
7 were being questioned by the solicitor, you said I think
8 there was a second occasion. You're not absolutely certain
9 about that either, are you?

10 A. I mean, that's the story I've been telling since day
11 one.

12 Q. But you're not absolutely certain that that was him?

13 A. He looked like the guy that I saw that I interacted
14 with, and I'm pretty good with recognizing faces.

15 Q. You just testified not an hour ago that you're not
16 absolutely certain or not absolutely positive that it was
17 him.

18 A. It seem to be him, ma'am; it looks like him.

19 Q. It seems to be him, and that's what you told law
20 enforcement back in 2010, isn't it?

21 A. Yes, ma'am.

22 Q. You said, that's exactly what you said was: That seems
23 to favor a gentleman that came here a couple times?

24 A. Yes, ma'am.

25 Q. Okay, and this, this guy that you saw, there was a

1 female with him, right?

2 A. Yes, ma'am.

3 Q. And she looked sort of like a street person?

4 A. Yes, ma'am.

5 Q. And he looked sort of down on his luck, too?

6 A. I mean, that's why I paid close attention because I
7 informed the dispatcher, you know what I'm saying, where I
8 don't know what they're looking for. But when they came in
9 and asked for the church service, that's when I informed
10 them that it started at 11.

11 Q. And that wouldn't be unusual to have to see -- to have
12 street people show up like that?

13 A. I mean, for that, yeah, I mean, I've never seen it
14 before, but I know different people come to the church.
15 That's my first time experiencing that.

16 Q. And this guy that you -- you actually spoke to him
17 that day, right?

18 A. Yes, ma'am.

19 Q. And you didn't know, you didn't remember anything
20 specific about his facial features that you told law
21 enforcement?

22 A. No, not really. I just remembered his look. He was
23 -- low haircut, you know. He had on a big jacket with like
24 a -- with a team logo on it or something.

25 Q. And in your interaction with him, he seemed kind of

M. PERRY - CROSS-EXAMINATION BY MS. PRINGLE

239

1 slow to you. Is that right?

2 A. Yeah. That's what I said.

3 Q. Seemed kind of slow, right?

4 A. Yeah.

5 Q. And as far as his relationship with Reverend
6 Eichelberger or the church or this person that you
7 remember, you didn't know, you didn't, didn't know anything
8 about that?

9 A. No.

10 Q. And you didn't see this individual ever cause any kind
11 of trouble?

12 A. No, ma'am, I didn't.

13 Q. No disruption or anything?

14 A. No, ma'am.

15 Q. Nothing that you would have noticed or remembered?

16 A. No, ma'am.

17 MS. PRINGLE: Thank you, Ms. Perry.

18 WITNESS: Thank you.

19 MS. CAMPBELL: Nothing further, Your Honor.

20 THE COURT: All right, thank you, ma'am. You may step
21 down.

22 (THE WITNESS EXITS THE STAND.)

23 THE COURT: Next witness.

24 MS. SIMPSON: The state calls Investigator Sumter.

25 CLARENCE SUMTER, BEING DULY SWORN,

C. SUMTER - DIRECT EXAMINATION BY MS. SIMPSON

240

1 TESTIFIES AS FOLLOWS:

2 CLERK OF COURT: Please have a seat. State your full
3 name for the record.

4 WITNESS: Clarence Sumter.

5 DIRECT EXAMINATION BY MS. SIMPSON:

6 Q. Investigator Sumter, where do you work?

7 A. Police department in Columbia.

8 Q. And what do you do for the Columbia Police Department?

9 A. Right now I'm an investigator.

10 Q. And how long have you been with law enforcement?

11 A. Total?

12 Q. Total.

13 A. Total, almost thirty years.

14 Q. Okay. So, assuming the total, what did you do prior
15 to coming to the Columbia Police Department?

16 A. I worked as a police officer with USC. And prior to
17 that, I was about five and a half years, the Department of
18 Corrections.

19 Q. Okay, and what do your duties include as an
20 investigator with the Columbia Police Department?

21 A. We investigate, my unit investigates homicide and
22 violent crimes, aggravated assaults.

23 Q. Okay, and back on, in May of -- or excuse me, March of
24 2010, were you still working in that capacity as an
25 investigator?

C. SUMTER - DIRECT EXAMINATION BY MS. SIMPSON

241

1 A. Yes, ma'am.

2 Q. And did you have occasion to become involved in this
3 case?

4 A. I did.

5 Q. And when was that?

6 A. Right around about, about that time I was assisting
7 the lead investigators, officer -- Investigators Reese and
8 Thomas with this investigation.

9 Q. All right, and on March 12th, did you have occasion to
10 go to the Blue Ribbon Cab Company?

11 A. Yes, ma'am.

12 Q. And what was your purpose of going?

13 A. I was instructed by the lead investigator,
14 Investigator Reese, to go and show a photo to the employee
15 that the -- that -- to see if anyone recognized or knew the
16 gentleman in the photo.

17 Q. And did anyone actually recognize the defendant?

18 A. Yes, ma'am. There were several people there, and I
19 showed just, just the one photo to everybody, and Ms. Perry
20 said that she recognized ---

21 MS. PRINGLE: Objection to hearsay, Your Honor.

22 A. --- this guy. Excuse me?

23 THE COURT: The objection is overruled.

24 BY MS. SIMPSON:

25 Q. I'm sorry. Continue. She stated, Michelle Perry,

1 what did she say to you?

2 A. Michelle Perry was the only one who indicated that she
3 recognized the gentleman in the photo.

4 Q. And when you showed this photo, what did you tell the
5 employees, or what did you ask of them?

6 A. I just asked them if anyone recognized this young man
7 in the photo.

8 Q. And did you indicate anything about him being involved
9 in any incident?

10 A. I did not.

11 Q. Or specifically the murder of Reverend Eichelberger?

12 A. No, I did not.

13 Q. And on March 12th, did you also have occasion to
14 respond to [REDACTED] in Columbia?

15 A. I did.

16 Q. And who did you speak with at that location?

17 A. Mr. Larry Harp.

18 Q. What did you do?

19 A. I was instructed to show him a photo array to see if
20 he could recognize anyone in that lineup that matched the
21 description of him. He had indicated he had seen him at
22 Mr. Eichelberger's house.

23 Q. And I want to back up just a little bit. You were
24 briefed on the course of this investigation, correct?

25 A. Yes, ma'am.

C. SUMTER - DIRECT EXAMINATION BY MS. SIMPSON

243

1 Q. And what -- who is Larry Harp?

2 A. Larry Harp, from what I was told, was the gentleman
3 who ---

4 MS. PRINGLE: Object to anything he was told, Your
5 Honor, as hearsay.

6 MS. SIMPSON: Your Honor.

7 THE COURT: Yes.

8 MS. SIMPSON: I was just going to say with respect to
9 this, I believe I asked if he was instructed or briefed on
10 the case, and this is not being offered for the truth of
11 the matter asserted. Just to explain the course of his
12 investigation.

13 THE COURT: The objection is overruled.

14 BY MS. SIMPSON:

15 A. Answer the question?

16 Q. Yes. Continue.

17 A. During the briefing, I was informed that Mr. Larry
18 Harp was the gentleman who had seen an individual at Mr.
19 Eichelberger's house earlier on the, on -- earlier that day
20 of the incident.

21 Q. And I am showing you what has been marked as State's
22 Exhibit 4. Do you recognize this?

23 A. I do.

24 Q. And what is that?

25 A. What you've just shown me is a photo lineup affidavit

1 which after Mr. Harp was show a photo array, he indicated
2 the individual he saw, he saw. Completed a form, and he
3 signed that form indicating the individual he picked out.

4 Q. Okay, and we're referring to the affidavit. That's
5 actually the front page. What is contained in the second
6 page?

7 A. The second page has a six-picture photo array.

8 Q. And when you showed him this photo lineup, what did
9 you do, or what did you say?

10 A. Just instructed Mr. Harp after I placed the photo
11 array upside over so it wasn't exposed. And I asked him to
12 turn it over and see if he could describe anybody or pick
13 out anybody in that lineup, in that photo lineup that
14 matched the person he saw at the house earlier that day.

15 Q. And did you suggest to him who to pick in any way?

16 A. No, ma'am. That's why I put the photo array front
17 side down: so I wouldn't have any opportunity to influence.

18 Q. And did he hesitate when picking out photo number 3?

19 A. He scanned it I guess about five seconds, and he
20 immediately picked out to number 3.

21 Q. Okay, and did he mark that in any way?

22 A. I asked him to be sure, and he said yes. He kind of
23 went to another one. Then he came right back to that one,
24 and I asked him is he sure. He said yes, and I asked him
25 to initial it, circle, put his initials, date, and time on

C. SUMTER - DIRECT EXAMINATION BY MS. SIMPSON

245

1 it.

2 Q. Okay. So, that's his writing?

3 A. Yes, ma'am.

4 Q. And on the affidavit, I believe you indicate that this
5 was done in your presence?

6 A. Yes, ma'am, and I, I filled out the first portion that
7 he had to -- signed it.

8 MS. SIMPSON: Your Honor, at this time the state would
9 seek to introduce State's Exhibit 4 into evidence.

10 (A PAUSE.)

11 MS. PRINGLE: Just renew my previous objection with
12 regards to this photo lineup.

13 THE COURT: They are admitted over objection.

14 MS. SIMPSON: Thank you, Your Honor.

15 (PHOTOGRAPHIC LINEUP MARKED INTO EVIDENCE AS STATE'S
16 EXHIBIT NUMBER 4.)

17 BY MS. SIMPSON:

18 Q. And did Mr. Harp also provide a written statement?

19 A. Yes, he did.

20 Q. And in the course of your investigation, on March the
21 15th did you go back and speak with Ms. Perry?

22 A. We were instructed to go and, and I think we needed to
23 go and get a written statement from Ms. Perry.

24 Q. And did she actually agree to give you a written
25 statement?

C. SUMTER - DIRECT EXAMINATION BY MS. SIMPSON

246

1 A. Yes, she did.

2 Q. And then on March the 17th, did you have occasion to
3 speak with another individual by the name of Ivan Bernard
4 Moore?

5 A. I did.

6 Q. And without saying what he said to you, did he provide
7 you with information that assisted you in the course of
8 this investigation?

9 A. Yes, ma'am.

10 Q. Where else did you respond on May -- or, excuse me; I
11 keep saying May -- March the 17th of 2010?

12 A. March the 17th.

13 Q. Yes, sir.

14 A. We went, we went to I guess Happy Daddy's Towing
15 Service, and Investigator Mahoney and myself spoke to Mr.
16 Brown and his mother in reference to whether he or any of
17 them know, knew Mr. McGee. Ms., Ms. ---

18 Q. Okay, without saying, going into what they told you.

19 A. Okay.

20 Q. You did have occasion to speak with ---

21 A. Yes.

22 Q. --- Ms. Brown as well as Mr. Brown?

23 A. And then we also went to the -- I'm sorry.

24 Q. And outside of that, with respect to the case at hand,
25 that's essentially your involvement in this investigation,

C. SUMTER - CROSS-EXAMINATION BY MS. PRINGLE

247

1 correct?

2 A. Essentially.

3 MS. SIMPSON: Thank you.

4 THE COURT: Cross-examination.

5 MS. PRINGLE: Please the court?

6 CROSS-EXAMINATION BY MS. PRINGLE:

7 Q. Good afternoon, Investigator.

8 A. Good afternoon.

9 Q. Just a couple of questions for you. When you went to
10 see -- when you went to the Blue Ribbon Cab Company and you
11 spoke with Ms. Perry, you spoke with several other people
12 as well, right?

13 A. Yes, ma'am.

14 Q. Five or six?

15 A. I'm thinking probably about five or six. There were,
16 I think there were two in the dispatch, and there were Ms.
17 Dodson, who was the, I think she was the owner. I think
18 there was the public relations lady, so I think it was
19 about five or six.

20 Q. And nobody else recognized that photograph?

21 A. No, ma'am.

22 Q. And the photograph you took, it was just one
23 photograph, correct?

24 A. Just one enlarge photograph, yes.

25 Q. Did you actually assemble that lineup that was

1 presented to Larry Harp?

2 A. I did not.

3 Q. How long have you been a police officer, an
4 investigator, a police officer?

5 A. Already testified. Going on three years.

6 Q. How many photo lineups have you ever composed?

7 A. I did several, but we -- I try to use, when I do a
8 lineup, I try to use SLED as my basis for my lineups so I
9 won't have to -- I would be -- not be held accountable for
10 anything that might be suggestive just outside the agency.

11 Q. So, I guess -- is that considered you doing it? How
12 often? I mean, how many times approximately have you done
13 that, put together a lineup using SLED's system or
14 whatever, however it is you do it? How often have you done
15 that?

16 A. I've done it lots of times.

17 Q. Fifty?

18 A. Forty, fifty, and I send the request through SLED, and
19 then they'll, they'll send me a lineup back. It's, it's
20 all documented.

21 Q. So, you know how to do that pretty well?

22 A. Yes.

23 Q. Of course you could do that. You could get on the
24 computer right now and do one in ten minutes?

25 A. Yes.

C. SUMTER - CROSS-EXAMINATION BY MS. PRINGLE

249

1 Q. So, you certainly on the day that you went out there,
2 you could have put a photo lineup together?

3 A. Yes, ma'am.

4 Q. But you didn't?

5 A. I didn't.

6 Q. And you went at the direction of whom?

7 A. I was being instructed by the lead investigators to go
8 out and, and do that, make the follow up, and they provided
9 me with the lineup.

10 Q. With the photo?

11 A. With the photo, yes.

12 Q. And when you're talking about lead investigator,
13 you're talking about Investigator Reese?

14 A. Investigator Reese and Thomas, yes.

15 Q. And Investigator Thomas, and they actually told you to
16 go out there with just the one photo?

17 A. Yes.

18 Q. And they provided that photo to you?

19 A. Yes.

20 Q. So, you didn't make that, you didn't make that
21 decision?

22 A. No, I did not.

23 Q. You did that at their direction?

24 A. Yes.

25 MS. PRINGLE: Beg the court's indulgence.

1 (A PAUSE.)

2 BY MS. PRINGLE:

3 Q. You assisted in the taking of the statement by Ms.
4 Perry?

5 A. Yes, ma'am. We went -- we -- she couldn't do it at
6 the business, so we went to her home.

7 Q. And it's important to do written statements, isn't it?

8 A. Yes, it is.

9 Q. And you got, you handle a dozen, dozens of cases a
10 year, don't you?

11 A. Yes.

12 Q. You interview hundreds of witnesses?

13 A. I would, I would say, I imagine a hundred.

14 Q. I guess I should say hundreds of individuals, right?

15 A. Yes.

16 Q. Hundred of potential witnesses?

17 A. Uh-huh.

18 Q. You work full time? How many hours a week you work?

19 A. Forty hours a week, I would imagine, a minimum.

20 Q. And you take, you take good, detailed notes so that
21 you can remember what you do from week to week, month to
22 month, month to month?

23 A. I try to.

24 Q. You try to?

25 A. I try to.

C. SUMTER - CROSS-EXAMINATION BY MS. PRINGLE

251

1 Q. And do you that because, of course, all of our
2 memories are not perfect, right?

3 A. Yes.

4 Q. And when you work on lots of different cases,
5 sometimes facts can get mixed up if you don't take good
6 notes. Is that right?

7 A. Yes, ma'am.

8 Q. And do you refer to your, to your notes when, when you
9 come to court to testify, prior to testifying?

10 A. Yes, ma'am. I have some in my hand now.

11 Q. All right. So, there's a perfect example. So, when
12 you came here to testify today or this week, you went back
13 and read your notes and reminded yourself of what you ---

14 A. Yes.

15 Q. --- what you'd done?

16 A. Yes, ma'am.

17 Q. Is that correct, and that helps you to get the facts
18 right and keep everything straight, right?

19 A. For the most part, yes.

20 Q. And that's important particularly in a case like this
21 because you're going to be called to answer specific
22 questions from somebody like me or someone else, right?

23 A. Yes, ma'am.

24 Q. It's not the first time you've testified, is it?

25 A. No.

1 Q. And for that same reason, law enforcement officers
2 take written statements from witnesses, right?

3 A. That's right.

4 Q. Because witnesses' memory -- this, this offense took
5 place in May of '09, correct? So, over two years, right?

6 A. Over two years ago.

7 Q. And without a written statement, witnesses can forget
8 as well?

9 A. Yes.

10 Q. And so you take the written statement in order to, I
11 guess, memorialize and make permanent what they knew at
12 that time. Is that right?

13 A. Yes.

14 Q. And when you took Michelle Perry's statement -- have
15 you had, have you had an opportunity to review that prior
16 to today?

17 A. And actually I did not. Investigator Mahoney was the
18 one, was primarily the one who was doing the statement. We
19 went in and, and he actually did the statement.

20 Q. You were there?

21 A. Yes.

22 Q. And so you recall specifically that she said that that
23 individual that she saw in the picture seems to favor a
24 gentleman that attended church services there?

25 A. No, ma'am. My notes indicate she remembers him

C. SUMTER - CROSS-EXAMINATION BY MS. PRINGLE

253

1 walking in with the reverend on at least two occasions.

2 Q. Have you seen the written statement?

3 A. No, ma'am.

4 MS. SIMPSON: Your Honor, I'm just going to object at
5 this point with respect to refreshing this witness's memory
6 as to another witness's written statement. That witness
7 actually just testified, and I believe did testify as to
8 her own statement. I believe his testimony regarding that,
9 as to what she said, is hearsay.

10 THE COURT: All right, Ms. Pringle.

11 MS. PRINGLE: It's a prior inconsistent statement,
12 Your Honor. I think that I can ask him if he's familiar
13 with it. I don't know if he is or not.

14 THE COURT: You can ask him whatever you want to.

15 BY MS. PRINGLE:

16 Q. Are you familiar with this? Have you seen this
17 statement? Are you familiar with it?

18 A. I have not.

19 Q. You have not seen it?

20 A. No, ma'am.

21 Q. Referring back to your notes regarding -- well, you
22 were present when the statement was written, but you didn't
23 see it?

24 A. Yes, ma'am. I was, I was present. I was actually
25 standing outside when they were doing the statement.

1 Q. So, you weren't in there with it?

2 A. No, ma'am.

3 Q. But you were present while she was being interviewed?

4 A. Yes, ma'am.

5 Q. And your notes do reflect that Ms. Perry was only able
6 to see this individual from just above the waist area as
7 they passed her window?

8 A. Yes, that's what I remember her telling me at the
9 business, at the business.

10 Q. So, that, that's memorialized in your notes, correct?

11 A. Yes.

12 Q. Could be confusing about any other written statement,
13 but those are your notes that you wrote?

14 A. These are my notes.

15 Q. And you wrote those notes, notes on March 12, 2010?

16 A. Yes.

17 Q. That she was able to see him from just above the waist
18 area as he passed her window as she sat in the dispatch
19 area?

20 A. Yes.

21 Q. And that's all you said about that?

22 A. That's all.

23 Q. And there's one other thing on your, on your notes for
24 that same day, March 12th of 2010. You testified just a
25 few minutes ago that Mr. Harp did not hesitate to pick --

C. SUMTER - CROSS-EXAMINATION BY MS. PRINGLE

255

1 I'm sorry. I ask you questions now about Mr. Larry Harp.

2 A. Okay.

3 Q. And when you were present for that photo
4 identification.

5 A. Uh-huh.

6 Q. You testified on direct examination that he didn't
7 hesitate?

8 A. No. I said he, he kind of checked around for about
9 five seconds and picked the gentleman, and then kind of
10 went over and looked at someone else, and then kind of came
11 back and said I'm sure this is the one.

12 Q. Okay. So, then specifically referring to your notes,
13 you said that he, in your notes, you state that:

14 He then said photo number 6 kind of looks like
15 the person, but quickly said no and returned back
16 to photo number 3, confirming photo number 3 was
17 the one.

18 A. Right.

19 Q. Does that accurately, does that accurately reflect
20 what's in your notes regarding that photo identification?

21 A. Yes, and I just paraphrased, but that's what the notes
22 says, yes. Based on what he says, he kind of went to it.
23 Was sure. I asked him to make sure. He looked over and
24 said number 6 is kind of, sort of, and then came back to
25 it.

1 Q. Kind of like comparing them?

2 MS. PRINGLE: No further questions.

3 MS. SIMPSON: Brief redirect, Your Honor.

4 REDIRECT EXAMINATION BY MS. SIMPSON:

5 Q. Investigator, she asked you about assembling lineups
6 and did you assemble them. I believe, did you -- were you
7 the lead investigator on this case?

8 A. No, I was not.

9 Q. And so were you assisting?

10 A. I was assisting.

11 Q. And as the role of the lead -- as the role of the
12 assisting investigator, who's response -- who supervises an
13 investigation?

14 A. The lead investigator ultimately gives out
15 instructions and advises assistants on what they want done,
16 and we just go out and follow up on that.

17 Q. And is that because there is a need for assisting
18 investigators typically?

19 A. There is, and he has -- lead investigators have their
20 own protocol. They have their way of doing things, and
21 that's what -- that's, this is what he wanted to do.

22 Q. And so essentially this is following protocol?

23 MS. PRINGLE: Objection. Leading.

24 Q. Was this following protocol?

25 A. Following ---

C. SUMTER - REDIRECT EXAMINATION BY MS. SIMPSON

257

1 MS. PRINGLE: Objection.

2 A. --- protocol, following the instructions of the lead
3 investigator, following the way he wants this investigation
4 to go.

5 Q. And we talked a lot, I believe -- she spoke a lot with
6 you about written statements being very important and
7 memory and things of that nature. Does everyone agree to
8 give you a written statement?

9 A. No.

10 Q. Was Michelle Perry agreeable to give you a written
11 statement in this case?

12 A. She was agreeable, but she said she couldn't do it at
13 the -- when I initially spoke with her because she was at
14 work. And of course she was at the dispatch, and calls
15 were coming in. So, she couldn't write it down.

16 A. And so that's why you all went back at a later date?

17 A. Yes.

18 Q. Also want to go over, Ms. Pringle focused on the fact
19 that I believe Michelle Perry told you that she was only
20 able to see him from the waist, just above the waist area
21 as he passed her window as she sat in the dispatch area of
22 the cab company. Can you go a little bit before that right
23 after her phone number and read that to us about what she
24 remembered seeing?

25 A. Remembered seeing this person attend Reverend

1 Eichelberger's church services that was held at
2 the Blue Ribbon site on Sunday morning back in
3 February of 2009.

4 Q. Did she say anything else about what she remembered?

5 A. She remembers him walking in with the reverend,
6 at least two occasions. It was during cold
7 months, and she remembered he wore a blue jacket
8 of some type, and she believed him to be homeless
9 or down on his luck.

10 Q. But in there, she clearly states, according to your
11 notes, that she remembers seeing the defendant?

12 A. Yes.

13 Q. And I also want to clear up. When she was speaking to
14 you about assembling photo lineups and then went to a
15 photo, with respect to the photo lineup in State's Exhibit
16 4, this is a lineup that was actually shown to Larry Harp,
17 correct?

18 A. Yes.

19 Q. It was not a single photo?

20 A. No.

21 Q. And Michelle Perry, did you show her a single photo?

22 A. I did.

23 Q. Okay, but Larry Harp was the photo lineup, not a
24 single photo?

25 A. Right.

1 MS. SIMPSON: Nothing further for this witness. Thank
2 you.

3 THE COURT: Anything further?

4 MS. PRINGLE: No, Your Honor.

5 THE COURT: Thank you, sir. You may step down.

6 (WITNESS EXITS THE STAND.)

7 MS. GARFIELD: Judge, these are all the witnesses we
8 have scheduled for today.

9 THE COURT: All right, ladies and gentlemen, 5:00, all
10 the witnesses scheduled for today. We will not have court
11 tomorrow or Friday. We will resume with this case 9:30
12 Monday morning, 9:30 Monday morning.

13 It's especially important that you not discuss the
14 case with people who certainly will be curious about your
15 being a juror in a case, and what's it all about, and those
16 kinds of things. Even if folks do not ask you, you may be
17 tempted to just volunteer to talk about the case that you
18 are on. You must resist all of that temptation because you
19 must decide the case only with your fellow jurors after you
20 have heard the entire case, and after you have gotten the
21 instruction of law. I trust that you all will abide by
22 your oath and not violate that oath of office.

23 We look forward to seeing you all at 9:30 Monday
24 morning. Have a good evening and a good weekend.

25 (THE JURY EXITS AT 4:59 P.M.)

1 THE COURT: Are there any other matters that we need
2 to discuss today, or that you all would like to talk about
3 today?

4 MS. PRINGLE: I just need to put on the record -- I
5 forgot at the last break -- that I asked to approach when
6 the -- Mr. Brown from Happy Daddy Towing testified, and I
7 was just renewing the previous objection to the entire line
8 of testimony and evidence relating to the Camden car
9 incident.

10 THE COURT: All right, let the record reflect that
11 that objection was timely made.

12 Ma'am.

13 MS. CAMPBELL: Your Honor, just one other matter. You
14 did instruct them to give us the name and identifying
15 information as far as a witness. I can't remember. I
16 think it was a Mr. Reeves. We did ask them to provide us
17 with his full name. They have given us his date of birth;
18 that's the extent of the identifying information we've
19 gotten. We would ask for his full name.

20 THE COURT: All right.

21 MS. PRINGLE: I just hadn't had time to call him. I
22 gave them the date of birth. His middle initial is D. As
23 soon as I get up to my office, I'll call him, see if I can
24 get ahold of him.

25 THE COURT: All right.

1 MS. PRINGLE: I didn't know this until just a few
2 hours ago.

3 MS. CAMPBELL: And if we could just get the correct
4 spelling of his last name. If she would just get that to
5 us via email, that's fine.

6 MS. PRINGLE: If I can get him. I will do my best.

7 THE COURT: All right, anything else? Okay, we will
8 be in recess then until Monday.

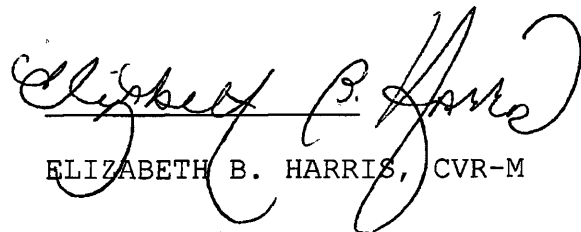
9 (WHEREUPON, THE CASE IS AT EASE.)

10 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 3RD DAY OF AUGUST, 2011.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

FEBRUARY 2ND, 2012

1 STATE OF SOUTH CAROLINA

2 COUNTY OF RICHLAND

) COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,

5 PLAINTIFF,

6 VS.

7 FRANKIE LEE MCGEE,

8 DEFENDANT.

) TRANSCRIPT

) OF

) RECORD

) 2010-GS-40-121

) 2010-GS-42-124

9
10 August 8th - 10th, 2011
Columbia, South Carolina

11
12 B E F O R E:

13 THE HONORABLE CLIFTON NEWMAN, Judge, and a jury.

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

15 DOLLY GARFIELD, LUCK CAMPBELL, and NICOLE SIMPSON
16 ASSISTANT SOLICITORS
Attorneys for the State

17 DOUG STRICKLER, FIELDING PRINGLE, and JENNIFER DAVIS
18 ESQ.
Attorneys for the Defendant

19
20
21 APRIL HERRON
22 Circuit Court Reporter

23 Transcribed by Pamela E. Green, Circuit Court Reporter
24
25

I N D E X O F W I T N E S S E SWITNESSESPAGE

C. RAY MILES

Direct examination by Sol. Campbell 12

Cross-examination by Mr. Strickler 16

Redirect examination by Sol. Campbell 21

ERSKINE MOODY

Direct examination by Sol. Garfield 22

Cross-examination by Ms. Davis 28

Redirect examination by Sol. Garfield 33

IVAN MOORE

Direct examination by Sol. Simpson 37

Cross-examination by Mr. Strickler 51

Redirect examination by Sol. Simpson 55

MARIE WARING

Direct examination by Sol. Campbell 56

Cross-examination by Ms. Pringle 59

TEMIKA ASHFORD

Direct examination by Sol. Campbell 61

Cross-examination by Ms. Pringle 88

Redirect examination by Sol. Campbell 127

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	HARRY CLINE	
4	Direct examination by Sol. Campbell	135
5	Cross-examination by Ms. Pringle	146
6	Redirect examination by Sol. Campbell	151
7	Recross examination by Ms. Pringle	151
8	DEBORAH GOFF	
9	Direct examination by Sol. Garfield	152
10	Cross-examination by Ms. Pringle	162
11	Redirect examination by Sol. Garfield	168
12	Recross examination by Ms. Pringle	170
13	BRADLEY MARCUS	
14	Direct examination by Sol. Garfield	177
15	MARIE WARING	
16	Direct examination by Sol. Campbell	185
17	Cross-examination by Ms. Pringle	187
18	SANDRA THOMAS	
19	Direct examination by Sol. Campbell	192
20	Cross-examination by Ms. Pringle	197
21	Redirect examination by Sol. Campbell	202
22		
23		
24		
25		

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	A.L. THOMAS	
4	Direct examination by Sol. Campbell	203
5	Cross-examination by Mr. Strickler	219
6	Direct examination by Sol. Campbell	221
7	Cross-examination by Mr. Strickler	244
8	Redirect examination by Sol. Campbell	338
9	KEVIN REECE	
10	Direct examination by Solicitor Campbell	346
11	Cross-examination by Mr. Strickler	382
12		
13	Motions	402
14	Closing Argument by Solicitor Campbell	410
15	Closing Argument by Mr. Strickler	428
16	Closing Argument by Solicitor Campbell	448
17	Charge by The Court	478
18	Motions	500
19	Sentencing	510
20	Certificate	511
21		
22		
23		
24		
25		

1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3		<u>State's Exhibits</u>		
4				
5	S-1	Advice of Rights		237
6	S-3	Photographic Line-up		79
7	S-119			81
8	S-120	Photographic Line-up		82
9	S-121	Photographic Line-up		82
10	S-122	Photographic Line-up		82
11	S-123	Photographic Line-up		86
12	S-124	DNA Chart		
13	S-125	DNA Chart		191
14	S-126	Indictment		
15	S-127	Indictment		
16	S-128	Photograph		143
17	S-129	Photograph		143
18	S-130	Photograph		
19	S-131	Record	58	59
20	S-132	CD/Video		139
21	S-133	Composite		159
22	S-134	Photograph		186
23	S-135	Photograph	189	
24	S-136	Map		191
25				

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2				
3	S-137	CD/Audio		237
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Anything before the jury comes?

SOLICITOR CAMPBELL: Your Honor, the first witness this morning is Temika Ashford. We have put her off. Basically last week we requested from the defense any statements that they may have taken from Ms. Ashford in pursuant to this investigation.

(WHEREUPON, from this line to Page 10, Line 14, there was no backup recording for this portion and was transcribed only from the notes of the court reporter.)

SOLICITOR CAMPBELL: They did provide an unsigned statement, approximately 23 pages, I believe that they produced on Wednesday of last week. At that time I then inquired of them, because I thought that there were different statements, this short statement that was out there, that they had then -- they told me that did not exist, and I talked to Ms. Pringle about that on Friday afternoon.

I was in my office approximately a quarter till 5:00, maybe 20 till 5:00, and I received this message asking for me to call her back. I then called her back at approximately a quarter after 5:00. I didn't get the message until then, Your Honor. I then, at that point, left a message on her personal phone that I have, cell phone,

1 what -- she could call me over the weekend to discuss this
2 issue.

3 It then came to my attention that afternoon,
4 Ms. Garfield called me, indicated that she had made contact
5 with Ms. Pringle. Ms. Pringle had made contact with her and
6 told her that they had, in fact, found another statement
7 that they had turned over to the officer from Ms. Ashford
8 that had been taken. Then I believe last night they
9 delivered it by Ms. Garfield's house some time around
10 5:00PM, 6:00PM, between 5:00 and 6:00PM last night. That
11 was the first we became aware of it.

12 In addition to that, Your Honor, had that --
13 Ms. Ashford never was aware of the shorter statement, that
14 that does have the signature page with it. We requested and
15 asked them if they have any outside recordings of this
16 longer statement because Temika Ashford is sounding not
17 aware that there was a second statement taken. Therefore,
18 the only way that could be -- to later be transcribed by
19 this individual. Since this, this document to, to only the
20 way the, the -- she is fairly lower in part right now or
21 that they -- I guess my first concern I may need further
22 time. If they could provide it to us, we just haven't had a
23 chance to get with her yet on that one.

24 In addition to that, Your Honor, we are asking if they
25 have any further statements they took there in, in other

1 witnesses, that they have that, have not been turned over,
2 that will be provided to us and those be provided.

3 In addition to that, Your Honor, I would renew
4 reciprocal Rule 5. We've not received any other documents
5 in this case. And, in addition to that, Your Honor, at this
6 time we would be requesting they produce, if they have an
7 expert in this matter, I'm not sure what the testimony is
8 going to be, if they did hire an expert, that we be provided
9 with their CV or information that we can, have requested we
10 have access in, in the court for that matter, and pending
11 anything, Your Honor, I know you have already required the
12 defense, if they have any type of alibi defense in this
13 case, that I believe they said they did not, but I just want
14 to make sure about that.

15 Then, Your Honor, some time this morning we do have the
16 matter of settling his record.

17 THE COURT: Ms. Pringle.

18 MS. PRINGLE: Thank you, Your Honor.

19 By and large that is accurate. I'm not aware of
20 anything under the rule to provide those things. I provided
21 some things that came to my focus. I provided to her I
22 think at Ms. Garfield's house last night. I will collect
23 the other things that are inquired about there and comply
24 with Rule 5. The, the disclosure only part goes to the
25 defendant. I think that that goes to what he said.

1 SOLICITOR CAMPBELL: Your Honor, I think under Rule 35
2 subsection 2, information provided to -- if you could -- may
3 have upon the sufficiency thereto. The question such
4 witness testifies that we would be discussing, Your Honor.
5 I believe question to that right under the rules even though
6 the section goes primarily to the section, the proposition,
7 I believe that under the theory to turn over any statements
8 either until the witness has become a witness. That's what
9 the rule reads.

10 We just ask that the Court comply with the, the general
11 intent of the rule. We are requesting these weeks ahead of
12 time. We believe we're different, and pursuant to the rules
13 would apply, and we just ask that they provide the statement
14 in the same manner they have the others they have provided.

15 THE COURT: Any response, Ms. Pringle?

16 MS. PRINGLE: I just rely on my previous response, Your
17 Honor.

18 THE COURT: Well, it may not be a duty on, on the part
19 of the defendant to disclose, but under the civility rules
20 and the, and as officers of the Court, certainly there
21 should be no misrepresentations involved as it goes to any
22 participant in a trial. The defense contends that they
23 discovered a, a statement at the last minute, and then, as a
24 matter, as a matter of courtesy or, or in the spirit of
25 civility, they will turn, turned it over and notified the

1 State promptly. Whether or not that's true I'm not here to
2 judge.

3 What, what else do you want then, Ms., Ms. Campbell?

4 SOLICITOR CAMPBELL: Your Honor, we would be requesting
5 just an Order to expedite matters. If they are intending to
6 offer any experts, that we either get their information or
7 be offered a CV or something so that we don't have to
8 request a recess to do research, which I think we would be
9 entitled to.

10 We're also asking if they have any alibi information or
11 defense in this case, we're renewing our reciprocal Rule 5
12 as to any documents or anything else that we should be
13 entitled to, and we are requesting any statements that they
14 would of obtained from Sophia McGee, Ivan Moore, Sandra
15 Thomas, and Louise Taylor, who are all potential witnesses
16 for the State.

17 THE COURT: What says the defense?

18 MS. PRINGLE: I'm happy to provide that, Your Honor. I
19 just need a couple of minutes to get, get those specific
20 things together. We're not offering any alibi defense.

21 THE COURT: All right. She needs, needs a couple of
22 minutes to get those things together she says. So, we, we
23 broke on Wednesday, but we're not ready to proceed on
24 Monday.

25 SOLICITOR CAMPBELL: We can. Your Honor, I think we

C. Ray Miles - Direct examination
By Solicitor Campbell

1 are ready to proceed. We can put up at least two witnesses,
2 and somewhat we're limited because some of this is happened
3 after a certain witness just to keep, to keep it in order.
4 We do have like six witnesses here, but we would be ready to
5 proceed at this point.

6 THE COURT: All right.

7 SOLICITOR CAMPBELL: If you, if you'd let us break at
8 some point this morning to get, get with them and review
9 those matters, Your Honor. I think we have a right to
10 review those statements with the witnesses prior to putting
11 them up.

12 THE COURT: All right. If you'd bring the jury please.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: Welcome back.

16 You may call your next witness.

17 SOLICITOR CAMPBELL: May it please the Court?

18 THE COURT: Yes, ma'am.

19 SOLICITOR CAMPBELL: The State calls C. Ray Miles.

20 C. RAY MILES, after being first
21 duly sworn, testified as follows:

22 THE CLERK: Please have a seat.

23 (Witness complies.)

24 THE CLERK: State your full name for the record.

25 DIRECT EXAMINATION

C. Ray Miles - Direct examination
By Solicitor Campbell

1 BY SOLICITOR CAMPBELL:

2 Q Mr. Miles?

3 A Yes, ma'am.

4 Q Can you state your name for the record?

5 A Initial C. Ray Miles.

6 Q Okay. And you can lean up just a little and talk in
7 that microphone so everybody can hear you because it's hard
8 to hear in here.

9 A All right.

10 Q Okay. And, Mr. Miles, where are you employed?

11 A C. Ray Miles Construction Company.

12 Q And how long have you been in the construction
13 business?

14 A About since the early 60's.

15 Q Since the early 60's?

16 A Yes.

17 Q And you own your own company?

18 A Yeah.

19 Q And it's actually named after you, is that correct?

20 A Right.

21 Q And did you know Frankie McGee?

22 A Yes, ma'am.

23 Q How did you know Frankie McGee?

24 A He's come there for employment and back in---

25 Q Are those your records?

C. Ray Miles - Direct examination
By Solicitor Campbell

1 A Yeah, I got the rest of them, but we hired him the
2 first time 4/14/95.

3 Q In 1995?

4 A Right.

5 Q And without going into any details, did he continue to
6 work for you until 2004 on and off?

7 A Well, he worked through 12/19/96, and then he come back
8 in 8/18/03.

9 Q In August of '03?

10 A Yeah, and worked through July the 27th, '04.

11 Q And in your company, what, what kind of work did
12 Frankie McGee do for you?

13 A He worked with excavation crews with laying bricks and
14 building pit stations and he worked with pouring concrete
15 and he worked with that crew some and he worked with
16 equipment some.

17 Q With equipment some?

18 A Yeah, operated some -- I know rollers and, you know,
19 the small equipment like that.

20 Q Okay. And as part of his duties would he be familiar
21 with what's called a winch bar?

22 A Would he be familiar with it, I'd say yes.

23 Q And were those winch bars used in your business?

24 A Well, you use them to tighten down and secure the load
25 on a flatbed trailer.

C. Ray Miles - Direct examination
By Solicitor Campbell

1 Q And in the construction business, that's typically
2 done, is that correct?

3 MR. STRICKLER: Objection to the leading, Your Honor.

4 THE COURT: Don't lead the witness.

5 Q Is that -- what type of a -- is, is a winch bar used in
6 your business?

7 A Yeah. Well, you know, haul and secure stuff on
8 trailers, transporting goods.

9 Q And would Mr. McGee have been familiar with that?

10 A Yeah.

11 Q I'm gonna show you what's been marked as State's
12 Exhibit No. 107.

13 Do you -- you don't recognize this specific one, but
14 does that look like a winch bar?

15 A Yeah.

16 Q And is that what you-all would of used in your
17 construction business?

18 A Yeah, but the ones we had I don't believe was that big.
19 Seems like ours mostly got this end to them rod.

20 Q But does that look like a winch bar?

21 A Yeah.

22 Q And would Mr. McGee have been familiar with a winch bar
23 in your business---

24 A Yeah.

25 Q ---working for you?

C. Ray Miles - Direct examination
By Solicitor Campbell

1 A Yeah.

2 Q And tell this jury, what does a winch bar do?

3 A Secure or tighten the straps. You got to ratchet
4 behind the, like on the top of the trailer, and then you
5 stick that in there at the top with a nylon strap about four
6 inches wide over your load. You got a bunch of them up
7 there on the trailer, and that secures your load on there.

8 Q And Mr. McGee, the person that worked for you, do you
9 see him here in the courtroom?

10 A Yes.

11 Q Can you point him out for the jury?

12 A Yeah, he's the man right about the next aisle on the
13 right over there.

14 Q Sitting at the table?

15 A Right.

16 Q And what color shirt does he have on?

17 A Looks kind of purple I guess. I'm about color blind
18 too.

19 SOLICITOR CAMPBELL: Your Honor, may the record reflect
20 he's identified the defendant?

21 THE COURT: Yes.

22 SOLICITOR CAMPBELL: That's all we have.

23 THE COURT: Cross-examination.

24 MR. STRICKLER: Thank you, Your Honor.

25 May it please the Court?

C. Ray Miles - Cross-examination
By Mr. Strickler

1 CROSS-EXAMINATION

2 BY MR. STRICKLER:

3 Q Good morning, Mr. Miles.

4 A Yes, sir.

5 Q My name is Doug Strickler. I'm one of the people here
6 representing Frankie.

7 A Yeah.

8 Q I just got a couple questions for you.

9 A All right.

10 Q Looks like say Frankie worked for you for two periods,
11 from April of '95 through December of '96?

12 A That's correct.

13 Q So, that's what, about a year and eight months,
14 something like that?

15 A Yeah, that's right.

16 Q And then August '03 through July '04, that's just a
17 little less than -- is that 11 months?

18 A Yes, sir.

19 Q Okay. Now, I was trying to keep track of what you were
20 saying as far as what his job was, but it was -- I believe
21 you said it had something to do with laying brick?

22 A Yeah, he worked with the crew building catch basins.

23 Q Who -- what? I'm sorry.

24 A Catch basins, drainage for inlets on the highway
25 project.

C. Ray Miles - Cross-examination
By Mr. Strickler

1 Q Okay. And he did some concrete pouring also or part of
2 the time?

3 A He was with the concrete crew also.

4 Q Okay. And then I believe you said he operated some
5 rollers?

6 A Yeah.

7 Q That's those things that roll down the asphalt or, or
8 pound down the earth?

9 A The earth, compact dirt, yeah.

10 Q Okay.

11 A I call it a roller.

12 Q Now, you indicated winch bars are used to tighten loads
13 on flatbed trailers, correct?

14 A Right.

15 Q Okay.

16 A Secure a load, you know.

17 Q Okay. And you indicated Frankie would of been
18 familiar with them?

19 A I'm sure he would of.

20 Q Not because he was tightening the loads himself, but
21 because they'd be on work sites that he had or what?

22 A Well, I don't know if he ever hauled anything and
23 used one.

24 Q Okay.

25 A I mean he did not drive a truck.

C. Ray Miles - Cross-examination
By Mr. Strickler

1 Q Okay.

2 A He may of -- if somebody come in with a little load on
3 the top, he may of helped take it loose and set them off or
4 set them on to the structures. I feel sure he'd be familiar
5 with what it is.

6 Q But your statement that your, you feel sure he'd be
7 familiar with what it is is not based on personal
8 observation on your part, correct?

9 A Right.

10 Q Just the nature of the work, you, you would expect---

11 A That's right.

12 Q ---you would expect that he would be familiar with
13 it?

14 A That's correct.

15 Q Now, let me show you what's marked as State's Exhibit
16 107. This is the thing that the prosecution showed you.
17 Now, I'm sorry. I couldn't see, I couldn't see it when she
18 was holding it up for you.

19 A Uh-huh. (Affirmative).

20 Q You believe -- I believe you said the ones that she
21 used in your work were smaller than this, is that correct?

22 A As well as I can recall, they were not quite that
23 long.

24 Q Okay.

25 A But it got the same end of it, the same function.

C. Ray Miles - Cross-examination
By Mr. Strickler

- 1 Q They got the end here?
- 2 A Yeah, the---
- 3 Q This end right here?
- 4 A Around the bottom.
- 5 Q Okay. What about this other end, they don't have this
- 6 end, the one you used?
- 7 A I don't remember mine has that one.
- 8 Q Okay. So -- just so the jury can see what we're
- 9 talking about, okay?
- 10 A Right.
- 11 Q The ones you're familiar with are not as large as this,
- 12 correct?
- 13 A Correct.
- 14 Q And they have this kind of end on them?
- 15 A Right.
- 16 Q But they don't have this square end?
- 17 A I don't -- if it is, if it is seems like mine's small
- 18 or shorter.
- 19 Q Okay.
- 20 A They may have that on the other end. I'm just not
- 21 positive.
- 22 Q But you didn't remember them having that on there?
- 23 A See, I've ended myself in '94.
- 24 Q Yes, sir.
- 25 A I'm not on the job like I use to be before that.

C. Ray Miles - Redirect examination
By Solicitor Campbell

1 Q Okay. Thank you, sir.

2 That's all I have.

3 SOLICITOR CAMPBELL: Just a couple questions.

4 THE COURT: Yes.

5 REDIRECT EXAMINATION

6 BY SOLICITOR CAMPBELL:

7 Q In, in order to do the concrete work and brick work,
8 the bricks and stuff would have to be loaded and unloaded,
9 is that correct?

10 A Correct. Now, we did have one truck with the catch
11 basin crew that had the winch on it, but the -- to set the
12 top one off, they use a, sometimes they on the same truck,
13 but you have to take to something secure them down, take
14 them off and --.

15 Q Like with a winch bar?

16 A Yeah.

17 Q Okay. Thank you.

18 I don't have anything further.

19 THE COURT: Anything further?

20 MR. STRICKLER: No, sir.

21 THE COURT: All right. Thank you, sir. You may step
22 down.

23 WITNESS: Yes, sir.

24 THE COURT: Call your next witness.

25 SOLICITOR GARFIELD: Thank you, Your Honor.

Erskine Moody - Direct examination
By Solicitor Garfield

1 The State calls officer Erskine Moody.

2 ERSKINE MOODY, being first duly
3 sworn, testified as follows:

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

6 THE COURT: Hold on just for a moment.

7 SOLICITOR GARFIELD: Yes, sir.

8 (Pause.)

9 WITNESS: Officer Erskine Moody. Columbia Police
10 Department.

11 THE COURT: You may proceed.

12 SOLICITOR GARFIELD: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY SOLICITOR GARFIELD:

15 Q Officer Moody, where are you employed?

16 A Columbia Police Department.

17 Q And what are your duties with the Columbia Police
18 Department?

19 A Patrol duties on the street, traffic tickets.

20 Q Do you respond to calls---

21 A Yes.

22 Q ---through 9-1-1?

23 A Yes, ma'am.

24 Q And were these your duties also back in May of 2009?

25 A Yes, ma'am.

Erskine Moody - Direct examination
By Solicitor Garfield

1 Q And specifically what region were you assigned to work
2 in back in May of 2009?

3 A North region.

4 Q Can you explain to the jury what north region means?

5 A North region is the city limits from Elmwood up to 20,
6 from Farrow over to Broad River.

7 Q And in north region, does that include the neighborhood
8 of, just known as Greenview?

9 A Yes, ma'am.

10 Q And particularly were you working on the early morning
11 hours of May 4th, 2009?

12 A Yes, ma'am.

13 Q And did you receive any sort of call to the Greenview
14 area?

15 A Yes, ma'am.

16 Q And can you explain to the jury the nature of that call
17 that you received?

18 A Yes, ma'am, I responded to the call. I believe it came
19 out to be, ended up being an assault call at which time,
20 while I was on my way, Officer Duckett gave a possible
21 description of a subject of being with white shirt, dark
22 pants. While responding, I made contact with two subjects,
23 one subject having a white shirt, dark pants. Upon contact
24 with the subjects, that one subject began to run.

25 Q Now, I'm gonna stop you just a second cause you're,

Erskine Moody - Direct examination
By Solicitor Garfield

1 you're going pretty fast.

2 A I'm sorry.

3 Q You come into contact with two subjects?

4 A Yes, ma'am.

5 Q And can you explain where you came into contact with
6 these individuals?

7 A Yes, ma'am, they were on Luke Street.

8 Q All right.

9 A Luke and, Luke and Christian Street. There's a little
10 four way right there.

11 Q Okay. And there were two individuals?

12 A Yes, ma'am.

13 Q And one of the individuals had what type of a
14 description?

15 A One of them had on a white shirt and dark pants.

16 Q And once you spotted these two individuals, and
17 realizing one matched the description, what course of action
18 did you next take?

19 A I stopped my vehicle, got out of my vehicle, and told
20 the subjects to put their hands on my vehicle for my own
21 safety due to the nature of the call.

22 Q Did the subjects abide by your demands?

23 A One subject did, the one that did not match the
24 description. The one that matched the description began to
25 walk away from me.

Erskine Moody - Direct examination
By Solicitor Garfield

1 Q Okay. And when he began to walk away from you, what
2 did you do?

3 A I began to walk towards him. As he was stopped, we,
4 you know, I need to talk to you, come back, at which time he
5 began to walk away more and where he, where he began to flee
6 from me.

7 Q And when you say flee, begin to run?

8 A Yes, ma'am.

9 Q And at that time did you proceed to trace that, chase
10 that individual?

11 A Yes, ma'am.

12 Q And where did he go?

13 A He ran approximately half a block to a house on Luke
14 Street, which we determined to be his house, his residence.

15 Q And were you able to apprehend this person?

16 A Yes, ma'am, after a brief struggle over the door,
17 where, where we struggled over the door, he tried to shut it
18 on me, I put my foot inside the door, and he was -- he ended
19 up surrendering himself after he saw that we was not
20 going---

21 Q Were you able to make an identification on this person?

22 A Yes, ma'am.

23 Q And what did the -- who was this person?

24 A David Williams.

25 Q And once you had David Williams, what did you do to

Erskine Moody - Direct examination
By Solicitor Garfield

1 him?

2 A We detained him. I -- obviously I detained him once he
3 surrendered himself. I walked him back down to my vehicle.
4 We had a witness from the assault come by to try to identify
5 him.

6 Q Okay. Let's talk about that for a moment.

7 You bring him back to the car. Is he later arrested
8 that night?

9 A He was.

10 Q And what---

11 A He was---

12 Q And what was he charged with?

13 A He ended up being charged with resisting arrest and
14 failure to stop for a police command.

15 Q And was he able to inform you why he ran?

16 A He told me he ran because he was smoking marijuana,
17 that he had a blunt.

18 Q Did you find any marijuana on him?

19 A No, I was not able. He said he dropped it when he was
20 running from me, and I was unable to find it.

21 Q Were you able to detect that smell about his body?

22 A I did smell marijuana on him.

23 Q And you said you brought him back to your patrol car?

24 A Yes, ma'am.

25 Q Was the other individual that initially complied with

Erskine Moody - Direct examination
By Solicitor Garfield

1 your request present?

2 A To tell you the truth, ma'am, I don't recall if he
3 stayed on scene or not.

4 Q Okay. And a witness came by.

5 were you familiar with the name of this witness?

6 A No, ma'am.

7 Q Do you know how she came to this location where you
8 were?

9 A She came by another officer, Officer Forest.

10 Q And did she -- was she brought by a vehicle?

11 A Yes, ma'am.

12 Q And was she taken out of the vehicle?

13 A No, ma'am.

14 Q And how does this kind of identification take place?

15 A Usually when an assault case or any kind of case like
16 this happens, and we have a possible subject and a possible
17 witness, we bring the witness by, shine the lights on the
18 subject. That way anybody inside the vehicle that's doing
19 the identifying can't, they can't see that person inside the
20 vehicle.

21 Q The person that's being---

22 A The witness, right.

23 Q And then the witness is inside the vehicle?

24 A Right.

25 Q And were you a party to what the witness indicated?

Erskine Moody - Direct examination
By Solicitor Garfield

1 A I was standing besides Mr. Williams holding him while
2 the witness was making the identification.

3 Q And when -- through your investigation in this case,
4 what was determined to be the results of that witness trying
5 to identify this person?

6 A She had problems with the clothing on Mr. Williams.
7 she didn't, she didn't believe -- she had a little conflict
8 with the clothing.

9 Q The clothing being the same?

10 A Being different.

11 Q Than the person that she had seen---

12 A Yes, sir.

13 Q ---do the assaults?

14 SOLICITOR GARFIELD: Beg the Court's indulgence.

15 (Pause.)

16 Q Thank you, officer. Please answer any questions
17 defense counsel may have for you.

18 THE COURT: Defense.

19 MS. DAVIS: Thank you, Your Honor.

20 May it please the Court.

21 CROSS-EXAMINATION

22 BY MS. DAVIS:

23 Q Good morning, Officer Moody.

24 A Good morning.

25 Q So, you testified you were assigned to the north region

Erskine Moody - Cross-examination
By Ms. Davis

1 at this time?

2 A Yes, ma'am.

3 Q So, you're really familiar with that area?

4 A Yes, ma'am.

5 Q And particularly the Greenview area that we're talking
6 about today?

7 A Yes, ma'am.

8 Q So, you, you know that area as well?

9 A Yes, ma'am.

10 Q and the place that you found -- or I'm sorry. The
11 place that you saw the suspect that was matching the
12 description -- if I can just have you stand down here so we
13 can look at this.

14 A (Witness comes down from the stand.)

15 Q And this is Exhibit, State's Exhibit 110, and this
16 shows the Greenview area?

17 A Yes, ma'am.

18 Q And this here is Farrow Road?

19 A Yes, ma'am.

20 Q And you actually saw the person that you stopped at the
21 corner of Luke and Christian I think you said?

22 A Yes, ma'am, it was, it was in this area right here
23 where that black box is.

24 Q So, Luke Street is right here?

25 A Yes, ma'am.

Erskine Moody - Cross-examination
By Ms. Davis

1 Q And then Farrow Road, there's actually the gas or the
2 Exxon station is right here?

3 A Right.

4 Q And -- okay. And then this is Issac Street over here?

5 A Yes, ma'am.

6 Q So, as you were coming through, that's when you saw the
7 person matching the description?

8 A Yes, ma'am.

9 Q You can have a seat.

10 A (Witness returns to the stand.)

11 Q And you stated the description that you heard was over
12 dispatch?

13 A It was from another officer. Another officer stated he
14 saw a possible subject walking down Farrow that matched the
15 description.

16 Q And that description was a black male?

17 A Yes, ma'am.

18 Q With a white shirt?

19 A Yes, ma'am.

20 Q Blue jeans, wearing gloves?

21 A Yes, ma'am.

22 Q And, so, when you came into the area to respond to that
23 call, call, that's when you saw those two individuals?

24 A Yes, ma'am.

25 Q And when you approached them, the one who matched the

Erskine Moody - Cross-examination
By Ms. Davis

1 description is the one who fled?

2 A Yes, ma'am.

3 Q And you said he fled just a short ways to where he
4 lived?

5 A Yes, ma'am.

6 Q Issac Street?

7 A Yes, ma'am.

8 Q And when he was apprehended he told you he ran because
9 he had marijuana?

10 A Yes, ma'am.

11 Q Did you find marijuana on him?

12 A No, ma'am.

13 Q And he was not charged with any marijuana, correct?

14 A No, ma'am.

15 Q And you stated, let's see, that the witness that came
16 by to do the identification, you weren't aware of the
17 witness' name?

18 A No, ma'am.

19 Q And you were standing outside of the vehicle when she
20 came by or you were inside?

21 A I was outside the vehicle.

22 Q Outside the vehicle?

23 A Yes, ma'am.

24 Q And you stated that, at that point, she was just driven
25 up in a patrol car?

Erskine Moody - Cross-examination
By MS. Davis

- 1 A Yes, ma'am.
- 2 Q And she -- the light was shined on Mr. Williams --
- 3 A Right.
- 4 Q -- who was sitting in the back of the vehicle?
- 5 A No, he was, he was standing outside the vehicle with
- 6 me.
- 7 Q So, he had gotten -- he was outside the vehicle?
- 8 A Yes, ma'am.
- 9 Q And she drove up?
- 10 A As she drove up. She was inside the vehicle.
- 11 Q And they shined the light right on the face, on his
- 12 face?
- 13 A On his face.
- 14 Q And at that point she was given time to view him?
- 15 A Yes, ma'am.
- 16 Q She wasn't rushed in any way?
- 17 A No, ma'am.
- 18 Q Y'all gave her plenty of time to look?
- 19 A Yes, ma'am.
- 20 Q Certainly no one told her to say that's the guy?
- 21 A No, ma'am.
- 22 Q And at that point you said that you recall there being
- 23 a problem with the clothing that she mentioned?
- 24 A Uh-huh. I -- from, from what I remember, there was --
- 25 she was just having a little problem with the, the clothing.

Erskine Moody - Cross-examination
By Ms. Davis

1 She said it was different.

2 Q And Mr. Williams, at that time, was still taken to
3 headquarters to be questioned in reference to this home
4 invasion?

5 A Yes, ma'am.

6 Q In reference to this assault?

7 A Yes, ma'am, he was transported to --.

8 MS. DAVIS: Beg the Court's indulgence.

9 (Pause.)

10 MS. DAVIS: Nothing further, Your Honor.

11 THE COURT: Anything?

12 SOLICITOR GARFIELD: Just briefly.

13 REDIRECT EXAMINATION

14 BY SOLICITOR GARFIELD:

15 Q You received a description of a suspect over dispatch
16 or through Officer Duckett?

17 A Right, yes, ma'am.

18 Q And I believe you testified that the description was
19 a black male?

20 A Yes, ma'am.

21 Q White shirt?

22 A Yes, ma'am.

23 Q Dark pants?

24 A It was dark pants, blue jeans.

25 Q And wearing gloves?

Erskine Moody - Redirect examination
By Solicitor Garfield

1 A I believe Officer Duckett said he did see the subject
2 in gloves.

3 Q All right. And the individual that you detained, what
4 was he wearing again?

5 A He was wearing a white shirt. I'm unsure of what, what
6 pants he had on at this time. I believe they were blue -- I
7 believe they were jeans.

8 Q But you're not sure right now?

9 A No.

10 Q Did you notice anything on him that could of been
11 blood?

12 A No, ma'am.

13 Q Anything on his shoes?

14 A No, ma'am.

15 Q Any evidence of a prior assault?

16 A No, ma'am.

17 SOLICITOR GARFIELD: Thank you. Nothing further.

18 THE COURT: Anything else?

19 MS. DAVIS: No, sir.

20 THE COURT: Thank you, sir.

21 Next witness.

22 SOLICITOR SIMPSON: The State calls Ivan Moore, and,
23 Your Honor, we need to approach.

24 THE COURT: Ladies and gentlemen, I'll have you go to
25 the jury room for a few minutes. Please do not discuss the

1 case.

2 (WHEREUPON, the following takes place outside the
3 presence of the jury.)

4 THE COURT: Yes, ma'am.

5 SOLICITOR SIMPSON: Yes, Your Honor. This witness does
6 have a prior record. We just need to settle the record.

7 THE COURT: All right.

8 SOLICITOR SIMPSON: I believe a copy of his wrap sheet
9 has been provided to the defense.

10 THE COURT: Now, what does that mean, settle the
11 record?

12 SOLICITOR SIMPSON: As to which offenses the State will
13 be, I mean that the defense will potentially cross on for
14 impeachment purposes, purposes.

15 THE COURT: Does someone have something to say?

16 SOLICITOR SIMPSON: Yes, Your Honor.

17 His prior record is fairly lengthy. He has simple
18 possession of marijuana from 2004, distribution of crack
19 cocaine from 2004, sell of stolen pistol, forgery from 2004,
20 possession of cocaine, and failure to stop for a blue light
21 in 2005, simple possession of marijuana in 2005, possession
22 of cocaine in 2006. Also, in 2006, distribution of crack
23 cocaine, distribution of crack cocaine within the proximity
24 of a school or church, possession of cocaine, failure to
25 stop for a blue light, simple possession of marijuana

1 second, and distribution of cocaine.

2 He also has several other minor charges in '08
3 including simple possession of marijuana, breach of peace in
4 2009. He also has pending charges in our office, felon in
5 possession of a firearm, forgery, possession of crack,
6 assault with intent to kill, possession with intent to
7 distribute crack cocaine, simple possession of marijuana,
8 and possession of drugs.

9 THE COURT: How many years have those cases been
10 pending?

11 SOLICITOR SIMPSON: I believe these are pending from no
12 later than 2009 with most of them being 2010.

13 THE COURT: What say the defense?

14 MR. STRICKLER: Yes, sir, if it please the Court.

15 What I have come up with was a distribution of crack.
16 Conviction date was June 2004. Possession of a pistol by
17 certain persons. This conviction date was June 2004. A
18 forgery conviction in June 2004, a failure to stop for a
19 blue light in 2006, and possession of marijuana second.

20 THE COURT: What are you doing repeating, what she's
21 repeated or distinguishing what she has said?

22 MR. WELCH: I'm trying to distinguish, yes, sir.
23 There's possession of marijuana second. That only carries a
24 year. I don't think that's impeachable.

25 The Year 2006, possession of cocaine, a series of drug

1 convictions, failure to stop.

2 Then, Your Honor, she, she, at the end, listed a series
3 of charges for which he is currently being prosecuted by
4 their office, and I would submit that those are proper
5 grounds for some questioning about.

6 THE COURT: Do any of y'all have a dispute with
7 anything?

8 SOLICITOR SIMPSON: No, Your Honor.

9 THE COURT: All right. There's no dispute then. Then
10 we're ready for the jury.

11 SOLICITOR SIMPSON: We are, Your Honor.

12 THE COURT: We'll take about a two minute stretch and
13 then bring the jury.

14 (WHEREUPON, a short recess was taken at this time.)

15 THE COURT: Bring the jury panel.

16 (WHEREUPON, the following takes place within the
17 presence of the jury.)

18 THE COURT: Call your next witness.

19 SOLICITOR SIMPSON: Ivan Moore.

20 THE COURT: Come forward, sir.

21 IVAN MOORE, being first duly sworn,
22 testified as follows:

23 THE CLERK: Please have a seat and state your full name
24 for the record.

25 DIRECT EXAMINATION

Ivan Moore - Direct examination
By Solicitor Simpson

1 BY SOLICITOR SIMPSON:

2 Q Would you please introduce yourself to the jury?

3 A Ivan Moore.

4 Q How old are you?

5 A Twenty-five.

6 Q Where are you currently living?

7 A [REDACTED]

8 Q And where were you living back in May of 2009?

9 A [REDACTED]

10 Q And what area is that?

11 A In Greenvew.

12 Q Can you describe a little bit about that area, Ames
13 Road?

14 A A drug related area basically.

15 Q And you actually have a prior record, isn't that right?

16 A Yes, ma'am.

17 Q Including a distribution of crack cocaine from 2004?

18 A Yes, ma'am.

19 Q Sale of a stolen pistol?

20 A Yes, ma'am.

21 Q Forgery?

22 A Yes, ma'am.

23 Q In 2006, possession of cocaine?

24 A Yes, ma'am.

25 Q And distribution of crack cocaine?

Ivan Moore - Direct examination
By Solicitor Simpson

1 A Yes, ma'am.

2 Q Distribution of crack cocaine within the proximity of a
3 school or church?

4 A Yes, ma'am.

5 Q As well as possession of cocaine and failure to stop
6 for a blue light?

7 A Yes, ma'am.

8 Q And a distribution of cocaine?

9 A Yes, ma'am.

10 Q Are you familiar with the defendant---

11 A Yes, ma'am.

12 Q ---Frankie McGee?

13 A Yes, ma'am.

14 Q And how do you know Frankie McGee?

15 A Just coming through the area, to the house.

16 Q What area is that that he would come through?

17 A Ames Road. The Greenvue area.

18 Q And was he there back in May of 2009?

19 A Yes, ma'am.

20 Q And are you familiar with his wife or does he have a
21 wife?

22 A Well, she use to come pick him up. She done come and
23 picked him up before. So, that's the only time, but besides
24 that, no, ma'am.

25 Q Okay. But she would come pick him up when he was in

Ivan Moore - Direct examination
By Solicitor Simpson

1 the Greenview area or at Greenview?

2 A Yes, ma'am.

3 Q On occasion?

4 A Yes, ma'am.

5 Q What type of vehicle would the defendant be in
6 sometimes?

7 A A red pickup truck.

8 Q And what would he do with that truck?

9 A Rent it out.

10 Q He'd rent it out?

11 A Yes, ma'am.

12 Q And do you know if that belonged to him or his wife?

13 A I think it belonged to his wife, but he use to drive it
14 though.

15 Q Okay. And you said earlier that she would actually
16 have to come get him?

17 A Yes, ma'am.

18 Q And get the truck sometimes?

19 A Yes, ma'am.

20 Q Now, you have several pending charges in our office as
21 well, right?

22 A Yes, ma'am.

23 Q Including a pointing and presenting?

24 A Yes, ma'am.

25 Q Felon in possession of a firearm?

Ivan Moore - Direct examination
By Solicitor Simpson

- 1 A Yes, ma'am.
- 2 Q Forgery?
- 3 A Yes, ma'am.
- 4 Q Possession of crack?
- 5 A Yes, ma'am.
- 6 Q And assault with intent to kill two counts?
- 7 A Yes, ma'am.
- 8 Q As well as possession with intent to distribute crack
- 9 cocaine---
- 10 A Yes, ma'am.
- 11 Q ---isn't that right?
- 12 And no promises have been made to you?
- 13 A No.
- 14 Q Right?
- 15 A No, ma'am.
- 16 Q We only -- the State's only asked you for the truth
- 17 here?
- 18 A Yes, ma'am.
- 19 Q And -- but you do hope somewhere down the road that
- 20 your cooperation may help you?
- 21 A Yes, ma'am.
- 22 Q And, again, how do you know the defendant?
- 23 A By coming to the house.
- 24 Q And your house, the Greenview area?
- 25 A Yes, ma'am.

Ivan Moore - Direct examination
By Solicitor Simpson

1 Q The Ames Road area?

2 A Ames Road. It's the Greenview area.

3 Q Which is a drug related area?

4 A Yes, ma'am.

5 MR. STRICKLER: I'll object. I have a matter of law,
6 sir.

7 THE COURT: sir?

8 MR. STRICKLER: I have a matter of law, sir.

9 THE COURT: All right. Ladies and gentlemen, I need to
10 have you step to the jury room.

11 (WHEREUPON, the following takes place outside the
12 presence of the jury.)

13 THE COURT: Yes, sir.

14 MR. STRICKLER: Yes, sir, at this point in time I move
15 for a mistrial in this regard. This gentlemen's testimony
16 is borne no relationship whatsoever to this case. He's
17 testified that he knows Mr. McGee from being in the
18 Greenview area. That's, that's the extent of the
19 connection.

20 That, and what made me stand up was I believe the third
21 time they ran around to the fact that it's a drug area, it's
22 a drug area, it's a drug area. It's been painted with that
23 brush, and he can't tell us anything about the offense. He
24 knows, he knows Mr. McGee from being in a drug area, from
25 being -- repeatedly his testimony is being in a drug area,
and I move for a mistrial on that basis, sir.

Ivan Moore - Direct examination
By Solicitor Simpson

1 THE COURT: Ms. Simpson.

2 SOLICITOR SIMPSON: Yes, Your Honor.

3 I believe that was the second mention. He described in
4 probably his first or second sentence that this was a drug
5 related area that he lived in. Identity is an issue in this
6 case. The State specifically cautioned him about saying
7 that Frankie McGee would actually come and buy drugs, crack
8 cocaine specifically, on numerous occasions. His testimony
9 is very relevant because it puts him in the area in May of
10 2009 at the time of this incident, and the State would argue
11 that a mistrial is -- there are no grounds for a mistrial in
12 this matter.

13 THE COURT: Mr. Strickler.

14 MR. STRICKLER: No, sir, that's the -- I've had that --
15 I've had what I have to say. I don't have anything
16 additionally. I think, once again, he's identified himself
17 as a drug dealer. He's identified Mr. -- and knowing
18 Mr. McGee as coming to his house in the Greenvue area on
19 Ames Road. I mean there is no great leap of faith that has
20 to be made there.

21 He's identified the area he's in as being a drug area.
22 He's -- then he, in essence, he's identified Mr. McGee as
23 being involved in using drugs, and I object to that, and I
24 move for a mistrial. That's -- I don't have anything in
25 addition to that, sir.

Ivan Moore - Direct examination
By Solicitor Simpson

1 THE COURT: All right. Ms. Simpson.

2 SOLICITOR SIMPSON: Briefly, at no point do I believe
3 this defendant actually identified himself as a drug dealer.
4 However, we did go through the prior record prior to even
5 him testifying, which does include drug offenses. Like I
6 said, ID is an issue in this case, and Mr. Moore can put the
7 defendant in the Greenview area at the time of this
8 incident. And, if anything, a limiting instruction would
9 cure it.

10 THE COURT: Such as what?

11 SOLICITOR SIMPSON: With respect to -- I mean it would
12 probably only seek to emphasize more, but the fact that --
13 well, I don't know. I'd leave that in Your Honor's
14 discretion.

15 THE COURT: Well, you said a limiting instruction
16 should suffice.

17 Such as what, such as what limiting instruction?

18 SOLICITOR SIMPSON: Your Honor, the State's position is
19 that there is no need for a limiting instruction, and that
20 clearly a mistrial is not warranted in this case.

21 THE COURT: Well, you've said that three times. The
22 first question to the defendant was describe the area of
23 Ames Road in Greenview, and he said a drug infested area, a
24 drug related area. I guess that's what he said. Hopefully,
25 hopefully the court reporter can determine what he said.

Ivan Moore - Direct examination
By Solicitor Simpson

1 He just kind of mumbled to me. I had a problem
2 understanding exactly what he said, but I thought that's
3 what he said. But there was no, there was no objection to
4 the question, and then he -- he went through his criminal
5 history of which was settled, and both parties agreed that
6 his criminal history was admissible.

7 Then the defendant was asked about Mr. McGee's truck,
8 which he said that he rents out, and his wife would pick him
9 up and then the defendant was asked whether Mr. McGee was
10 there I guess the month in question that the death occurred
11 or the event occurred or the assault occurred.

12 Was it in May?

13 SOLICITOR SIMPSON: Yes, Your Honor.

14 THE COURT: You asked him where, was Mr. McGee in the
15 area in May in of that particular year. He said, yes. Then
16 you asked him to reemphasize or reiterate what type of area
17 it is and he said it's a drug area.

18 Now, the defendant, without any, any objection to the
19 record at this point, says he has a matter of law, which he
20 has, has stated. Of course, the issue is whether or not, by
21 asking the question about the type of area that this
22 defendant, that this witness lives in and that Mr. McGee was
23 seen in, the area being a drug infested area, whether or not
24 that constitutes grounds for a mistrial, and/or whether or
25 not the fact that this witness who has a history of being

Ivan Moore - Direct examination
By Solicitor Simpson

1 involved in drugs and other crimes, that he knows Mr. McGee,
2 whether or not that constitutes grounds for a mistrial.

3 of course, we spent quite a bit of time last week going
4 through Mr. McGee's own statement in which he continually
5 described places where he presented as being drug houses and
6 the like. As far as what was redacted from that statement,
7 and the statements of Mr. McGee, I do not believe the Court
8 redacted all references to, to drugs or Mr. McGee's own
9 description of the areas as being drug areas.

10 Let's see here. Can the State decide what was left in
11 the, that transcript regarding Mr. McGee's description of
12 drugs and drug areas?

13 SOLICITOR SIMPSON: Beg the Court's indulgence.

14 (Pause.)

15 SOLICITOR SIMPSON: Your Honor, if I may, I do have a
16 portion of the, of the statement relative to---

17 THE COURT: I want all portions of the statement that,
18 that mentions that.

19 SOLICITOR SIMPSON: Yes, sir. Beginning on Page 46,
20 Lines 22 and 23 where the defendant is discussing the kind
21 of work that the guy had, and then it says he had a
22 landscaping business, uh-huh, is he a drug---

23 THE COURT: All right. Give me the, the page, line,
24 and the reference so we can keep moving rather than an
25 explanation.

Ivan Moore - Direct examination
By Solicitor Simpson

1 SOLICITOR SIMPSON: Oh, okay. 46, Lines 22 and 23.

2 Then page---

3 THE COURT: Now repeat what it says in, in those
4 instances.

5 SOLICITOR SIMPSON: Lines 22 and 23, is he a drug
6 dealer?

7 Yes, he's a drug dealer.

8 THE COURT: All right.

9 SOLICITOR SIMPSON: And then on Page 74, make sure I
10 get the correct lines, beginning with Lines 20 and going on
11 to Page 75, and I'll just end at the drug house, the top of
12 75. Those lines, who was it that you were telling her that
13 you hit or her, one of the drug dealers at the house that
14 night?

15 At what house?

16 That same night at the Eichelberger's?

17 No, no, no, not at the Eichelberger house, but at the
18 drug house, the drug house that I was at.

19 Your Honor, also with respect to that specific page,
20 that is something that the defendant actually requested stay
21 in.

22 Then, Your Honor, on Page 76, the first line
23 referencing drug dealers says when an individual, when a
24 person is at a drug house, you got drug dealers that come
25 and go.

Ivan Moore - Direct examination
By Solicitor Simpson

1 And then also, Your Honor, Page 85, Lines 8, Lines 15
2 through 16, and 21 through 22. Specifically the defendant
3 says he took me all around to the drug spot that I was at
4 and dropped me off right there. I've got, I've got
5 witnesses.

6 And then later down in the page yes, he got out. He
7 pulled over in front of the drug house. He got out, went to
8 the drug house.

9 And down a to 20, yes, he was, he was. All right. So,
10 he got out and went into the drug house and -- Your Honor,
11 that's as far as the State has gotten so far.

12 THE COURT: All right. Well, obviously the Court has
13 the, always has a concern and it should be scrutinized where
14 the State attempts to offer the defendant's character into
15 evidence in a trial because of the, among other things, the,
16 the threat to the defendant's Constitutional right to remain
17 silent, and also to the threat of having a jury decide a
18 case on an improper basis. That is not based on specific
19 evidence in a case, but based on the defendant's character.

20 In this case, the -- we have evidence and testimony
21 that wasn't objected to by the defense. The defense can't
22 sit idly by and rely on testimony that defense contests is
23 inadmissible be admitted, and then after a string of that
24 evidence being admitted, then, then, then, jumping up and
25 asking for a mistrial without making any objections.

Ivan Moore - Direct examination
By Solicitor Simpson

1 The -- in this particular instance, the State seems to
2 justify introducing evidence of, of Mr. McGee being seen in
3 a drug area at around the time of the crime as being, as
4 being okay as long as the State does not offer specific
5 testimony that Mr. McGee is buying drugs and using drugs on
6 that particular day. But the -- all of this evidence will,
7 will come in anyway because it's part of his statement that
8 the Court is scrutinized, and in many instances both parties
9 have indicated an agreement to have some of the testimony
10 in, and the Court is allowed some other testimony regarding
11 from Mr. McGee's own statement, and some of the, some of the
12 activities in the area.

13 Certainly -- I'm sure many others will dispute
14 Mr. McGee having this witness' characterization as the area
15 as being a drug area, but the -- it seems to be clear from
16 the testimony that there are places within the area where
17 drugs are sold or used.

18 I overrule the objection. I do not find the
19 defendant's Constitutional right to a fair trial has been
20 violated.

21 SOLICITOR SIMPSON: Thank you, Your Honor.

22 MR. STRICKLER: Thank you, Your Honor.

23 THE COURT: Bring the jury.

24 (WHEREUPON, the following takes place within the
25 presence of the jury.)

Ivan Moore - Direct examination
By Solicitor Simpson

1 BAILIFF: The jury is seated, Your Honor.

2 THE COURT: All right. Next question.

3 SOLICITOR SIMPSON: Thank you, Your Honor.

4 CONTINUED DIRECT EXAMINATION

5 BY SOLICITOR SIMPSON:

6 Q Mr. Moore, do you recall when Investigator Sumter,
7 along with another investigator, came to talk to you about
8 this case?

9 A Yes, ma'am.

10 Q And did you tell them what you knew about Frankie
11 McGee?

12 A Yes, ma'am.

13 Q And do you see the person you know as Frankie McGee
14 sitting here in the courtroom here today?

15 A Yes, ma'am.

16 Q Can you point him out for the jury?

17 A Yes. Go ahead and do it?

18 Q Yes, sir.

19 A Right there.

20 Q Will you describe what he's wearing?

21 A Brown shirt with a long necktie.

22 SOLICITOR SIMPSON: Let the record reflect that the
23 witness has identified the defendant.

24 THE COURT: It does.

25 SOLICITOR SIMPSON: Thank you. No further questions

Ivan Moore - Cross-examination
By Mr. Strickler

1 for this witness.

2 THE COURT: Cross-examination.

3 MR. STRICKLER: Beg the Court's indulgence one moment.

4 (Pause.)

5 CROSS-EXAMINATION

6 BY MR. STRICKLER:

7 Q Let me get this straight if I can please.

8 You currently are charged with pointing and presenting
9 a firearm, correct?

10 A Yes, sir.

11 Q Felon in the possession of a firearm, correct?

12 A Uh-huh. (Affirmative).

13 Q Forgery, right?

14 A No.

15 Q No forgery?

16 A That was -- I already take care of that. That's over.

17 Q All right. Possession of crack cocaine?

18 A Yes, sir.

19 Q Possession with intent to distribute crack cocaine?

20 A Yes, sir.

21 Q Possession of marijuana?

22 A Yes, sir.

23 Q And possession of some -- just possession of drugs in
24 general?

25 A Just simple possession marijuana.

Ivan Moore - Cross-examination
By Mr. Strickler

1 Q And two counts of assault with intent to kill?

2 A Yes, sir.

3 Q All right. Now, all those charges are being prosecuted
4 by the Fifth Circuit Solicitor's Office, right?

5 A Yes, sir.

6 Q They're right here, right here in River City, right
7 here in Richland County, right?

8 A Yes, sir.

9 Q Okay. So, this office is prosecuting this case is
10 prosecuting you on those charges, right?

11 A Yes, sir.

12 Q Now, at some point in time this office right here will
13 make decisions about your future, right?

14 A Yes, sir.

15 Q Serious decisions about your future?

16 A (Witness nods affirmatively.)

17 Q Right?

18 A Yes, sir.

19 Q How much time does pointing and presenting a firearm
20 carry?

21 A I don't know.

22 Q About 15 years.

23 A I don't know.

24 Q How about assault with intent to kill?

25 A Don't know.

Ivan Moore - Cross-examination
By Mr. Strickler

- 1 Q Who's your lawyer?
- 2 A Joe Chapman.
- 3 Q Joe Nathan Chapman?
- 4 A Yes, sir.
- 5 Q You haven't talked with your lawyer about how much
- 6 these charges carry, possible penalties?
- 7 A We didn't get to that yet.
- 8 Q Okay. Assault with intent to kill?
- 9 A Don't know.
- 10 Q How about ten years a shot for 20 on two counts?
- 11 Sound about right?
- 12 A Sir, I don't now.
- 13 Q How about possession with intent to distribute crack?
- 14 A Don't know.
- 15 Q Well, let's -- you've been convicted of that before,
- 16 right?
- 17 A Yes, sir.
- 18 Q You have no idea?
- 19 A The reason why I don't know cause in my cases I'm not
- 20 ready. The one that's in possession of all until my cases
- 21 is handled, sir.
- 22 Q And, so, you won't know how much felon in possession of
- 23 a firearm carries I take it, right?
- 24 A Yeah, that carry five years.
- 25 Q Five years.

Ivan Moore - Cross-examination
By Mr. Strickler

1 First offense possession with intent to distribute
2 crack, zero to 15, right?

3 A Yes, sir.

4 Q And you've been convicted of that before.

5 So, the penalties go down when you're charged with
6 drugs or each time they go up?

7 A They go up.

8 Q So, while you're not sure how much it carries, it's
9 gonna be more than 15 years, right?

10 A If that's what you're telling me, yes, sir.

11 Q And, again, your future, as far as those charges, is
12 tied up in what the prosecutors want to do as far as
13 prosecuting you, right?

14 A Yeah, those are who gonna prosecute my charges, yes,
15 sir.

16 Q Right.

17 And they'll make a determination as to which charges
18 they actually prosecute, right?

19 A Yes, sir.

20 Q They could dismiss some, they could prosecute some,
21 right?

22 A I believe so.

23 Q So, you have every reason under the sun to make these
24 people happy, don't you?

25 A No, sir.

Ivan Moore - Redirect examination
By Solicitor Simpson

1 Q No?

2 Thank you very much.

3 SOLICITOR SIMPSON: Briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY SOLICITOR SIMPSON:

6 Q Now, Investigator Sumter actually talked to you back in
7 March of 2010, right?

8 A Yes, ma'am.

9 Q And that's actually prior to the time when you were
10 arrested on most of these new pending charges?

11 A Yes, ma'am.

12 Q And has the State promised you anything?

13 A Oh, no, ma'am.

14 MR. STRICKLER: That's been asked and answered, Your
15 Honor, on direct.

16 THE COURT: Objection overruled.

17 Q And -- but you are hoping that your cooperation might
18 help you down the road?

19 A I'm not really looking for it. But I mean yeah.
20 Any -- if it's good, yeah, but not really looking for it
21 though.

22 Q Thank you.

23 No further questions.

24 THE COURT: Anything further?

25 MR. STRICKLER: No, sir, thank you.

Marie Waring - Direct examination
By Solicitor Campbell

1 THE COURT: You may step down.

2 WITNESS: Thank you, Your Honor.

3 THE COURT: Next witness.

4 SOLICITOR CAMPBELL: State would call Marie Waring.

5 Your Honor, she is sequestered. We're getting her.

6 MARIE WARING, being first duly sworn,
7 testified as follows:

8 THE CLERK: Please have a seat.

9 (Witness complies.)

10 THE COURT: State your full name for the record.

11 DIRECT EXAMINATION

12 BY SOLICITOR CAMPBELL:

13 Q Ms. Waring, where are you employed?

14 A At South Carolina Department of Motor Vehicles.

15 Q At the Department of Motor Vehicles?

16 A Yes.

17 Q Are what do your duties include there, ma'am?

18 A Custodian of driver's records.

19 Q Driver's records?

20 A Yes.

21 Q And are driving records kept at the Department of Motor
22 vehicles in the normal course of business?

23 A Yes.

24 Q And in order for someone in South Carolina to have a
25 driver's record, y'all would have a record of that, is that

Marie Waring - Direct examination
By Solicitor Campbell

1 correct?

2 A Correct.

3 Q And at my request did you pull a driving record which
4 I'm showing you here today?

5 A Yes.

6 Q And who does that driving record belong to, ma'am?

7 A Frankie Lee McGee.

8 Q Frankie Lee McGee?

9 A Yes.

10 Q And what's the date of birth listed there?

11 A [REDACTED].

12 Q [REDACTED]?

13 A Yes.

14 Q And in driving records, does it distinguish on the
15 driving records between a regular driver's license and
16 what's known as a commercial driver's license?

17 A Yes.

18 Q And on Frankie Lee McGee's driving record, does it
19 indicate whether or not or when he first applied or got a
20 commercial driver's license?

21 A Yes.

22 Q And when was that date, ma'am?

23 A March the 18th, 1994.

24 Q 1994?

25 A Yes.

Marie Waring - Direct examination
By Solicitor Campbell

1 Q And does it also indicate that at a later date that he
2 got that commercial driver's license again?

3 A Yes.

4 Q And what date was it that he renewed or, or got his
5 commercial driver's license again?

6 A November the 25th, 2008.

7 Q November the 25th of 2008?

8 A Yes.

9 Q And is he currently licensed to be a commercial---

10 A Yes.

11 Q ---driver?

12 A Yes.

13 Q And is that a copy of the actual driving record here?

14 A Yes.

15 Q And I show you this page.

16 Does that reflect the dates you just---

17 A Yes.

18 SOLICITOR CAMPBELL: Your Honor, at this time we'd
19 offer or let me mark it and we'd offer it into evidence.

20 (WHEREUPON, the driver's record was marked as State's
21 Exhibit No. 131 for identification purposes only at this
22 time.)

23 SOLICITOR CAMPBELL: Your Honor, that would be State's
24 Exhibit 131.

25 MS. PRINGLE: No objection.

Marie Waring - Direct examination
By Solicitor Campbell

1 THE COURT: Admitted without objection.

2 (WHEREUPON, State's Exhibit No. 131 was received into
3 evidence at this time.)

4 Q And State's Exhibit 131, that's his driving record
5 which indicates those dates you just testified to?

6 A Yes.

7 Q Can you tell this jury, is there any specialized
8 training involved in getting a commercial driver's license
9 versus a regular driver's license?

10 A Yes.

11 Q And what kind of vehicles does a commercial driver, is
12 a commercialized driver able to drive that a regular driver
13 that's licensed might not be able to do?

14 A Excuse me?

15 Q What kind of vehicles has been able -- when you get
16 your commercial driver's license---

17 A Yes, 18-wheelers.

18 Q Eighteen wheelers?

19 A Yes.

20 Q Thank you.

21 I have nothing further, Your Honor.

22 THE COURT: From the defense.

23 MS. PRINGLE: Please the Court.

24 CROSS-EXAMINATION

25 BY MS. PRINGLE:

Marie Waring - Cross-examination
By Ms. Pringle

1 Q Good morning, Ms. Waring.

2 A Good morning.

3 Q Other than this one document that's right there and
4 this document, did you bring any other documents here with
5 you to court today?

6 A No, I have the same thing.

7 Q Just these, just these two sheets?

8 A Yes.

9 Q Okay.

10 A And you don't have any personal knowledge of Frankie
11 McGee at all, do you?

12 A No.

13 Q You're here in the capacity simply as a records
14 custodian?

15 A Yes.

16 Q And, so, you wouldn't know what kind of jobs he's had?

17 A No.

18 Q You wouldn't know what kind of truck or vehicle he
19 would of ever driven?

20 A No.

21 Q And having a commercial driver's license enables you to
22 drive for hire, correct?

23 A Yes.

24 MS. PRINGLE: No further questions. Thank you.

25 THE COURT: Anything further?

Temika Ashford - Direct examination
By Solicitor Campbell

1 SOLICITOR CAMPBELL: No, sir.

2 THE COURT: You may step down.

3 Next witness.

4 SOLICITOR CAMPBELL: State calls Temika Ashford.

5 Your Honor, may we approach?

6 THE COURT: Yes.

7 (WHEREUPON, a bench conference was held in the presence
8 of the jury, but out of the hearing of the jury at this
9 time.)

10 TEMIKA ASHFORD, being first duly sworn,
11 testified as follows:

12 THE CLERK: Please have a seat.

13 (Witness complies.)

14 THE CLERK: State your name for the record.

15 DIRECT EXAMINATION

16 BY SOLICITOR CAMPBELL:

17 Q Ms. Ashford, how old are you?

18 A Thirty.

19 Q Thirty?

20 A Yes, ma'am.

21 Q And do you live here in Columbia?

22 A Yes, ma'am.

23 Q How long have you lived in Columbia?

24 A All my life.

25 Q And are you currently employed?

Temika Ashford - Direct examination
By Solicitor Campbell

- 1 A No, ma'am.
- 2 Q Do you have any children?
- 3 A Yes, ma'am.
- 4 Q How many children do you have?
- 5 A Three.
- 6 Q Did you know Reverend Eichelberger?
- 7 A Yes, ma'am.
- 8 Q And how did you initially meet Reverend Eichelberger?
- 9 A I had called for a cab one day and he invited me to
- 10 come to church.
- 11 Q And where was his church located?
- 12 A At the Blue Ribbon.
- 13 Q Blue Ribbon Cab Company?
- 14 A Yes, ma'am.
- 15 Q And what street is that on?
- 16 Do you know?
- 17 A North Main.
- 18 Q And are you familiar with the Greenview area?
- 19 A Yes, ma'am.
- 20 Q Do you live there?
- 21 A No, ma'am.
- 22 Q Did you know where the Reverend lived?
- 23 A Yes, ma'am.
- 24 Q And did he live in the Greenview area?
- 25 A Yes, ma'am.

Temika Ashford - Direct examination
By Solicitor Campbell

1 Q I want to turn your attention -- how long had you known
2 the Reverend when -- we're getting ready to talk about what
3 happened on May the 3rd.

4 How long had you known him approximately?

5 A Maybe two years, three. Maybe two, three years.

6 Q And during the time he'd known you on prior occasions,
7 had he done anything for you?

8 MS. PRINGLE: Objection to leading, Your Honor.

9 THE COURT: Don't lead the witness.

10 Q Had he done anything for you?

11 A Yes, ma'am.

12 Q And what had he done for you?

13 A He helped pay my bills, some of my bills.

14 Q Some of your bills?

15 A Uh-huh. (Affirmative).

16 Q I want to turn your attention to May the 3rd of 2009.
17 Did you have any contact with the Reverend that day?

18 A Yes, ma'am.

19 Q And tell the jury what happened that day.

20 A I had called earlier to ask if he could help me with my
21 water bill, and he told me to call him back a little later.
22 So, I called back a little later that night.

23 Q And when you called him back later that night, did you
24 talk to him again?

25 A Yes, ma'am.

Temika Ashford - Direct examination
By Solicitor Campbell

- 1 Q And as a result of that conversation, what did you do?
- 2 A He told me to come on over.
- 3 Q And where did you go?
- 4 A To Greenview.
- 5 Q To Greenview?
- 6 A Yes, ma'am.
- 7 Q Specifically where in Greenview were you going?
- 8 A Reverend Eichelberger's house.
- 9 Q And do you remember about what time that night this was
- 10 when you got over to his house?
- 11 A I guess about 11:00.
- 12 Q And that's a general time?
- 13 A Yes, ma'am, I don't exactly remember what time it was.
- 14 Q And when you got over to his house, what did you do?
- 15 A I parked my car---
- 16 Q Okay. Did you go---
- 17 A ---and---
- 18 Q Did you go into his house?
- 19 A Yes, ma'am.
- 20 Q And do you remember what door you went into?
- 21 A Yes, ma'am.
- 22 Q And what door was that?
- 23 A The, the living room door, the front door.
- 24 Q Were you aware, on his house, is also a side door?
- 25 A Yes, ma'am.

Temika Ashford - Direct examination
By Solicitor Campbell

1 Q But you went in the front door?

2 A Yes, ma'am.

3 Q And once inside, what area of the house did you go in
4 or did you stay in?

5 A The living room.

6 Q The living room?

7 A Yes, ma'am.

8 Q Tell this jury what caught your attention.

9 Do you need some water?

10 A No, ma'am, I'm okay.

11 Q You okay?

12 A Uh-huh. (Affirmative).

13 Q Once you were inside, what happened?

14 A We sat in the living room for a while and talked,
15 talked about church and my bills, and me getting help with
16 my bills and stuff and coming to church. So, we sat there
17 for a minute. After a minute of us sitting there, we
18 heard -- I heard the first one (inaudible). Like it wasn't
19 so loud. The second time around the sound got a little
20 louder, and he didn't hear it the first time, but I did. He
21 said you ain't hear nothing, girl, you just hearing things.

22 So, the second time around he heard the noise and he
23 said well, let me go around here and check and see what's
24 again on. He went around there. When he went -- he asked
25 someone who did you---

Temika Ashford - Direct examination
By Solicitor Campbell

- 1 Q Let me back up. Let me back up for a second.
- 2 A Okay.
- 3 Q You said you first heard a noise?
- 4 A Uh-huh. (Affirmative).
- 5 Q And then how, how long was it before you heard another
- 6 noise?
- 7 A Not long after.
- 8 Q Could you tell what part of the house the noise was
- 9 coming from?
- 10 A No, ma'am, not really.
- 11 Q Was it coming from in the room you were in?
- 12 A No, ma'am.
- 13 Q And at some point you said after -- you heard the noise
- 14 a second time, he got up, right?
- 15 A Yes, ma'am, cause he heard the second, the second time
- 16 around.
- 17 Q And did he stay in the living room or did he go
- 18 somewhere else?
- 19 A I stayed in the living room.
- 20 Q Where did he go?
- 21 A He went through the living room door around to where
- 22 the noise was coming from.
- 23 Q And at that point could you see him anymore?
- 24 A No, ma'am.
- 25 Q But could you still hear what was going on in the other

Temika Ashford - Direct examination
By Solicitor Campbell

1 part of the house?

2 A Yes, ma'am.

3 Q And what did you hear once he exited the living room
4 and went into another part of the house and you couldn't see
5 him anymore?

6 A He asked someone what is you doing here, how did you
7 get in here, and---

8 Q who said that?

9 A Reverend Eichelberger.

10 Q And you could recognize his voice?

11 A Yes, ma'am.

12 Q What did you hear next cause you couldn't see into that
13 room, could you?

14 MS. PRINGLE: Objection to leading.

15 THE COURT: Don't lead the witness.

16 Q Could you see into that room?

17 A No, ma'am, I couldn't see in that room.

18 Q What happened next?

19 A The next I heard a lot of, like a noise, like a little
20 bit of commotion, and I got up, tiptoed to the front door,
21 and I ran out and got in my car.

22 Q Why did you do?

23 A Cause I heard him hollering.

24 Q Who hollering?

25 A Reverend Eichelberger.

Temika Ashford - Direct examination
By Solicitor Campbell

1 Q And what did you hear him hollering?

2 A He was saying oh. After maybe the first oh he didn't
3 say nothing else.

4 Q And what was going through your mind?

5 A Something up.

6 MS. PRINGLE: Object to the relevance of that question,
7 Your Honor.

8 THE COURT: Objection's overruled.

9 Q You can answer.

10 A It just didn't sound right.

11 Q So, at that point is when you said you did what?

12 A I got an alarm on my car.

13 Q All right. Let me back up.

14 while you're still in the house, what did you do?

15 A Oh, I tiptoed to the front door and I got to the front
16 door and I ran to my car.

17 Q What did you do when you got to your car?

18 A I hit my alarm button and opened my door.

19 Q Why did you run to your car?

20 A Because I was scared.

21 Q You hit the alarm button and then what happened?

22 A I jumped in my car and I pulled off. I went -- and I
23 got in my car and I went around the curve, came back around,
24 and I called Reverend Eichelberger on the phone. He didn't
25 answer. So, as I came back around, went down the street, I

Temika Ashford - Direct examination
By Solicitor Campbell

1 seen -- I slowed down a little bit, not much, rode past the
2 house and looked over, and that's when I seen a guy standing
3 there.

4 Q Let me back up.

5 where was your car parked?

6 A Not in the front, but on the side.

7 Q So, would that have been on Issac Street or the other
8 street?

9 A The other -- the side street.

10 Q And you said you jumped into your car and which way did
11 you go?

12 A I went up the street to the stop sign and made a right.

13 Q Onto what road?

14 A On to Farrow Road.

15 Q And then what did you do?

16 A I came back around, turned back on Issac Street.

17 Q On Issac Street?

18 A Uh-huh. (Affirmative).

19 Q And is that the street where Reverend Eichelberger's
20 house is?

21 A Yes, ma'am.

22 Q And what happened next?

23 A I started calling, before I got to Issac Street, I
24 started calling as soon as I left out. I got in my car and
25 he didn't answer. So, I said, well, I'm gonna go back

Temika Ashford - Direct examination
By Solicitor Campbell

1 around. On my way going back around, I went back around, I
2 seen a guy standing out there.

3 Q You said you saw a guy standing out there.

4 Where would you see a guy?

5 A Standing on the, by the front porch.

6 Q The front porch or the side porch?

7 A Yeah, the, the porch right there where the, the porch
8 and where you go in. You go in the front, the other door,
9 the side door, yes, ma'am.

10 Q Right there at the side door?

11 A Uh-huh. (Affirmative).

12 Q And you said you saw a person.

13 How far away from you were you when you saw him?

14 A I was by the road and they were --.

15 Q He was on the porch --

16 A Uh-huh. (Affirmative).

17 Q -- is what you just testified to, right?

18 A Yes, ma'am.

19 Q And at that point did you get a look at him?

20 A Not a good look, but I, I glanced over.

21 Q And when you glanced over, did you notice anything
22 about his clothing or about his person?

23 A Yes, ma'am.

24 Q And what did you notice, Ms. Ashford?

25 A He had a receding hairline. He was a kind of a husky

Temika Ashford - Direct examination
By Solicitor Campbell

1 guy with a big belly. He had on a white sweaty t-shirt and
2 was sweating around the neck part, and --.

3 Q Did you see him with anything in his hands?

4 A Yes, ma'am.

5 Q Okay. Tell the jury what you saw.

6 A I seen a long object like a pipe or something.

7 Q And did you notice anything else about his hands?

8 A Yes, ma'am, he had on gloves.

9 Q Could you tell what color they looked to be?

10 A Yes, ma'am, white.

11 Q What was he doing there on the porch when you saw him?

12 A Just standing there like -- just standing there.

13 Q Was he holding the bar or did he have the bar down on
14 the ground or what, the pipe?

15 A He had it in his hand.

16 Q And you were on the street?

17 A Yes, ma'am.

18 Q And were you still moving at this point or did you stop
19 or what?

20 A I never stopped.

21 Q Why didn't you stop?

22 A I was scared.

23 Q What happened next?

24 A I went further down. After I seen that, I'm on the
25 phone calling 9-1-1. After I go around the corner, I roam

Temika Ashford - Direct examination
By Solicitor Campbell

1 around, and to keep from going to the house till the police
2 got there, I went on around the curve till I seen the police
3 and then I stopped at the house.

4 Q So, you stayed in the area?

5 A Yes, ma'am.

6 Q And where was this person when you last saw him near
7 the house?

8 A Walking up Farrow Road going up---

9 Q Okay. Let me back up --

10 A Okay.

11 Q -- before we get to that.

12 The first time when you passed by the house --

13 A Uh-huh. (Affirmative.)

14 Q -- where was he?

15 A Standing on the porch.

16 Q Okay. Did you ever see him move from there?

17 A No, ma'am.

18 Q You said you continued around the block?

19 A Uh-huh. (Affirmative).

20 Q In which direction did you go this time?

21 A I went straight.

22 Q You went straight?

23 A Uh-huh. (Affirmative).

24 Q Down Issac Street?

25 A Yes, ma'am.

Temika Ashford - Direct examination
By Solicitor Campbell

1 Q And did you continue -- did you ever turn off Issac
2 Street?

3 A Yes, ma'am, I made a right on to the, the next street.

4 Q And where did you go then?

5 A I went on around to the stop sign. I came back up the,
6 the next street and I came on back up and went up Farrow
7 Road.

8 Q You went up Farrow Road?

9 A Uh-huh. (Affirmative).

10 Q And you mentioned that when you, you -- you just
11 mentioned something about seeing someone on Farrow Road?

12 A Yes, ma'am.

13 Q And as you went down Farrow Road, what, what area were
14 you going towards?

15 A Going around till the police got to the house.

16 Q Okay. And while you were on Farrow Road, what did you
17 see?

18 A I seen the same guy walking.

19 Q Was there anything different about him this time
20 though?

21 A Yes, ma'am.

22 Q What was different?

23 A He still had on the white shirt, but nothing in his
24 hands.

25 Q What about -- you mentioned gloves earlier?

Temika Ashford - Direct examination
By Solicitor Campbell

- 1 A Yes, ma'am, it was nothing.
- 2 Q And you mentioned a pole earlier?
- 3 A Yes, ma'am.
- 4 Q When you saw him on Farrow Road did he have the pole?
- 5 A No, ma'am.
- 6 Q Did you continue to drive around Greenview?
- 7 A No, ma'am, I drove around, and when I went back down I
- 8 seen the police there.
- 9 Q And once you saw the police were there, what did you
- 10 do?
- 11 A I stopped.
- 12 Q And where were the police when you stopped?
- 13 A At Reverend Eichelberger's house.
- 14 Q At that point what did you do?
- 15 A I got out to talk to him.
- 16 Q How many policemen were there when you first got there?
- 17 A I don't remember.
- 18 Q Once you got there, did you talk to the police?
- 19 A Yes, they told me to sit in the car and wait.
- 20 Q They told you to sit in the car and wait?
- 21 A Uh-huh. (Affirmative).
- 22 Q And did you do what they told you to do?
- 23 A Yes, ma'am.
- 24 Q And where was your car parked at this point?
- 25 A Right there in front of the house behind a police

Temika Ashford - Direct examination
By Solicitor Campbell

1 car.

2 Q And would that of been on Issac Street or the other
3 street?

4 A Issac Street.

5 Q Did the police come back and talk to you later?

6 A Yes, ma'am.

7 Q At some point some time shortly thereafter did they
8 actually take you somewhere?

9 A Yes, ma'am.

10 Q Tell the jury about that.

11 A They took me down the street. They had found someone
12 that had been running, that they say had ran in the house,
13 and they told me to identify him. I told them I couldn't
14 cause the guy they had found didn't have on the same clothes
15 as the guy I had seen at Reverend Eichelberger's house. The
16 guy that they had caught around the corner had on different
17 clothes.

18 Q Okay. And did you ever get a real good look at
19 anybody's face?

20 A Not a really good look, no, ma'am.

21 Q But you could tell what about, anything, in general?

22 A Yes, ma'am.

23 Q what you described to the jury?

24 A The body, uh-huh. (Affirmative).

25 Q That night did you have to go down to the police

Temika Ashford - Direct examination
By Solicitor Campbell

1 department---

2 A It wasn't the---

3 Q ---or did they take a statement from you there?

4 A It wasn't that night. It was the next day.

5 Q The next day?

6 A Yes, ma'am.

7 Q And did you meet with an Investigator Pegram I believe?

8 Do you remember what investigator you met with first?

9 A No, ma'am.

10 Q Did you write out a short statement?

11 A Yes, ma'am.

12 Q And what was your frame of mind when you were writing
13 out that statement?

14 A I was -- I wasn't all there. I was scared.

15 Q And why were you scared?

16 A Because I never been through nothing like that. It was
17 just scary, just being there.

18 Q A couple days later do you remember meeting with
19 Investigator Reece and Investigator Thomas?

20 A Yes, ma'am.

21 Q And I believe they recorded what you told them there
22 too, didn't they?

23 A Yes, ma'am.

24 Q And you told them some more details?

25 A Yes, ma'am.

Temika Ashford - Direct examination
By Solicitor Campbell

- 1 Q About what happened?
- 2 A Yes, ma'am.
- 3 Q And they recorded your statement?
- 4 A Yes, ma'am.
- 5 Q And do you remember them asking you at that point if
- 6 you could go and, and meet with a sketch artist?
- 7 A Yes, ma'am.
- 8 Q Just to see if you could generally identify the person?
- 9 A Yes, ma'am.
- 10 Q And at that point did they set up a meeting for that?
- 11 A Yes, ma'am.
- 12 Q And I'm gonna show you a photograph.
- 13 Did you go and did you try to get the likeness of the
- 14 person you saw?
- 15 A Yes, ma'am.
- 16 Q And I'm gonna show you that.
- 17 Do you recognize that?
- 18 A Yes, ma'am.
- 19 Q And is that the likeness that you and the sketch artist
- 20 created, created?
- 21 A Yes, ma'am.
- 22 SOLICITOR CAMPBELL: Court's indulgence.
- 23 (Pause.)
- 24 Q Do you remember the police asking you during that to
- 25 describe the man again?

Temika Ashford - Direct examination
By Solicitor Campbell

- 1 A Yes, ma'am.
- 2 Q And did you give them a description?
- 3 A Yes, ma'am.
- 4 Q And do you remember said, what age you said he was
- 5 approximately?
- 6 A Yes, ma'am.
- 7 Q And what age was that?
- 8 A Maybe late 30's, early 40's.
- 9 Q Over the period of the next months, did they present to
- 10 you some photo line-ups --
- 11 A Yes, ma'am.
- 12 Q -- to see if you could recognize the person?
- 13 A Yes, ma'am.
- 14 Q And, again, you were up front with what you saw that
- 15 night, right?
- 16 A Yes, ma'am.
- 17 Q And I'm gonna show you what's been marked as State's
- 18 Exhibit No. 3.
- 19 Do you remember back in, I believe it was August right
- 20 after this happened, the state showed you those pictures?
- 21 A Yes, ma'am.
- 22 Q August 25th?
- 23 A Yes, ma'am.
- 24 Q And when they showed you those pictures, what, if
- 25 anything, did they say to you?

Temika Ashford - Direct examination
By Solicitor Campbell

1 Do you remember?

2 A Say that again.

3 Q What, if anything, did they say to you?

4 A I don't remember.

5 Q You don't remember?

6 A No, ma'am.

7 Q But when you look at these six photographs, could you
8 recognize anyone?

9 A No, ma'am, I couldn't.

10 Q And did you tell them that?

11 A Yes, ma'am.

12 Q And that's State Exhibit No. 3, is that correct?

13 A Yes, ma'am.

14 Q So, you didn't recognize anyone in that one?

15 A No, ma'am.

16 Q But that is the line-up they showed you on that day?

17 A Yes, ma'am.

18 SOLICITOR CAMPBELL: Your Honor, at this time we offer
19 State's Exhibit 3 into evidence.

20 THE COURT: What say the defense?

21 MS. PRINGLE: No objection.

22 THE COURT: It's admitted.

23 (WHEREUPON, State's Exhibit No. 3 was received into
24 evidence at this time.)

25 Q I want to show you what's been marked as State's

Temika Ashford - Direct examination
By Solicitor Campbell

1 Exhibit No. 119.

2 On September of that same year, of 2009, on September
3 30th, did they show you another set of pictures?

4 A Yes, ma'am.

5 Q And I'm gonna show you State's Exhibit 119.

6 Do you recognize that?

7 A Yes, ma'am.

8 Q And when they showed it to you, other than the
9 handwriting that's now on it, that's the, the photo they
10 showed you?

11 A Yes, ma'am.

12 Q And what, if anything, were you able to tell the
13 police at that point about the person that you saw at
14 Reverend Eichelberger's?

15 A The hairline and the build.

16 Q And out of these six pictures, who do you think the
17 hairline and the build, which ones did you think it looked
18 like?

19 A Three and five.

20 Q And did you memorialize that in anyway on this?

21 A No, ma'am.

22 Q Did you initial it next to the ones you thought---

23 A Yes, ma'am.

24 Q ---looked most like him?

25 A Uh-huh. (Affirmative).

Temika Ashford - Direct examination
By Solicitor Campbell

1 Q But, again, you couldn't say positively that's---

2 MS. PRINGLE: Objection to leading.

3 THE COURT: Don't lead the witness.

4 Q Could you positively say that was him?

5 A No, ma'am.

6 SOLICITOR CAMPBELL: Your Honor, at this time we'd
7 offer State's Exhibit 119 into evidence.

8 MS. PRINGLE: No objection.

9 THE COURT: It's admitted.

10 (WHEREUPON, State's Exhibit No. 119 was received into
11 evidence at this time.)

12 Q And on the bottom here, what's the writing say right
13 there as what you said?

14 A Witness states subject looks like number five and
15 number three.

16 Q Did the police continue to make contact with you?

17 A Yes, ma'am.

18 Q And I believe, in January, 22nd, now we're into 2010,
19 did they show you another series of photographs?

20 A Yes, ma'am.

21 Q And I'm gonna show you what's been marked as State's
22 Exhibit 120, 121, and 122.

23 were those some of the photographs that they showed
24 you?

25 A Yes, ma'am.

Temika Ashford - Direct examination
By Solicitor Campbell

1 Q And, again, were you able to give them whatever
2 information you were as to who it looked like?

3 A Yes, ma'am.

4 SOLICITOR CAMPBELL: Your Honor, at this time we offer
5 these into evidence.

6 MS. PRINGLE: No objection.

7 THE COURT: Admitted without objection.

8 (WHEREUPON, State's Exhibit No. 120 through 122 were
9 received into evidence at this time.)

10 Q And when they showed you State's Exhibit No. 120, do
11 you remember looking at that one?

12 A Yes, ma'am.

13 Q And what were you able to tell the police about whether
14 or not that resembled the guy you saw?

15 A The head shape and the body build.

16 Q And is that's what's written on the bottom?

17 A Yes, ma'am.

18 Q And is that information you gave them?

19 A Yes, ma'am.

20 Q But were you able to positively identify anyone?

21 A No, ma'am.

22 Q State's Exhibit No. 122, when you looked at those
23 photographs, again, did one of them look like it?

24 A Yes, ma'am.

25 Q And you initialed that one?

Temika Ashford - Direct examination
By Solicitor Campbell

1 A Yes, ma'am.

2 Q And, again, what about him looked like him?

3 A The head shape and the body build.

4 Q Cause that what's shown as what's here as 120.

5 Finally, State's Exhibit 121, did you recognize that
6 person?

7 A Yes, ma'am.

8 Q Is that one of the photos they showed you?

9 A Yes, ma'am.

10 Q But was that -- did you identify him in anyway?

11 A Uh-huh. (Affirmative).

12 Q At any point when the police are showing you all these
13 photographs, and one more I'm getting ready to get to, did
14 they tell you who to pick?

15 A No, ma'am.

16 Q Did they influence you in anyway?

17 A No, ma'am.

18 Q And were you doing the best you could to show them who
19 it resembled?

20 MS. PRINGLE: Objection.

21 A Yes, ma'am.

22 MS. PRINGLE: Leading.

23 THE COURT: Don't lead the witness.

24 Q were you doing -- how would you characterize what you
25 were doing?

Temika Ashford - Direct examination
By Solicitor Campbell

1 A I was doing my best to identify the person that looked
2 like the person that I saw.

3 Q And, again, how was -- the closest you got to him that
4 night.

5 A I was by the road and he was a good distance standing
6 on the porch.

7 Q And what was the lighting like?
8 What time of night was this, around 11:00?

9 A Yes, ma'am.

10 Q What was the lighting like?

11 A It was dark.

12 Q State's Exhibit No. 123, I'm gonna show you that, and
13 on March 13th, did they come make contact with you again?

14 A Yes, ma'am.

15 Q And do you remember where you were when they talked to
16 you this time?

17 A Yes, ma'am.

18 Q Where were you?

19 A I think I was home.

20 Q You were at home?

21 A Yes, ma'am.

22 Q And did they come talk to you again about the
23 Reverend's case?

24 A Yes, ma'am.

25 Q And when they came and talked to you, I'm showing you

Temika Ashford - Direct examination
By Solicitor Campbell

1 State's Exhibit No. 123, did they show you that line-up?

2 A Yes, ma'am.

3 Q And when they showed you that line-up, did it have any
4 of the writing on it?

5 A No, ma'am.

6 Q And did they, tell the jury, did they influence you in
7 anyway?

8 A No, ma'am.

9 Q And when you looked at those six photos, what, if
10 anything, were you able to tell them?

11 A I picked out one and three because of the head shape
12 and the body build.

13 Q And the information that you gave them about why you
14 recognize them, is that reflected -- did you then initial
15 off of these?

16 A Yes, ma'am.

17 Q And the information's reflected on the box?

18 A Yes, ma'am.

19 Q And these are your initials and your signature down
20 here, right?

21 A Yes, ma'am.

22 SOLICITOR CAMPBELL: Your Honor, at this time I'd offer
23 State's Exhibit 123.

24 THE COURT: What say the defense?

25 MS. PRINGLE: Subject to previous objection.

Temika Ashford - Direct examination
By Solicitor Campbell

1 THE COURT: It's admitted over the objection.

2 (WHEREUPON, State's Exhibit No. 123 was received into
3 evidence at this time.)

4 Q There at the bottom, what does it say about what you
5 identified?

6 A Witness states the subject she saw on 5/3/04 could be
7 number three and number one. She picked three first, but
8 start, stated both resembled the suspect because of the head
9 shape and the body build.

10 Q And that's the information you gave them?

11 A Yes, ma'am.

12 Q Were you ever able to positively identify anyone?

13 A No, ma'am.

14 Q You gave the police I believe two statements in the
15 case?

16 A Yes, ma'am.

17 Q To their investigator?

18 A Yes, ma'am.

19 Q And tried to give them information that you knew about
20 it?

21 A Yes, ma'am.

22 Q The description that you'd given the police or that
23 you've given this jury today, is that the same description
24 you gave the police?

25 A Yes, ma'am.

Temika Ashford - Direct examination
By Solicitor Campbell

1 Q And the defense attorneys?

2 A Yes, ma'am.

3 Q The physical build of the person you saw on the porch
4 when you were out on the street --

5 A Yes, ma'am.

6 Q -- can you tell the jury again what it was?

7 A Yes, ma'am, a receding hairline, big guy, wide
8 shoulders, a pot belly.

9 Q And as far as -- and you can't, can't positively
10 identify anyone here today, can you?

11 MS. PRINGLE: Objection to leading.

12 SOLICITOR CAMPBELL: I'm trying to make sure I don't---

13 THE COURT: That's asked and answered.

14 Q Is it consistent with the defendant sitting at that
15 table, what you saw?

16 MS. PRINGLE: Objection. Leading and asked and
17 answered, Your Honor.

18 THE COURT: Restate the question please.

19 Q The person that you saw on the porch --

20 A Yes, ma'am.

21 Q -- is it consistent with the defendant?

22 A Yes, ma'am.

23 Q The noise when you were in the living room that you
24 heard that night, can you describe it to the jury, what you
25 actually heard, or what it sounded like to you?

Temika Ashford - Direct examination
By Solicitor Campbell

1 A Like I said, the first one you couldn't hear -- I
2 could -- you could barely hear it. The second time around
3 it got a little louder. It was just awful.

4 Q Do you remember what you told the police?

5 A Yes, ma'am, it sounded like maybe a screen door or
6 something I guess. I'm not sure.

7 SOLICITOR CAMPBELL: That's all I have, Your Honor.

8 THE COURT: Cross-examination.

9 MS. PRINGLE: May it please the Court.

10 Beg the Court's indulgence.

11 (Pause.)

12 CROSS-EXAMINATION

13 BY MS. PRINGLE:

14 Q Good morning, Ms. Ashford.

15 A Good morning.

16 Q Ms. Ashford, you and I have only met ever so briefly,
17 correct?

18 A Yes, ma'am.

19 Q You and I have only spoken -- we just spoke outside and
20 said hello one day last week, correct?

21 A Yes, ma'am.

22 Q That's the extent of our conversations?

23 A Yes, ma'am.

24 Q Go back to the beginning. I have a couple of questions
25 for you about the beginning of your testimony.

Temika Ashford - Cross-examination
By Ms. Pringle

1 You would go by and see the Reverend on occasion?

2 A Not that often, no, ma'am.

3 Q Okay. So, you didn't -- you would only see him four or
4 five times a year?

5 Is that about right?

6 A Yes, ma'am, besides going to church, yes, ma'am.

7 Q And you attended his church?

8 A Yes, ma'am.

9 Q And how often would you attend that church?

10 A I use to go a lot at the beginning, but at the end I
11 --.

12 Q Not very often?

13 A No, ma'am.

14 Q So, at the beginning when you first met him, you would
15 attend -- you, you went to the church?

16 A Yes, ma'am.

17 Q But that just tapered off and you stopped going
18 completely?

19 A Not completely. I use to go not more than I use to.

20 Q All right. So, you would see him let's say half a
21 dozen times a year?

22 Is that about fair?

23 A Yes, ma'am.

24 Q And he would give you money to pay your bills?

25 A Yes, ma'am.

Temika Ashford - Cross-examination
By Ms. Pringle

1 Q And he would give you a good bit of money from time to
2 time?

3 A Yes, ma'am.

4 Q And on this evening you were going by to get about
5 \$80?

6 A Yes, ma'am.

7 Q And did you ever get that money that night?

8 A No, ma'am.

9 Q And on the day that this happened, on May 3rd, you
10 actually talked to him twice that day, right?

11 A Yes, ma'am.

12 Q And the first time was early in the afternoon around
13 5:00 or 6:00?

14 A Yes, ma'am.

15 Q And he told you I can't really talk to you right now?

16 A Yes, ma'am.

17 Q And he said so, just call me back later?

18 A Yes, ma'am.

19 Q And did you call him back later or he called you back
20 later?

21 A I called him back.

22 Q All right. And you called him about eleven o'clock at
23 night?

24 A Maybe 10:00, 10:30, eleven o'clock, yes, ma'am.

25 Q All right. And this was, fair to say, a pretty scary

Temika Ashford - Cross-examination
By Ms. Pringle

1 situation, wasn't it?

2 A Yes, ma'am.

3 Q Worst thing that's ever happened to you?

4 A Yes, ma'am.

5 Q Worst thing you've ever been involved in?

6 A Yes, ma'am.

7 Q Both that night and having that -- hearing that
8 break-in terrified you then, didn't it?

9 A Yes, ma'am.

10 Q Being here today is not very pleasant, is it?

11 A No, ma'am, it's not.

12 Q You'd prefer to not be here, wouldn't you?

13 A No.

14 Q That's all right.

15 So, that night you, you heard this happen, and you had
16 an idea that something bad happened?

17 A Yes, ma'am.

18 Q And you left immediately like anyone would do, right?

19 A Yes, ma'am.

20 Q And if you had wanted to, you could of just kept going,
21 right?

22 A Yes, ma'am.

23 Q Nobody knew you were there, did they?

24 A No, ma'am.

25 Q Did -- had you told anybody that you were going to be

Temika Ashford - Cross-examination
By Ms. Pringle

1 there?

2 A No, ma'am.

3 Q And your car was right outside that front door.

4 So, you, you could just fly out to your car,
5 couldn't you?

6 A Yes, ma'am.

7 Q And you did?

8 A Yes, ma'am.

9 Q The person that was in the kitchen didn't even know you
10 were there?

11 A No, ma'am.

12 Q And you jumped in your car, and while you could have
13 left and you could have just gone home, you didn't, did you?

14 A No, ma'am.

15 Q And actually you could of even left, and if you didn't
16 want to go home, driven to the police station, couldn't you?

17 A Yes, ma'am.

18 Q But you did the right thing, didn't you?

19 A Yes, ma'am.

20 Q And you decided to stay close in the area, right?

21 A Yes, ma'am.

22 Q And you called 9-1-1?

23 A Yes, ma'am.

24 Q And you called 9-1-1 and you told them who they were
25 looking for?

Temika Ashford - Cross-examination
By Ms. Pringle

1 You told them, you told them what had happened, right?

2 A Yes, ma'am.

3 Q And you gave them a description of what the guy looked
4 like so that if the police came right then they could catch
5 him, right?

6 A When I called I told them that I needed a cop to come
7 out because I think something bad had happened.

8 Q And they asked you what the guy looked like and you
9 told them just a little bit about the sweaty t-shirt and the
10 clothes that he had on?

11 You told---

12 A Yes.

13 Q You told them on 9-1-1?

14 A Yes, ma'am.

15 Q Because they were asking you because they're gonna send
16 the police there and they're asking you to tell them who
17 they're looking for, right?

18 A Yes, ma'am.

19 Q And you wanted to do that, correct?

20 A Yes, ma'am.

21 Q And you wanted to give the best information that you
22 could?

23 A Yes, ma'am.

24 Q Because you wanted to make sure that they got the
25 guy---

Temika Ashford - Cross-examination
By Ms. Pringle

- 1 A Yes, ma'am.
- 2 Q ---and that they got the right guy?
- 3 A Yes, ma'am.
- 4 Q So, you go back to the house and, at this point -- you,
- 5 you drive around one time, correct?
- 6 A Yes, ma'am.
- 7 Q And then the first time you drive back around is when
- 8 you see this person on the porch?
- 9 A Yes, ma'am.
- 10 Q Standing right, right there in front of the house,
- 11 right?
- 12 A Yes, ma'am.
- 13 Q And you then circle back around one time, and then is
- 14 that when you see him the second time?
- 15 A No, I see him the first time.
- 16 Q Okay. And then you circle around how many more times
- 17 before you see him the second time?
- 18 A I circled around one more time.
- 19 Q All right. And at some point you see -- you -- at
- 20 something -- you realize something's bad happened, right?
- 21 A Uh-huh. (Affirmative).
- 22 Q And you know that it's terribly serious?
- 23 A (Witness nods affirmatively.)
- 24 Q And you know -- I'm sorry.
- 25 Yes or no?

Temika Ashford - Cross-examination
By Ms. Pringle

- 1 A Yes, ma'am.
- 2 Q And at some point you see the ambulance, right?
- 3 A Yes, ma'am.
- 4 Q And how long had you been driving around before you saw
5 that ambulance?
- 6 A The ambulance and the police was at the house. Not
7 long.
- 8 Q So, you drive around and you're not going anywhere?
- 9 A No, ma'am.
- 10 Q You're not gonna leave?
- 11 A No, ma'am.
- 12 Q You're determined to stay and to help?
- 13 A Yes, ma'am.
- 14 Q You didn't really want to do that, did you?
- 15 A I mean I had no other choice. I, I, I was there.
- 16 Q But this was not a comfortable situation for you?
- 17 A No, ma'am.
- 18 Q You didn't want to have to talk to them at all?
- 19 A (No response.)
- 20 Q Let me ask you this.
- 21 Initially you didn't tell them exactly where you'd been
22 or what had taken place, right?
- 23 A Yes, ma'am.
- 24 Q Initially you told them -- in fact, your first
25 statement was that you were in your car---

Temika Ashford - Cross-examination
By Ms. Pringle

- 1 A Yes, ma'am.
- 2 Q ---pulling up, right?
- 3 A Yes, ma'am.
- 4 Q And that you heard this from your car, right?
- 5 A The noise that was happening in the house?
- 6 Q Uh-huh. (Affirmative).
- 7 A No, I was already in the house when everything
- 8 happened.
- 9 Q Right.
- 10 But when you first spoke to the police, we're gonna
- 11 come back to this in a minute, but when you first spoke to
- 12 them, you didn't tell them that, right?
- 13 A That was the truth. So, I told them. Yes, ma'am, I
- 14 did tell them that.
- 15 Q Okay. We'll come back to that in just a minute.
- 16 But you know that you're the most, you're the most
- 17 important person in this investigation at this point, right?
- 18 A Yes, ma'am, I---
- 19 Q You're the only one who knows anything about what
- 20 happened, right?
- 21 A Right.
- 22 Q And you saw this guy not one time, but two times,
- 23 right?
- 24 A Uh-huh. (Affirmative).
- 25 Q And you saw his face?

Temika Ashford - Cross-examination
By Ms. Pringle

1 A I didn't really get a good look at this face. It was
2 dark.

3 Q And you saw his body, right?

4 A Yes, ma'am.

5 Q All right. The first time when you, you drive around,
6 you seen him out front, and he's facing you, correct?

7 A Yes, ma'am.

8 Q All right. And you see him in the driveway and you,
9 you see the stick or the pipe or whatever it is, right?

10 A Yes, ma'am.

11 Q You see the gloves?

12 A Yes, ma'am.

13 Q And I think you described them as -- you thought they
14 were plastic gloves, didn't you?

15 A Yes, ma'am.

16 Q They didn't look like socks to you?

17 A I don't know what it was. I mean he had something on
18 his hands.

19 Q And you see that he's got a t-shirt on?

20 A Yes, ma'am, white t-shirt.

21 Q And you can actually see that he has sweat around his
22 neck on that t-shirt?

23 A On the shirt, yes, ma'am.

24 Q All right. And that -- you could see that clearly?

25 A Yes, ma'am.

Temika Ashford - Cross-examination
By Ms. Pringle

1 Q And you can see the look on his face?

2 A I didn't get a good look at his face.

3 Q Well, you've described -- and I'm gonna ask you about a
4 bunch of those -- the description.

5 You've been asked many many times to describe what
6 happened that night, right?

7 A Yes, ma'am.

8 Q And many times you've described how he looked, right?

9 A Yes, ma'am.

10 Q And during those conversations with law enforcement,
11 police, my investigator, you said that the guy that night
12 had a crazy look on his face, right?

13 A Yes, ma'am.

14 Q He looked kind of off?

15 A Yes, ma'am.

16 Q And you said dazed?

17 A Not saying the way he looked. The way he was standing
18 out there. When I came around, the way he was standing,
19 just like he was just, just standing there. Just --.

20 Q Out of it, right?

21 A Yes, ma'am.

22 Q Lost---

23 A Yes, ma'am.

24 Q ---is the word you used?

25 You said he looked like a mental patient?

Temika Ashford - Cross-examination
By Ms. Pringle

1 A Yes, ma'am.

2 Q And you sat down -- Ms. Campbell, Ms. Campbell asked
3 you about sitting down meeting with a sketch artist, right?

4 A Yes, ma'am.

5 Q And the way that came about is on May -- well, at some
6 point you're meeting with Investigator Reece, correct?

7 A Yes, ma'am.

8 Q And he says to you we can do a composite sketch of the
9 person that you saw if you can describe him to the sketch
10 artist, right?

11 A Yes, ma'am.

12 Q And he says to you do you think you can do that, right?

13 A Yes, ma'am.

14 Q And you said yes?

15 A Yes, ma'am.

16 Q And you did?

17 A Yes, ma'am.

18 Q And when you sat down with that sketch arrest, she
19 asked you what did the guy's hair look like, right?

20 A Yes, ma'am.

21 Q And what did his eyes look like, right?

22 A Yes, ma'am.

23 Q And what did his nose, what did his nose look like?

24 A Yes, ma'am.

25 Q She asked you about his facial hair?

Temika Ashford - Cross-examination
By Ms. Pringle

- 1 A Yes, ma'am.
- 2 Q And she asked you about his head shape, right?
- 3 A Yes, ma'am.
- 4 Q And this was a drawing of his face and not his body,
5 right?
- 6 A Yes, ma'am.
- 7 Q And you told her you could do that?
- 8 A Yes, ma'am.
- 9 Q And you did and they then drew a picture, that picture
10 that Ms. Campbell showed to you, and you saw that before?
11 You saw that on that day that they drew it, right?
- 12 A Yes, ma'am.
- 13 Q And you said yeah, that looks like him, right?
- 14 A Yes, ma'am.
- 15 Q Because that was the description that, that you had
16 given to them?
- 17 A Yes, ma'am.
- 18 Q All right. So, the second time -- so, that's the first
19 time that you'd seen him---
- 20 A Yes, ma'am.
- 21 Q ---standing there in the driveway?
- 22 A Yes, ma'am.
- 23 Q The second time around, you see the same guy and you're
24 sure of it, right?
- 25 A Yes, ma'am.

Temika Ashford - Cross-examination
By Ms. Pringle

1 Q And that guy, other than not having the stick or the
2 glove, it's the same guy?

3 A Yes, ma'am.

4 Q And you go back to the house, right?

5 A I rolled -- yes, ma'am.

6 Q And you, you got out and you went trying to tell the
7 officer that you'd just seen him again, right?

8 A Yes, ma'am.

9 Q And you jump out of your car, go over to Officer
10 Duckett or you don't know -- or what did the officer look
11 like that you spoke to?

12 A I don't remember.

13 Q Okay. And you tell him I just saw the guy again, he's
14 walking down the street, it's the same guy, he's over there,
15 wanting them to be able to go catch him, right?

16 A Yes, ma'am.

17 Q And you know something bad, something's bad happened
18 and you're trying to help put the police with him, right?

19 A Yes, ma'am.

20 Q The officer says you got to get back in your car, get
21 back in your car?

22 A Yes, ma'am.

23 Q All right. So, you don't say anything else to the
24 officer at that point, right?

25 A No, ma'am.

Temika Ashford - Cross-examination
By Ms. Pringle

- 1 Q And how long are you, are you in the car?
- 2 A Not long.
- 3 Q Five minutes, ten minutes?
- 4 A Maybe ten minutes.
- 5 Q All right. And then you tell them, at that point, what
- 6 the guy looks like that they're looking for?
- 7 A Yes, ma'am.
- 8 Q And they come -- at some, at some point someone comes
- 9 to get you and says we think that we've got him, right?
- 10 A Yes, ma'am.
- 11 Q And you're -- where are you at this point?
- 12 A I'm in my car.
- 13 Q All right. They -- do they actually take you out of
- 14 your car?
- 15 A Yes, ma'am.
- 16 Q And they put you in the, in the patrol car?
- 17 A Yes, ma'am.
- 18 Q And drive you about how far away?
- 19 A Down the street.
- 20 Q And they told you we got somebody in custody?
- 21 A Yes, ma'am.
- 22 Q And we think we've got him?
- 23 A Yes, ma'am.
- 24 Q And they, they take you over there and they actually
- 25 take -- this guy's David Williams, right?

Temika Ashford - Cross-examination
By Ms. Pringle

1 That's his name?

2 Are you aware of that?

3 A No, ma'am.

4 Q Okay. Well, the guy that, that they take you over
5 there to see, they take him out of the patrol car, don't
6 they?

7 A Yes, ma'am.

8 Q But when you pull up he's in the back of a patrol car?

9 A Yes, ma'am.

10 Q And they, they take him out and you're in the other, in
11 the other car?

12 A Yes, ma'am.

13 Q They get you out of the car?

14 A No, ma'am.

15 Q You look from the car?

16 A Yes, ma'am.

17 Q But you're close to him?

18 A Not that close.

19 Q Pulled up side-by-side?

20 A Not side-by-side. He was across the street under the
21 street light, and I was sitting on the other side of the
22 road.

23 Q So, he's under a street light?

24 A Uh-huh. (Affirmative).

25 Q And he's standing there?

Temika Ashford - Cross-examination
By Ms. Pringle

- 1 A Yes, ma'am.
- 2 Q Just about exactly how you were seeing this individual
- 3 stand, right?
- 4 A Yes, ma'am.
- 5 Q And they, they shine a light on his face, don't they?
- 6 A Yes, ma'am.
- 7 Q And while they've got him standing there, they tell,
- 8 they ask you is this him, identify him, right?
- 9 A Yes, ma'am.
- 10 Q And you tell them that's the guy?
- 11 A I told them at first I don't know if it was him cause
- 12 he didn't have on the same clothes.
- 13 Q That's what you told them at first?
- 14 A Uh-huh. (Affirmative).
- 15 Q But they told you that he had time to change his
- 16 clothes?
- 17 A Uh-huh. (Affirmative).
- 18 Yes, ma'am.
- 19 Q That he had run to a house, they were chasing him,
- 20 right?
- 21 A And they found him in a closet, yes, ma'am.
- 22 Q They found him in a closet, is that what you said?
- 23 A Yes, ma'am.
- 24 Q And, so, everything about this guy was right except
- 25 those clothes, right?

Temika Ashford - Cross-examination
By Ms. Pringle

1 A Yes, ma'am.

2 Q And it wasn't all of his clothes, it was just pants, is
3 that right?

4 A The pants and he didn't have the receding hairline.

5 Q And, so, they, they tell you -- you say looks right,
6 but I can't -- I don't know about the clothes, right?

7 A He just didn't look like the guy.

8 Q All right. They then say ma'am, take a good look,
9 didn't they?

10 A Yes, ma'am.

11 Q They told you to look again, didn't they?

12 A Yes, ma'am.

13 Q Did you feel a little pressured?

14 A A little bit.

15 Q A little bit.

16 And you felt maybe a little bit intimidated by the
17 whole situation?

18 A No, I was just scared.

19 Q Okay. Scared.

20 And the police were sure it was him as far as you could
21 tell?

22 SOLICITOR CAMPBELL: Objection, Your Honor. That calls
23 for speculation.

24 THE COURT: Objection sustained.

25 Q They take him out of the car, you see him, shine the

Temika Ashford - Cross-examination
By Ms. Pringle

1 light on his face, you're having a conversation with the
2 police and eventually you say yes, that's the guy?

3 SOLICITOR CAMPBELL: Objection, Your Honor. Asked and
4 answered.

5 THE COURT: The objection---

6 A I told them that I wasn't sure if that was the guy or
7 not.

8 Q Okay. And that guy in the car had the same, the same
9 build, right?

10 A Yes, ma'am.

11 Q Same pot belly, and he was, he was sweaty too, wasn't
12 he?

13 A Yes, ma'am, but he wasn't sweaty around the neck part.

14 Q All right. All right. Let me ask you about some of
15 the times that you've been -- you've been asked many many
16 times to describe this person, right?

17 A Yes, ma'am.

18 Q All right. I'm gonna ask you about those things in
19 particular, okay?

20 A Okay.

21 Q You said he had a white t-shirt?

22 A Yes, ma'am.

23 Q Real sweaty?

24 Talked about the white gloves, right?

25 A Yes, ma'am.

Temika Ashford - Cross-examination
By Ms. Pringle

- 1 Q And the receding hairline and the pot belly, right?
- 2 A Yes, ma'am.
- 3 Q But you've also said he's a real tall guy?
- 4 Six feet or 6'1"?
- 5 A (No response.)
- 6 Q Do you remember talking to Investigators Reece and
- 7 Thomas and, on May 6th?
- 8 A Yes, ma'am.
- 9 Q All right. And do you -- were you aware that they were
- 10 recording your statement?
- 11 A Yes, ma'am.
- 12 Q And they told you they were recording it?
- 13 A Yes, ma'am.
- 14 Q And at one point toward the end of the conversation
- 15 with them you recall telling them he was about six feet or
- 16 six feet one, he was a big husky guy, he wasn't fat?
- 17 A No, ma'am, he wasn't fat.
- 18 Q All right. Big guy, right?
- 19 A Yes, ma'am.
- 20 Q And you told him that he was a real tall guy?
- 21 A Well, to me tall cause he weighed -- you know, he was
- 22 taller than me. He was standing far back and I was by the
- 23 road. So --.
- 24 Q But you told him he was six feet or 6'1"?
- 25 A Maybe.

Temika Ashford - Cross-examination
By Ms. Pringle

- 1 Q All right. And that he had short hair?
- 2 A Had a real low haircut.
- 3 Q Real low haircut.
- 4 You didn't tell them he was bald?
- 5 A Hu huh. (Negative).
- 6 Q Short hair and that's what you told the sketch artist
- 7 too, right?
- 8 A I don't remember.
- 9 Q Well, did you see the sketch when Ms. Campbell showed
- 10 it to you just a minute ago?
- 11 A Yes, ma'am.
- 12 Q Does that guy have hair?
- 13 A Yes, ma'am, a little bit.
- 14 Q A little bit?
- 15 A Yes, ma'am.
- 16 Q And he's got a, he's got a -- it's not high, but he's
- 17 got hair, right?
- 18 A Yes, ma'am.
- 19 Q And the hair actually comes down in a peak in the
- 20 front, doesn't it?
- 21 A Yes, ma'am.
- 22 Q Sort of a point.
- 23 You've also described this guy as built and real wide?
- 24 That sound right?
- 25 A The top part was wide.

Temika Ashford - Cross-examination
By Ms. Pringle

1 Q All right. Ms. Ashford, the next morning you went down
2 to C.P.D., the police department, and actually wrote out a
3 statement and provided it to law enforcement that next
4 morning, correct?

5 A Yes, ma'am.

6 Q And that didn't happen on the night that this took
7 place, did it?

8 You actually went down there in the morning the next
9 day?

10 A Yes, ma'am, I gave a statement that night to the cops,
11 and then the next day I went and gave a statement.

12 Q All right. I'm gonna ask you some real specific
13 questions about the statement you gave---

14 A Yes, ma'am.

15 Q ---that night.

16 would it help to refresh your recollection to have a
17 copy of that statement in front of you?

18 A No, ma'am.

19 Q Do you, do you -- well, you don't need your statement?

20 I'm gonna ask you very specific questions like what
21 time was it, what was the date, what was the address, very
22 specific questions.

23 would it help you to be able to see it?

24 A Yes, ma'am.

25 Q All right. I'm gonna hand you what's been marked as

Temika Ashford - Cross-examination
By Ms. Pringle

- 1 Defense Exhibit No. 1.
- 2 What is that?
- 3 A A statement.
- 4 Q Is that a copy of your statement?
- 5 A Yes, ma'am.
- 6 Q And that's a copy of your written statement, right?
- 7 A Yes, ma'am.
- 8 Q All right. I want you to look up at the top, and does
- 9 that statement have on it the date?
- 10 A Yes, ma'am.
- 11 Q And what's that date?
- 12 A 5/4/09.
- 13 Q And it's got 12:15AM, is that right?
- 14 A Yes, ma'am.
- 15 Q And it has place being [REDACTED]?
- 16 A Yes, ma'am.
- 17 Q All right. And it says up there at the top that it's
- 18 one of two pages, right?
- 19 A Yes, ma'am.
- 20 Q So, your whole statement's actually two written pages?
- 21 A Yes, ma'am.
- 22 Q And it has I am Temika Ashford, right?
- 23 A Yes, ma'am.
- 24 Q And it has your birth date, but I'm not gonna ask you
- 25 your birth day.

Temika Ashford - Cross-examination
By Ms. Pringle

1 okay?

2 A okay.

3 Q And it has, again, your personal information, your
4 address, right?

5 A Yes, ma'am.

6 Q And your phone number?

7 A Yes, ma'am.

8 Q And it says that you're giving a statement regarding
9 what, regarding [REDACTED] [REDACTED]

10 A Yes, ma'am?

11 Q [REDACTED] [REDACTED] is Reverend Eichelberger's address,
12 correct?

13 A Yes, ma'am.

14 Q And it -- do you remember -- well, there were, there
15 were two officers that were there with you that morning or
16 just one?

17 A I wrote this statement at night to the cops.

18 Q You wrote -- I believe you testified previously you
19 wrote this that next morning?

20 A I wrote one the next morning too.

21 Q You've written two?

22 A No, ma'am, I give a statement to the officers, the
23 investigators.

24 Q Okay. This written statement was provided that
25 morning, right?

Temika Ashford - Cross-examination
By Ms. Pringle

- 1 A No, ma'am.
- 2 Q How many written statements have you, have you given to
3 the City of Columbia?
- 4 A I just wrote one.
- 5 Q Okay. And this is, this is the only one?
- 6 A Yes, ma'am, this---
- 7 Q All right.
- 8 A I wrote this that night when the officers came out.
- 9 Q When the officers came out?
- 10 A Uh-huh. (Affirmative).
- 11 Q Where were you when you wrote it?
- 12 A Issac Street.
- 13 Q At the what?
- 14 A Issac Street.
- 15 Q Where, and where did you -- where were you actually
16 sitting and standing or where were you when you wrote it?
- 17 A At my car.
- 18 Q And who handed it to you to write it?
- 19 A The officer.
- 20 Q Do you know which officer?
- 21 Was it the first, the guy that you saw when you first
22 got there?
- 23 A I'm not sure.
- 24 Q All right. When you wrote this statement, you're
25 still -- you're trying to help, right?

Temika Ashford - Cross-examination
By Ms. Pringle

- 1 A Yes, ma'am.
- 2 Q And you're trying to give as much information as you
3 can cause they've asked you too, correct?
- 4 A Yes, ma'am.
- 5 Q And they are very serious. They don't want to just
6 talk to you. They want you to write it down, right?
- 7 A Yes, ma'am.
- 8 Q And they asked you to put this statement in your own
9 handwriting, correct?
- 10 A Yes, ma'am.
- 11 Q And you know at that point it's really important to
12 give them whatever information that you have?
- 13 A Yes, ma'am.
- 14 Q You knew that he'd been hurt, hurt badly I imagine at
15 this point, right?
- 16 A Yes, ma'am.
- 17 Q You see the ambulance?
- 18 A Yes, ma'am.
- 19 Q All right. So, the top part -- is the, is the body of
20 the statement where it describes what happened in your
21 handwriting?
- 22 A Yes, ma'am.
- 23 Q And is that your signature at the bottom?
- 24 A Yes, ma'am.
- 25 Q And you swore to tell the truth?

Temika Ashford - Cross-examination
By Ms. Pringle

1 A Yes, ma'am.

2 Q And signed that you, that you told the truth in this
3 statement?

4 A Yes, ma'am.

5 Q Just like you were sworn to tell the truth today?

6 A Yes, ma'am.

7 Q The handwriting at the top, whose handwriting is that?

8 A That's not mines.

9 Q The top part describes what time and where and the
10 place and those details, correct?

11 A Yes, ma'am.

12 Q When the statement was handed to you to write, what was
13 on it?

14 A That was on it.

15 MS. PRINGLE: Beg the Court's indulgence.

16 (Pause.)

17 Q Let me ask a couple questions.

18 Do you recall speaking with an investigator from my
19 office, Detective Watkins, Investigator Watkins?

20 A Yes, ma'am.

21 Q All right. You spoke to him on a couple of occasions,
22 didn't you?

23 A Yes, ma'am.

24 Q And you provided at least one signed written statement
25 to him?

Temika Ashford - Cross-examination
By Ms. Pringle

- 1 A Yes, ma'am.
- 2 Q Okay. And that was -- one of those was done on
- 3 April 4th of 2011, right?
- 4 A Uh-huh. (Affirmative).
- 5 Q Yes?
- 6 A Yes, ma'am.
- 7 Q Okay. I'm gonna ask you about some of the things that
- 8 you signed in that statement.
- 9 okay?
- 10 A Uh-huh. (Affirmative).
- 11 Q Did you not tell Investigator Watkins that when this
- 12 statement was provided to you the top part was blank?
- 13 A I don't remember.
- 14 Q All right. Ms. Ashford, I'm gonna show you what's been
- 15 marked as, for ID purposes only, Defendant's Exhibit No. 2.
- 16 Is that your handwriting on the last page?
- 17 A Yes, ma'am.
- 18 Q All right. And did you sign that?
- 19 A Yes, ma'am.
- 20 Q And this is a six page statement, right?
- 21 A Okay.
- 22 Q Is that right?
- 23 A Yes, ma'am.
- 24 Q And you actually gave this statement to Detective
- 25 Watkins?

Temika Ashford - Cross-examination
By Ms. Pringle

- 1 A Yes, ma'am.
- 2 Q And he typed it out --
- 3 A Yes, ma'am.
- 4 Q -- and brought it back to you?
- 5 A Yes, ma'am.
- 6 Q And you, you read it and signed it, right?
- 7 A Yes, ma'am.
- 8 Q Put your signature on the last page there, right?
- 9 A Yes, ma'am.
- 10 Q Okay. When he, when he -- in this statement, do you
- 11 tell him the date, the time and the date at the top of the
- 12 statement is not right because I did not write this
- 13 statement that night or during the early morning hours of
- 14 the 4th?
- 15 A This statement right here was wrote that night that I
- 16 first stopped at the house, and I gave a verbal statement to
- 17 the investigators at the police station the next morning.
- 18 Q Okay. But to Detective Watkins, in April, you said the
- 19 first statement that I wrote out was at Columbia Police
- 20 station at 9:00 or 10:00 the next day, not at night?
- 21 Isn't that what that says?
- 22 A Yes, ma'am.
- 23 Q And you signed that, right?
- 24 A Uh-huh. (Affirmative).
- 25 well, I didn't never read it. All the stuff that I got

Temika Ashford - Cross-examination
By Ms. Pringle

1 on here is true. I wrote this the night the police came,

2 and the next day I gave the investigators a verbal

3 statement, and I wrote this the night the police was there.

4 Q But in all -- and everything in that statement is true?

5 A Yes, ma'am.

6 Q All right. Have you had a chance to read that back

7 over again getting ready for court today?

8 A No, ma'am.

9 Q All right. But this statement is true, correct?

10 A I don't know. I ain't had time to read it.

11 Q All right. Well, let me ask you some specific

12 questions about it.

13 All right. So, your testimony is that, that you wrote

14 it right then, that night?

15 A Yes, ma'am.

16 Q So, it had just happened?

17 A Yes, ma'am.

18 Q And you had already gone and seen this other individual

19 and they've asked you to identify him, right?

20 A Yes, ma'am.

21 Q So -- and it was -- this was, this was within the same

22 hour?

23 A I'm not -- I don't remember.

24 Q That you wrote -- well, it says 12:15AM at the top,

25 right?

Temika Ashford - Cross-examination
By Ms. Pringle

- 1 A Yes, ma'am.
- 2 Q And that's -- you're saying now, that's what, that is
3 what time it was?
- 4 A Yes, ma'am.
- 5 Q All right. So, this was literally just minutes after,
6 within the hour of going and seeing this other guy at eight
7 o'clock?
- 8 A Okay.
- 9 Q All right?
- 10 A Yes, ma'am.
- 11 Q Okay. And in this statement, you tell law enforcement
12 that -- you tell them that you're sometimes a member of the
13 church, right?
- 14 A Yes, ma'am.
- 15 Q And you tell them that you've talked to Reverend
16 Eichelberger about four o'clock that day, right?
- 17 A Yes, ma'am.
- 18 Q And about paying your water bill, right?
- 19 A Yes, ma'am.
- 20 Q And he tells you to call him back. So, you call him
21 back around 11:00?
- 22 A Yes, ma'am.
- 23 Q All what you've said today, right?
- 24 A Yes, ma'am.
- 25 Q And he told you to come pick up the money for the water

Temika Ashford - Cross-examination
By Ms. Pringle

1 bill?

2 A Yes, ma'am.

3 Q And you then say -- read from -- after it, after it
4 says water bill, read from so, until I stop you.

5 A Okay. So when I pulled---

6 THE COURT: Just a minute.

7 What statement are you seeking to have her read?

8 MS. PRINGLE: A prior inconsistent, a prior
9 inconsistent statement, Your Honor.

10 THE COURT: What statement are you seeking to have her
11 read?

12 MS. PRINGLE: The, the statement that she provided to
13 law enforcement that night.

14 THE COURT: Law enforcement that night?

15 MS. PRINGLE: Yes, sir.

16 THE COURT: All right. You may proceed.

17 Q So --?

18 A So when I pulled up to the church parking lot I saw a
19 guy coming out of the house with a white t-shirt and a pair
20 of white gloves and a stomach that looked like -- and
21 something that looked like a stick or pipe, and I slowed
22 down to glance over and seen the guy walking towards my car.
23 So, I rode around the block and called the police. I also
24 heard Reverend Eichelberger ask what are you doing in here.

25 Q Okay. So, that's different from what actually

Temika Ashford - Cross-examination
By Ms. Pringle

1 happened?

2 What actually happened was you were in the house,
3 right?

4 A Yes, ma'am.

5 Q But that's what you told them night, correct?

6 A Yes, ma'am.

7 Q And turn over to the second page and what is the last
8 sentence of the second page?

9 Would you read this out to this jury?

10 A Read which one?

11 Q Start at I and just read everything on that page.

12 A I did get in the police car to identify the guy, and he
13 was the one who I saw with the gloves and a long object in
14 his hand.

15 Q I got in the police car to identify the guy.

16 That's the guy that they come and got you and asked you
17 to go over there and identify, right?

18 A Yes, ma'am.

19 Q So, that night, the night that this happened, on May
20 4th at, within an hour of this happening and you seeing the
21 guy in the patrol car, you said I did get in the police
22 car---

23 A Yes, ma'am.

24 Q ---to identify the guy, right?

25 A Yes, ma'am.

Temika Ashford - Cross-examination
By Ms. Pringle

1 Q And he was the one who I saw with the gloves and a long
2 object in his hand?

3 A Yes, ma'am.

4 Q There's no question about that, right?

5 A No, he just didn't have on the same clothes.

6 Q There's no question that that's what you wrote that
7 night?

8 A Yes, ma'am.

9 Q There's no question that that's your handwriting?

10 A Yes, ma'am.

11 Q There's no question that you said that?

12 A Yes, ma'am.

13 Q And that guy that you saw that night isn't Frankie
14 McGee, is it?

15 That guy's not my client?

16 A The guy that I seen where?

17 Q That you saw that you identified that you told the
18 police was the guy that you'd seen with the stick and the
19 gloves?

20 SOLICITOR CAMPBELL: Objection, Your Honor.

21 Mischaracterization to what she's testified to.

22 THE COURT: Well, just ask one question, and then let
23 her answer it.

24 Q The guy that you identified that night as the person
25 who had been at Reverend Eichelberger's home that you told

Temika Ashford - Cross-examination
By Ms. Pringle

1 the police that night that you saw in the driveway is not
2 that guy, Frankie McGee?

3 A I told them that I couldn't identify the guy that they
4 had caught cause he didn't have on the same clothes.

5 Q Well, you also told them that that was the guy that
6 night, right?

7 A Yes, ma'am, but that was after me telling them several
8 times that I didn't think he was the guy cause he didn't
9 have on the same clothes.

10 Q So, you're trying -- you told them several times that
11 that the clothes were wrong?

12 A Yes, ma'am.

13 Q But other than that, that was the guy is what your
14 statement says?

15 A He looked like the guy, yes, ma'am.

16 Q But that's not what your statement says. Your
17 statement says that was that guy, right?

18 A Yes, ma'am.

19 Q We can agree on that, can't we?

20 A (No response.)

21 MS. PRINGLE: Beg the Court's indulgence.

22 (Pause.)

23 Q The police came to see you over and over again, right?

24 A Yes, ma'am.

25 Q After, after this had happened?

Temika Ashford - Cross-examination
By Ms. Pringle

1 A Yes, ma'am.

2 Q And they kept bringing you pictures and asking you if
3 you could identify them, is that right?

4 A Yes, ma'am.

5 Q So, the, the police, at least, were coming to you and
6 representing to you that, that, asking you if you could
7 identify somebody in here?

8 A Yes, ma'am.

9 Q And you were shown one, two, three, four, five -- shown
10 this one too?

11 six?

12 A Yes, ma'am.

13 Q All right. So, you were shown six line-ups, right?

14 A Yes, ma'am.

15 Q Over months and months of investigation, right?

16 A Yes, ma'am.

17 Q And you circled some people on here, on some of them,
18 but not all of them, right?

19 A Yes, ma'am.

20 Q And all of these guys have, that you circle, other than
21 Mr. McGee, would you agree have sort of a round shape to
22 their head?

23 A Yes, ma'am.

24 Q All right. Sort of a round shape to his head?

25 A Yes, ma'am.

Temika Ashford - Cross-examination
By Ms. Pringle

- 1 Q What about on State's Exhibit 119?
- 2 A Yes, ma'am.
- 3 Q Number 3 has a round shape?
- 4 A Yes, ma'am.
- 5 Q And number five's kind of a round shape, is that right?
- 6 A Yes, ma'am.
- 7 Q And on State's Exhibit 120, that's -- number three has
- 8 a real round head, doesn't he?
- 9 A Yes, ma'am.
- 10 Q And on State's No. 3, you don't identify anybody,
- 11 right?
- 12 A No, ma'am.
- 13 Q And on State's 122, very round head, correct?
- 14 A Yes, ma'am.
- 15 Q So, you're looking at those and looking for a round
- 16 head, right, sort of a flat top?
- 17 A Yes, ma'am.
- 18 Q And in all of those line-ups you don't ever say that
- 19 anybody in any of those line-ups is the guy that you saw
- 20 that night?
- 21 A No, ma'am.
- 22 Q And, to your knowledge, is there any picture with the
- 23 guy that you did see that night, is his picture, David
- 24 Williams picture, in any of those line-ups?
- 25 A I'm not sure.

Temika Ashford - Cross-examination
By Ms. Pringle

1 Q All right. But what you are sure of is that nobody in
2 those line-ups that you see is the guy that you saw that
3 night?

4 A I'm not sure. I didn't get a good look at his face.

5 Q You didn't get a good look at his face, but you got,
6 you got, you got a good enough look to give them information
7 for a composite sketch, right?

8 A Yes, ma'am.

9 Q And you got a good enough look to give them a
10 description of the head shape, right?

11 A Yes, ma'am.

12 Q The eyes, the nose, all the facial features that you
13 were asked about, correct?

14 A Yes, ma'am.

15 Q And you told them you could do that?

16 A Yes, ma'am.

17 Q And you did?

18 A Yes, ma'am.

19 Q And on the night that this happened, no question about
20 it, at 12:14 that morning, you told them that the person
21 that you saw was that guy that they had on scene?

22 SOLICITOR CAMPBELL: Objection, Your Honor. She's
23 asked and answered this question ten times and it
24 doesn't---

25 THE COURT: Objection overruled.

Temika Ashford - Cross-examination
By Ms. Pringle

- 1 Q Yes or no?
- 2 THE COURT: You can answer the question.
- 3 A Okay. He just didn't have on the same clothes.
- 4 Q But other than that, you told them in that statement
- 5 that that was the guy?
- 6 A Because they kept asking me and I kept telling them he
- 7 didn't have on the same clothes.
- 8 Q Okay.
- 9 A And I was scared. So, I was wanting to go home.
- 10 Q But you didn't go home, you stayed, didn't you?
- 11 A After I finished talking to the police I went home.
- 12 Q But -- and you, and you stayed to help, right?
- 13 A Yes, ma'am.
- 14 Q Because you knew that was important?
- 15 A (Witness nods affirmatively.)
- 16 Q And you knew it was important to try to get whoever
- 17 that was off the street, right?
- 18 A Yes, ma'am.
- 19 Q And, so, there's no question that that night when you
- 20 were asking questions, answering questions, no matter how
- 21 scared you were, you were trying to stay there and do the
- 22 right thing?
- 23 A Yes, ma'am.
- 24 Q And in doing that, you told them who, that the guy that
- 25 they had right there was the guy, right?

Temika Ashford - Cross-examination
By Ms. Pringle

1 No question that that's what's in your written
2 statement, right?

3 A Yeah, but that -- like I said, the guy didn't have on
4 the same clothes. I was wanting to go home. After telling
5 them several times the guy didn't have on the some clothes,
6 and being there looking at the guy, I was scared.

7 Q You swore to tell the truth in that statement, didn't
8 you?

9 A Yes, ma'am.

10 Q Like you've sworn to tell the truth today, right?

11 A And I'm telling the truth today, yes, ma'am.

12 Q You swore to tell the truth, the whole truth, and
13 nothing but the truth that night?

14 A That's right.

15 Q And that was two, almost two and a half years ago?

16 A Yes, ma'am, but I was scared. Like I said, I never
17 been in nothing like that. I was scared. I didn't know
18 what to do, what to say, but to tell the truth.

19 Q And you did tell the truth, didn't you?

20 A About that part, I was pressured, kept telling them
21 that the guy did not have on the same clothes.

22 Q Thank you, Ms. Ashford.

23 THE COURT: Anything on redirect?

24 SOLICITOR CAMPBELL: Yes, Your Honor.

25 REDIRECT EXAMINATION

Temika Ashford - Redirect examination
By Solicitor Campbell

1 BY SOLICITOR CAMPBELL:

2 Q Temika, she asked you about the statement and whether
3 it was the truth.

4 A Yes, ma'am.

5 Q When the police -- this was taken at -- what time is
6 indicated on here?

7 You got the statement?

8 A Yes, ma'am, 12:15.

9 Q And they were asking you about when you saw the guy?

10 A Yes, ma'am.

11 Q And the part where she was asking you to quote on the
12 front page about when you pulled up, that's when you saw him
13 on the porch?

14 A Yes, ma'am.

15 Q That's when you saw the guy, right?

16 A The first time, yes, ma'am.

17 Q And that's the truth?

18 A Yes, ma'am.

19 MS. PRINGLE: Objection. Leading.

20 THE COURT: Don't lead the witness.

21 Q That night when you met with the police and they showed
22 you about the line-up, you told them what, that you told
23 them since the day one about --?

24 A About the guy?

25 Q Yeah, that they stopped nearby.

1 A The one that they caught the first time?

2 Q Uh-huh. (Affirmative).

3 A I just kept telling them -- I already had told them I
4 was scared. I kept telling them that can't be him cause he
5 didn't have on the same clothes.

6 Q And did you perhaps leave out any words in this when
7 you were writing it?

8 MS. PRINGLE: Objection to leading. Leading.

9 THE COURT: Objection sustained.

10 Q What you were writing this, were -- what was, what was
11 your frame of mind when you were writing this at 12:15 at
12 night?

13 MS. PRINGLE: Objection. Improper redirect.

14 THE COURT: Objection's overruled.

15 SOLICITOR CAMPBELL: Thank you.

16 Q What was your frame of mind, mind that night when you
17 were writing this out?

18 A I wasn't all the way -- yeah, I was just scared. I
19 wanted to go home.

20 Q You were doing the best you could?

21 A I tried to.

22 Q And, so, if you left anything out of this statement, it
23 wasn't intentionally?

24 MS. PRINGLE: Objection to leading.

25 A No, ma'am.

1 THE COURT: Objection's sustained.

2 Q And then you met with the investigators and you met
3 with our investigators, is that right?

4 A Yes, ma'am.

5 Q I believe a day or so later with Investigator Reece and
6 Thomas, and they took a statement from you?

7 A Yes, ma'am.

8 Q And do you remember what you told them -- what was,
9 what was your frame of mind a day or so later?

10 A I was still just kind of --.

11 Q What did you say about the guy they stopped that night
12 when you met with investigators to follow-up on some
13 additional information?

14 A The guy that I seen that night?

15 Q Uh-huh. (Affirmative).

16 A I told them that I don't know if he was the guy or not
17 cause the clothes he had on wasn't the clothes. It didn't
18 look like the same guy to me.

19 Q And this statement, that's a transcript of your
20 statement right there?

21 A Uh-huh. (Affirmative).

22 Q And that's clearly reflected in there?

23 A Uh-huh. (Affirmative).

24 MS. PRINGLE: Your Honor, I'm going to object. Prior
25 consistent statement. I don't think this is appropriate

1 from cross.

2 THE COURT: Pardon me?

3 MS. PRINGLE: I'm gonna object, Your Honor. I think
4 what she's trying to do is illicit a prior consistent
5 statement from the transcript that is transcribed and
6 recorded, and I don't think that that -- would you like us
7 to approach, Your Honor?

8 THE COURT: Whatever you want.

9 MS. PRINGLE: May we approach?

10 THE COURT: Ladies and gentlemen, let's stand for a
11 moment while counsel approaches.

12 Counsel.

13 (WHEREUPON, a bench conference was held in the presence
14 of the jury, but out of the hearing of the jury at this
15 time.)

16 THE COURT: All right. The objection is overruled.

17 Q When you met with Investigators Reece and Thomas a day
18 or so later after this occurred, what did you tell them
19 about the person they stopped that night?

20 A I don't think he was the guy because he didn't have on
21 the -- he just didn't have on the same clothes, and he just
22 didn't look like the guy I seen.

23 Q You also met with their investigators this year?

24 A Yes, ma'am.

25 Q I believe this is dated April the 4th of 2011?

1 A Yes, ma'am.

2 Q Did he ask you specifically about the guy you saw that
3 night?

4 A Yes, ma'am.

5 Q What did you tell them, again, about the guy you saw
6 that night that they stopped?

7 A I told the police officer that I could not identify the
8 man, and I did not know if it was him or not because I did
9 not get a good look at his face.

10 Q A good enough look?

11 A Yes, ma'am.

12 Q Temika, have you tried to help with what you could do?

13 A Yes, ma'am.

14 SOLICITOR CAMPBELL: I don't have anything further,
15 Your Honor.

16 THE COURT: Any further cross?

17 MS. PRINGLE: No further questions, Your Honor.

18 THE COURT: All right. You may step down, ma'am.

19 Ladies and gentlemen, we'll take a break now, about ten
20 minutes. Please go to the jury room. Please do not discuss
21 the case.

22 (WHEREUPON, the following takes place outside the
23 presence of the jury.)

24 THE COURT: Anything before we break, anything about
25 these other witnesses?

1 SOLICITOR CAMPBELL: Your Honor, during the break there
2 is a video we need to set up. It will be very brief, and
3 we'll go ahead and set up the equipment for the audio
4 recording so that we won't delay the Court.

5 THE COURT: All right. We'll take ten minutes.

6 SOLICITOR CAMPBELL: Thank you, sir.

7 (WHEREUPON, a short break was taken.)

8 (WHEREUPON, State's Exhibit Nos. 132 and 133 were
9 marked for identification purposes only at this time.)

10 THE COURT: All right. You ready for the jury?
11 Ms. Pringle.

12 MS. PRINGLE: If I just may place a sidebar objection
13 on the record from Ms. Ashford's testimony. I objected
14 that, Ms. Campbell going into the prior consistent
15 statements given by Ms. Ashford to Investigator Reece. My
16 objection is under 801(b)(1)(b) that the professional
17 practices and statement of admissions, admissions was not
18 met. The statement that they were seeking to elicit was
19 consistent with the witness' testimony, but it would be my
20 position that there was no allegation of recent fabrication
21 that, that could have been met.

22 The statement that she was crossing on was on May 6th
23 of 2009. The statement would have to be offered to rebut
24 recent fabrication or improper incident or motive, but the
25 statement must have been made prior to the fabrication or

1 before motive or influence or (inaudible).

2 My position was just that that would of between May 3rd
3 and May 6th when the fabrication arose on May 6th, and the
4 Court overruled my objection.

5 THE COURT: All right. Ms. Campbell.

6 SOLICITOR CAMPBELL: Your Honor, we would abide by your
7 ruling, and also we didn't attempt to actually introduce the
8 actual statements themselves. We just went over what she
9 told the officers.

10 THE COURT: All right. Thank you.

11 The basis of the cross-examination, in large part, was
12 that she made a prior statement, and she was attempting to
13 change her testimony today. She's attempting to testify
14 today inconsistent with a prior statement. So, the -- a
15 prior consistent statement showing that, as a result of all
16 the police interrogation and showing her pictures and, and
17 the various oaths she took, and that she is not fabricating
18 her testimony on the witness stand to the jury. That's
19 what, what matters, and the prior consistent statement I
20 find is admissible under Rule 801(b)(1) and my
21 interpretation of the applicability of the rule to the
22 testimony in this case is different from Ms. Pringle.

23 So, I overrule the objection, and you are, your basis
24 for the objection as stated at side-bar is in the record.

25 All right. Are y'all ready for the jury?

1 Now, what's coming next?

2 SOLICITOR CAMPBELL: Your Honor, I'm coming back to
3 the, Mr. Kline from Camden Steel and Metal and there would
4 be a video.

5 THE COURT: All right. Okay.

6 SOLICITOR CAMPBELL: So, we do have that set up. So,
7 it should not be a problem.

8 THE COURT: All right. Bring the jury.

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 BAILIFF: The jury's seated, Your Honor.

12 THE COURT: All right. Very good.

13 Madam Forelady, how's the jury doing?

14 FORELADY: Just fine.

15 THE COURT: Just fine. Good.

16 All right. Your next witness.

17 SOLICITOR CAMPBELL: May it please the Court.

18 State would call Harry Kline.

19 THE COURT: Mr. Kline, if you'd come forward.

20 HARRY KLINE, having been first duly
21 sworn, testified as follows:

22 THE CLERK: Please have a seat.

23 (Witness complies.)

24 THE CLERK: State your full name for the record.

25 DIRECT EXAMINATION

Harry Kline - Direct examination
By Solicitor Campbell

1 BY SOLICITOR CAMPBELL:

2 Q Mr. Kline, where do you live?

3 A Camden, South Carolina.

4 Q Do you have a business over there?

5 A Yes, I do.

6 Q Okay. What's the name of your business, sir?

7 A Camden Steel and Metal Company, Incorporated.

8 Q And what do you do at your business?

9 A We recycle scrap metal.

10 Q As part of your business, do you also have certain
11 equipment on the property including what's been referred to
12 as like an 18-wheeler?

13 A Yes, we do.

14 Q And you use those in the course of your business?

15 A Yes.

16 Q And typically when the business is closed, where are
17 those trucks kept?

18 A They're parked inside the fence.

19 Q How long have you been in business, sir?

20 A My father bought a business in 1948. So, we've been
21 60, I don't know, years at least.

22 Q Okay. What days of the week does your business
23 operate?

24 A Monday through Friday and at certain times on
25 Saturdays.

Harry Kline - Direct examination
By Solicitor Campbell

1 Q And do you work a full day on Saturday?

2 A Till twelve o'clock.

3 Q Till 12:00 noon.

4 I want to turn your attention back to May of 2009, that
5 weekend, was your business burglarized or broken into?

6 A Yes, it was.

7 Q And on May -- when did that actual event occur?

8 Were you able to determine?

9 A Saturday afternoon.

10 Q And that would be May the 2nd?

11 A Yes.

12 Q And when did you actually discover that your business
13 had been broken into?

14 A Either Sunday night or Monday. I, I think maybe we
15 discovered it was broken into on a Monday morning when we
16 showed up for work, and I'm not sure when the towing company
17 called me and told me they had -- if they called me on
18 Sunday, then, then I knew Sunday, but if they called -- I
19 think they called after we opened and said they had the
20 truck.

21 Q When you showed up that Monday morning, when you got to
22 your business, was anything immediately noticeable to you as
23 far as some, some damage to your business?

24 A Yes, the gate was gone.

25 Q And when you say gone, what kind of gate are we talking

Harry Kline - Direct examination
By Solicitor Campbell

1 about?

2 A An eight foot tall chain link gate.

3 Q And upon further review, did you notice any of your
4 equipment missing that Monday morning?

5 A Yeah, a red Peterbilt.

6 Q And I'm gonna show you what's been marked as State's
7 Exhibit Nos. 128 and 129, and first ask do you recognize
8 this, this truck that's depicted here?

9 A Yep, that's our truck.

10 Q And was that the truck that was there when you left
11 either that Friday afternoon or Saturday morning?

12 A Yes, it was.

13 Q Do you have any kind of security equipment at your
14 place of business?

15 A Yeah, we have security cameras and burglar alarm.

16 Q And the security cameras, does it show, as well as the
17 interior, but the exterior of the business where the truck
18 would have been kept?

19 A Yes, it does.

20 Q And that Monday morning when you showed up on the 4th I
21 believe that would be, did you pull any kind of videotape
22 that would of been part of your security system?

23 A Yes, I did. I, I pulled a copy of the, of the exterior
24 cameras where it showed the truck being taken and gave it to
25 the police.

Harry Kline - Direct examination
By Solicitor Campbell

1 Q And you actually gave that to the police?

2 A Yes.

3 Q Cause you actually contacted the police that Monday I
4 believe?

5 A Yes.

6 Q And that would of been the Kershaw County Police?

7 A Camden, City of Camden.

8 Q City of Camden police. Excuse me.

9 And did you pull that video and did you actually turn
10 it over to the police at that point?

11 A Yeah.

12 Q And when pulling it, did you alter or tamper with it in
13 any way or change it in any way?

14 A No.

15 Q And would that have accurately reflected what happened
16 at your business during that robbery on that Saturday?

17 A Yes, it would.

18 Q And that's what you turned over?

19 A Yes.

20 Q And you've had an opportunity to see that?

21 A Yes, many time.

22 SOLICITOR CAMPBELL: Your Honor, at this time we'd
23 offer State's Exhibit No. 132, which is a video.

24 MS. PRINGLE: Subject to our previous objections at
25 this time.

Harry Kline - Direct examination
By Solicitor Campbell

1 THE COURT: It's been noted.

2 (WHEREUPON, State's Exhibit No. 132 was received into
3 evidence at this time.)

4 Q Before I show the video, how did you actually -- you
5 said you got a call from a towing company, what towing
6 company got in touch with you?

7 Do you remember?

8 A I think it was Big Daddy, Big Daddy, Happy Daddy.

9 Q And they actually contacted you about what information?

10 A About we've got your truck.

11 Q And as a result of the phone call you got from -- and
12 did -- where did you go?

13 A Somewhere off -- in Columbia.

14 Q In Columbia?

15 A Off of Farrow Road somewhere.

16 Q And when you got there off Farrow Road, did you go to
17 the actual towing company?

18 A Yes, I did.

19 Q And, that Monday, did you recover your truck?

20 A Yes, we.

21 Q What was the condition of your truck when you recovered
22 it on that Monday?

23 A The hood and front, front-end were messed up, and there
24 was the chain -- the chain link fence was wrapped around one
25 of the axles.

Harry Kline - Direct examination
By Solicitor Campbell

1 Q And would that be the chain link fence that use to be
2 your gate?

3 A Yes, it would.

4 Q And prior to recovering, to actually taking the truck
5 back to Camden, did y'all take any measures to get the chain
6 link off the axle?

7 A Yes, we had to cut away the, the chain link fence from
8 the axle and pull it out from under the truck.

9 Q Part of the items that are kept in your truck there's
10 what's called the -- there's the cab of the truck, is that
11 correct?

12 A Correct.

13 Q And then there's a tool box on the truck, is that
14 correct?

15 A That's correct.

16 Q And that's shown here?

17 A Yes.

18 Q And where is the tool box you're, I'm referring to?

19 A It's behind the cab.

20 Q Right behind the cab?

21 Right there?

22 A That's it.

23 Q And are there certain instruments that are normal in
24 towing that are kept in that box?

25 A Yes.

Harry Kline - Direct examination
By Solicitor Campbell

1 MS. PRINGLE: Objection to the leading nature of the
2 question.

3 THE COURT: Objection's overruled.

4 SOLICITOR CAMPBELL: Thank you.

5 Q And are you familiar with the term winch bar?

6 A Yes, I am.

7 Q And what is a winch bar, sir?

8 A It's a tool used to tighten winch straps on trailers
9 and pull binders tight, chain binders.

10 Q And was a winch bar normally kept in the tool box that
11 would of been in your truck in State's Exhibit No. 128 and
12 129?

13 A Yes.

14 Q And where would that have normally been kept?

15 A In the tool box.

16 Q I'm gonna show you what's been marked as State's
17 Exhibit No. 107. First ask you to look at this item.

18 A Yes, that's, that's a winch bar.

19 Q That's the winch bar?

20 A Yes.

21 Q And would this been the item you're referring to as the
22 winch bar that would of been kept in that tool box?

23 A Yes, or one like it.

24 Q Or one like it?

25 MS. PRINGLE: Objection to the leading and

Harry Kline - Direct examination
By Solicitor Campbell

1 mischaracterization of what he testified to.

2 THE COURT: Don't lead the witness.

3 Q You're familiar with this object?

4 A Yes, I am.

5 Q And would -- tell this jury, would that have been kept
6 on that truck?

7 A Yes.

8 SOLICITOR CAMPBELL: Your Honor, at this we offer the
9 photos into evidence. I don't believe they've been admitted
10 before, 128 and 29.

11 MS. PRINGLE: Subject to our previous objections.

12 THE COURT: They're admitted.

13 (WHEREUPON, State's Exhibit Nos. 128 and 129 were
14 received into evidence at this time.)

15 Q The truck that was stolen that's been shown as pictures
16 128 and 129, is it a commercial truck?

17 A Yes, it is.

18 Q Is there a certain type of driver's license necessary
19 or, or knowledge to drive that truck?

20 A You have to have a CDL.

21 Q And what's a CDL, sir?

22 A It's a commercial driver's license rated -- there's
23 three or four different kinds, but that is a Class A that
24 you -- we didn't have the trailer on it. Without a trailer
25 it could be a Class B.

Harry Kline - Direct examination
By Solicitor Campbell

1 SOLICITOR CAMPBELL: Your Honor, at this time with
2 permission to publish the video.

3 THE COURT: All right. You may.

4 (WHEREUPON, State's Exhibit No. 132 was published to
5 the jury at this time.)

6 Q You can step down so you can come over here. Come,
7 come over on this side and just speak loudly when answering
8 the questions.

9 A (Witness comes down from the stand.)

10 Q What area does this show, sir?

11 A That is the truck scale and the gate.

12 Q And where is the, the gate?

13 Can you just point it out?

14 A This is the gate.

15 Q In the picture now, what do you see?

16 A The truck is coming up on to the scale.

17 Q Are the keys normally left in it?

18 A No.

19 Q And do you know the person that just got out of the
20 truck?

21 A No.

22 Q What area is he in right now?

23 A He's right outside the office. The office is behind
24 those two chairs.

25 Q Can you tell me what he's doing?

Harry Kline - Direct examination
By Solicitor Campbell

1 A He's taken the, the -- we have there some pieces of
2 aluminum, the scrap pieces of aluminum that was strapped
3 down on the pallets. He was removing the straps to get one
4 of them.

5 Q This is a slightly different angle?

6 A Yeah, that's further back where it was parked.

7 Q And I notice the movements are jerky.

8 Is there a little bit of a time lapse involved in, in
9 the security system?

10 A I don't know. They only work when there's a motion.
11 So --.

12 Q You actually turned this video over to I believe the
13 Camden Police Department?

14 A Yes.

15 Q And were you aware of what's shown on the video?

16 A Yes.

17 Q About -- and when you recovered your truck on May the
18 4th of 2009, you didn't know who had taken it or who that
19 person was?

20 A No.

21 Q Some ten months later the police then contacted you
22 involving this case?

23 A Yes, I'm not sure of the time.

24 Q Not sure of the time, but a while had passed?

25 A A while.

Harry Kline - Direct examination
By Solicitor Campbell

1 Q And at that point did you then give them information
2 about your business and the stealing of that truck?

3 A Yes.

4 Q And, again, the place that you recovered the truck was
5 from the towing company off Farrow Road?

6 A Yes.

7 Q Thank you, sir.

8 I don't have anything further.

9 THE COURT: From the defense.

10 MS. PRINGLE: Please the Court.

11 CROSS-EXAMINATION

12 BY MS. PRINGLE:

13 Q Good afternoon, Mr. Kline.

14 It's Mr. Kline, right?

15 A Right.

16 Q So, you testified that, at your business, some trucks
17 have winch bars similar to that on them, right?

18 A Right.

19 Q But you're not saying that that winch bar belonged to
20 your business?

21 A One exactly like it.

22 Q Okay. But you can't identify that one as one
23 specifically coming from your business, correct?

24 A No.

25 Q And some of your trucks have winch bars on them, but

Harry Kline - Cross-examination
By Ms. Pringle

1 some don't, right?

2 A Right now both of them do. That, that truck there
3 always has one. The other truck, not always, but it's not
4 a -- it's a truck that doesn't pull a trailer.

5 Q But what you, when -- when this truck was returned, you
6 didn't do any inventory of the truck, right?

7 A No.

8 Q You didn't inventory anything that might of been
9 missing from inside the truck?

10 A I don't think anything was missing inside the truck.

11 Q Do you -- did you write anything down about what might
12 of been missing at the time?

13 A No, the winch bar would of been outside of, you know,
14 in the tool box. No, we did not inventory it.

15 Q And you didn't inventory anything that might of been
16 missing or notice anything that was missing on the outside
17 of the truck?

18 A No.

19 Q And there was no, no note or indication, of which
20 you're aware, that there was a winch bar missing from that
21 truck and it was returned?

22 A No.

23 Q And this is a red -- it's a Peterbilt truck, right?

24 A Correct.

25 Q Not a Mack truck?

Harry Kline - Cross-examination
By Ms. Pringle

- 1 A No, Peterbilt.
- 2 Q And those are quite different trucks, right?
- 3 A No, not -- I mean they do the same thing. Different,
- 4 you know, it's a difference between a Toyota and a
- 5 Chevrolet.
- 6 Q Okay. But this is a Peterbilt?
- 7 A Right.
- 8 Q And at the time that it happened -- well, law
- 9 enforcement actually came to you?
- 10 It was reported to law enforcement, whether you did it
- 11 or they came to you, correct?
- 12 A Correct.
- 13 Q And that -- it was on May 2nd?
- 14 A I'm thinking it was the Monday.
- 15 Q When you became aware of it?
- 16 A Yes.
- 17 Q And do you have any idea -- okay. So, you don't know
- 18 what time it was taken or the specific?
- 19 You only know when you, when you learned of it?
- 20 A No, the, the security camera says -- I forgot. It's,
- 21 it's on there. It's like three o'clock Saturday afternoon.
- 22 Q And, so, Saturday would be the 2nd?
- 23 A Yes.
- 24 Q Okay. And it was reported to the Camden or Kershaw
- 25 Police Department at the time?

Harry Kline - Cross-examination
By Ms. Pringle

- 1 A On Monday.
- 2 Q Right.
- 3 And there was a report, an incident report made to a
- 4 police officer that the business had been burglarized?
- 5 A Correct.
- 6 Q And at that time or any time from May until March of
- 7 2010, had anybody been charged with breaking into your
- 8 business?
- 9 A Not that I know of.
- 10 Q And had anybody been identified as being the person on
- 11 that video to your knowledge?
- 12 A No, not to my knowledge.
- 13 Q And winch bars are pretty common in the trucking
- 14 business, correct?
- 15 A Yes.
- 16 Q I mean trucking companies will have winch bars all over
- 17 the place, some on trucks, some just on the grounds, right?
- 18 A Only the ones that pull flatbed trailers. So, that---
- 19 Q And they're different brands of winch bars?
- 20 A I'm sure. I don't know.
- 21 Q Different companies that make them?
- 22 A (No response.)
- 23 Q And a winch bar like that, you can actually get it at
- 24 any truck stop, can't you?
- 25 A I would think. Maybe not all of them, but most of

Harry Kline - Cross-examination
By Ms. Pringle

- 1 them.
- 2 Q But plenty of those big trucks stops out on the highway
3 would have those available for purchase?
- 4 A Yes.
- 5 Q And you've just watched this video.
6 You don't know who that individual is, do you?
- 7 A No.
- 8 Q And you testified that you don't know who it is, and
9 you agree that, on the video, you can't see the person's
10 face?
- 11 A No, not very well.
- 12 Q He has a ball cap on, turned around backwards I think?
- 13 A Yes.
- 14 Q And there's some distance from the camera to the
15 individual?
- 16 A Yes.
- 17 Q Basically every, all that you can see is an
18 African-American male, kind of stocky shaped guy, right?
- 19 A Yes.
- 20 Q You agree with that?
21 And the timing, I think Ms. Campbell alluded to, is
22 kind of jerky, right?
- 23 A Yes.
- 24 Q So, you can't even see how the person walks, can you?
- 25 A I don't -- what do you mean?

Harry Kline - Cross-examination
By Ms. Pringle

1 Q Well, the actual video sort of stutters, doesn't it,
2 the timing of it?

3 It's not smooth?

4 It, it sort of stops and starts, kind of jerky as
5 Ms. Campbell said?

6 A Yes.

7 MS. PRINGLE: No further questions. Thank you, sir.

8 THE COURT: Redirect?

9 SOLICITOR CAMPBELL: Just a couple.

10 REDIRECT EXAMINATION

11 BY SOLICITOR CAMPBELL:

12 Q She asked you about other trucks on the lot. We're
13 talking about this specific truck.

14 Would it of had a winch bar just like this on it?

15 A Yes.

16 Q And you didn't do any inventory when you got it back to
17 see whether or not it was still there?

18 A No.

19 Q So, you don't know if it was missing or not?

20 A No.

21 Q But this looks just like the winch bar that would of
22 been on it?

23 A Yes.

24 Q Okay. Thank you.

25 THE COURT: Anything further?

Harry Kline - Recross examination
By Ms. Pringle

1 RECROSS EXAMINATION

2 BY MS. PRINGLE:

3 Q In any event, you're not saying that that came from
4 your business cause you don't know, right?

5 A Right.

6 THE COURT: All right. Thank you, sir.

7 All right.

8 SOLICITOR GARFIELD: Thank you, Your Honor.

9 State calls special Agent Deborah Goff.

10 THE COURT: How long is she expected to testify?

11 SOLICITOR GARFIELD: Just a few minutes, Your Honor.

12 THE COURT: All right.

13 DEBORAH GOFF, being first duly
14 sworn, testified as follows:

15 THE COURT: Be seated.

16 DIRECT EXAMINATION

17 BY SOLICITOR GARFIELD:

18 Q Please state your name for the record.

19 A Deborah R. Goff. D-E-B-O-R-A-H. Middle initial R.
20 G-O-F-F.

21 Q And where are you employed?

22 A I'm employed at the South Carolina Law Enforcement
23 Division.

24 Q And there, Agent Goff, what is your capacity with SLED?

25 A I'm a special agent assigned to the forensic art unit.

Deborah Goff - Direct examination
By Solicitor Garfield

1 I'm a full-time forensic artist.

2 Q Can you please explain to the jury what is forensic
3 art?

4 A Forensic art is any art related to law that helps aid
5 in investigations or court prosecution.

6 Q And how long have you been employed in that capacity?

7 A About five years.

8 Q And do you have any previous experience outside that
9 five years?

10 A Previous to being hired at SLED as a full-time forensic
11 artist I was a freelance forensic artist up in North
12 Carolina.

13 Q And did you ever have any opportunities to, to compile
14 any composite sketches?

15 A Yes.

16 Q And can you explain to the jury what composite sketches
17 are?

18 A A composite sketch is an image made up of component
19 parts that represent the witness' memory of what a suspect
20 looked like at the time of the crime.

21 Q What type of, type of training have you received to be
22 able to perform these sketches?

23 A My training includes -- I have a Bachelor of Fine Arts
24 Degree from Georgia State University majoring in
25 illustration in 1995. In 2003 I studied with Karen T.

Deborah Goff - Direct examination
By Solicitor Garfield

1 Taylor. Her company has a composite drawing course in
2 Scottsdale, Arizona. In 2006 I attended the Federal Bureau
3 of Investigations forensic imaging course in Quantico, and
4 in 2008, 2008 I attended the International Association for
5 Identifications Educational Conference in Louisville,
6 Kentucky, and in 2008 I also became certified as a composite
7 sketch artist through the International Association for
8 Identification and I've been a member of the International
9 Association for Identification in the forensic art
10 discipline since 2003.

11 Q Do you continue to receive continuous training?

12 A Yes, we do.

13 Q Agent Goff, have you ever been qualified as an expert
14 before?

15 A Yes, I have.

16 Q In what area have you been qualified as an expert?

17 A In composite sketches.

18 Q And approximately how many times?

19 A One time.

20 SOLICITOR GARFIELD: Your Honor, at this time I would
21 move Agent Goff as an expert in composite sketch art.

22 THE COURT: Any questions?

23 MS. PRINGLE: No voir dire. No objection.

24 THE COURT: All right. She's admitted.

25 SOLICITOR GARFIELD: Thank you, Your Honor.

Deborah Goff - Direct examination
By Solicitor Garfield

1 Q Agent Goff, please relay to the jury, jury how
2 composite sketches are used in police investigations.

3 A Composite sketches are used when there's a crime that
4 occurs and the identity of the suspect is unknown. We'll be
5 called by -- usually we're called by a local agency to try
6 to do a composite sketch interview with a witness who saw
7 the suspect, and they're used as an investigative tool to
8 help generate leads often as a plea to the public to
9 generate leads, which may lead to an identification and
10 possibly an arrest.

11 Q Do you assist agencies all over the State?

12 A Yes, we do.

13 Q Specifically do -- you assisted local law enforcement
14 here in Columbia?

15 A Yes, ma'am.

16 Q Concerning the case we're here in court about?

17 A Yes.

18 Q Please explain to the jury the process you go through
19 in composing such composite sketches.

20 A First I'll do an, a preliminary interview with the
21 witness to see if they got a good enough look at the
22 suspect, and if they feel that they're capable of doing a
23 composite sketch. And after we've determined that they're
24 capable, then I will sit down with the witness one-on-one,
25 just me and the witness, and I'll ask them to briefly tell

Deborah Goff - Direct examination
By Solicitor Garfield

1 me the circumstances that they saw the suspect, what the,
2 what their opportunity to see the suspect was, and then
3 we'll proceed to -- I'll ask the witness open ended
4 questions using cognitive interviewing skills where we ask
5 open ended questions as to not lead the witness.

6 I'll ask them to tell me what you, what can you tell me
7 about what the suspect looked like, and I'll be taking
8 notes. And then as I start to get an idea of what they're
9 trying to describe to me, then I'll start sketching out what
10 the, you know, what the, what she's describing to me, and
11 then as we get further along in the interview, I'll
12 introduce some further reference material, which can then
13 help us, hopefully help us get a little bit more specific
14 about the individual futures.

15 And -- but it's the reference materials. So, just a --
16 it's a communication tool to help us communicate to each
17 other what the suspect, what they remember the suspect
18 looked like at the time. And then after we've come to a
19 point where the witness, there isn't anything more that the
20 witness can tell me, any more changes that we can make to
21 try to make it look more like what they remembered, then
22 we'll complete the composite sketch and I'll ask them to
23 rate the drawing on a scale of one to ten, and that's so
24 that we have an idea and investigators have an idea of how
25 much leeway to allow the sketch because we're -- memories

Deborah Goff - Direct examination
By Solicitor Garfield

1 aren't 100 percent.

2 So, I'll ask the witness to rate the drawing on a scale
3 of one to ten. One meaning he doesn't look anything like
4 the suspect, and ten looks exactly like the suspect. And,
5 so, that's what we did in this case.

6 Q These are the same procedures you used concerning the
7 case at hand?

8 A Yes.

9 Q Did you have an opportunity to interview a witness
10 involved in this case, Temika Ashford?

11 A Yes, I did.

12 Q Specifically did you interview her on May 6th of 2009?

13 A May I look at my notes?

14 Q Please do so.

15 A Yes, I interviewed her on May 6th.

16 Q And can you tell the jury where you interviewed her?

17 A At the Columbia Police Department.

18 Q And do you recall the demeanor of Ms. Ashford on that
19 particular day?

20 A I really -- I don't recall a lot about that, about
21 specifics, but I -- she was a little bit shaken about what
22 she had just been a part of.

23 Q And can you relay to the jury the information Ms.
24 Ashford provided to you regarding the person that she saw?

25 A Can I relay the information?

Deborah Goff - Direct examination
By Solicitor Garfield

- 1 Q Yes, sir. Yes, ma'am.
- 2 A I have a, my composite sketch that is---
- 3 Q Well, I'm specifically asking you to refer to your
- 4 notes---
- 5 A Okay.
- 6 Q ---about the characteristics she saw.
- 7 A Okay. What I have written in my notes, suspect was an
- 8 African-American male, possibly late 30's, big eyes.
- 9 Complexion, pecan, tan, medium tan.
- 10 Height, tall.
- 11 Weight 180 to 200 pounds.
- 12 The build was husky or wide. The shoulders were broad.
- 13 Hair, short receding low haircut that had a peak, and
- 14 then the facial hair, she wasn't really sure, but had a
- 15 short oval face.
- 16 Q And did she give you any description regarding
- 17 clothing?
- 18 A She did. She indicated that he appeared to be wearing,
- 19 hospital, white, hospital white gloves, and he had a tall
- 20 stick or object in his hands, a white t-shirt, t-shirt,
- 21 sweating, and blue jeans.
- 22 Q And based on the description she gave you, Agent Goff,
- 23 were you able to construct your composite sketch?
- 24 A Yes, I was.
- 25 Q Do you have that with you today?

Deborah Goff - Direct examination
By Solicitor Garfield

1 A Yes, I do.

2 Q And has this been marked as State's Exhibit No. 133?

3 A Yes.

4 Q And is that the sketch that you developed in
5 investigation of this case?

6 A Yes.

7 Q Has there -- is there a signature on the back of that
8 sketch?

9 A Yes, the signature is the witness, Temika Ashford.

10 Q And did you witness Ms. Ashford make that signature?

11 A Yes.

12 SOLICITOR GARFIELD: Your Honor, at this time we'd like
13 to introduce State's Exhibit No. 133 into evidence.

14 MS. PRINGLE: No objection.

15 THE COURT: It's admitted.

16 SOLICITOR GARFIELD: Thank you.

17 (WHEREUPON, State's Exhibit No. 133 was received into
18 evidence at this time.)

19 Q Agent Goff, you made reference to a photo reference
20 book?

21 A Uh-huh. (Affirmative).

22 Q Do you have that book with you?

23 A Yes, I do.

24 Q And just for demonstrative purposes, can you
25 demonstrated to the jury of how this is assisting your

Deborah Goff - Direct examination
By Solicitor Garfield

1 sketches?

2 A Sure. After we establish that overall proportions and
3 layout of the face and head and shoulder areas, then I'll
4 introduce a photo reference catalog and it is broken into
5 different categories like oval head shapes.

6 Q Agent Goff, I'm gonna ask you to stand---

7 A Okay.

8 Q ---so all the jury can see.

9 A Oval head shapes, triangular head shape, square head
10 shape. So, they can look through here. They, they take
11 their time and look through here, and if they see something
12 that reminds them of what the suspect looked like, then she
13 can point it out to me, and I'll use that as reference in my
14 sketch.

15 Q Is that the same photograph book you used with Ms.
16 Ashford?

17 A Yes.

18 Q Thank you.

19 was she able to rate on a scale how confident she was
20 that that was a replica of the person she was describing?

21 A Yes, to the best of her recollection, she rated this
22 sketch a seven or an eight as to the resemblance of the
23 sketch to what she remembered the suspect looking at the
24 time of the crime.

25 Q And, Agent Goff, that's seven or eight on a scale of

Deborah Goff - Direct examination
By Solicitor Garfield

1 how many?

2 A A scale of one to ten.

3 Q And is it -- are you trying to make a hundred percent
4 accurate picture?

5 A We try to get the sketch as close as possible to what
6 the witness remembers the suspect looking like. But a
7 composite sketch is never expected to be an exact portrait
8 of the suspect because we're working from somebody's memory
9 and under certain circumstances.

10 Q Was the witness able to give you any information
11 regarding her opportunity to view the suspect?

12 A Yes.

13 Q And what was that information?

14 A She indicated that she was at the Reverend's residence,
15 and what I have in my notes is she heard a noise -- she was
16 with the Reverend at her residence. She heard a noise. The
17 Reverend got up to check it out. She heard a beating. She
18 heard a noise. And, so, she had left the house, and she had
19 seen the same guy walking down the road.

20 And when I'm interviewing a witness, I'll ask them what
21 was the best opportunity that you had to see the person, and
22 her best opportunity was when she saw him walking down the
23 road approximately 15-feet away from him and in low light.
24 So, that the -- that's the time that we'll focus on to do
25 the composite sketch.

Deborah Goff - Direct examination
By Solicitor Garfield

1 Q Agent, do you sometimes, in your line of work and in
2 your, your expertise, find that time can affect a
3 description from a witness?

4 A It, it can. It depends on the situation.

5 Q Can sometimes time help a witness improve?

6 A Sometimes it can.

7 Q Thank you, Agent Goff. Please answer any questions
8 defense counsel may have.

9 MS. PRINGLE: Please the Court?

10 THE COURT: Yes.

11 CROSS-EXAMINATION

12 BY MS. PRINGLE:

13 Q Good afternoon, Agent Goff.

14 A Good afternoon.

15 Q If I understood your testimony correctly, it sort of
16 goes to say, a witness, when you sit down and meet with
17 them, the first thing that you need to know is if the
18 witness got a good enough look to even being capable of
19 doing a composite sketch, right?

20 A Yes, ma'am.

21 Q And sometimes when you meet with a witness, do you
22 decide they didn't get enough, a good enough look and you
23 don't do it?

24 A Right. Yes.

25 Q So, it's a, I guess a two or three part interview, and

Deborah Goff - Cross-examination
By Ms. Pringle

1 if you don't get past the first part, y'all just stop,
2 correct?

3 A (No response.)

4 Q If they, if they didn't get a good enough look---

5 A If it -- if I -- during my preliminary interview with a
6 witness, if they are not able to describe to me what the
7 suspect looked like in the composite sketches, we're not
8 able to do a composite sketch. So then it would be called.

9 Q And specifically what you're looking for are facial --
10 the ability to recall facial features?

11 A What we're looking for is a general overall look of
12 what the suspect looked like based on the witness' memory.

13 Q But the drawing is of just the face, not the full body?

14 A Right.

15 Q So, the, the end result, what you're looking to come up
16 with, is a composite sketch of the face?

17 A Yes.

18 Q And she didn't -- Ms. Ashford, when you met with her,
19 she didn't say to you I couldn't see this person's face?

20 A Sometimes the witness might say I didn't get a real
21 good look at him. But if she can, if, if she can give me
22 general descriptive information, it's enough to create a
23 general resemblance of what the suspect looks like, which
24 can help in the investigation.

25 Q And specifically with regard to Ms. Ashford though, she

Deborah Goff - Cross-examination
By Ms. Pringle

1 didn't say to you that she could, she didn't get a good look
2 at his face?

3 A I don't recall her saying she didn't get a good look at
4 his face.

5 Q That would be significant though, wouldn't it?

6 A If she was not able to describe what his face looked
7 like, yes.

8 Q And do you recall if she said I only glanced at him?

9 A No.

10 Q And that composite sketch, the information, the image
11 that you created is based on what she told you, right?

12 A Yes, ma'am.

13 Q From her words and looking at those photograph that you
14 just talked about?

15 A Yes, ma'am.

16 Q And at the end of it, she got to review the final
17 product, right?

18 A Yes, ma'am.

19 Q She looked it over and you said she rated it?

20 A Yes.

21 Q And would you acknowledge that, on a scale of zero to
22 ten, seven or eight is pretty high?

23 A It's on the higher end of the scale, yes.

24 Q So, she was fairly confident and comfortable with the
25 way that looked?

Deborah Goff - Cross-examination
By Ms. Pringle

1 A She rated it a seven or an eight. So, I mean a seven,
2 in her mind -- the rating scale is subjective. So, seven in
3 her mind could be, you know, C, or it could be higher.

4 Q To you, would a seven or an eight be pretty good---

5 A For the---

6 Q Pretty good?

7 A For a composite sketch, a seven or eight is fairly
8 common.

9 Q Now, let me ask you about some of the specific things
10 that she told you or, or may not have told you.

11 You did get height and weight from her, correct?

12 A Yes, when we ask the witness to describe what he looked
13 like, they're trying to describe to us what they saw and
14 what they can recall. It's not, it's not a fact.

15 Q She specifically told you this guy was tall?

16 A I wrote tall down on my notes, yes.

17 Q And 180 to 200 pounds?

18 A Her estimate is 180 to 200 pounds.

19 Q And obviously the person that she described has hair?

20 A Yes, she said short receding low cut.

21 Q And you specifically noted on direct that the hair has
22 a peak?

23 A Yes.

24 Q And what do you mean by that?

25 A As the composite sketch illustrates, the composite

Deborah Goff - Cross-examination
By Ms. Pringle

1 sketch is basically the notes and the outcome of my
2 interview with the witness. So, the sketch illustrates what
3 she meant or it's close to what she meant as we could get.

4 Q And I'm sorry, just describe what you mean by a peak
5 on---

6 A Do you have a copy of the sketch?

7 Q If you could just hold it up and show the jury what
8 you're talking about.

9 A This -- she mentioned the receding hairline and the
10 peak where it comes down in the center.

11 Q It comes sort of towards a point in the front there?

12 A I wouldn't call it a point. I'd say it curves down.

13 Q Okay. She didn't tell you he was bald, did she?

14 A No, she did not.

15 Q And the eyes in this image, would you say those eyes
16 were sort of wide set?

17 A I mean I guess that's, that's subjective.

18 Q Okay. Did she say anything to you about the individual
19 having, anything about having gold teeth?

20 A No.

21 Q Did she say anything about a birth mark on his head?

22 A No, we didn't -- we weren't able to get that specific.

23 Q And she did not tell you -- one of the things you
24 talked about with the photo was a triangular shaped head.

25 what does that mean?

Deborah Goff - Cross-examination
By Ms. Pringle

1 A When we're interviewing the witness at the beginning of
2 the, towards the front end of the composite interview, we'll
3 try to get the basic head shape, and some people, you know,
4 when you look at somebody and you see somebody with a really
5 round head or it's wider at the top and narrower at the
6 bottom, triangular shaped head or long, and rectangular
7 shaped head, we'll just try to get the basic head shape as a
8 starting point.

9 Q And the only point is just the triangular is a kind of
10 shape of head that somebody might select, right?

11 A Yes.

12 Q But that's not what -- you don't have any indication
13 that she selected that shape head?

14 A I mean I can look in my notes and see what she pointed
15 out, out of the reference book, but she didn't specifically
16 say triangular shaped head.

17 Q And these notes that you keep, those are actually notes
18 that you take while you're with the witness?

19 A Yes, ma'am.

20 Q And she told you -- your notes indicate that she was
21 about 15 feet away from him at one point?

22 A Yes.

23 Q And did she also tell you that -- do you recall she
24 told you she saw him not once, but twice?

25 A From what I can recall from my interview with her, she

Deborah Goff - Cross-examination
By Ms. Pringle

1 knew he was in the house and she saw him a second time
2 walking down the road, and that's where she saw him from 15
3 to 20 feet away and that's the time that we focused on to do
4 this composite sketch.

5 Q Okay. And on your -- you have notes up there that are
6 just your -- it's a blank sheet of paper with, with your
7 notes written on the front.

8 Do you have those up there with you?

9 A Yes.

10 Q May I see what you have?

11 A That's the front of the form I think.

12 Q Oh, okay.

13 So, that's on the back?

14 A Yes.

15 Q And would you read to the jury what you have written
16 there at the top of that?

17 A What I wrote is if you saw him again and the answer is
18 yes. That's my notes to me that I asked if you saw him
19 again would you recognize him, and her answer was yes.

20 Q Thank you very much.

21 A Thank you.

22 THE COURT: Anything further?

23 SOLICITOR GARFIELD: Just a couple, Judge.

24 REDIRECT EXAMINATION

25 BY SOLICITOR GARFIELD:

Deborah Goff - Redirect examination
By Solicitor Garfield

1 Q Agent Goff, was she confident in her description of the
2 suspect's nose?

3 A I think the -- let me see. When we got, when we -- the
4 sketch is a work in progress. You know, she might be more
5 confident in some areas. I do have in my notes that she
6 felt more confident about the head shape and the hair and
7 was more vague on the nose and mouth, and that's common for
8 somebody to be more confident in a certain area of the face
9 than in others.

10 Q Is that your expert opinion?

11 A Yes, ma'am.

12 Q Agent Goff, are you, in any way during these composite
13 sketches, suggestive?

14 A No.

15 Q You don't offer anything to the witness?

16 A No, the witness controls the drawing. Leads and
17 controls the drawing throughout the process.

18 Q Do you only do composite sketches of faces?

19 A If we're asked to do composite sketches of something
20 else that the witness can describe then we may be asked to
21 draw that.

22 Q Were you asked to do any other kind of sketches in this
23 case?

24 A No.

25 Q Thank you.

Deborah Goff - Recross examination
By Ms. Pringle

1 THE COURT: Anything else?

2 RECROSS EXAMINATION

3 BY MS. PRINGLE:

4 Q So, all of the information that you needed and that you
5 used to create that sketch came from Ms. Ashford?

6 A Yes, ma'am.

7 THE COURT: All right. Thank you. You may step down.

8 Ladies and gentlemen of the jury, we will take one hour
9 and 15 minutes, one hour and 15 minutes for lunch. Please
10 do not discuss the case. Please go to the jury room.

11 (WHEREUPON, the following takes place outside the
12 presence of the jury.)

13 THE COURT: Is there anything before we break?

14 SOLICITOR CAMPBELL: Nothing from the State, Your
15 Honor.

16 MR. STRICKLER: No, sir, thank you.

17 THE COURT: We'll reconvene in an hour and 15 minutes.

18 (WHEREUPON, Court was in recess for the lunch break.)

19 SOLICITOR GARFIELD: The next witness is Doctor Marcus,
20 the pathologist. We have provided the autopsy pictures to
21 the defense that we wish to introduce. They have them and I
22 believe there's some objections.

23 THE COURT: All right.

24 MS. DAVIS: Your Honor, if I can approach and just show
25 you the four pictures that we're---

1 THE COURT: Sure.

2 MS. DAVIS: ---referring to?

3 THE COURT: And what are these four, these four
4 pictures that you handed to me?

5 SOLICITOR GARFIELD: Your Honor, those are autopsy
6 pictures. I consulted with our pathologist, Doctor Marcus,
7 over the lunch hour, and he indicates to me that those are
8 the pictures that would help him explain to the jury the
9 injuries sustained by the victim, Reverend Eichelberger. It
10 definitely shows evidence of the general injuries.

11 THE COURT: All right. And from the defense?

12 MS. DAVIS: Yes, sir, Your Honor. We would object to
13 the admission of all four of those photographs. In terms of
14 the case, one, under Rule 403, we find that it would be
15 highly prejudicial or it would outweigh the probative value
16 of those, of what the pictures are intending to show.

17 Your Honor, one of the most recent cases is State v.
18 Torres, which is 309 SC 618, a 2010 case, and in that
19 case -- it's a death penalty case and there were autopsy
20 photos admitted, but it's actually admitted in the
21 sentencing phase of the trial, not in the guilt phase, and
22 in that situation they allowed those photos, but they also
23 said that it's because the probative value in the sentencing
24 phase in a death penalty case is much broader than in the
25 guilt phase because the State is, has to show aggravating

1 factors, is allowed to go into the character of the
2 defendant, and the circumstances of the crime to show the
3 aggravating factors.

4 The case, although they allowed the photographs in,
5 Your Honor, went on to state that it takes this opportunity
6 to address the area of growing concern to the Court. The
7 photos at issue, while admissible, are the outer limits of
8 what our law permits a jury to consider. Moreover, they
9 also sought to introduce of a dissection at autopsy, which
10 was properly excluded, and the photos that I've handed up,
11 that the State wants to introduce, first of all, I think are
12 evidence of dissection at autopsy.

13 They're not just an autopsy photo showing an injury.
14 It's actually a dissection of the, Mr. Eichelberger's head,
15 his brains, and skull area, which, even in State v. Torres,
16 was actually excluded those photos. It stated some that you
17 introduce at the sentencing phase.

18 So, Your Honor, I think that that would be on point,
19 and would make those photos inadmissible. But in other
20 cases, Your Honor, they also, in non-death penalty cases,
21 where the State was then allowed to introduce autopsy photos
22 extend where the cause of death has been highly disputable
23 or at issue in the case.

24 State v. Holder, Your Honor, is cited actually in the
25 Torres case. It's a homicide by child abuse case where the

1 State said that autopsy photos were necessary for the
2 pathologist to show the injuries, and was also done because
3 it, the photographs demonstrated the damage to the child,
4 which would have been difficult to ignore because the
5 defense was stating that, through their witness, that she
6 thought it was food poisoning, and, therefore, had no idea
7 the injuries had occurred, and the State was able to get
8 those photos in to rebut that or refute that testimony.

9 Your Honor, also in State v. Ward, which is 374, I'm
10 sorry, 374 SC 606. That is also cited in State v. Torres.
11 It's a non-death penalty case where two autopsy photographs
12 were allowed that illustrated a gray wound to, in a murder
13 case. It was said to be a graze to the victim's back, and
14 the State, I'm sorry, the Court allowed those in saying it
15 was necessary to rebuts the defense's argument about the
16 angle of the shot and to refute self-defense.

17 So, both of those cases, although not death penalty, in
18 both cases where the injury and the cause of death were
19 contested, disputed, and at issue, and then they put up one
20 doctor, which we have no questions for. There is no dispute
21 about the cause of death in this case, and I have further
22 case law, Your Honor, to go to the Court that I think this
23 is highly prejudicial and not probative, probative. It
24 would, for that reason, ask that they be, not be allowed and
25 not be admitted.

1 I'll cite one other case, Your Honor, State v.
2 Middleton, which is 288 SC 21, it's a 1986 case, which is,
3 talks about pictures or three photographs that depict the
4 scalp being pulled away from the skull. There's some other
5 more graphic photos including a CSC case. But in that case
6 also, Your Honor, the Court reasoned that that was -- the
7 photos were used to arouse sympathy and should be excluded,
8 and, Your Honor, I just think that, under all those case
9 law, I think the pictures that they're wanting to get in
10 are, should be, should not be allowed.

11 THE COURT: All right. Ms. Garfield.

12 SOLICITOR GARFIELD: Thank you, Your Honor.

13 While it is not disputed, according to Ms. Davis, the
14 cause of death, it is still our burden to prove a cause of
15 death. We also have an issue of proving malice we believe
16 that would help in Mr. Marcus' testimony and his explanation
17 of how these wounds were sustained, the amount of force that
18 was required to be used or sustained.

19 Ms. Davis is correct that there's a majority of
20 homicide by child abuse cases that allow these photographs
21 to come in and most of those cases we're dealing with
22 children who are dead as a result of some sort of head
23 trauma, and this is the case, this is the same situation in
24 this case where we had a victim who died of head trauma, and
25 not only that, Your Honor, who died obviously close to three

1 months after the injury's sustained.

2 we believe it's proper to go into his testimony and
3 allow the jury to understand, that even after three months,
4 he still died as a result of those head injuries.

5 THE COURT: What other photo, photographs do you have
6 that you intend to introduce where there is no objection if
7 there, if there are any?

8 SOLICITOR GARFIELD: We have -- would you like to see
9 all autopsy pictures?

10 Is that what you're asking for?

11 THE COURT: Are there any photographs that you-all have
12 agreed to as being admissible?

13 SOLICITOR GARFIELD: Oh, no, sir, those are the only
14 four the State's seeking to introduce as well as we'll be
15 relying on photographs that are already in evidence.

16 THE COURT: All right.

17 MS. DAVIS: And, Your Honor, part of the argument also
18 is they already have into evidence I believe two, if not
19 three, photos that show the injury to Mr. Eichelberger on
20 the night of---

21 THE COURT: The defense objected to those as well. So,
22 it's the defense's position that photographs per se are
23 inadmissible I imagine.

24 MS. DAVIS: No, sir, Your Honor. But in certain
25 circumstances, circumstances where they're particularly

1 gruesome or particularly of the caliber that we, that the
2 state's seeking to introduce autopsy photos we do have any
3 have objection.

4 THE COURT: We're talking about autopsy, all autopsy
5 photos at this point?

6 MS. DAVIS: Yes, sir.

7 THE COURT: But we were earlier talking about injury
8 photographs, and y'all objected to those as well.

9 MS. DAVIS: Yes, sir.

10 THE COURT: Preliminarily, in other words, at this
11 stage of things, based on what has been argued to me, I
12 believe that the prejudicial effect outweighs any probative
13 value absent some showing of need. Beyond what I've heard,
14 I would sustain the objection to these photographs.

15 MS. DAVIS: Thank you, Judge.

16 SOLICITOR GARFIELD: Thank you, Your Honor.

17 THE COURT: Anything else before the jury comes?

18 SOLICITOR GARFIELD: No, sir.

19 THE COURT: All right. Bring them in.

20 (WHEREUPON, the following takes place within the
21 presence of the jury.)

22 BAILIFF: The jury is seated, Your Honor.

23 THE COURT: All right. Thank you.

24 The next witness.

25 SOLICITOR GARFIELD: Thank you, Judge.

Bradley Marcus - Direct examination
By Solicitor Garfield

1 The State will call Doctor Bradley Marcus.

2 DOCTOR BRADLEY MARCUS, having been first
3 duly sworn, testified as follows:

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

6 WITNESS: Bradley J. Marcus. M-A-R-C-U-S.

7 DIRECT EXAMINATION

8 BY SOLICITOR GARFIELD:

9 Q Doctor Marcus, what is your profession?

10 A I'm a pathologist.

11 Q And can you explain to the jury what a pathologist is?

12 A All right. A pathologist is a person who studies
13 disease. In addition to my -- as -- and a branch of
14 pathology is called forensic pathology, and forensic
15 pathology investigates sudden and unexpected deaths, and a
16 forensic pathologist does perform the autopsy on a person
17 who suddenly unexpectedly dies and determines the cause of
18 death, which is either a disease or an injury that brings
19 about death.

20 Q Are you board certified?

21 A Yes, I am.

22 Q And can you share with the jury your board
23 certifications?

24 A Yes, I'm, I'm board certified in anatomic pathology,
25 clinical pathology, forensic pathology, and cyto pathology,

Bradley Marcus - Direct examination
By Solicitor Garfield

1 which cyto pathology is the study of like cells, like Pap
2 smears, and so forth. I, I look at those slides and I come
3 up with an interpretation.

4 Q And how does one become board certified?

5 A Well, basically, in pathology, you got to go to medical
6 school first. So, I went to medical school, and then after
7 completing medical school I, I completed six years of
8 training at the Medical University of South Carolina where I
9 studied anatomic pathology, clinical pathology. I did a
10 year of forensic pathology in a fellowship training program
11 and I also did a year of cyto pathology.

12 Q And have -- what -- where did you go to college,
13 undergrad?

14 A I went to University of North Carolina at Chapel Hill.

15 Q And then you went on to MUSC?

16 A Yes.

17 Q And currently what are your duties?

18 A Right now my duties are -- right now I'm the chief
19 medical examiner for Richland County. I also work -- part
20 of my job is I work at Professional Pathology Services,
21 which is a private group here in Columbia of pathologists,
22 and I perform forensic autopsies at Palmetto Health,
23 Richland Hospital.

24 Q And where all, where all do you have hospital
25 privileges?

Bradley Marcus - Direct examination
By Solicitor Garfield

1 A I have privileges at Richland, Palmetto Health,
2 Baptist, Newberry Hospital, and also in Kershaw Health up in
3 Camden.

4 Q Do you only do autopsies here in the Midlands?

5 A I do -- well, I do autopsies and I also just look at
6 anything, anything related to pathology I do pretty much.

7 Q And how many autopsies would you say you've performed?

8 A I've preformed approximately 1500 over my nine year
9 career so far.

10 Q And have you ever been certified as an expert?

11 A Yes.

12 Q Approximately how many times?

13 A Approximately 16, 17 times.

14 SOLICITOR GARFIELD: Your Honor, at this time I'd like
15 to seek to introduce Doctor Marcus as an expert in forensic
16 pathology.

17 MR. STRICKLER: We have no voir dire for the doctor.

18 THE COURT: He's an expert in that field.

19 SOLICITOR GARFIELD: Thank you, Your Honor.

20 Q Doctor Marcus, on the case at hand involving a victim,
21 Reverend Tryon Eichelberger, did you have an opportunity to
22 conduct an autopsy on this person?

23 A Yes, I did. I performed the autopsy myself.

24 Q And approximately when was that?

25 A I did the autopsy on August the 1st, 2009.

Bradley Marcus - Direct examination
By Solicitor Garfield

1 Q And where was that autopsy performed?

2 A Autopsy was performed at Palmetto Health Richland
3 Hospital in the autopsy suite in the basement.

4 Q Approximately how long does such an autopsy take?

5 A Mr. Eichelberger's autopsy took approximately an hour
6 or so.

7 Q And based on your findings regarding this autopsy,
8 share with the jury what you discovered.

9 A So, what I discovered at autopsy is it was an
10 elderly -- you know, not an elderly, but a well in shape
11 gentleman. He weighed approximately 150 pounds, 68-inches
12 in length, and basically what I found -- the first thing I
13 do is I do an external examination on him, and the only
14 thing I really found was that, like a little abrasion on his
15 right upper earlobe, which probably was from being in the,
16 in the bag, like a little sore from laying on a pillow or
17 something.

18 After that, I concentrated on the head cause he had
19 some medical history that was significant. After, after I
20 cut the scalp open, I reflected the scalp over and there
21 were three burr holes, which are three like drill holes in
22 the, in the skull. Again, I can't exactly point out where
23 they were or I don't have my diagrams here. But there were
24 three holes that a surgeon had put into his, into his skull
25 to drain out a, what they, what they call a subdural

Bradley Marcus - Direct examination
By Solicitor Garfield

1 hemorrhage, which is a hemorrhage on the brain per se.
2 subdural is underneath the dural membrane in the brain. The
3 brain has got several membranes, membranes in it.

4 It's a, basically a hemorrhage in the brain that
5 occurred, and I didn't see any blood in there cause the
6 surgeon had, had, had drained it out. But what I did find
7 in the, in the brain was a neomembrane. It's a membrane
8 that forms when you have a hemorrhage like this in the
9 brain, and that was there, and that would, that would stay
10 there for the rest of his life.

11 In the, the left area of the brain area was flat
12 probably because the blood was in there at, at one point,
13 but the surgeon had drained it out. So, that was what I
14 found at the autopsy.

15 Q Doctor, within a reasonable degree of medical
16 certainty, do you have an expert opinion as to what the
17 cause of death was?

18 A Yes, after a thorough review of all the medical records
19 and the history, I came up with the cause of death as being
20 complications of a subdural hemorrhage due to a blunt head
21 impact. Something struck his head. That's what I came up
22 with after looking through all the medical records and my
23 autopsy.

24 Q Doctor Marcus, you reviewed all the medical records?

25 A Yes.

Bradley Marcus - Direct examination
By Solicitor Garfield

1 Q And this incident where he sustained the injury had
2 actually occurred several weeks prior to the autopsy, is
3 that correct?

4 A Yes, that's correct.

5 Q Did that change your opinion in any way?

6 A No, it does not.

7 Q Were you also able to review some photographs from
8 hospital?

9 A Yes, I was.

10 Q I'm gonna show you what's already been marked as
11 State's Exhibits No. 8.

12 Were you able to review that photograph?

13 A Yes, I was.

14 Q And do you view an injury in that photograph?

15 A I do.

16 Q And is that consistent with your findings, that injury?

17 A That is consistent with my findings.

18 Q And what does that photograph, that injury in that
19 photograph reflect to you?

20 A Can I show it?

21 Q Please do.

22 A Okay. So, here, here -- I've had -- there's two
23 injuries in this photo. So, this is a, a photo of
24 Mr. Eichelberger, Eichelberger laying down and photographing
25 him from the, from the, the left side here, and what I see

Bradley Marcus - Direct examination
By Solicitor Garfield

1 here are two injuries. Clearly on the scalp there's an
2 injury which is called a laceration.

3 All right. A laceration is an injury that occurs due
4 to blunt trauma. Blunt trauma, I mean not sharp, something
5 not sharp. It's blunt. Someone hits you like that, and
6 actually it tears the skin open. Actually tears the skin.
7 The skin only has so much strength holding it together.
8 That's called a laceration. Clearly I see a laceration
9 right here on his left head, and I see another laceration
10 right here on the, like the shoulder, chest area right about
11 here in, for based in that photograph.

12 So, what this tells me is they're two, at least two
13 blunt impacts. One to his head, one there on his left
14 shoulder, anterior chest area.

15 Q Doctor Marcus, I'm also gonna show you State's Exhibits
16 12 and 14. If you can look at each of those and demonstrate
17 to the jury what those reflect in the photograph.

18 A Okay. So, this here -- this is just a close-up of that
19 laceration. Again, there are -- there's medical
20 intervention here, someone came and surgically stapled the
21 laceration closed cause the gape's open and you close it.

22 Q And, Doctor Marcus, what number is that?

23 A This is State Exhibit No. 12.

24 Q Okay. Thank you.

25 A And then this one, this is State Exhibit No. 14, this

Bradley Marcus - Direct examination
By Solicitor Garfield

1 is just a close-up of the injury on State's Exhibit No. 8
2 here. Just a close-up showing the laceration here. Kinda
3 of the same consistency in the, in the hair area.

4 Q Thank you, Doctor Marcus.

5 Doctor Marcus, I'm gonna show you what's been entered
6 into evidence as State's Exhibit No. 107.

7 Is this object consistent with what could have been
8 used?

9 A Absolutely.

10 Q And in your expert opinion, doctor, can you share with
11 the jury the amount of force that could of been, that may of
12 been used in developing this injury?

13 A A significant amount of force was used in developing
14 this injury. A significant amount like, you know, amount to
15 a swinging of a bat almost in my opinion.

16 Q And is that your expert opinion?

17 A That's my expert opinion.

18 Q And, Doctor Marcus, it is possible he could have
19 sustained such type of injury from a fall?

20 A Absolutely not.

21 Q And why is that?

22 A The base -- based on the injury and the length of that
23 injury there, if you had fallen, you could still get a scalp
24 laceration, but it's not gonna be that long. Absolutely
25 not. That's a gaping laceration here. And, remember, your

Bradley Marcus - Direct examination
By Solicitor Garfield

1 skull is curved. So, if you fall, you then hit just one
2 area.

3 Q And, Doctor Marcus, you related that this victim in
4 this case was elderly?

5 A Yes.

6 Q Did his age contribute in any way to his death?

7 A No.

8 Q And why do you say that?

9 A From my autopsy, otherwise, Mr. Eichelberger was very
10 healthy from what I can tell from my autopsy.

11 Q Thank you, Doctor Marcus. Please answer any questions
12 defense counsel may have.

13 THE COURT: Defense.

14 MR. STRICKLER: We have no questions, Your Honor.
15 Thank you.

16 THE COURT: All right. Thank you, doctor. You may
17 step down.

18 SOLICITOR CAMPBELL: Please the Court.

19 The State would call Ms. Waring.

20 MARIE WARING, after being duly
21 sworn, testified as follows:

22 THE CLERK: Please have a seat and state your name for
23 the jury.

24 WITNESS: Marie, Marie Waring.

25 DIRECT EXAMINATION

Marie Waring - Direct examination
By Solicitor Campbell

1 BY SOLICITOR CAMPBELL:

2 Q Ms. Waring, I apologize for bringing you back up here.
3 I'm gonna show you a photograph.

4 Is that also part of your file and kept in the normal
5 course of business?

6 A Yes.

7 Q And was then the photograph that was taken I believe in
8 2008 associated with the driver's license you testified to
9 earlier?

10 A Yes.

11 SOLICITOR CAMPBELL: Your Honor, at this time we'd
12 offer it into evidence.

13 THE COURT: Any objection?

14 MS. PRINGLE: Beg the Court's indulgence.

15 (Pause.)

16 MS. PRINGLE: If I can just look at it, Your Honor.

17 SOLICITOR CAMPBELL: Your Honor, that's State's 134.

18 (Pause.)

19 MS. PRINGLE: No objection.

20 THE COURT: Admitted without objection.

21 (WHEREUPON, State's Exhibit No. 134 was received into
22 evidence at this time.)

23 Q The date, the issue date, is that reflected on this
24 document?

25 A Yes.

Marie Waring - Direct examination
By Solicitor Campbell

1 Q And what's the issue date, ma'am?

2 A November the 25th, 2008.

3 Q Thank you, ma'am.

4 I don't have anything further, Your Honor.

5 THE COURT: Any questions by the defense?

6 MS. PRINGLE: Your Honor, may it please the Court.

7 CROSS-EXAMINATION

8 BY MS. PRINGLE:

9 Q Hello again, Ms. Waring.

10 A Hi.

11 Q On State's Exhibit No. 134, I ask you to refer to it
12 and tell the jury the height and the weight that are listed
13 on there.

14 A The height is 5'8". The weight is 230 pounds.

15 Q And that would be the height and weight for Mr. Frankie
16 McGee, correct?

17 A Yes.

18 Q And -- that's all. Thank you.

19 THE COURT: Anything further?

20 SOLICITOR CAMPBELL: Nothing, Your Honor.

21 THE COURT: All right. Thank you. You may step down.

22 SOLICITOR CAMPBELL: Beg the Court's indulgence, Your
23 Honor.

24 (Pause.)

25 THE COURT: Ladies and gentlemen, I'll have you go to

1 the jury room for a few minutes. Please do not discuss the
2 case.

3 (WHEREUPON, the following takes place outside the
4 presence of the jury.)

5 SOLICITOR CAMPBELL: I apologize, Your Honor.

6 THE COURT: That's all right.

7 SOLICITOR CAMPBELL: It suddenly occurred to me, as I
8 was getting ready to put in the closest in time photo that
9 we have of him, this is September 9th, 2010, and I do have
10 Captain Redmond here, but it suddenly occurred to me that it
11 might be some prejudice to the defendant, if I, and I just
12 thought about this as I was getting ready to call him. So,
13 I consulted with the defense and how they want me to
14 introduce that. It's just a picture of him on September 9th
15 of 2010.

16 THE COURT: All right.

17 MR. STRICKLER: 2010?

18 SOLICITOR CAMPBELL: I'm sorry. 2009. I'm sorry.
19 September 9th, 2009, at 2:06PM, and, and I apologize, Your
20 Honor. I should of brought it up ahead of time. It just
21 occurred to me, as I was getting ready to call the witness
22 that it might---

23 THE COURT: All right.

24 SOLICITOR CAMPBELL: ---be perceived as prejudice.

25 Can I go ahead and mark the item?

1 THE COURT: Yes.

2 SOLICITOR CAMPBELL: Thank you.

3 (WHEREUPON, the photograph was marked as State's
4 Exhibit No. 135 for identification purposes only at this
5 time.)

6 SOLICITOR CAMPBELL: Thank you, Your Honor.

7 THE COURT: All right. Mr. Strickler.

8 MR. STRICKLER: Your Honor, obviously we object. First
9 of all, as to relevance. This is a picture taken September,
10 September 9th, 2009, which would be a number of months after
11 the incident in this case. We already have a picture from
12 November 2008. I don't know what this has, the mix as far
13 as another picture of the defendant for.

14 THE COURT: Your objection's as to relevance.

15 Do you object on any other basis?

16 MR. STRICKLER: No, sir.

17 THE COURT: All right. What says the State regarding
18 relevance?

19 SOLICITOR CAMPBELL: Your Honor, based on the
20 cross-examination of Ms. Ashford and of the sketch artist,
21 there were mentions about the shape of the head, the
22 receding hairline, things of that nature. I believe she
23 referred to it as a triangular shaped head. These are as
24 close in time as I can get to photographs, actual
25 photographs of the defendant. The one from November of 2008

1 is some seven or eight months before. This one is actually
2 only four months afterwards. We would say that they are
3 relevant just based on their cross-examination to the issues
4 in this case as this whole case is about ID.

5 THE COURT: All right.

6 SOLICITOR CAMPBELL: I can hand the picture up if you'd
7 like to see it.

8 THE COURT: I don't need to see it.

9 SOLICITOR CAMPBELL: Okay. There are no identifying
10 factors on it that would in any way --.

11 THE COURT: And the, the witness who's going to
12 introduce the photograph is Captain Redmond you say?

13 SOLICITOR CAMPBELL: Yes, sir, he's here.

14 MR. STRICKLER: If I may, Your Honor, if Your Honor is
15 inclined to go ahead and let them introduce it, I would
16 stipulate that that's a picture of him---

17 SOLICITOR CAMPBELL: That's what I---

18 MR. STRICKLER: ---and the date from which it was taken
19 so that Mr. Redmond, Captain Redmond doesn't have to get up
20 and testify to the facts and circumstances surrounding that
21 photo.

22 THE COURT: All right.

23 SOLICITOR CAMPBELL: And I apologize for not bringing
24 it to the Court's attention earlier. It just occurred to me
25 as I was about to call him.

1 THE COURT: All right. Admitted over objection. As it
2 relates to the relevance, the parties will stipulate as to
3 the day and that that is the defendant. Then Captain
4 Redmond should not have to testify.

5 MR. STRICKLER: Thank you, sir.

6 THE COURT: All right.

7 SOLICITOR CAMPBELL: Thank you, Your Honor.

8 THE COURT: All right. We'll be at ease for just a
9 couple minutes.

10 (WHEREUPON, State's Exhibit No. 125 was received into
11 evidence at this time.)

12 (WHEREUPON, a map was marked as State's Exhibit No. 136
13 for identification purposes only at this time.)

14 (Pause.)

15 THE COURT: Let's bring the jury.

16 SOLICITOR CAMPBELL: I need to review with defense
17 counsel this.

18 THE COURT: All right.

19 SOLICITOR CAMPBELL: Just so we can keep things moving,
20 Your Honor.

21 (WHEREUPON, the following takes place within the
22 presence of the jury.)

23 BAILIFF: The jury's all seated, Your Honor.

24 THE COURT: All right. Call your next witness please.

25 SOLICITOR CAMPBELL: May it please the Court.

1 Your Honor, at this time the State would seek to
2 introduce State Exhibit No. 135 I believe through
3 stipulation, a photograph of the defendant taken on
4 September 9th of 2009.

5 THE COURT: Is that -- that's right, counsel?

6 MR. STRICKLER: Yes, sir, Your Honor, subject to my
7 previously stated objections.

8 THE COURT: All right. Ladies and gentlemen, a
9 stipulation is an agreement between counsel, and when there
10 is a, is a stipulation then there is no need to offer any
11 proof of it. The parties agree as to the facts as stated by
12 the solicitor.

13 All right.

14 SOLICITOR CAMPBELL: Permission to publish, Your Honor?

15 THE COURT: You may.

16 SOLICITOR CAMPBELL: Your Honor, at this time the State
17 would call -- oh, I'm sorry. Can I go on?

18 THE COURT: Yes.

19 SOLICITOR CAMPBELL: Thank you.

20 At this time the State would call Sandra Thomas.

21 SANDRA THOMAS, being first duly sworn,
22 testified as follows:

23 THE CLERK: Have a seat and state your full name for
24 the record.

25 THE WITNESS: Sandra McGee Thomas.