

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable Kristi F. Curtis, Circuit Court Judge

RECEIVED

DEC 23 2019

S.C. SUPREME COURT

SANDY LEE LOCKLEAR,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000864

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHNNY ELLIS JAMES, JR.
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MAY 28-30, JUNE 2-4, AND JUNE 9-12, 2014	1
INDICTMENTS AND SENTENCE SHEET	1485
APPLICATION FOR POST-CONVICTION RELIEF	1490
RETURN AND PARTIAL MOTION TO DISMISS	1498
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED NOV. 28, 2018	1509
ORDER OF DISMISSAL	1535

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2013-GS-26-302, 304

The State,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	May 28-30, 2014
vs.	)	June 2-4, 2014
	)	June 9-12, 2014
Sandy Lee Locklear,	)	
	)	
Defendant.	)	

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Brad Richardson, Esquire
Monica Wooten, Esquire
Attorneys for Plaintiff

Ralph Wilson, Jr., Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1	I N D E X	
2	(May 28, 2014)	
3	Brady Motion.	17
4	<u>Jackson v. Denno</u> Hearing	
5	Neil Frebowitz	
6	Examination by Mr. Richardson	19
7	(May 29, 2014)	
8	(Neil Frebowitz Examination Continued by Mr. Richardson)	
9	(May 30, 2014)	
10	Neil Frebowitz	
11	Examination by Mr. Wilson	77
12	Reexamination by Mr. Richardson	138
13	Arraignment	189
14	<u>Jackson v. Denno</u> Hearing (Continued)	196
15	Motions - Search Warrants	
16	Brandon Strickland	
17	Examination by Mr. Richardson	207
18	Examination by Mr. Wilson	212
19	Jerry Sarvis	
20	Examination by Mr. Richardson	216
21	Examination by Mr. Wilson	229
22	Reexamination by Mr. Richardson	233
23	Damon Vescovi	
24	Examination by Mr. Richardson	233
25	Examination by Mr. Wilson	236

State v. Dwiggin

3

1	Reexamination by Mr. Richardson	243
2	Damon Vescovi	
3	Examination by Mr. Richardson	249
4	Examination by Mr. Wilson	273
5	Motion For Extended Voir Dire	289
6	Motion For Sequestration.	291
7	(June 2, 2014)	
8	Juror Number 49 Excused	305
9	Motions - Prison Clothes.	307
10	Motion for Sequestration.	309
11	Objections to Video Statement	310
12	Voir Dire	320
13	Jury Selection.	333
14	Questioning of Juror 446.	346
15	Opening Instructions by Court	349
16	Opening Statement by Mr. Richardson	356
17	Opening Statement by Mr. Wilson	364
18	Matthew William Tindall	
19	Direct by Mr. Richardson.	372
20	Cross by Mr. Wilson	389
21	Martha Carmichael	
22	Direct by Mr. Richardson.	397
23	Cross by Mr. Wilson	401
24	Lenore Bolig	
25	Direct by Mr. Richardson.	402

State v. Dwiggins

4

1	Cross by Mr. Wilson	412
2	Clayton Hatfield	
3	Direct by Mr. Richardson.	414
4	Cross by Mr. Wilson	424
5	(June 3, 2014)	
6	Jennifer Dalmida	
7	Direct by Mr. Richardson.	434
8	Cross by Mr. Wilson	461
9	Redirect by Mr. Richardson.	468
10	Neil Frebowitz	
11	Direct by Mr. Richardson.	472
12	(June 4, 2014)	
13	Neil Frebowitz	
14	Cross by Mr. Wilson	565
15	Redirect by Mr. Richardson.	629
16	Jonathan Martin	
17	Direct by Mr. Richardson.	644
18	Cross by Mr. Wilson	723
19	Redirect by Mr. Richardson.	753
20	Jill Domogauer	
21	Direct by Mr. Wooten.	759
22	Cross by Mr. Wilson	771
23	(June 9, 2014)	
24	Janet Moore	
25	Direct by Ms. Wooten.	779

State v. Dwiggin

5

1	Cross by Mr. Wilson	809
2	Redirect by Ms. Wooten.	814
3	Faye Hunt	
4	Direct by Mr. Richardson.	817
5	Cross by Mr. Wilson	837
6	Redirect by Mr. Richardson.	847
7	Benjamin Larry Hardie	
8	Direct by Mr. Richardson.	850
9	Cross by Mr. Wilson	858
10	Brian Wilson	
11	Direct by Mr. Richardson.	864
12	Cross by Mr. Wilson	892
13	Redirect by Mr. Richardson.	900
14	James W. Green	
15	Direct by Mr. Richardson.	902
16	Cross by Mr. Wilson	925
17	Tim Bazinet	
18	Direct by Mr. Richardson.	933
19	Cross by Mr. Wilson	943
20	Redirect by Mr. Richardson.	946
21	Brandon Strickland	
22	Direct by Mr. Richardson.	947
23	Cross by Mr. Wilson	970
24	Redirect by Mr. Richardson.	987
25	Damon Vescovi	

State v. Dwiggins

6

1	Direct by Mr. Richardson.	992
2	Cross by Mr. Wilson	1013
3	Redirect by Mr. Richardson.	1027
4	E.L. Proctor, Jr.	
5	Direct by Ms. Wooten.	1029
6	Cross by Mr. Wilson	1053
7	Motions	1058
8	Questioning Re: Rights	1074
9	(June 10, 2014)	
10	John William Rowe, III	
11	Direct by Mr. Wilson.	1082
12	Cross by Mr. Richardson.	1092
13	Redirect by Mr. Wilson.	1093
14	Karen Maldet	
15	Direct by Mr. Wilson.	1095
16	Cross by Mr. Richardson.	1100
17	Jim Chatfield	
18	Direct by Mr. Wilson.	1102
19	Cross by Mr. Richardson.	1113
20	Redirect by Mr. Wilson.	1117
21	Lauren Johnson	
22	Direct by Mr. Wilson.	1128
23	Cross by Mr. Richardson.	1136
24	Redirect by Mr. Wilson.	1139
25	Teresa Phillips	

State v. Dwiggin

7

1	Direct by Mr. Wilson.	1141
2	Cross by Mr. Richardson.	1149
3	Redirect by Mr. Wilson.	1155
4	Cotearea Todd	
5	Direct by Mr. Wilson.	1157
6	Cross by Mr. Richardson.	1160
7	Brian Wilson	
8	Direct by Mr. Wilson.	1167
9	Cross by Mr. Richardson.	1168
10	Todd Cox	
11	Direct by Mr. Wilson.	1170
12	Cross by Mr. Richardson.	1174
13	Redirect by Mr. Wilson.	1181
14	Damon Vescovi	
15	Direct by Mr. Wilson.	1201
16	Cross by Mr. Richardson.	1213
17	Heather Brummett	
18	Direct by Mr. Wilson.	1215
19	Cross by Mr. Richardson.	1219
20	Redirect by Mr. Wilson.	1220
21	(June 11, 2014.)	
22	Questioning Defendant Re: Rights	1224
23	Ila Simmons	
24	Direct by Mr. Wilson.	1230
25	Cross by Mr. Richardson.	1236

State v. Dwiggin

8

1	Redirect by Mr. Wilson.	1238
2	Shana Sorrells	
3	Direct by Mr. Wilson.	1240
4	Cross by Mr. Richardson.	1245
5	Redirect by Mr. Wilson.	1262
6	Bob West	
7	Direct by Mr. Wilson.	1268
8	Cross by Mr. Richardson.	1286
9	Redirect by Mr. Wilson.	1305
10	Motions Renewed by Defense.	1308
11	David Eagerton	
12	Direct by Mr. Richardson.	1311
13	Cross by Mr. Wilson	1336
14	Redirect by Mr. Richardson.	1356
15	Charges Discussed	1360
16	(June 12, 2014)	
17	Closing Argument by Mr. Wilson.	1382
18	Closing Argument by Mr. Richardson.	1411
19	Charge.	1443
20	Question from Jury.	1464
21	Verdict	1467
22	Motions	1470
23	Sentencing.	1472
24	Certificate	1484
25		

State v. Dwiggin

9

1	E X H I B I T S		
2		ID	EVD
3	S-1	Poster - Aerial View	375
4	S-2	Photograph	379
5	S-3	Photograph	379
6	S-4	Photograph	379
7	S-5	Photograph	379
8	S-6	Photograph	379
9	S-7	Photograph	379
10	S-8	Photograph	379
11	S-9	CD - 911 Call	400
12	S-10	Gun Box and Tags	423
13	S-11	Exigent Search Request	440
14	S-12	Exigent Search Request (ID only)	
15	S-13	Texts	443
16	S-14	Call Detail Report	451
17	S-15	Text Detail Report	451
18	S-16	Tower Locations/Cell Site Address	459
19	S-17	CD - Statement of Defendant (Edited)	507
20	S-18	CD - Statement of Defendant (8-20-12)	553
21	S-19	Miranda Rights Form	499
22	S-20	Voluntary Statement of Defendant	519
23	S-21	Photograph	481
24	S-22	Photograph	481
25	S-23	Photograph	481

State v. Dwiggin

10

1	S-24	Photograph	481
2	S-25	Photograph	481
3	S-26	Photograph	556
4	S-27	Photograph	556
5	S-28	Photograph	560
6	S-29	Photograph	560
7	S-30	Photograph	657
8	S-31	Photograph	657
9	S-32	Photograph	657
10	S-33	Photograph	665
11	S-34	Photograph	665
12	S-35	Photograph (ID only)	
13	S-36	Photograph (ID only)	
14	S-37	Photograph	665
15	S-38	Photograph	673
16	S-39	Photograph	673
17	S-40	Photograph	673
18	S-41	Photograph (ID only)	
19	S-42	Photograph	673
20	S-43	Photograph	673
21	S-44	Photograph	673
22	S-45	Photograph (ID only)	
23	S-46	Photograph	673
24	S-47	Photograph	673
25	S-48	Photograph	673

State v. Dwiggins

11

1	S-49	Photograph	673
2	S-50	Photograph	673
3	S-51	Photograph	684
4	S-52	Photograph	684
5	S-53	Photograph	684
6	S-54	Photograph	684
7	S-55	Photograph	684
8	S-56	Photograph	684
9	S-57	Photograph	684
10	S-58	Photograph	684
11	S-59	Photograph	693
12	S-60	Photograph	693
13	S-61	Photograph	693
14	S-62	Photograph	693
15	S-63	Photograph	697
16	S-64	Photograph	697
17	S-65	Photograph	697
18	S-66	Photograph	697
19	S-67	Photograph	697
20	S-68	Photograph	697
21	S-69	Photograph	697
22	S-70	Photograph	697
23	S-71	Photograph	697
24	S-72	Photograph	706
25	S-73	Photograph	706

State v. Dwiggin

12

1	S-74	Photograph	716
2	S-75	Photograph	716
3	S-76	Photograph	716
4	S-77	Photograph	716
5	S-78	Photograph	716
6	S-79	Photograph	716
7	S-80	Photograph	718
8	S-81	Photograph	718
9	S-82	Photograph	718
10	S-83	Photograph	718
11	S-84	Photograph	718
12	S-85	Photograph	718
13	S-86	Photograph	718
14	S-87	Photograph	718
15	S-88	Photograph	718
16	S-89	Poster	659
17	S-90	Poster	707
18	S-91	Photograph (ID only)	
19	S-92	Photograph (ID only)	
20	S-93	Photograph (ID only)	
21	S-94	Photograph	665
22	S-95	Photograph	665
23	S-96	Photograph (ID only)	
24	S-97	Photograph (ID only)	
25	S-98	Photograph	673

State v. Duggins

13

1	S-99 Green and White Pillow	670
2	S-100 Pillow	679
3	S-101 Pillow	679
4	S-102 Kyocera Cell Phone	682
5	S-103 Black Duct Tape	689
6	S-104 Black Duct Tape	689
7	S-105 Black Duct Tape	689
8	S-106 White Bra	703
9	S-107 Black Panties	703
10	S-108 Photograph	711
11	S-109 (A) and (B) Projectiles	716, 919
12	S-110 SLED Chain of Custody	917
13	S-111 I Lab Submission Form	763
14	S-112 Statement of Faye Hunt (ID only)	
15	S-113 Surveillance Photograph (ID only)	855
16	S-114 Surveillance Photograph (ID only)	855
17	S-115 Surveillance Photograph (ID only)	855
18	S-116 Surveillance Photograph (ID only)	855
19	S-117 Insurance Policies	886
20	S-118 Insurance Policies	886
21	S-119 Purse	887
22	S-120 Contents of Purse	888
23	S-121 Autopsy Photograph (ID only)	
24	S-122 Autopsy Photograph (ID only)	
25	S-123 Photograph	1053

State v. Dwiggin

14

1	S-124 Photograph	1053	
2	S-125 Photograph	1053	
3	S-126 Photograph (ID only)		
4	S-127 Photograph	1053	
5	S-128 Photograph (ID only)		
6	S-129 Photograph (ID only)		
7	S-130 Photograph (ID only)		
8	S-131 Photograph (ID only)		
9	S-132 Photograph (ID only)		
10	S-133 Kia Test Drive Agreement	938	
11	S-134 Kia Repair Order	938	
12	S-135 Note - Telephone Number	1012	
13	S-136 Evans ID Card	1012	
14	S-137 Evans Social Security Card	1012	
15	S-138 Evans Beginner Permit	1012	
16	D-1 GSR Kit	735	737
17	D-2 SLED Ballistics Report	928	928
18	D-3 Strickland Report	984	
19	D-4 Photograph		1146
20	D-5 First Federal Account Application	1085	1086
21	D-6 Check #3055 to IGA		1090
22	D-7 Eviction Packet		1098
23	D-8 Report - Chatfield (ID only)	1110	
24	D-9 Interview of Teresa Phillips	1197	
25	D-10 SLED Intake Form	1218	1219

State v. Dwiggin

15

1	D-11	SLED Report - GSR Kit	1234	1235
2	D-12	SLED Toxicology Report	1243	1264
3	D-13	Report of Dr. West	1275	1285
4	C-1	Advisement of Miranda Rights Form	36	
5	C-2	Voluntary Statement	70	
6	C-3	CD Locklear Interview (Unedited)	31	
7	C-4	CD Locklear Interview 8-20-12	73	
8	C-5	Search Warrant	212	
9	C-6	Search Warrant	226	
10	C-7	Search Warrant	229	
11	C-8	Exigent Request	260	
12	C-9	Exigent Request	270	
13	C-10	Exigent Request	268	
14	C-11	Exigent Request	255	
15	C-12	Exigent Request	255	
16	C-13	Photograph		
17	C-14	Medical Exam Release Form		
18	C-15	Consent to Search	273	
19	C-16	Report of Mental Finding	195	
20	C-17	Cases from Defense		
21	C-18	Statement - Hunt	245	
22	C-19	Foreperson Selection	345	
23	C-20	Question from Jury Re: Transcript	564	
24	C-21	Question from Jury Re: 911	1465	
25	C-22	Question from Jury	1465	

1 (State v. Sandy Lee Locklear, 2013-GS-26-302, 304. On
2 the record, May 28, 2014. The following takes place outside
3 the presence of the jury.)

4 THE COURT: All right. Just want to let everybody
5 know before we get started on this. I understand this is
6 going to take a while and it's going to be pretty lengthy.
7 So, you know, if anybody at the tables or anything needs to
8 use the restroom or anything before we get started, let's go
9 ahead and do that before we get started. Okay? All
10 right.

11 MR. RICHARDSON: Thank you, Your Honor. We're here
12 before you on 2013-GS-26-304, State of South Carolina, County
13 of Horry versus Sandy Lee Locklear, true-billed indictment for
14 murder, also, 2013-GS-26-303, State of South Carolina, County
15 of Horry versus Sandy Lee Locklear, true-billed indictment --
16 I'm sorry, Your Honor. We're not going forward on the filing
17 false police report. All right. 2013-GS-26-302, State of
18 South Carolina, County of Horry versus Sandy Lee Locklear,
19 true-billed indictment on murder.

20 THE COURT: Okay. So it's 302 and 304 for murder?

21 MR. RICHARDSON: That's correct, Your Honor.

22 THE COURT: All right. All right. Let's go ahead and
23 for the record give the court reporter your names and who you
24 represent.

25 MR. RICHARDSON: Your Honor, Brad Richardson on behalf of

Motions

17

1 the State, also co-counsel.

2 MS. WOOTEN: Monica Wooten by and on behalf of the
3 State.

4 THE COURT: All right.

5 MR. WILSON: Ralph Wilson, Jr., Your Honor, on behalf of
6 the Defendant. Ralph Wilson, Sr., is going to assist, but I
7 will be lead counsel in this matter.

8 THE COURT: All right. All right. So what do we need to
9 do first?

10 MR. WILSON: Your Honor, just a matter of a Brady motion
11 filed by the Defense with the State. It's our intention right
12 now, Judge, to, to motion before the Court to ask that a Brady
13 motion be entertained for a document concerning internal
14 affairs report that was done on Mr. Frebowitz, Detective
15 Frebowitz, who is here in the courtroom today, Judge. It's my
16 understanding that the State's in possession of that
17 particular document, and we would just request that the Court
18 at least review the matter to see if it's discoverable at this
19 point in time, Judge, or relevant.

20 THE COURT: All right. Mr. Richardson.

21 MR. WILSON: Thank you, Your Honor.

22 MR. RICHARDSON: Your Honor, as we discussed previously
23 in chambers with counsel present, I've asked my investigative
24 contact, the head of Office of Professional Standards, to get
25 a copy of those files. We've reviewed them. I've given you a

1 summary, but he's going to get them to bring those over either
2 this afternoon or tomorrow morning, Your Honor, for your
3 review in camera.

4 THE COURT: Okay. And I'll take a look at them and I'll
5 make a decision as to whether or not they're relevant.

6 MR. RICHARDSON: Certainly.

7 THE COURT: And subject to Brady or not. Okay?

8 MR. WILSON: Thank you, Your Honor.

9 MR. RICHARDSON: Thank you, Your Honor.

10 THE COURT: All right. Sounds good. All right.
11 Anything else?

12 MR. WILSON: Nothing further at this time, Your
13 Honor.

14 THE COURT: All right. Anything from the State?

15 MR. RICHARDSON: Your Honor, we're prepared to go forward
16 on a Jackson v. Denno as we've discussed previously in status
17 conferences. This will be somewhat lengthy. So we're
18 prepared to go forward today.

19 THE COURT: All right. Anything before you call your
20 first witness? Anything from Defense?

21 MR. WILSON: Nothing, Your Honor, at this time.

22 THE COURT: All right. Anything from the State?

23 MR. RICHARDSON: No, sir, Your Honor.

24 THE COURT: All right. Let's go ahead and call your
25 first witness.

Motions

19

1 MR. RICHARDSON: The State would call Detective Neil
2 Frebowitz.

3 Whereupon, Neil Frebowitz was called to the stand, duly
4 sworn by the clerk and testified as follows:

5 THE CLERK: Okay. State your full name and spell your
6 first and last name.

7 MR. FREBOWITZ: Certainly. Neil Frebowitz, first name is
8 N-E-I-L; last name is F-R-E-B, as in Baker, O-W-I-T-Z.

9 EXAMINATION

10 BY MR. RICHARDSON:

11 Q And I know you're retired now, but formerly you were a
12 detective with the Horry County Police Department?

13 A Yes, sir.

14 Q If it's all right I'll keep calling you detective. I've
15 gotten used to it.

16 A Yes, sir.

17 Q Detective Frebowitz, could you educate us a little bit
18 about where you were employed at the time of this murder
19 investigation?

20 A Yes, sir. I was a detective assigned to the violent
21 crimes unit at the time with the Horry County Police
22 Department.

23 Q And what was your -- what were your duties with regard to
24 this particular case?

25 A This particular case I was the lead detective in the

1 homicide.

2 Q Okay. As the lead investigator, could you educate us
3 a little bit and give us a brief summary of the
4 investigation?

5 A Yes, sir. Primary responsibility is to ensure that the
6 scene is properly handled, the evidence is collected,
7 interviews are conducted, and additional facts and
8 circumstances as they present themselves are followed up
9 on.

10 Q Okay. In this particular case could you give us a brief
11 summary of the facts of the case --

12 A Yes, sir.

13 Q -- how your investigation transpired?

14 A Yes, sir. Initially, I had received a telephone call
15 from -- at my residence around 4:00 o'clock in the morning
16 from Sergeant Squires at the time advising me that there had
17 been a report of a homicide in the Loris area on Red Bluff
18 Road. Upon my -- I responded up there to assume the
19 investigation.

20 Q Okay. And whenever you, you went out to that address, it
21 was on Red Bluff Road. That's here in Horry County?

22 A Yes, sir. It is.

23 Q Okay. When you first came on the scene, what did you
24 encounter?

25 A Initially, the crime scene had been established.

Motions

21

1 Detective Martin from our crime scene unit at the time had
2 begun processing the scene itself.

3 Q Okay. And what crimes were alleged at this moment --
4 point?

5 A At this point, well, I hadn't entered the building.
6 In fact, I gave instructions that nobody were to enter
7 until Detective Martin had finished his forensic interview
8 or his forensic collections of the evidence, and after he
9 had processed the exterior, had gone inside, I accessed
10 the outside and saw Ms. Locklear in the back of a police
11 car.

12 Q Okay. And Ms. Locklear was in the back of the police
13 car. Was she a suspect in this crime?

14 A No. At the time she was a -- we thought she was a
15 victim.

16 Q Okay. And what crime had she alleged occurred to
17 her?

18 A She told me she was the victim of a home invasion,
19 robbery and a sexual assault.

20 Q Okay. And her relation to the -- you said there was a
21 murder. So, there were body or bodies?

22 A There were -- well, I had been informed at that time
23 there were two deceased individuals inside the home. She
24 told me that one was her husband and one was her stepson,
25 Tommy.

1 Q Okay. So, as I understand your testimony thus far, there
2 were reports of a home invasion, burglary, CSC or criminal
3 sexual conduct, a rape?

4 A Yes, sir. A rape.

5 Q And at this time the Defendant was alleging she was
6 raped?

7 A That's correct.

8 Q And her husband and stepson had been murdered?

9 A That's correct.

10 Q Okay. Now, did you speak with the Defendant at the
11 scene?

12 A I did.

13 Q Okay. And when you spoke with her you indicated that at
14 this point that she was a victim?

15 A She was a, she was a victim.

16 Q Okay. And how long did you speak with her out at the
17 scene?

18 A Just briefly. I -- once she advised that she was a
19 victim of a sexual assault, certain protocols are required
20 to have victims treated, and I directed that she be
21 transported to a -- the hospital. In this case I believe
22 it was Conway Hospital to have the appropriate criminal
23 sexual conduct, assault kits done, and I believe Detective
24 Chatfield either transported her or followed her to the
25 hospital.

Motions

23

1 Q Okay. Was she in handcuffs or anything?

2 A Absolutely not.

3 Q Any way restrained whatsoever?

4 A No, sir.

5 Q Okay. And why was Chatfield, Detective Chatfield, why
6 was he taking her? Why didn't she drive herself?

7 A Well, it's just not our protocol. She was upset. She's
8 the -- at the time I really thought she was a victim of a
9 crime and she -- her, her body is, in fact, a crime scene.
10 Victims of a sexual assault have evidence on them, and it was
11 important that we maintain some chain of custody.

12 Q Okay. So you were -- at this point you were attempting
13 to gather evidence of who attacked her and murdered her
14 husband and stepson?

15 A That's correct, sir.

16 Q And she was not a suspect. You stated that she was
17 transported to the hospital.

18 A That's correct.

19 Q Did you visit the hospital?

20 A I did later on that morning.

21 Q Okay. Was the Defendant still there when you --

22 A She was, sir.

23 Q Okay. And do you know what time she arrived at the
24 hospital?

25 A Would have been about 4:30, 5:00 o'clock in the

1 morning.

2 Q Okay. Now, when you got with -- got to the hospital did
3 you gather any information from her?

4 A Briefly I spoke with her, and again, she reiterated that
5 she was a victim of a sexual assault.

6 Q Did you indicate who you were?

7 A I, I did.

8 Q Okay. And how did she appear at the hospital?

9 A She was still upset. By that time her, her clothes had
10 been retrieved, and she was wearing a hospital or clothes
11 somebody else had given her. I thought she was appropriate
12 for a victim. She was still upset, a little disoriented,
13 and needed a place to calm down and answer my
14 questions.

15 Q Okay. And you stated she appeared to be disoriented.
16 Did she appear to be under the influence of anything?

17 A No, sir. Just, just upset.

18 Q Okay. Subsequent to meeting with her at the hospital and
19 you said that was brief?

20 A Yes, sir.

21 Q Did you have the opportunity to speak with her again that
22 day?

23 A Yes, sir, I did.

24 Q And where was that?

25 A At the police department.

Motions

25

- 1 Q And do you remember about what time that was?
- 2 A Around 7:00 o'clock in the morning.
- 3 Q At 7:00 o'clock in the morning?
- 4 A I believe it was around seven.
- 5 Q Okay. And was this recorded?
- 6 A Yes, sir. It was.
- 7 Q Okay. And the recordings, are those -- do they have time
8 stamps on them?
- 9 A They do now. I don't remember if they did then.
- 10 Q Okay. But the times would be accurate on --
- 11 A The times would be accurate. Yes, sir.
- 12 Q Okay. So you did speak with her at the M.L. Brown
13 Building. That's the police department?
- 14 A Yes, sir. It is.
- 15 Q Okay. And how did she arrive at M.L. Brown?
- 16 A She was transported by law enforcement.
- 17 Q Okay. And was that Detective Chatfield?
- 18 A I believe. Yes, sir.
- 19 Q Whenever she entered the police department, was she in
20 cuffs?
- 21 A No, sir.
- 22 Q Was she restrained in any way?
- 23 A No, sir.
- 24 Q Was she under arrest?
- 25 A No. She was a victim.

1 Q She was a victim, and a witness to the murders?

2 A That's correct.

3 Q And you stated that this was recorded. How was this
4 recorded?

5 A It was -- there's a video-camera, as well as there was a
6 secondary recording made through a pocket recorder.

7 Q Okay. And that secondary recording, at some point -- the
8 interview took, took place over some time; correct?

9 A It did.

10 Q And eventually you ran out of space on the audio?

11 A I believe that's what happened. Yes, sir.

12 Q Okay. Now, prior to speaking with the, with the
13 Defendant at M.L. Brown initially, did you or anyone to your
14 knowledge ever advise her of her, advise her of her Miranda
15 Rights?

16 A No, sir.

17 Q Why not?

18 A She wasn't a suspect.

19 Q And you were speaking to her as a victim or a witness?

20 A And she was a victim and witness at that time.

21 Q And the purpose of the interview was for what?

22 A To get the information she had. She was a victim. She
23 saw who committed this horrific crime, and we needed to know
24 what she saw.

25 Q Okay. In your experience in law enforcement, is it

Motions

27

1 unusual to speak with supposed victims at the police
2 department?

3 A No, sir. Not at all.

4 Q Okay. And where was she taken when she got to the police
5 department?

6 A We have an interview room. It's just a standard
7 interview room. It's soft chairs. It's, you know, just, just
8 a standard room. It's quiet. There's no interruptions.
9 Nobody can see her, you know, respected her privacy.

10 Q Okay. The chair, comfortable, uncomfortable?

11 A No, it's -- I sit in them, sat in them all, all the time.
12 They were fine.

13 Q Okay. Any locks on the doors?

14 A No, sir.

15 Q Okay. So she could open the door if she needed to?

16 A Yes, sir.

17 Q And she wasn't handcuffed. What other efforts were taken
18 to make her comfortable in any way?

19 A We ensured or I ensured specifically that she could have
20 -- she -- asked her several times she wanted something to eat,
21 something to drink, use the restrooms if she needed to, smoke
22 break if she needed to. Again, she was a victim and a witness
23 and was treated accordingly.

24 Q Okay. And now, she had been to the hospital. You said
25 she didn't appear intoxicated there. How about now?

1 A No, sir. Not at all.

2 Q Did you inquire as to her state of mind?

3 A Not specifically. No, sir.

4 Q Did she appear to understand the English language as she
5 spoke?

6 A Yes, sir. She did.

7 Q Did she respond appropriately to any questions you
8 asked?

9 A She answered questions. Yes, sir.

10 Q And did the Defendant appear coherent to you as you
11 spoke?

12 A Yes, sir.

13 Q Describe any perceived difficulties you had in
14 communicating with her.

15 A None really. Occasionally she would drop her voice and,
16 and lower her voice or lower her head, but again, I didn't
17 find that to be unusual for someone who had just experienced
18 such a trauma.

19 Q Prior to beginning the victim witness interview, did you
20 or anyone with your knowledge, once again, take any efforts to
21 coerce the Defendant into speaking with police?

22 A No, sir. Not at all.

23 Q In fact, if she would have gotten there and asked to go
24 home, what would have happened?

25 A Would have taken her home.

Motions

29

1 Q Did she ever ask to go home?

2 A No, sir.

3 Q Any threats made to the Defendant prior to beginning that
4 victim witness interview?

5 A No, sir.

6 Q Any promises?

7 A No, sir.

8 Q When you first began speaking to the Defendant what was
9 your express purpose in conducting the interview?

10 A To develop the information that she had, that we
11 needed to catch the people who had committed this horrific
12 crime.

13 Q Okay. And this initial interview lasted about an
14 hour?

15 A About an hour or so. Yes, sir.

16 Q At any time during that initial hour was the Defendant
17 ever informed she was a suspect?

18 A No, sir.

19 Q What restrictions were there on her movements?

20 A None.

21 Q And how many officers initially spoke to her as a victim
22 witness in the room?

23 A Initially, I did by myself, and I'm sure I was joined by
24 a second investigator.

25 Q Would you characterize the interview as one-sided? In

1 other words, was she responding to your questions with yes,
2 nos, or did you just let her talk?

3 A Both, a combination of both.

4 Q Did you use any interrogation techniques at this point to
5 pressure her?

6 A No, sir.

7 Q So, you wanted to interview her as a witness and as a
8 victim and this was recorded?

9 A Yes, sir. It was.

10 Q You stated previously the interview was recorded both
11 video and audibly. Allow me to show you what has been marked
12 for the purpose of this hearing --

13 A Yes.

14 Q -- Court's 3A and B. See if you recognize those.

15 A Yes, sir.

16 Q Okay. And what are 3A and B?

17 A They appear to be the disks containing the unedited
18 interviews, video, audio of the Defendant.

19 Q And originally these were stored on a data server;
20 correct?

21 A Yes, sir. That's correct.

22 Q Okay. And then provided on a thumb drive?

23 A That's correct.

24 Q And the video that you provided and has been provided in
25 discovery, is that the complete and unaltered video?

Motions

31

1 A I provided the Solicitor's Office every piece of evidence
2 I had.

3 Q And there were no deletions, omissions, anything?

4 A No, sir.

5 Q And your entire interview contained on these two
6 disks?

7 A Yes, sir.

8 Q Okay. And they were labeled whenever you sent them,
9 parts one, two, three, four?

10 A Yes, sir. I believe so.

11 MR. RICHARDSON: Your Honor, I'd move into evidence
12 for the purposes of this hearing.

13 THE COURT: All right. And how are they identified?

14 MR. RICHARDSON: By Court's Exhibit 3A and 3B.

15 THE COURT: All right. Any objection?

16 MR. WILSON: Without objection, Your Honor.

17 THE COURT: All right. Court's Exhibits 3A and 3B
18 admitted into evidence without objection for purposes of this
19 Jackson v. Denno hearing.

20 MR. RICHARDSON: For this hearing. Yes, sir, Your
21 Honor.

22 (Whereupon, Court's Exhibit Numbers 3A and 3B [Disks of
23 Unedited Interview of Defendant] admitted into evidence for
24 purposes of Jackson v. Denno hearing and appropriately
25 marked.)

1 BY MR. RICHARDSON:

2 Q Now, Detective, and we'll try and publish those in just a
3 moment. At some point, did the course of the interview
4 change?

5 A It did.

6 Q In what way?

7 A There became a time where the Defendant -- it became
8 clear she was attempting to mislead our investigation. She'd
9 provide information that could not be verified, that despite
10 our best efforts. We'd go back and question her again, and
11 she'd provide different information which couldn't be verified
12 or, in fact -- well, just couldn't be verified.

13 Q Okay.

14 A It was apparent after a while that she was actively
15 attempting to deflect the truth.

16 Q Okay. And at some point after you were speaking with her
17 as a victim and a witness in the interview, did you take a
18 break?

19 A Yes, sir.

20 Q I'm going to show you what's been marked -- I'm sorry. I
21 grabbed the wrong one -- marked as Court's Exhibit Number One.
22 See if you recognize that.

23 A Yes, sir, I do.

24 Q Okay. And how do you recognize Court's Exhibit One?

25 A It's affixed with my signature, and I recognize my

Motions

33

1 handwriting on the bottom of the form.

2 Q Okay. What is Court's Exhibit Number One?

3 A It's a standard advice of Miranda Rights form.

4 Q Okay. And was that provided to the Defendant?

5 A Yes, sir. It was.

6 Q Did you just provide it in writing or --

7 A It was provided in writing, as well as I read the rights
8 to her.

9 Q And that would appear on the video?

10 A Yes, sir.

11 Q Okay. And what's the date on that?

12 A I have to read my own handwriting. It's 8-19 2000 and,
13 well, it says 2000 and the 12:00 noon. I don't have the exact
14 date on it.

15 Q And this was presented to the Defendant. She -- you went
16 over her rights?

17 A That's correct, sir.

18 Q And was that shortly after your victim witness
19 interview?

20 A That's when she transitioned from a victim witness to,
21 obviously, we were concerned that she had information, that
22 she was more involved in the scenario than she was letting
23 on.

24 Q And after you presented the Miranda Form, Court's Exhibit
25 One, to the Defendant, what efforts did you take to ensure she

1 understood her rights?

2 A Well, I presented her the form, and she signed it
3 acknowledging she understood her rights..

4 Q And we've heard the Miranda form. Again, what rights did
5 you administer to her?

6 A That she had the right to remain silent, anything she
7 said could be used against her in a court of law, the right to
8 an attorney, to have an attorney present with her while she's
9 being questioned, if she couldn't afford an attorney one would
10 be appointed for her, and --

11 Q And she indicated she understood.

12 A And there's the next block that specifically asks that
13 question, and she indicated yes.

14 Q And you began that interview about noon. Any point did
15 the Defendant indicate she wanted to remain silent?

16 A No, sir.

17 Q Did she ever ask for an attorney?

18 A No, sir.

19 Q Ever tell you or anyone else that wished, wished to cease
20 the interview?

21 A No, sir.

22 Q Prior to obtaining the post-Miranda statement from the
23 Defendant, did you or anyone else in your presence or to your
24 knowledge make any undue promises of leniency or reward, any
25 threats of any kind or in any manner or any improper methods

Motions

35

1 of coercion in an effort to obtain the statement from the
2 Defendant?

3 A No, sir.

4 Q Approximately how long did the entire interview, from,
5 from the very beginning when she was a victim witness to the
6 conclusion of the interview?

7 A Started around seven, I believe around seven in the
8 morning and ended one, 2:00 o'clock in the afternoon.

9 Q Okay. Is there a possibility you might be a little bit
10 off on the time?

11 A Oh, I'm sure I'm off on the times. I haven't reviewed
12 the --

13 Q Almost two years ago?

14 A Yes, sir.

15 Q Okay. This occurred August 19th, 2012?

16 A That's correct.

17 Q Was the interview continuous or was the Defendant given
18 breaks?

19 A She was given breaks.

20 Q Okay. And was the Defendant allowed to use the
21 restroom?

22 A Absolutely.

23 Q Was she offered food or drink in any way?

24 A Of course, absolutely.

25 Q Given smoke breaks?

1 A If she wanted it.

2 Q You're not a smoker?

3 A No, sir.

4 Q Okay. And once again, the entire video, the entire
5 video that the Defendant is at M. L. Brown that's contained on
6 those two disks?

7 A Yes, sir.

8 MR. RICHARDSON: Your Honor, at this time the State would
9 seek to publish Court's Exhibit 3A.

10 THE COURT: All right. Any objection?

11 MR. WILSON: No objection, Judge, and it's obviously in
12 this hearing.

13 THE COURT: All right.

14 MR. RICHARDSON: And for the purpose of this hearing the
15 State would also enter Exhibit One.

16 THE COURT: Any objection?

17 MR. WILSON: No objection.

18 THE COURT: All right. Court's Exhibit One admitted into
19 evidence without objection.

20 (Whereupon, Court's Exhibit Number One [Advisement of
21 Miranda Rights] entered into evidence and appropriately marked
22 for the purposes of the Jackson v. Denno hearing.)

23 THE COURT: I understand this is kind of lengthy, and as
24 we discussed, I don't think there's any objection to letting
25 the witness stand down --

Motions

37

1 MR. RICHARDSON: No, sir, Your Honor.

2 THE COURT: -- from the witness stand --

3 MR. RICHARDSON: If the witness wants to --

4 THE COURT: -- if you want rather than sit there through
5 the, through the whole entire thing.

6 MR. RICHARDSON: -- sit in the jury box out and those
7 benches get hard.

8 THE COURT: All right.

9 MR. WILSON: No objection from the Defense, Your
10 Honor.

11 THE COURT: All right. Thank you.

12 MR. RICHARDSON: Thank you, Your Honor.

13 (Whereupon, Court's 3A is played in open court.)

14 MR. RICHARDSON: If the Court will just tell me if we
15 need to turn the volume down.

16 THE COURT: Turn it down just a little. That's
17 good.

18 (Whereupon, Court's 3A is played in open court.)

19 (Stopped at 10:54 a.m.)

20 MR. RICHARDSON: Your Honor, for scheduling purposes
21 there's about a 10-minute break here, and then it'll go into
22 about an hour, an hour and 15 minutes worth of questioning
23 about her phone records.

24 THE COURT: Okay.

25 MR. RICHARDSON: I didn't know if you wanted to take a

1 short break.

2 THE COURT: All right. Let's just keep going for right
3 now.

4 MR. RICHARDSON: Yes, sir, Your Honor.

5 (Whereupon, Court's 3A played in open court.)

6 (Stopped at 11:28 a.m.)

7 MR. RICHARDSON: This next gap the officers will reenter
8 about 45 minutes by that clock, 45, 46 minutes. I didn't know
9 if you wanted to take a break at this point since we've been
10 going for about two hours.

11 THE COURT: Okay.

12 MR. WILSON: Judge, two things: one, that I just
13 want to let the Court know there is an obvious delay -- I
14 want the Court to realize that -- between the actual words and
15 the actions that occur in the video.

16 THE COURT: I noticed that, yeah.

17 MR. WILSON: Yes, sir.

18 MR. RICHARDSON: Yes, sir.

19 MR. WILSON: All right. And I have no objection to
20 taking a break if the Court wants to. I think we're pretty
21 much okay over here.

22 MR. RICHARDSON: And for the record, I've played the
23 video and sometimes -- and there's a three-second lag. I
24 don't know if it's a software problem or what. The -- as we
25 stated -- as I told Mr., Mr. Wilson previously there is a --

Motions

39

1 we had the original and converted it to a Movie Maker copy as
2 there was a pop or a hiss in there, and it seemed to remove
3 the pop or hiss, but there's times when it just seems to lag
4 beyond the --

5 THE COURT: All right.

6 MR. RICHARDSON: -- the actual motion is taking place
7 separate, Your Honor.

8 THE COURT: All right. Well, I mean, is there any
9 objection to this being --

10 MR. RICHARDSON: I'm just --

11 THE COURT: -- the disk that if it is ruled admissible is
12 played to the jury or is there another one that we need to be
13 reviewing?

14 MR. WILSON: No. We need to review -- we want to review
15 the entire tape.

16 THE COURT: Well, I know that --

17 MR. WILSON: Yes, sir.

18 THE COURT: -- but what I'm saying is I understand that
19 this is the one that's got a delay between when they talk and
20 it fluctuates.

21 MR. RICHARDSON: And Your Honor, it's -- every copy is
22 going to be about like this. Whenever it's -- there's a pop
23 and a hiss in the other, but I --

24 THE COURT: But I mean, from what I understand from a
25 Jackson v. Denno hearing I have to review what's going to be

1 played to the jury.

2 MR. RICHARDSON: This is what I've produced. This is
3 what I've been --

4 THE COURT: So that's the one that we're playing to the
5 jury.

6 MR. WILSON: Yes, sir.

7 MR. RICHARDSON: Actually, the one I would move to play
8 to the jury is the one that has been edited with the gaps
9 taken out of it, Your Honor.

10 MR. WILSON: This is the one that we received in
11 discovery, Judge.

12 THE COURT: Okay, is this -- is there any objection,
13 besides the review from Jackson v. Denno, for this one being
14 played to the jury if it's ruled admissible or is there --
15 you're going to say -- I mean, I guess what I'm anticipating
16 is the Defense says, "That's not the one they took when she
17 was interviewed. We want the original," then we're going to
18 need to address that issue.

19 MR. WILSON: Then it's going to be an issue later on,
20 Judge. I'm not going to sit here and tell you it's not. I
21 mean, obviously, what we want is the depiction of what
22 happened.

23 THE COURT: All right. So let's get --

24 MR. RICHARDSON: Your Honor, this is what I provided to
25 them. This is what we've had on the table. This is the first

Motions

41

1 I'm hearing that he wants us to bring the network server over
2 or whatever. I told him this is -- we, we converted this to
3 Windows Movie Maker to remove the hiss so the jury could
4 hear.

5 THE COURT: Well --

6 MR. RICHARDSON: This is the entire video. This is the
7 entire audio.

8 MR. WILSON: Well, let's -- but let's, let's be clear
9 about a couple of things. We actually have reviewed this
10 multiple times, Judge, on a, on a varied -- a plethora,
11 actually, of different speakers. This version seems to be a
12 lot clearer -- we were just discussing that -- than the
13 version we received. I'm not sure if there is some distortion
14 or if it's been doctored or what the deal is, but my concern
15 is is that when he slaps his hand on that table I want the
16 jury to hear and see that at the same time so it's not missed.
17 That's my concern. So if, if Your Honor finds that the tape
18 is admissible, my concern later on is going to be, obviously,
19 that I want the jury to see his actions at the time when it
20 happened on the tape, and that they're going to hear it then
21 they won't see it because when he is sitting there slapping
22 the table, obviously which is an issue for us, because we
23 still have to prove, we can still argue, obviously, at the
24 trial that there is going to be an issue for my client, for
25 the Defendant as far as the admissibility or whether or not

1 it's voluntary or not.

2 THE COURT: All right.

3 MR. RICHARDSON: And Your Honor, it --

4 THE COURT: Let's take a short break. Get together. You
5 tell me when I get back which one you, if it's ruled
6 permissible or admissible under Jackson v. Denno --

7 MR. WILSON: Yes, Your Honor.

8 THE COURT: -- the one that you say is the original that
9 has to go to the jury.

10 MR. WILSON: All right. Thank you, Judge.

11 THE COURT: I've got to do some research to find out
12 if you're tied into the original played interview, recorded
13 interview or not. I, and I don't know the answer to
14 that.

15 MR. RICHARDSON: Yes, sir.

16 THE COURT: If we are tied into it, I hate the fact that
17 we've just wasted two hours of court time without even knowing
18 that that was an issue.

19 MR. RICHARDSON: All right. Of course, like I say, this
20 is what I've provided.

21 THE COURT: So that's why before we waste any more
22 court's time, Mr. Wilson, let me know which statement you say
23 is the one that must be played to the jury if it passes the
24 Jackson v. Denno review because if we do have to have an
25 original then we're going to have to go back and start all

Motions

43

1 over from ground one, and I don't know the answer to that. So
2 you all get together, let me know. Let's take about a 15-
3 minute break.

4 MR. WILSON: Thank you, Your Honor.

5 MR. RICHARDSON: Thank you, Your Honor.

6 OFF THE RECORD

7 (On the record, 12:05 p.m. The following takes place
8 outside the presence of the jury.)

9 MR. RICHARDSON: Prepared to resume, Your Honor?

10 THE COURT: All right. You ready? All right. Let's go
11 ahead and resume.

12 MR. RICHARDSON: Thank you, Your Honor.

13 THE COURT: Thank you.

14 (Whereupon, Court's 3A is played in open court.)

15 (Stopped at 12:49 p.m.)

16 THE COURT: All right, it's a quarter till one. It's
17 a good time for us to go ahead and break for lunch;
18 okay?

19 MR. RICHARDSON: Yes, sir, Your Honor.

20 MR. WILSON: Yes, sir.

21 THE COURT: All right. Anything from the State before we
22 break for lunch?

23 MR. RICHARDSON: Nothing at this time, Your Honor. On
24 this particular one it looks like there's about 49 minutes
25 left on this one. Each one of the clips is about three hours

1 long.

2 THE COURT: Okay. Anything from the Defense before we
3 break for lunch?

4 MR. WILSON: Nothing at this time, Your Honor.

5 THE COURT: All right. It's ten till one. When do you
6 all want to resume?

7 MR. RICHARDSON: We want to get at least two videos in
8 today. I assume about 2:00 o'clock, Your Honor, but I'm at
9 your discretion.

10 THE COURT: All right. Let's shoot for 2:00 o'clock;
11 okay?

12 MR. WILSON: Yes, Your Honor.

13 MR. RICHARDSON: Thank you.

14 THE COURT: All right. We'll be in recess till 2:00.

15 MR. WILSON: Thank you, Judge.

16 OFF THE RECORD

17 (On the record, 2:03 p.m. The following takes place
18 outside the presence of the jury.)

19 THE COURT: All right. Anything from the State before we
20 resume the video?

21 MR. RICHARDSON: Ready to press play, Your Honor.

22 THE COURT: Anything from the Defense?

23 MR. WILSON: Ready to go, Judge.

24 THE COURT: All right. Let's go ahead and resume the
25 video.

Motions

45

1 (Whereupon, Court's Exhibit 3A is played in open
2 court.)

3 (Stopped at 2:23 p.m.)

4 MR. RICHARDSON: For the record, Your Honor, for about
5 the next 58 minutes to an hour is she's more or less alone.
6 I'm just telling the Court that for the record.

7 THE COURT: All right. You still need us to review this
8 part? Turn it down some.

9 MR. WILSON: Judge, I would ask that the Court review
10 it.

11 THE COURT: Okay.

12 MR. WILSON: Especially if the jury is going to get to
13 see it.

14 THE COURT: All right. We'll review it.

15 MR. WILSON: Thank you, Your Honor.

16 MR. RICHARDSON: Thank you, Your Honor.

17 (Whereupon, Court's Exhibit 3A is played in open
18 court.)

19 (Stopped at 2:24 p.m.)

20 THE COURT: All right. Now, I understand the rules say
21 they can put in the portions they want. If you want the
22 entire thing played, then you can have the entire thing
23 played, doesn't necessarily mean that the jury's going to
24 see the whole thing unless you want them to see the whole
25 thing.

1 MR. WILSON: My issue is, for, for -- actually
2 two-fold, Judge. My concern is is that one of my main
3 arguments is going to be the longevity of this particular
4 interrogation.

5 THE COURT: Right.

6 MR. WILSON: And there are moments where we go from
7 interrogation to pre-custodial interrogation to custodial
8 interrogation.

9 THE COURT: Right.

10 MR. WILSON: So because I know that the length is going
11 to be an issue, and obviously there is going to be some issue
12 about when the custodial interrogation begins, the length of
13 time and her isolation as well is going to be an issue, as
14 well as her health, which is also one of the caveats the Court
15 mentions in totality of the circumstances.

16 THE COURT: Well, I mean, my question to you is if I rule
17 that this is voluntary pursuant to the Jackson v. Denno
18 hearing, and assuming they lay the foundation at trial and
19 assuming they tender part of it to the jury in their case in
20 chief, looking down the road --

21 MR. WILSON: Yes, sir.

22 THE COURT: -- are you going to want the entire thing
23 played to the jury?

24 MR. WILSON: Absolutely, Judge.

25 THE COURT: Okay. All right.

Motions

47

1 MR. WILSON: If they, if they show any portion of it.

2 THE COURT: Okay.

3 MR. WILSON: Yes.

4 THE COURT: All right. Well, then let's go ahead

5 --

6 MR. RICHARDSON: Your Honor, it would be the State's
7 intent to play the portions it wants. If he wants to go back
8 on the record --

9 THE COURT: Well, I think that's what the rules of
10 evidence say --

11 MR. RICHARDSON: Yes, sir.

12 THE COURT: -- is that you can play the portions
13 you want, and then if he wants the entire thing played, we go
14 back and play the entire thing. It's up to him, but I do
15 think you're right that, you know, it really --

16 MR. RICHARDSON: And all --

17 THE COURT: -- doesn't have anything to do with this
18 hearing, but I didn't want to lead anybody to believe that if
19 I rule this passes the Jackson v. Denno review then that means
20 we have to play the entire thing for the jury. As I
21 understand the proponent of the statement publishes what
22 portion they want.

23 MR. RICHARDSON: Yes, sir, Your Honor.

24 THE COURT: Then the rules of evidence say that the
25 opposing party, if they want the entire thing played, can have

1 the entire thing played and that's the procedure.

2 MR. WILSON: Yes, sir. That, that was my understanding,
3 Judge.

4 THE COURT: Okay. All right. Well, then let's go ahead
5 and continue with the review.

6 MR. WILSON: Thank you, Your Honor.

7 THE COURT: Yes, sir.

8 (Whereupon, Court's Exhibit 3A is played in open
9 court.)

10 (Stopped at 2:46 p.m.)

11 MR. RICHARDSON: I do apologize, Judge. I just missed it
12 on my notes. Sorry about that.

13 (Whereupon, Court's Exhibit 3A is played in open
14 court.)

15 (Stopped at 3:09 p.m.)

16 THE COURT: All right. Does this mean there's no audio
17 in this part?

18 MR. RICHARDSON: It's that time lag, Your Honor. This
19 is right at the end of the video, the end of the first
20 video.

21 THE COURT: Okay.

22 MR. RICHARDSON: Your Honor, prior to starting the, the
23 second clip --

24 THE COURT: All right.

25 MR. RICHARDSON: -- I would just respectfully request a

Motions

49

1 five-minute recess.

2 THE COURT: All right. Let's take a five-minute
3 break.

4 MR. RICHARDSON: Thank you, Your Honor.

5 THE COURT: Thank you.

6 OFF THE RECORD

7 (On the record, 3:22 p.m. The following takes place
8 outside the presence of the jury.)

9 THE COURT: All right. Anything from the State before we
10 resume?

11 MR. RICHARDSON: Other than, Your Honor, I'm sorry. I
12 said I thought it was three hours. It looks like it was three
13 hours, 15 minutes.

14 THE COURT: All right.

15 MR. RICHARDSON: I was off by 15.

16 THE COURT: No problem. Anything from Defense?

17 MR. WILSON: Nothing, Judge. Nothing else.

18 THE COURT: All right. So, now, we're getting ready to
19 play the second?

20 MR. RICHARDSON: Entitled on this disk "Sandy Locklear
21 2".

22 THE COURT: All right.

23 MR. RICHARDSON: And the clock started at 14:06:44.

24 (Whereupon, Court's Exhibit 3A is played in open
25 court.)

1 (Stopped at 3:34 p.m.)

2 MR. RICHARDSON: Your Honor, for the record, Mr. Wilson
3 and I were just discussing advancing it, but it's only two
4 minutes, and I can certainly do that.

5 THE COURT: Say that again now.

6 MR. RICHARDSON: Mr. Wilson just stated he'd be okay if
7 we advanced it till 14:20 when she reenters the room and I'll
8 see if I can accommodate.

9 THE COURT: All right. Here she comes.

10 MR. RICHARDSON: Are we good there?

11 MR. WILSON: Yeah. That's fine.

12 (Whereupon, Court's Exhibit 3A is played in open
13 court.)

14 (Stopped at 6:00 p.m.)

15 THE COURT: All right. Let's go ahead and stop it, break
16 for the night.

17 MR. RICHARDSON: It looks like there's about 50 minutes
18 left, somewhere. I think the last one went to three hours, 15
19 minutes. So it looks like there's about 45 minutes, 50
20 minutes left.

21 THE COURT: Okay.

22 MR. WILSON: That's about right, Judge.

23 THE COURT: All right. Well, let's go ahead and we'll
24 break for the evening. Resume it right there. What is that
25 16:45:52?

Motions

51

1 MR. RICHARDSON: 16:45:52 seconds, and then the actual
2 counter at the bottom says 2:39 and ten seconds, Your
3 Honor.

4 THE COURT: All right. All right.

5 MR. RICHARDSON: And I'll, I'll eject this for Madam
6 Court Reporter tonight.

7 THE COURT: All right. Anything from the State before we
8 break for the evening?

9 MR. RICHARDSON: No, sir, Your Honor.

10 THE COURT: Anything from the Defense?

11 MR. WILSON: Just one thing, Judge, and I think Brad and
12 I --

13 MR. RICHARDSON: Go ahead, Ralph.

14 MR. WILSON: -- we may be able to settle it between us,
15 but I'm going to need the last detective, Detective
16 Strickland, here either Friday or Thursday, whenever we
17 start.

18 MR. RICHARDSON: He's going to be here Friday.

19 MR. WILSON: Okay.

20 MR. RICHARDSON: He, he, he was just the affiant on the
21 search warrant for the house.

22 MR. WILSON: No, no issues.

23 MR. RICHARDSON: Your Honor, with regard to the, the OPS
24 documentation, the internal affairs documentation --

25 THE COURT: Right.

1 MR. RICHARDSON: -- do you want the officer to have it
2 here tomorrow morning bright and early or when would you like
3 him to have it here?

4 THE COURT: Well --

5 MR. RICHARDSON: Because I --

6 THE COURT: Yeah.

7 MR. RICHARDSON: With those files over here, it's not the
8 nuclear suitcase, but they kind of have to sit there and
9 whether they sit outside your chambers or whatever.

10 THE COURT: Well, just have them bring over here, sit out
11 here, whenever I get a chance to look at it.

12 MR. RICHARDSON: Yes. Yes, sir. Yes, sir.

13 THE COURT: I'll take it -- I'll take a look at it then,
14 you know.

15 MR. RICHARDSON: I didn't know if you wanted me to set
16 aside a time.

17 THE COURT: I mean, I wish I could give them a more
18 definite time.

19 MR. RICHARDSON: That's fine.

20 THE COURT: But I don't know when it would be.

21 MR. RICHARDSON: And I, I will say for the Court it's not
22 an incredibly big document.

23 THE COURT: Yeah. Okay. All right. Well, whenever we
24 take a break, whenever I get an opportunity and we're not
25 dealing with this then I'll take a look at it, and like I say,

Motions

53

1 if I, if I knew of a little bit more definitive time as to
2 when we'd be breaking and when I'd have an opportunity to look
3 at it --

4 MR. RICHARDSON: Certainly, Your Honor.

5 THE COURT: -- I could tell them to come over then, but
6 not knowing that let's just go ahead and have them here and
7 whenever I get a chance I'll take a look at it.

8 MR. RICHARDSON: Certainly, Your Honor.

9 MR. WILSON: Yes, Your Honor.

10 THE COURT: All right. All right. Let's, let's try to
11 get started at about 9:15 tomorrow morning.

12 MR. WILSON: Yes, Your Honor.

13 MR. RICHARDSON: About 9:15. Yes, sir, Your Honor.

14 THE COURT: All right, sounds good.

15 (Adjourned for day, May 28th, 2014.)

16

17

18

19

20

21

22

23

24

25

1 (State v. Sandy Lee Locklear, 2013-GS-26-302, 304. On
2 the record, May 29th, 2014. The following takes place outside
3 the presence of the jury.)

4 THE COURT: All right. Anything from the State before we
5 get started?

6 MR. RICHARDSON: No, sir, Your Honor.

7 THE COURT: Anything from the Defense?

8 MR. WILSON: Absolutely, Judge. I have one thing just
9 want to take up with the Court at this time.

10 THE COURT: All right.

11 MR. WILSON: Yesterday, Your Honor asked me whether I
12 would put the entire video in if the State showed a portion.
13 Last night while I was doing some research, I wanted to make
14 the Court aware that I'm changing that statement.

15 THE COURT: Okay.

16 MR. WILSON: It depends on which portion Your Honor puts
17 in --

18 THE COURT: And I understand.

19 MR. WILSON: -- if that is the case.

20 THE COURT: Well, I mean, I guess for purposes -- and the
21 only reason I asked that is for purposes of this Jackson v.
22 Denno hearing, if there's a chance you're going to put in the
23 whole video, and I, I, I'm not going to hold you to that, but
24 if there's a chance then I'm assuming we still need to review
25 the whole video.

Motions

55

1 MR. WILSON: Yes, sir. Yes, sir.

2 THE COURT: Okay.

3 MR. WILSON: There's a chance.

4 THE COURT: Okay. All right.

5 MR. WILSON: Yes, sir. Yes, sir.

6 THE COURT: Well, that's all I was trying to find out if
7 there was portions where you agreed wouldn't be played and was
8 irrelevant then we could cut it down, but if not, I understand
9 that and that's fine. That's not a problem.

10 MR. WILSON: Yes, Your Honor.

11 THE COURT: All right.

12 MR. WILSON: Thank you.

13 THE COURT: Anything further?

14 MR. WILSON: Nothing further, Judge.

15 THE COURT: All right. Let's go ahead and down the
16 screen.

17 MR. RICHARDSON: Your Honor, for the record, we're
18 starting back at computer counter 2:38:45 and on the time
19 stamp on the video itself 16:29:20. Is that approximately
20 where we left off, Your Honor?

21 THE COURT: Okay, well, I -- yeah, that's close enough.
22 I mean, I had it written down as 16:45:52 on the time stamp,
23 but that's --

24 MR. RICHARDSON: 16:45 -- I can, I can skip --

25 THE COURT: -- but you're talking about only about 20

1 seconds. So that's --

2 MR. RICHARDSON: Okay.

3 THE COURT: -- I don't mind going -- starting it right
4 there as long as -- I don't mind starting it a little
5 early.

6 MR. RICHARDSON: All right. Thank you, Judge.

7 THE COURT: As long as we don't skip anything, that'll be
8 fine.

9 (Court's Exhibit Number 3A played in open court.)

10 (Stopped at 10:02 a.m.)

11 MR. RICHARDSON: At this time I am removing Court's
12 Exhibit 3A.

13 THE COURT: All right.

14 MR. RICHARDSON: Returning same to the clerk. I'll now
15 insert Courtroom's [sic] 3B, contains two videos, continuation
16 of the interview.

17 MR. WILSON: Without objection, Your Honor.

18 THE COURT: All right. Thank you.

19 MR. RICHARDSON: Your Honor, for the record, if my notes
20 serve me correct, we'll have about, and Mr. Wilson can correct
21 me if I'm wrong, have about 28 minutes before officers walk
22 in? Is that about right, Ralph?

23 MR. WILSON: I believe so. I believe that's correct.

24 THE COURT: All right.

25 (Court's Exhibit Number 3B played in open court.)

Motions

57

1 (Stopped at 10:33 a.m.)

2 MR. RICHARDSON: By prior agreement we've agreed to skip
3 ahead. They're out of the room until -- I've got marked 47:04
4 --

5 THE COURT: All right.

6 MR. RICHARDSON: -- at the bottom.

7 THE COURT: Is that agreeable?

8 MR. WILSON: Agreeable, Your Honor. No objection from
9 the Defense.

10 THE COURT: All right. And from that point on how long
11 have we got until they come back in?

12 MR. RICHARDSON: They come back in at about 47:04. She's
13 left alone to -- at about 47:39. Then at 1:40 -- I think
14 she's left alone for about -- just shy of an hour when
15 Detective Frebowitz walks in, then out, and then at about two
16 hours, two seconds in, officers come back in to question
17 her.

18 THE COURT: What I'm saying is if you're going to go
19 ahead and set that, is this a good time for us to go ahead and
20 take a short break right now?

21 MR. RICHARDSON: It, it probably would be.

22 THE COURT: All right. Let's go ahead and take about a
23 10-minute break.

24 MR. WILSON: Thank you, Your Honor.

25 THE COURT: Thank you.

1 MR. WILSON: Five minutes, Judge, or --

2 THE COURT: Let's take about a 10 minute. We'll get
3 started at quarter till.

4 MR. WILSON: Thank you, Your Honor.

5 THE COURT: All right. Thank you.

6 MR. RICHARDSON: Thank you, Your Honor.

7 OFF THE RECORD

8 (On the record, 10:48 a.m. The following takes place
9 outside the presence of the jury.)

10 THE COURT: All right. Anything from the State before we
11 resume?

12 MR. RICHARDSON: No, sir, Your Honor. I believe I have
13 it at the proper point.

14 THE COURT: All right. Anything from Defense?

15 MR. WILSON: Nothing from the Defense, Your Honor.

16 THE COURT: All right. Let's go ahead and resume.

17 (Court's Exhibit Number 3B played in open court.)

18 (Stopped at 12:28 p.m.)

19 MR. RICHARDSON: Your Honor, there's about another 30-
20 minute period here where she's sitting in a room by herself.
21 If you want to go through it, that's fine. I didn't know if
22 you wanted to break for lunch at this juncture or just
23 start.

24 THE COURT: Is it all right to go ahead and break for
25 lunch?

Motions

59

1 MR. WILSON: Your Honor, I have no objection to that.

2 THE COURT: All right. Let's go ahead and stop where it
3 is right now. We'll resume it right there when we come back.
4 It's 12:30. 1:30 all right?

5 MR. RICHARDSON: Your Honor, if I could just -- and it's
6 -- whether it needs to be on the record or not, I was just
7 going to state that it's not the State's intent to put
8 anything from video four up. That's -- most of it is where
9 she is being prepared for transport, and I don't believe
10 there's really any questioning, there may be a small bit,
11 but I wasn't going to try and get into any of that, but I'll
12 let Mr. Wilson dwell on that and see if he wants to get into
13 it.

14 MR. WILSON: I can respond, Judge, if you want me to.

15 THE COURT: Yeah.

16 MR. WILSON: My issue is this, Judge. Obviously, there
17 are two other occasions on the first three portions of this
18 tape where they say they're going to transport.

19 MR. RICHARDSON: Okay.

20 MR. WILSON: Then they say on the fourth portion they're
21 going to transport her again. That's going to be an issue for
22 the jury.

23 MR. RICHARDSON: Okay.

24 MR. WILSON: It's also going to be an issue, obviously,
25 for this hearing.

1 MR. RICHARDSON: Okay.

2 THE COURT: All right. Well, we'll review it.

3 MR. WILSON: All right.

4 MR. RICHARDSON: Yes, sir. Thank you, Your Honor.

5 THE COURT: All right. Let's go ahead. We'll break
6 until 1:30.

7 MR. WILSON: Your Honor, one last question if I
8 could?

9 THE COURT: Yeah.

10 MR. WILSON: Can we give cases -- I don't know if Your
11 Honor wants to accept, and I was going to talk to Brad about
12 this, but I can do it in open court. Will you allow us to
13 give you cases that we're going to rely on for our, our oral
14 arguments tomorrow morning? Is that okay?

15 THE COURT: That'll be fine if you want to.

16 MR. WILSON: Okay.

17 MR. RICHARDSON: I've got --

18 THE COURT: Okay.

19 MR. RICHARDSON: -- for you, for Your Honor, and for
20 Defense counsel.

21 MR. WILSON: Thank you, Judge.

22 MR. RICHARDSON: Thank you, Judge.

23 THE COURT: All right.

24 MR. RICHARDSON: Your Honor, what time did you say?

25 THE COURT: 1:30.

Motions

61

1 MR. RICHARDSON: Thank you, Your Honor.

2 THE COURT: All right.

3 OFF THE RECORD

4 (On the record, 1:34 p.m. The following takes place
5 outside the presence of the jury.)

6 THE COURT: All right. Anything from the State before we
7 break -- resume?

8 MR. RICHARDSON: And Your Honor, I apologize. I got
9 everything else ready, but the camera is going to take about
10 one minute.

11 THE COURT: All right. Anything from the Defense before
12 we resume?

13 MR. WILSON: Nothing, Your Honor.

14 THE COURT: All right.

15 MR. RICHARDSON: For the record, I'll be restarting it at
16 2:26:27. By my mark we had stopped it at 2:26:28.

17 THE COURT: Okay.

18 MR. RICHARDSON: That's by the computer clock.

19 MR. WILSON: No objection.

20 (Court's Exhibit Number 3B played in open court.)

21 (Stopped at 2:24 p.m.)

22 MR. RICHARDSON: Your Honor, now we'll play what is in
23 the file Sandy Locklear 4 from Court's Exhibit 3B.

24 (Court's Exhibit Number 3B played in open court.)

25 (Stopped at 2:43 p.m.)

1 MR. WILSON: Your Honor.

2 THE COURT: Yes.

3 MR. WILSON: I didn't want the Court to think I was
4 wasting its time, but I just want to let you know there is
5 further interrogation on this tape.

6 THE COURT: That's fine.

7 (Court's Exhibit Number 3B played in open court.)

8 (Stopped at 3:15 p.m.)

9 MR. RICHARDSON: Your Honor, at this particular juncture
10 she is out of the room until I think it's 58 and some change
11 on there. She went out doing a smoke break, and I believe
12 we've agreed to jump ahead on that. There's about -- whenever
13 she returns there's about one hour left of the video if you
14 want to take a break.

15 THE COURT: All right. Is that agreeable to skip ahead
16 till they come back?

17 MR. WILSON: Agreeable, Your Honor. No objection at
18 all.

19 THE COURT: All right. Let's go ahead and take a --

20 MR. RICHARDSON: If you want I'll just get it set up
21 where I can go right in.

22 THE COURT: All right. Let's take about a 10, 15-minute
23 break.

24 MR. WILSON: Thank you, Your Honor.

25 THE COURT: Thank you. All right. Let's take about a

Motions

63

1 10-minute break.

2 MR. RICHARDSON: Thank you, Your Honor.

3 OFF THE RECORD

4 (On the record, 3:33 p.m. The following takes place
5 outside the presence of the jury.)

6 THE COURT: All right. Anything from the State before we
7 resume?

8 MR. RICHARDSON: No, sir, Your Honor.

9 THE COURT: Anything from the Defense?

10 MR. WILSON: Nothing at this time, Your Honor.

11 THE COURT: All right. Let's go ahead and --

12 MR. RICHARDSON: Starting back at 58:32, Your Honor.

13 THE COURT: All right.

14 (Court's Exhibit Number 3B played in open court.)

15 (Stopped at 4:44 p.m.)

16 MR. WILSON: That's it.

17 MR. RICHARDSON: Your Honor, I'm ending the video on
18 the date stamp 2 -- 22:46:47. On the computer it says
19 2:09:30.

20 THE COURT: All right.

21 MR. RICHARDSON: That is on Sandy Locklear 4 on Court's
22 Exhibit 3B. If I could ask Detective Frebowitz to please
23 resume the stand at this point, Your Honor.

24 THE COURT: All right. Can I get you to do me one
25 favor?

1 MR. RICHARDSON: Yes, sir.

2 THE COURT: Well, he can go ahead and take the stand, and
3 I don't know how long it's going to take you to find it. Can
4 you go back to the part where he mirandized her?

5 MR. RICHARDSON: Yes, sir.

6 THE COURT: Do you recall where that --

7 MR. RICHARDSON: I believe I do have that marked.

8 THE COURT: Let me view that one more time.

9 MR. RICHARDSON: Yes, sir, Your Honor. I will need A.

10 THE COURT: Yeah. While we've got everything set up, and
11 I don't know how hard it is --

12 MR. RICHARDSON: Certainly, Your Honor.

13 THE COURT: -- to locate it.

14 MR. RICHARDSON: Certainly, Your Honor. For the record,
15 Your Honor, I have it playing at 1:02:45, computer 11:54:14 on
16 the date stamp.

17 THE COURT: All right.

18 (Court's Exhibit Number 3A played in open court.)

19 MR. RICHARDSON: Is that sufficient, Your Honor?

20 THE COURT: Yeah. That's good.

21 REPORTER: Can you tell me what the stop, 11:56.

22 MR. RICHARDSON: Yes, ma'am. It's 11:56:21 on the date
23 stamp and it is 1:04:54 on the computer time.

24 REPORTER: Thank you, sir.

25 MR. RICHARDSON: We can probably bring the screen up at

Motions

65

1 this point, Your Honor.

2 THE COURT: All right.

3 EXAMINATION (Continued)

4 BY MR. RICHARDSON:

5 Q Detective Frebowitz, the video that we just watched --
6 I'm sorry. I just want to ask some follow-up questions with
7 regard to the video, please, sir. Now, there were some time
8 lags between the video and the audio.

9 A Yes, sir.

10 Q All the audio, regardless of the time lags, is there any
11 deletions, omissions? I mean, you've reviewed the video
12 before. Is it -- regardless of being off, does it appear to
13 be all, all of what was stated in her interview?

14 A Yes, sir.

15 Q Okay. And you were not in the room all -- the whole
16 time; correct?

17 A No, I wasn't.

18 Q There were times others were in there interviewing the
19 Defendant?

20 A That's correct.

21 Q And the police department has got a screen where you can
22 watch the interviews as they happen?

23 A There's several monitors you can watch the interviews
24 throughout the building.

25 Q Okay. Now, when you asked her during the portion -- the

1 initial portion, the 11 to 12, the 11 to noon portion where
2 she was a witness victim, you asked about the assailants. Why
3 is that?

4 A She was the one who was the best witness. She would have
5 seen who committed this horrific offense.

6 Q Okay. And at a couple of junctures you informed the
7 Defendant that her stories changed some or that it's a little
8 bit different. Why is that?

9 A You know, that's not unusual. You have a victim,
10 especially I believed her initially. She was a victim of
11 watching someone she cared about murdered. She was the victim
12 of a, you know, attempted murder herself, possibly, and a
13 brutal rape. I would expect her to be upset to the point
14 where she didn't know exactly what happened. Plus I didn't
15 know if the hospital had given her anything for pain or a
16 sedative or anything like that. So I wasn't concerned
17 initially.

18 Q And when you asked her about what time she arrived at
19 Amos's house, was that for timeline purposes?

20 A Yes, sir. That's correct.

21 Q Okay. You asked about her rape injuries. What's the
22 purpose?

23 A It's the same thing, just to coordinate and confirm the
24 injuries that she was reporting.

25 Q And you asked her about any drug use or alcohol use. Why

Motions

67

1 did you do that?

2 A So that she would understand what we were trying to say,
3 what -- and I could assure myself that she understood my
4 questions, could answer them appropriately.

5 Q Okay. Now, there are times during the, the interviews
6 where she appears to be in the room by herself.

7 A That's correct, sir.

8 Q What was going on during that time period?

9 A We needed to coordinate what she was saying and trying to
10 verify, validate. She one time sent us to the IGA. We had to
11 run out and get some videos. There was a Hot Spot mentioned.
12 Anything she told us we believed in its entirety, and we acted
13 on that information and sent teams out, multiple teams out to
14 different areas of the county and in some case North Carolina
15 to validate that information.

16 Q So there was no ulterior motive to leave her in there?

17 A Oh, absolutely not.

18 Q Okay. And now, during that initial interview, the first
19 hour per se, did you ever inform the Defendant she was a
20 suspect?

21 A No.

22 Q At some point you asked about permission to, to gather
23 her cell records. Do you recall that?

24 A Yes, sir, I do.

25 Q What was the purpose in that?

1 A A timeline. She was a little hesitant on the timeline.
2 If she made any phone calls, we would get a better idea where,
3 you know, who she spoke to, and it just helped refresh her
4 memory, narrowed down the time.

5 Q As a matter of a fact, what did she indicate about her
6 cell phone?

7 A Somebody had taken it, I believe.

8 Q Okay. So she thought the robbers had taken that cell --
9 her cell phone?

10 A Yes, sir. That's correct.

11 Q And in your experience as an investigator, can you use a
12 stolen cell phone to track the thief, the suspect?

13 A Yes, sir. That's correct.

14 Q And in this case a murderer?

15 A Yes, sir.

16 Q And whenever you asked her about that cell phone, what
17 was her response? Did she, did she --

18 A I don't --

19 Q -- agree to allow you to?

20 A Oh, yes, sir. Absolutely. She, she --

21 Q Okay, I'm sorry.

22 A -- agreed us to use the phone, yeah.

23 Q Late in the day. My questions are getting bad.

24 A To look at the phone. Yes, sir.

25 Q So, she -- with any hesitation did she ever withdraw the

Motions

69

1 consent for you to look at her cell phone?

2 A No, sir. She did not.

3 Q And I believe the response was, "Absolutely," when asked
4 about looking at her cell phone.

5 A It could be. We could watch 12 hours of video again if
6 we wanted.

7 Q No thank you.

8 MR. WILSON: Objection, Your Honor.

9 THE COURT: Sustained.

10 Q Did she provide her cell number to you?

11 A Yes, sir. She did.

12 Q Allow me to show you, and I believe I had one marked
13 yesterday, but we did not have a reverse side on this.

14 MR. RICHARDSON: So If I may substitute State's or
15 Court's Exhibit Number Two, Your Honor. It's now a two-page
16 document.

17 THE COURT: Any objection?

18 MR. WILSON: No objection, Your Honor.

19 THE COURT: So how are we identifying that?

20 MR. RICHARDSON: Court's Two.

21 (Court and court reporter confer.)

22 THE COURT: Okay. All right.

23 BY MR. RICHARDSON:

24 Q I'm going to show you what's been marked as Court's Two.
25 Do you recognize that item?

1 A Yes, sir, I do.

2 Q And what do you recognize that as being?

3 A That's the statement that Ms. Locklear prepared.

4 Q And it's a photocopy of it?

5 A It is, sir.

6 Q Okay. And she prepared that during -- we saw that on the

7 --

8 A On the video. Yes, sir

9 Q Okay.

10 MR. RICHARDSON: Your Honor, the State would introduce

11 State's -- Court's Exhibit Number Two for the record.

12 THE COURT: All right. That's not already in
13 evidence?

14 MR. RICHARDSON: I, I don't know if it was, Your
15 Honor.

16 THE COURT: It may not be. Any objection?

17 MR. WILSON: No objection at this time, Your Honor.

18 THE COURT: All right.

19 (Court's Exhibit Number Two [Voluntary Statement]
20 admitted into evidence for purpose of Jackson v. Denno hearing
21 and appropriately marked.)

22 BY MR. RICHARDSON:

23 Q And that was done actually pretty early in the, in the
24 interview process; correct?

25 A Yes. It was.

Motions

71

1 Q Shortly after she was mirandized?

2 A Yes, sir.

3 Q Shortly after she signed, signed State's Number One, the
4 Miranda Form?

5 A Yes, sir.

6 Q Okay. Now, did you have opportunity to speak with the,
7 with the Defendant again at a later time?

8 A Yes, sir, I did.

9 Q When, when and where was that?

10 A After the -- the next day at the jail.

11 Q Okay. And what was the purpose of going to speak to the
12 Defendant at the jail?

13 A Initially I had no intention of speaking with her again.
14 I had obtained warrants. I was going to serve her with the
15 warrants. Once I was there, she said, "I want to talk to you
16 again," and I didn't stop her.

17 Q And you didn't mirandize her that day?

18 A No, sir, I did not.

19 Q And why not?

20 A She really had nothing else she could say of interest to
21 me. We had already developed all the information we needed,
22 but if she wanted to tell a story, and plus I had already
23 mirandized her once.

24 Q Okay. And at any point during the conversation on that
25 day did she ever request an attorney?

1 A No, sir.

2 Q Did she ever tell you she wanted to quit the
3 interview?

4 A No, sir.

5 Q And this was done at her behest?

6 A Yes, sir. It was.

7 Q And was this recorded?

8 A Yes, sir. It was.

9 Q And not on that, not on that video?

10 A No, sir. Not at all.

11 Q Okay. Great. Allow me to show you what's been marked as
12 Court's Exhibit Number Four. Do you recognize it?

13 A Yes, sir.

14 Q And what does that appear to be?

15 A A CD in this case of an audio transmission.

16 Q Okay. And this is a copy of your digital recorder;
17 correct?

18 A Yes, sir. It is.

19 MR. RICHARDSON: The State would seek to introduce
20 Exhibit Number Four for the purposes of this hearing.

21 MR. WILSON: No objection to this hearing, Your
22 Honor.

23 THE COURT: All right, Court's Exhibit Number Four
24 admitted into evidence without objection.

25 MR. RICHARDSON: Thank you, Your Honor.

Motions

73

1 (Court's Exhibit Number Four [CD - Locklear Interview
2 8-20-12] admitted into evidence for the purposes of the
3 Jackson v. Denno hearing and appropriately marked.)

4 BY MR. RICHARDSON:

5 Q While this is coming up, Detective Frebowitz, what did
6 you do after you got the Defendant's permission to look at her
7 cell records?

8 A I turned information over to Detective Vescovi. He's a
9 technician that understands those technical terms.

10 Q And he was working with you?

11 A He's part of our team. Yes, sir.

12 (Court's Exhibit Number 4 played in open court.)

13 BY MR. RICHARDSON:

14 Q Detective --

15 A Yes, sir.

16 Q -- is that the entire interview out at J. Reuben
17 Long?

18 A Yes, sir.

19 Q Have you had any other communication with Ms. Locklear
20 since you served her with warrants that day?

21 A No, sir. I don't believe so.

22 Q And is your understanding that she consented to allow
23 you all to look at her records because her phone had been
24 stolen?

25 A Yes, sir.

1 Q And they were going to be useful to help her -- help find
2 the murderers?

3 A She consented to the use of the records.

4 Q Okay. And during the course of the interview on the
5 19th, you all talked to her about transport was on its way and
6 did you do anything to beguile her to, to mislead her in any
7 way?

8 A No, sir.

9 Q And you -- I believe you said the big gaps in time where
10 she was sitting by herself you all were actually trying to
11 conduct the investigation and kind of follow up on what she
12 had told you?

13 A Yes, sir.

14 Q And it stretched from Tabor City, North Carolina, to
15 Loris, everywhere?

16 A It did, sir.

17 Q And it took some time.

18 MR. RICHARDSON: And I believe for the purposes of
19 this hearing I have no further questions, Your Honor.

20 THE COURT: All right. Let me see the attorneys for a
21 second.

22 (Whereupon, a bench conference is held.)

23 THE COURT: All right, we'll go ahead and break for the
24 evening. We'll resume at 9:15 tomorrow morning. All
25 right?

Motions

75

1 MR. WILSON: Thank you, Your Honor.

2 THE COURT: Thank you. Wait a minute, let me back up.
3 I've got a hearing tomorrow morning at 9:30.

4 MR. WILSON: Yes, Your Honor.

5 THE COURT: It shouldn't take more than about 10
6 minutes.

7 MR. WILSON: Yes, sir.

8 THE COURT: So let's be here, be ready and as soon as I
9 finish with the 9:30 hearing --

10 MR. WILSON: Yes, sir.

11 THE COURT: -- we'll get started. All right?

12 MR. WILSON: Yes, sir.

13 MR. RICHARDSON: Yes, sir.

14 THE COURT: All right.

15 MR. WILSON: Thank you, Judge.

16 THE COURT: Thank you.

17 All right. Back on the Brady motion, internal affairs
18 investigation, I have reviewed those files. There's nothing
19 in there relevant to this case or that is exculpatory or
20 inculpatory in this case. So I'm going to rule that it's not
21 discoverable. Okay?

22 MR. RICHARDSON: Yes, sir, Your Honor.

23 THE COURT: All right.

24 MR. WILSON: No objection, Judge.

25 THE COURT: Thank you.

1 MR. WILSON: Thank you, Your Honor.

2 MR. RICHARDSON: Your Honor, I don't know if you want to
3 -- I've just got case law that I'll be citing during argument
4 tomorrow.

5 THE COURT: All right.

6 (Adjourned for day, May 29th, 2014.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Motions

77

1 (State v. Sandy Lee Locklear, 2013-GS-26-302, 304. On
2 the record, May 30, 2014. The following takes place outside
3 the presence of the jury.)

4 THE COURT: All right. Anything from the State before
5 we get started?

6 MR. RICHARDSON: No, sir, Your Honor.

7 THE COURT: Anything from the Defense?

8 MR. WILSON: Nothing, Your Honor.

9 THE COURT: All right. Mr. Frebowitz, if you'd come back
10 up, take the stand. You're still under oath. All right. Mr.
11 Wilson, cross examination.

12 MR. WILSON: Your Honor, if it please the Court.

13 THE COURT: Yes, sir.

14 MR. WILSON: Thank you, Your Honor.

15 EXAMINATION

16 BY MR. WILSON:

17 Q Good morning, Mr. Frebowitz.

18 A Good morning, sir.

19 Q Let me ask you this, at the time when this murder
20 occurred, you were actually lead detective on this case;
21 correct?

22 A Yes, sir, I was.

23 Q Okay. And you got a call that morning from who?

24 A Sergeant Squires or, no, I can double check. I don't
25 remember if it was Lieutenant DeBerry or Sergeant Squires, but

1 one of the supervisors.

2 Q Okay. One of the supervising detectives?

3 A Yeah. Supervisors of the detectives.

4 Q Okay. All right. They called you and then told you
5 that you would be lead detective. Is that how it works?

6 A There's an on-call system.

7 Q Okay.

8 A And whoever is on call assumes the duties as the lead
9 detective.

10 Q Okay. And what are the duties of a lead detective?
11 What, what does a lead detective do?

12 A Well, it's a -- it's comprehensive. It assumes full
13 responsibility for the investigation from the arrival on the
14 scene, including ensuring that the crime scene is
15 appropriately secured, appropriately processed or at least
16 someone's in place to do that if you're not there. The
17 witnesses are accounted for and interviewed, and leads are
18 followed up. It's much more voluminous than that, but that's
19 it in a nutshell.

20 Q That's it in a nutshell?

21 A Yes, sir.

22 Q Okay. All right. So one of your primary
23 responsibilities as lead detective is secure the crime
24 scene?

25 A Yes, sir.

Motions

79

1 Q Okay. When the Solicitor asked you a question the other
2 day he asked you about the Defendant Sandy Locklear that when
3 you got there that you actually considered her to be a -- and
4 you tell me if I'm wrong -- but you said you considered her to
5 be a crime scene; did you not?

6 A Absolutely.

7 Q That's what you considered that?

8 A She is.

9 Q And part of your job is is secure and control crime
10 scenes; correct?

11 A Correct.

12 Q Okay. All right. So we agree on that. And when
13 you got there you had a chance to talk with Sandy
14 Locklear?

15 A Briefly.

16 Q Okay. Let me back up one second. Did you actually
17 go into the house or the trailer that day when you got
18 there?

19 A Not immediately, but subsequently I did.

20 Q Okay. You said not immediately?

21 A No, sir.

22 Q So what was the first thing you did when you actually
23 got to the crime scene?

24 A I interviewed the first responding officers.

25 Q Okay.

1 A And determined what they had observed.

2 Q Okay. Did anyone tell you that they had already done a
3 buoy sweep or protective sweep of the residence?

4 A I don't recall that.

5 Q As part of your duties as lead investigator you would
6 have done a report of investigation; correct?

7 A I would have.

8 Q Okay. I'm going to give you the first page.

9 MR. WILSON: Excuse me. Your Honor, may I approach the
10 witness?

11 THE COURT: Yes.

12 BY MR. WILSON:

13 Q I'm going to give you the first page of your report of
14 investigation, and if you could, tell me whether or not you
15 went inside that residence when you first got there?

16 A I did not go in when I first got there.

17 Q Okay. Tell me what you did.

18 A As I said, I don't need to read that.

19 Q Okay.

20 A When I first got there I interviewed the first
21 responding officers. I ensured the crime scene was being
22 processed. Detective Martin had already -- was already there.
23 He -- and it is my protocol and policy on every scene I've
24 ever been to for 30 years, crime scene processes the scene
25 before I go in or allow anybody else to go in. I make sure

Motions

81

1 that they handle their photographs, they do what they need
2 to do. Once that's accomplished and they say they've done
3 their preliminary processing, then I went into the crime
4 scene.

5 Q Okay. All right. So in this report when it says, and
6 I'm going to read from the report that you wrote -- this is
7 your report; correct?

8 A Yes, sir.

9 Q (As read) "The television was on, the station tuned to a
10 television crime show believed to be the First 48 was
11 broadcasting. After conducting a secondary protective sweep
12 and determining no other victims were present, the below
13 signed departed the residence."

14 A That's correct.

15 Q So you did that?

16 A That was at 7:00 o'clock.

17 Q At what point in time did you do that?

18 A That was about 7:00 o'clock in the morning.

19 Q That was 7:00 o'clock in the morning?

20 A Yes, sir.

21 Q Okay. And what time did you order everybody out of the
22 residence?

23 A I didn't order anybody out of the residence. Nobody was
24 in there when I got there.

25 Q Okay. Nobody had been in the residence when you got

1 there?

2 A Detective Martin had been in there, and I assume
3 the first responding officers had done a protective
4 sweep.

5 Q Okay. All right. So, so you presumed they had done a
6 protective sweep?

7 A Yes, sir.

8 Q Okay. So you did a secondary protective sweep?

9 A Absolutely.

10 Q Okay. And what was the purpose of that secondary
11 protective sweep?

12 A It's my safety. I'm looking around.

13 Q Okay. For your safety?

14 A Yes, sir.

15 Q How many officers were already there or detectives or
16 law enforcement personnel were already there by the time you
17 got there?

18 A Five or six, maybe more.

19 Q Okay. All right. Let me ask you this, did you have an
20 opportunity, and I believe you stated on direct examination
21 you had an opportunity to observe Sandy Locklear when you
22 first got there; correct?

23 A Yes, sir.

24 Q Okay. And you had a chance to talk to her?

25 A I did.

Motions

83

1 Q All right. You briefly spoke with her, that's what,
2 that's what your testimony was; correct?

3 A Yes, sir.

4 Q Tell me what you all talked about.

5 A I identified myself. I told her that we'd be
6 investigating the crime. I briefly asked her -- she -- I
7 think she volunteered. I don't think I had to ask her
8 anything, and she volunteered that she was a victim. I then
9 said we need to get her out of here, get her to the hospital.
10 I directed that she be transported to Conway Hospital and
11 requested Detective Chatfield either transport her or follow
12 her to the hospital to ensure her -- to ensure that crime
13 scene.

14 Q Okay. You spoke with Detective Martin; correct?

15 A That's correct, sir.

16 Q All right. Now, under your testimony yesterday when the
17 Prosecutor asked you a question about whether or not she
18 seemed coherent when you got there, you said, "Yes," to you
19 she seemed coherent; right?

20 A She was very upset, but she was able to understand what
21 I was trying to accomplish, I believe. Yes, sir.

22 Q Okay. Well, you've been a detective for how many years
23 now?

24 A I was a detective for eight years with county
25 police.

1 Q Okay. With the county police. Where did you work
2 before that?

3 A Washington, D.C.

4 Q How many years did you work Washington, Washington,
5 D.C.?

6 A Twenty-five years.

7 Q Okay. So you've been doing it roughly 33 years?

8 A A little closer to 40, but that's --

9 Q Closer to 40 years?

10 A Yes, sir.

11 Q Okay. All right. I have what -- and let me, let me
12 make sure we understand each other. Detective Martin, is that
13 his name?

14 A Yes, sir. John Martin.

15 Q John Martin, he actually went to the crime scene. He
16 took photographs of Sandy Locklear when he first got there;
17 correct?

18 A I believe that's true.. Yes, sir.

19 Q All right. Do you have the case file with you?

20 A No, sir. I have some notes and some transcript, but not
21 the whole file.

22 Q Okay. All right. Fair enough. All right. I'm going
23 to show you a picture that Detective Martin took of Sandy
24 Locklear when he first arrived on the scene.

25 MR. WILSON: May I approach the witness, Your

Motions

85

1 Honor?

2 THE COURT: Yes, sir.

3 MR. WILSON: Thank you, Your Honor.

4 A Yep.

5 Q Is that what she looked like?

6 A Yes, sir.

7 MR. WILSON: Your Honor, I'd like to have this marked.

8 THE COURT: All right. Court's Exhibit 13. All
9 right.

10 BY MR. WILSON:

11 Q Court's Exhibit 13. I want you to take a look at that
12 and let me ask you this, in that picture -- but you say you
13 saw Sandy Locklear when you first came to that scene. Does
14 she look coherent to you?

15 A That one photograph?

16 Q That one photograph.

17 A You can't tell from one photograph.

18 Q I'm only asking you about that photograph.

19 A I answered it. I can't tell from this photograph.

20 Q I'm not --

21 MR. RICHARDSON: Your Honor, the detective has already
22 testified that she appeared coherent to him.

23 MR. WILSON: Judge --

24 MR. RICHARDSON: He indicated he can't tell from one
25 photograph, asked and answered.

1 MR. WILSON: Judge, Judge.

2 THE COURT: Okay.

3 MR. WILSON: I'm asking him specifically. He looked to
4 the Prosecution. The Prosecution can't help him. I'm asking
5 him specifically if she was coherent.

6 MR. RICHARDSON: Your Honor, I object to him saying he's
7 looking for help from the Prosecution.

8 THE COURT: All right. Overruled. He's already asked
9 and answered. He said he can't tell from that photograph
10 whether she looks coherent.

11 MR. WILSON: Thank you, Your Honor.

12 THE COURT: Thank you.

13 BY MR. WILSON:

14 Q All right. Now, your testimony was yesterday and today
15 that you directed or ordered Chatfield to transport Sandy
16 Locklear to the actual hospital; correct?

17 A I believe I said she was transported to the hospital. I
18 asked Chatfield to either transport her or accompany her. I
19 don't remember which.

20 Q Okay. Okay. All right. Well, let me ask you this, did
21 Sandy Locklear ever ask you to go to the hospital?

22 A No, sir.

23 Q She didn't?

24 A I don't believe so. No, sir.

25 Q Okay. All right. Did she ever ask you to make an

Motions

87

1 arrangement for her to go to the hospital?

2 A No, sir. I don't believe she did.

3 Q Okay. And would it surprise you then if you -- I say
4 that you testified yesterday that you ordered him to, to
5 escort her to the hospital?

6 A No. I just said that again.

7 Q So you did order him to go take her to the hospital?

8 A He was -- I can't order him to do anything. We're
9 peers. Actually, he's a supervisor. Technically, I requested
10 or suggested he go to the hospital, and I thought that's what
11 I testified to.

12 Q Okay. Do you know if he went to the hospital or
13 not?

14 A I know he did.

15 Q Okay. All right. As a part of your case file I assume
16 that you would have received at some point in time a copy of
17 the rape kit report?

18 A No, sir, I didn't.

19 Q You never received a copy of the rape kit report?

20 A I don't believe so. No.

21 Q All right. So Chatfield takes Sandy Locklear to the
22 hospital. Okay. Fair enough?

23 A She, she goes to the hospital with Chatfield in some
24 mechanism. I'll agree with that.

25 Q Okay.

1 MR. WILSON: Your Honor, may I approach the
2 witness?

3 THE COURT: Yes.

4 MR. RICHARDSON: Your Honor, the Defense counsel is
5 trying to introduce Detective Chatfield's report. I believe
6 the proper mechanism would be to call Detective Chatfield
7 in.

8 THE COURT: Okay.

9 MR. RICHARDSON: It would be his report.

10 MR. WILSON: I'm attempting to save the Court time. This
11 is a part of the case file, which this gentleman was lead
12 detective at the time. He should have the case file. He
13 should have reviewed it.

14 THE COURT: Okay. But if you're offering it for the
15 truth of the matter asserted, it's hearsay. I sustain
16 it.

17 MR. WILSON: Thank you, Your Honor.

18 THE COURT: Thank you

19 BY MR. WILSON:

20 Q Did Detective Chatfield ever give you a copy of the rape
21 kit report?

22 A Not that I remember. No, sir.

23 Q Okay. Do you ever recall talking with Sandy about the
24 rape kit report?

25 A The rape kit report?

Motions

89

1 Q Yeah. The rape report.

2 A No, sir.

3 Q Saying that she wasn't raped, the analysis from the
4 hospital?

5 A The -- there is no analysis from the hospital whether
6 they make a finding of whether she was a victim of an assault.
7 The kit itself is sent to SLED, and that report is sent
8 months, years later. I never got that.

9 Q All right. My question is this, did Mr. Chatfield or
10 Detective Chatfield ever communicate to you the results at the
11 hospital -- of the hospital of whether or not Sandy Locklear
12 was assaulted?

13 A I don't recall, sir. I'm sorry.

14 MR. WILSON: Your Honor, can I play the tape? Would the
15 Judge -- would the Court be willing to allow me to play the
16 actual portion where he asked her about the results and told
17 her about the results?

18 THE COURT: No. I recall him saying that he told her the
19 results came back that she was not raped. I recall that on
20 the video --

21 MR. WILSON: Thank you, Your Honor.

22 THE COURT: -- during the interrogation.

23 MR. WILSON: Then I don't need to play it again.

24 THE COURT: All right.

25 MR. WILSON: All right. Then I'll move on.

1 BY MR. WILSON:

2 Q All right. So Chatfield gives you the report at some
3 point in time because obviously he must have said it at
4 some point in time to Sandy Locklear because you discussed it
5 with her in the conversation. My next question is this.
6 When did you know about the actual fact that she was not
7 raped?

8 A I never knew specifically that she was not raped,
9 that the hospital report -- like I said, the rape report
10 didn't come back for -- in fact I never even, I don't think
11 I ever saw the rape report. If there was some preliminary
12 belief that her injuries were not consistent with what she
13 was saying, that may have been communicated to me, and
14 from that, I drew my own conclusion, but I never saw a
15 report.

16 Q Okay. All right. At 10:51 Sandy Locklear is brought
17 back to or brought to M.L. Brown Building. Do you know who
18 transported her to the M.L. Brown Building?

19 A No, sir, I don't.

20 Q Okay. At that point in time do you recall actually
21 going in the room with her?

22 A Yes, sir, I do.

23 Q Okay. So you went in the room with her?

24 A I did.

25 Q Okay. And in that room actually you sat down with her.

Motions

91

1 Did you mirandize her?

2 A No, sir.

3 Q All right. And you said the reason you didn't mirandize
4 her was why?

5 A She's a victim.

6 Q She was a victim at the time?

7 A Yes, sir.

8 Q So at the time you were treating her as a victim?

9 A Absolutely.

10 Q Correct? And there's no doubt about that in your
11 mind?

12 A No doubt about it.

13 Q Okay. Fair enough. All right. At 10:51 do you recall
14 her telling you that she was raped by a white guy and a black
15 guy?

16 A Yes, sir.

17 Q Okay. You recall that?

18 A I, I -- yes, sir. I recall it.

19 Q Okay. All right. You watched it on video like all of
20 us?

21 A Yes, sir.

22 Q Okay. All right. And so you listened to that testimony
23 from her or that statement from her; correct?

24 A Yes, sir.

25 Q Okay. All right. And you were still questioning her

1 during this time. Is that -- any question about that?

2 A No, sir.

3 Q Okay. Do you recall 11:11 when you leave your cell
4 phone on the table?

5 A Yes, sir.

6 Q Okay. All right. Do you recall at 11:13 when you begin
7 to have her mark evidence?

8 A Yes, sir.

9 Q Okay. Do you recall what evidence you had her mark?

10 A I believe it was the house itself where the front door
11 was, back door was, just schematics of the crime scene
12 itself.

13 Q Okay. Fair enough. All right. And at 11:15, which
14 is approximately 24 minutes after you began your
15 conversation with Ms. Locklear, you begin asking her
16 questions --

17 MR. WILSON: Let me rephrase, Your Honor. I withdraw
18 that question.

19 BY MR. WILSON:

20 Q Do you recall asking Sandy Locklear whether or not that
21 was the truth or not?

22 A Yes, sir.

23 Q Okay. Do you recall specifically saying, "Well, that's
24 different from what you told me before?"

25 A Yes, sir.

Motions

93

1 Q Okay. Why did you say that to her?

2 A To make sure she understood that I needed to hear the
3 truth. It -- she was just -- I'd been working rape cases and
4 sexual assault cases for a long time.

5 Q Okay.

6 A It's embarrassing to have a male officer ask a female
7 victim very intimate and personal questions. It's not unusual
8 at all for people to try to deflect the truth or hold the
9 information back just out of sheer embarrassment. I was just
10 trying to communicate to her that I understood it was
11 embarrassing. I just needed the truth.

12 Q Fair enough. Okay. At 11:17 she showed you bite marks.
13 Did she not? Didn't she show you some bite marks?

14 A Bite marks?

15 Q Did she ever show you bite marks?

16 A I don't recall. I just don't remember.

17 Q Okay. Well, if she had shown you bite marks would you
18 have photographed those bite marks?

19 A I would've had a -- had them photographed. Yes,
20 sir.

21 Q Okay. Well, do you recall saying to her at 11:17, also,
22 "Most rapists don't bite?"

23 A No. No, sir. I don't recall, I mean, but I'm not
24 saying I didn't say it. I just don't remember.

25 MR. WILSON: Your Honor, do I need to play it back for

1 the Court?

2 A I have, I have the transcript.

3 THE COURT: Well, he says he doesn't dispute that he said
4 it.

5 A Yeah.

6 THE COURT: But he doesn't recall saying it.

7 MR. WILSON: All right.

8 THE COURT: Which means he's not disputing that you say
9 he said that.

10 MR. WILSON: Yes, Your Honor. I'll move on.

11 BY MR. WILSON:

12 Q 11:18 you say to her, to Sandy Locklear that is, you say
13 to Sandy Locklear, "You didn't, you didn't tell me they tied
14 you up." What did you mean by that?

15 A It says, (As read) "See" -- I actually have the
16 transcript. It says, "Tell me about that." Says, "You didn't
17 tell me about that the first time," was what I, what I
18 answered, what I said. And just, again, to communicate to her
19 that she needs to be forthcoming and tell me the truth as
20 embarrassing as it very well may be.

21 Q Well, let me ask you this. You're reading from
22 the transcript that the Prosecution prepared for you;
23 correct?

24 A Yes, sir.

25 Q Okay. My question to you is about the bite marks. Do

Motions

95

1 you see the comment about the bite marks?

2 A I do now.

3 Q Okay. Well, tell me what it says.

4 A (As read) "They bit me," she says. "He had me down,
5 pinned me down. He was like kissing all over me and then he
6 started biting me." "Really?" "Yeah." And I say, "I think
7 that's unusual. Most rapists don't do that. They just, you
8 know, get on with that."

9 Q Okay. Thank you very much. Now, you also asked her
10 whether or not the perps climaxed or not?

11 A The what, sir?

12 Q You asked her whether the perps climaxed or not?

13 A I did.

14 Q Okay. What was the reason for asking that
15 question?

16 A Well, to make sure that if there, A, was ejaculate
17 someplace that wasn't on her body or wasn't recovered that we
18 could go back and find it if it wasn't processed at the, at
19 the hospital.

20 Q Fair enough. You asked also about her bra and panties;
21 correct?

22 A Yes, sir.

23 Q Okay. Why'd you ask that question?

24 A Again, that's evidence.

25 Q Evidence. Okay. Now, at 11:26, which is the first time

1 that you actually asked her about her daughter, do you recall
2 asking her about her child?

3 A Yes, sir, I do.

4 Q All right. Do you recall what you said about her child?

5 A I wanted to make sure the child was safe, and if not, we
6 could get her into some sort of protective custody.

7 Q So your purpose for asking her about her child, her
8 daughter who was four years old, was to get her in protective
9 custody?

10 A Absolutely.

11 Q If she needed to be?

12 A Yes, sir.

13 Q Okay. Now, 11:26 you asked her for her phone number?

14 A Yes, sir.

15 Q Is that correct?

16 A Yes, sir.

17 Q Okay. And this is still while she's still a victim;
18 correct?

19 A Absolutely.

20 Q Okay. She hadn't been mirandized?

21 A Correct.

22 Q Okay. And you were trying to get her phone number?

23 A Yes, sir.

24 Q All right. And what was the purpose of getting her
25 phone number if she's a victim?

Motions

97

1 A She said her phone had been stolen. If we get her phone
2 number we may be able to track her phone and then find the
3 suspects.

4 Q Okay. All right. Now, did she ever give you consent
5 to get her phone or did she -- or get her phone records or
6 did she give you consent for her phone? Which one was
7 it?

8 A She answered yes to my questions. I think it was an
9 encompassing question, but the phone, specifically.

10 Q And you got your log right there. If you could find in
11 the log, tell me what, exactly what's said for the purposes of
12 this hearing anyway?

13 A Yes, sir.

14 MR. WILSON: Your Honor?

15 A If somebody could assist me finding it in the
16 transcript.

17 THE COURT: All right. But he's asking you the
18 questions.

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

20 THE COURT: You're the one that needs to respond. You
21 can't get any assistance. Look through.

22 A I apologize, Your Honor.

23 THE COURT: Okay.

24 MS. WOOTEN: I apologize.

25 A Okay. I found it.

1 Q Okay. What was said according to the transcript?

2 A There was a question about the cell phone, and it says,

3 (As read) "You couldn't find your cell phone? You said

4 earlier you couldn't find your phone. What is your phone

5 number," and then she said, "910", I said, "Okay. Hold on.

6 Let me write this down or get a piece of paper, make sure I

7 write it on a piece of paper." Then she gives me the phone

8 number, "And you had the phone," and I asked her if she had

9 the phone at the house, she says, "Uh-huh." "And what'd your

10 phone look like?" She said, "It's black, a straight talk,

11 Samsung." "Did you ever find your phone, find your phone?" I

12 think the answer's, "Uh-huh." "What phone did you use to call

13 911?" "I don't know whose phone I had," and then it goes on

14 from there.

15 Q Okay. Does she ever give you permission to get her

16 phone records?

17 A Specifically, no, sir.

18 Q All right. So she never gave you permission to get

19 those phone records?

20 A I don't believe so.

21 Q Okay. All right. Now, at 11:55 -- well, let me ask you

22 this. Let me back up one second. While you were in there

23 with her was she crying? Was she distraught?

24 A Yes, sir.

25 Q Okay. She was upset?

Motions

99

1 A Absolutely.

2 Q And would you say as a detective who's been doing this
3 for a long time victims sometimes get upset?

4 A Yes, sir.

5 Q Okay. And you were still treating her as a victim;
6 correct?

7 A Yes, sir.

8 Q Okay. So, she was not a suspect yet?

9 A Not then.

10 Q Not at that point in time. 11:55 comes and you come back
11 in the room because you leave at some point in time.

12 A Yes, sir.

13 Q Went back in the room and you mirandize her?

14 A Yes, sir.

15 Q Okay. Tell me why you mirandized her.

16 A She had given some preliminary information which was
17 discounted by the officers trying to follow her leads. It was
18 obvious she was attempting to deflect the truth. Also, I had
19 spoken by that time to Detective Martin, and she didn't have
20 -- he had photographed injuries at the scene or lack thereof,
21 and she just wasn't consistent with someone who is telling the
22 truth. Out of an abundance of caution, and at that time I
23 wasn't convinced she still wasn't a victim, but out of an
24 abundance of caution we mirandized her, Miranda, issued her
25 Miranda.

1 Q Issued a Miranda warning?

2 A Yes, sir.

3 Q Okay. All right. And there's no doubt in your mind that
4 you did a full Miranda warning; correct?

5 A Yes, sir.

6 Q Absolutely. All right. So you come back in the room,
7 you mirandize her. Do you recall exactly what you said next
8 to her? Well, let me ask you this.

9 A Yes, sir. Thank you.

10 MR. WILSON: I'll rephrase the question, Your Honor.

11 BY MR. WILSON:

12 Q Would it be fair to say that 11:56 when you came back in
13 the room you said, "There was evidence to support exactly what
14 you said." Do you recall telling her that?

15 A I don't recall, but I won't dispute it.

16 Q Okay. Why would you tell her that if you just told me
17 under oath that there were some discrepancies in what she told
18 you based on the evidence you had already collected?

19 A Because now I'm at a phase where I'm going to try and
20 gain the trust of a suspect so they can become more
21 truthful.

22 Q Absolutely. Absolutely. Thank you very much. All
23 right. 11:57 she tells you that she believes that one of the
24 guns that was used was a big gun to hit someone over the head,
25 one of the victims in the case?

Motions

101

1 A Yes, sir.

2 Q Okay.

3 A Yes, sir.

4 Q And do you recall what you said to her when she asked

5 you, you know, what kind of gun that might be?

6 A Again, I don't, sir.

7 Q Okay. Would it be fair to say that you said, "You were

8 there, I wasn't?"

9 A Yes, sir.

10 Q Okay. That sound about right?

11 A Yes, sir.

12 Q All right. At 12:01 do you recall asking her to tell you

13 a better version of the truth?

14 A Yes, sir.

15 Q Okay. Why would you tell a victim or a suspect -- which

16 one was she now? Was she a victim or a suspect?

17 A I think she could have gone either way at that time.

18 Q So it's fair to say by your testimony that it's really

19 kind of up in the air at this time.

20 A I wasn't sure.

21 Q You weren't certain?

22 A No, sir.

23 Q Okay. All right. Fair enough. Okay. Now, at 12:02,

24 which is after you tell her the better version of the truth,

25 you say that, "Science does not lie." Do you recall saying

1 that?

2 A Yes, sir.

3 Q Okay. Do you have that in your notes?

4 A I'm sure I do, but I --

5 Q Okay. Okay. But you don't contest that you said
6 it?

7 A No, sir.

8 Q Okay. And what science exactly are you talking about
9 when you say that science does not lie?

10 A DNA and associated forensic evidence.

11 Q What DNA evidence did you have at the time?

12 A Absolutely none.

13 Q Okay. So you had no DNA evidence at the time?

14 A No, sir.

15 Q Okay. But you tell her that, "Science doesn't
16 lie?"

17 A That's correct.

18 Q But now, when did you all get that rape report?

19 A Traditionally, that's not sent till right before trial.
20 So I have no idea.

21 Q So you're saying Chatfield never reported to you, your
22 lead detective whose responsibility solely is to make certain
23 that the case is, one, followed up on, as well as to make sure
24 that the case is rock solid, if you will --

25 A Yes, sir.

Motions

103

1 Q -- that Chatfield never reported to you from the hospital
2 which at -- I guess was it 7:00 o'clock that morning when she
3 went to the hospital, got out around 10:00 o'clock?

4 A That's about right, sir.

5 Q He never reported to you that there was a negative
6 result on the rape test? That's what your testimony is
7 today?

8 A I don't recall he and I having that particular
9 conversation. No, sir.

10 Q Would it be uncommon for anyone who is working on a case
11 with you not to divulge that kind of information?

12 A No -- I mean, yes, it would be uncommon. He should have
13 told me that and he may very well may have. I just don't
14 recall.

15 Q You just don't recall. So you're not contesting that he
16 may have told you?

17 A No, sir.

18 Q Okay. It wouldn't be unlikely that he would have told
19 you?

20 A Something like that. Yes, sir.

21 Q Okay. Fair enough. All right. Now, at 12:06 -- well,
22 let me back up. 12:04 actually is what I want to talk about,
23 too. You show Locklear some pictures, Defendant Locklear some
24 pictures. Do you recall that?

25 A Yes, sir.

1 Q Of the crime scene?

2 A Of the crime scene. Yes, sir.

3 Q So you had the pictures of the crime scene?

4 A Yes, sir.

5 Q You got those from who?

6 A They would have been sent to me from Detective Martin,
7 probably.

8 Q So Detective Martin knew to give you at least crime scene
9 evidence; correct?

10 A He would -- it's all digital these days. He probably
11 sent it to my computer. I printed it off and showed
12 her.

13 Q But e-mailed it to you?

14 A Yeah. Could have been.

15 Q Okay. Fair enough. And do you recall showing her those
16 photographs?

17 A I do.

18 Q Do you recall what you did at the time when you were
19 showing them?

20 A I asked her to mark where she was and just kind of
21 identify the, the structure and where she may have been, I
22 believe.

23 Q I'm not asking you about marking evidence. I'm asking
24 you what you did when you actually showed her the pictures.

25 Do you recall doing this? (Hits table with hand), bang. Do

Motions

105

1 you recall doing that?

2 A Yes, sir, I do.

3 Q You recall doing it again (hits table with hand)?

4 A Uh-huh.

5 Q Do you recall doing it again (hits table with

6 hand)?

7 A Right.

8 Q Tell me the purpose of banging on the table with a person

9 you think at this point in time is either a suspect or a

10 witness?

11 A Right.

12 Q Why are you banging on the table right next to her?

13 A To get her attention.

14 Q To get her attention.

15 A She seemed to be in -- she -- I just needed to get her

16 attention.

17 Q Get her attention?

18 A Yes, sir.

19 Q So the purpose of you banging on the table three times in

20 front of this Defendant in an interrogation is to get her

21 attention?

22 A Yes, sir.

23 Q Okay. Fair enough. Do you recall at 12:12 banging on

24 the table again?

25 A Yes, sir.

1 Q Okay. Why did you do it then?

2 A The same thing, just keep her focused, get her
3 attention.

4 Q Again, you want to keep her focused and get her
5 attention; is that correct?

6 A Yes, sir.

7 Q Okay. All right. Now, by this time she's been -- it's
8 now 13 --

9 MR. WILSON: The Court's indulgence, Your Honor.

10 THE COURT: All right.

11 BY MR. WILSON:

12 Q It's now 13:02. You started this, this actual interview,
13 interrogation, whatever you want to call it, you started it at
14 10:51.

15 A Yes, sir.

16 Q So she had been in there roughly for an hour and a half,
17 two hours.

18 A Yes, sir.

19 Q Okay. All right. So now, at this point in time, you
20 actually talk to her about her family. Do you recall talking
21 to her about her family?

22 A Yes, sir.

23 Q Okay. She asked you if she could see her husband at some
24 point in time. Do you recall that, her husband which has
25 died?

Motions

107

1 A Yes, sir.

2 Q Okay. And while you're still juggling the idea of
3 whether or not she's actually a victim or a suspect, you told
4 her what when she asked you could she go and see her husband?
5 What did you say?

6 A I, I don't recall exactly.

7 Q Okay. Would it be a fair statement to say that you told
8 her, "Unfortunately you can't see him at this time?"

9 A That sounds right.

10 Q Okay. All right. Did you ever tell her also in the same
11 breath that she can't leave right now?

12 A Yes, sir.

13 Q Okay. All right. So does this begin the custody? Is
14 she in custody at that point?

15 A Oh, she, she wasn't free to leave at that point.

16 Q She was not free to leave at that point.

17 A No, sir.

18 Q So at that point when you tell her she can't talk to
19 somebody when she goes incommunicado, then she is now in
20 custody; correct?

21 A Fair to say that's about right. Yes, sir.

22 Q That's fair. Okay.

23 A Yes, sir.

24 Q Fair enough. 13:16 she requests to speak with Sylvia.
25 Do you recall that?

1 A Yes, sir.

2 Q Okay. And this is just a few minutes after she'd already
3 asked to see her husband.

4 A Yes, sir.

5 Q All right. And what did you say to that?

6 A I think I declined that request, too.

7 Q You declined that request, too, but you didn't put
8 handcuffs on her yet; did you?

9 A No, sir.

10 Q Didn't do that?

11 A No, sir.

12 Q Okay. But she wasn't free to leave?

13 A Well, in my -- in honesty in my mind --

14 Q Yes, sir.

15 A -- she was not free to leave..

16 Q Okay. Fair enough. Fair enough. Well, let me ask you
17 --

18 MR. WILSON: Well, withdraw that, Your Honor.

19 BY MR. WILSON:

20 Q At 13:11 you actually say to her, and you tell me if I'm
21 wrong, you say to her that, "Until we get these guys you're
22 going to be in trouble."

23 A Yes, sir.

24 Q Okay. What does that mean? What did you mean when you
25 said that?

Motions

109

1 A Well, that was kind of an open-ended question, and
2 again, in the possibility that she very well may still be a
3 victim, and it was slimmer and slimmer as the time went by
4 --

5 Q Uh-huh.

6 A -- these are two guys who just committed a double murder.
7 Why they left her alive was still open to discussion. I
8 wasn't about to send her out on the street to be a possible
9 victim again. If she were to -- and that's an exact question,
10 I'm mean, that's just exactly what I said.

11 Q Okay.

12 A She's in trouble until we get these guys.

13 Q At 13:22 she asked to go see the victim again. Do you
14 recall that?

15 A Yes, sir.

16 Q All right. And what was your response at that point in
17 time as well?

18 A I believe I declined that again.

19 Q All right. You declined that as well?

20 A Yes, sir.

21 Q Fair enough. Now, you leave the room at 13:22.

22 A Yes, sir.

23 Q Okay. Was she still crying?

24 A She -- I would assume. Yes. She cried a lot.

25 Q Was she still visibly upset?

1 A Yes, sir.

2 Q Okay. All right. And in your opinion, would -- and I'm
3 just asking for your opinion. If the answer is no just say
4 no, but would you say that she was distraught?

5 A Yes.

6 Q Okay. Now, let me ask you this. I just want to break
7 off the timeline for just a second. When she came into that
8 interview room -- well, let me ask you to back up further than
9 that. When you saw her that morning --

10 A Yes, sir.

11 Q -- did she have an injury to her leg?

12 A I don't recall seeing one.

13 Q Okay. All right. Well, let me ask you this. When you
14 got in the interview room at 10:51 do you recall seeing her on
15 crutches?

16 A Yes, sir. She hobbled in on crutches.

17 Q Okay. All right. Did you ever ask to look at her leg to
18 see how it was?

19 A I don't believe I had to ask. I -- no, sir.

20 Q I'm just asking you if you asked her.

21 A No, sir.

22 Q Okay. Fair enough. Fair enough. Okay. We'll get back
23 to that in a second. 13:42 another officer comes in the room
24 and he's trying to confirm the actual phone number -- okay --
25 the phone number that you solicited or elicited from Defendant

Motions

111

1 Locklear.

2 A Yes, sir.

3 Q Okay. And do you recall that event?

4 A Yes, sir.

5 Q Okay. Do you know the purpose, and if you don't know

6 you don't have to -- obviously, don't answer, but if you

7 know the purpose, do you know why he came in to confirm the

8 number?

9 A Yes.

10 Q What was the reason?

11 A Track the phone.

12 Q He was going to track the phone.

13 A Try to track the phone, at least that was my

14 expectations, try to track the phone.

15 Q Okay. Fair enough. Fair enough. Now, this particular

16 room that you guys had her in, Defendant Locklear, at the

17 time, how cold was that room?

18 A It's room temperature. I, I don't know.

19 Q Well, I mean, I --

20 A It's -- that building is usually around 72 to 75

21 degrees. That room is about the same as the rest of the

22 building.

23 Q Okay. Well, today I have on a suit. I think at the time

24 you had on a tie?

25 A Yes, sir.

- 1 Q As well as a shirt just like I do, a white shirt?
- 2 A Yes, sir.
- 3 Q And it's hot in here to me today. Okay.
- 4 A Yes, sir.
- 5 Q Would you say it's warm in here today?
- 6 A It's room temperature. It's fine.
- 7 Q Okay. It's room temperature. Okay. At the time, do you
- 8 know what Defendant Locklear was wearing at the time when she
- 9 was in that room?
- 10 A Something similar to what she's wearing now. I think
- 11 they're blue hospital scrubs they had given her after they
- 12 took her clothes.
- 13 Q Okay. All right. And did she have on a bra?
- 14 A I, I don't recall.
- 15 Q All right. You don't recall her telling you that she
- 16 didn't have on a bra?
- 17 A No, sir, I don't.
- 18 Q Okay. You don't recall her telling the officers when
- 19 you first got there that someone ripped her bra and panties
- 20 off?
- 21 A Oh, yes, sir.
- 22 Q Okay. And that she had on a dress?
- 23 A Sir?
- 24 Q Did she have on a dress when you first saw her?
- 25 A Yes, sir.

Motions

113

1 Q Okay. But she wasn't wearing the same dress when you saw
2 her later on?

3 A No, sir.

4 Q Okay. And that was because it was taken into evidence;
5 correct?

6 A That's correct.

7 Q Okay. So when she left the hospital she had on some
8 blues basically?

9 A Yes, sir.

10 Q Okay. And you're telling the Court that you don't
11 know if she had on bra and panties. That's what you're
12 saying?

13 A Yes, sir. That's correct.

14 Q All right. Well, let me ask you this, do you know if she
15 had anything on underneath the blues?

16 A No, sir.

17 Q Okay. Did she not lift her shirt up at some point in
18 time and show you her stomach?

19 A Yes, sir.

20 Q Okay. So she was showing you the bite marks. So you saw
21 she had nothing on underneath; correct? Is that a fair
22 statement?

23 A I saw, I saw her naval area when she lifted up her
24 clothes. I didn't know how many layers she pulled up.

25 Q All right. Let me ask you this. Did you see any other

1 clothes other than the blues?

2 A No, sir.

3 Q Okay. All right. At 14:51 you say that she set up the
4 murder. Do you recall saying that?

5 A Yes, sir.

6 Q Okay. Why did you all of a sudden come up with the
7 notion that she set up a murder? Where did that come
8 from?

9 A I think by that time enough of the leads or information
10 she had given us had been discounted --

11 Q Okay.

12 A -- or it seemed that she was an integral part of the
13 incident.

14 Q Okay. Let me ask you this, also. At 14:54 there were
15 three officers in the room. Do you recall that?

16 A I won't dispute it, sir.

17 Q Okay. Do you recall someone saying they're going to put
18 a needle in her arm?

19 A Yes, sir.

20 Q Okay. Who said that?

21 A I believe I did.

22 Q Okay. You told this Defendant in an interrogation that
23 they were going to put a needle in her arm?

24 A No. I believe my exact context was that this is a double
25 murder. This is a big deal in Horry County or something to

Motions

115

1 that effect and that the Solicitor has the ability, if she's
2 the one who did it, to have, you know, to -- for an execution
3 and that could -- they could actually put a needle in her arm.

4 Q Okay. So you told her that the Solicitor could put a
5 needle in her arm. Is that my understanding?

6 A Could.

7 Q Could?

8 A Could.

9 Q If he wanted to.

10 A Yes, sir.

11 Q Now, the Solicitor was there that day; correct?

12 A Yes, sir.

13 Q Okay. He was actually in the room watching this
14 unfold?

15 A He was in a different room. He wasn't with us.

16 Q Okay. So when you told her that, that the Prosecutor
17 could put a needle in her arm, you knew that the Prosecutor
18 was there that day; correct?

19 A Yes, sir.

20 Q Okay. Fair enough. 14:57 do you recall telling
21 Defendant Locklear that she would leave the jail in a
22 coffin?

23 A Yes, sir.

24 Q Okay. What was the purpose of telling her that she would
25 leave the jail in a coffin when you were interrogating her

1 about a murder?

2 A She knew who -- she had already said by that time that
3 they weren't supposed to get killed, it was just supposed to
4 be a robbery. Therefore, she had already identified that she
5 was specifically involved, she knew who the other people were
6 and it was incredibly important to find out who those people
7 were and to ask, again, impress upon her the gravity of the
8 situation.

9 Q So my question still stands. Why did you say
10 specifically that she was going to leave in a coffin?

11 A Because --

12 Q Why did you say that?

13 A To impress upon her the gravity of the situation, that
14 she was looking at a very serious length of time, if not
15 more.

16 Q So there were no other ways to say that?

17 A I -- yes.

18 Q Okay. Fair enough. At 15:02 you recall calling her a
19 cold-blooded liar and a murderer?

20 A Yes, sir.

21 Q Okay. Do ever recall calling her a cold-hearted
22 bitch?

23 A I don't recall saying that.

24 Q You don't recall saying that? Would you dispute it?

25 A No. No. No, sir.

Motions

117

1 Q Okay. 15:03 do you recall telling her she belongs on
2 death row?

3 A Yes, sir.

4 Q All right. So, you told this Defendant that she belongs
5 on death row. Is that my understanding?

6 A Yes, sir.

7 Q What was the point of that?

8 A The same thing, get her to realize the gravity of the
9 situation.

10 Q Got to get that gravity out there. Okay. Now, at
11 15:07, which is roughly five minutes after this whole barrage
12 of coffins, needles and death row, you go to the Defendant
13 --

14 MR. WILSON: And my paralegal already knows I'm going to
15 do this, Judge. I just want to warn the Court.

16 BY MR. WILSON:

17 Q -- you go up to her face, and you tell me if I'm wrong
18 --

19 A Yes, sir.

20 Q -- you get up in her face, you stand up; correct?

21 A Yes, sir.

22 Q And you do this (claps hands in face of paralegal)?

23 A Right.

24 Q Tell me the purpose of that.

25 A She seemed to be in almost like a trance.

- 1 Q She was in a trance?
- 2 A She, she just was just sitting there.
- 3 Q Just sitting there.
- 4 A And I was trying to get her attention, and I had said
- 5 words and didn't work and (claps hands), wake her up.
- 6 Q How long you been a detective?
- 7 A Eight years.
- 8 Q How long you been in law enforcement?
- 9 A Forty years.
- 10 Q Okay. Do you think in that time that you've ever
- 11 investigated a case of assault?
- 12 A A case of assault?
- 13 Q Yes.
- 14 A Yes, sir.
- 15 Q Okay. You know what an assault is?
- 16 A Yes, sir.
- 17 Q All right. What is it?
- 18 A Non-consensual touching with intent to inflict pain or
- 19 injury.
- 20 Q Or the apprehension; correct?
- 21 A No, sir.
- 22 Q Let me ask you this question. If I go up to my paralegal
- 23 and I do (claps hands in face of paralegal) this, you think
- 24 she apprehends some fear? Do you think she considered that to
- 25 be a threat?

Motions

119

1 A No, sir.

2 Q Why not?

3 A You just did it twice and she didn't have a problem with
4 it.

5 Q What about the first time I did it?

6 A Didn't have a problem with it.

7 Q If I came up to you and did that, would you consider it
8 to be a threat?

9 A No, sir.

10 Q That's not a threat?

11 A No, sir.

12 Q Your testimony here today in this court is that's not,
13 that's not a threat?

14 MR. RICHARDSON: Your Honor, asked and answered
15 repeatedly.

16 THE COURT: Okay. That's his answer.

17 MR. WILSON: Thank you, Your Honor.

18 BY MR. WILSON:

19 Q 15:11 you told Detective [sic] Locklear that you know
20 people who've done less who've gotten 20 years in jail. Did
21 you not?

22 A Ms. Locklear?

23 Q Yes, Defendant Locklear.

24 A Yes, sir.

25 Q Okay. And this is already after you told her that the

1 Prosecutor is down the hall; correct?

2 A I may have communicated that. I don't recall.

3 Q Okay. You don't dispute it; do you?

4 A No, sir.

5 Q Okay. At 15:13 do you tell her that the Prosecutor, who
6 you already says is down the hall and you say you don't
7 dispute that, that he's going to put her -- no, excuse me --
8 put the responsible party in jail for the rest of their life.
9 Did you say that to Defendant Locklear?

10 A Yes, sir.

11 Q Okay. Did you also say to her that, "He's going to do
12 everything he can?" Did you say that?

13 A Yes, sir.

14 Q Okay. 15:13 also you tell her that you want her to get
15 on the side of the law enforcement; correct?

16 A Yes, sir.

17 Q Okay. And you also say that you want her to get on the
18 side of the Prosecutor's team; right?

19 A Yes, sir.

20 Q Okay. Because you said, and you tell me if I'm wrong,
21 that you and the Prosecutor who is down the hall are on the
22 same team. Is that correct?

23 A Yes, sir.

24 Q Okay. Now, at this point in time you've already
25 testified that she was in custody; correct?

Motions

121

1 A Yes, sir.

2 Q Okay. Now, shortly after the comment regarding you and
3 the Prosecutor being on the same team you actually at 15:16
4 handcuff her. Right after you say that you and the Prosecutor
5 are on the same team you handcuff her.

6 A Yes, sir.

7 Q Do you recall that?

8 A I do.

9 Q All right. You actually put her hands behind her back;
10 correct?

11 A That's correct.

12 Q Okay. And then you sat her back down in the chair.

13 A That's correct.

14 Q Is that right? Now, if she was in custody already,
15 please explain to this Court why you decide after that
16 statement to put her in handcuffs.

17 A We'd reached the point where it was apparent to myself
18 that she didn't appreciate, and like I said earlier, the
19 gravity of the situation, and I debated as to impress upon her
20 that she was, in fact, in custody because I thought she was
21 still in denial, and I thought the most appropriate way to do
22 that was to place her in custody so she would finally
23 understand she was under arrest for the crime she committed.

24 Q So your testimony to this Court today is after you told
25 her that they were going to put a needle in her arm, that she

1 was going to death row, that she's going to get a coffin, that
2 you and the Prosecutor are on the same team, that the
3 Prosecutor is down the hallway, that now to impress upon her
4 even further the gravity of her situation you then put her in
5 handcuffs?

6 A Yes, sir.

7 Q That's your testimony?

8 A It is.

9 Q Okay. Fair enough. Now, shortly after you put her in
10 handcuffs and you and the Prosecutor are on the same team, do
11 you recall, again, asking her about the whereabouts of her
12 daughter?

13 A Yes, sir.

14 Q Okay. Do you recall how many times you asked her about
15 her daughter in the -- I'm sorry. I apologize for cutting you
16 off, my apologies.

17 MR. WILSON: I withdraw that, Judge.

18 BY MR. WILSON:

19 Q Do you recall how many times you asked her about her
20 daughter in the 18 hours or so that she was in the presence
21 and in the custody of law enforcement?

22 A There were several times. I know other officer asked her
23 as well.

24 Q Absolutely. How long did you leave the Defendant, who's
25 also a citizen, I might add, of this country, how long did you

Motions

123

1 leave her handcuffed in the interrogation room, if that's
2 okay, if I can say it that way? How long did you leave
3 her handcuffed over, bent over with her hands behind her
4 back?

5 A She wasn't bent over. She was sitting in a regular seat,
6 but she was there for, I don't know exactly, but it was, it
7 was a little bit of a time. Yes, sir.

8 Q Okay. All right. And while this is all unfolding what
9 were you guys doing, you and the Prosecutor? What were you
10 all doing down the hall?

11 A Well, first of all the Prosecutor and I weren't
12 communicating. He was watching the interview, and if I had
13 any conversations with him, it was about the, the certain
14 legal standards, but I don't remember at that time we had any
15 kind of conversations at all.

16 Q It's your testimony today that you and the Prosecutor
17 never talked? That's what you're saying?

18 A Oh, we talked.

19 Q Okay.

20 A But we never had specific conversation as to the way I
21 conduct my interviews or the way I should do my job.

22 Q Well, let me ask you this then since you brought it up.
23 Let me ask you this. At some point in time you actually saw
24 the Prosecutor there; didn't you?

25 A Oh, yes, sir.

1 Q Okay. All right. And so you interacted with him at some
2 point in time?

3 A Yes, sir.

4 Q Okay. During this interrogation; correct?

5 A Yes.

6 Q Okay. So, I'm asking you what were you all doing when
7 Ms. Locklear was bent over in her seat?

8 A I don't recall exactly what I was doing. I'm sure I was
9 coordinating with the other investigators to see what they had
10 learned from their, their responding out to the different
11 leads she had given us.

12 Q All right. You don't recall what anybody else was doing
13 at the time?

14 A What anybody else was doing?

15 Q Yeah.

16 A A lot of times they weren't even in the building. They
17 were going to Loris and Tabor City and other places trying to
18 track down some of these leads based on the information she
19 was giving us.

20 Q Well, let me ask you this. Did, in the time that you
21 were interrogating Ms. Locklear and you were out of the room,
22 did you ever get water?

23 A Oh, yes, sir.

24 Q Okay. Did you have lunch?

25 A No, I don't believe I did.

Motions

125

1 Q Did you have breakfast?

2 A No. I know I didn't.

3 Q Did you have dinner that night?

4 A That night? I'm sure some time that night I ate.

5 Q Okay. Fair enough.

6 A In fact, in the video you see that I go in and she didn't
7 want those chips that I had gotten for her from the vending
8 machine. I believe I ate the chips.

9 Q Okay. Thank you very much. Now, at 16:05 you come back
10 in the room and you handcuff her to the chair. Do you recall
11 that?

12 A Yes, sir.

13 Q Okay. And the purpose of handcuffing her to the chair is
14 what?

15 A That's just standard procedure. She's now under arrest.
16 Hopefully she wouldn't run out the door.

17 Q It's standard procedure to handcuff? They teach you all
18 that at the academy to handcuff suspects to a chair?

19 A No. In my academy days they -- we actually had secure
20 facilities to handcuff people in an appropriate place. Horry
21 County has a chair.

22 Q Okay. So the chair is where they handcuff everybody?

23 A Yes, sir.

24 Q Okay. All right. They normally handcuff people for 12
25 hours?

1 A I've seen that before. Yes, sir.

2 Q You have seen that before. Do you recall at 16:09
3 telling this Defendant that any jury is going to convict
4 her?

5 A Yes, sir.

6 Q Why did you tell her that?

7 A Again, to impress upon the gravity of the situation, that
8 she needed to tell the truth.

9 Q Okay. 16:11 you bring up her child again.

10 A Yes, sir.

11 Q Why did you bring up the child again?

12 A Again, every time we brought up the child we were
13 concerned about the safety. Actually, my supervisor, who
14 you saw in the video, Lieutenant Squires, was concerned for
15 the safety of that child and wanted to make sure that we
16 attempted to locate the child, and they were appropriately
17 safe..

18 Q Let me ask you this question. At some point in time
19 during your interrogation, did Sandy Locklear tell you, before
20 all this -- these questions about her child, did she tell you
21 that her child was with the grandmother?

22 A Yes.

23 Q Okay. But you all still were concerned that the child
24 was going to be in an unsafe environment with the
25 grandmother?

Motions

127

1 A Yes, sir.

2 Q Okay. All right. Fair enough. 16:15 did you tell her
3 that you hoped they put her in jail?

4 A Yes, sir.

5 Q Okay. 16:19 did you tell her that she was going to jail
6 again for 20 years?

7 A I don't recall, but I won't dispute it.

8 Q Okay. At 16:20 do you recall telling this Defendant that
9 she is spitting on the dead body of her husband?

10 A Again, I don't recall, but I won't dispute it..

11 Q You don't dispute it. If you said it, what would be the
12 purposes of telling her that?

13 MR. RICHARDSON: Your Honor, he's indicating he doesn't
14 dispute it, but he doesn't recall it. So --

15 MR. WILSON: Judge, a different question.

16 MR. RICHARDSON: He's asking hypotheticals.

17 THE COURT: Overruled. I'll allow it. Go ahead.

18 BY MR. WILSON:

19 Q What is the purpose of telling her that?

20 A Again, to try to get her to understand and appreciate the
21 gravity of the situation and tell the truth.

22 Q Fair enough. At 16:39 you actually are in there with
23 another detective who is your supervisor; correct? Do you
24 recall that, a gentleman in a green shirt comes to the
25 door?

1 A I, I --

2 Q I can play it for you if you want me to. Would you
3 dispute if I said he came to the door?

4 A I agree.

5 Q All right. Do you recall him saying that he was going to
6 put Ms. Locklear's daughter in custody with the Department of
7 Social Services?

8 A Oh, yes, sir. I remember that.

9 Q You recall that?

10 A I remember that.

11 Q Okay. And you remember him specifically saying that;
12 correct?

13 A Yes, sir.

14 Q So, again, you're asking about her child?

15 A Yes, sir.

16 Q Okay. And let me ask you this. Do you know how long
17 Sandy Locklear was in the presence or in the custody of the
18 police that day?

19 A I, I remember now after seeing the video. Yes, sir.

20 Q Okay. And can you tell the Court how long she was in
21 the presence or in the custody of the police department that
22 day?

23 A Well, she was in our -- in presence from the time the
24 police responded to her home, 4:00 o'clock in the morning,
25 until I think roughly 11:00 o'clock at night when she was

Motions

129

1 transported to the jail.

2 Q All right. How many hours is that? Do you know?

3 A Four to 11.

4 Q Four to 11. 18 hours basically?

5 A Okay.

6 Q Around there?

7 A Yes, sir.

8 Q Okay. Fair enough. At the time when you were

9 questioning her during this 18 hours, did you ever think that

10 she was exhausted?

11 A I didn't question her for 18 hours. She was in our

12 presence for that long.

13 Q The time that you were there --

14 A Yes, sir.

15 Q -- did you ever think that she was exhausted?

16 A She was probably tired. Yes, sir.

17 Q Did you ever think that she was distraught,

18 traumatized?

19 A She, she, she appeared distraught and traumatized.

20 Q Okay. All right. You said earlier in your testimony,

21 not mine, your testimony --

22 A Yes, sir.

23 Q -- that you thought she appeared to be in a trance.

24 A At one point in time. Yes, sir.

25 Q Okay. Well, let me ask you this. In your experience in

1 dealing with victims and dealing with suspects, is it typical
2 that someone who has been traumatized or has been in a
3 traumatic situation that they would be in a trance? Is that
4 typical?

5 A I've seen that before. Yes, sir.

6 Q Okay. Would it also be typical that a person who is
7 possibly on some narcotics be in a trance? You ever seen
8 that?

9 A Yes, sir.

10 Q Okay. All right. You ever heard of Ambien?

11 A Yes, sir, I have.

12 Q You have. Okay. You ever heard of Xanax?

13 A Yes, sir, I have.

14 Q Have you reviewed the entire case file with the
15 Prosecutor?

16 A No, sir.

17 Q You have not? Okay. Did the Prosecutor ever tell you
18 that a toxicology report was done in this case?

19 A No, sir.

20 Q Okay. Do you know the results of the toxicology
21 report?

22 A No, sir.

23 Q Would it surprise you if I told you that Ms. Locklear
24 not only tested positive for Xanax, but also tested positive
25 for Ambien, THC and muscle relaxers. Would that surprise

Motions

131

1 you?

2 MR. RICHARDSON: Your Honor, is he testifying on this?
3 This is a Jackson v. Denno. It's supposed to deal with the
4 voluntariness of it and he has no further evidence.

5 THE COURT: Well, what he's saying is that she was under
6 the influence of medication.

7 MR. RICHARDSON: But he's put forth no evidence of that.
8 He's asking the officer if he's aware.

9 THE COURT: He's asking if he knows about it.

10 MR. RICHARDSON: Yes, sir.

11 THE COURT: I don't know whether she was on it or
12 not.

13 MR. RICHARDSON: Yes, sir, Your Honor.

14 THE COURT: I, I understand. I'll overrule the
15 objection. I'll allow it.

16 BY MR. WILSON:

17 Q Did you know that? Did he ever tell you -- you're a lead
18 investigator on this case; correct?

19 A Yes, sir.

20 Q Okay. And it's your responsibility to investigate this
21 entire case?

22 A Yes, sir.

23 Q All right. My question is did you know about those drugs
24 being in her system at the time?

25 A No, sir.

1 Q Okay. Fair enough. Now, at some point in time you
2 leave, you never show back up in the video.

3 A Yes, sir.

4 Q Why was that?

5 A I believe I started some of the documentation that was
6 required in this case.

7 Q Okay. So you leave and who takes over?

8 A Detective Cox at one point in time he would have been the
9 senior detective. Detective Vescovi and Detective Strickland,
10 they were all involved.

11 Q Okay. And they all, based on your knowledge --

12 A Yes, sir.

13 Q -- came after you and started asking questions;
14 correct?

15 A Yes, sir.

16 Q Okay. Now, I want to talk about this audiotape on the
17 next day.

18 A Yes, sir.

19 Q Okay. Now, your testimony to this Court under oath
20 yesterday was that Ms. Locklear initiated contact with you at
21 J. Reuben Long; correct?

22 A No. That wasn't my testimony.

23 Q I'm sorry then. I apologize. Then please tell me what
24 your testimony was.

25 A That I had no intention of interviewing her. My

Motions

133

1 intention was to get a warrant, serve her with the warrant and
2 go on the hunt up in Tabor City for Jeremiah.

3 Q Okay. And that was your intention?

4 A Yes, sir.

5 Q Okay. So you're not saying under oath now that or let me
6 correct myself. I withdraw the question. You're not saying
7 at all that she initiated contact with you?

8 A As I -- what I said yesterday, and what I'll repeat
9 today, is I was advised by the jail personnel when I went to
10 get the warrants that she wanted to talk to somebody.

11 Q All right. My question is this, did this Defendant
12 ever initiate contact with you, yes or no. That's my
13 question.

14 A I guess no.

15 Q Okay. All right. Thank you very much. Let me ask you
16 this. Now, you say that it wasn't your intent to actually go
17 and do any sort of interview that day; correct?

18 A No, sir.

19 Q All right. Now, and you tell me if I'm wrong, but I
20 listened to the video, excuse me, to the audio on a hundred
21 occasions before I got here today, and I listened to it
22 yesterday.

23 A Yes, sir.

24 Q Did you not have with you photographs?

25 A Well, if you'll look at my case notes, it was an hour

1 from the time I went to get the warrants till I went to
2 interview her. When I went to get the warrants and the
3 jail personnel said she wanted to talk to somebody, it was
4 that time span to me I went back to my car, I got my tape
5 recorder, which I don't carry with me. I got the case file.
6 I got the photographs and then went and spoke to Ms.
7 Locklear.

8 Q Let me ask you this. Did you go to a meeting room to
9 actually see her, Defendant Locklear, or did you actually go
10 to her cell? Did they take you to her cell?

11 A I honestly don't remember.

12 Q Would you dispute it if I told you that they -- you went
13 to her cell?

14 A I won't dispute it.

15 Q Okay. All right. All right. And at that point in time
16 did you not tell Defendant Locklear that you wanted to talk to
17 her?

18 A That's correct.

19 Q Okay. All right. And then you took her into a room,
20 what they call the Green Mile at J. Reuben Long?

21 A Yes, sir.

22 Q Okay. Fair enough. All right. You all went to the room
23 and then you turned on your recorder?

24 A Yes, sir.

25 Q Which you had handy?

Motions

135

1 A Yes, sir.

2 Q Okay. All right. And you started to record a statement
3 again from Defendant Locklear; correct?

4 A That's correct.

5 Q Okay. During that statement did you ever tell her she
6 has a right to remain silent?

7 A Did I ever? Yes, sir.

8 Q You did?

9 A Yes, sir.

10 Q When?

11 A Towards the end.

12 Q Towards the end of her statement?

13 A Yes, sir.

14 Q Okay. Fair enough. Okay. All right. Did you ever tell
15 her she had the right to an attorney?

16 A I believe again towards the end.

17 Q Towards the end. Okay. All right. Well, let's talk
18 about the beginning. At the beginning of the interview,
19 interrogation, whatever you want to call it, where is she at
20 at the time?

21 A In the interview room at J. Reuben.

22 Q Well, my question, was she in custody at the time?

23 A Oh, yes, sir.

24 Q Okay. And so at that time, at the beginning of that
25 interview did you mirandize Defendant Locklear?

1 A No, sir.

2 Q Okay. But yet you proceeded to have a conversation with
3 her; didn't you?

4 A I did.

5 Q Did you not elicit statements from her?

6 A Yes, sir.

7 Q Okay. All right. And did you not ask her to mark
8 evidence for you?

9 A I did.

10 Q All right. You asked her to identify certain people in
11 this case; did you not?

12 A I did.

13 Q All right. And did she do that for you?

14 A She did.

15 Q Okay. At the end of that conversation she asked you
16 about what? Did she ask you about a lawyer?

17 A Yes, sir.

18 Q All right. And you started to respond to her -- what did
19 you say to her? Let me ask you that.

20 A I believe I advised her that the Public Defender might be
21 available to her or something along those lines.

22 Q Okay. Did you say anything else that might be considered
23 to be legal advice?

24 A Legal advice?

25 Q Yes.

Motions

137

1 A Not that I recall.

2 Q Do you recall yesterday listening to the audio and
3 asking her or telling her about her right to a bond hearing,
4 that she might have two bond hearings because of these
5 issues?

6 A That's, that's not legal advice. That's protocol
7 explaining --

8 Q I'm asking you if -- I'm asking you if you recall.

9 A I said those words. Yes, sir.

10 Q All right. So you do recall asking or telling her
11 that?

12 A Yes, sir.

13 Q Okay. Are you her lawyer?

14 A No, sir.

15 Q Were you a lawyer at the time?

16 A No, sir.

17 Q Okay. Last question I'm going to ask you is this,
18 actually two questions I want to ask you. When you first
19 walked into the interrogation room at M.L. Brown Building to
20 sit down with Sandy Locklear, do you recall the first thing
21 she said to you?

22 A The first thing she said to me according to the
23 transcript was, "Eighth or ninth grade."

24 Q Do you recall her saying, "Where's Amos?"

25 A No, sir.

1 Q Would you dispute it if I told you she said that?

2 A No, sir.

3 Q All right. But that's not in the transcript; is it?

4 A No, sir.

5 Q Okay. All right.

6 MR. WILSON: Your Honor, that's all I have.

7 THE COURT: All right. Redirect?

8 MR. RICHARDSON: Very briefly, Your Honor.

9 REEXAMINATION

10 BY MR. RICHARDSON:

11 Q Detective, I'm going to have something marked real
12 quick.

13 MR. RICHARDSON: Mark that all as one.

14 BY MR. RICHARDSON:

15 Q I'm going to hand you Court's Number, is that a 1-4?

16 REPORTER: Yeah, sorry.

17 Q 14, see if you can identify that.

18 A Yes, sir. It appears to be the standard documents to go
19 along with the South Carolina rape kit.

20 Q And this is items that are -- were filled out at the
21 hospital; correct?

22 A Yes, sir. It is. They are.

23 Q And you may have had that on August 19th because when
24 we're talking or let me rephrase it. Whenever you're talking
25 about a rape kit report, what are you talking about?

Motions

139

1 A Well, the kit itself is a box full of medical examination
2 and collection devices. This is just the accompanying
3 paperwork that generally goes to the lab.

4 Q Is there a chance you may have seen some of that that
5 day, the 19th?

6 A I don't recall seeing it.

7 MR. RICHARDSON: Of course, for, for the purpose of this
8 hearing, Your Honor.

9 THE COURT: All right.

10 BY MR. RICHARDSON:

11 Q It would be standard practice to talk with Chatfield that
12 day?

13 A It would have been.

14 Q Could have happened during that ten-minute break?

15 A It could have.

16 Q Okay. Now, I believe you were referring to a transcript
17 up there when Mr. Wilson asked about cell phone records or
18 requests. Could you flip to page 36?

19 A Yes, sir.

20 Q And line 15.

21 A Yes, sir.

22 Q Can you read there, please?

23 A My question is, (as read) "Now, from your phone today is
24 it okay with you we'd like to search your phone records."

25 Q And what's --

1 A Her answer is, "Absolutely."

2 Q Okay. And do you follow that up with anything else?

3 A Yes. "To see where -- to see who you spoke to all day so
4 you -- would you be okay with that," and she says, "That's
5 fine."

6 Q Okay. So you did ask for the records?

7 A Yes, sir. Apparently I did.

8 Q Okay. Mr. Wilson was asking you about she wanted to see
9 Amos at about 1300 or so. Do you recall when the autopsies
10 were done? That's all right.

11 A I can review. I think it was the next day.

12 Q Mr. Wilson asked you for your opinion with regard to did
13 she look distraught. So I ask your opinion. Did it appear to
14 be genuine distraught?

15 A She looked distraught. The more time I spent with her
16 the less believable her distraught was.

17 Q Okay. So you thought she was faking it?

18 A Initially I didn't know her well enough, but after
19 spending some time, what I noticed after a while was that even
20 though there appeared to be genuine crying there was an
21 absence of tears. In fact, I had tissues I had brought in
22 with me to put in my pocket. I never gave her any because
23 there were never any tears. There was really never any mucous
24 and never anything that was biologically connected with the
25 crime.

Motions

141

1 Q Mr. Wilson went over again and again asking about her
2 child. She indicated the child was supposed to come back that
3 day; correct?

4 A Yes, sir.

5 Q And so if she was going to be arrested that child would
6 need to be cared for?

7 A Absolutely, sir.

8 Q And Mr. Wilson asked about her being left alone for some
9 time. Was there anything interrupting her from sleeping in
10 the room at that point?

11 A No, sir.

12 Q A table was there?

13 A It was.

14 Q To your knowledge did she ever lay down, go to sleep?

15 A There were extra chairs. It looks at sometime she pulled
16 up a chair and reclined some.

17 Q Okay.

18 MR. RICHARDSON: The Court's indulgence.

19 THE COURT: All right.

20 BY MR. RICHARDSON:

21 Q Mr. Wilson asked about a bunch of drugs and stuff. Did
22 you ever ask her if she was on any drugs?

23 A No, sir. I don't believe I did.

24 Q Okay. But the video would speak for it?

25 A Yes, sir.

1 Q Okay. And whenever you said she looked like she was in a
2 trance, did you ever have any time when you -- describe any
3 time when you thought that she was having difficulty
4 understanding you or comprehending what you were saying.

5 A Well, there were times when she wasn't directly
6 responsive, and I had to get her attention. Hence, I
7 slapped on the table or (claps hands) gave a clap next to her
8 face.

9 Q Mr. Wilson asked you are there times when victims act
10 like they're in a trance, if people on drugs are in a trance.
11 Have you ever had the occasion where Defendants acted like
12 they were in a trance in other times?

13 A Yes, sir.

14 Q And in those instances what was your opinion with regard
15 to their trance?

16 A Sometimes it was real and sometimes it was faking.

17 Q Okay.

18 MR. RICHARDSON: No further questions, Your Honor.

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

20 A Thank you, Judge.

21 THE COURT: The State can call their next witness.

22 MR. RICHARDSON: Your Honor, that'd be all the witnesses
23 for the State with regard to this.

24 THE COURT: All right. Anything from the Defense?

25 MR. WILSON: I don't think anything's necessary, Judge,

Motions

143

1 nothing further.

2 THE COURT: All right.

3 MR. RICHARDSON: Your Honor, prior to argument the State
4 would ask for about a five-minute recess.

5 THE COURT: All right. We'll take about a five-minute
6 recess and then we'll come back.

7 MR. WILSON: Your Honor, may I approach?

8 THE COURT: Yeah.

9 MR. WILSON: Thank you, Judge.

10 (Whereupon, a bench conference is held.)

11 OFF THE RECORD

12 (On the record. The following takes place outside the
13 presence of the jury.)

14 THE COURT: Please be seated. All right, Mr.
15 Richardson.

16 MR. RICHARDSON: Your Honor, the next motion before the
17 Court is with regard to search warrants. First I'd call
18 Sergeant Brandon Strickland to the stand.

19 THE COURT: Okay. Do we want to -- do you all want to
20 argue anything on this other or just --

21 MR. RICHARDSON: I'd be happy to argue at this time, Your
22 Honor. I thought we were going to argue on that after we got
23 done with the other motions. I apologize.

24 THE COURT: Okay.

25 MR. WILSON: Judge, we can go ahead and get it out the

1 way would be great.

2 THE COURT: All right. Yeah. Let's go ahead and finish
3 up on the Jackson v. Denno hearing first. Okay?

4 MR. RICHARDSON: Yes, sir, Your Honor.

5 THE COURT: All right.

6 MR. RICHARDSON: Your Honor, the cases I'm going to be
7 asking the Court to look at -- I see this really as two
8 parts. First, that we have the first hour, 50 minutes to an
9 hour of the interview that's conducted whenever Detective
10 Frebowitz is looking to the Defendant as a, as a victim or a
11 witness and at some point becomes custodial in nature, Your
12 Honor. I'd ask the Court to review State v. Williams, 405
13 S.C. 263 and 747 S.E.2d 194. It's a Court of Appeals case
14 from, I believe, June of 2013. Should be in the stack of
15 documents provided. Your Honor, that case, it was a child
16 abuse case.

17 THE COURT: Yeah, but now, State v. Williams, that is
18 where the Defendant voluntarily came down to the police
19 department. The family was there waiting on her. The
20 Defendant said, "I want to get this wrapped up before I leave
21 out of the" --

22 MR. RICHARDSON: "I want to get this out the way."

23 THE COURT: But this wasn't where the police took her
24 down to the police station and put her in an interrogation
25 room. This is where the Defendant voluntarily showed up;

Motions

145

1 correct?

2 MR. RICHARDSON: It -- and I agree with that, Your
3 Honor.

4 THE COURT: Okay.

5 MR. RICHARDSON: There was no other means of transport
6 for the Defendant. At that point she indicated or she
7 indicated during her statement her car had been taken and, and
8 --

9 THE COURT: But, I mean, is it your position that Ms.
10 Locklear in this case voluntarily went down to the police
11 station to answer questions?

12 MR. RICHARDSON: That, that she -- that she agreed to go
13 to the police station with the police to be interviewed as a
14 victim and a witness, Your Honor.

15 THE COURT: Okay. But it wasn't where she just
16 voluntarily showed up. It was they --

17 MR. RICHARDSON: She didn't just show up off the street,
18 Your Honor.

19 THE COURT: Right, okay.

20 MR. RICHARDSON: Yes, sir. I'm not trying to go at it
21 that method.

22 THE COURT: All right.

23 MR. RICHARDSON: That manner, but in that case it was the
24 -- and it sounds like you're familiar with Williams. So I
25 won't bore you with all the details.

1 THE COURT: Right.

2 MR. RICHARDSON: But in that case, of course, the
3 officers talked to the Defendant at some length, and he's
4 giving details and gives details and gives details, and
5 finally, they do mirandize him and in the -- in that case,
6 the, the determination whether or not the Defendant is in
7 custody, the, the Court states that (as read), "Whether a
8 person is in custody is determined by an objective analysis
9 whether a reasonable person in subject's position would have
10 understood himself to be in custody," quoting Ledford, and
11 you've got to view it from the totality of the circumstances,
12 Your Honor, including but not limited to place, purpose,
13 length of interrogation.

14 Your Honor, the Supreme Court has stated that (as read),
15 "The determination of whether or not a subject is in custody
16 the question must be asked if there is a formal arrest or
17 restraint of movement," and that's Maryland v. Shatzer, and
18 I'm just going through that first hour at this point, Your
19 Honor.

20 THE COURT: Right. I understand.

21 MR. RICHARDSON: First, Miranda has little to do with the
22 strength of an officer's suspicions. So even if Detective
23 Frebowitz would have said, "She's our only suspect, she is our
24 only suspect," as long as he didn't communicate that to her or
25 no one else communicated that to Ms. Locklear, Your Honor,

Motions

147

1 would have no meaning. I believe they're citing Stansbury in
2 there. (As read) "Even if, if the interview is done at a law
3 enforcement center and at the initiation of police, as to a
4 determination of whether an interview is tantamount to
5 custodial interrogation, the fact that the Defendant
6 voluntarily agreed to accompany officers and were," I'm
7 quoting Doby here, Your Honor, State v. Doby, 273 S.C. 704, a
8 '79 case. In that case Doby did, Mr. Doby did volunteer and
9 went with the police to the police department, and they say
10 that, that the reason -- because he volunteers to go and he
11 accompanies officers, answers questions without being placed
12 under arrest, that that's non -- that that is a clear indicator
13 of a non-custodial situation, and it seems that Williams goes
14 back to Doby and whatnot, Your Honor.

15 The Court goes on to quote a lot of Oregon v. Mathiason
16 and I think it's great language at least for the State. (As
17 read), "The noncustodial situation is not converted to one
18 which Miranda applies simply because the reviewing court
19 concludes that, even in the absence of any formal arrest or
20 restraint on freedom of movement, the questioning took place
21 in a coercive environment. Any interview of one suspected by
22 -- suspected of a crime by a police officer will have coercive
23 aspects to it, simply by the virtue of the fact the police
24 officer is part of the law enforcement system which may
25 ultimately cause the suspect to be charged with a crime. The

1 police officers are not required to administer Miranda to
2 everyone whom they question, nor is the requirement of
3 warnings to be imposed simply because the questioning takes
4 place at the station house or because the questioned person is
5 one whom the police suspect. Miranda warnings are only
6 required where there has been a restriction on the person's
7 freedom to render them in custody," and that, that's what
8 Miranda was designed for, and that's quoting from Mathiason,
9 Oregon v. Mathiason, Your Honor, 429 U.S. 492.

10 Detective Frebowitz said that the door was unlocked.
11 She was not handcuffed whenever he initially began speaking
12 with her. If she would have indicated she wanted to go home,
13 they would have been happy to take her there until she
14 started giving information that could not be corroborated,
15 seemed to be in contradiction to evidence found at the scene
16 in his discussion with other officers, and at that juncture
17 --

18 THE COURT: Well, when is the State's position that that
19 occurred?

20 MR. RICHARDSON: When he comes back in to Mirandize her,
21 Your Honor.

22 THE COURT: And so, so not until -- so when he first
23 comes back in -- so they're saying that --

24 MR. RICHARDSON: Right around the noontime hour, Your
25 Honor.

Motions

149

1 THE COURT: Okay.

2 MR. RICHARDSON: I believe it was.

3 THE COURT: So the -- everything that happened prior to
4 mirandizing he said was still a fact investigation of a
5 victim?

6 MR. RICHARDSON: Yes, sir.

7 THE COURT: Okay.

8 MR. RICHARDSON: The victim, witness.

9 THE COURT: All right.

10 MR. RICHARDSON: She indicated by her statements on 911,
11 about everything else, when she was being treated at the
12 hospital that she was a victim in this case. Her husband had
13 been shot. Her stepson had been shot. She had been brutally
14 raped, Your Honor, and they responded accordingly. They took
15 her to the hospital which is protocol, Your Honor, and they
16 wanted to interview her as a witness. She said she was there.
17 She witnessed it happen, Your Honor, and it just makes sense
18 the police would want to speak with her, and I believe she
19 indicates at the beginning of her interview that she wants to
20 help, she wants to help.

21 The Court's indulgence.

22 THE COURT: But what my -- the problem I'm having in this
23 is Officer Frebowitz acknowledged the rape kit didn't come
24 back for weeks or months later.

25 MR. RICHARDSON: Yes, sir.

1 THE COURT: At some point in time they're of the opinion
2 she's lying about the rape. When did that occur --

3 MR. RICHARDSON: And Your Honor, he said could have
4 spoken with --

5 THE COURT: -- because there's nothing in the --

6 MR. RICHARDSON: -- he doesn't have independent
7 recollection, but he did -- he said it would have been
8 customary to speak with Detective Chatfield that day.

9 THE COURT: So how did Officer Chatfield know?

10 MR. RICHARDSON: He, he took her to the hospital. He was
11 present during the interviews and whatnot.

12 THE COURT: So they could tell at the hospital at that
13 point in time that she --

14 MR. RICHARDSON: They had some -- they had some
15 questions, Your Honor.

16 THE COURT: So when she left the hospital they were aware
17 that she had not been raped?

18 MR. RICHARDSON: Detective Chatfield, they called it into
19 question, Your Honor. They called it into question. They
20 said there were some, some errors. They didn't say, "We're
21 not going to do a rape kit. We're not going to do -- follow
22 any protocol." There were just some questions. What
23 transformed it, Your Honor, was not just the mere rape, but
24 also some of the other facts that, that she was jumping around
25 the point about where locations of certain items were, and I

Motions

151

1 believe they go into that later on post-Miranda about, I
2 believe, at one point she indicates that her bra and panties
3 would have been in the, in the kitchen and they ended up
4 finding them in the bedroom, Your Honor. There were just a
5 lot of things that were called into question.

6 THE COURT: But if I, if I follow the evidence before me
7 at this point in time --

8 MR. RICHARDSON: Yes, sir.

9 THE COURT: -- is it accurate or is it not the State's
10 position that when the Defendant went to the police
11 department, began questioning by police, at that point in
12 time the interrogators were of the, of the opinion that
13 she had not been raped and that her story of the rape was a
14 lie?

15 MR. RICHARDSON: Your Honor, I believe when they began
16 listening to her statement how she stated that she was beat
17 about the head, the face that, that the facts that she said
18 how they taped her up, how they taped her feet together, at
19 that point it started transforming into they had difficulty
20 believing her at that point because --

21 THE COURT: So it was nothing that --

22 MR. RICHARDSON: -- there was no -- there's nothing
23 --

24 THE COURT: -- no information they got from the hospital
25 led them to believe.

1 MR. RICHARDSON: That may have come at a later date, Your
2 Honor, and I believe Detective Frebowitz stated that, that,
3 that he doesn't have any independent recollection of when he
4 learned about that, Your Honor.

5 THE COURT: And I think that's probably a critical point,
6 isn't it, as to when they thought she was lying about the rape
7 and then it starts to shift from a fact investigation of a
8 victim to an interrogation of a suspect.

9 MR. RICHARDSON: But Your Honor, as Doby and Williams
10 state and Mathiason, regardless of the strength of -- it's
11 irrelevant whether or not the bullet -- the police believed
12 that she is a suspect, they don't have enough to arrest her at
13 that point, they've not placed her under arrest, they've not
14 done anything to restrain her freedom any further, Your Honor.
15 As long as they don't communicate that to her --

16 THE COURT: I see.

17 MR. RICHARDSON: -- that that's irrelevant and that's,
18 that's what Mathiason says and that's a Supreme Court case,
19 and of course, our courts have quoted that. Well, our court
20 in Williams quoted that. Doby was sometime before
21 Mathiason.

22 THE COURT: Okay. All right. I got you. Go ahead.

23 MR. RICHARDSON: And Your Honor, I apologize.

24 THE COURT: No, no. I, I understand. So your argument
25 is is it's when she thinks she is in custody is when she's

Motions

153

1 entitled to Miranda?

2 MR. RICHARDSON: Yes, sir, Your Honor.

3 THE COURT: Okay.

4 MR. RICHARDSON: When it is conveyed to her she's in
5 custody that, that -- and where that triggering point is is
6 the totality of the circumstances, and I'll go into that when
7 I talk about Miranda, Your Honor.

8 THE COURT: Okay.

9 MR. RICHARDSON: With regard to that first hour, and
10 of course, that's what distinguishes this from Seibert.
11 She's not being questioned for the purpose of getting a
12 statement out and then re-recording the exact same
13 statement.

14 THE COURT: Right. Okay.

15 MR. RICHARDSON: Which is what the facts were in Seibert.
16 In Williams they actually go in -- like I said, you're
17 familiar with it, Your Honor. So they go into the factors of,
18 (as read), "Whether the contact with law enforcement was
19 initiated by the police or the person interrogated, and if by
20 the police, whether they voluntarily agreed to be interviewed,
21 what was the express purpose of the interview, where the
22 interview took place, whether the police informed the person
23 he or she was under arrest or in custody, whether the informed
24 person, whether they informed the person he or she could
25 terminate the interview and leave the room, whether there were

1 restrictions on the person's freedom of movement, how long the
2 interrogation lasted, how many police officers participated,
3 whether they dominated and controlled the course of the
4 interrogation, whether they manifested a belief the person was
5 culpable, they had the evidence to prove it, whether the
6 police were aggressive, confrontational or accusatory, whether
7 the police used interrogation techniques to pressure the
8 suspect and whether the person was arrested at the end of the
9 interrogation," and Your Honor, that's from -- what
10 constitutes custodial interrogation. That's a George Blum
11 [spelled phonetically] article in A.L.R. 6-1, Section 2, 2007.
12 Of course, A.L.R. is just a conglomeration, Your Honor, of
13 cases reviewed.

14 THE COURT: Right.

15 MR. RICHARDSON: The Williams court indicated several
16 factors to assess how a reasonable person in the Defendant's
17 position would have understood the situation, and once again,
18 they basically cite everything that Mr. Blum [spelled
19 phonetically] cites, Your Honor, the location and were they in
20 a comfortable place, a person would normally feel free to
21 leave, was the Defendant a suspect at the time of being
22 interviewed, bearing in mind Miranda warnings are not required
23 simply because the investigation is focused on that person,
24 was the Defendant's freedom to leave restricted in any way,
25 was the Defendant handcuffed or told they were under arrest,

Motions

155

1 were there threats made during that interrogation, was the
2 Defendant physically intimidated during the interrogation,
3 did the police verbally dominate the interrogation, was
4 Defendant's purpose for being at the place questioned,
5 were neutral parties present, did the police take any
6 action to overpower, trick or coerce the Defendant into a
7 statement.

8 Your Honor, at this, this and I'll just jump straight to
9 the argument. You've got the case law in front of you.
10 You've got State v. Navy, State v. Evans. I believe this is
11 different than both those cases, Your Honor.

12 Actually, and, and you can review State v. Navy, 386 S.C.
13 294, 2010 case. The court found the first statement in that
14 case, Your Honor, was a voluntary statement and should have
15 been allowed and it was supported by the record. The second
16 and third statements were violative of Seibert because at that
17 point officers began to question the Defendant with his
18 knowledge of suffocation, rib fractures with the intention of
19 eliciting a confession, and these were all done pre-Miranda,
20 Your Honor, the second and third interview in Navy. Officer
21 sprang suffocation. They threw shocking pictures out in front
22 of the Defendant. They, they gave the Defendant a cigarette
23 break and then brought him back in and hit him with Miranda
24 right then in Navy. So it's completely different than this,
25 Your Honor, and there were no --

1 THE COURT: Well, I mean, he did show some pictures

2 --

3 MR. RICHARDSON: Showed pictures of the house.

4 THE COURT: -- and said that he knowed -- knew she was
5 lying.

6 MR. RICHARDSON: Showed pictures of the house.

7 THE COURT: Right.

8 MR. RICHARDSON: I'm, I'm just talking about that first
9 hour, Your Honor.

10 THE COURT: Okay.

11 MR. RICHARDSON: I'm just talking about the first and I'm
12 -- and I apologize.

13 THE COURT: Right.

14 MR. RICHARDSON: Like I said, I think this is kind of a
15 two-prong. It's a little bit different. The pictures, I
16 believe the testimony is that there were pictures of the house
17 that were shown and Detective Frebowitz testified he was
18 looking for, "Okay. Where did the people enter? Okay. So
19 where did you come in," and just trying to get a full picture
20 of the, of the thing. There, there were no pictures of dead
21 bodies at that point, Your Honor. There's no testimony to
22 that. All right, and I, I --

23 THE COURT: But I mean, that, that was the incident where
24 he slammed the desk.

25 MR. RICHARDSON: That is after Miranda, Your Honor.

Motions

157

1 THE COURT: That was after Miranda. Okay.

2 MR. RICHARDSON: Yes, sir. Yes, sir.

3 With regard to, to this first hour, 50 minutes I think or
4 49 minutes being non-custodial, the State would, would put
5 forth that the Defendant was the original complainant, called
6 911, went to the police department for the purpose of being a
7 victim, witness interview, voluntarily there. While she went
8 with police she was voluntarily there. She accompanied police
9 just like in Doby, Your Honor. Express purpose for the first
10 hour was to question her as a witness and a victim. That is
11 testified to by Detective Frebowitz. The interview took place
12 in an unlocked interview room. The door was even wide open as
13 she sat there waiting on Detective Frebowitz to come in. She
14 was in the same type of chair Detective Frebowitz sat in for
15 some time. She was provided with, with a drink. When she
16 asked for food at a later point she was provided with, with
17 chips. At no point did she indicate she wanted any more than
18 that, Your Honor.

19 The initial interview lasted about 50 minutes before
20 officers left the room. They weren't any restrictions on the
21 Defendant. She wasn't in handcuffs at this point. Only one
22 police officer, Detective Frebowitz, conducted this portion of
23 the interview. He's not yelling. He's not screaming. He
24 didn't dominate this portion of the interview. As a matter of
25 a fact, believed that the statement points out that Detective

1 Frebowitz, from what I've seen, most of his answers, he does
2 ask some questions, but most of them are, "Uh-huh. Yeah. Go
3 on," that type, is non-confrontational, only informed her of
4 the fact that she had left out some details previously, and
5 she, she said some things a little differently previously, and
6 Detective Frebowitz said that's not uncommon for a victim or a
7 witness. He testified he didn't use any pressure techniques
8 at this point, Your Honor, and she was not arrested at the end
9 of that interview. There were no threats and that takes us up
10 to about the noon hour, Your Honor.

11 Now, with regard to the voluntariness after Miranda, Your
12 Honor, number one, Miranda was given, evidenced by the Miranda
13 form put in, the video we saw where the detective went through
14 her rights. You can see the Defendant actually reading
15 through the form. She indicated she had a seventh to eighth
16 grade education, that she had worked as, I believe, a CNA
17 before, a nurse. She seemed to understand the English
18 language, seemed to understand all her rights, never requested
19 an attorney, never requested to remain silent. As a matter of
20 a fact, I think the statement will bear out she kept trying to
21 explain away the story, and I would point the Court out to
22 Torrance v. Ozmint, [spelled phonetically]. That's 2008 W.L.,
23 West Law, 628604, and that's a District Court of South
24 Carolina, 2008 case, Your Honor, and it's a habeas case, but I
25 think it's pretty much on point. Of course, habeas is filed

Motions

159

1 after the person has been incarcerated, and I would cite the,
2 the Supreme Court case where it was a life without case, from
3 a death penalty case, Your Honor, and I would cite that case
4 but it was an unpublished opinion in, I believe, '95. I did
5 speak with the people that argued it, but Torrance v. Ozmint
6 [spelled phonetically] actually goes over a lot of the same
7 facts and they're examining a lot of the same issues. The
8 Defendant in that case questioned, was questioned, had
9 committed or participated in a murder that had occurred in
10 Lexington County, was actually apprehended with his wife down
11 in Charleston and was brought back to Lexington, was in police
12 custody for 16 hours being questioned, Your Honor. Some of
13 that was travel time. Some of that he was left alone. In, in
14 Torrance the District Court states that Judge Anderson held a
15 Jackson v. Denno, a lengthy one, and the court ruled that,
16 this court ruled that, (as read), "The Defendant was fully
17 advised of his rights, knowingly and intelligently waived
18 those rights and all statements were freely and voluntary
19 given without duress, coercion, undue influence, without
20 reward or promise or hope of reward, without promise of
21 leniency, without threat of injury and without compulsion or
22 inducement of any kind. The statements were voluntarily
23 produced, produced of the unconstrained will of the
24 Defendant." The court in this instance stood a de novo
25 review, Your Honor. So they went over everything, and in, in

1 this Torrance indicated that the chief argument was
2 psychological coercion, about deprivation of food, sleep,
3 cigarettes, contact with family and the length of the
4 interrogation. There's testimony in the record, much like
5 here, that the Defendant was provided food, that there were
6 breaks over the 16 hours. The final product of the statement
7 where he indicates his culpability takes place, I believe, at
8 6 a.m. in the morning, early morning hours, Your Honor. The
9 court found that Torrance was given food, cigarettes. The
10 testimony was that Torrance chose not to sleep during
11 transport, although if he would have wanted to he could have,
12 Your Honor. The court felt that -- the court ruled that the
13 Defendant failed to show determination in state court were
14 contrary or involved unreasonable application of clearly
15 established Supreme Court precedents, so clearly talking about
16 the length of an interview, Your Honor, and I believe it's,
17 it's, it's one of the chief concerns here. It is a lengthy
18 interview. I'd also point out State v. Goodwin. That is a
19 case I pointed to back in chambers with co-counsel. I told
20 him I couldn't remember the case's name, but in Goodwin, Your
21 Honor, there's a burglary and a murder where the Defendant's
22 DNA was found. It's -- I'm sorry -- it's 384 S.C. 588, 683
23 S.E.2d 500, Court of Appeals, 2009. It's a burglary and
24 murder where the Defendant's DNA was found on a cigar butt
25 outside of the residence of the murder victim. They got a hit

Motions

161

1 on that, Your Honor. They brought him in. They questioned
2 the Defendant extensively, extensively over a period of three
3 days. The first interview lasted approximately 70 minutes
4 while the Defendant was offered food, drink and restroom.
5 They took approximately six total interviews, and the first
6 four statements were done at the police department in various
7 offices. Officers used statements about -- officers used
8 statements and pressure points talking about his family, about
9 how --

10 THE COURT: So, excuse me, the Goodwin case, he was held
11 by the police for three days?

12 MR. RICHARDSON: Just not all at the police department,
13 Your Honor. He was taken to the jail.

14 THE COURT: Okay.

15 MR. RICHARDSON: He was held by the police for three
16 days. He was only administered Miranda one time.

17 THE COURT: Okay, so he was either at the police
18 department or in jail for that three -- 72-hour period?

19 MR. RICHARDSON: Yes, sir.

20 THE COURT: Okay, all right.

21 MR. RICHARDSON: Yes, sir. And each interview lasted
22 about 70 minutes or so. His first interview lasted 70
23 minutes. Here we had 50 minutes, and then I think we have
24 short blocks as well, Your Honor, but the officers in this
25 case they talked to him about the death penalty. They talked

1 to him about his family, about how his kids don't need to grow
2 up thinking Daddy is a cold-blooded killer, how his mama and
3 daddy don't deserve to think they have a cold-blooded killer.
4 They're putting family pressure on him, extreme pressure, Your
5 Honor, and tell him, "This is your opportunity to tell your
6 side of the story because there's others involved," Your
7 Honor, and he comes out bit by bit by bit saying, "Well, I
8 went in the house after I found it was broken into." "Okay,
9 well, I was in there. I went in there. I didn't do the
10 shooting," and he goes on much like we have here, Your Honor.
11 The court -- and in those cases the police even lied to him
12 talking about they found fingerprints, that other witnesses
13 had seen him in that house. The fingerprint evidence wasn't
14 back for weeks, Your Honor. The witnesses never put him
15 inside the house. They lied to him, but, but the Court upheld
16 -- the Court properly -- the Court held that the trial court
17 properly found the statements were admissible, Your Honor.
18 State v. Moses, 390 S.C. 502, 702 S.E.2d 395, Court of
19 Appeals, 2010, in this case it was a special needs student,
20 Your Honor, at the jail, being charged with assaulting an
21 officer by resisting arrest. It happened at the school. The
22 officer had facial fractures. The Court held that there's no
23 difference for invoking the right to counsel or the right to
24 remain silent, the indication must be clear and unambiguous.
25 In this case, Your Honor, the main question was whether or not

Motions

163

1 the Mama was called in, would they have allowed him to call
2 his mama in, whether they should have questioned him because
3 of his special-needs status, and the Court held that (as
4 read), "Voluntary -- the statement was voluntary in the sense
5 that it was the product of a free and deliberate choice rather
6 than intimidation, coercion, or deception and the waiver must
7 be made with full awareness of both the nature of the right
8 being abandoned. Express waiver is not needed, must be judged
9 by the totality of the circumstances," and they lay out the
10 factors to consider: age; maturity; physical condition;
11 mental health; length of custody or detention; police
12 misrepresentations; lack of advice to the Defendant on his or
13 her rights; threats of violence; direct or indirect promises,
14 however slight; lack of education or low intelligence;
15 repeated and prolonged nature of the questioning; exertion of
16 improper influence; and use of physical punishment; and it
17 states (as read), "No single factor is dispositive. Each case
18 requires careful scrutiny of surrounding circumstances." The
19 court recognized several officers walked in and out of the
20 interview room in this case, Your Honor, during the interview
21 of Smith, that the officers were aware of the Defendant's
22 young age. He was 17 at the time, and the fact that he was in
23 special-needs classes. The people interviewing him worked at
24 the school, Your Honor. The court held that his waiver was
25 freely, knowingly and voluntarily made.

1 Here we have a Defendant that was 40, two days shy, two
2 days shy of being 41 at the time, Your Honor. She had worked
3 throughout her life, indicated she had been, I believe, a CNA
4 at a rest home or something to that accord, Your Honor. The
5 officers testified she didn't appear to be under the
6 influence. She appeared to comprehend what was being said,
7 communicated with them. While being held for some time, the
8 actual questioning only took place over a period of about four
9 and a half hours, and Detective Frebowitz states why she was
10 left alone for so long. Every statement she would give them
11 they were trying to verify. "Is she telling us the truth?"
12 They would go to Tabor City. They would go to Loris to the
13 IGA, to the Vasco, and they were trying to run down these
14 leads she was giving out, Your Honor. The police didn't lie
15 to her about the evidence.

16 She was advised of her rights at noon or shortly before
17 that, Your Honor. They didn't use threats of violence. They
18 did clap their hands (claps hands) to get her attention, Your
19 Honor. At no point do they make an assault at her. Gave
20 repeated restroom and cigarette breaks, and there are no other
21 promises other than informing the State of any cooperation she
22 might get -- give, Your Honor, and I believe -- and while the
23 volume is a bit off, Your Honor, I believe that, that is clear
24 from the record.

25 Your Honor, taking all the cases in light, and I've

Motions

165

1 provided you with all the cases I've cited, I believe, one, I
2 believe the Court should find, one, the initial statement, the
3 50-minute statement that Miranda was not needed. She was not
4 in custody, and it was a voluntary statement. It was a non-
5 custodial situation. I believe the case law supports that,
6 and I would ask that once Miranda is given she's in custody at
7 that point, Your Honor. She's developing into custody, but
8 she -- they do give her the prophylactics of, of advising of
9 her, of her Miranda rights. She waives those rights,
10 indicates she wants to keep on talking, signs off on them and
11 continues to talk and to talk and talk, and the only reason
12 that the interview lasted for so long is because everything
13 she would say would be proven false, and they would come back
14 and tell her, "That's not accurate," and she'd give a little
15 bit more and a little bit more, Your Honor, and so as the
16 State took all the precautions necessitated by Miranda,
17 necessitated by the case law of this state, the statement
18 should be allowed in, Your Honor.

19 With regard to the statement at the jail the following
20 day, Goodwin actually demonstrates that over a period of three
21 days one Miranda is sufficient unless the Defendant invokes,
22 as a matter of a fact that is the holding in Goodwin that,
23 that he never invoked his right to counsel or remain silent
24 during that three-day period, and the Court allowed all of
25 this in, Your Honor. That would be -- the Court's

1 indulgence.

2 THE COURT: All right, thank you.

3 MR. RICHARDSON: That would be it, Your Honor.

4 THE COURT: All right, Mr. Wilson.

5 MR. WILSON: May it please the Court, Your Honor?

6 THE COURT: Yes.

7 MR. WILSON: Thank you, Judge. Judge, I'm going to ask
8 that the case law that I have provided the Court be adopted as
9 a part of the record, and I'm going to provide that at this
10 point in time to the Prosecution, the cases that we have
11 before you, Judge.

12 Let me first start off by talking about the standard,
13 which is, counsel's correct, obviously, thank you. The
14 standard is the totality of the circumstances. That is the
15 review that the Court uses to determine whether or not a
16 statement is voluntary under Jackson v. Denno, and in this
17 case, there are some things that I want to discuss, that I'm
18 not going to be really lengthy, but I want to discuss,
19 obviously, some of the issues that I have concerns with about
20 the voluntariness of this statement, the entire statement, and
21 then I'll do Miranda after I get done with this.

22 The first concern, obviously, is going to be the length
23 of time, and counsel pointed it out, he's right, that is one
24 of the problems that I have with this case. It's not just
25 length of time though, it's not just that she was in the, in

Motions

167

1 the custody for 12 hours and under interrogation for 12 hours,
2 but it's also, Judge, that they were -- actually had her
3 incommunicado for a period of 18 hours. They started in the
4 morning with their investigation. The witness testified on
5 the stand that when they got there they treated her as a crime
6 scene. I asked him specifically, Judge, if he -- if his
7 responsibility as lead detective was to control and secure
8 crime scenes. His answer under cross-examination was, yes,
9 that's what his obligation, his job was. I asked him, also,
10 if he testified on direct examination under -- with the
11 Prosecution if he treated or he said that he treated Ms.
12 Locklear as a crime scene. He said yes. He said then he
13 directed Chatfield or told him or asked him to take Ms.
14 Locklear to the hospital. Chatfield then stayed with him or
15 with Locklear at the hospital. Then he gets the actual
16 results from the rape kit test, brings it back with Ms.
17 Locklear and they begin to question her at 10:51. They didn't
18 ask her if she wanted to go home. They didn't say, you know,
19 "Do you need to go and get some food for breakfast?" They
20 didn't say, "Do you want to see your husband?" They
21 specifically brought her back in the police transport. She
22 was transported to the hospital in a police car. She was
23 taken back to M.L. Brown Building and put in a room, and based
24 on our research, and I think counsel is exactly right, it's
25 from the perspective of the Defendant whether or not she

1 believes or should believe that she is in custody at the time.
2 I believe the court said, and bear with me if I'm wrong, Judge
3 -- indulgence, Your Honor.

4 THE COURT: Okay.

5 MR. WILSON: The Court says in Miller (as read), "It is
6 now axiomatic that a Defendant in a criminal case is deprived
7 of due process of law if his conviction is found in whole or
8 in part upon an involuntary statement without regard for the
9 truth or falsity of the statement even though there is simple"
10 -- excuse me -- "ample evidence aside from the statement to
11 support a conviction," and I would submit to the Court that
12 this particular length of time, the fact that they transported
13 this Defendant in this car begins to make this a custodial
14 interrogation, begins to make this a, from the perspective of
15 the Defendant, a custodial interrogation. When they get her
16 --

17 THE COURT: Well, let me ask you this. What should they
18 have done if they come up on a rape victim? What do they do?

19 MR. WILSON: Well, Judge, I don't know what they -- their
20 normal protocol is, but I know this, I know that if you begin
21 at 4:00 o'clock in the morning with the police and you end up
22 at 11:00 o'clock at night with the police, I know that's a
23 long time.

24 THE COURT: Well, yeah. And there is at some point in
25 time, and I don't think they argued that at some point in time

Motions

169

1 it becomes an interrogation of a, of a suspect, but my
2 question is to you is when they respond and they receive a
3 report that they have a rape victim, is it -- are you saying
4 it was improper for them to put her in a police car, take her
5 to the hospital, and then transport her to the police
6 department to get additional information?

7 MR. WILSON: What I'm saying, Judge, is that under the
8 totality of the circumstances in this matter, because of the
9 fact that she had just gone through a traumatic event, because
10 of the fact that she was actually a victim according to the
11 testimony, and based on the fact that, obviously, when they
12 got to Ms. Locklear she was obviously distraught, obviously
13 was not lucid and coherent based on the photograph alone that
14 Detective Martin took, based on the testimony from Detective
15 Frebowitz, and I would argue to the Court, Judge, that at that
16 time she's not in any condition to give any permission
17 whatsoever or even give, you know, a legal answer or response
18 to whether or not, one, she should sign on for a rape kit
19 test, whether or not she should be transported at the time by
20 law enforcement. In my opinion about what happened in this
21 particular case and my understanding of this case is that,
22 basically, what they did was they took a person they said was
23 a victim who was obviously distraught at the time, who had
24 obviously experienced a traumatic event, and then they
25 actually took her to the hospital without really much say-so

1 from Ms. Locklear. She never gave them permission to get a --
2 take her to the hospital to get a rape test. She never said,
3 "Transport me," and it was my understanding from the detective
4 that he took control of the situation, he took control of her,
5 and if he is in control of her, based on the testimony, Judge,
6 then he is in custody of her. She is in custody at that time,
7 and I don't know of anything else in the record that
8 contradicts them saying that he took control of her, her body
9 is a crime scene, and if he's treating her as a crime scene,
10 based on that, she is in custody if she's being controlled by
11 the police, and I would ask the Court to take judicial notice
12 of this that if the State is actually involved in any activity
13 where they take control or possession of a piece of property
14 or a person, then that person or that thing is now in the
15 possession of the State, and at this point in time, I would
16 suggest to the Court that she was in the custody of the State,
17 Your Honor.

18 Now, the statement begins back at M.L. Brown Building at
19 10:51, and I think Your Honor touched on a point earlier with
20 the Prosecutor during his presentation about whether or not
21 this actually, you know, began some form of interrogation or
22 began some form of custody. Well, I've already argued that I
23 believe that it did, but more so than that, Judge, I am
24 concerned and I think the Court is concerned about when
25 actually this interrogation really started and what was going

Motions

171

1 on with this interrogation. My concern is they were asking
2 her questions, clear questions. Detective Frebowitz said it
3 on the stand. He said, "Look, we were asking her about the
4 rape." They specifically ask her about the rape. I
5 specifically asked her or asked Frebowitz under, under cross-
6 examination whether or not he knew from Chatfield that the
7 rape test kit, whatever it is, was actually negative. He
8 says, his testimony under oath is that Chatfield would not
9 have or he didn't know if he had given him the actual rape kit
10 or rape test or the results of the rape test. Chatfield goes
11 to the hospital with Sandy Locklear, gets the results from the
12 nurse, goes back with the results to M.L. Brown Building, and
13 he wants this Court to believe that, that Chatfield didn't
14 tell the lead investigator who's about to question a possible
15 suspect or possible victim in this case that the rape kit is
16 negative, and coincidentally, and you saw the video, Judge, he
17 asked her in the beginning, starting at 10:51, when he says
18 she's still a victim, he asked her specifically to tell him
19 about the rape. She then proceeds to tell him that she was
20 raped by a black guy and a white guy, that she was flipped
21 over, and then he goes out of the room, then he comes back
22 in and mirandizes her, and then he begins to ask her again
23 about the rape, and he specifically says, "You were not
24 raped." It's in the video. He said that after he mirandizes
25 her.

1 THE COURT: But I mean, prior to him saying, "You were
2 not raped," how did she know that it was not a fact
3 investigation of her as a victim?

4 MR. WILSON: Well, Judge --

5 THE COURT: If they -- if nobody says -- it doesn't
6 matter what the police think. It matters what the person
7 being interrogated thinks. At what point in time did she
8 are you arguing that she had the impression that it was
9 an interrogation, and therefore, should have been
10 mirandized?

11 MR. WILSON: I don't know what she thinks, Judge, and I
12 can't speak for her, but I can tell you what I think. I
13 believe at the moment they brought her back to the M.L. Brown
14 Building they began interrogation. However, having said that,
15 their evidence is -- they're saying that they didn't start an
16 interrogation of a, of a actual suspect. Their evidence is
17 that they actually just came up on the stand and said, or
18 Frebowitz says that he was treating her as a victim, and if
19 that's the case then I would ask the Court to point to or look
20 at State versus Kenneth Navy, Jr.

21 Your Honor, this is a case involving, basically, the
22 death of a child, and the allegations in this case are that
23 there was an initial contact with this gentleman about what
24 happened this particular day, and I'm going to read directly
25 from the record so that I don't mess it up, Your Honor. The

Motions

173

1 Court's indulgence, Judge. (As read) "Respondent's first
2 statement was given at the station at 9:50 a.m. In this oral
3 statement Respondent maintained that he was watching TV on the
4 first floor while the two younger children, the victim and the
5 four-year-old-daughter, napped upstairs. He told the
6 officers, one, the victim awoke crying as if from a nightmare;
7 two, Respondent comforted him, putting him back in the crib
8 and patting him on the back. At the sheriff's department
9 Respondent was given cigarettes and permitted to take escorted
10 smoke breaks. The investigator testified Respondent was not
11 in custody or under arrest at the beginning of this
12 questioning, the interview. He gave the first statement, the
13 crying and was upset, he was crying, he was upset, and he
14 informed for the first time that the child had been suffocated
15 during this time and there was evidence of broken ribs.
16 According to the Investigator Smith, Respondent was shocked
17 and surprised by this information. The officers engage in
18 follow-up questioning asking specifically how Respondent had
19 comforted the child while crying. After eliciting the answers
20 in which Respondent admitted hitting the child and interfering
21 with the child's breathing, the officers allowed him another
22 smoke break. Then they come back at 11:35 and" -- or excuse
23 me -- "11:40 and mirandize him." They then start
24 interrogating him again for a second time. This time they get
25 him to write a statement, which is similar to what happened to

1 Ms. Locklear in this case. They get him to write a statement
2 and the statement then pretty much reiterates what he
3 originally said and then adds some other incriminating facts
4 to it. (As read), "The following statement was reduced to
5 writing" -- excuse me -- "they contacted the pathologist who
6 had conducted the autopsy to ask whether the actions
7 Respondent admitted committing in the second statement could
8 have caused the child's death." In this case, Judge, the
9 Court of Appeals held that, (as read), "Respondent's second
10 and third statements should have been suppressed because they
11 were obtained in violation of the rule announced in Missouri
12 versus Seibert, 542 U.S. 600 (2004), and we agree. In
13 Seibert, the Court dealt with the police practice of
14 questioning a suspect until incriminating information is
15 elicited, then administering Miranda warnings. Following the
16 warnings, the suspect is again questioned and the
17 incriminating information re-elicited. The post-warning
18 statement is then sought to be admitted. The factors to be
19 considered in determining a constitutional violation occurred
20 in this setting is as follows," and I want to go over this
21 with the Court, Judge, if I could.

22 (As read) "Number one, completeness and detail of the
23 question and answers in the first round of interrogation."
24 They specifically asked this Defendant whether or not she had
25 been raped. They went through great lengths to tell her,

Motions

175

1 "Look, tell us, you know, what happened in the rape. Tell us
2 what went on," and she began to divulge that information at
3 length. (As read) "The timing and setting of the first
4 questioning and the second questioning." In this particular
5 case, excuse me, in this case they actually allowed this
6 person to take a smoke break. This Defendant didn't have a
7 smoke break between the time that they actually had the first
8 questioning and the time that they actually had the actual
9 Miranda warning and then the questioning after that. As a
10 matter of a fact, the timestamp on it, Judge, if the Court
11 could indulge me, and Your Honor, I asked Detective Frebowitz
12 about this on the stand. So it's in the record. He did not
13 dispute it. The timestamp for the time that they actually
14 started the questioning was 10:51. At 11:55 they mirandized
15 her. 11:56 he comes back and says, "There is evidence to
16 support what you said," and then he goes on to ask her for a
17 better version of the truth shortly after that. He continued
18 to talk to her about this particular case, about whether or
19 not she had been raped, about whether or not she had actually
20 suffered a rape, and he told her, "You were not raped. We
21 don't believe you were raped." There's only one way that
22 Detective Frebowitz could have known that she was not raped.
23 There's only one way, and the only way he knew that she wasn't
24 raped because he had the actual evidence from Chatfield. He
25 already knew. They elicited that testimony from her for the

1 purposes of getting the evidence on her so that she could then
2 tell them, "Look, this is a lie," and then once they realize
3 that she's telling them it's a lie they go back and then they
4 basically mirandize her and ask her again the same
5 information. (As read) "The degree to which the
6 interrogator's questions treated the second round as
7 continuous." Again, Judge, he continued to ask her questions.
8 It wasn't even a minute after he mirandized her. He continued
9 to ask her questions and then goes forward and gets her to
10 write a statement, which is the statement that you see before
11 the Court that's been entered into evidence, it hadn't been
12 signed.

13 And this is also what the Court said. The Court said,
14 (as read), "Finally, the Seibert Court acknowledged that it
15 was unlikely that law enforcement would admit," this is the
16 Court, "it was using the question first technique and thus
17 evidence that offers, officers were following this protocol
18 was not necessary in order for a Miranda violation to be found
19 in Seibert." I specifically asked this detective whether or
20 not he elicited testimony regarding this rape. He said,
21 "Yes." I then asked him after he mirandized her did he
22 continue to talk to her about the rape. He said, "Yes." I
23 would submit to the Court, Judge, that that statement after
24 Miranda is in violation of Seibert and including the actual
25 last statement that she makes would be in violation of Seibert

Motions

177

1 based on the reading from the court.

2 Now, I want to get back to, Judge, some other issues
3 regarding voluntariness. The Prosecutor's right when he talks
4 about voluntariness and coercion, and I'm not going to go back
5 over the case law. The Court is quite aware of the case law
6 on this. The length of time, the threats, the undue
7 influence, the isolation, her being incommunicado, I
8 specifically asked Detective Frebowitz on the stand if they
9 kept her incommunicado, and he said, "Yes." I asked him
10 whether or not he allowed her to talk to anybody, whether it
11 was her sister-in-law, whether it was her -- go see her
12 husband. He specifically said no. He denied those things.
13 He declined those things. That's what he said.

14 At least six or seven times in the record they tell this
15 Defendant that she is going to die in prison, that she is
16 going to get a needle, that she's going to get a -- be in a
17 coffin, that she's going to be, you know, in jail forever.
18 Then on top of that, if that's not enough, they then tell this
19 Defendant that her daughter is going to be taken from her.
20 They tell her that her daughter is not going to -- she's not
21 going to see her daughter again for a long time, that her
22 daughter is going to be taken into custody by DSS, you know,
23 and Judge, you know, with all due respect to law enforcement,
24 and I hate to say this, but law enforcement they do a good
25 job, but my concern here is this is that when they get on the

1 stand and testify that when this occurs (claps hands), that
2 that is not an assault. That is constitutionally offensive.
3 Anyone in law enforcement or in law, the Prosecutor included,
4 knows that if I go to anybody and I do this (claps hands)
5 that is to create one thing and that's fear, that is fear.
6 There's no other reason for it. There's no other reason
7 why a detective in law enforcement in Horry County should be
8 in the face of a Defendant or, excuse me, a suspect at the
9 time or a victim and clap their hands (claps hands) in their
10 face.

11 THE COURT: But I mean, as far as the other allegations,
12 the State's argument is that State v. Goodwin they use the
13 same tactics, and it was held not to be coercive.

14 MR. WILSON: Judge, and I would submit to the Court that
15 in this case I think it's a little bit different. I think
16 that when you take the view of the totality of the
17 circumstances, again, in that case, the Defendant wasn't held
18 for 12 hours. In that case the Defendant was not subjected to
19 a violation, in my opinion, of Seibert.

20 THE COURT: Well, I've got to go read the case. They're
21 saying they were -- he was held for three days.

22 MR. WILSON: He was -- no, Judge. The facts in that
23 case was they interviewed him 70 minutes, and if I'm wrong,
24 you tell me if I'm wrong.

25 MR. RICHARDSON: The first --

Motions

179

1 MR. WILSON: On the first day, Judge, they interviewed
2 him for 70 minutes.

3 THE COURT: Okay.

4 MR. WILSON: On her first day in custody they had her at
5 least in their presence for 18 hours and they interviewed her
6 for a total of 12 hours.

7 THE COURT: Okay.

8 MR. WILSON: Which is different, and I think after you
9 look at the threats, the issues regarding the daughter, the
10 issues regarding them telling her that she was going to jail
11 forever and ever, the fact that they also bring up the
12 Prosecutor to her, there's case law on this and I'm not going
13 to -- I'm just going to tell the Court and you've got the
14 cases in front of you, but there is case law which suggests in
15 the federal system, and our rule mirrors the federal system,
16 that there should be no communication to the actual Defendant
17 that there is some sort of possibility that if she gets on
18 their team with the Prosecutor that she is going to somehow
19 benefit from that, no matter how slight, and there's a reason
20 for that. Law enforcement's job is to go out and investigate.
21 The Prosecutor's job is to go out and prosecute and that's
22 what the court says clearly. The Court's indulgence, Your
23 Honor.

24 I'm just going to put these cases, Judge, in the record
25 for, for the purposes of protecting the record, Your Honor.

1 (As read), "An involuntary confession is one extracted by any
2 sort of threats of violence, obtained by any direct or implied
3 promises, however slight, by the exertion of improper
4 influence," Hutto versus Ross, Supreme Court case. (As read),
5 "Extended interrogation," Chambers versus Florida, U.S.
6 Supreme Court case. "Held incommunicado, refused contact with
7 family or friends upon request. This" -- excuse me -- "this
8 factor is frequently noted in combination with a lengthy
9 period of interrogation." Harris versus South Carolina, (as
10 read), "During the whole period of interrogation," this was
11 over the course of several days, of course, but, "the person
12 was denied the benefit of consultation with family or
13 friends," and intimidation and threats, Judge. The Supreme
14 Court has held a number of times that intimidation and threats
15 are absolutely prima fascia evidence that a confession or a
16 statement is involuntary, and I would ask the Court to take
17 notice of that as well.

18 Regarding Miranda, Your Honor, the issue for me on
19 Miranda is that during the actual course of the beginning of
20 the statement there was absolutely no rights whatsoever
21 provided to this Defendant, and again, it's not from the
22 detective's perspective, it is from the actual Defendant's
23 perspective, whether or not she should have believed or she
24 believed that she was actually in interrogation, or excuse me,
25 in custody, and my concern is is that in the beginning I don't

Motions

181

1 know how you cannot argue that taking her from her husband's
2 house after the murder took place and then going to the
3 hospital, officer stays there with her, gets the results, then
4 gets her in the car, takes her to the M.L. Brown Building and
5 then leaves her in the room for Detective Frebowitz, who then
6 proceeds to do an interrogation on her, and then they keep her
7 there for the entirety. Looking at this in totality, and I
8 have seen a lot of rough interrogations in my day. This was
9 bad, and I think that the case law supports that, and I would
10 ask the Court to suppress and dismiss every single last
11 statement, including the second statement where she was not
12 mirandized and she did not initiate any contact with law
13 enforcement.

14 THE COURT: But she never did stop or say she wanted to
15 quit speaking to them either; did she?

16 MR. WILSON: No. No.

17 THE COURT: Okay.

18 MR. WILSON: No. But I think it's very telling that the
19 officer gets on the stand, Judge, and he says that he didn't
20 intend on talking to her that day, yet he admits on the stand
21 also he had his recorder, he had pictures, and he obviously
22 came there to get some information because he had her mark
23 evidence.

24 THE COURT: Yeah. But the critical question is is did he
25 have to re-mirandize her.

1 MR. WILSON: I think that he did based on the law,
2 Judge. I think all the law from the Federal --

3 THE COURT: Well, I mean, Goodwin says he doesn't.
4 Goodwin says that unless you request an attorney or unless she
5 says she wants to stop the interrogation. Now, I agree with
6 you. I think the officer thinks that he maybe should have. I
7 mean, I agree with this testimony. I don't know, you know,
8 I'm not getting into that, but the law is what the law is, and
9 according to Goodwin it says that unless she requests an
10 attorney or unless she says she wants to stop the
11 interrogation, they do not have to re-mirandize her.

12 MR. WILSON: The Court's indulgence.

13 THE COURT: And I, and I'm --

14 MR. WILSON: I apologize, Judge.

15 THE COURT: Let me qualify it.

16 MR. WILSON: I apologize.

17 THE COURT: I have not read it. I've skimmed the
18 synopsis at the starting based upon their argument, but I
19 understand that to be the State's argument.

20 MR. WILSON: Yes, sir.

21 THE COURT: Now, I have not read the case, and I'll
22 certainly go back and read the case before I make a
23 ruling.

24 MR. WILSON: Yes, Your Honor.

25 THE COURT: But the little summaries of the law they give

Motions

183

1 at the starting of the case, it did say that Miranda warnings
2 were not required where the Defendant did not request an
3 attorney or stated that they did not want to make any further
4 statement.

5 MR. WILSON: Yes, sir. Yes, sir. Indulgence one second,
6 Judge?

7 THE COURT: Yeah.

8 MR. WILSON: Thank you, Judge.

9 MR. WILSON: Your Honor, I have here an opinion issued
10 by the South Carolina Court of Appeals. It's State versus
11 Samuel, appellate case number 2010-180226. It's an appeal
12 from Richland County, G. Thomas Cooper, Jr., Circuit Court
13 Judge, and the opinion was written by Judge Lockemy, I think
14 formerly from Dillon. In this particular case, Judge, and I'm
15 just going to -- I'm not going to belabor the point, but I do
16 want to read this into the record, and I think it bears on the
17 issue at hand. (As read) "South Carolina has not directly
18 addressed the issue of whether pre-custodial Miranda waiver is
19 per se ineffective when applied to confessions made after
20 custody was established. However, several other states have
21 addressed this issue, and all but one determined that instead
22 of a bright-line approach to the issue, it is more appropriate
23 to apply a totality-of-the-circumstances. A totality-of-the-
24 circumstances approach is preferable in that it encourages
25 warnings when the police question a suspect and allows law

1 enforcement officials to pursue their investigation. Finding
2 a Defendant cannot anticipatorily invoke his Miranda rights,
3 because the 'window of opportunity' for the assertion of
4 Miranda rights comes into existence only when that right is
5 available during a custodial interrogation. However, to avoid
6 a significant burden on the Defendant, when police have given
7 Miranda rights outside the context of custodial interrogation
8 those warnings must be repeated once custodial interrogation
9 begins." In conclusion, they reversed the trial court, but in
10 the note, in the footnote 5, this is what the court says: (as
11 read) "Samuel conceded to the trial court that staleness was
12 not an issue under these facts, and the sole argument on
13 appeal is that pre-custodial Miranda rights and waivers are
14 not effective once custody is subsequently established. We
15 also note though in this case Samuel was asked whether she had
16 been given her rights, to which she responded affirmatively
17 and indicated she was willing to continue with the interview,"
18 and I would ask the Court to take a look at this case because
19 I think that it is the new law based on or -- and obviously,
20 the court said that it's novel law. They haven't really
21 addressed the issue, but this case addresses the issue of
22 whether or not she should have been read her Miranda rights,
23 Judge. They never -- he never said it. I asked him
24 specifically, and we heard the tape. He never says, "Do you
25 remember that I gave you your Miranda rights?" He never says,

Motions

185

1 "I told you, you know, your rights yesterday." He never says,
2 "Do you remember your rights," not until the end of the
3 conversation, Judge. Then he says, "Oh, yeah, well, you've
4 got some rights, too."

5 THE COURT: Well, when is it your argument that she was
6 taken into custody?

7 MR. WILSON: She was taken into custody, Judge, at the
8 time when he actually handcuffs her, but then she was actually
9 --

10 THE COURT: Handcuffs her in the interrogation room?

11 MR. WILSON: In the interrogation room.

12 THE COURT: Okay.

13 MR. WILSON: But then she was actually in custody still
14 when she goes -- they, they take her into custody or take
15 possession of her I think in the beginning, but anyway, the
16 evidence shows that at the very least she was taken into
17 custody when they put the handcuffs on her and she had them
18 behind her back.

19 THE COURT: So your argument is once they handcuffed her
20 the Miranda warnings they gave her prior to that time was no
21 longer effective.

22 MR. WILSON: No longer effective unless they go back and
23 they say, they cure it and say, "You know what, don't forget
24 we read you your Miranda rights or that we discussed this with
25 you," and let me be clear with the Court, in this particular

1 case what the court said was very simple was that in this
2 case, "We're going to take it on a case-by-case basis and in
3 this case we're not going to allow this to be suppressed," but
4 the court put the footnote in and was very clear that this
5 case is different from other cases and that that's why the
6 court issued a totality-of-the-circumstances so that the court
7 has a lot of latitude to determine whether or not a person
8 should be allowed their Miranda rights.

9 THE COURT: All right, I understand.

10 MR. WILSON: Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. RICHARDSON: Your Honor, if I may point out on the
13 case he was just citing?

14 THE COURT: That's all right. I'm going to read
15 them.

16 MR. RICHARDSON: It just it actually upholds the
17 statement of Samuels.

18 MR. WILSON: I just said that, Judge.

19 THE COURT: Well, that's what he said.

20 MR. RICHARDSON: Okay. All right.

21 THE COURT: But they said in the footnote that it should
22 be analyzed on a case-by-case basis, in other words --

23 MR. RICHARDSON: Okay.

24 THE COURT: -- that that was not the law in every case is
25 what I understand.

Motions

187

1 MR. RICHARDSON: Yes, sir, Your Honor. I apologize.

2 THE COURT: And I hadn't read it. All right, I'll take
3 it under advisement. I'll probably over lunch look at these
4 cases. I don't -- hopefully, I'll get through them all, but I
5 don't know if I will, but I'll take a look at it.

6 MR. RICHARDSON: Yes, sir, Your Honor.

7 THE COURT: It's a quarter till one. Do we want to go
8 ahead and break for lunch and come back and finish up?

9 MR. RICHARDSON: We don't have any problems.

10 THE COURT: I think we're going to have to.

11 MR. RICHARDSON: Yes, sir, Your Honor. I just wanted to
12 check with Major Sarvis from Tabor City.

13 THE COURT: All right. If we get started back at 2:00
14 o'clock will we have time to finish everything today?

15 MR. RICHARDSON: Oh, yeah, the --

16 MR. WILSON: It's going to be real brief for my part.

17 MR. RICHARDSON: Yeah, the search warrants I don't think
18 --

19 MR. WILSON: It's going to be brief.

20 MR. RICHARDSON: No more video.

21 THE COURT: Okay. Well, what have we got? We got the
22 search warrants and what else?

23 MR. RICHARDSON: There's just three witnesses on, I
24 think, five search warrants.

25 THE COURT: But I mean, is it all to do with search

1 warrants?

2 MR. RICHARDSON: That, that, that should be it. Yes,
3 sir.

4 THE COURT: Okay, all right.

5 MR. RICHARDSON: It's --

6 THE COURT: So nothing else pretrial other than
7 those?

8 MR. RICHARDSON: No other pretrial motions.

9 THE COURT: All right, well, let's go ahead and --

10 MR. WILSON: Well, no, no, Judge. That's not necessarily
11 true. We do have some other pretrial motions. They shouldn't
12 take long though, Judge.

13 THE COURT: Okay.

14 MR. WILSON: I think there's like three or four that we
15 have to go through, the sequestration issue and a couple of
16 other things.

17 MR. RICHARDSON: I don't -- and Your Honor, I believe we
18 did state on the record or not on the record, but in the
19 status conference with regard to a Blair hearing there's none
20 needed.

21 MR. WILSON: But we do need an arraignment.

22 THE COURT: Okay.

23 MR. WILSON: We agreed on that in chambers that he would
24 arraign her.

25 THE COURT: Well, do we --

Arraignment

189

1 MR. RICHARDSON: You want to arraign her today that's
2 fine, Your Honor.

3 THE COURT: Well, do we want to go ahead and do that
4 right now?

5 MR. WILSON: We can do it right now, Judge.

6 THE COURT: That'll give her, that'll give her more time
7 to do it, okay?

8 MR. WILSON: Yes, sir.

9 THE COURT: All right, let's go ahead --

10 MR. RICHARDSON: That's fine.

11 THE COURT: -- and do the arraignment. All right. Is
12 there any offer of settlement?

13 MR. RICHARDSON: Your Honor, any offers have been
14 expired at this point. We extended an offer, which was
15 rejected, offering concurrent sentences of -- with a
16 recommended range of 35 to 40 years. It's my understanding
17 that the Defendant -- to plead guilty to two counts of murder,
18 Your Honor.

19 THE COURT: Okay, but the only offer from the State at
20 this point in time is to plead guilty to two straight up
21 counts with --

22 MR. RICHARDSON: That's correct, Your Honor.

23 THE COURT: -- with no recommendation?

24 MR. RICHARDSON: That's correct. Well, no
25 recommendation. The State would make a position on it at that

1 point, Your Honor.

2 THE COURT: All right, now, let's go ahead and put on --
3 these are indictments 2013-GS-26-302 and 2013-GS-26-304.

4 MR. RICHARDSON: That's correct.

5 THE COURT: Correct?

6 MR. RICHARDSON: Charging Defendant Sandy Lee Locklear
7 with two counts of murder in the execution style murders of
8 Thomas Hatfield and Amos Hatfield.

9 THE COURT: Okay, and murder carries, what is it 30 to
10 --

11 MR. RICHARDSON: 30 years to life, day for day.

12 THE COURT: 30 to life without parole?

13 MR. RICHARDSON: That's correct, Your Honor.

14 THE COURT: Okay, all right, Mr. Wilson.

15 MR. WILSON: Yes, Your Honor.

16 THE COURT: You represent Sandy Lee Locklear on two
17 counts of murder?

18 MR. WILSON: I do, Your Honor.

19 THE COURT: Okay. Have you discussed with your client
20 the charges against her, her rights as a Defendant and the
21 consequences of being convicted of these crimes?

22 MR. WILSON: Ad nauseam, Your Honor.

23 THE COURT: In your opinion does your client understand
24 the charges against her, her rights as a Defendant and the
25 consequences of being convicted of these crimes?

Arraignment

191

1 MR. WILSON: She does, Your Honor.

2 THE COURT: And does she wish to plead guilty or not
3 guilty?

4 MR. WILSON: She wishes to plead not guilty, Judge.

5 THE COURT: All right. Let's go ahead and put Ms.
6 Locklear under oath.

7 (Whereupon, the Defendant is sworn by the clerk.)

8 THE COURT: All right. Ma'am, your name is Sandy Lee
9 Locklear?

10 MS. LOCKLEAR: Yes, sir.

11 THE COURT: All right. Ms. Locklear, you have been
12 charged and indicted by the grand jury on two counts of
13 murder, and according to your attorney you wish to plead not
14 guilty to those charges. Is that correct?

15 MS. LOCKLEAR: That's correct, sir.

16 THE COURT: All right. Now, you understand that you have
17 the right under the Constitution, you are presumed innocent of
18 these charges, that you have the right to have your guilt or
19 innocence determined by a jury trial of your peers. The State
20 bears the burden of proving your guilt beyond a reasonable
21 doubt. You do not have to prove your innocence and you cannot
22 be compelled to testify against yourself. You also have the
23 right to confront and cross-examine anybody who testifies
24 against you. If you choose you can present a defense to these
25 charges. Do you understand those rights?

Arraignment

192

1 MS. LOCKLEAR: Yes, sir, I do.

2 THE COURT: Okay. And according to your attorney you
3 wish to plead not guilty and to go to trial on both of these
4 charges.

5 MS. LOCKLEAR: Yes, sir, I do.

6 THE COURT: All right. Now, you understand that the
7 State is allowing you or has allowed and would now allow
8 you to plead guilty to these charges without any
9 recommendation from the State on your sentencing. Do you
10 understand that?

11 MS. LOCKLEAR: Yes, sir, I do.

12 THE COURT: And you understand that it is within the
13 discretion of the Court that if you pled guilty to these
14 charges the State could or the Court could sentence you either
15 to 30 years in prison, which is the mandatory minimum sentence
16 that must be imposed in these cases. If you pled guilty to
17 both of them then the Court could impose two 30-year
18 sentences, but order them to run concurrently. You understand
19 that?

20 MS. LOCKLEAR: Yes, sir, I do.

21 THE COURT: You understand or the Court could order
22 anything up to life in prison without the possibility of
23 parole or two life sentences without the possibility of
24 parole. Do you understand that?

25 MS. LOCKLEAR: Yes, sir, I do.

Arraignment

193

1 THE COURT: All right. And knowing that do you
2 still wish to plead not guilty and go to trial on these
3 charges?

4 MS. LOCKLEAR: Yes, sir, I do.

5 THE COURT: All right. During the past 72 hours have you
6 taken any medication, consumed any alcohol or drugs or been
7 under any type of influence that would affect your ability to
8 know why you're here?

9 MS. LOCKLEAR: No, sir.

10 THE COURT: Do you understand why you're here?

11 MS. LOCKLEAR: Yes, sir.

12 THE COURT: All right. Have you had ample opportunity to
13 discuss this matter with your attorney and to assist him in
14 the preparation of your defense?

15 MS. LOCKLEAR: Yes, I have, sir.

16 THE COURT: All right. Anything further the State wants
17 placed -- and you understand that this trial, we've been
18 hearing some pretrial motions on this trial and that it will
19 start this coming Monday. You understand that?

20 MS. LOCKLEAR: Yes, sir, I do.

21 THE COURT: And have you had ample opportunity to prepare
22 your case with your attorney?

23 MS. LOCKLEAR: Yes, sir, I have.

24 THE COURT: All right. Anything further the State wants
25 placed on the record?

1 MR. RICHARDSON: Not with regard to this, Your Honor. We
2 did -- there was a Blair order that was issued December 2013.
3 I believe Mr. Wilson has indicated previously to Judge John
4 they would not contest the findings. I would just ask that
5 --

6 THE COURT: And what are the findings of the Blair
7 order?

8 MR. RICHARDSON: Your Honor, specifically, (as read), "It
9 would appear from our examination that Ms. Locklear has
10 sufficient factual and rational understanding of the
11 proceedings against her. Furthermore, she was able to answer
12 all our questions in a rational manner, will be able to answer
13 questions posed by her attorney. Therefore, it is our opinion
14 that she does have the present ability to assist her counsel
15 in the preparation of a defense."

16 THE COURT: All right.

17 MR. RICHARDSON: And we will not challenge those.

18 THE COURT: All right. All right. Mr. Wilson, you agree
19 with those findings?

20 MR. WILSON: Your Honor, there's no objection at all.
21 Can we approach, Judge?

22 THE COURT: Okay. All right.

23 MR. RICHARDSON: If I can make that part of the record,
24 Your Honor.

25 THE COURT: All right, any objection?

Motions

195

1 MR. WILSON: No objection, Judge, at all.

2 THE COURT: All right, that would be?

3 REPORTER: 16, Court's 16.

4 THE COURT: Even though it's not part of the Jackson v.
5 Denno? It's an arraignment. Would it still be?

6 MR. RICHARDSON: It's all Court's.

7 (Reporter and Court confer.)

8 THE COURT: Okay. All right. So Court's Exhibit 16
9 admitted without objection. Hold for one second.

10 (Court's Exhibit Number 16 [Report of Mental Finding]
11 appropriately marked.)

12 THE COURT: All right.

13 (Whereupon, a bench conference is held.)

14 MR. RICHARDSON: Thank you, Your Honor.

15 THE COURT: Thank you.

16 MR. WILSON: Thank you, Your Honor.

17 THE COURT: All right, Mr. Wilson, anything further you
18 want placed on the record?

19 MR. WILSON: Nothing further, Judge.

20 THE COURT: All right. That'll be sufficient. We'll go
21 -- we'll, we'll address, address the remaining pretrial
22 matters at 2:00 o'clock.

23 MR. WILSON: Thank you, Your Honor.

24 THE COURT: Thank you.

25 OFF THE RECORD

1 (On the record.)

2 THE COURT: All right. All right. I've been looking
3 over these cases, and I don't want a re-argument or anything
4 like that, but, Mr. Richardson, let me hear from you. How
5 do you distinguish the State v. Navy case from this one?

6 MR. RICHARDSON: One instance in Navy, Your Honor, as I
7 recall Navy, it was a child abuse case. The actual finding of
8 the court, the Supreme Court originally when Defendant Navy
9 was brought in he was questioned. The Court of Appeals said
10 that that was improper.

11 THE COURT: Right. Right. That's --

12 MR. RICHARDSON: The Supreme Court overturned that and
13 said, "That one's fine."

14 THE COURT: Yeah. What they're saying in, in State v.
15 Navy is, which it was voluntary, not a custodial interrogation
16 up to Miranda warnings, but then it was like they elicited the
17 incriminating statement, gave Miranda and then Seibert came
18 into play on the last two questions.

19 MR. RICHARDSON: Yes, sir, on the last two. As I
20 understand the facts of Navy, if I understand them correctly,
21 they got the first interview. That ended, and I believe
22 that's when he got the first cigarette break. If, if -- I may
23 be off.

24 THE COURT: I think, yeah.

25 MR. RICHARDSON: There was a break at that point. They

Motions

197

1 walk right back in after that and they begin questioning
2 Seibert -- Seibert -- Navy without Miranda, without any kind
3 of warnings whatsoever, and they start springing on him the
4 evidence of the broken ribs, the fractures, everything else
5 that's involved. They spring material evidence on him, and
6 only after he agrees at that point, "Yes, I struck the child.
7 I struck the child like this," and he's demonstrating, only
8 then once they get those incriminating statements from the
9 Defendant, at that point then they go back, much like in
10 Seibert, and then they mirandize him and go more fully into
11 detail at that point, and they're actually using those
12 particular statements, and the purpose was to get that
13 incriminating statement, as I understand Navy. In this case
14 it's a bit different. They, they get her initial statement,
15 her victim witness statement in, and, and then at that point
16 whenever they find out it's a little funny, at that point,
17 then they come back and mirandize her.

18 THE COURT: Oh, so you're saying -- I need to go back and
19 look at the tape then. So I thought that before Miranda he
20 came back and he said, "We know you weren't raped. We know
21 that that wasn't true."

22 MR. RICHARDSON: No, sir. No, sir, at -- it actually
23 ends -- there's no statement about the not being raped until,
24 until after Miranda. I have that the initial interview was
25 about 48 minutes long, 48, 49 minutes long, 48:55 is what I

1 actually have here, and it actually ends --

2 THE COURT: All right. That's a critical point and that
3 might be the distinction in this case, and I might have to go
4 back and look at that portion to find out --

5 MR. RICHARDSON: Yes, sir. The Court's indulgence.

6 THE COURT: -- what the, what the questioning was. I
7 thought he basically was telling her he knew that she was not
8 telling the truth about the rape, then got some statements and
9 then mirandized her.

10 MR. RICHARDSON: No, sir. The only, the only statements
11 even somewhat in contradiction to her statement is, "Well, you
12 didn't tell me that before," and that's during the initial
13 interview.

14 THE COURT: Okay.

15 MR. RICHARDSON: And he testified that happens
16 sometimes. You have to tell victims, "Well, I didn't hear
17 that before."

18 THE COURT: Yeah.

19 MR. RICHARDSON: "We just need the full story." He never
20 counters and contradicts her and tells her, "No, you were not
21 raped," until after Miranda.

22 THE COURT: Okay. Is that your view of it as well?

23 MR. WILSON: It is not, Your Honor. If I could,
24 Judge.

25 THE COURT: Yeah.

Motions

199

1 MR. WILSON: The case law is clear. This is what

2 --

3 THE COURT: No, no, no, no. I've reviewed the case law.
4 My question is did he elicit from her the fact that she had
5 not been raped prior to mirandizing her?

6 MR. WILSON: Judge, let me get the time stamps. I just
7 want to be correct about the time.

8 THE COURT: And that's what I'm trying to find out the
9 time stance.

10 MR. WILSON: All right.

11 THE COURT: I was of the impression that he said, "We
12 know you weren't raped. We know that's not what happened,"
13 then she changed her story, then he mirandized her and
14 continued questioning her.

15 MR. WILSON: Right. This, this was my understanding of
16 what happened, Judge, and this is from our, of course, our
17 depiction of the actual tape itself. At 11:13 what he says
18 is, and this is what he testified to because I asked him about
19 every time stamp on here. He says that he begins to have her
20 mark evidence. Then he tells her, "That's different from what
21 you told me before." She -- then he says that, "Most rapists
22 don't bite." Then she says that she was slapped around. He
23 says that, "Well, I don't see any marks on you," is what he
24 says to her, and then he talks to her about the photos and her
25 daughter and some other things, you know, but my contention,

1 if I could, Judge, is quickly, what the court said in Navy was
2 very clear. They say that they're discouraging, flat-out, the
3 tactic of eliciting information that the police know to be
4 false, then going back and mirandizing the person, and then
5 saying, "Okay. Well, tell me again."

6 THE COURT: And I agree with that.

7 MR. WILSON: Yes, sir.

8 THE COURT: And that is the law in Navy. I agree with
9 that.

10 MR. WILSON: Yes, sir.

11 THE COURT: But the State's argument is is that they did
12 not know she was giving false testimony, that once they found
13 out they mirandized her before they continued any additional
14 questioning.

15 MR. WILSON: Absolutely. And I asked Detective
16 Frebowitz on the stand if Chatfield came back and gave him
17 the actual -- Chatfield had the actual result from the
18 hospital.

19 MR. RICHARDSON: Your Honor, there is no record,
20 nothing.

21 THE COURT: I understand. There's no record of that, but
22 my question is, and I'm going to have to go -- I, I've got a
23 handle of it. I've got a handle of the law.

24 MR. WILSON: Yes, sir.

25 THE COURT: I've got to go back and look at the Miranda,

Motions

201

1 when he gave the Miranda, what the questioning was before
2 Miranda and what the questioning was leading up to Miranda to
3 see what was the responses at that time. You're saying
4 everything that you said where he says, "That's usually not
5 what happens and that's not the case," that was all pre-
6 Miranda.

7 MR. WILSON: That was all pre-Miranda, Judge.

8 THE COURT: Okay. Well, and I've got to go back and make
9 a determination as to whether or not. I thought they knew at
10 that point in time that she had not been raped or not. So
11 because that's -- I think that is a critical point.

12 MR. RICHARDSON: Yes, sir. And I don't counter that they
13 did say, "Well, you didn't tell me that previously." He
14 doesn't say that, "You weren't raped."

15 THE COURT: No, no. He's saying that it's more than,
16 "You didn't tell me that." He's saying she said, "Well he bit
17 me and all that." "Well, that usually doesn't happen in a
18 rape" --

19 MR. RICHARDSON: He doesn't -- he --

20 THE COURT: -- like he had knowledge that there was no
21 rape that had taken place.

22 MR. RICHARDSON: No, sir. What he says is he says,
23 "That's unusual. Mostly they just go right at it."

24 THE COURT: Yeah.

25 MR. RICHARDSON: He testified to that on the stand this

1 morning. He's just commenting on --

2 THE COURT: Well, he also testified that they didn't know
3 anything, that it was confirmed that she hadn't been raped
4 until weeks afterwards when they got the report. I mean, he
5 was leading it ---

6 MR. RICHARDSON: Well, well, after she starts admitting
7 that, no, she wasn't raped as they go down and as they pull
8 apart her story, find out she wasn't --

9 THE COURT: Yeah. But, I mean, his testimony was until
10 she basically said that that he had no confirmed knowledge of
11 it and he had really no inclination because he actually said
12 when he asked Officer Frebowitz, "You had the results of the
13 test," he was like, "No, we don't get those test results until
14 weeks or months later." So he was leading the Court, wanting
15 the Court to believe that at no point in time during any of
16 that interview did they base their questioning on knowledge
17 that she was not raped.

18 MR. RICHARDSON: Well, and by no means do I want to
19 mislead the Court.

20 THE COURT: Right.

21 MR. RICHARDSON: I'm just saying at this juncture up
22 until the Miranda is given, regardless of what is in the
23 officer's mind, she has not been told that, that she's a
24 suspect regardless of what's in his mind.

25 THE COURT: Well, that was the same thing in Navy,

Motions

203

1 too.

2 MR. RICHARDSON: Well, in Navy they actually had a little
3 bit more. I believe he indicated and, Your Honor, if I -- beg
4 the Court's indulgence. Let me look at my Navy case real
5 quick.

6 THE COURT: And I've, and I've, I've got a handle of
7 it.

8 MR. RICHARDSON: Yes, sir.

9 THE COURT: I've read the Navy case.

10 MR. RICHARDSON: And, and I --

11 THE COURT: But you're right, the Navy never addresses
12 the knowledge. In Navy they basically tell him, "You're free
13 to go at any time you want to go."

14 MR. RICHARDSON: Yes, sir. The, the -- and I, I admit
15 that -- I admit that he does say, "Well, that's unusual."

16 THE COURT: Uh-huh.

17 MR. RICHARDSON: If I remember it correctly, he says,
18 "That's unusual. Normally rapists don't bite." He's not
19 saying, "I don't believe you." He's saying, "Normally they
20 don't bite. Normally they get right to it."

21 THE COURT: Okay.

22 MR. RICHARDSON: "And they go on," and she talks about
23 how she was beaten and everything.

24 THE COURT: Well, and I can go back and I can review that
25 portion of that time, and I can tell from the tone of his

1 questioning whether or not he's questioning her with knowledge
2 that she had not been raped and was trying to elicit a
3 confession or whether or not he was still conducting a fact
4 investigation of someone he perceived to be a victim, and I'll
5 have to just look at the statement and make a judgment call as
6 to what a preponderance of the evidence shows at that point in
7 time because that is the standard that I have is the
8 preponderance of the evidence at this point in time, and I can
9 look at it and say, make a judgment call, do I think he think
10 she's lying and he's trying to elicit a confession or do I
11 think that he is still interviewing somebody that he perceives
12 to be a victim of a rape, and I'm -- I'll be able to look at
13 that and make a decision.

14 MR. RICHARDSON: Yes, sir.

15 THE COURT: So.

16 MR. WILSON: Can I say one other thing, Judge, just about
17 the facts, not about the case law.

18 THE COURT: Well, no, and I've got a handle of the
19 facts.

20 MR. WILSON: Thank you, Your Honor.

21 THE COURT: I was, I was just couldn't recall what Mr.
22 Richardson said the -- I know he said that State v. Navy was
23 distinguishable in this case, but I couldn't remember what
24 his argument of the distinguishing factors were in that
25 case.

Motions

205

1 MR. RICHARDSON: Yeah.

2 THE COURT: And it might be a misperception. I was
3 thinking that there was some questioning --

4 MR. RICHARDSON: He does not --

5 THE COURT: -- prior to Miranda telling her, "We know you
6 weren't raped. We know that you've given us some false
7 statements," and then when she starts explaining then he goes
8 back and gives Miranda, which to me is right on point with
9 State v. Navy.

10 MR. RICHARDSON: Well, in State --

11 THE COURT: But there might be a distinction.

12 MR. RICHARDSON: In State v. Navy they come right back,
13 and once again, in Navy the problem they have is that before
14 ever issuing Miranda they take that first statement, they come
15 back and question him, and if ---

16 THE COURT: Well, that's what happened here. They took
17 the first statement --

18 MR. RICHARDSON: Well, well, but they took a first
19 statement, took a break, did not read Miranda at that point in
20 Navy, took a second statement, sprung it on him, said, "We
21 know you're lying because these are broken ribs," they sprung
22 the broken ribs and --

23 THE COURT: Well, that's a factual matter that whether
24 it's distinguishable from this case or not. That's why I'm
25 saying I've got to look at it again.

1 MR. RICHARDSON: And all that was done, and all that was
2 done pre-Miranda, Your Honor, and then they took that and
3 that's why the Court held that the second statement and third
4 statement were out because of the springing on those.

5 THE COURT: I understand that.

6 MR. RICHARDSON: Yes, sir.

7 THE COURT: And that's what I've got to look at the
8 statement to see if that's what happened in this case.

9 MR. RICHARDSON: Yes, sir.

10 THE COURT: I know the State's position is it didn't.
11 The Defense position is that it did, and I won't know until I
12 look and find out because I do recall his testimony in there
13 where he says, "We know you weren't raped."

14 MR. RICHARDSON: Yes, sir.

15 THE COURT: "It was shown by the tests you were
16 not raped." I don't recall whether that was before or
17 after Miranda, and that's what I've got to find out. All
18 right.

19 MR. RICHARDSON: Yes, sir.

20 THE COURT: So I'll go back and take a look at that, make
21 a decision.

22 MR. WILSON: Thank you, Your Honor.

23 THE COURT: All right.

24 MR. RICHARDSON: Yes, sir.

25 THE COURT: All right. What do we need to do now?

Motions

207

1 MR. RICHARDSON: The State would call Brandon
2 Strickland.

3 THE COURT: All right. What kind of hearing is this
4 now?

5 MR. RICHARDSON: Search warrant, Your Honor.

6 THE COURT: Okay.

7 MR. RICHARDSON: Specifically of [REDACTED].

8 Whereupon, Brandon Strickland was called to the stand,
9 duly sworn by the clerk and testified as follows:

10 THE CLERK: Please be seated, state your full name and
11 spell your last name for the Court, please, sir.

12 MR. STRICKLAND: Brandon Strickland,
13 S-T-R-I-C-K-L-A-N-D.

14 EXAMINATION

15 BY MR. RICHARDSON:

16 Q Sergeant Strickland, if I can tell by your chevrons,
17 could you please tell us where you're employed, how long and
18 in what capacity?

19 A I'm employed with the Horry County Police Department.
20 I've been there for nine years now, and I work now as a patrol
21 sergeant in the west precinct.

22 Q How about back August 19, 2012, what capacity were you
23 working with the Horry County Police?

24 A I was a detective in the violent crimes division.

25 Q And in your capacity as a detective in the violent crimes

1 did you have the opportunity to become involved in the
2 investigation of the murder of Tommy and Amos Hatfield?

3 A I did, sir.

4 Q What time did you arrive on scene?

5 A I don't know the exact time. I received a call that
6 morning from -- right after the incident occurred when, I
7 guess, the road supervisor contacted the supervisor over
8 violent crimes. I received a phone call to respond so.

9 Q Still dark outside?

10 A It was still dark, early morning hours.

11 Q Okay. Did you go to the scene?

12 A I did.

13 Q And upon arrival what if any duties were you
14 assigned?

15 A Upon arrival the officers on scene, I guess the initial
16 responding officers had secured the scene. I contacted
17 Detective Frebowitz being he was the -- I knew he was the
18 on-call detective and asked him what he would like me to
19 do.

20 Q And what were you detailed to do?

21 A Obtain a search warrant for the residence.

22 Q Okay. And assuming you obtained a search warrant, did
23 you gather some information prior to getting the search
24 warrant?

25 A I did. I obtained information from the officers on scene

Motions

209

1 about what the call was, the initial call, the address, the
2 location and description of the home and just the somewhat
3 small summary of what the officers knew from the -- their
4 initial contact at the residence.

5 Q Okay. And what do you do with this information?

6 A I took that information, prepared a search warrant and
7 went and found a magistrate to sign it, presented it.

8 Q Was that Judge Monte Harrelson?

9 A Judge Harrelson. Yes, sir.

10 Q Prior to -- and did Judge Harrelson sign that?

11 A He did. I presented it, the facts to him and he did sign
12 it.

13 Q Did he place you under oath?

14 A Yes. He did.

15 Q Okay. And who -- he placed you under oath: Allow me to
16 show you State's or Court's Exhibit Number Five for the
17 purpose of this hearing.

18 THE COURT: What is that number?

19 MR. RICHARDSON: Number five, Your Honor.

20 THE COURT: Okay, thank you.

21 BY MR. RICHARDSON:

22 Q Tell me if you recognize State's [sic] Five.

23 A I do.

24 Q And what do you recognize State's [sic] Five as
25 being?

1 A A search warrant that I prepared for the residence of the
2 victim.

3 Q Okay. And this is the search warrant you presented to
4 Judge Harrelson, you went under oath and you swore to the
5 affidavit there?

6 A Yes, sir.

7 Q Okay. And what address were you attempting to
8 search?

9 A The search warrant was at [REDACTED] in Loris
10 Section of Horry County.

11 Q And what, and what information did you provide to Judge
12 Harrelson prior to his signature? If you could just recite
13 the affidavit.

14 A Right. (As read) "That on, that on or about August 19th,
15 2012, at approximately 4:00 o'clock in the morning in the
16 Loris Section of Horry County, Horry County Police Officers
17 responded to a call for assistance at [REDACTED].
18 The caller who identified herself as Sandy Hatfield stated her
19 house was just broken into and her husband may be shot. Sandy
20 advised two males, one white male, one black male wearing
21 masks, entered her residence and fled the scene. Upon
22 officers' arrival they discovered two victims, Amos Hatfield
23 and Thomas Hatfield, in the residence, deceased, suffering
24 from apparent gunshot wounds. Sandy Hatfield was located in a
25 bedroom of the residence by officers while securing the

Motions

211

1 residence. Suspects were no longer on scene and Sandy was
2 unable to provide further suspect information, and
3 therefore, it was my belief that the evidence, there may
4 be evidence located in the residence or within the
5 curtilage that will lead to the identity of the unknown
6 suspects."

7 Q And it was unknown suspects at this point?

8 A Yes, sir.

9 Q And that's what you all were looking for, evidence within
10 the house --

11 A Yes, sir.

12 Q -- of the murders. All right, thank you. Judge
13 Harrelson signed it. After you got a signed search warrant
14 what if anything did you do?

15 A I returned back to the incident location with the signed
16 warrant.

17 Q And the purpose of the warrant was to enter the residence
18 and search for evidence?

19 A Yes, sir.

20 Q And was there a return prepared?

21 A Yes, sir. There was.

22 Q Did you prepare the return?

23 A I did not. I believe it was Detective Martin, Detective
24 Martin and Detective Smith.

25 Q Okay.

1 A Yeah.

2 Q Okay. But that was, that was attached to the search
3 warrant after the service of the search warrant?

4 A Yes, sir.

5 Q Is that the extent of your involvement in the search
6 warrant?

7 A Yes, sir.

8 MR. RICHARDSON: For the purposes of this hearing the
9 State would introduce Court's Five, Your Honor.

10 THE COURT: Any objection?

11 MR. WILSON: No objection, Your Honor.

12 THE COURT: Court's Exhibit Five admitted into evidence
13 without objection.

14 (Court's Exhibit Number Five [Search Warrant, REDACTED
REDACTED, 8-19-12] appropriately marked.)

16 MR. RICHARDSON: Please answer any question that the
17 Defense may have.

18 EXAMINATION

19 BY MR. WILSON:

20 Q Thank you, Sergeant. I'll be brief. I just have a
21 couple of questions.

22 A Okay.

23 Q Let me ask you this. What time did you get the search
24 warrant signed by Judge Harrelson?

25 A I -- can I look back at it?

Motions

213

1 Q Absolutely. Yeah. I apologize. Thank you.

2 A I don't know. There's, there's not a time on there, and
3 to be honest with you, I don't recollect. I know it was right
4 after leaving the scene. I went and prepared the search
5 warrant and went directly to his residence.

6 Q Okay. Was the sun up when you went back to the residence
7 when you got there?

8 A When I returned back?

9 Q Yes, sir.

10 A Yes, sir. The sun was coming up.

11 Q Okay. All right. Would it be fair to say it was after
12 6:00 o'clock? Is that fair? And if you can't remember just
13 tell me you can't remember.

14 A I, I, I can't remember to be honest with you.

15 Q That's okay. That's fine. All right. When you got back
16 there you actually had the search warrant with you when you
17 went to the residence; correct?

18 A Yes, sir. On my return.

19 Q Okay. And when you got there had anyone gone into the
20 residence to your knowledge?

21 A You mean the whole -- from the whole thing?

22 Q In -- before you got there with the search warrant had
23 anybody gone into the residence to your knowledge?

24 A I don't know. I know the initial officers when they
25 first arrived on scene, but I, I don't believe so because when

1 I talked to Detective Frebowitz he said that he didn't want
2 anybody to enter until crime scene and after we had the search
3 warrant and everything. So I don't believe so.

4 Q Okay.

5 A I don't, I don't know.

6 Q You're familiar with what a buoy sweep is?

7 A Protective sweep?

8 Q Yes, sir.

9 A Yes, sir.

10 Q Okay. And is that typical that the police officers will
11 do a protective sweep or a buoy sweep when they first come to
12 a crime scene?

13 A Yes, sir.

14 Q And what's the purpose of that?

15 A Just to look for known hazards in the residence like
16 people hiding, other additional victims, stuff like that.

17 Q Okay. Do you know if there was a buoy sweep done in this
18 case? Did anybody tell you there was?

19 A I wasn't there, sir.

20 Q Okay. So you don't know that?

21 A For, to be sure, no, sir.

22 MR. WILSON: No further questions, Judge.

23 THE COURT: All right, anything on redirect?

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

25 THE COURT: All right, you may step down.

Motions

215

1 A Thank you, Your Honor.

2 MR. RICHARDSON: Your Honor, in this particular matter
3 the State would just submit there was sufficient probable
4 cause as found by Judge Harrelson and the warrant should
5 stand.

6 THE COURT: All right, anything from the Defense?

7 MR. WILSON: Your Honor, the only objection we have is
8 that we believe that there was a second buoy sweep that was
9 performed on the residence before the search warrant was
10 gotten, which I would consider to be tantamount to a search.
11 I know the State is going to say inevitable discovery anyway
12 as a curative measure for the search warrant, but that would
13 be our only objection on the record, Judge.

14 THE COURT: All right. I'm going to find it's a valid
15 execution of the search warrant.

16 MR. RICHARDSON: Thank you, Your Honor. I'd just ask
17 that Sergeant Strickland -- I was about to say Detective
18 Strickland -- be excused to return to his duties.

19 THE COURT: Any objection?

20 MR. WILSON: Your Honor, I have no objection to
21 that.

22 THE COURT: All right.

23 A Thank you.

24 MR. RICHARDSON: The State would call Major Jerry Sarvis
25 of the Tabor City Police Department.

5 MR. SARVIS: Jerry Sarvis, S-A-R-V-I-S.

EXAMINATION

7 BY MR. RICHARDSON:

8 Q Major Sarvis.

9 A Yeah. Yes, sir.

10 Q Back in August it was -- August 2012, Lieutenant Sergeant
11 at that point?

12 | A Yes, sir.

13 Q All right. Just want to make sure they know that you're
14 talking about the same person.

15 | A All right, sir.

16 Q Major Sarvis, could you please -- thank you for being
17 with us today. Thank you for bearing with us. Could you tell
18 us where you're employed and in what capacity?

19 A I'm a major with the Tabor City Police Department. Been
20 there approximately seven years.

21 Q As a member of the Tabor City Police Department are there
22 times when you assist other agencies from outside your
23 jurisdiction?

24 A Yes, sir. Anytime agencies ask for our assistance we're
25 more than happy to help them.

Motions

217

1 Q Did you receive such a request from Horry County Police
2 Department back on August 20, 2012?

3 A Yes, sir, I did.

4 Q Could you educate us a little bit about with whom you
5 spoke and what assistance was requested of you?

6 A Well, I talked with Damon Vescovi, Frebowitz. There was
7 quite a few detectives there. I don't remember all their
8 names. That was back 2012.

9 Q Okay. Was it over the phone, in person?

10 A In person.

11 Q Okay. And did they ask about your assistance in getting
12 some search warrants?

13 A Yes, sir. They did.

14 Q You met with them on August 20?

15 A I believe that's correct.

16 Q It was a Monday?

17 A I think so.

18 Q And you said you met with them in person. There was a
19 bunch of them. You said Detective Vescovi, Detective
20 Frebowitz, several others?

21 A Yes, sir. They met -- I met with them in the -- in my
22 office at the police department.

23 Q At some point did the Horry County Police Department
24 approach you regarding obtaining a search warrant on an
25 address located at [REDACTED] [REDACTED] in Tabor City?

- 1 A Yes, sir. They did.
- 2 Q And that's in your jurisdiction?
- 3 A Yes, sir.
- 4 Q And on receiving such a request, what, what information
- 5 was provided to you?
- 6 A They provided me about the -- that they had obtained, I
- 7 think, warrants on Ms. Locklear for murder and that they had
- 8 other evidence that provide probable cause to believe that
- 9 there might be some evidence of the crime at [REDACTED] [REDACTED]
- 10 Road.
- 11 Q Okay. And do you recall specifically which -- was it an
- 12 Horry County detective that provided that information to
- 13 you?
- 14 A Yes, sir.
- 15 Q Do you recall specifically who it was?
- 16 A I don't remember if it was Frebowitz or Vescovi, but it
- 17 was one of the two.
- 18 Q They were both there --
- 19 A They were both there.
- 20 Q -- and it's been almost two years.
- 21 A And both talking to me at the same time.
- 22 Q No doubt about it, you didn't have a question as to who
- 23 they were?
- 24 A No. I knowed them quite a while.
- 25 Q Okay. And do you recall what time of day you received

Motions

219

1 that information?

2 A It was over in the afternoon, late afternoon.

3 Q And upon receiving that request for a search warrant,
4 receiving that necessary information, what steps did you
5 take?

6 A Well, I went and typed -- we typed up a search warrant
7 and got the magistrate to sign it for [REDACTED].

8 Q Okay. You went to -- and that was prepared at your
9 office?

10 A Right there in my office.

11 Q Did it take any length of time to prepare it?

12 A It took some time. It probably took about an hour or
13 more, might have been even longer than that, I'm not -- I
14 don't remember how long it took.

15 Q Allow me to show you State's [sic] Number Six.

16 A Yes, sir.

17 Q See if you recognize that, that document.

18 A Yes, sir. It's a copy of the search warrant.

19 Q Okay. True and accurate copy of the search warrant?

20 A Yeah. Yes, sir.

21 Q Okay. And which judge -- you said you presented that to
22 a judge. Which judge did you present it to?

23 A It was Magistrate Green.

24 Q Magistrate Green. And he's a duly authorized judge
25 authorized to issue search warrants in your jurisdiction?

1 A Yes, sir.

2 Q In front of Judge Green what steps do you take whenever,
3 whenever you're presented with that search warrant?

4 A Okay. Well, I had to read the facts to him and why I
5 thought we should be able to get a search warrant, which would
6 have been prepared with the affidavit.

7 Q Okay. And he put you under oath?

8 A Yes, sir. We had to swear.

9 Q Okay. And when you met with Judge Green who else was
10 present?

11 A I was thinking it was Damon Vescovi, but I'm not a
12 hundred percent on that.

13 Q Another Horry County officer?

14 A Yes, sir.

15 Q And you were present. Did they, did they affirm your
16 --

17 A Yes, sir. They, they pretty much they told the judge the
18 same thing I told him.

19 Q And your affidavit, do you see that before you?

20 A Yes, sir.

21 Q Could you read your affidavit, Sergeant Sarvis?

22 A (As read) "In the matter of Sandy Locklear, the date, the
23 date of August the 20th, 2012, I, Detective Sarvis, do attest
24 that I'm a sworn law enforcement officer in the State of North
25 Carolina. I'm employed as a detective with the Tabor City

Motions

221

1 Police Department. I have worked for Tabor City 58 months. I
2 do have my general certification in law enforcement in North
3 Carolina. I, Detective Sarvis, do swear and attest that on 8-
4 19, 2012, the Horry County -- in Horry County, South Carolina,
5 a murder occurred with two victims being shot execution style,
6 placing a pillow over them and firing a small caliber
7 projectile into their head causing the death of a human being.
8 Witness statements obtained during the investigation disclosed
9 the motive behind the murders to be for fiduciary gain by the
10 wife of one of the victims. The wife identified as Sandy
11 Locklear lives and resides at [REDACTED] [REDACTED] in Tabor
12 City, North Carolina, and is currently incarcerated in Horry
13 County Detention Center charged with two counts of murder and
14 associated crimes with warrants issued upon affidavit of
15 probable cause presented to a South Carolina Magistrate Judge.
16 Eyewitness statements obtained by Horry County Detectives
17 revealed the Defendant Locklear recently obtained a life
18 insurance policy naming herself as the beneficiary and the
19 decedent as the insured. The document was subsequently
20 observed inside a container stored in a non-descriptive drawer
21 within the kitchen that also contained a small caliber pistol
22 significantly similar to the weapon used to commit the crimes.
23 I, Detective Sergeant, do request that a search warrant be
24 issued to collect the document, instrument or corresponding
25 papers directly related to the life insurance policy

1 identifying Amos Hatfield as the decedent -- as the insured
2 along with weapons, pistol or ammunition located and contained
3 in the aforementioned storage drawer," and signed by Jerry
4 Sarvis and the magistrate actually on this search warrant was
5 Lanier.

6 Q Oh, it was Judge Lanier in that one?

7 A Judge Lanier.

8 Q Okay.

9 A I think the other --

10 Q It wasn't Judge Green. It was Judge Lanier.

11 A The other one, search warrant was Judge Green.

12 Q On the -- oh, okay, and that's found ---

13 A On the vehicle.

14 Q --- discussing on the vehicle.

15 A Yeah.

16 Q So this was Judge Lanier. Okay.

17 A This is Judge Lanier done this one.

18 Q Okay. So, you just wanted to correct it was Judge
19 Lanier, not Judge Green.

20 A Yeah. That's right, correct.

21 MR. RICHARDSON: Your Honor, I would just ask the record
22 reflect any time I said Judge Green, it was Judge Lanier.

23 THE COURT: All right.

24 BY MR. RICHARDSON:

25 Q Now, and Judge Lanier signed this search warrant?

Motions

223

1 A Yes, sir.

2 Q Upon him signing the search warrant, finding probable
3 cause, what if anything did you all do with the search
4 warrant?

5 A We went to [REDACTED] [REDACTED] and made entry into the
6 house and conducted the search.

7 Q How did you all make entry?

8 A Had to bust the front window out of the house to get in
9 it. Me and one of my officers went in first and made sure it
10 was safe inside.

11 Q Okay. What if any items were recovered to your
12 knowledge?

13 A Yeah. There was some items recovered. Let me look.

14 Q You got a return?

15 A It's a return. Two insurance policies located in a
16 briefcase under the bed, a black pocketbook with a cell
17 phone.

18 Q Okay. So the insurance policies were found there?

19 A Yes, sir.

20 Q They weren't in the kitchen. They were under the bed?

21 A Yes, sir.

22 Q And there were some other items that were found?

23 A Yeah.

24 Q Okay. But they were in the house?

25 A Yes, sir.

1 Q And do you know if those items were ever given to anybody
2 else?

3 A We turned them over to the detectives from Horry County.

4 Q Horry County. And did you review those policies,
5 insurance paperwork?

6 A We just saw who, who they was made out to, made sure we
7 had the right policies.

8 Q Okay. The policy, who was the insured on this
9 policy?

10 A Amos Hatfield.

11 Q And who was the beneficiary?

12 A Oh, Ms. Locklear.

13 MR. RICHARDSON: Your Honor, in an effort to save time,
14 I'm going into the secondary search warrant at this time, the
15 same witness.

16 THE COURT: All right.

17 BY MR. RICHARDSON:

18 Q And I won't have to get into it again where you work and
19 all that. Let me show you a secondary search warrant marked
20 Court's Number Seven.

21 MR. RICHARDSON: That was Court's Six, Your Honor, for
22 the record.

23 THE COURT: Are you putting that in?

24 MR. RICHARDSON: Yes, sir. I would put it in for the
25 purpose of this hearing.

Motions

225

1 THE COURT: Any objection to Court's Exhibit Six?

2 MR. WILSON: No objection at this time, Your Honor.

3 THE COURT: All right, Court's Exhibit Six admitted into
4 evidence without objection.

5 (Court's Exhibit Number Six [Search Warrant, [REDACTED]
6 [REDACTED], 8-20-12] appropriately marked.)

7 BY MR. RICHARDSON:

8 Q Do you recognize Court's Seven, Detective?

9 A Yes, sir. This is a search warrant for Coteara Todd's
10 vehicle, a 1998 Dodge Neon.

11 Q Okay. Now, on -- and for what purpose did you -- that's
12 a search warrant for Coteara Todd's.

13 A Uh-huh.

14 Q Who approached you on getting a search warrant for
15 Coteara Todd's vehicle?

16 A It would be -- it was the detectives and I'm not exactly
17 sure which ones.

18 Q Horry County detectives?

19 A It was Horry County detectives.

20 Q And did it pertain to this particular case?

21 A Yes, sir.

22 Q Okay. And did you -- at that point did you know the
23 connection of Coteara Todd to this case?

24 A No, sir. Well, let me clarify that. I, I think there
25 was a connection that one of the individuals had been seen in

1 the vehicle.

2 Q Ms. Locklear or one of the other individuals?

3 A The suspects.

4 Q Okay. One of the other suspects. Now, this request to
5 get a search warrant on Coteara Todd's vehicle, when, when was
6 that request made?

7 A 21st.

8 Q The 21st of August, 2012?

9 A Yes, sir.

10 Q Okay. And once again, if you'd just take us on -- take
11 us through how you sought that.

12 A You talking about the affidavit?

13 Q Yes, sir.

14 Q Okay. (As read) "In the matter of Coteara Marie Todd, on
15 August the 21st, 2012, I, Detective Sarvis, do attest I'm a
16 sworn law enforcement officer in the State of North Carolina.
17 I am employed as a detective with the Tabor City Police
18 Department. I have worked for Tabor City for 58 months. I do
19 have my general certification in law enforcement. I,
20 Detective Sarvis, do swear and attest on 8-19, 2012, Horry
21 County, South Carolina, a murder occurred with two victims
22 being shot execution style by placing a pillow over them and
23 firing a small caliber projectile in their head causing death
24 in a human being. In investigation it was determined that
25 Defendants subsequently fled to North Carolina and was

Motions

227

1 observed in a red in color 1998 Dodge Neon with North Carolina
2 license plate ALC9893 and VIN number 1" -- looks like -- "B,
3 boy, 3E, easy, S, Sam, 47COWD597905. I, Detective Sarvis, do
4 request that a search warrant be issued to collect the
5 instruments associated with the homicide that occurred in
6 Horry County, South Carolina, on August 18th, 2012, and a
7 subsequent arson. The Defendant who has been charged in the
8 murder was observed in the vehicle to be searched
9 contemporaneous to the crime that was seen. There is
10 reason to believe that the vehicle to be searched contains
11 instruments that -- to include firearms, ammunition, bloody
12 clothing, DNA and associated biological evidence, 21st day
13 of August, 2012, I am," signed by me and Magistrate
14 Green.

15 Q Okay. So this is the one you presented to Magistrate
16 Green?

17 A Yes, sir.

18 Q And the car, was that located within your
19 jurisdiction?

20 A Yes, sir.

21 Q Do you know if that was ever served? Did Magistrate
22 Green, did he put you under oath?

23 A Yes, sir.

24 Q Did you swear to the affidavit?

25 A Yes, sir.

1 Q Did he sign the search warrant?

2 A Yes, sir.

3 Q Was that search warrant subsequently served?

4 A Yes, sir.

5 Q Upon serving that search warrant was that vehicle,
6 indeed, seized?

7 A Yes, sir.

8 Q And what happened to that vehicle?

9 A It was, it was impounded and brought to the police
10 department.

11 Q Your police department?

12 A Yes, sir.

13 Q Was that vehicle ever turned over to anyone else?

14 A No, sir.

15 Q And when was that search warrant executed?

16 A 21st of August, 2012.

17 Q And what if anything was found in, in the vehicle?

18 A According to the return only photographs, photos was
19 collected.

20 Q Photos.

21 A Nothing else.

22 MR. RICHARDSON: The Court's indulgence. Your Honor,
23 nothing further from this witness.

24 THE COURT: All right. Are you tendering that into
25 evidence?

Motions

229

1 MR. RICHARDSON: Oh, yeah. I'm sorry, Your Honor. I'd
2 like to -- the State would seek to admit Court's --

3 THE COURT: Any objection?

4 MR. WILSON: No objection at this time, Your
5 Honor.

6 MR. RICHARDSON: -- for the purposes of this hearing.

7 THE COURT: All right. Court's Exhibit Number
8 Seven admitted into evidence without objection.

9 (Court's Exhibit Number Seven [Search Warrant, Dodge
10 Neon, dated 8-21-12] appropriately marked.)

11 THE COURT: All right, cross examination.

12 MR. WILSON: If it please the Court, Your Honor.

13 CROSS EXAMINATION

14 BY MR. WILSON:

15 Q Major, how you doing today, sir?

16 A Fine.

17 Q All right. Let me ask you just a few questions.

18 A Yes, sir.

19 Q When the detectives came to talk to you did they show you
20 any evidence?

21 A No, sir. Not to my -- they just --

22 Q All right. Okay. Because in this --

23 A They just told me the facts.

24 Q Told you the facts. All right. In this affidavit, and
25 If you don't mind I'm going to read just this little section.

1 It says, (as read) "Eyewitness statements obtained Horry
2 County" -- excuse me -- "by Horry County Detectives revealed
3 Defendant Locklear recently obtained a life insurance policy
4 naming herself as a beneficiary and the decedent as the
5 insured. The document was subsequently observed inside a
6 container stored in her non-descript drawer." That, those are
7 your words; correct?

8 A Yeah.

9 Q But you never saw a statement from any eyewitness;
10 correct?

11 A No, sir. I relied on the officers as being truthful to
12 me.

13 Q Okay. So but let me ask you this, as a law enforcement
14 officer, when you go to get a -- an actual search warrant,
15 isn't it typical or customary to have some idea what's going
16 on in the case for a search warrant?

17 A Yes, sir. I, like I said, we discussed the case. They
18 went over the case with me and told me what they had.

19 Q Okay. All right. And they told you they had eyewitness
20 statements; right?

21 A Yes, sir.

22 Q All right. Which means you're saying in this affidavit
23 that they told you they had multiple statements. Would that
24 be fair?

25 A I think there -- yes, sir. I guess so.

Motions

231

1 Q Well, let me -- I just want to be clear on the record

2 --

3 A Uh-huh.

4 Q -- because this is important.

5 MR. WILSON: If I may approach, Your Honor.

6 THE COURT: All right.

7 BY MR. WILSON:

8 Q I'm just want you to read this part that I've got
9 highlighted right there to the Court.

10 A Okay.

11 Q And my question is this, when you wrote this affidavit
12 were you under the impression that Horry County Detectives had
13 multiple statements that -- multiple eyewitness statements
14 that, that there were actually a policy and a gun in this
15 house?

16 A Yes, sir.

17 Q Okay. Thank you very much. Now, let me ask you this
18 question also. You said you saw the return from this house;
19 correct?

20 A Yes, sir. Well, yeah.

21 Q Okay. I apologize. Let me get this from you.

22 MR. WILSON: Your Honor, approach?

23 THE COURT: All right.

24 MR. WILSON: Thank you, Judge. May I approach, Your
25 Honor?

1 THE COURT: Yes, sir.

2 BY MR. WILSON:

3 Q If you could, and it's a little difficult to read because
4 it was a little difficult for me to read, but can you tell me
5 what they found in the house?

6 A It says, (as read) "I seized two insurance policies
7 located on, in a briefcase under the bed, a black pocketbook
8 with cell phone."

9 Q Okay. Does it say they found a weapon in that house?

10 A No, sir.

11 Q Okay. Thank you, sir. So just my last question, when
12 you went to get this affidavit it was your impression there
13 were multiple statements, eyewitness statements which placed
14 someone, I guess, in a position to see these things in the
15 house; correct?

16 A Yes, sir.

17 Q Not just one statement.

18 A Yes, sir.

19 Q All right. Did they ever bring you a statement from any
20 eyewitness?

21 A Not that I can remember.

22 Q Okay.

23 A Far as I know.

24 Q Did they bring you anything, pictures from the house,
25 anything that would lead you to believe, one, there was a

Motions

233

1 murder, and two, that Sandy Locklear was involved other than
2 them telling you?

3 A The best I can remember, no.

4 MR. WILSON: I have no further questions, Your
5 Honor.

6 THE COURT: All right. Redirect.

7 REEXAMINATION

8 BY MR. RICHARDSON:

9 Q Detective Vescovi was there whenever the search warrants
10 --

11 A Yes, sir.

12 MR. RICHARDSON: Your Honor, I have no further questions
13 of this witness at this time.

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

15 MR. RICHARDSON: The State would call Detective Damon
16 Vescovi to the stand.

17 Whereupon, Damon Vescovi was called to the stand, duly
18 sworn by the clerk and testified as follows:

19 THE CLERK: Please be seated and state your full name,
20 spell your last name for the Court, please, sir.

21 REPORTER: Can you spell your first name, too, your first
22 and last name? Thank you.

23 MR. VESCOVI: Damon Vescovi, D-A-M-O-N, last name, V, as
24 in Victor, E-S-C-O-V, as in Victor, I.

25 EXAMINATION

1 BY MR. RICHARDSON:

2 Q Detective Vescovi, just for the purpose of this hearing
3 where are you employed?

4 A Horry County Police Department.

5 Q In what capacity?

6 A Currently, I'm a narcotics detective.

7 Q How about back in August 2012?

8 A During the time I was a violent crimes detective.

9 Q Okay. And you've been present in the courtroom?

10 A I'm sorry?

11 Q You've been present in the courtroom?

12 A Yes. Yes, sir.

13 Q Were you involved in the investigation of this case?

14 A Yes, sir, I was.

15 Q Did you have the opportunity to go over to Tabor City in
16 the evening of August 20, 2012?

17 A Yes, sir.

18 Q Now, prior to that, prior to that evening when this
19 search warrant was gotten, did a witness come in the police
20 department?

21 A Yes, sir.

22 Q Faye Hunt?

23 A I believe so. Yes, sir.

24 Q Okay. And were you present whenever she met with
25 Detective Bryan Wilson?

Motions

235

1 A I was not in the room, but I was there when she came and
2 provided information to Detective Wilson.

3 Q Okay. And do you know what information she provided?

4 A Yes, sir. It was information pertaining to the insurance
5 policies that supposedly Ms. Locklear had taken and filed with
6 whatever company naming her as a beneficiary.

7 Q And to your knowledge did she discuss the possibility of
8 a gun being in the residence as well?

9 A Yes, sir. I don't recall the details. I do remember a
10 small caliber pistol being somewhere in the residence, I
11 believe in a box of some sort, but I can't recall the exact
12 details of the information.

13 Q Okay. But there, there -- but really she was telling you
14 about insurance policies.

15 A Yes, sir.

16 Q And that information, was that conveyed to Major Jerry
17 Sarvis?

18 A Yes, sir.

19 Q Okay.

20 A Yes, sir.

21 Q To the issuing -- you were present whenever these
22 warrants were signed?

23 A Yes, sir.

24 Q And did one Horry County Detective, either you or
25 Detective Frebowitz, convey this to the magistrate as

1 well?

2 A Yes, sir.

3 Q Okay. And you all were placed under oath?

4 A Yes, sir.

5 Q Okay. And the information with regard to the insurance
6 policy, prior to that witness coming in was there any other
7 information with regard to the insurance policies?

8 A No to my knowledge. I don't recall it. There could have
9 been. I just don't recall.

10 Q And no doubt about it by the evening of August 20th, 2012,
11 the Defendant was incarcerated?

12 A I'm sorry?

13 Q She was incarcerated at that point; correct?

14 A Yes, sir.

15 Q She had been charged?

16 A Yes, sir.

17 Q In the murders of her husband and stepson?

18 A Uh-huh.

19 MR. RICHARDSON: Your Honor, with regard to these
20 particular matters I have no further questions of Detective
21 Vescovi.

22 THE COURT: All right, cross examination.

23 MR. WILSON: If it please the Court, Your Honor.

24 THE COURT: All right.

25 EXAMINATION

Motions

237

1 BY MR. WILSON:

2 Q Detective, you are an Horry County Detective;
3 correct?

4 A Yes, sir.

5 Q Okay. And your province is basically in Horry County?

6 A Yes, sir.

7 Q Okay. And I would assume that you have no legal
8 authority or jurisdiction in North Carolina; is that
9 correct?

10 A No, sir.

11 Q Okay. Which is why you guys contacted the major;
12 correct?

13 A Correct.

14 Q Okay. All right. Let me ask you this. When Faye Hunt
15 came in, the Prosecutor asked you about Faye Hunt. When Faye
16 Hunt came in to meet with you why did she tell you she was
17 coming there?

18 A She never met with me specifically. She met with another
19 detective.

20 Q Okay.

21 A Detective Wilson.

22 Q Okay.

23 A I just -- I was there when that, when that occurred.

24 Q I understand, but you admit that you obviously knew about
25 the statement?

1 A Yes, sir.

2 Q Okay. And you would have reviewed the statement I would
3 imagine?

4 A Just in general conversation amongst all the
5 detectives.

6 Q Okay.

7 A The information was relayed where I, where I was privy to
8 it.

9 Q Okay. All right. But you --

10 A But it didn't come directly to me, and I wasn't passing
11 it on to another, say the case agent.

12 Q All right. Well, let me ask you this. You testified a
13 little bit before on direct examination that you went before a
14 magistrate, a judge?

15 A Uh-huh.

16 Q And that you swore these things were true; correct?

17 A Yes, sir.

18 Q Okay. So you would have known about Faye coming in and
19 her statement, I imagine.

20 A Yes, sir.

21 Q Okay. I'm just going to let you read her statement.

22 MR. RICHARDSON: I've got it.

23 MR. WILSON: You got it. Okay.

24 BY MR. WILSON:

25 Q If you will, please, read the first four lines of her

Motions

239

1 statement to the Court, please.

2 A (As read) "I came to the police department to clear my
3 name. Sandy Lee Locklear Hatfield, brother Timmy Locklear, is
4 telling my family and friends that I had something to do with
5 her husband and stepson's death." Continue?

6 Q Yes, sir, please.

7 A (As read) "I also came to tell about the million dollar
8 policy that the victim left Sandy L. Locklear Hatfield and
9 that if she - if he died today she would be a rich," and I
10 quote, "bitch."

11 Q Yes, sir. All right. Thank you very much.

12 A Uh-huh.

13 Q All right. Let me ask you a question. When you take a
14 statement from someone, any witness, are you ever concerned
15 about the veracity of the statement?

16 A Certainly.

17 Q All right. And in this case when she comes in, and she
18 clearly says that -- well, and I assume that because you swore
19 to it that you would know, she came in, she said, "To clear
20 her name."

21 A Uh-huh.

22 Q Correct? Would you be concerned about that at all as an
23 officer?

24 A Depends on the situation, I guess.

25 Q Well, in this situation when there's a double homicide

1 and there's an expectation of privacy issue at, at stake for
2 this Defendant whose house you broke the window in to go into
3 the house --

4 A Uh-huh.

5 Q -- would you say that it's important to have a witness
6 who has serious veracity, that they're trustworthy?

7 A Yes, sir. Yes, sir.

8 Q Okay. Now, let me ask you this. When you went to see
9 the major, who was kind enough to come here today, when you
10 went to go see him, did you all tell them, him that you all
11 had multiple statements?

12 A I do not recall. The -- and just so you know, Detective
13 Frebowitz, who was the case agent, was there as well. So most
14 of the information was derived from him.

15 Q Okay. All right. So, you --

16 A To what -- how -- to what number count of statements we
17 had, I couldn't recall.

18 Q Okay. So, Detective Frebowitz you're saying was there,
19 that Detective Frebowitz also swore under oath that this
20 affidavit was true?

21 A Yes, sir.

22 Q And accurate?

23 A Yes, sir.

24 Q Okay. Let me ask you to read over this affidavit. I
25 want you to read the part that's in green to the Court,

Motions

241

1 please.

2 A (As read) "Eyewitness statements obtained by Horry County
3 Detectives revealed Defendant Locklear recently obtained a
4 life insurance policy naming herself as the beneficiary and
5 the deceased as the insured. The document was subsequently
6 observed inside a contained -- container stored in non-
7 descriptive, non-descript drawer within the kitchen that also
8 contained a small caliber pistol significantly similar to the
9 weapon used to commit the murders."

10 Q Now, I ask you under oath today to tell me whether or not
11 there were multiples statements. That does say multiple
12 statements; correct? It says statements.

13 A Yes, sir. Yes, sir.

14 Q Were there multiple statements which suggested that?

15 A To be honest, I don't know.

16 Q All right. If I asked --

17 A I don't recall.

18 Q I apologize. I'm sorry. I didn't mean to interrupt
19 you.

20 A That's fine.

21 Q You go ahead.

22 A I don't recall.

23 Q Okay. All right. If I was to tell you that this is the
24 only statement that was in the record --

25 A Uh-huh.

1 Q -- would you doubt that at all?

2 A I wouldn't know. I don't recall.

3 Q Okay. All right. Also, I want to present this to you.

4 MR. RICHARDSON: Well, if you're going to present, go
5 ahead and put the whole thing in.

6 MR. WILSON: Okay. Thank you much. Appreciate it. Your
7 Honor, may I approach the witness?

8 THE COURT: Yes.

9 BY MR. WILSON:

10 Q Can you tell me what that is? Just take a brief look at
11 it. Take your time.

12 A Appears to be a statement.

13 Q All right.

14 A A page two of two.

15 Q Okay. Tell me what the statement says. What does the
16 statement say?

17 A (As read) "Like his daughter and son she helped her
18 marriage" -- I guess that's -- "she helped her marriage a
19 secret. Also, she wouldn't let him stay with her. I, Whitney
20 Faye Hunt, wrote some of this statement for my mother," and
21 then it is signed Whitney, looks like Whitney Hunt.

22 Q Okay. So at the end it actually says that the daughter
23 wrote some of the statement for the mother; is that
24 correct?

25 A I assume so.

Motions

243

1 Q Okay. Did you know that?

2 A No. I did not.

3 Q So when you swore to the judge you didn't tell the judge
4 that; did you?

5 A I'm sorry?

6 Q When you swore to the judge, did you tell the judge that
7 part of this statement was written by someone else other than
8 the affiant?

9 A I didn't tell the judge anything.

10 Q Okay. Well, did you --

11 A I was present.

12 Q I apologize.

13 A When this took place.

14 Q Did you, did you tell the major? I guess that's my
15 question.

16 A I'm sure we discussed it in some capacity, but to what
17 detail that I indulged him I do not remember. I know that the
18 heart of the conversation was between the major and Detective
19 Frebowitz because as he was the case agent.

20 Q Thank you so much, Detective. I appreciate it.

21 A Uh-huh.

22 MR. WILSON: No further questions, Your Honor.

23 THE COURT: Redirect?

24 MR. RICHARDSON: Real briefly.

25

REEXAMINATION

1 BY MR. RICHARDSON:

2 Q Just so we can understand the full context, the document
3 that was presented to you by Mr. Wilson, and so we're not
4 looking at a void, would you just read this whole page to us,
5 both pages?

6 A (As read) "I came to the police department to clear my
7 name. Sandy Lee Locklear Hatfield, brother Timmy Locklear, is
8 telling my family and friends that I had something to do with
9 her husband, stepson's death. I also came to tell about the
10 million dollar policy that victim left Sandy L. Locklear
11 Hatfield, and that if he died today she would be a rich bitch.
12 She also showed me a gold pearl 25 caliber which she tried
13 selling to my boyfriend for \$250, and she hang with bad
14 company. The skinny black guy had Sandy Locklear Hatfield
15 lawnmower and bigger" -- I think it says -- I'm not sure what
16 that is -- "bigger guy took a shower the same day, and Amos
17 Hatfield would also visit, could not stay but a short or else
18 she would cuss, and the day they got married she made him take
19 the wedding band off and she helped her ring in a jury box.
20 She acted like she didn't like his daughter and son. She kept
21 her marriage a secret. Also she wouldn't let him stay with
22 her. I, Whitney Faye Hunt wrote some of this statement for my
23 mother. Signed, Whitney Hunt."

24 Q At the bottom of the page, is there an advisement that's
25 printed in some way?

Motions

245

1 A Yes.

2 Q What does that say?

3 A (As read) "I have read each page of this statement
4 consisting of two pages, each which bears my signature and
5 correction, any if bear my initials and I certify that the
6 facts contained herein are true and correct."

7 Q And who signed that?

8 A Faye Hunt. Yeah.

9 Q And does it indicate what time this statement was
10 taken?

11 A It does. 3:30 p.m. on 8-20, 2012.

12 Q And that's before you all got the search warrant?

13 A Yes.

14 Q And where is Ms. Hunt from?

15 A [REDACTED] Scranton, South Carolina.

16 Q Okay. So she's not even from Horry County?

17 A No, sir.

18 MR. RICHARDSON: The State would introduce for the
19 purposes of this hearing Court's Exhibit 18.

20 THE COURT: Any objection?

21 MR. WILSON: No objection, Your Honor.

22 THE COURT: Court's Exhibit 18 admitted into evidence
23 without objection.

24 (Court's Exhibit Number 18 [Faye Hunt Statement] marked
25 appropriately.)

1 MR. RICHARDSON: Your Honor, I have no further
2 questions --

3 A I don't know. I don't remember whose this was.

4 MR. RICHARDSON: -- no further questions of Detective
5 Vescovi with regard to this particular matter.

6 THE COURT: All right. You can step down.

7 MR. WILSON: Thank you, Brad.

8 MR. RICHARDSON: Uh-huh.

9 MR. WILSON: Appreciate that.

10 THE COURT: Call your next witness.

11 MR. RICHARDSON: Your Honor, that would be it for this
12 matter. At this time the State would move to introduce the
13 search warrant, of course anything taken into evidence or not
14 into evidence, but move that the search warrant should be
15 upheld. Major Jerry Sarvis, at the time Lieutenant Sarvis,
16 swore to the affirmation. We had one of the persons that was
17 actually present as representative of Horry County there,
18 talked about what was affirmed there at that. There was
19 introduction of a statement that was taken. It was a
20 statement, not statements. There were other statements that
21 had been taken, including the Defendant's own statement, Your
22 Honor, with regard to where she lived, which is included on
23 her Miranda form and everything else. Your Honor, they, they
24 properly went before a magistrate. They swore before a
25 magistrate. The magistrate had more than sufficient evidence

Motions

247

1 and more than sufficient probable cause to allow them entry
2 into that home, including the statement, including the fact
3 that the Defendant had been charged with the crime after her
4 statements, Your Honor, and everything that was sworn. There
5 was sufficient probable cause. They went through the right
6 steps and it should be allowed, Your Honor.

7 THE COURT: All right, Mr. Wilson.

8 MR. WILSON: Your Honor, obviously, we are concerned
9 about the search warrant for several reasons. Let me first
10 start with on the face of the actual warrant, I mean, excuse
11 me, on the affidavit itself, it's untrue. It was a -- it's an
12 untrue statement that was made to a magistrate, and he
13 actually issued the search warrant based on the fact that he
14 believed that there were statements, and in the law I know
15 they say it's always, you know, a letter off. Well, in this
16 case it is because if there were statements that were made
17 this Defendant never made a statement about having a policy or
18 having a gun. This specifically says eyewitness statements
19 obtained and the magistrate was misled by that. The other
20 thing I'm concerned about as well is, obviously, my client has
21 an expectation of privacy in her home. That's a guaranteed
22 Fourth Amendment Right, and that before they can supersede
23 that or circumvent it in this case, which is what had happened
24 in this matter, they've got to get probable cause, and Faye
25 Hunt coming in with a clear motive to lie is not enough for a

1 witness who comes in to say, "I'm clearing my own name.
2 Here's what I know." That is not probable cause. It doesn't
3 rise -- it may rise to the level of being suspicious, but it
4 doesn't rise to the level of probable cause. Now, if they had
5 multiple statements like this affidavit claims to have, then I
6 would say, "You know what, they got multiple statements saying
7 that there's a policy, there's a gun," and I might add I asked
8 them what they found when they went to the residence. They
9 found no gun at all, but that's not even the issue. The issue
10 begins at the beginning. Probable cause has to be established
11 before they can go into somebody's home and I didn't do it.
12 They went into the home, broke the glass to get into the
13 place, and they got a warrant based on bad, bad, bad
14 affidavit, and on top of that, too, the affidavit of Faye Hunt
15 I would ask the Court to understand that the veracity of her
16 statement has to be -- to come into question, and the police
17 officers, the detectives, Detective Frebowitz, as well as
18 Detective Vescovi, before they swore, they should have made
19 sure, one, the affidavit was correct and true and accurate
20 because that's what the law requires. That is black letter
21 law. I have nothing further to say, Judge, about the
22 issue.

23 THE COURT: All right. All right. I'm going to find the
24 search warrant is valid.

25 MR. WILSON: Thank you, Your Honor.

Motions

249

1 THE COURT: All right. That's both Court's Exhibit Six
2 and Court's Exhibit Seven.

3 MR. RICHARDSON: Thank you, Your Honor.

4 THE COURT: All right.

5 MR. RICHARDSON: And I'm going to call Detective Vescovi
6 one last time, Your Honor.

7 EXAMINATION

8 BY MR. RICHARDSON:

9 Q We won't go through everything, Detective Vescovi. You
10 were working this case back in August 2012. It was a double
11 homicide and possible rape; correct?

12 A Yes, sir.

13 Q And what was your main focus on Sunday, August 19th, 2012?
14 What were your details? What were your details?

15 A Well, initially, when I responded, I was assisting as a
16 -- an assisting detective with general functions. I do have a
17 special skill set that in this case -- well, I was requested
18 to send off for some phone records that was in the form of an
19 exigent circumstance request.

20 Q Could you talk to us about your specific skill set,
21 your training and what is that, in cell phone data
22 retrieval?

23 A Cellular data analysis.

24 Q Okay. And in cellular data analysis, what, what type of
25 education do you have?

1 A I received training in basically how to request, send
2 off, request for certain cell phone data records using a
3 particular vernacular, if you will, for each respective phone
4 company. Each one's different, and obtaining those records,
5 analyzing them in different, different ways, particularly and
6 the one that perks most attention is the plotting of
7 geographic locations.

8 Q Okay. And now, you received numerous courses -- you
9 know who to contact when you have an exigent request?

10 A Yes, sir.

11 Q Okay. And the term lerts do you know what that is?

12 A I'm sorry?

13 Q L-E-R-T-S? Whenever you request, is there a particular
14 group you request from, request records from with regard to
15 cell phones?

16 A The actual phone company, whatever the provider may be
17 for that particular cell device.

18 Q Okay.

19 A I think in this matter it was Verizon.

20 Q Now, particularly with regard to information in this
21 particular case, on that day did you get a couple of search
22 warrants that day?

23 A Yes, sir.

24 Q And what were those in response to?

25 A Those were the victims Amos and Thomas Hatfield, I

Motions

251

1 believe.

2 Q Okay.

3 A Excuse me.

4 Q Those were for their phones found at the scene?

5 A Yes, sir.

6 Q Okay. So those, you actually had physical custody of
7 those phones?

8 A Yes, sir. Somebody had collected them in the means of
9 processing the scene.

10 Q And so when you -- I'm going to show you what's been
11 marked as State's or Court's 11 and 12. See if you can
12 identify those.

13 A The first, which is marked 11, is a search warrant
14 requesting phone data for a black in colored cellular device.
15 It gives a serial number. I don't know particularly just from
16 the warrant itself whose phone is whose. 12 is a search
17 warrant for the same except it was a black LG TracFone with a
18 serial number, model number listed. I did not insert a name
19 on this one either.

20 Q You inserted the description?

21 A The owner, the believed to be owner, but there is an
22 affidavit. You want me to read the affidavit?

23 Q Please, and cite which one you're reading from?

24 A Okay, 12.

25 Q Okay.

1 A (As read) "On August 19th, 2012, a double homicide
2 occurred at [REDACTED] in which two male subjects
3 entered the home and shot two of the live-in residents in the
4 back of their heads. The female was witness to the incident
5 and made a 911 distress call to report the incident from a
6 cellular device utilizing phone number [REDACTED]. This
7 phone was located by law enforcement after execution of a
8 search warrant for the residence. Based on these facts
9 there's probable cause for the material/data requested in this
10 affidavit."

11 Q Okay. And you're saying the 911 call was made from that
12 one?

13 A Yes, sir.

14 Q Okay. Were you able to identify whose phone that
15 was?

16 A I could if I actually had the record. I don't -- just
17 from this search warrant itself, no. It appears to be one of
18 the two victims.

19 Q Okay. And the, the -- if you could just read very
20 quickly the affidavit on -- I think you just read number 12.
21 If you'd read 11?

22 A Yeah. It'll be similar in nature. (As read) "On August
23 19th, 2012, a double homicide occurred at [REDACTED]
24 in which two male subjects entered the home and shot two of
25 the live-in, and shot two of the live-in residents in the back

Motions

253

1 of their heads. A black" -- I don't know how you pronounce
2 that -- "Kyocera made cellular phone was located by law
3 enforcement after execution of a search warrant for the
4 residence. The identity of the owner of the phone is unknown
5 at this time. Based on these facts there's probable cause for
6 the material/data requested in this affidavit."

7 Q What time did you seek these search warrants?

8 A It is signed by the judge at 11:40 a.m. on the 19th of
9 August.

10 Q So that's pretty early in the morning?

11 A Yes, sir.

12 Q Okay, it's 11:40 a.m.?

13 A Uh-huh.

14 Q And you're doing this while Ms. Locklear is being
15 questioned by detectives?

16 A Yes, sir.

17 Q Okay. And you went and got it signed by Judge Butler;
18 is that correct? My recollection may not be correct. So I
19 ask you, did you get it signed by a magistrate?

20 A Yes. Aaron Butler.

21 Q Okay. He signed both of them? You were placed under
22 oath?

23 A Yes, sir. Yes, sir.

24 Q Swore to your affidavit?

25 A Yes, sir.

- 1 Q Did you ever prepare a return?
- 2 A Yes, sir.
- 3 Q And when was that?
- 4 A It's not time stamped.
- 5 Q Not time stamped?
- 6 A I don't believe.
- 7 Q Attached to the return do you have the --
- 8 A It, it, it has the, the material that was obtained from
- 9 the execution of the search warrant.
- 10 Q Okay. And in the execution of those search warrants,
- 11 and you stated Judge Butler had no problem signing these
- 12 search warrants, they're, they're phones found at the crime
- 13 scene?
- 14 A Correct.
- 15 Q On any of those do you find a, a phone number attributed
- 16 in the return to Sandy?
- 17 A Yes, I did.
- 18 Q And what's that phone number?
- 19 A [REDACTED].
- 20 Q Okay. And which phone is that on, which return is that
- 21 on?
- 22 A This is 12, which would be a, a black LG TracFone.
- 23 Q Okay.
- 24 A Silver and black LG TracFone.
- 25 Q Thank you.

Motions

255

1 MR. RICHARDSON: Your Honor, for the purpose of this
2 hearing, the State would seek to introduce Court's 11 and 12.

3 THE COURT: Any objection?

4 MR. WILSON: No objection, Your Honor.

5 THE COURT: All right.

6 (Court's Exhibit Number 11 [Search Warrant for black in
7 color cellular device] and Court's Exhibit Number 12 [Search
8 Warrant for black LG TracFone] appropriately marked.)

9 BY MR. RICHARDSON:

10 Q Now, at some point that day, August 19th, 2012, did you
11 ever, did you ever get a number that you believed to be
12 attributed to Sandy Lee Locklear?

13 A Yes, sir.

14 Q And what number was that?

15 A The one that I just quoted [REDACTED] --

16 Q [REDACTED]?

17 A [REDACTED] something and another.

18 Q And now, when you got that information, from whom did you
19 get that information?

20 A I would assume Detective Frebowitz, but I, I got the
21 information as well from the, the phone.

22 Q Okay. And whenever you got this information, what was
23 your understanding with regard to the cell phone, attached,
24 attached to that [REDACTED] or --

25 A Ms. Locklear's?

1 Q Yes?

2 A It was my understanding that during the event after the
3 homicides and the alleged rape that when the perpetrators fled
4 the scene they took her cell phone and vehicle as well.

5 Q Okay. And that was your understanding?

6 A Yes, sir.

7 Q Okay. What were -- what were you to do once you -- I
8 mean, you had cell phones that you got search warrants on.
9 What'd you do with this phone number?

10 A Ms. Locklear's I made an exigent request to Verizon for
11 cell location, text messaging content, text messaging detail,
12 subscriber information, a tower list and a call detail record,
13 but now --

14 Q Now, this exigent request, why, why did you make an
15 exigent request?

16 A The -- we had some violent offenders that had fled the
17 area that posed a significant danger to the community, the
18 cell phone being a possible means of investigative avenue to,
19 to find and locate these individuals and get them off the
20 street.

21 Q Okay. So you were trying, if I understand your testimony
22 correctly, you are attempting to locate two people that were
23 possibly guilty of a double homicide?

24 A Correct.

25 Q That had allegedly stolen a cell phone?

Motions

257

1 A Correct.

2 Q And you were trying to use that cell phone, that cell
3 phone number to track them?

4 A Correct.

5 Q And with regard to permission to use those records, what
6 was your understanding?

7 A It was, it was my understanding that she said it was
8 okay. Again, I know we've talked about it already, but
9 initially she was viewed as a victim so.

10 Q And now, you did get a search warrant on that; correct?

11 A No, that was an exigent request. It was followed by a
12 search warrant at a later date.

13 Q Okay. And the purpose of getting an exigent request
14 that day --

15 A Uh-huh.

16 Q -- is there anything in particular with regard to text
17 messages and cell locators and stuff?

18 A Yes. Certain perishable evidence, possible perishable
19 evidence, cell location. There's a variety of things from an
20 analytical standpoint, but more importantly, two individuals
21 who had just committed a homicide we believed to be in
22 possession of this phone and their whereabouts, location was
23 the main objective.

24 Q Okay. I'm going to show you what's been marked Court's
25 Exhibit Number Eight. Tell me if you recognize that set of

1 documents?

2 A This is the exigent request to Verizon Wireless for Ms.
3 Locklear's phone.

4 Q Okay. And that was the number that you were given
5 attributed to her?

6 A Yes, sir.

7 Q And what time did you send that exigent request off?

8 A This would have been on the -- the same, the same day, 8-
9 19, 2012, at 14:43.

10 Q And if she gave the number prior to that, why'd you --
11 there's some gap in time between whenever you sent the exigent
12 request off. What happened before you actually sent that
13 exigent request off? What else were you doing?

14 A Concerning the phone?

15 Q Yeah.

16 A Well, there's a little bit of preliminary steps to take
17 when you do this. One is to discover who, who the carrier is,
18 and in this case I believe, and I don't know specifically, I
19 think this is a pre-paid phone. So I, I don't think she
20 actually knew the carrier. I had to find that myself. So
21 that would be one step. Two is to contact, and again, I don't
22 know if it was this particular case or not, but a lot of times
23 the phone companies they, they won't just let you -- allow you
24 to do an exigent request. You have to call them physically
25 and they have to send you the form.

Motions

259

1 Q Okay.

2 A They just don't hand them out like pamphlets. They
3 either have to actually send them to you -- I don't know if
4 that was the case in this particular situation, but most of
5 the time that is what happens, but again, I would fill that
6 out. It's pretty much fill in the blanks. I sign it,
7 swearing to the facts contained in the statement, and I faxed
8 it to the 24-hour 911 department, if you will, for Verizon
9 Wireless.

10 Q So you don't have like just a loose leaf notebook full
11 of exigent requests?

12 A No.

13 Q Okay. You had to talk to somebody?

14 A Yes, sir.

15 Q And get person-to-person, say, "What do you all
16 need?"

17 A Yes, sir.

18 Q Okay. And this is the exigent request you filed that
19 day?

20 A Yes, sir. It's a copy of it, uh-huh, with a fax cover,
21 the confirmation, the cover sheet, the e-mail that I
22 received the information back, and the actual request
23 following that.

24 Q Okay. And I'm going to read from Court's Exhibit Number
25 --

1 MR. RICHARDSON: And I'd introduce this for the purposes
2 of this hearing, Your Honor.

3 THE COURT: Any objection?

4 MR. WILSON: No objection at this time, Your Honor.

5 THE COURT: All right, Court's Exhibit Eight admitted
6 into evidence without objection.

7 (Court's Exhibit Number Eight [Exigent Request, Verizon
8 Wireless, 8-19-12] appropriately marked.)

9 BY MR. RICHARDSON:

10 Q It looks like a fax time of 14:43 hours?

11 A Uh-huh.

12 Q That's 2:43?

13 A Yes, sir.

14 Q In the afternoon?

15 A Yes, sir.

16 Q Okay. Now, reading through this exigent request looks
17 like you got a response back on page number three of this
18 exhibit at or about 4:30 p.m. in the afternoon?

19 A If it says it. Yes, sir. Yes, sir.

20 Q And that would have been 16:30 hours.

21 A Yes, sir.

22 Q It's page, I believe it's at page number four. Can you
23 just read the affidavit portion?

24 A Uh-uh, (as read) "I hereby certify that, one, I am a law
25 enforcement officer authorized by the applicable law to

Motions

261

1 request the following information; two, there is an immediate
2 danger of death or serious physical injury to a person
3 requiring that the information below be provided without
4 warning or waiting for a court order; and three, if I am
5 requesting a pin register or wiretap surveillance I certify
6 that a court order could be entered authorizing the
7 interception requested below and that my agency will obtain a
8 court order approving this interception within 48 hours.
9 Accordingly, I request (check information requested and
10 specified timeframe for which it is requested)" -- you want me
11 to read the --

12 Q What were you requesting?

13 A The one -- the items that I checked was for subscriber
14 information, cell site location, incoming, outgoing calls in
15 the form of a call detail record, text messaging activity and
16 text messaging content and that was for the times of 8-17,
17 2012, to present.

18 Q Would that be, would that be information to be helpful
19 in finding who has that phone?

20 A Absolutely. Yes, sir. Yes, sir.

21 Q May I?

22 A Uh-huh.

23 Q And when you, when you talk about there is an immediate
24 danger of death or serious physical injury to a person, what
25 are you referring to?

1 A The potential for them to cause harm to other people.
2 He'd already -- the two individuals, to our knowledge, had
3 already killed two people and raped one.

4 Q So you were briefed on what had transpired the first
5 statements of the Defendant?

6 A Oh, absolutely. Yes, sir. Yes, sir.

7 Q So you knew she identified that there were two --

8 A Uh-huh.

9 Q -- armed individuals --

10 A Uh-huh.

11 Q -- two dead bodies --

12 A Uh-huh.

13 Q And so we're looking for them at that point.

14 A Yes, sir.

15 Q Now, you had gotten a couple of search warrants on Amos
16 Hatfield and Thomas Hatfield's phone?

17 A Right.

18 Q The homes found in the -- the phones found in the home.
19 You get you one on this on that date. Once again, why was
20 that?

21 A Because of the urgency. The, the situation concerning
22 her phone, it was a stolen phone and possibly in the
23 possession of the two suspects that we were interested in.
24 Again, they posed a threat to the community, and that was for
25 the -- it was an immediate need.

Motions

263

1 Q And to your knowledge she had authorized you all to
2 look, look at the records?

3 A Right.

4 Q Subsequently, did you get a search warrant on her phone?

5 A Yes, sir.

6 Q Allow me to show you State's Number 10, I mean, Court's
7 Exhibit Number 10. Do you recognize that?

8 A I do. It is a search warrant for Ms. Locklear's phone.

9 Q And let me back up before I get there. After you got
10 the exigent request, what, if any, information was provided to
11 you discussing information came back to you at 4:30 that
12 afternoon?

13 A Yeah.

14 Q 4:30 on the exigent?

15 A Yes, sir. Yes, sir.

16 Q What was the nature of --

17 A The material.

18 Q That's correct?

19 A I did receive a call detail record --

20 Q Yes, sir.

21 A -- for the last whatever the -- I think it's the last
22 48. I did receive text messaging content and detail. I
23 believe -- there was a cell location alert that was sent to,
24 to, to my computer, I believe my computer, my phone, I can't
25 remember which. On -- it was a -- an updated cell location

1 for this particular phone.

2 Q And the -- you got some text messages back?

3 A Correct.

4 Q And once you got those text messages, print them out,
5 leave them on your computer, what?

6 A They were viewed. I don't know -- I'm sure I printed
7 them out.

8 Q Okay. And whenever you printed them out, did you
9 provide them to anybody?

10 A I did.

11 Q Detective Frebowitz?

12 A I did, yeah.

13 Q Okay. So he could review them?

14 A Yes, sir.

15 Q And those text messages you got out you said you
16 believed they were for the previous 48 hours?

17 A Yes, sir.

18 Q And were they in order?

19 A Sometimes they're not. You have to look at the
20 timestamp. I don't recall if they were, but they're, they're
21 -- in viewing them you can discern which one precedes the
22 other.

23 Q Okay. So there's time stamps on there. You can tell
24 when a call or a text is made?

25 A Correct. Correct.

Motions

265

1 Q Okay. Now, back on the search warrant on the phone we
2 believe has been identified as Sandy Locklear's --

3 A Uh-huh.

4 Q -- the [REDACTED], if I remember correctly. When did
5 you seek that search warrant?

6 A This was signed on August 27th, 2012, and it was signed
7 at 3:20 p.m. by Judge Butler.

8 Q Okay. And Judge Butler, where is he located?

9 A His office is at the J. Reuben Long Detention
10 Center.

11 Q Okay. So you got an exigent request on Sunday the 19th,
12 and about a week later, the Monday after the 20th, I guess, you
13 got a search warrant on that. Why the delay?

14 A Well, the, the initial need for that information came in
15 the form of an exigent request because we needed it
16 immediately. The search warrant is basically just a follow-up
17 to the exigent request. Again, an exigent request, most phone
18 companies are only going to provide you the last 48 hours of
19 information concerning that cellular device. A search warrant
20 you can request however far back the company retains that
21 record. I don't recall what -- why exactly it was, it was so
22 long or, you know, however much time transpired between the
23 two, but I always follow an exigent request with a search
24 warrant.

25 Q So you're just trying to make sure we had a search

1 warrant after the fact to get more fuller details?

2 A That, and I've always been told that's what we're
3 supposed to do.

4 Q Okay. That's fair.

5 A For the phone company.

6 Q After Ms. Locklear was, was arrested, did you all arrest
7 anybody else immediately?

8 A I don't know how, how immediate. I know that seems like
9 one, maybe. I don't remember the dates.

10 Q Okay, but I mean, the investigating -- investigation
11 --

12 A It wasn't a long investigation. No.

13 Q And it was ongoing?

14 A I'm sorry?

15 Q You testified about the search we did on the 20th?

16 A Right.

17 Q And then the 21st I believe Major Sarvis testified we
18 did another search?

19 A Right.

20 Q So it was ongoing?

21 A Right.

22 Q Okay. And the information that you requested, could you
23 read your affidavit there?

24 A (As read) "On August the 19th, 2012, a double homicide
25 occurred at [REDACTED] in the Loris Section of Horry

Motions

267

1 County in which two male subjects entered the home and shot
2 two of the live-in residents in the back of their heads. A
3 female was witness to the incident and made a 911 distress
4 call to report the incident, which later became suspect to the
5 incident. Therefore, there is probable cause for the data
6 pertaining to the cellular device requested within this
7 affidavit."

8 Q And that is -- that's what you swore to in front of
9 Judge Butler?

10 A Yes, sir.

11 Q And he signed it?

12 A Yes, sir.

13 Q And did you prepare a return?

14 A Yes, sir.

15 Q And when was that?

16 A This is dated August the 27th, 2012.

17 Q Okay. So the same day?

18 A Yeah.

19 Q And so is that information provided to you
20 electronically?

21 A Yes, sir. I'm sorry.

22 Q Okay. Let's go on to Court's Exhibit Number Nine.

23 MR. RICHARDSON: The State would seek to introduce for
24 purposes of this hearing Court's Number 10, Your Honor.

25 THE COURT: Any objection?

1 MR. WILSON: No objection at this time, Your Honor.

2 THE COURT: All right. Court's Exhibit 10 admitted into
3 evidence without objection.

4 (Court's Exhibit Number 10 [8-27-12 Search Warrant for
5 Verizon] appropriately marked.)

6 BY MR. RICHARDSON:

7 Q Court's Number Nine, what is that?

8 A This is a search warrant requesting cell, cell records
9 for [REDACTED] -- or a target number of [REDACTED], which is -- I
10 can't remember which one of the two, it was either Odom or
11 Nehemiah, is that -- I can't remember his name.

12 Q And did that correspond with anything from the
13 information you received on the 19th?

14 A Yes, sir.

15 Q In what way?

16 A There was an obvious text message between Ms. Locklear
17 and this particular phone.

18 Q Early-morning time?

19 A It was during the crime.

20 Q Okay. About 2:39 in the morning? Does that sound
21 right?

22 A Yeah. Sounds right.

23 Q And that's, that's a search warrant you prepared?

24 A Yes, sir.

25 Q When was that prepared?

Motions

269

1 A This was prepared on August 27th.

2 Q The same day you prepared the search warrant for Ms.
3 Locklear's phone?

4 A Yes, sir.

5 Q And why the delay on getting that search warrant?

6 A I'm sorry?

7 Q Why the delay on getting that search warrant?

8 A On this one?

9 Q Yes.

10 A That I didn't have the information at the time I don't
11 think. This was --

12 Q Did you know who the carrier was for that particular
13 cell phone on Sunday the 19th?

14 A I don't recall. I don't recall.

15 Q Okay. But you presented -- could you read your
16 affidavit just one more time that you presented to Judge
17 Butler?

18 A Yeah. (As read) "On August the 19th, 2012, a double
19 homicide occurred at [REDACTED] in the Loris section
20 of Horry County in which two male subjects entered the home
21 and shot two of the live-in residents in the back of their
22 heads. A female was witness to the incident and made a 911
23 distress call to report the incident, which later became
24 suspect to the incident. The investigation revealed a
25 cellular telephone number used by the female in which an

1 exigent request was made to Verizon Wireless for certain
2 records pertaining to that device and its use. The request
3 was fulfilled, which produced another number which proved to
4 be used by one of the suspects and used to facilitate the
5 crime. Therefore, there is probable cause for the request,
6 requested data herein."

7 Q Okay. And you're telling us that the, the information
8 was that there was text message traffic back and forth
9 contemporaneous with the murders?

10 A Right.

11 Q Between Ms. Locklear's phone and this phone?

12 A Right.

13 Q And you swore an oath to Judge Butler?

14 A Right. Yes, sir.

15 Q Okay. And he found probable cause?

16 A Yes, sir.

17 MR. RICHARDSON: The State would seek to introduce for
18 the purpose of this hearing Court's Exhibit Number Nine, Your
19 Honor.

20 THE COURT: Any objection?

21 MR. WILSON: No objection at this time, Your Honor.

22 THE COURT: All right. Court's Exhibit Nine admitted
23 into evidence without objection.

24 (Court's Exhibit Number Nine [8-27-12 Search Warrant for
25 AT&T] appropriately marked.)

Motions

271

1 BY MR. RICHARDSON:

2 Q Did you get those records back from both those search
3 warrants?

4 A Yes, sir.

5 Q Now, this has nothing to do with cell phones. Were you
6 present during the search of [REDACTED] in Tabor City,
7 the house of one Coteara Todd?

8 A I don't remember the particular address.

9 Q Okay. Allow me to show you State's or Court's Exhibit
10 Number 15 and see if you recognize that.

11 A Yeah. Yeah. Yes. I'm sorry. Yes, I was.

12 Q And what do you recognize Court's Exhibit Number 15 to
13 be?

14 A This is, this is where we, we went in, we went into
15 Tabor City. I think it was Detective Cox and Frebowitz and
16 one of the suspects in this particular case was in the yard
17 when we pulled up and he took off running. We subsequently
18 went into the house and found items inside the house related
19 to this case.

20 Q Okay. How'd you get in the house?

21 A It was a consent to search from and I remember the --
22 she had a nickname of Pig. I -- that always stood out. I
23 don't remember -- I didn't remember her name until now, but
24 this is Ms. Todd.

25 Q And now, did you prepare that consent to search?

1 A No. This was Tabor City.

2 Q Okay. Did you witness Ms. Todd signing that consent to
3 search?

4 A Yes, sir. Yes, sir. I did.

5 Q And the address is [REDACTED]?

6 A Yes, sir. It's noted on there. Yeah.

7 Q Okay. Did she seem to have any hesitation in signing
8 that consent to search?

9 A No. Actually she was very cooperative.

10 Q She wanted you all to search?

11 A Right.

12 Q And no threats made to her?

13 A No, sir.

14 Q And she let you all on in?

15 A Yes, sir.

16 Q And, and you said you saw Mr. -- one of the Defendants,
17 Mr. Evans or Mr. Bryant, around the house. Do you, do you
18 --

19 A Two other detectives did. It was just simply relayed.
20 I never saw that, but they, they were ahead of us at one point
21 and --

22 Q But Ms. Todd lived at this address as well?

23 A Yes. Yes, sir.

24 MR. RICHARDSON: Your Honor, for the purposes of this
25 hearing the State would submit Court's 15.

Motions

273

1 THE COURT: Any objection?

2 MR. WILSON: No objection, Your Honor.

3 THE COURT: Court Exhibit 15 admitted into evidence
4 without objection.

5 (Court's Exhibit Number 15 [Consent to Search]
6 appropriately marked.)

7 Q And you retrieved -- you actually retrieved some items
8 from that address?

9 A I did.

10 Q And they were?

11 A One was a piece of paper with Sandy Locklear's name on
12 it and her phone number, which ironically matches what's on
13 the record. There was an ID of one of the suspects, a set of
14 keys. I think that's about it.

15 Q Okay.

16 A That I can remember.

17 Q All right. Detective Vescovi, thank you very much. If
18 you'll answer any questions Mr. Wilson may have.

19 MR. WILSON: May it please the Court, Your Honor.

20 THE COURT: All right.

21 MR. WILSON: Thank you, Judge.

22 EXAMINATION

23 BY MR. WILSON:

24 Q Detective, all my questions are going to really be
25 regarding the actual exigent search for the phone records for

1 Ms. Locklear, okay. Let me ask you this, and you said it
2 earlier, you said that you, "Hereby certify that I am a law
3 enforcement officer authorized under the applicable law to
4 request the following information," and number two is that you
5 certify that there is an immediate danger of death or serious
6 physical injury to a person.

7 A Uh-huh.

8 Q That was what you certified; correct?

9 A Yes, sir.

10 Q And -- well, let me ask you this. Do you know the rules
11 regarding exigent circumstances and when you can actually get
12 a or do a search without a warrant?

13 A Yes, sir.

14 Q Okay. What are the rules based on your knowledge? And I
15 know you've been doing this for a while.

16 A Yeah.

17 Q Yes, sir.

18 A Perishable evidence.

19 Q Okay.

20 A Fresh pursuit of an individual that's wanted for a
21 felony.

22 Q Okay.

23 A Then what's noted in there, the possible danger to
24 others or serious bodily harm.

25 Q Okay. You testified when the Prosecutor asked you on

Motions

275

1 direct examination that, that the concern was is that you had
2 two people who supposedly came into a house and raped somebody
3 and killed two people; correct?

4 A Yes, sir.

5 Q And that was the reasoning behind getting a search
6 warrant, excuse me, getting a, a -- doing a search under the
7 theory of exigent circumstances; correct?

8 A Correct.

9 Q How many times in your career, and I know you have a
10 lot, how many times in your career have you worked murder
11 cases or drug cases?

12 A Many times over.

13 Q Would you say over a hundred?

14 A Yeah.

15 Q Okay. All right. Well, let me ask you this. In other
16 murder cases, just in simple murder cases where people are
17 killed, do you get exigent, do exigent circumstances searches
18 on that every time somebody is murdered?

19 A In reference to phones?

20 Q Yes.

21 A Yes, sir.

22 Q Okay. So your testimony here today is is that you get
23 emergency searches on phones on every murder?

24 A Not every murder, but there have been some. Yes,
25 sir.

1 Q Okay. All right. And so the person who was in danger
2 was who? Who were the -- who was the person because you
3 certified that a person was in danger and that's what this
4 says. I mean, I'm not just quoting this. You want me to --
5 you need to read it again?

6 A No. No.

7 Q Okay. All right. You certified that a person was in
8 danger and physical danger or immediate danger. Were you
9 talking about Sandy Locklear?

10 A Possibly.

11 Q Okay. Do you know where she was? Time stamps. Do
12 you know where she was when you were getting this search
13 warrant?

14 A I'm sorry?

15 Q I'm sorry. When you were doing the search, do you know
16 where Sandy Locklear was?

17 A Yeah. Yes, sir.

18 Q Where was she, where was she at?

19 A She was at the police department.

20 Q Okay. Was she in immediate danger of being hurt?

21 A No, sir.

22 Q Okay. Would you --

23 A Not, not at that particular moment, no.

24 Q Okay. All right. But she wasn't in immediate danger of
25 being hurt; was she?

Motions

277

1 A No.

2 Q All right.

3 A Not, not right then at that moment I would hope not at
4 the police department at least.

5 Q Okay. All right. So she wasn't necessarily in immediate
6 danger if she's in the custody and care of the police
7 department, M.L. Brown?

8 A Correct.

9 Q Okay. All right. So then tell me why it is or who
10 directed you or how it came about that decision was made to
11 get an exigent circumstances or claim exigent circumstances to
12 get the phone records?

13 A Everybody that lives in our area is subject to these
14 individuals that are fleeing the scene. That's what I'm
15 referring to. It wasn't necessarily Ms. Locklear. I was
16 confusing where you were going with this, but my response was
17 if she were to leave our custody I would put her at the same
18 possibility of being harmed by these two individuals again.
19 There was a question as to why she was left alive at the
20 scene. Therefore, if she were to have left our, our police
21 department, yes, I would say that she was in jeopardy. I
22 don't know whether these two people knew her, what their
23 intentions were, why they left her alive, for that matter, but
24 then again, aside of her, just the community in general
25 they've already killed two people. Who's to say they're not

1 going to kill anybody else. They've stolen a car, a cell
2 phone. That is the danger in which I am referring to in that
3 affidavit.

4 Q Okay. So an immediate danger, to you, everybody in this
5 county or in Loris or Tabor City we were all in immediate
6 danger? That's what you're saying?

7 A Uh-huh. Yes, sir.

8 Q Okay. All right. Now, let me just show you this
9 document. I think it's been entered already. I'm not
10 sure.

11 (Mr. Richardson and Mr. Wilson confer.)

12 MR. WILSON: Thank you much.

13 BY MR. WILSON:

14 Q Up here at the top what is the timestamp on the fax to
15 get this exigent information?

16 A 8-19, 2012, at 14:43.

17 Q Okay. And you said that you were given an update or
18 some sort of briefing on, I guess, the case before you got --
19 you did the search; correct?

20 A Yes, sir.

21 Q Okay. And tell me again what your briefing was about?

22 A That Ms. Locklear had two individuals come into her home,
23 killed her husband and his, his son, possibly have raped her,
24 stole her cell phone and fled in her car.

25 Q Okay. And that was at -- did you know -- let me ask

Motions

279

1 you.

2 MR. WILSON: Withdraw that, Your Honor.

3 BY MR. WILSON:

4 Q What time did you find out that her cell phone was in
5 that residence?

6 A In which residence?

7 Q Well, let me ask you this. How many phones were
8 recovered from the Hatfield residence?

9 A Two that I know of.

10 MR. WILSON: The Court's indulgence, Your Honor.

11 THE COURT: All right.

12 MR. RICHARDSON: Okay.

13 MR. WILSON: Thank you.

14 BY MR. WILSON:

15 Q Let me ask you this question. Do you know where that
16 cell phone was found?

17 A At [REDACTED].

18 Q Okay. Do you know whose cell phone that is?

19 A Not according to this sheet here I don't.

20 Q Let me ask you this question. Do you know if the police
21 or anyone in law enforcement had Sandy Locklear's phone before
22 you sent the request off for exigent circumstances?

23 A The, the two phones that were found on scene --

24 Q Okay.

25 A -- were -- there was a nexus formed between the phone,

1 and whatever that nexus was I don't recall, but I know that
2 there was a nexus between the phones on scene and the deceased
3 victims.

4 Q Okay.

5 A Ms. Locklear's phone, according to her, was stolen by
6 the perpetrators who had fled the scene.

7 Q I understand that, but at any point in time did anyone
8 tell you that they found her phone, that they had her
9 phone?

10 A No.

11 Q No one ever told you that?

12 A Huh-uh.

13 Q Okay. All right. Now, I just want to ask you this
14 one last question just to be certain. You sent off the
15 actual request at 14:43 saying that she was in immediate
16 danger, correct, or that we all were in immediate danger;
17 right?

18 A Correct.

19 Q Okay. Did you get an update from Detective Frebowitz
20 or anyone regarding what was going on with her
21 interrogation? Did you all communicate?

22 A I honestly don't remember. I, I, I don't remember. I
23 don't.

24 Q It's okay. So you don't remember, you just don't
25 remember. Let me ask you this last question.

Motions

281

1 A At what, at what point I did receive information I don't
2 know if it was before or after. I was there the entire time,
3 but understand I was doing -- this is what I was doing.

4 Q I understand.

5 A If I learned anything it was in passing a detective
6 through the hallway, but at what point, I couldn't discern at
7 what point I was privy to what information.

8 Q Well, when did Detective Frebowitz tell you that he had
9 permission to get her phone?

10 A That was initial.

11 Q All right.

12 A That was initially.

13 Q What time was that?

14 A It was after I -- after we had responded.

15 Q Okay. Do you know if she was in handcuffs at the
16 time?

17 A No. I didn't.

18 Q He never told you that?

19 A I never saw her in handcuffs. I -- when I saw her was
20 at the scene very briefly when, when she, she left in an
21 ambulance.

22 Q Okay. All right. All right. She left in an ambulance
23 when?

24 A I think it's when she went to the hospital.

25 Q You were there that morning at the scene?

1 A Yeah. I live a mile from there.

2 Q Okay. And, and you believe that she left in an
3 ambulance?

4 A I know she did.

5 Q Okay.

6 MR. WILSON: No further questions, Your Honor

7 THE COURT: All right. Anything on redirect?

8 MR. RICHARDSON: Just ask that the officer be allowed to
9 return to his duties, Your Honor.

10 THE COURT: Any objection?

11 MR. WILSON: No objection at all, Judge.

12 THE COURT: All right, step down. You're free to
13 go.

14 A I'm going to start charging you for --

15 MR. WILSON: Don't charge me, man.

16 THE COURT: All right. Call your next witness.

17 MR. RICHARDSON: None, Your Honor. The -- first of all
18 I'll address there was no question, questioning with regard to
19 the Coteara Todd house, Your Honor. So, I'd ask that that be
20 allowed in, the consent to search of that house. With regard
21 to --

22 THE COURT: I thought -- wait a minute, on the Todd
23 house.

24 MR. RICHARDSON: Coteara Todd in Tabor City, I believe
25 [REDACTED], Your Honor, Court's 15, if I'm not mistaken.

Motions

283

1 I'm sorry, Your Honor.

2 THE COURT: Oh, okay. I got you. I got you. Go ahead.
3 Go ahead.

4 MR. RICHARDSON: I'm going in reverse order. I
5 apologize.

6 THE COURT: Yeah.

7 MR. RICHARDSON: Your Honor.

8 THE COURT: Okay.

9 MR. RICHARDSON: Don't mean to confuse. Didn't hear any
10 contradiction about Amos Hatfield's phone, Thomas Hatfield's
11 phone, the two that were found in the house. It was
12 established they were located in the house and that we got a
13 search warrant on it.

14 With regard to the exigent circumstances, first, Your
15 Honor, I'd argue with regard to the phone number that belongs
16 to Ms. Locklear, first of all, pre-Miranda, during the
17 interviews, it's established during the lengthy Jackson v.
18 Denno motion, Your Honor, as I, as I started off I indicated
19 that I was just going to ask about the phone in a consent back
20 in chambers or on the record, Your Honor, in an effort to save
21 time with Detective Frebowitz, but as I directed this morning,
22 prior to Miranda, they talked about the cell phone before and
23 you watched the video right along with us, Your Honor. The
24 Defendant indicated her cell phone was laid up on the counter,
25 I believe, and her wallet, her keys, her cell phone were all

1 stolen. They were gone, including her car. They asked her
2 about the phone, and then the question was, "Now, from your
3 phone today, if it's okay with you, we'd like to search your
4 phone records." The response was, "Absolutely." "To see who
5 spoke, who you spoke with all day. So would that be okay with
6 you," and she said, "That's fine." So one, I'd argue that it
7 was consented to allow us to look at the phone, look at the
8 phone records. She provided the number, provided the number
9 again on her Miranda form, which is one of the Court's
10 Exhibits as to her phone number. So we had knowledge of it,
11 and she never withdrew that consent. At no point did she ever
12 say, "Hey, you all quit looking at my phones," at any
13 juncture, Your Honor. She consented. Assuming, argumentative
14 -- argument that there was no consent, Your Honor, there was
15 exigent circumstances evidenced by her statements that the
16 phone had been stolen by the two people that raped her,
17 murdered her husband, shot him in the back of the head during
18 the course of a robbery, as established on the stand that
19 those phones had been used in the past, could be used in the
20 future, could be used at that point to locate those suspects,
21 and it was an exigent circumstances, Your Honor, under both
22 perishable evidence that as one of the items allowed as
23 Detective Vescovi stated that a lot of instances that those
24 text messages just will disappear. They don't keep those at
25 the cell providers very long. Secondarily, serious bodily

Motions

285

1 harm, these people that they, according to her story, two
2 people broke in the house, kicked in the door, shot her
3 husband and stepson in the back of the head, beat the hell out
4 of them, I believe she stated. Those are dangerous people,
5 and they've stolen her cell phone. Certainly there was
6 exigent circumstances to look for the people who stole her
7 cell phone, and finally, Your Honor, inevitable discovery.
8 Certainly through the search warrant we were able to look in
9 there. We were able to establish what her cell phone number
10 was. By the time she got charged, certainly they were going
11 to be requesting her, her cell records, and we did get a
12 search warrant in about one week, Your Honor, to just go back
13 and just make sure we had a search warrant as well, Your
14 Honor, but, you know, once again, she consented. There were
15 exigent circumstances and inevitable discovery issues. We
16 knew what her phone number was. Certainly we were going to
17 look for those phone records, Your Honor.

18 THE COURT: All right, Mr. Wilson.

19 MR. WILSON: May it please the Court, Your Honor. This
20 goes back to the issue regarding whether or not my client
21 should have believed or did believe she was in custody at the
22 time, and if she believed that she was in the custody at the
23 time of the police who had her from, I don't know, from 4:00
24 o'clock in the morning until, I guess, she made the statement
25 or before she was mirandized then the issue is whether or not

1 that statement is allowable, whether or not, the fruit of that
2 statement is allowable, and I would also argue, Judge, this is
3 not some phone with a phone carrier like, you know, HTC or, or
4 AT&T. This is a TracFone, which is a different phone, and
5 they argue inevitable discovery, but that is not necessarily
6 the case. They came in arguing that they're going to have
7 exigent circumstances in this, in this matter. The detective
8 gets on the stand, and to his credit, he says that he believed
9 that she was in danger at the time and that everybody else was
10 in danger, and exigent circumstances is not that. I would
11 point the court to State v. Dupree. The citation is 319 S.C.
12 454, 462 S.E.2d 279 for the purposes of the record, and that
13 basically probable cause to believe that evidence is being
14 disposed of or that a person is in danger, immediate danger,
15 that's what the court has always said. She was not in danger.
16 I don't know who else was in danger, but I don't believe that
17 the court said that, "Well, if the entire community is in
18 danger that gives us a right to get a circumvention of the
19 actual Fourth Amendment Right," which is to a right to privacy
20 or expectation of privacy in your own personal effects, and
21 the cell phone is a personal effect, and I would also argue,
22 again, that it would not have been inevitably discovered
23 because if that was the case they would have never had to ask
24 her in the first place for the cell phone number if they
25 didn't have the cell phone, and on top of that, too, they try

Motions

287

1 to cure it later on with this. This is what they say probable
2 cause is in the affidavit seven days later, "On August 19th,
3 2012, a double homicide occurred at [REDACTED] in
4 Loris Section of Horry County in which two male subjects
5 entered the home and shot two of the live-in residents in the
6 back of their heads. The female" -- excuse me -- "A female
7 witness to the incident and made a 911 distress call to report
8 the incident, which later became a suspect to the incident.
9 Therefore, there's probable cause for data pertaining to the
10 cellular device." I would submit to Your Honor, on the face
11 of this, this affidavit, there is no probable cause that's
12 established. Just because they have a homicide where they
13 believe that she is a suspect, that is not tantamount to
14 probable cause. If you have a murder and you believe that I
15 have the person's cell phone or you believe I have, you know,
16 the person's effects, that's not corpus delicti, doesn't even
17 get close to a nexus to the crime, and that is my argument to
18 the Court today. I don't believe for a second that this
19 affidavit really meets the standard under probable cause, and
20 I would ask the Court to suppress this evidence because I
21 think it's prejudicial, and it is, excuse me, not prejudicial,
22 it is highly prejudicial to the Defendant, and the State and
23 law enforcement should not be allowed to circumvent the actual
24 Fourth Amendment Right to expectation of privacy by using and
25 abusing exigent circumstances. When someone is really in

1 danger, someone's missing, you know, someone is being
2 threatened, somebody calls the police and says, "Look, my
3 husband's on the way over here," those are exigent
4 circumstances where you can track someone's phone. There's no
5 immediate public danger when you are looking at a situation
6 where there's been a murder at a location where people have
7 fled. There's no immediate danger to the public, and if they
8 want to claim the --

9 THE COURT: Well, what about -- excuse me for
10 interrupting -- what about her consent for the phone?

11 MR. WILSON: And, and that's what I was saying earlier,
12 Judge. When she was actually there giving these statements I
13 believe and I know Your Honor hadn't ruled on it yet, but I
14 still believe that there was a custodial interrogation taking
15 place possibly, and I know that obviously you're going to rule
16 on that eventually, but my concern is is that she was there
17 from the very beginning to the very on that day, and from the
18 very beginning they took control of the situation.

19 THE COURT: Okay.

20 MR. WILSON: They took control of the situation.

21 THE COURT: All right. I'm going to rule that they're
22 valid search warrants and that the exigent request is valid.
23 I'm going to allow it.

24 MR. WILSON: Thank you, Your Honor.

25 THE COURT: All right. Thank you.

Motions

289

1 MR. WILSON: Thank you, Judge.

2 THE COURT: Anything else?

3 MR. RICHARDSON: That would be the State's motions at
4 this time, Your Honor.

5 THE COURT: All right, Defense motion?

6 MR. WILSON: Your Honor, there is a motion, actually
7 two motions that I have. The first motion is a motion for
8 extended voir dire in this case. The reason that we're
9 requesting that, the Defense is requesting that, we are
10 concerned about the issue of having two days off in this
11 matter, and I know that's the Court's schedule. What we'd
12 like to have is just simple questions regarding Facebook,
13 Twitter, all the social media. We don't want any jurors
14 on this jury, and I'll say it in the court, because this is
15 the issue, we want to protect against any issues of jurors
16 being on my Facebook page, being on the Prosecutor's
17 Facebook page, or being involved because I'm afraid that
18 that dissemination of information is going to get out
19 during that time.

20 THE COURT: What, I mean, what is it you're asking?
21 What, what --

22 MR. WILSON: I simply want --

23 THE COURT: -- voir dire questioning are you wanting?

24 MR. WILSON: I simply want to ask the jurors whether or
25 not they are a person or, or a member on those Instagrams or

1 Facebook or Twitter on our pages and that they don't know any
2 of the victims in this case.

3 THE COURT: When you say "on our pages" what are you
4 talking about?

5 MR. WILSON: Well, well, the, the Court would obviously
6 ask them whether or not they know the victims, whether or not
7 they know the Defendant in this matter. Those are the folks
8 that I'm concerned about.

9 THE COURT: Wait a minute. So you want me to ask the
10 jury panel if they are on any social media, Facebook, Twitter
11 or anything with whom?

12 MR. WILSON: With all the parties of this case, Your
13 Honor.

14 THE COURT: With the Defendants?

15 MR. WILSON: Yes.

16 THE COURT: The victims?

17 MR. WILSON: And including the attorneys as well.

18 THE COURT: And the attorneys?

19 MR. WILSON: Absolutely, Judge, and the reason is is
20 we're afraid that there's going to be some dissemination of
21 information on these pages is our concern.

22 THE COURT: Dissemination by whom to whom?

23 MR. WILSON: Well, that's the problem. You can't
24 control it because there are multiple folks on -- give you
25 an example.

Motions

291

1 THE COURT: But I mean, is -- if you're talking about --
2 I can, I can understand with regard to the Defendant, the
3 victims, possibly even the potential witnesses in this case,
4 but with regard to the attorneys, I don't see --

5 MR. WILSON: Well, I'm doing it out of an abundance of
6 caution. The only reason I say that, Judge, I know that the
7 Solicitor and I both are on Facebook and my concern is is that
8 folks will go on there knowing that we're involved in this
9 case and make comments on there. That's my concern. You
10 can't control that. The Solicitor can't control that, nor can
11 I.

12 MR. RICHARDSON: Your Honor, I believe an admonition is,
13 typically is given to the jury,, can certainly cure any of
14 that with an admonition not to contact any witness, any,
15 anybody via social media, press or anything else should be
16 able to cover it.

17 MR. WILSON: I'm not concerned about the contact, Judge.
18 I'm concerned about the dissemination of information.

19 MR. RICHARDSON: You just said comments.

20 MR. WILSON: No. I didn't say that, contact.

21 THE COURT: Well, well, let's -- just submit your voir
22 dire requests and I'll take a look at it.

23 MR. WILSON: Thank you, Your Honor.

24 The last motion, Judge, that we have is a motion for
25 sequestration. We are concerned about obviously this case is

1 going to be a high profile case. It's going to be in the news
2 media. There have been a number of comments placed on blogs
3 about the case and about the Defendant. I am concerned,
4 obviously, about the jury being tainted, which is part of my
5 previous --

6 THE COURT: So you're talking about sequestering the
7 jury?

8 MR. WILSON: Yes, sir.

9 THE COURT: Holding them Thursday, Friday, Saturday,
10 Sunday?

11 MR. WILSON: Yes, sir.

12 THE COURT: Okay. Before I do that I'll just cancel my
13 plans. I ain't going to do that. I, I can't justify
14 sequestering a jury for -- from a Wednesday until a following
15 Monday simply because I have to go to a wedding. I'll, I'll,
16 I'll cancel my plans on that.

17 MR. WILSON: Judge, we don't want you to cancel your
18 plans. What, what --

19 THE COURT: Well, I know you don't, but if you think
20 that there is a chance that this jury is going to go out
21 and they need to be sequestered because of it, I'm not
22 going to let my personal plans inconvenience the jury to
23 that extent.

24 MR. WILSON: Well, my concern is this, and just so I'm
25 clear on the record, my concern is, and then again, if we

Motions

293

1 could do the voir dire that might take care of a lot of our
2 concerns. We're concerned about mass media, Judge, and I know
3 that this is a novel issue, obviously, that really hasn't come
4 before the Court. There are not a lot of decisions on it.
5 That's our concern.

6 THE COURT: Well, and I, I understand that, but let's say
7 -- what is the State's position? I cancel my plans Thursday,
8 Friday, sequestering a jury for Saturday and Sunday if it
9 spills over the following week?

10 MR. RICHARDSON: Your Honor, this is not the first murder
11 case we've tried. It won't be the last murder case we try.
12 Traditionally, we do not sequester.

13 THE COURT: Yeah. But the question, and I know
14 traditionally we don't, but I don't know what kind of profile
15 this case is going to have.

16 MR. RICHARDSON: Your Honor, in just about every murder
17 case we have some coverage. In every one a Judge gives,
18 especially the ones that go over the weekend, you give the
19 admonition every day, "You are not to do this. You are not
20 to do that. You cannot go on social media. You can't go
21 on WPDE, WMBF, the Sun News, read about this case," and in
22 the alternative, you question them when they come back, Your
23 Honor. To set this aside and say this is completely
24 different than every other murder case we've ever tried in
25 this county, in this jurisdiction, in this State is

1 preposterous.

2 THE COURT: Okay. Well, how is it distinguished from any
3 other murder trial?

4 MR. WILSON: This case has been sensationalized on
5 blogs. I've read them -- excuse me. I have read them
6 personally myself, Judge. My concern is is that you have
7 here a wife who is charged with murdering her husband and
8 stepson.

9 THE COURT: Okay. Where are the -- get me some of the
10 blogs. I want to see.

11 MR. WILSON: I don't have the blogs with me, but I can
12 bring them to you, Judge.

13 THE COURT: Whose blog was it and what was said?

14 MR. WILSON: This is multiple websites, but I was
15 actually put onto this because my client actually came to me
16 and said this. That's how we found out about the blogs, and
17 there were some bad things being said, and I'll be honest
18 with you, I don't want any of those people on the jury as
19 well.

20 THE COURT: Well, has this case been publicized more than
21 the other murder cases in this area? Has there been more
22 attention to this than the typical murder case in this area
23 because I agree with the State, there are a bunch of murders
24 in this area. There's a bunch of attention, and generally,
25 there is not a sequestration.

Motions

295

1 MR. WILSON: I understand that, Judge, but again,
2 because of the sensationalism in this case, I would just ask
3 for caution.

4 THE COURT: Well, what is -- that's what I'm saying.
5 What is the sensationalism --

6 MR. WILSON: Well, the facts of the case.

7 THE COURT: -- that distinguishes this from an ordinary
8 murder case that exists in Horry County?

9 MR. WILSON: The facts of this case, Judge, are bad.
10 They're bad and --

11 THE COURT: But every murder case it's a bad case.

12 MR. WILSON: Well, yeah. That's true, Judge. That's
13 very true.

14 THE COURT: Okay.

15 MR. WILSON: But the facts of this case are that this
16 Defendant, and the Prosecutor has said it a number of times
17 already, in cold blood murdered her husband and her stepson,
18 and this is not every -- I know there are murder cases in this
19 community every day, and we know all about them. The bottom
20 line is is that they're not all cold-blooded murders. No one
21 is saying that every person that murders someone has murdered
22 their husband and their stepson, and that's, that's my
23 problem. That's my issue, and this case will get coverage,
24 you know, and again, it's an issue for the jury -- for the
25 Court. If the Court decides that we should be sequestered,

1 we'll accept that. If the Court decides that we can't be
2 sequestered, we will also accept that. We're prepared to go
3 forward, obviously.

4 THE COURT: Okay.

5 MR. RICHARDSON: And Your Honor, all due respect, with
6 regard to as far as you canceling your plans, we actually
7 arranged witnesses, flying people in around the schedule that
8 we decided on a month ago.

9 THE COURT: Okay. Well, I'll readdress the issue, but at
10 this point in time deciding this motion at this time I don't
11 see anything before the Court that distinguishes this from any
12 other type of murder. I mean, I don't know. I don't see
13 where it's received any more publicity or that a need to
14 sequester a jury is any more paramount in this case than in
15 another case. So I'm denying your motion at this time. If
16 something happens over the weekend, bring it up Monday, and
17 I'll readdress it.

18 MR. WILSON: Thank you, Your Honor.

19 THE COURT: But right now, I don't see any need to or I
20 don't see anything, aside from your argument, that this, that
21 distinguishes this case.

22 MR. WILSON: I understand, Judge.

23 THE COURT: All right.

24 MR. WILSON: Thank you, Judge.

25 THE COURT: All right.

Motions

297

1 MR. RICHARDSON: Mr. Wilson, I believe you did have a
2 motion with regard to closing arguments, closing remarks you
3 filed?

4 MR. WILSON: I did, Judge, actually. We're going to
5 withdraw that motion.

6 THE COURT: What is that now?

7 MR. WILSON: It's a motion, actually, to go last, Judge,
8 based on some precedent we'd found in a civil case where the
9 civil court now rule is is that -- obviously, that the -
10 even though the Plaintiff has the burden they allow the
11 Defendant to go last and -- but we're withdrawing that
12 motion.

13 THE COURT: All right. All right. Anything else?

14 MR. WILSON: Nothing forward.

15 THE COURT: All right. Anything from the State?

16 MR. RICHARDSON: No, sir, Your Honor.

17 THE COURT: All right. Let's take about a 10-minute
18 break. Can you set that thing up where I can go back and
19 review that portion? I want --

20 MR. RICHARDSON: Which portion? Do you want the initial
21 hour --

22 THE COURT: I want --

23 MR. RICHARDSON: -- or where at, Your Honor?

24 THE COURT: Not the whole initial hour, but I do want, I
25 do want to see --

1 MR. RICHARDSON: The portion where they discuss the rape,
2 Your Honor?

3 THE COURT: Yeah, up until he gives the Miranda.
4 Probably I want to say it was the --

5 MR. RICHARDSON: Well, I know that there is a short
6 portion, he ceases the first part of the interview at like
7 it's 48:55, somewhere around there, and then the 10 minutes
8 later he comes in and pretty much immediately says, "I forgot
9 to administer Miranda."

10 THE COURT: Okay.

11 MR. RICHARDSON: Then he does issue Miranda.

12 THE COURT: I want to hear the -- probably the last ten
13 minutes of the questioning before he leaves the room and then
14 when he comes back and immediately mirandizes her.

15 MR. RICHARDSON: Almost about from about 35 minutes into
16 the interview?

17 THE COURT: Yeah. Yeah. And let's bring that and I'll
18 take a look at that. Okay?

19 MR. RICHARDSON: Thank you, Your Honor.

20 THE COURT: All right.

21 MR. WILSON: Thank you, Judge.

22 THE COURT: All right, we'll take a break.

23 OFF THE RECORD

24 (On the record. The following takes place outside the
25 presence of the jury.)

Motions

299

1 THE COURT: Thank you very much. Please be seated.

2 MR. RICHARDSON: Your Honor, it's my understanding you
3 just want to listen to the last 10 minutes or so before the
4 detective walks out of the room. I believe Mr. Wilson wanted
5 you to listen to more than that.

6 MR. WILSON: Judge, my concern is the time stamps are
7 clear about where they talked about the rape and all that good
8 stuff. That's all I would say.

9 THE COURT: All right. Well, no, let me -- let me listen
10 to that, and if I want to back it up further than that, we'll
11 back it up further than that, but let's just go with that
12 right know.

13 MR. WILSON: Yes, Your Honor.

14 THE COURT: All right, let's go ahead and drop the
15 screen, please. I mean, I know, I know what I'm looking for.
16 I just can't -- I was interpreting the sequence differently
17 than what the State is saying it was, and that's what I want
18 to verify because --

19 MR. RICHARDSON: And Your Honor, before we get, before we
20 get started, once we get to where Detective Frebowitz walks
21 out of the room do you want me to pan ahead?

22 THE COURT: Yeah. Yeah. Once he walks out of the room
23 --

24 MR. RICHARDSON: You just want me to pan ahead.

25 THE COURT: -- just pan ahead until he comes back in.

1 REPORTER: What's the time you're starting?

2 THE COURT: Yeah. Yeah. I'm sorry.

3 MR. RICHARDSON: And I'm sorry. I promised Ms. Grace I'd
4 do that, 34:47.

5 THE COURT: And do we have the right exhibit?

6 MR. RICHARDSON: I'm sorry. For the record, this is
7 Court's Exhibit for the purpose of this hearing 3A. We will
8 be starting at 34:46 by the counter, 11:26 and 12 seconds by
9 the clock on the, on the exhibit itself, Your Honor.

10 THE COURT: All right.

11 (Court's Exhibit Number 3A is played in open court.)

12 MR. RICHARDSON: Your Honor, I pause it now, 51:56 on the
13 counter, 11:43 and 23 seconds on the, on the time stamp on the
14 video itself.

15 THE COURT: All right.

16 MR. RICHARDSON: I will fast forward, as you indicated,
17 that we needed go to where the officer returns to the
18 room.

19 THE COURT: Correct.

20 MR. RICHARDSON: I just have to actually play it to see
21 if this is the area, Your Honor.

22 (Court's Exhibit 3A played in open court.)

23 MR. RICHARDSON: Your Honor, he should return within the
24 next minute or two.

25 THE COURT: Okay. That'll be good.

Motions

301

1 MR. RICHARDSON: And for the record, it's 1:01:03 on the
2 counter, 11:52:29 on the time stamp on the video itself.

3 THE COURT: All right.

4 (Court's Exhibit 3A played in open court.)

5 THE COURT: All right. You can go ahead and stop it
6 now. All right. Let's identify where we're stopping it.

7 MR. RICHARDSON: 1:10:32, and on the recorder clock 12:01
8 and 58 seconds.

9 THE COURT: Okay. All right. That's, that's what I
10 wanted to see was that part right there.

11 MR. RICHARDSON: Your Honor, is it okay for me to eject
12 the disk at this point?

13 THE COURT: Yeah. Go ahead. All right. I'm ready to go
14 ahead and rule. I'm going to go ahead and find, as I
15 understand it's a preponderance of the evidence that I have to
16 find that it's voluntary and a valid waiver of rights, and I
17 find that all statements were voluntary. I find that pre-
18 Miranda it was still a fact investigation of someone thought
19 to be a victim. When he came back in, he Mirandized her.
20 She validly waived it, and then he went forward with the
21 questioning. So I'm going to rule that the pre-Miranda
22 statements were voluntarily given, that Miranda warnings
23 were not required at that time because she was being
24 questioned by someone thought to be a victim for a fact
25 investigation. The Officer Frebowitz, he left the room. It

1 seems as though then is when he got some, or a preponderance
2 of the evidence shows that he got some information that
3 showed she was making contradictory statements. He came back
4 in. He immediately Mirandized her, recognized that there was
5 a change in positions. She did a waiver. Then he went
6 forward with the questioning. So I find that the statements
7 given after that are voluntarily made with a waiver of the
8 rights.

9 The next day statements, I'm following the, the case law
10 that said she never requested an attorney, she never wanted to
11 stop the questioning or anything of that nature. So
12 additional rights at that time were not required. Anything I
13 have not ruled on?

14 MR. RICHARDSON: To my knowledge, Your Honor, no,
15 sir.

16 THE COURT: All right. Mr. Wilson, are you aware of
17 anything?

18 MR. WILSON: Nothing further, Judge.

19 THE COURT: All right. Be ready Monday morning.

20 MR. RICHARDSON: Yes, sir. Thank you, Your Honor.

21 THE COURT: Thank you. Do we need to do anything before
22 jury qualifications Monday?

23 MR. RICHARDSON: Not that I'm aware of, Your Honor.

24 THE COURT: Okay.

25 MR. RICHARDSON: Mr. Wilson?

Motions

303

1 MR. WILSON: Not that I'm aware of, Judge.

2 THE COURT: Okay.

3 MR. WILSON: I think we're ready to go.

4 THE COURT: All right. So okay. And I don't even know
5 who's qualifying the jury, whether I am or whether somebody
6 else is, but --

7 MR. WILSON: There is one issue, Judge. We need a
8 --

9 THE COURT: Wait a minute. Do you need this on the
10 record?

11 MR. WILSON: No, Your Honor.

12 THE COURT: Oh, okay. All right.

13 (Adjourned for day of May 30th, 2014.)

14

15

16

17

18

19

20

21

22

23

24

25

1 (State v. Sandy Lee Locklear, 2013-GS-26-302, 304. On the
2 record, June 2, 2014. The following takes place outside the
3 presence of the jury.)

4 MR. WILSON: Your Honor, if you want to go ahead and
5 empanel the jury.

6 THE COURT: Well, no. What's happened there is
7 -- the bailiff recognized somebody on the jury panel --

8 MR. WILSON: Yes, Your Honor.

9 THE COURT: -- that was here with the victim's family
10 last week and she is -- he just went, and she confirmed that
11 she was up here last week and she's part of the victim's
12 family. So I want to go ahead and maybe --

13 MR. RICHARDSON: She can be excused, Your Honor.

14 THE COURT: Well, yeah. Let's go ahead.

15 MR. RICHARDSON: You may, you may want to inquire to make
16 sure she hasn't discussed it.

17 MR. WILSON: Yeah. That's, that's ---

18 THE COURT: And that's what I was going to do is check
19 that, but do we want to wait for your client or can he go
20 ahead and bring her.

21 MR. WILSON: Your Honor, he can bring her in because I
22 think that's, that's separate. We did -- we could have done
23 the same thing.

24 THE COURT: Yeah. Let's go ahead and just bring her in.

25 (Whereupon, Juror Number 49, Loren S. Buschell, enters

State v. Locklear

305

1 courtroom.)

2 THE COURT: All right. Let's go ahead and put this on
3 the record. Ma'am, if you'd come up. Your name is Loren S.,
4 is it ---

5 MS. BUSCHELL: Buschell.

6 THE COURT: -- Buschell?

7 MS. BUSCHELL: Yes.

8 THE COURT: Okay. And I understand, Ms. Buschell, that
9 you are a family member of the victim's in this State v.
10 Locklear case?

11 MS. BUSCHELL: Correct.

12 THE COURT: Okay. Have you discussed this case with any
13 of the other members of the jury panel?

14 MS. BUSCHELL: No, I did not.

15 THE COURT: Have you brought that matter up to anyone?

16 MS. BUSCHELL: No. I didn't speak to anybody.

17 THE COURT: Okay. Thank you for that. I -- the bailiff
18 just recognized you --

19 MS. BUSCHELL: Right.

20 THE COURT: -- and we wanted to make sure we went ahead
21 and excused you from this particular case. Is there anything
22 further that the State wants placed on the record?

23 MR. RICHARDSON: No, sir, Your Honor.

24 THE COURT: All right. Anything the Defense wants
25 placed on the record?

1 MR. WILSON: Nothing, Your Honor.

2 THE COURT: All right. Ms. Buschell, if I could get you
3 right there just to raise your right hand.

4 (Whereupon, Juror Number 49 is sworn by the Court.)

5 THE COURT: I'm going to go ahead and excuse you from any
6 further participation in this trial or from serving as a juror
7 on this trial. I understand you should have been given a
8 phone number that you'll need to call back the Clerk of Court
9 after 6 p.m. today. There may be another trial that they'll
10 need you to serve on.

11 MS. BUSCHELL: Okay.

12 THE COURT: Okay. All right. And thank you very much.

13 MS. BUSCHELL: Okay.

14 THE COURT: But I'm going to go ahead and excuse you now.
15 Please do not discuss this --

16 MS. BUSCHELL: I understand.

17 THE COURT: -- with anyone else, okay?

18 MS. BUSCHELL: I will not.

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

20 MS. BUSCHELL: Thank you, Your Honor.

21 (Whereupon, Juror Number 49, Loren Buschell, exits
22 courtroom.)

23 THE COURT: All right. Mr. Wilson, I understand you've
24 got a pretrial motion?

25 THE COURT: Your Honor, just a couple of things. Judge,

Motions

307

1 I'm asking the Court at this point in time, and we didn't do
2 this last week and that's my, that's my fault, Your Honor. I
3 take responsibility for that. I just want to get an order
4 just in case there's any discrepancy allowing the Defendant to
5 be transported in plain clothes, in civilian clothes. There
6 was not an issue with J. Reuben Long not doing it this
7 morning, just an issue with her not having the right size
8 clothes this morning, but I just want to have an order from
9 the Court if that's okay with Your Honor. That's just one of
10 the motions that I have. I have two more.

11 THE COURT: What do they typically do? I don't know what
12 the security requirements are and what they typically do.

13 MR. WILSON: What we've done in other trials, Judge, is
14 basically turned the clothes over to J. Reuben Long and allow
15 them to dress her and then bring her, but my only issue I
16 don't want the jury to see her in, obviously, in, in prison
17 clothes.

18 THE COURT: Yeah. And I understand that, and I just
19 didn't know -- I, I -- but I figured we'd just follow what's
20 the usual protocol. Is that the usual protocol?

21 MR. RICHARDSON: They bring, they bring the prisoners in
22 through the sally port, Your Honor. So that's on the opposite
23 side of wherever. It's a protected area that's walled off
24 where the judges come in.

25 THE COURT: Okay. But I mean, what, what do they

1 typically do? Do they transport them in --

2 MR. RICHARDSON: Typically they dress them out
3 downstairs.

4 THE COURT: They what?

5 MR. RICHARDSON: Typically they dress them out down in
6 holding downstairs, Your Honor.

7 THE COURT: Oh, down here?

8 MR. WILSON: My only concern, Judge, is that if she is
9 seen in prison clothes I think that would be a violation of,
10 obviously, her rights to a fair trial and due process
11 violations. I'm only concerned with having her dressed out.
12 Now, if that's the policy of the jail to dress her out
13 downstairs, I just want to make certain because if she comes
14 and tells me, "Look, I saw some jurors this morning from my
15 trial that saw me in prison clothes," I think that's an issue,
16 obviously, that I would have to bring up, and I don't want to
17 -- obviously, we don't want to have to mistrial. We don't
18 want a mistrial in this case.

19 THE COURT: Yeah. But I don't know. There might be some
20 security reason as to why they do that.

21 MR. WILSON: Yes, Your Honor.

22 THE COURT: I'm going to deny your motion and just let
23 them do what they typically do --

24 MR. WILSON: Yes, Your Honor.

25 THE COURT: -- in, in their ordinary case. Okay?

Motions

309

1 MR. WILSON: Yes, Your Honor.

2 MR. RICHARDSON: Judy Boyd can probably tell us what the
3 standard procedure is, too, Your Honor.

4 THE COURT: Yes, ma'am, your name?

5 MS. BOYD: Lieutenant Judy Boyd.

6 THE COURT: All right. Ms. Boyd, what's typically done?

7 MS. BOYD: We typically dress them out downstairs. They
8 all come in through the back sally port away from any of the
9 public and anyone else and they're brought in through the back
10 entrance.

11 THE COURT: All right.

12 MR. RICHARDSON: Lieutenant Boyd is in charge of
13 classification and what not.

14 THE COURT: Okay. I'm going to let them just keep doing
15 what they normally do.

16 MR. WILSON: No objection, Your Honor.

17 THE COURT: All right.

18 MR. WILSON: Your Honor, the other actual motion that I
19 have is a motion to sequester witnesses in this matter, and
20 we're asking for an order to sequester witnesses, Judge.

21 THE COURT: All right. Any objection?

22 MR. RICHARDSON: Your Honor, for the purposes of it, of
23 course, Sylvia Adkins is the daughter of the victim and, and
24 the sister of the victim in this case. She'll be present in
25 the courtroom, although she does appear on the witness list.

1 She does come under the Victims' Bill of Rights and should be
2 allowed to be -- remain in the courtroom.

3 THE COURT: And who is that?

4 MR. RICHARDSON: Sylvia Adkins, and Your Honor, for the
5 purpose with Detective Frebowitz having retired, detective,
6 Senior Detective Todd Cox is acting as my chief investigator
7 in this case. Other than that, the State has no objection to
8 any sequestration. We just ask that it be mutual.

9 THE COURT: All right. We'll sequester all witnesses
10 with the exception of Sylvia Adkins, who is the daughter of
11 the alleged victim, will be permitted in the courtroom, Todd
12 Cox as chief investing officer will be allowed in the
13 courtroom and the Defendant will be allowed in the courtroom.
14 All other Prosecution witnesses, all other Defense witnesses
15 we'll sequester them.

16 MR. WILSON: Thank you, Your Honor.

17 THE COURT: All right.

18 MR. WILSON: Your Honor, one last issue, and I know we
19 discussed this in chambers a little bit, but I don't know if
20 this is the appropriate time, that you want me to make the
21 objection during trial. I figured we'd have the hearing right
22 now. I'm raising an objection, obviously, to the video, with
23 the lag in the video which we discussed already, and then if
24 the Court is so willing, I will go ahead and put it on the
25 record my objections.

Motions

311

1 THE COURT: What do you mean the lag in the video?

2 MR. WILSON: The lag in the video between the actual
3 sound and the actual action that occurs that's going to be
4 shown to the actual jury.

5 THE COURT: Okay.

6 MR. WILSON: And my concern is is that that evidence
7 under Rule 403, as well as under case law, which I'm going to
8 cite in a second, is misrepresentative of the actual interview
9 that took place.

10 THE COURT: All right.

11 MR. WILSON: And, Your Honor, I would liken it to any
12 misrepresentation that the Court would have ruled anyway that
13 would be unacceptable, but under Holmes v. South Carolina,
14 which is a Supreme Court case, United States Supreme Court
15 case where the South Carolina Supreme Court was overturned in
16 2006, the court ordered and, and said that, (as read), "It's
17 well-established rules of evidence permit trial judges to
18 exclude evidence if its probative value is outweighed by
19 certain other factors, such as unfair prejudice, confusion of
20 the issues, potential to mislead the jury," and it's CEG
21 [spelled phonetically] Federal Rule of Evidence 403, which is
22 the rule in South Carolina. My main concern is this, Judge,
23 and I know we talked about this a little bit from the actual
24 detective's perspective who were questioning her, but my
25 concern is when she's answering their questions it can be

1 misleading if she's saying, "Yes," and nodding her head, and
2 they're asking her if she did something because by the time
3 she got to the question she may be answering something else
4 and she would've been answering something else.

5 THE COURT: Well, do you have an instance of that in the
6 video because I don't --

7 MR. WILSON: Oh, there are, there are, I mean, throughout
8 the video, throughout the entire video because of the lag
9 she's answering stuff after they ask stuff. So, I mean, it's,
10 it's, it's, it's prevalent in the entire video, the entire
11 video is wrought with it because -- and I've got to say this
12 because I know that the State argued last time that or said
13 that, well, we didn't let them know. We don't have any
14 responsibility or burden to assist the State in its case,
15 Judge.

16 THE COURT: Well, I hate that we're going to have to view
17 that video again for me to see when that occurred because I
18 don't recall it occurring, but I understand your argument. If
19 they asked, "Did you commit the crime," and she says, no, and
20 they say, "Are you Ms. Locklear," and she says, "Yes," and
21 shakes her head at the same time there's a lag, that could be
22 misleading, but I don't know how to address that. If you're
23 saying it happened throughout the entire video, then all I
24 know to do is let's look at it again so I can see where it
25 happened and when it happened you say, "Right there," so I can

Motions

313

1 know about it.

2 MR. WILSON: The entire video from the very beginning to
3 end, Your Honor, and I think we noted --

4 THE COURT: Well, I know there's a lag.

5 MR. WILSON: Yeah.

6 THE COURT: But I'm talking about specifically what
7 you're talking about where they ask a question where her
8 answer is no, but you see her shaking her head yes during the
9 lag of the video.

10 MR. WILSON: Absolutely.

11 THE COURT: That's what I'm going to need to find out.

12 MR. RICHARDSON: Your Honor, as a curative measure I can
13 turn off the video portion and we can just play the audio.
14 That way you don't have a lag.

15 MR. RICHARDSON: How about that?

16 MR. WILSON: Not going to be satisfactory because it does
17 not depict what happened. They actually videoed her.

18 MR. RICHARDSON: Which, which does he want?

19 THE COURT: Well, no, yeah.

20 MR. RICHARDSON: He wants there not to be a video of her
21 nodding and an answer. There's not going to be a video of her
22 nodding at all if we turn the picture off.

23 MR. WILSON: They can't have it their way. They, they
24 made the video. They went through the Jackson v. Denno to get
25 it in. They -- Your Honor ruled that it was, it was

1 admissible, and now they want to turn it off and say, "Okay.
2 No. No. No. We don't want to put it up because there's an
3 issue with a lag." The video itself does not show an accurate
4 depiction. It misrepresents what my client is saying during
5 the video. That is clear throughout the entire video and, and
6 by watching it and looking at it and giving it to the jury,
7 and again, I would suggest to the Court, again, the Defendant
8 has a right to remain silent, a right not to assist, she
9 doesn't have to assist the State. We don't have to tell them
10 that their video is lag. They had it for almost a year.

11 THE COURT: Okay. I understand. What I'm going to do is
12 during the interrogation portion we'll just do the audio.

13 MR. RICHARDSON: Just the audio, Your Honor?

14 THE COURT: If he wants or you can present -- yeah.
15 We'll just do the audio. Then if he wants the entire
16 interrogation played where they stop questioning and she's
17 sitting in the room by herself we'll put on the audio and --
18 well, but I don't want to mislead the jury in that regard. I
19 guess the best thing to do is just do the audio. We'll just
20 do the audio without the video portion.

21 MR. WILSON: Subject to an objection, Your Honor?

22 THE COURT: Okay. But I mean, as I understand -- well,
23 let me ask you this. Would you rather have the audio and
24 video or just the audio?

25 MR. WILSON: Your Honor, I would rather have the entire

Motions

315

1 video kicked out.

2 THE COURT: I know that, but you're not going to get
3 that. So would you rather have just the audio or the audio
4 and the video?

5 MR. WILSON: I'll let the Court decide because --

6 THE COURT: No, no. You tell me.

7 MR. WILSON: Well, my sole purpose in bringing this
8 motion, Judge, is to have that video kicked out, the audio and
9 video. Both are misrepresentative of what happened, and the
10 audio and the, actually, excuse me, the video was actually
11 taken by the police. It's obviously a question for the jury
12 of the voluntariness of it, but my other problem is is that
13 the actual piece of evidence is misleading itself, and the
14 State is not allowed to have misleading evidence or evidence
15 that misrepresents what happened with this Defendant while
16 she's being questioned, which is a violation of her due
17 process rights, Judge.

18 THE COURT: Okay. But with his argument saying that
19 there are portions of the video, and I don't recall that. I
20 don't remember seeing that, but I'll give the Defendant the
21 benefit of the doubt and say that there are questions where
22 they said her answer to a question might have been no and it
23 -- the video shows her shaking yes. Because of that we'll
24 just go with the audio portion of the, of the interrogation.
25 Okay?

1 MR. RICHARDSON: Yes, sir, Your Honor.

2 THE COURT: All right.

3 MR. WILSON: Thank you, Your Honor.

4 THE COURT: All right.

5 MR. WILSON: Your Honor, no further motions from the
6 Defense.

7 THE COURT: Okay. Now, when it comes time for them to
8 put it in, do you want the entire portion or have you made --
9 you don't even -- I'll wait and let you make that decision,
10 but if they're going to -- I understand the State only wants
11 to put in portions of the interrogation, but I think under the
12 Rules of Evidence opposing party is entitled to have the
13 entire thing placed in rather than just portions. Is that --

14 MR. WILSON: That's my understanding, Judge.

15 THE COURT: Okay. Is that --

16 MR. WILSON: If he puts in a portion of it then we can
17 put in all of it.

18 THE COURT: Okay. And is that your intention to put in
19 all of it?

20 MR. WILSON: At this time I just want to --

21 THE COURT: Okay.

22 MR. WILSON: -- wait and see how the trial unfolds.

23 THE COURT: All right. Well, we'll just go forward then
24 just prepared to do the portion that you want to put in and
25 just do it --

Motions

317

1 MR. RICHARDSON: I have, I have a copy prepared with just
2 the portions I want.

3 THE COURT: Okay. And we'll just do the audio. Can you
4 just do the audio portion with --

5 MR. RICHARDSON: All I have to do is turn off the --

6 MR. WILSON: Video.

7 MR. RICHARDSON: -- turn off the video screen.

8 THE COURT: Okay. All right. We'll just do it that way.
9 Sounds good.

10 MR. WILSON: Thank you, Your Honor.

11 THE COURT: All right.

12 MR. WILSON: Thank you, Judge.

13 THE COURT: Anything further preliminary from the State
14 before we begin voir dire?

15 MR. RICHARDSON: No, sir, Your Honor.

16 THE COURT: Anything from the Defense?

17 MR. WILSON: Nothing, Your Honor.

18 THE COURT: All right. It's 12:15. How do we want -- do
19 we want to go ahead, pull a jury and cut them loose for lunch
20 or how do you all want to do this?

21 MR. RICHARDSON: Well, certainly they're going to need to
22 eat at some point, Your Honor.

23 THE COURT: Yeah.

24 MR. RICHARDSON: If you want to go ahead and pull the
25 jury I -- the State has no further voir dire, Your Honor.

1 THE COURT: Okay.

2 MR. RICHARDSON: Other than the standard that you'll
3 issue.

4 THE COURT: All right. Do you have any additional voir
5 dire?

6 MR. WILSON: Just one, Your Honor, if I may approach.

7 THE COURT: All right.

8 MR. WILSON: And, Judge, Your Honor, the Court is welcome
9 to tailor this or --

10 THE COURT: I got you.

11 MR. WILSON: And Judge, if I may, I think what it cures
12 for us is any concerns regarding the Thursday and Friday days
13 that we'll miss, Your Honor.

14 THE COURT: Okay. Basically the voir dire, and I'll ask
15 it, is there any member of the jury panel that is associated
16 with either the Defendant, Nehemiah James Evans, Odom Bryant,
17 Thomas Hatfield or Amos Hatfield via network, social media in
18 any fashion.

19 MR. RICHARDSON: Yes, sir, Your Honor.

20 THE COURT: Okay. All right. Any potential witnesses
21 that I need to inquire?

22 MR. WILSON: Yes, sir. Yes, Your Honor.

23 THE COURT: All right.

24 MR. WILSON: Possibly Teresa Phillips and Coteara Todd.

25 MR. RICHARDSON: Your expert as well.

Motions

319

1 MR. WILSON: I'm sorry. You're right. I apologize. Bob
2 West as well, Judge, Dr. Bob West. I think he is from
3 Florida, but there's still a chance, obviously.

4 THE COURT: Teresa Phillips, Bob West and who?

5 MR. WILSON: And Coteara Todd, as well as Lauren Johnson.

6 THE COURT: All right. All right. Anything further from
7 the State?

8 MR. RICHARDSON: No, sir, Your Honor.

9 THE COURT: Anything from the Defense?

10 MR. WILSON: Nothing, Your Honor.

11 THE COURT: All right. Let's go ahead and bring the jury
12 panel in.

13 MR. WILSON: Thank you, Judge.

14 THE COURT: Thank you. This five and ten?

15 MR. RICHARDSON: That's correct, Your Honor. Yes, sir.

16 THE COURT: Five and ten, okay.

17 MR. RICHARDSON: And then on each alternate one and two.

18 THE COURT: Yeah. I'm going to try to get four
19 alternates. Is that agreeable?

20 MR. RICHARDSON: Yes, sir, Your Honor.

21 MR. WILSON: Yes, Your Honor.

22 THE COURT: Okay. Let me see the attorneys for just a
23 second.

24 (Whereupon, a bench conference is held.)

25 (Whereupon, the following takes place in the presence of

1 the jury panel.)

2 THE COURT: All right. Good morning, ladies and
3 gentlemen, almost good afternoon. Good to see you. My name
4 is Judge Ben Culbertson. I'm a Resident Judge of the 15th
5 Judicial Circuit, which is made up of Horry and Georgetown
6 Counties, but as may have been explained to you during jury
7 qualifications, we do travel around the State holding terms of
8 Common Pleas Court and General Sessions Court. It's my
9 pleasure to be in my home circuit of the 15th Circuit and in
10 Horry County for this week and for the next two weeks for
11 General Sessions Court or what's commonly referred to as
12 criminal court. That's where the State has charged someone
13 with violating a criminal statute, and they're seeking a
14 conviction for that alleged wrongdoing, and so I will be
15 holding General Sessions Court this week with Judge John who I
16 understand qualified you during the jury qualifications.

17 Now, I've got some questions to go over with you. We're
18 getting ready to start the trial of a case, and I have some
19 questions to go over with you. You've been qualified to serve
20 as jurors for this term of court, but these questions that I
21 have to go over with you are called voir dire questions.
22 They're to determine whether or not you're qualified to serve
23 as jurors on this particular case, and it also gives the
24 attorneys some additional information that assists them in the
25 jury selection process. So the first thing you're going to

Voir Dire

321

1 learn as jurors is just like witnesses you're constantly
2 taking oaths. I'm sure you were put under oath during the
3 qualification process, but I'll need you, again, to please
4 stand and raise your right hand to respond to the oath to
5 respond to these voir dire questions honestly.

6 (Whereupon, the jury panel is sworn by the Court.)

7 THE COURT: Thank you very much. Is there any member of
8 the jury panel that did not respond to that oath by saying I
9 do? If so, please stand.

10 (No response.)

11 THE COURT: All right. Very well. As I said, I do have
12 some questions to go over with you to determine whether or not
13 you're qualified to serve as jurors in this particular case,
14 and it gives the attorneys some information that helps them in
15 the jury selection process.

16 Now, we're getting ready to start the trial of the case
17 of the State of South Carolina versus Sandy Lee Locklear.
18 Now, Ms. Locklear has been indicted and charged with two
19 counts of murder, the allegations being that on or about
20 August the 19th in 2012 on Red Bluff or in the Red Bluff Road
21 area of Loris, South Carolina, they're saying that Ms.
22 Locklear did willfully, feloniously and intentionally kill
23 Amos Hatfield and Thomas Hatfield with malice aforethought.
24 Now, those are the allegations in this case. Is there any
25 member of the jury panel that has heard anything, read

1 anything, discussed anything or knows anything about this
2 case? If so, please stand.

3 (No response.)

4 THE COURT: All right. As I said, the Defendant in this
5 case is Sandy Lee Locklear. Is there any member of the jury
6 panel related by blood or marriage, have a close personal
7 relationship, business relationship, social relationship or
8 any other type of relationship with Ms. Locklear? If so,
9 please stand.

10 (No response.)

11 THE COURT: All right. The alleged victims in this case
12 are Amos Hatfield and Thomas Hatfield. Is there any member of
13 the jury panel related by blood or marriage, have a close
14 personal relationship, business relationship, social
15 relationship or any other type of relationship with any of
16 these alleged victims? If so, please stand.

17 (No response.)

18 THE COURT: All right. Please listen carefully because
19 these are the potential witnesses who may or may not testify
20 in this case, but I need to go over the witnesses with you to
21 see if any of you have any type of relationship with them. So
22 please listen because this is quite a long list. All right.
23 The potential witnesses who may testify in this case are
24 Sylvia Adkins; Tim Bazinet, B-A-Z-I-N-E-T; Steve Blair; Lenore
25 Bolig, B-O-L-I-G; Heather Brummett, B-R-U-M-M-E-T-T; Odom

Voir Dire

323

1 Bryant; Martha Carmichael; Crystal Caulder; Jim Chatfield;
2 Todd Cox; Jennifer Dalmida or Dalmida, D-A-L-M-I-D-A; Jill
3 Domogauer.

4 MR. RICHARDSON: Domogauer.

5 THE COURT: Domogauer, D-O-M-O-G-A-U-E-R; David Eagerton.

6 MR. RICHARDSON: Eagerton, Your Honor.

7 THE COURT: Eagerton, E-A-G-E-R-T-O-N, David Eagerton;
8 Nehemiah James Evans; Neil Frebowitz; James W. Green; Benjamin
9 Larry Hardie; Renee Hardwick; Clayton Hatfield; Faye Hunt;
10 Jonathan Martin; Teresa Phillips; Edward Lee Proctor; Steve
11 Rogerio, R-O-G-E-R-I-O; Jerry Sarvis; Ila Simmons; Alex Smith;
12 Matthew Stevenson; Brandon Strickland; Matthew Tindall; Damon
13 Vescovi, V-E-S-C-O-V-I; Brian Wilson; Doris Yarborough; Teresa
14 Phillips; Coteara Todd; Bob West; or Lauren Johnson. Is there
15 any member of the jury panel related by blood or marriage,
16 have a close personal relationship, business relationship,
17 social relationship or any other type of relationship with any
18 of these potential witnesses? If so, please stand. Yes,
19 ma'am. If you'd please stand and give me your name and
20 number.

21 MS. HODGES: My name is Donna Hodges. I know --

22 THE COURT: Excuse me. What is your jury number, do you
23 know?

24 MS. HODGES: No, I don't. I didn't remember.

25 THE COURT: Okay. Hold for --

1 MR. RICHARDSON: 175, Your Honor.

2 THE COURT: What is it?

3 MR. RICHARDSON: 175.

4 THE COURT: All right. Ms. Hodges, who is it that you --

5 MS. HODGES: I have known Damon Vescovi --

6 THE COURT: Okay.

7 MS. HODGES: -- for a long time. He went to school with
8 my son.

9 THE COURT: Okay.

10 MS. HODGES: And they were, you know, and his wife. I
11 know her. She teaches at Loris High School.

12 THE COURT: All right. Now, is that the extent of how
13 you know them? Do you --

14 MS. HODGES: Yes. I mean, we're not blood related or
15 anything. I just know Damon since growing up and --

16 THE COURT: Do you all socialize together on a regular
17 basis or --

18 MS. HODGES: Not on a regular basis.

19 THE COURT: Do you go to church together? Are you a
20 member of any social clubs together, anything like that?

21 MS. HODGES: Yes, church.

22 THE COURT: Okay. Now, would your association be such
23 that it would affect your ability to give both the State and
24 the Defendant in this case a fair and impartial trial?

25 MS. HODGES: I would certainly hope not.

Voir Dire

325

1 THE COURT: Well, and I understand that and I appreciate
2 your honesty.

3 MS. HODGES: I mean, I mean, I --

4 THE COURT: I can tell you, though, what I have to be
5 concerned with is that whoever is selected as a juror in this
6 case bases his or her decision exclusively on the testimony
7 and evidence without any influence from any outside source.
8 So if you think there is even a chance that it could influence
9 you one way or the other, whether it be in favor of the State
10 against the Defendant or in favor of the Defendant against the
11 State, that's what I need to know if you think that that might
12 happen.

13 MS. HODGES: I, I totally don't think that I would be
14 that way, I mean.

15 THE COURT: Okay. I mean, could you -- would you be more
16 inclined to believe his testimony simply because you know him
17 to the exclusion of what the other evidence might show?

18 MS. HODGES: No. Not against the evidence.

19 THE COURT: Okay. All right. Ms. Hodges, I'm going to
20 excuse you from this particular case. Okay? If you'd please
21 stay with us.

22 MS. HODGES: Okay.

23 THE COURT: But I'm going to go ahead and excuse you from
24 this case.

25 MS. HODGES: Okay. Thank you, Your Honor.

1 THE COURT: Thank you. Does anyone else have any type of
2 relationship or knowledge of any of these potential witnesses?
3 If so, please stand.

4 (No response.)

5 THE COURT: All right. All right. Brad Richardson and,
6 I'm sorry, Ms. Wooten, your first name?

7 MS. WOOTEN: Monica.

8 THE COURT: Monica, that's right. Monica Wooten, they
9 are the attorneys for the State prosecuting this case.
10 They're employed with the 15th Circuit Solicitor's Office. Mr.
11 Ralph Wilson is the attorney for the Defendant in this case.
12 What is the name of your firm, Mr. Wilson, just the Wilson --

13 MR. WILSON: Wilson, Wilson Law Group.

14 THE COURT: Wilson, and Wilson Law Group.

15 MR. WILSON: Yes, Your Honor.

16 THE COURT: That's here in Conway, South Carolina.

17 MR. WILSON: Yes, Your Honor.

18 THE COURT: Is there any member of the jury panel
19 represented [sic] by blood or marriage, have a close personal
20 relationship, business relationship, social relationship or
21 any other type of relationship with any of these attorneys?
22 If so, please stand: Yes, sir, your name and number?

23 MR. CIACCIO: 70, Chris Ciaccio.

24 THE COURT: All right. Mr. Ciaccio, who is it --

25 MR. CIACCIO: I, I just wait on these gentlemen. I work

Voir Dire

327

1 at a local restaurant.

2 THE COURT: Okay.

3 MR. CIACCIO: And I take care of them quite frequently.

4 THE COURT: With the Solicitor's Office?

5 MR. CIACCIO: Yes, sir.

6 THE COURT: Okay. Now, Mr. Ciaccio, the fact that they
7 are, I guess, patrons of your restaurant, is there any
8 relationship more than that? I mean, do you socialize
9 together? Do you -- member of the same civic club, go to
10 church together or --

11 MR. CIACCIO: I have -- my wife is an attorney, also, in
12 town.

13 THE COURT: Okay. And who is your wife?

14 MR. CIACCIO: Robin Ciaccio.

15 THE COURT: Okay. Would her employment or your
16 association with either Ms. Wooten or Mr. Richardson or
17 anybody in the Solicitor's Office, would it affect your
18 ability to give both the State and the Defendant in this case
19 a fair and impartial trial?

20 MR. CIACCIO: No, sir.

21 THE COURT: Okay. Would you be able to disregard those
22 associations in their entirety and base your decision in this
23 case exclusively on the testimony and evidence in this case?

24 MR. CIACCIO: Yes, sir.

25 THE COURT: Okay. Thank you, Mr. Ciaccio, for bringing

1 that to our attention.

2 MR. RICHARDSON: Thank you, Your Honor.

3 THE COURT: Thank you.

4 MR. WILSON: Thank you, Your Honor.

5 THE COURT: Anyone else have any type of relationship
6 with any of these attorneys, if so, please stand.

7 (No response.)

8 THE COURT: Has any member of the jury panel ever been
9 represented by any of these attorneys? If so, please stand.

10 (No response.)

11 THE COURT: Has any member of the jury panel ever been
12 involved in any legal action where any of these attorneys
13 represented another party to that action? If so, please
14 stand.

15 (No response.)

16 THE COURT: Is there any member of the jury panel, either
17 personally, has a family member or a close personal friend
18 employed with the 15th Circuit Solicitor's Office or with the
19 Wilson and Wilson Legal Group here in Georgetown [sic]? If
20 so, please stand. Yes, ma'am, your name and number?

21 MS. GASQUE: Sheila Gasque, Juror 141, and I'm third
22 cousins with Jimmy Richardson, the Solicitor.

23 THE COURT: All right. And Gasque?

24 MS. GASQUE: Yes, sir.

25 THE COURT: All right. Ms. Gasque, how often -- you said

Voir Dire

329

1 third cousins, and I'm going to be honest with you, I've got
2 cousins a lot more distance that I stay in touch with, and
3 then I've got cousins a lot closer that I never see or don't
4 even know what they're doing. What kind of -- how often do
5 you see Mr. Richardson? Do you all socialize together?

6 MS. GASQUE: No, sir. Just in, in passing and at family
7 reunions.

8 THE COURT: Okay. Would your relationship with Mr.
9 Richardson affect your ability to give both the State and
10 Defense in this case a fair and impartial trial?

11 MS. GASQUE: No, sir.

12 THE COURT: Okay. Would you be able to disregard that
13 association in its entirety --

14 MS. GASQUE: Yes, sir.

15 THE COURT: -- and base your decision in this case
16 exclusively on the testimony and evidence in this case?

17 MS. GASQUE: Yes.

18 THE COURT: Okay. When was the last time you saw Mr.
19 Richardson?

20 MS. GASQUE: Probably been several months ago.

21 THE COURT: Okay. And kind of give me an idea what was
22 that contact? What was the occasion?

23 MS. GASQUE: It's the -- I think it was, you know, at the
24 grocery store, just speaking, asking how his family was doing.

25 THE COURT: Okay. All right. Thank you, Ms. Gasque for

1 bringing that to our attention.

2 Is there any member of the jury panel that has any type
3 of association, being social media networks, whether it be
4 Facebook, Twitter, whatever social media capabilities you
5 might have with either the Defendant, Sandy Lee Locklear,
6 James -- Nehemiah James Evans, Odom Bryant or with the alleged
7 victims in this case, Thomas Hatfield or Amos Hatfield, or
8 their immediate families? Anybody have any type of
9 association via social media with any of these people? If so,
10 please stand.

11 (No response.)

12 THE COURT: Is there any member of the jury panel that
13 has ever been the victim of a violent crime? If so, please
14 stand. All right. Sir, your name and number?

15 MR. SHANKS: Jonathan Shanks, 366.

16 THE COURT: All right. Mr. Shanks, if you'd come
17 forward, please.

18 (Whereupon, a bench conference is held with Juror Number
19 366, Jonathan Shanks, counsel for the State and counsel for
20 the Defense.)

21 THE COURT: All right. Thank you very much for bringing
22 that to our attention. All right. Anyone else in the jury
23 panel that has ever been the victim of a violent crime? If
24 so, please stand.

25 (No response.)

Voir Dire

331

1 THE COURT: Has any member of the jury panel formed or
2 expressed an opinion about any issue or matter involved in
3 this case? If so, please stand.

4 (No response.)

5 THE COURT: Is there any member of the jury panel aware
6 of any bias or prejudice towards either the State of South
7 Carolina or the Defendant in this case? If so, please stand.

8 (No response.)

9 THE COURT: Is there any member of the jury panel that
10 was a member of the Grand Jury that issued the indictments in
11 this case? If so, please stand.

12 (No response.)

13 THE COURT: Is there any member of the jury panel that is
14 a member of or a contributor to any group which has as its
15 primary concern the promotion of law enforcement or victims'
16 rights? Now, some examples of these organizations are Mothers
17 Against Drunk Drivers or MADD, Students Against Drunk Drivers,
18 often referred to as SADD, Citizens Against Violent Crimes,
19 referred to as CAVE, or Citizens Against Spousal Abuse, also
20 known as CASA? Is there any member of the jury panel that is
21 a member of or a contributor to any such organization or
22 similar organization whose primary concern is law enforcement
23 or victims' rights? If so, please stand.

24 (No response.)

25 THE COURT: Does any member of the jury panel know of any

1 reason whatsoever why he or she should not serve as a juror in
2 this case with particular emphasis being placed on your
3 ability to be fair and impartial to both the State and the
4 Defendant? If so, please stand.

5 (No response.)

6 THE COURT: Any additional questions from the State?

7 MR. RICHARDSON: No, sir, Your Honor. That's sufficient.

8 THE COURT: All right. Any from the Defense?

9 MR. WILSON: Nothing further, Your Honor.

10 THE COURT: All right. All right. Ladies and gentlemen,
11 what happens at this posture is your names will be called out
12 at random. They've been fed into a computer. They've been
13 generated on a list at random, and if your name is called, if
14 you would please come forward, stand in front of the
15 attorneys, turn around and face the attorneys, and the State
16 is going to look at their notes and then they're going to look
17 at you. Then they're going to look back at their notes, and
18 then they're going to look at you, and then they're going to
19 decide if they want you as a juror, and if they decide they
20 want you as a juror, then the Defense is going to look at you
21 a little while and look at their notes, and then they're going
22 to look at you and look back at their notes and decide if they
23 want you as a juror, and we go through this process until we
24 get a jury selected.

25 Now, let me tell you from the outset, there is really no

Jury Selection

333

1 rhyme or reason as to why certain jurors are taken and certain
2 jurors are struck. If you are struck from this particular
3 case, please do not take it personally. It just means that
4 for whatever reason during this case you do not fit a certain
5 profile that that side is looking for. I've had many cases
6 where a juror is taken on one case and then struck by the same
7 side on the next case or where a juror is struck from one case
8 and then taken by the same side on the following case. So
9 there's really no rhyme or reason, and please do not take it
10 personally if you are struck from this particular case. It
11 just means that for whatever reason you do not fit a certain
12 profile that they're looking for in this particular case and
13 it's nothing personally against you. So please listen up, and
14 as your names are called, if you would please come forward,
15 bring with you any pocketbooks you might have, any umbrellas,
16 coats or whatever you may have. Thank you very much. All
17 right.

18 THE CLERK: Juror Number 419, Willie Vereen.

19 What say the State?

20 MR. RICHARDSON: Please present Mr. Vereen.

21 THE CLERK: Defense?

22 MR. WILSON: Please present this juror.

23 THE CLERK: Please be seated in the jury box.

24 44, Theresa Bumbaco. What say the State?

25 MR. RICHARDSON: Please present Ms. Bumbaco, Bumbaco.

Jury Selection

334

1 THE CLERK: Defense?

2 MR. WILSON: Please present this juror.

3 THE CLERK: Please be seated in the jury box.

4 437, Andrew Wood. What say the State?

5 MR. RICHARDSON: Please present Mr. Wood.

6 THE CLERK: Defense?

7 MR. WILSON: Please excuse the juror from this particular

8 case.

9 THE CLERK: You're excused from this particular case.

10 278.

11 MR. WOOD: Do I go sit down?

12 THE CLERK: Yes, sir.

13 THE COURT: Yeah. Just thank you, sir.

14 THE CLERK: 278, Christopher Millsaps. What say the

15 State?

16 MR. RICHARDSON: Please present Mr. Millsaps.

17 THE CLERK: Defense?

18 MR. WILSON: Please present this juror.

19 THE CLERK: Please be seated in the jury box.

20 144, Shellie Gibson. What say the State?

21 MR. RICHARDSON: Please present Mrs. Gibson.

22 THE CLERK: Defense?

23 MR. WILSON: Please excuse this juror from this

24 particular case.

25 THE CLERK: You're excused from this particular case.

Jury Selection

335

1 384, Telsi Snyder. What say the State?
2 MR. RICHARDSON: The Court's indulgence.
3 THE COURT: All right.
4 MR. RICHARDSON: Please present Ms. Snyder.
5 THE CLERK: Defense?
6 MR. WILSON: Please present this juror.
7 THE CLERK: Please be seated in the jury box.
8 201, Violet Johnson. What say the State?
9 MR. RICHARDSON: Please present Ms. Johnson.
10 THE CLERK: Defense?
11 MR. WILSON: Please present this juror.
12 THE CLERK: Please be seated in the jury box.
13 13, Shelly Barnas. What say the State?
14 MR. RICHARDSON: Please present Ms. Barnas.
15 THE CLERK: Defense?
16 MR. WILSON: Please excuse this juror from this
17 particular case.
18 THE CLERK: You're excused from this particular case.
19 366, Jonathan Shanks. What say the State?
20 MR. RICHARDSON: Please present Mr. Shanks.
21 THE CLERK: Defense?
22 MR. WILSON: Please excuse this juror from this
23 particular case.
24 THE CLERK: You're excused from this particular case.
25 293, Debra Mundie. What say the State?

1 MR. RICHARDSON: Please present Mrs. Mundie.
2 THE CLERK: Defense?
3 MR. WILSON: Please seat the juror.
4 THE CLERK: Please be seated in the jury box.
5 79, Robert Cooper. What say the State?
6 MR. RICHARDSON: Please present Mr. Cooper.
7 THE CLERK: Defense?
8 MR. WILSON: Please excuse this juror from this
9 particular case.
10 THE CLERK: You're excused from this particular case.
11 307, Deepti Patel. What say the State?
12 MR. RICHARDSON: Please excuse Mrs. Patel.
13 THE CLERK: You're excused from this particular case.
14 115, Janine Durbin. What say the State?
15 MR. RICHARDSON: Please present Mrs. Durbin.
16 THE CLERK: Defense?
17 MR. WILSON: Please excuse the juror from this particular
18 case.
19 THE CLERK: You're excused in this particular case.
20 308, Jitendra Patel. What say the State?
21 MR. RICHARDSON: Please excuse Mr. Patel from the trial
22 of this case.
23 THE CLERK: You're excused from this particular case.
24 114, Kathleen Dulhagen. What say the State?
25 MR. RICHARDSON: Please present Mrs. Dulhagen.

Jury Selection

337

1 THE CLERK: Defense?

2 MR. WILSON: Please present the juror for this particular
3 case.

4 THE CLERK: Please be seated in the jury box.

5 319, Kelsey Phillips. What say the State?

6 MR. RICHARDSON: Please excuse Mr. Phillips from the
7 trial of this case.

8 THE CLERK: You're excused from this particular case.

9 205, Elizabeth Jones. What say the State?

10 MR. RICHARDSON: Please present Mrs. Jones.

11 THE CLERK: Defense?

12 MR. WILSON: Please present the juror.

13 THE CLERK: Please be seated in the jury box.

14 81, Katheryn Cowan. What say the State?

15 MR. RICHARDSON: Please present Ms. Cowan.

16 THE CLERK: Defense?

17 MR. WILSON: Please present the juror for this particular
18 case.

19 THE CLERK: Please be seated in the jury box.

20 305, Carrie Parnell. What say the State?

21 MR. RICHARDSON: Please present Mrs. Parnell.

22 THE CLERK: Defense?

23 MR. WILSON: Please present the juror for this particular
24 case.

25 THE CLERK: Please be seated in the jury box.

1 272, Shennica Mercier. What say the State?

2 MR. RICHARDSON: Please present Mrs. Mercier. Good.

3 THE CLERK: Defense?

4 MR. WILSON: Please present the juror.

5 THE CLERK: Please be seated in the jury box.

6 145, Wanda Glenn. What say the State?

7 MR. RICHARDSON: The Court's indulgence. Please excuse
8 Mrs. Glenn.

9 THE CLERK: You're excused from this particular case.

10 441, Camille Wrenn. What say the State?

11 MR. RICHARDSON: Please present Mrs. Wrenn.

12 THE CLERK: Defense?

13 MR. WILSON: Please present the juror.

14 THE CLERK: Please be seated in the jury box.

15 THE COURT: All right. We'll select our first -- well,
16 we'll get four alternates, but for each alternate the State
17 gets one strike, the Defense gets two.

18 MR. RICHARDSON: Thank you, Your Honor.

19 MR. WILSON: Thank you, Your Honor.

20 THE CLERK: 70, Christopher Ciaccio. What say the State?

21 MR. RICHARDSON: The Court's indulgence. Please excuse
22 Mr. Ciaccio.

23 THE CLERK: You're excused from this particular case.

24 74, Starlet Claspell. What say the State?

25 MR. RICHARDSON: Please present Miss Claspell.

Jury Selection

339

1 THE CLERK: Defense?

2 MR. WILSON: Please excuse the juror from this particular
3 case.

4 THE CLERK: You're excused from this particular case.

5 446, Daniel Yearwood. What say the State?

6 MR. RICHARDSON: Please present Mr. Yearwood.

7 THE CLERK: Defense?

8 MR. WILSON: Please present the juror.

9 THE CLERK: Please be seated in the jury box.

10 THE COURT: All right. We'll select another alternate.

11 The State gets one strike, Defense gets two.

12 MR. RICHARDSON: Yes, sir, Your Honor.

13 MR. WILSON: Thank you, Your Honor.

14 THE CLERK: 421, Patricia Walker. What say the State?

15 MR. RICHARDSON: Please present Mrs. Walker.

16 THE CLERK: Defense?

17 MR. WILSON: Please seat this juror.

18 THE CLERK: Please be seated in the jury box.

19 THE COURT: All right. We'll select another alternate.

20 The State gets one strike, Defense gets two.

21 THE CLERK: 48, Shamar Burroughs.

22 MR. RICHARDSON: Which number, Madam Clerk?

23 THE CLERK: 48.

24 MR. RICHARDSON: 48, thank you.

25 THE CLERK: You're welcome. What say the State?

Jury Selection

340

1 MR. RICHARDSON: Please present Mr. Burroughs.

2 THE CLERK: Defense?

3 MR. WILSON: Please seat the juror.

4 THE CLERK: Please be seated in the jury box.

5 THE COURT: All right. We'll select one more alternate.

6 The State gets one strike, Defense gets two.

7 THE CLERK: 96, Michael Davis. What say the State?

8 MR. RICHARDSON: Please present Mr. Davis.

9 THE CLERK: Defense?

10 MR. WILSON: Please excuse Mr. Davis from this particular
11 case.

12 THE CLERK: You're excused from this particular case.

13 247, Donald Lovallo. What say the State?

14 MR. RICHARDSON: Please present Mr. Lovallo.

15 THE CLERK: Defense?

16 MR. WILSON: Please seat this juror.

17 THE CLERK: Please be seated in the jury box.

18 THE COURT: All right. All right. Ladies and gentlemen,
19 you'll be the jury that will preside over this case. I'm
20 going to excuse you back to the jury room for just a few
21 minutes and I'll bring you back out in just a few seconds, but
22 I've got some matters I need to take up with the attorneys
23 before we proceed. So I'm going to excuse you back to the
24 jury room for just a few minutes. Thank you very much.
25 Everybody else please remain seated while the jury is excused.

Jury Selection

341

1 (Whereupon, the following takes place outside the
2 presence of the jury.)

3 THE COURT: All right. Any challenges to the selection
4 or composition of the jury by the State?

5 MR. RICHARDSON: No, Your Honor.

6 THE COURT: Any by the Defense?

7 MR. WILSON: None, Your Honor.

8 THE COURT: All right.

9 (Remaining jury panel dismissed by the Court with call-in
10 instructions.)

11 THE COURT: All right. I suggest we just bring the jury
12 back in and cut them loose for lunch and have them come back,
13 what, say 2:15 and try to get started right at 2:30?

14 MR. RICHARDSON: The State will be prepared to go
15 forward, Your Honor.

16 THE COURT: Is that agreeable with the Defense?

17 MR. WILSON: Your Honor, the Defense is ready.

18 THE COURT: Okay. All right. Let's go ahead and bring
19 the jury in.

20 (Whereupon, the following takes place in the presence of
21 the jury.)

22 THE COURT: All right. Welcome back, ladies and
23 gentlemen. We are going to start the trial of this case, but
24 given the time of day, I'm going to go ahead and excuse you to
25 go to lunch on your own today. I'm going to ask that you

1 please be back in the jury room at 2:15. That'll give you a
2 little over an hour, and I'll try to get started as soon after
3 2:15 as we can. I'll give you some opening instructions at
4 that time as to what you can expect and what is expected of
5 you during the trial of this case.

6 Now, when you get back in the jury room after lunch, if
7 you could do me a favor, and that would be to select a
8 foreperson for this jury. Now, you may not know everyone, and
9 if you cannot select a foreperson, don't worry about it. I
10 can appoint someone to serve as foreperson. Many judges
11 appoint their own foreperson. I like to give the jury the
12 opportunity to select one on their own if they're able to do
13 so.

14 Now, the foreperson has absolutely no more authority, no
15 more influence, no more importance than any other juror. The
16 function of the foreperson is to act as a liaison between the
17 Court and the jury. If the jury has a need, the foreperson
18 lets the Court know. If the jury has a question, the
19 foreperson lets the Court know. When it's time to deliberate
20 a verdict, the foreperson will preside over the deliberations,
21 but other than that, the foreperson has no more influence, no
22 more authority or no more importance than any other juror.
23 The only restriction would be, let's see, Mr. Yearwood, Ms.
24 Walker, Mr. Burroughs and Mr. Lovallo, as alternates you would
25 not be eligible to serve as foreperson because you are

State v. Locklear

343

1 alternates on this jury at this point in time, but anyone else
2 can serve as a foreperson.

3 Now, when you come back in the jury room, if the four
4 alternates would always occupy the seats where you now sit.
5 The foreperson will occupy this second seat on the front row.
6 The rest of you are at liberty to sit in whatever seat you
7 like. If you want to sit in the same seat through the trial
8 of the case, you can do that. If you want to alternate seats
9 during the trial of the case, you can do that. The only
10 restriction is that we have the alternates occupy the
11 alternates seats unless and until you become a part of the
12 jury, and the foreperson always occupies that front row seat,
13 the second on the front row.

14 I hope everybody has a good lunch. I caution you, and
15 I'll give you some further instructions this week. We will be
16 taking breaks from time to time, but please do not try to find
17 out anything about this case. Don't go looking through the
18 newspaper to find out any information about it, don't listen
19 to any news reports if any come up, don't go looking on the
20 internet trying to discover anything or conduct any
21 independent investigation in the case. Everything you need to
22 make a decision in this case will be presented to you from the
23 witness stand, and the law requires that your decision be
24 based exclusively on the testimony and evidence at trial
25 without any influence from any outside source. So if anybody

1 tries to talk to you about the trial don't talk to them about
2 it, don't conduct any independent investigations, don't listen
3 to any news reports or go looking through the newspaper to
4 find out anything.

5 I hope everybody has a good lunch, and we'll see you back
6 at 2:15. Thank you very much.

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: Is it shut? All right. Anything -- is the
10 door closed? Okay. Anything from the State before we break
11 for lunch?

12 MR. RICHARDSON: No, sir, Your Honor.

13 THE COURT: Anything from the Defense?

14 MR. WILSON: Nothing, Your Honor.

15 THE COURT: All right. We'll be in recess. I've got
16 them coming back at 2:15 so they can select a foreperson.
17 I'll try to take the bench at 2:30. Okay?

18 MR. RICHARDSON: Yes, sir, Your Honor.

19 MR. WILSON: Yes, Your Honor.

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

21 MR. WILSON: Thank you, Judge.

22 OFF THE RECORD

23 (On the record. Whereupon, the following takes place
24 outside the presence of the jury.)

25 THE COURT: Thank you very much. Please be seated. All

1 right. The bailiff brought me a note. Juror Number 44,
2 Theresa, B-U-M-B-A-C-O, has been selected as the foreperson.
3 I don't know. I'll have to ask her how to pronounce it. I'm
4 going to put this as -- this'll be Court's Exhibit?

5 REPORTER: 19.

6 THE COURT: 19, okay.

7 (Court's Exhibit Number 19 [Foreperson Selection]
8 appropriately marked.)

9 THE COURT: All right. Now, I understand that there was
10 a motion to sequester witnesses. Have we got them sequestered
11 at this point in time?

12 MR. RICHARDSON: All except my first witness which is
13 Officer Matt Tindall. He's the first responding officer, Your
14 Honor. I've discussed it with Mr. Wilson. I believe he
15 indicated he, he didn't have an issue with him remaining in
16 this courtroom at this time.

17 THE COURT: Okay. All right. But anybody else that
18 needs to be sequestered is sequestered; is that correct?

19 MR. WILSON: That's my understanding, Your Honor.

20 THE COURT: Okay.

21 MR. RICHARDSON: Ms. Adkins is in the courtroom, but she
22 is a victim, Your Honor.

23 THE COURT: Yeah, and I -- other than that I think I
24 allowed Ms. Adkins.

25 MR. RICHARDSON: And Senior Detective Todd Cox.

1 THE COURT: Todd Cox and the Defendant. Any other --
2 anybody else that may potentially be testifying needs to be
3 sequestered.

4 MR. RICHARDSON: Thank you, Your Honor.

5 THE COURT: All right. Anything from the State before we
6 bring the jury in?

7 MR. RICHARDSON: No, sir, Your Honor. We're prepared to
8 go forward.

9 THE COURT: Anything from the Defense?

10 MR. WILSON: The Defense is ready, Your Honor.

11 THE COURT: All right. All right. Hold for a second.

12 (Bailiff and Court confer.)

13 THE COURT: All right. Well, let's go ahead and bring
14 Mr. Yearwood in, bring him in and let me question him. One of
15 the alternates, Daniel C. Yearwood, Juror Number 446, just
16 told the bailiff that now he recalls reading something about
17 the case.

18 (Whereupon, Juror Number 446, Daniel C. Yearwood, enters
19 courtroom.)

20 THE COURT: Mr. Yearwood, if you'd come around, please.
21 I understand you informed the bailiff that you recall reading
22 something about this case?

23 MR. YEARWOOD: Yes, sir.

24 THE COURT: Okay. How long ago was that?

25 MR. YEARWOOD: Whenever it came out, I think.

State v. Locklear

347

1 THE COURT: Okay. This was in the newspaper?

2 MR. YEARWOOD: I think it was -- yes, sir, might have
3 been.

4 THE COURT: Okay. Do you recall what you read about it?

5 MR. YEARWOOD: No, sir.

6 THE COURT: Okay. Would the fact that this appeared in
7 the newspaper and what or whatever you reviewed, would it
8 affect your ability to be fair and impartial to both the State
9 and the Defendant in this case?

10 MR. YEARWOOD: No, sir.

11 THE COURT: Okay. Would you be able to disregard what
12 you've read in its entirety and base your decision in this
13 case exclusively on the testimony and evidence in this case?

14 MR. YEARWOOD: Yes, sir.

15 THE COURT: Okay. Have you discussed the fact that
16 you've read anything in the newspaper or whatever it was you
17 saw with any other jurors?

18 MR. YEARWOOD: No, sir.

19 THE COURT: Okay. All right. Any additional questioning
20 from the State?

21 MR. RICHARDSON: No, sir, Your Honor.

22 THE COURT: Anything from the Defense?

23 MR. WILSON: Judge, just a clarification of where he read
24 what he read.

25 THE COURT: Okay. He said he didn't recall.

1 MR. WILSON: Okay.

2 THE COURT: He just recalled seeing something. As I
3 understand you just recalled seeing --

4 MR. YEARWOOD: It was -- I saw it was from my area where
5 I live.

6 THE COURT: Okay.

7 MR. YEARWOOD: And that's, that's what I just recognized
8 from it. I can't really remember everything.

9 THE COURT: Okay. But do you recall whether it was a
10 newspaper or what newspaper or what?

11 MR. YEARWOOD: No, sir.

12 THE COURT: Okay.

13 MR. WILSON: No further questions, Judge.

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

15 (Whereupon, Juror Number 446, Daniel C. Yearwood, exits
16 courtroom.)

17 THE COURT: All right. Anything from the State before we
18 bring the jury in?

19 MR. RICHARDSON: No, sir, just so the record's clear,
20 it's my understanding that he still ---

21 THE COURT: I'm going to leave him on as an alternate,
22 yeah.

23 MR. RICHARDSON: Yes, sir, Your Honor.

24 THE COURT: All right. Anything further from the Defense
25 before we bring the jury in?

Opening Instructions by Court

349

1 MR. WILSON: Nothing further, Your Honor.

2 THE COURT: All right. Can you go ahead and tell them
3 we're ready for the jury?

4 (Whereupon, the following takes place in the presence of
5 the jury.)

6 THE COURT: All right. Ladies and gentlemen, welcome
7 back. Hope everyone had a good lunch. I understand that
8 you've chosen, and you're going to have to pronounce your
9 name. I apologize.

10 MS. BUMBACO: Theresa Bumbaco.

11 THE COURT: Bumbaco. All right. Ms. Bumbaco, I
12 understand you've been selected as foreperson; correct?

13 MS. BUMBACO: Yes.

14 THE COURT: All right. If you'd please just always
15 occupy the seat where you now sit. The alternates, if you
16 would occupy the seats where you all are at this time. The
17 rest of you, as I said, are at liberty to sit in whatever seat
18 you like, whether it be the same seat throughout the trial of
19 the case, alternating seats throughout the trial of the case,
20 or whatever makes you feel more comfortable, and that'll be
21 fine. Thank you for doing that.

22 Before we get started I want to introduce you to the
23 court personnel that you'll be working with during the trial
24 of this case.

25 (Court personnel introduced by Court to jury.)

1 THE COURT: Now, we're getting ready to start the trial
2 of this case, but as I told you during the voir dire
3 questioning, jurors are constantly taking oaths. So I need
4 you to stand and raise your right hand for the clerk to
5 administer the oath for you to preside as jurors on this
6 particular case.

7 (Whereupon, the jury is sworn by the clerk.)

8 THE COURT: Is there any member of the jury that did not
9 respond to the oath by saying I do? If so, please stand.

10 (No response.)

11 THE COURT: Very well. Thank you very much. All right.
12 Ladies and gentlemen, we are about to begin the trial of the
13 case of the State of South Carolina versus Sandy Lee Locklear.
14 Now, before we began this trial, I want to tell you that the
15 trial will probably be different from what you're accustomed
16 to from watching TV shows, watching movies, reading books,
17 things of that nature. Trials are often filled with a lot of
18 action, a lot of suspense and things of that nature, and while
19 that might be the case in this trial, it probably won't be.
20 The primary function of this trial is a search for the truth
21 to find out what actually happened, and that is often a slow,
22 deliberate, repetitive process, the exact opposite of what you
23 might be accustomed to when you watch trials for entertainment
24 purposes and things of that nature, but I hope that you do
25 find this trial interesting. I hope that you do find it

Opening Instructions by Court

351

1 educational, and I want to thank you from the outset for
2 serving as jurors in this case.

3 Now, the attorneys appearing before you are advocates for
4 the parties they represent, but first and foremost, they are
5 officers of the court. They're sworn to uphold the integrity
6 and the fairness of our judicial system and to help you in a
7 search for the truth in this case. You should expect them to
8 be professional, competent and ethical in the representation
9 of their clients' interests.

10 Now, what I will now say at this point in time to you is
11 intended to serve as an introduction to the trial of this
12 case. These remarks are not a charge on the law. I will
13 instruct you on the law applicable to this case at the end of
14 the trial before you retire to consider your verdict. This is
15 merely an explanation of the procedure that we'll follow in
16 this trial so that you will better understand what's
17 happening.

18 Now, the Defendant is charged with two indictments.
19 These are the indictments, and it charges the Defendant with
20 murder on each indictment. Now, the elements of those crimes
21 I'll explain to you when I charge you on the law in this case.
22 These indictments are simply the charge by which this case is
23 brought into this court. They are not in any sense evidence
24 of any of the allegations contained in them. The Defendant
25 has pled not guilty to these indictments. Therefore, the

1 State has the burden of proving each of the elements of the
2 indictments beyond a reasonable doubt. It will be your duty,
3 ladies and gentlemen, to decide whether or not the State has
4 met that burden. Your purpose as jurors is to find and
5 determine the facts of this case. You're the sole judge of
6 the facts of this case. If at any time I make a comment
7 regarding the facts of the case, you must disregard my
8 comments. You are to determine the facts from the testimony
9 you hear and the other evidence introduced in court. It is up
10 to you to determine the inferences which you feel may properly
11 be drawn from that evidence. It is especially important that
12 you perform your duty of determining the facts diligently and
13 conscientiously because ordinarily there is no way to reverse
14 an erroneous determination of the facts by a jury. On the
15 other hand and with equal emphasis, the same law that makes
16 you the judge of the facts in this case makes me the judge of
17 the law. The law as given by the Court is the only law that
18 you can consider. You must accept and follow the law as I
19 give it to you even though you may disagree with it. Just as
20 I cannot tell you what the facts of this case are, you cannot
21 disagree with me about the law to be applied in this case.
22 Your job as jurors is to take the law as I give it to you and
23 apply it to the facts as you find those facts to be.

24 Now, after doing that, you will then render your verdict,
25 which is a true and just verdict under the solemn oath that

Opening Instructions by Court

353

1 you just took as jurors. Now, until I advise you to begin
2 your deliberations, you must not discuss this case with
3 anyone, including your fellow jurors or any family or friends
4 or anything of that nature. Do not discuss anything about the
5 case with anyone while you are part of this jury. After the
6 case is submitted to you, you can then discuss the case, but
7 only in the jury room with your fellow jurors. The attorneys
8 and parties in this case have been advised that they're not to
9 talk to you at all in this case as well. So if you have any
10 friends that are involved in this case and they do not talk to
11 you, they're not being rude. They're just following the
12 instructions of the Court and that is to ensure that everybody
13 gets a fair, impartial trial without any influence from any
14 other source, and we thank everybody if they would abide by
15 those restrictions.

16 Now, during this trial, you are not to read or listen to
17 or watch any news reports about this case. This includes
18 anything that may be in the newspapers or on the internet or
19 radio or television. You must not consider anything you may
20 have read or heard about the case outside of the courtroom,
21 whether that is before or during the trial of this case. It
22 is important that you keep an open mind and not decide any
23 issue in this case until all of the evidence has been
24 presented to you. The parties will then make their closing
25 arguments. I'll instruct you on the law of the case, and then

1 you will be instructed when you can begin your deliberations.
2 It is your solemn responsibility to determine the guilt or
3 innocence of the Defendant, and your verdict must be based
4 solely on the evidence as it is presented to you in this trial
5 and on the law as I instruct you during and at the close of
6 the trial.

7 Now, in just a moment the Solicitor will make what's
8 called an opening statement in which the Solicitor will
9 explain to you the issues in this case or at least what the
10 Solicitor feels the issues in this case are. The attorney for
11 the Defendant may also make an opening statement, although he
12 is not required to do so. What these attorneys tell you
13 during their opening statements is not evidence in this case.
14 It is only their contention as to what they feel the issues in
15 this case are. The evidence in this case will be presented to
16 you by testimony of sworn witnesses from the witness stand and
17 any other exhibits that may be introduced into evidence.

18 Now, in determining what the true facts are in this case,
19 you must decide whether or not the testimony of a witness is
20 believable. It will be my responsibility to rule as a matter
21 of law as to whether certain testimony is admissible at all or
22 not, but once testimony is admitted into evidence whether or
23 not you believe it is solely for you to determine. In
24 deciding whether to believe a witness, you have the right to
25 consider the interest of the witness, the bias of any witness,

Opening Instructions by Court

355

1 the prejudice of any witness, the opportunity for the witness
2 to have seen the matters and things about which the witness
3 may testify and the way the witness acts on the witness stand.
4 You will have the right to consider anything that is in the
5 record that will help you evaluate the testimony of the
6 witnesses. That means that it is your duty to pay close
7 attention to these witnesses, to observe them, to listen to
8 their testimony and to pay close attention to the attorneys
9 and to the Court. Please do not let your thoughts wander, but
10 give strict attention to the testimony in this case so that at
11 the end of all of the testimony and after the arguments of
12 counsel and a charge on the law by the Court, you will then be
13 in a position to determine what the true facts are and to
14 apply the law to those facts and thus render a true and just
15 verdict.

16 All right. Any challenges or additional charges from the
17 State?

18 MR. RICHARDSON: No, Your Honor.

19 THE COURT: Any from the Defense?

20 MR. WILSON: No, Your Honor.

21 THE COURT: All right. Ladies and gentlemen, at this
22 time, we'll begin the trial with the opening statements. As I
23 told you, these opening statements are not evidence. It is
24 simply the attorneys' contention as to what they feel the
25 issues in this case are. Mr. Richardson.

1 MR. RICHARDSON: With a cold, wicked heart and a soul
2 blackened by an insatiable greed, this Defendant plotted and
3 schemed and conspired to carry out the murders of her husband
4 and her stepson, and after doing it, attempted to, in a vain
5 manner, to cover her planning, her scheming, her plotting,
6 telling story after story, lie after lie, hoping to distract
7 law enforcement, but her story came undone.

8 During the course of the trial you'll find out Amos
9 Hatfield, our victim in this case, one of our victims, he was
10 a widow, widower, and in his later years, he had decided to
11 remarry. He was looking for some comfort, looking for some
12 love, but instead what he found was the Defendant, a woman who
13 wanted what she wanted and was willing to do whatever she had
14 to to get it. Amos was nothing more than a gold mine to her,
15 get married and dig in, get a house. Dig in a little bit
16 deeper, get those veteran benefits, and a little bit deeper,
17 get a car, and as that mine began to play out, as he ran
18 through his resources, there was only one thing left, and so
19 she went for the mother-load. She reached way down deep for
20 the life insurance policy. There's only one way to collect on
21 that, folks. Amos had to die, and Tommy Hatfield, he was in
22 the way. He provided a scapegoat. So he had to die, too.
23 Her greed caused her to go after that life insurance policy,
24 and that's what she wanted, folks, but don't, don't give her
25 what she wants, give her what she has earned, what she

Opening Statement by Mr. Richardson

357

1 deserves. At the conclusion of this trial find her guilty,
2 guilty of the murder of Tommy Hatfield because he got in the
3 way, and guilty of the murder of Amos Hatfield because that's
4 what she intended.

5 When you begin hearing testimony, you're going to find
6 out that on or in the early morning hours around 4 a.m.,
7 August 19th, 2012, 911 received a call. The Defendant was on
8 the line, and she told 911 she needed help now, she had been
9 raped, raped in her bedroom, in her husband's bedroom. Some
10 men had broken in, a white boy and a light-skinned guy, might
11 be Hispanic, might be mixed race and she knows the difference.
12 You'll hear that 911 tape, and she needs police now, and so
13 her story begins.

14 You'll hear from Officer Matt Tindall, the first
15 responder, how when he arrived he and his partner cleared the
16 scene outside this old mobile home on Red Bluff Road in the
17 Loris Section of Horry County. They cleared outside, and they
18 went around to the back and they found a back door open, how
19 with guns drawn they entered the house, the only lights in the
20 house a TV screen in the living room, in a hall room bath down
21 the hallway. Officer Tindall will tell you how he found Amos
22 Hatfield face down on the floor of his kitchen not moving, and
23 he looks over before going down the hallway and he sees Tommy
24 Hatfield face down not moving, but Officer Tindall he goes on
25 back. He knows that they've got someone on 911, and he goes

1 back and he finds the Defendant, and he takes her out. She's
2 a victim of rape. She's, she's a witness. That's, that's
3 what she tells everybody, "I was brutally raped. I'm the lone
4 survivor. These guys who broke into my, my husband's house,
5 shot him, shot his son. They left me alive. I don't know
6 why." And so the police treat her as a victim, as a witness,
7 and they take her to the hospital. They go through rape
8 protocol. They get her checked out, make sure she's all right
9 and they have to talk to her, folks, because she is an
10 eyewitness to this brutal execution style murder.

11 And so when she's done at the hospital, they ask her to
12 go to the police department, take her from Conway Hospital to
13 the M.L Brown Building, a short distance away, and they begin
14 to talk to her.

15 You'll hear from the chief investigator at the time,
16 since retired, Detective Neil Frebowitz. He'll talk to you,
17 and you'll hear the interview when he sits down with her the
18 first time, "Tell us what happened. Ms. Locklear, tell us
19 what happened," and he listens, as you will, and as he listens
20 he notices her story, it doesn't make sense. She adds to it.
21 She takes away, and while it's not uncommon for a victim, it
22 doesn't make sense with what they find at the scene, and so
23 after about 45, 50 minutes Detective Frebowitz says, "Let's
24 take a little break. Drink your water, relax, and I'll be
25 back." And so he takes a 10-minute break, and when he returns

Opening Statement by Mr. Richardson

359

1 he takes a precaution. His antennae are up. His interest has
2 been tweaked a little bit. So he reads her her Miranda
3 Rights. "You've got the right to remain silent. You've got
4 the right to an attorney, if you want. Do you understand your
5 rights?" And she says yes, and she wants to keep telling her
6 tale, and she keeps trying to add to it and add to it until
7 the police say, "You're lying. You're lying. We know you're
8 lying. You weren't raped. You said you were beaten to death,
9 and there's not a mark on you. You said you were brutally
10 raped here and then there and then there, and there's no
11 evidence of it, and you're lying," and so she adds to the
12 story. What a tangled web we weave when at first we practice
13 to deceive, and as those lies become unraveled she's got to
14 tell another lie and another lie and another lie, one on top
15 of the other, trying to escape the truth, and every time she
16 tells a lie the police have to take a break. They have to go
17 out and investigate what she's told them, and every time they
18 come back and say, "We can find no evidence to what you've
19 said," and she tells yet another lie, and it's only after some
20 time, after numerous breaks, after she's been sitting in an
21 interview for some time getting questioned off and on over a
22 period of time that the police finally receive her cell phone
23 records.

24 You see, she had told police originally that these people
25 that broke in the house and killed her husband and left her

1 alive, they stole her cell phone. So the police had asked,
2 "Can we, can we look at your cell phone records, maybe track
3 it," and they went to do that, but instead of finding where
4 these shooters were, what they found were text messages. Now,
5 mind you, she calls 911 at 4 a.m. in the morning, and they
6 look back at her text messages, 2:39 a.m. August 19th. She
7 gets a text from a [REDACTED] number, a North Carolina cell phone.
8 "Is the back door open?" The police read a little further,
9 and there's a response from her phone. "The back is on."
10 Just a few minutes later, "R.E. it's locked," from that same
11 [REDACTED] number, and finally she responds to them, "The back door
12 is open," and when the police present this to her and tell
13 her, "We know you were involved," she, she hangs her head and
14 says, "It was just supposed be a robbery. It was just
15 supposed to be a robbery," and they continue to interview her,
16 and she talks about how she was supposed to leave the door
17 open, and this fellow she knows, James, who cuts her grass,
18 was going to come in for the robbery, but the police are still
19 confused and confounded because they've been in the house.
20 They've looked around. You'll see photos from the house.
21 What is there to rob? I believe you'll even hear from the
22 Defendant's own statement, "Amos didn't have anything." So
23 what were they supposed to rob?
24 But she is charged with murder that night for, for her
25 part, for being the one who was supposed to leave the door

Opening Statement by Mr. Richardson

361

1 open, and police continued their investigation. They looked
2 for this James fellow, and they'll take you through that
3 investigation, how they identify Nehemiah James Evans, Odom
4 Bryant. Still, why the robbery? What is there to rob, and
5 that thought is going and going and going until the very next
6 day, August 20th in the afternoon. Faye Hunt comes in, a woman
7 that has known the Defendant literally her whole life, has
8 been her drinking buddy, her friend, her compatriot. Faye
9 hangs out at the Defendant's home, and she's able to fill in
10 some of the details. Faye Hunt will take the stand, and she
11 will tell you about the relationship of her and the Defendant,
12 and she'll tell you about the relationship of Amos Hatfield
13 and the Defendant. She'll tell you how she was present at the
14 house Amos bought for the Defendant in North Carolina, a house
15 she wouldn't let Amos in, how Amos came with important papers
16 one day to hand to her, and said, "Take care of this, Sandy.
17 This is important papers," and as she shooed Amos away, Amos
18 left, and Faye said, "What is that?" She said, "Girl, this is
19 a million dollar policy, and when that old man dies, I'm going
20 to be a rich bitch," her words. Ah hah, we know what it's
21 about. There's no robbery. The only things of value in that
22 entire home at [REDACTED], Tommy Hatfield with his
23 innate human value, he's a brother that's loved by his sister,
24 obviously loved by his father. His father was keeping him in
25 that house, and certainly Amos Hatfield, a father that was

1 loved by his family and a pretty devoted husband, whether it
2 was returned or not, and let's not forget that million dollar
3 policy.

4 So police take this information and they investigate.
5 They go get a search warrant because Faye also says, "Saw her
6 put, put the insurance paperwork away in her house, [REDACTED]
7 [REDACTED], Tabor City, North Carolina," and so officers go
8 with the Tabor City Police Department. They get a search
9 warrant. They enter that house, and they do an extensive
10 search of that house, and lo and behold, they find that
11 policy, and you'll see it, folks. The State is going to
12 introduce it, the policy she thought was worth a million
13 dollars, her words to Faye.

14 They interview the Defendant one more time that Monday
15 night. She's had about 18, 24 hours to come up with a new
16 story, and she tells yet another story. She combines all the
17 stories she told the day before into one grand thing. She
18 says, "Tommy was bad on drugs and Amos wanted to scare him.
19 So Amos and I together decided we would get these guys I know
20 to break in the house to scare him away from his drugs."
21 Folks, if that's the truth, why not say it from the get go?
22 Why make up some story about some white guy, some light
23 skinned guy, might be Hispanic, might be black? Why make up a
24 story about being raped? Why make up any of it until you get
25 that hard evidence put down in front of you about you leaving

Opening Statement by Mr. Richardson

363

1 the door open? Because she wants to distract law enforcement,
2 folks. She wants to take them away from the truth. So you
3 don't be taken away from the truth. You don't be taken away
4 from what happened, and you heard me mention Odom Bryant,
5 Nehemiah James Evans, who were arrested, and their court date
6 will be for another jury, another time, and they will face
7 their jury for their actions in this, but today you will
8 render a verdict on the woman who led the whole crime. Use
9 your common sense, and it makes no matter that night whose
10 finger was on the trigger, whether it was Nehemiah James
11 Evans, Odom Bryant or the Defendant herself as that trigger
12 was squeezed, as the gun was lowered to Tommy Hatfield's head,
13 and he was shot dead right there in his living room on the
14 floor, and it makes no difference whose finger was on the
15 trigger as Amos Hatfield was put down to the floor having
16 witnessed his son be executed, as that trigger was squeezed
17 one more time, as he dies on his kitchen floor like a dog in
18 the street, no matter whose finger is on that trigger there's
19 one hand and only one hand that aims the gun, Sandy Lee
20 Locklear. She went after the insurance money, folks, plain
21 and simple, and she lied and she lied and she lied. Don't
22 give her what she wants. You give her what she deserves,
23 guilty for the murder of Tommy Hatfield, the convenient
24 scapegoat, the man who got in the way, and certainly guilty of
25 the murder of her husband, Amos Hatfield, because the only way

1 she could get that pot of gold at the end of the rainbow, get
2 the return on that life insurance policy was to put him down.
3 Find her guilty because that's what she is, folks.

4 THE COURT: Mr. Wilson.

5 MR. WILSON: May it please the Court, Your Honor.

6 THE COURT: Yes, sir.

7 MR. WILSON: Thank you, Judge. This case started 20
8 years ago. Didn't start when this murder happened. It
9 started 20 years ago. Amos Hatfield, and you will hear
10 testimony, had a problem with his son for 20 years. That is
11 undisputed. He was on drugs for a long time. His father,
12 Thomas's father, Amos Hatfield, actually moved from his house
13 at Wagon Wheel Court because his son had drug dealers coming
14 to the house. They burst in the door. In 2010 he filed an
15 eviction notice to have his son kicked out of the house. He
16 actually left his house at Wagon Wheel because of the drug
17 problems his son was having to move in with his daughter. He
18 was dealing with this for a long time. This didn't happen
19 overnight.

20 This Defendant, Sandy Lee Locklear, married Thomas --
21 excuse me, Amos Hatfield. They got married in 2010 or '11.
22 You'll hear testimony about their marriage. It was a mutual
23 marriage. They decided they cared about each other enough to
24 get married, and it's true, Amos Hatfield took very good care
25 of Sandy Locklear. He cared for her so much he got her a

Opening Statement by Mr. Wilson

365

1 house, got her a car. He paid her bills, and let's talk about
2 this insurance policy the Prosecutor just told you about. You
3 will hear testimony that this insurance policy was not for a
4 million dollars. You will hear that there are three classes
5 in this insurance policy. The first one is if you get in a
6 plane accident then the policy says it's a million-dollar
7 payout. If you then get in a pedestrian accident or a car
8 accident, you get \$500,000, and the last class, if anything
9 else happens, you get \$200,000, which she has to, she has to
10 split with Sylvia who is in the policy as a beneficiary. So
11 it's not a million dollars.

12 This case started 20 years ago when Amos had problems
13 with his son, and you will hear testimony that on the day that
14 this happened you will hear testimony on the stand that Amos
15 Hatfield spoke with Sandy Lee Locklear about the problems he
16 was continuing to have with his son and that two days before
17 his son had actually attacked him because he wanted money for
18 drugs. He wanted to go to the place called the bottom in
19 Loris or in Tabor City and score. He asked this Defendant,
20 "Do you know anybody who can come up here and put the fear of
21 God in my son? I don't know what else to do." The family was
22 at their wits end. They didn't know what to do. She tells
23 him, "Yes. I know my guy who cuts my grass." You will see
24 evidence on the stand she gave him beer and cigarettes to come
25 and scare him.

1 Amos and Sandy go to IGA. They get the actual beer.
2 There's a check with his signature on the, on the, on the
3 actual check. They get the beer. They get the cigarettes and
4 some sugar, and she gives it to James, who then calls some
5 crazy guy named Odom, Odom Bryant, who's also charged with
6 this crime of murder.

7 Odom Bryant and James Nehemiah Evans decide at some point
8 in time that they think that Amos has money because he takes
9 care of Sandy, and they decide they're going to go ahead and
10 rob and kill these two men. Then they threaten this
11 Defendant. You will see evidence that one of the Co-
12 Defendants, who's not here today I might add, had a gun which
13 matched the caliber weapon that was used in this case to do
14 the murders. He had it before and he had it afterwards. They
15 didn't tell you that; did they?

16 You will see evidence on the stand from a State Law
17 Enforcement Division agent, who is now moved on to something
18 else, that there was no gunshot residue found on this
19 Defendant the night this happened. They came in and tested
20 her for gunshot residue. They tested her for gunshot residue,
21 whether or not she had actually been close enough or if she
22 had fired a weapon. It came back negative. You'll hear him
23 get on the stand. They didn't tell you that; did they?

24 You will hear evidence in this case that there was
25 collected pillows from the crime scene. There was collected

Opening Statement by Mr. Wilson

367

1 tape, which this Defendant was taped up with. You will also
2 hear evidence about bruises and abrasions that were on this
3 Defendant, and the police tested none of this stuff for DNA,
4 hair follicles. You will hear evidence that they didn't even
5 test one of the Co-Defendants for DNA at all, but they took a
6 door down where this Defendant was tied up in a bed, took out
7 and tested it to see if blood was on it because that's where
8 she was found, in the bedroom. That's where the police found
9 her when they came to the house. They found her in the
10 bedroom, and do you think that they did anything else? No.
11 They did not. They did not. They took the door down, tested
12 it, no blood. They thought that a red stain on the door was
13 blood, which would have meant that she transferred it, but
14 they didn't test anything else, and they found a lot of
15 evidence in the house. None of it, not one single shred of
16 evidence came back as a match to anything to this Defendant,
17 not one, and yes, this client, you're going to hear testimony
18 on the stand absolutely, positively was on Xanax. She was on
19 other prescription medication. She was on marijuana. She had
20 alcohol that night. She had drank with some friends. We
21 ain't going to deny that, but the question still remains, was
22 she complicit in this murder or was this the act of two
23 knuckleheads who decided to go and do a brutal murder, who are
24 not here I might add, but this Defendant is because the State
25 believes that she's the guilty one. They want you to believe

1 that she's the guilty one, that she planned all this.

2 You will see evidence that the police, the police had
3 this Defendant in their custody for almost 18 hours that day
4 starting at 4:00 o'clock. They come to the scene. They take
5 her, ask her questions right then. They have a chance to look
6 at her to see whether she's got blood on her person, to see
7 whether or not she's washed off. You'll hear testimony about
8 it.

9 They take her to the hospital, get a rape kit done, and
10 then they bring her back to the M.L. Brown Building here in
11 Horry County, and they question her for another 12 hours. At
12 around 10:51 a.m., if my memory serves me correct, they
13 questioned her, then you will hear testimony they handcuffed
14 her after a few hours. They didn't believe her from the
15 beginning. They put her hands behind her back, and she was
16 sitting at a table like so. After they thought that, I guess,
17 that was just too much, they come back in, re-handcuff her,
18 and handcuff her to the chair, and what they're going to tell
19 you is they were trying to impress upon her the gravity of the
20 situation, as if she didn't already know.

21 While she's in custody 12 hours sitting there in a cold
22 room in nothing but blues, "Your husband's dead, your
23 stepson's dead," they then take their hands, one of them,
24 (claps hands), bam, "You did it, didn't you", right in her
25 face. They wanted her to confess to this crime. They wanted

Opening Statement by Mr. Wilson

369

1 her to confess to this crime.

2 If that wasn't enough they again say to her, "Look, we're
3 going to put a needle in your arm. We're going to send you
4 out of here in a coffin if you don't tell us what we want to
5 know about this case." The police wanted her to say X, Y and
6 Z. They wanted her to say, "Look, I did it," because they
7 already believed it, and before they did a proper
8 investigation they had already tried her and convicted her,
9 and I'm asking you today, I'm asking you today to please
10 listen to all the evidence before you make up your minds. I
11 admit to you, absolutely, this is a bad factual case. It is
12 heinous to think about what happened to those two men and that
13 family, and it's tough because we're all human beings. We all
14 have reactions to all these things, myself included. We all
15 do, but the question is what does the evidence show? What
16 does the evidence show us? What does the evidence show in
17 this case?

18 When I was growing up, I grew up right here in Conway,
19 South Carolina. I grew up here, and when I was about seven or
20 eight years old, I actually wanted to grow up maybe a little
21 bit too fast, and my mother would always say, "Look, you can't
22 have your daddy's cranberry juice." Sunday mornings my father
23 would always drink cranberry juice, and he would always say,
24 "Look, this is not for you. You can have milk. You can have
25 water." That's what he would say.

1 My mother would tell me, "Don't go and drink his
2 cranberry juice," and if I did, and I promise you on occasions
3 I did, she would spank me. Then if it was his candy bar, you
4 know, my mother would say, "No, that's your daddy's candy bar.
5 You're not old enough yet to eat those kind of candy bars.
6 When you get older you can have those kind of candy bars."

7 If I wanted a shaving kit when I was seven and eight, and
8 I promise you I didn't have the beard I have now, he would say
9 the same thing and so would my mother, and my mother sat me
10 down one day, I was about nine or ten, and she said, "Look,
11 you're trying to grow up too fast. It's a process. Growing
12 up is a process," and that is not unlike the judicial system.
13 It's a process. The judicial process system is set up so that
14 Defendants can get a fair trial, and that's what you swore to
15 do, to follow the evidence in the case, not your passions, not
16 your prejudices because you're going to see things and hear
17 things in this case that obviously are going to raise,
18 obviously, the hair on the back of your heads, on your necks,
19 but you agreed and you took a oath to look at the evidence in
20 this case and to give this Defendant a fair trial, and the
21 reason that's so important is because the State can stop you,
22 they can question you, they can charge you and investigate
23 you, indict you without much interference, and absolutely
24 without having a trier of fact on board who can protect the
25 rights of the Defendant from the State because today the buck

Opening Statement by Mr. Wilson

371

1 stops here, not with me, not with what I'm telling you, not
2 with the Prosecution, not with the Judge, but with you. The
3 buck stops with you, with you. You are the jury. You are the
4 trier of fact in this case, and all we're asking for, all
5 we're required to ask for and all I'm asking for, all we want
6 is a fair trial, not to be sucked in by the bad facts. Every
7 time you get tired I want you to remember these words, this
8 Defendant seated over here is innocent until proven guilty
9 beyond a reasonable doubt, innocent until proven guilty beyond
10 a reasonable doubt, and if you get afraid of some of the
11 things you hear, remember those words, she is innocent until
12 proven guilty beyond a reasonable doubt. That's the law. As
13 of now she sits innocent, and the evidence that they put up
14 I'm asking you to listen to it, hear what the witnesses say,
15 weigh the believability of what the witnesses say, look at the
16 evidence, the documents, the insurance policy, the gunshot
17 residue test, look at those things, look at the evidence from
18 the house, listen to the video, I -- excuse me -- I -- excuse
19 me -- I ask you to listen to the audiotape, listen to it, hear
20 what they have to say. Hear what the police say to her. This
21 Defendant, I would suggest to you, never, ever said, "Oh, it
22 must have been a robbery." That's not what she said. Listen
23 to the tape. Listen to what she says. It's hard to hear, but
24 listen to it. Please listen to it.

25 The end of the day she tells the detectives what really

1 happened. 10:00 o'clock in the morning they start, 10:30 at
2 night she tells them, "Look, this is what happened. This is
3 what happened. Amos and I were there. We talked about it.
4 He agreed on it," and you'll see a phone call placed to Amos
5 at 12:30 that night. They spoke.

6 Please take your time, listen to the witnesses, weigh the
7 evidence and give this Defendant a fair trial. That's what I
8 ask. Thank you so much.

9 THE COURT: All right. Ladies and gentlemen, we'll now
10 begin the evidentiary portion of this trial with the calling
11 of witnesses. Mr. Richardson, the State can call their first
12 witness.

13 MR. RICHARDSON: Thank you, Your Honor. The State would
14 call Officer Matthew Tindall.

15 THE COURT: All right.

16 Whereupon, Matthew William Tindall was called to the
17 stand, duly sworn by the clerk and testified as follows:

18 THE CLERK: State your full name and spell your last
19 name.

20 MR. TINDALL: Matthew William Tindall, last name T-I-N-D-
21 A-L-L.

22 MR. RICHARDSON: The Court's indulgence.

23 THE COURT: All right.

24 DIRECT EXAMINATION

25 BY MR. RICHARDSON:

Matthew Tindall - Direct by Mr. Richardson

373

1 Q Officer Tindall, could you please talk to us a little
2 bit, tell us a little bit about yourself, where you're
3 employed, what capacity, whatnot?

4 A I work for the Horry County Police Department. I've
5 worked there for the last around about six years. I've spent
6 most of my time working the Aynor, Gallivants Ferry area,
7 briefly worked the Loris area.

8 Q Okay. And that's all part of the west precinct?

9 A Yes, sir.

10 Q And you're a patrol officer; correct?

11 A Yes, sir.

12 Q Now, as a patrol officer with the Horry County Police
13 Department, what are your typical duties and, and what -- and
14 you've already told us you handle stuff over in the west. So
15 what are your typical patrol duties?

16 A Normal patrol duties is for any reason anybody calls 911
17 or requests for police assistance we go out, assess the
18 situation, talk with the community, just assist in any way
19 possible for anybody that needs any type of help.

20 Q And were you so employed and working back August 19th,
21 2012?

22 A I was.

23 Q And what shift were you working that day?

24 A Night shift.

25 Q Okay. So you had started on the 18th, Saturday night?

1 A Yes, sir.

2 Q On into Sunday morning?

3 A Yes, sir. 6:00 o'clock in the afternoon until 6:00
4 o'clock in the morning.

5 Q Okay. In your course -- in the course of your duties as
6 a patrolman in the west precinct, did you have the opportunity
7 to respond to [REDACTED]?

8 A I did.

9 Q And for what purpose did you go to that address?

10 A Me and my partner were dispatched to that address in
11 reference to a possible burglary in progress, which shortly
12 thereafter they advised us that it was somebody possibly been
13 shot. So we were dispatched there and arrived shortly after.

14 Q Okay. And Officer, I'm going to show you what's been
15 marked State's One.

16 MR. WILSON: Without objection, Your Honor.

17 Q For identification. See if you can tell us what State's
18 One is, see if you recognize it.

19 A It appears to be an overhead view of the area of Loris
20 and the residence and Highway 9.

21 Q County line or state line?

22 A Horry County and North Carolina, Tabor City line.

23 Q All right.

24 MR. RICHARDSON: And Your Honor, if I could have the
25 witness step down from the stand.

Matthew Tindall - Direct by Mr. Richardson

375

1 THE COURT: All right. Have we put that into evidence?

2 MR. RICHARDSON: I'd move it into evidence at this time,
3 Your Honor. I've provided it. It's a map.

4 THE COURT: Any objection?

5 MR. WILSON: No objection, Your Honor.

6 THE COURT: All right. State's Exhibit Number One
7 admitted into evidence without objection.

8 (Whereupon, State's Exhibit One [Aerial Map] admitted
9 into evidence and appropriately marked.)

10 MR. RICHARDSON: Permission to publish, Your Honor?

11 THE COURT: All right. Yeah.

12 MR. RICHARDSON: Yes, ma'am.

13 THE COURT: All right, sir.

14 MR. RICHARDSON: Thank you, Your Honor.

15 BY MR. RICHARDSON:

16 Q Let's see. Now, when you talk let's just talk into the
17 microphone as good as you could, please, so that Madam Court
18 Reporter can take down everything and so the jury can hear
19 you.

20 A All right.

21 Q Now, when you received the 911 call, what time of day was
22 it?

23 A It was early morning, right around 4:00 o'clock in the
24 morning.

25 Q About 4:00 o'clock in the morning. You said you and your

1 partner you all are in the same patrol car, two different?

2 A Two separate patrol cars, but that time of the morning it
3 tends to get a little bit slower. So we tend to meet up and
4 just discuss events that occurred during the night.

5 Q Okay. And on the map could you show us approximately
6 where you and your partner were?

7 A Right around this area here in the city limits of --

8 THE COURT: All right. You're going to need to back up
9 some. Not all the jurors can see what we're --

10 MR. RICHARDSON: I'm sorry. Can you see a little bit
11 better now?

12 A The general area we were in we're right in the city
13 limits of Loris right, right around there.

14 Q Okay. Right around there.

15 A Uh-huh.

16 Q And [REDACTED] is that about where you had to go
17 to?

18 A Yes, sir. Right here.

19 Q How'd you get there?

20 A Patrol car, took -- we went straight across -- I can't
21 remember the exact name of the road, a little side street,
22 which that side street turned into Bryant Street which around
23 turned into Red Bluff Road.

24 Q Okay.

25 A A very short distance.

Matthew Tindall - Direct by Mr. Richardson

377

1 Q A very short distance. All right. Go ahead and take the
2 stand back.

3 A (Complies with request.)

4 Q So you and your partner have a short distance to go from
5 the time you received the 911 call. Who was your partner at
6 the time?

7 A Officer Matthew Stevenson.

8 Q Okay. And you all were in two separate patrol cars. So
9 you left the City of Loris and you headed out to Red Bluff
10 Road?

11 A Yes, sir.

12 Q And you already showed us the direction you took. About
13 how long did it take you to get there?

14 A About four minutes.

15 Q About four minutes from the time you got the call?

16 A From the time we were first told to respond to that
17 address till the time we actually were right there at the
18 house.

19 Q Now, when you first get to the scene, [REDACTED]
[REDACTED], what county is that in?

21 A Horry County.

22 Q That's here in Horry County. What'd you first do?

23 A The first thing we did was exit our vehicles. Officer
24 Stevenson, since he was a little bit more familiar with the
25 area, approached the residence first. He walked to the front

1 door with me behind him. He noticed that the front door was
2 locked. So he come down off the steps, at which time I began
3 to take the lead to the back of the house. After we come
4 around the back side of the house it was -- we could see the
5 back door at that time, which was wide open. A screen door
6 was completely open. Then we got to the back door and
7 examined, that we could see into the house, and at that time
8 while looking from the outside in we could observe a person
9 laying face down in the living room area.

10 Q Okay. And were there any lights on in the house that you
11 could see?

12 A If there was it was very dim lights because we had to use
13 our flashlights to see what we could.

14 Q And describe the area for us. I mean, is this an urban
15 area, rural area or what?

16 A Right where the residence was it's not in the -- right
17 close to the city from where all the residents are close
18 together. There are other residents around, but none really
19 close to where people are on top of each other.

20 Q They're spaced out pretty good?

21 A They're spaced out fairly well.

22 Q Allow me to show you what has been marked as -- for
23 identification as State's Two through Eight.

24 MR. WILSON: No objection, Your Honor.

25 THE COURT: I mean, are we putting those in now?

Matthew Tindall - Direct by Mr. Richardson

379

1 MR. RICHARDSON: I will be, Your Honor.

2 BY MR. RICHARDSON:

3 Q See if you can identify State's Two through Eight,
4 please, sir. Take your time and look at it.

5 A Yes, sir. This is the residence that we were dispatched
6 and responded to.

7 MR. RICHARDSON: Your Honor, the State would seek to
8 introduce these into evidence.

9 THE COURT: Any objection?

10 MR. WILSON: Without objection, Your Honor.

11 THE COURT: All right. State's Exhibits Two, Three,
12 Four, Five, Six, Seven and Eight are admitted into evidence
13 without objection.

14 (Whereupon, State's Exhibit Numbers Two through Eight
15 [Photographs] admitted into evidence and appropriately
16 marked.)

17 BY MR. RICHARDSON:

18 Q Officer Tindall, State's Two through Eight, do they, do
19 they accurately depict the lighting conditions you found when
20 you first arrived on scene?

21 A They do.

22 Q Okay. So it was dark outside?

23 A Pretty dark.

24 Q And if you'll look through there, you stated that you all
25 stepped was it around back?

1 A To, to start with, Officer Stevenson went onto the front
2 porch, opened the screen door but then noticed the actual hard
3 door was locked. He walked off of the steps, which at that
4 time --

5 Q And that's depicted on State's Number Three?

6 A Yes, sir. And at -- whenever I observed him coming off
7 the steps we approached closer to the back of the house,
8 coming from the front to the back to where once we got to the
9 back we could see that the, the back door was open.

10 Q Okay. And the back door is depicted on State's -- well,
11 State's Five, Six, Five and Six shows a view of it, and Eight?

12 A Yes, sir. That's the front door.

13 Q Seven is just another view of the front door. Now, you
14 told us that whenever you all arrived you got out of your
15 patrol cars. Did you take any efforts to secure the area?

16 A The first thing we did once we get out we're, we're
17 always looking around, out of the corner of our eyes just
18 making sure there's no immediate dangers, looking at the wood
19 line, shining your flashlight back there to where the grass
20 meets the edge of the yard, just look for any signs of where
21 anybody may be around that could do us or anyone else harm at
22 that time.

23 Q Okay. Now, as you arrived on scene, you originally had a
24 report of a burglary I believe you testified to?

25 A Yes, sir.

Matthew Tindall - Direct by Mr. Richardson

381

1 Q What information do you have at this point whenever you
2 arrived on scene?

3 A At this point the only information I can recall that we
4 had was it was a burglary in progress, then it come out that
5 possibly someone inside the residence may have been shot in
6 the head. With it being such a brief period of time for us
7 actually getting called out till the time that we were in the
8 yard, dispatch was still trying to obtain further information.
9 By the time that we actually got to the back door, we only
10 knew that there was a female inside that had been there when
11 the altercation occurred.

12 Q Okay. So you had information that there's possibly been
13 a shooting?

14 A Yes, sir.

15 Q What steps do you do to protect yourself and Officer
16 Stevenson?

17 A At that time once we -- when we get out of our vehicles
18 we un-holster our weapons and immediately start observing for
19 dangers, keeping at that time anything that we'd look at,
20 keeping it in view with our firearm just in case it is needed.

21 Q Okay. And so you have your guns drawn?

22 A Yes, sir.

23 Q And you state that you all eventually work your way to
24 the back door and you enter and you said when you first
25 entered you saw a body on the floor?

1 A Well, actually, before we even had to step into the
2 residence, you could see, had a plain view of sight into the
3 living room, and you can see a person laying face down on the
4 living room floor, and then once we stepped inside of the
5 residence we see another person laying face down on the
6 kitchen floor.

7 Q Okay. Are you using any other lighting source or
8 anything, flashlight or anything?

9 A We're using flashlights that all, pretty much all of us
10 use at nighttime, shining it where we need so we can see.

11 Q Okay. So after you see the, the body laying down on the
12 living room floor and body in the kitchen --

13 A Body laying in the living room and the body in the
14 kitchen. Yes, sir.

15 Q -- what's your next steps? If you could just take us
16 through how you proceeded.

17 A Well, once, once we got inside the house, it was obvious
18 that there was no type of movement from anybody that was
19 laying on the floor, and you could hear a female voice. Right
20 now I can't recall exactly what was being said, but it was a
21 female in distress from what I can recall. I scanned the room
22 the best I can while going to that voice because knew that
23 someone was inside the residence.

24 Once I got into the back door there was a, a small
25 hallway to the right, and the bedroom was straight across with

Matthew Tindall - Direct by Mr. Richardson

383

1 the door open, and I can see a female sitting on the bed, and
2 I immediately went straight in there, made sure there was no
3 one in the bedroom with her, and then attempted to get her out
4 of the residence.

5 Q Were there any lights on inside the house?

6 A The best that I can recall at this time was possibly a
7 small, a light on in the living room or kitchen area
8 somewhere.

9 Q All right. Now, you make your way back to the bedroom,
10 you said you heard a female voice down the hallway.

11 A Yes, sir.

12 Q You make your way to the bedroom and you find a female.

13 A Yes, sir.

14 Q Do you see that female in the courtroom today?

15 A Yes, sir.

16 Q And could you tell us who, who you see?

17 A Ms. Locklear with the black jacket on and the blue shirt
18 underneath it.

19 Q And at this point you've worked back there. She's on the
20 bed I believe you said?

21 A Yes, sir.

22 Q Did you have the opportunity to speak with her?

23 A Very briefly. While she was -- before getting her out of
24 the room I was just asking her questions just to get an
25 immediate, "Who was this? Who done this?" As soon as she

1 started speaking I was asking her what, if she knew who done
2 it. The only information she could provide was it was two
3 males wearing hoodies, ski masks and one had on white gloves.

4 Q Did -- now, you didn't read her her rights or anything?

5 A No, sir.

6 Q Why not?

7 A She was, at that time, I believed that she was a victim
8 and she had been assaulted herself.

9 Q Now, how did she appear to you at this juncture?

10 A At -- once I first seen her in the bedroom she did appear
11 to be -- had been in distress. She was sitting on the bed
12 sobbing, able to speak but kept getting interrupted,
13 interrupting herself by just briefly crying at times, not able
14 to provide a whole bunch of answers at that time, but she did
15 appear to be in distress.

16 Q Did she appear to be intoxicated in any way?

17 A At the time of getting her outside of the residence, I
18 don't recall her being under the influence of anything at that
19 time, but I was quickly just trying to get information,
20 getting short answers from her.

21 Q And you brought her out of the residence; correct?

22 A Yes, sir.

23 Q Did she stumble, did she fall?

24 A At that time she wasn't stumbling, but due to the
25 circumstances as there being two people throughout the house

Matthew Tindall - Direct by Mr. Richardson

385

1 in plain view if when we were walking out she'd be able to
2 see, I attempted to assist her out of the house by holding on
3 to one arm and asking her to look away, just to look at the
4 ceiling, look at the wall, just don't look over, and I just
5 assisted her out of the residence.

6 Q Okay. Once you got her out of the residence, what'd you
7 do?

8 A I walked her to the patrol car and let her have a seat in
9 the back seat of the car just due to the fact it being 4:00
10 o'clock in the morning, not really knowing if there's still
11 somebody around the house just to put her in a safe and
12 comfortable place where I would think that she'd be a little
13 bit better off.

14 Q Now, you have her in the back of the patrol car. That's
15 for her safety?

16 A Yes, sir.

17 Q And you said previously that she identified there was
18 some masked men, ski masks, white gloves?

19 A Yes, sir.

20 Q At any point did she talk to you about any types of
21 weapons that she saw?

22 A She did. After asking her for any information at all
23 that she could give to assist us in trying to locate some of
24 these people, she said that there were two men come inside the
25 house, had a long gun and struck her husband and her son in

1 the head causing them to -- and making them lay on the, on the
2 floor, and she herself also said that she was struck in the
3 head with that same gun.

4 Q Did you get any information with regard to a timeline of
5 when this happened?

6 A At first I believe she said that they had left the
7 residence about 30 minutes before we got there, but it all
8 occurred around 11 something p.m.

9 Q Okay. And this is four a.m. in the morning?

10 A Yes, sir.

11 Q Did the Defendant say anything about her being attacked?

12 A She did. She stated that the subject wearing a black
13 hoodie, wearing white gloves had raped her twice in the
14 kitchen.

15 Q Okay. Now, did the Defendant make any statements about
16 when she heard gunshots?

17 A She said that while she was in the bedroom, I do not
18 recall if she was tied up at this time, but while she was in
19 the bedroom she said she did hear two gunshots coming from the
20 opposite end of the house.

21 Q Okay. And after you secured the Defendant, is the victim
22 at this time, what if anything else did you or any other
23 officers do in your presence?

24 A As far as around her?

25 Q Yes, sir.

Matthew Tindall - Direct by Mr. Richardson

387

1 A Pretty much it was just me attempting to get information
2 from her. While she was sitting in the car I just kept asking
3 her if she was okay, if she needed any kind of medical
4 treatment and just obtaining information from her as far as if
5 she knew who had done anything. She would -- at some times it
6 would be hard to get any type of information. She seemed to
7 be upset one minute and not paying any attention what was
8 going on the next minute.

9 Q Okay. So her behavior was a little different?

10 A Up and, up and down, just kind of.

11 Q Now, did you witness any other officers come on scene?

12 A Several other officers. There was Officer Stevenson who
13 was already there with me, my supervisor at the time, Sergeant
14 Toober Boyd [spelled phonetically] had arrived on scene, and
15 by this time we had determined that a crime had been committed
16 and established the crime scene, and by this time I'm not
17 paying a whole lot of attention to other officers pulling up,
18 just kind of concerned about her wellbeing.

19 Q Any detectives arrive?

20 A Several.

21 Q And you're concentrating basically on your duties at this
22 point?

23 A Yes, sir.

24 Q And you mentioned something about established a crime
25 scene?

1 A Yes, sir.

2 Q Was there anything you all did to protect this crime
3 scene?

4 A Well, we took the yellow tape, wrapped it around the
5 residence and started a crime scene log and notated anybody
6 who walked inside of the crime scene and whenever they left
7 the crime scene.

8 MR. RICHARDSON: The Court's indulgence.

9 THE COURT: All right.

10 BY MR. RICHARDSON:

11 Q Now, so after the detectives arrived, other than keeping
12 the crime scene, your job is pretty much done at that point?

13 A Yes, sir. Once a crime scene is established and the
14 detectives -- once the crime scene is established, it's our
15 job to make sure the perimeter is secure, that no one
16 unauthorized goes inside of it, and once a detective arrives
17 on location we pretty much give them everything we know and
18 pass along all the information and we kind of step back and
19 let them do their duties.

20 Q And did you -- were you involved in any way with the
21 search for the men this Defendant said were involved?

22 A No, sir. Once I, once I left the crime scene to the
23 detectives, I actually left the location to start the initial
24 report and did not have any other involvement.

25 Q Officer Tindall, thank you very much. If you'll answer

Matthew Tindall - Cross by Mr. Wilson

389

1 any questions Mr. Wilson may have.

2 THE COURT: Cross examination.

3 MR. WILSON: Your Honor, if it please the Court?

4 THE COURT: Yes, sir.

5 CROSS EXAMINATION

6 BY MR. WILSON:

7 Q Officer, when you got there on the scene that day or that
8 morning actually, you had a chance to observe this Defendant;
9 correct?

10 A Yes, sir.

11 Q Okay. And can you tell the Court, tell the jury if you
12 saw any blood on this Defendant.

13 A At that time I do not recall seeing any blood.

14 Q Okay. You walked in the crime scene -- correct -- as
15 well?

16 A Yes, sir.

17 Q Okay. Did you smell any gasoline?

18 A Not to my knowledge.

19 Q Did you smell any Clorox?

20 A Not to my knowledge.

21 Q Did you smell any sort of cleansers at all in that crime
22 scene when you went in?

23 A Not to my knowledge. I was more focused in on getting
24 in, getting the person out.

25 Q Well, do you think you would recall if you smelled Clorox

1 or the strong smell of Clorox?

2 A It's possible I wouldn't. I have a bad sinus condition.
3 Sometimes my nose is stopped up.

4 Q Okay. You said sometimes your nose is stopped up?

5 A Yes, sir.

6 Q Okay. Now, you said that you secured the crime scene and
7 you secured the actual house; correct?

8 A Yes, sir.

9 Q Did you secure the curtilage around the house, the actual
10 yard?

11 A The -- exactly how far out I do not recall, how far out
12 it was.

13 Q Well, you just told the Prosecutor --

14 A The second, the second or the secondary officer that was
15 there, Officer Stevenson, he's the one that walked around with
16 the crime scene tape around.

17 Q Okay. You just told the Prosecutor a second ago that a
18 number of officers showed up, detectives, officers showed up
19 at this particular crime scene; correct?

20 A Yes, sir.

21 Q At this crime scene was there a yard?

22 A There was.

23 Q Okay. Thank you, ma'am. I'm going to ask you to look at
24 these exhibits for me.

25 A Okay.

Matthew Tindall - Cross by Mr. Wilson

391

1 Q And I want you to tell me how big you think that yard is.

2 A From the pictures?

3 Q Yes, sir. And your recollection if you can.

4 A Okay. From the pictures it doesn't be -- appear to be
5 very large at all, but from my record -- knowledge just
6 looking at the pictures I'd be -- from this picture here about
7 two of those on front and back as far as distance from the
8 edge of the picture to the porch.

9 Q Okay. All right. Thank you. Let me ask you this, did
10 you secure the entire yard once you got there or did
11 detectives walk through that yard?

12 A The -- like I say, I don't recall exactly how much of
13 that yard was secured, and any detectives that did enter the
14 yard the crime scene tape had already been established at that
15 time ---

16 Q Okay.

17 A --- so there'd be a record of it.

18 Q Okay. Well, you looked at the photos; correct?

19 A Yes, sir.

20 Q Did you see any crime scene tape in those photos?

21 A No, sir.

22 Q Would that have meant that there was no crime scene tape
23 up over the yard?

24 A No, sir. It's possible that they were taken from our
25 crime investigator that was on the other side of the tape.

1 Q Okay. Now, you said when you saw the Defendant that you
2 didn't notice that she was either intoxicated or that she may
3 have been on some narcotics; correct?

4 A Not at the time of exiting her outside of the residence
5 just due to the fact of everything going on.

6 Q But you're not suggesting that she was not; correct?

7 A Not at the time of her being inside the residence, but
8 after speaking with her further, just from her actions while I
9 was asking her questions and the demeanor that she had from up
10 and down crying to not crying within a matter of seconds.
11 It's just odd.

12 Q Okay. Well, let me ask you this, what -- did you notice
13 that she was limping at all?

14 A No, sir.

15 Q So she wasn't limping?

16 A Because like I said, as I was walking her outside of the
17 house, I had a hold of one arm of her just assisting her. I
18 couldn't tell you at the time she was limping or just walking
19 with me.

20 Q Okay. Well, let me ask you this. Did she ever tell you
21 that she had an injury to her ankle?

22 A Ankle?

23 Q Yes.

24 A I don't recall an ankle, but I do recall something about
25 a toe, maybe bumping her toe or something.

Matthew Tindall - Cross by Mr. Wilson

393

1 Q Bumping her toe? Did you see when you were in that house
2 torn bras or panties?

3 A No. No, sir.

4 Q Did you see pillows at all?

5 A I do recall seeing a pillow next to one of the gentlemen
6 that were laying in the floor.

7 Q And when you arrived at the scene what was this Defendant
8 wearing?

9 A I believe a nightgown.

10 Q Okay. And just to make sure I asked you this question,
11 you didn't see any -- did you see any marks on this Defendant?

12 A Not that I can recall.

13 Q You didn't see any injuries on her face?

14 A Not that I can recall.

15 Q Were you looking for injuries on her at all?

16 A No, sir.

17 Q You weren't looking for that. Okay. Fair enough.

18 A She, like I said, she only indicated she got struck in
19 the head with the, with the long gun, and the sexual assault
20 she didn't really say that she was hurt in any other way.

21 Q Fair enough. Did you find any weapons in the house while
22 you were there?

23 A I didn't. No, sir.

24 Q Did you find any weapons on this Defendant while you were
25 there?

1 A No, sir.

2 Q Okay.

3 MR. WILSON: I have no further questions.

4 THE COURT: All right. Anything on redirect?

5 MR. RICHARDSON: No, sir, Your Honor.

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

7 MR. RICHARDSON: As we set up for the next witness this
8 might be a good time for the afternoon break, Your Honor.

9 THE COURT: Okay. All right. Ladies and gentlemen,
10 we're going to go ahead and take a short break. I'm going to
11 excuse you back to the jury room. Please do not discuss the
12 case even among yourselves at this point in time. We'll take
13 a short break and bring you out in just a second.
14 Oh, the jury, yeah, if you've got an exhibit just leave it
15 there in the jury box. That'll be good. Thank you.

16 (Whereupon, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right. Anything from the State before we
19 take a break?

20 MR. RICHARDSON: I'd just ask that Officer Tindall be
21 excused to go back to his duties, Your Honor.

22 THE COURT: All right. Any objection?

23 MR. WILSON: Absolutely no objection, Judge.

24 THE COURT: All right. He's free to go. Thank you very
25 much.

State v. Locklear

395

1 MR. RICHARDSON: Thank you, Your Honor.

2 THE COURT: Anything further from the State?

3 MR. RICHARDSON: No, sir, Your Honor.

4 THE COURT: All right. Anything from the Defense before
5 we take a break?

6 MR. WILSON: Nothing else, Judge.

7 THE COURT: All right. We'll take about a -- how long
8 you need, 10, 15 minutes?

9 MR. RICHARDSON: Ten minutes is more than sufficient,
10 Your Honor. I just want to make --

11 THE COURT: All right. Let's take about a 10-minute
12 break.

13 MR. WILSON: Thank you, Your Honor.

14 THE COURT: Thank you.

15 OFF THE RECORD

16 (On the record. The following takes place outside the
17 presence of the jury.)

18 THE COURT: Let me see the attorneys for a second.

19 (Whereupon, a bench conference is held.)

20 THE COURT: Let's take them back out for just a
21 second. We'll bring them back in in just a minute, okay. All
22 right. I apologize, ladies and gentlemen. All right. I was
23 just going to check to see if there was anything from the
24 State before we bring the jury in.

25 MR. RICHARDSON: No, sir, but I'm glad you broke right

1 there.

2 THE COURT: Okay.

3 MR. WILSON: Yes, sir.

4 THE COURT: Anything from the Defense before we
5 bring the jury in?

6 MR. WILSON: Just that I want her in the, in the actual
7 auditorium before we bring the jury in.

8 THE COURT: That's right. I understand.

9 MR. WILSON: Thank you, Your Honor.

10 THE COURT: All right. Let's go ahead and get her back
11 in the Court -- the Defendant back in the courtroom. All
12 right. Anything from the State before we bring the jury in?

13 MR. RICHARDSON: No, sir, Your Honor. We've got Ms.
14 Carmichael of 911 here.

15 THE COURT: All right. Anything from the Defense before
16 we bring the jury in?

17 MR. WILSON: Nothing, Your Honor.

18 THE COURT: All right. Let's go ahead and bring the jury
19 in.

20 (Whereupon, the following takes place in the presence of
21 the jury.)

22 THE COURT: All right. Ladies and gentlemen, welcome
23 back. I apologize for the confusion. I always need to get on
24 the record to make sure that there's nothing that we need to
25 address before we bring the jury back in, and I failed to do

Martha Carmichael - Direct by Mr. Richardson

397

1 that before we brought you back in, but I just needed to check
2 with the attorneys to see if there was anything further
3 preparation that we needed to do before we brought you back
4 in. So I basically had to send you back out for them to say,
5 "No, there's nothing else for us to do," before we bring you
6 back, and so then we turned around and brought you back, and I
7 apologize for that inconvenience.

8 All right. The State can call their next witness.

9 MR. RICHARDSON: The State would call Martha
10 Carmichael of Horry County 911, Your Honor.

11 THE COURT: All right.

12 Whereupon, Martha Carmichael was called to the stand,
13 duly sworn by the clerk and testified as follows:

14 THE CLERK: Please state your full name and spell your
15 last name.

16 MS. CARMICHAEL: Okay. Martha Carmichael, C-A-R-M-I-C-H-
17 A-E-L.

18 DIRECT EXAMINATION:

19 BY RICHARDSON:

20 Q Good afternoon, Ms. Carmichael.

21 A Good afternoon.

22 Q Could you please tell us about yourself, where you're
23 employed and in what capacity?

24 A I'm employed Horry County 911, and I'm the training
25 officer and records custodian.

1 Q Okay. And we probably all know it, but what is the
2 purpose of Horry County 911?

3 A We answer emergency and non-emergency calls and send for
4 field responders, police, fire and EMS.

5 Q Okay. Ms. Carmichael, as the records custodian, or first
6 and foremost, in the normal course of business at the Horry
7 County 911 are incoming calls, are they recorded in any
8 fashion?

9 A Yes.

10 Q And was that the practice back August 19, 2012?

11 A Yes.

12 Q And how are these recordings made?

13 A Everything's recorded on a DVD.

14 Q Okay. And every call?

15 A Every call that comes in and goes out.

16 Q And what is done to preserve those records?

17 A We archive the files.

18 Q Okay.

19 A The state law requires we maintain them for 60 days.

20 Q Is it typical to record the entire conversation?

21 A Yes.

22 Q From the time the operator picks up till --

23 A From the time the phone starts ringing into 911 until the
24 call is terminated.

25 Q Now, you stated that these records are normally kept for

Martha Carmichael - Direct by Mr. Richardson

399

1 60 days.

2 A Sixty days.

3 Q What happens if a request is made for those records in
4 that 60 days?

5 A We have to have some type of documentation showing what
6 you're requesting and we produce it.

7 Q Okay. The recording device, you stated that they're
8 recorded to DVD?

9 A Yes.

10 Q Okay. That you had in operation capable back in August
11 2012? Are you able to take the data off of that DVD and
12 transfer it to another medium?

13 A Yes. It's converted to an MP3 file, and then we can send
14 it to the requester.

15 Q Okay. And how do you know this?

16 A I do it.

17 Q Okay.

18 A Every day.

19 Q Okay. Because it's your job?

20 A That is my job.

21 Q And what kind, what kind of experience do you have in
22 operating this, this device?

23 A I've been using it for the past 20 years pretty much.

24 Q That's pretty good experience?

25 A Yeah.

1 Q Ever had any kind of trouble operating the device?

2 A No.

3 Q And allow me to show you State's Number Nine for your
4 identification. Do you recognize State's Number Nine?

5 A Yes.

6 Q And how do you recognize State's Number Nine?

7 A It's a CD with the call from Red Bluff Road.

8 Q Okay. [REDACTED]?

9 A Yes.

10 Q And have you listened to this?

11 A Yes.

12 Q And is this a true and accurate copy of the 911 call that
13 was placed on August 19th, 2012, from [REDACTED]?

14 A Yes. It is.

15 MR. RICHARDSON: Your Honor, at this time the State would
16 seek to introduce and publish State's Number Nine.

17 THE COURT: Any objection?

18 MR. WILSON: No objection, Your Honor.

19 THE COURT: All right. State's Exhibit Number Nine is
20 admitted into evidence without objection. You can go ahead
21 and publish it to the jury.

22 (State's Exhibit Number Nine [CD, 911 Call] admitted into
23 evidence and appropriately marked.)

24 MR. RICHARDSON: And I may adjust the volume depending
25 how it comes out, Your Honor.

Martha Carmichael - Cross by Mr. Wilson

401

1 (Whereupon, State's Exhibit Number Nine [911 Call] played
2 in open court.)

3 BY MR. RICHARDSON:

4 Q Ms. Carmichael, is that a complete copy of the 911 call?

5 A Yes. It is.

6 Q Any additions or deletions?

7 A No.

8 Q So this is basically an exact recording of the call that
9 was placed at four a.m. in the morning?

10 A Yes.

11 Q Please answer any questions that Mr. Wilson may have.

12 Thank you. Thank you, ma'am.

13 CROSS EXAMINATION

14 BY MR. WILSON:

15 Q Good afternoon, ma'am. How you doing this afternoon?

16 A Good afternoon. I'm fine.

17 Q I'll be brief. I just have a couple of questions for
18 you.

19 A Okay.

20 Q Did you take the 911 call?

21 A No.

22 Q Okay. All right. So you didn't answer anything that the
23 Defendant said to you and you didn't ask her those questions;
24 correct?

25 A No, I did not.

1 Q Thank you so much. I have no further questions.

2 THE COURT: Anything on redirect?

3 MR. RICHARDSON: No, sir, Your Honor.

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

5 A Thank you.

6 MR. RICHARDSON: Your Honor, I would ask that Ms.

7 Carmichael be excused to return to her duties.

8 THE COURT: Any objection?

9 MR. WILSON: Absolutely no objection, Judge.

10 THE COURT: All right. She's free to go. Thank you very
11 much. All right. The State can call their next witness.

12 MS. WOOTEN: The State's next witness is Ms. Lenore
13 Bolig. She's out, right outside. Thank you.

14 THE COURT: All right.

15 Whereupon, Lenore Louise Bolig was called to the stand,
16 duly sworn by the clerk and testified as follows:

17 THE CLERK: Please state your name and spell your last
18 name.

19 MS. BOLIG: My name is Lenore Louise Bolig, B-O-L-I-G.

20 THE COURT: All right. Ms. Wooten.

21 MS. WOOTEN: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. WOOTEN:

24 Q Good afternoon, Ms. Bolig. How are you doing?

25 A Good. Thank you.

Lenore Bolig - Direct by Ms. Wooten

403

1 Q Thank you for being here and thank you for testifying for
2 the State. What -- tell us a little bit about yourself. What
3 do you do for a living? Where do you live?

4 A Well, I moved here from Pennsylvania in 1997 because my
5 former husband and I had sold our business, and so I took a
6 few years off, and in 2001 I became a real estate agent, and
7 from there became a broker, and in 2007 decided to fulfill a
8 lifelong dream of getting a college degree. So I started
9 school, and I'm still there. Right now I'm finishing up my
10 internship, and I hope to graduate with a Masters of Arts
11 Degree in Clinical Counseling either December or May of next
12 year.

13 Q Wonderful, wonderful. What were you -- you said you
14 started school in 2007. What were you employed doing in 2012?

15 A Full-time student.

16 Q A full-time student. Were you volunteering anywhere,
17 doing anything outside of school around August of 2012?

18 A No. No. Just a full-time student.

19 Q Did you ever volunteer for the Rape Crisis Center in
20 Horry County?

21 A I began that volunteer in May of 2011.

22 Q May of 2011. Okay. How long did you work with and
23 volunteer with the Rape Crisis Center in Horry County?

24 A From May of 2011 until August of 2012.

25 Q And were you a volunteer for the Rape Crisis Center in

1 Horry County on August 19th, 2012?

2 A Yes.

3 Q And were you a volunteer that morning?

4 A Yes.

5 Q Okay. Did you get a call from the Rape Crisis Center
6 that morning on August 19th, 2012?

7 A I did.

8 Q And how do you remember that?

9 A That, that weekend they had e-mailed the volunteers and
10 said they needed extra hours to be volunteered for, and so I
11 said, "Okay." I sent an e-mail back and said I would
12 volunteer for the following weekend, but it actually got -- I
13 got placed on, on assignment for that particular weekend. So
14 when the call came it was a surprise to me. I'm getting ready
15 for church. It's 8:10 in the morning, and I get the call that
16 there's a victim, I need to go to Conway Medical Center. So I
17 thought, "Okay. I guess I was meant to be on today." So I
18 got ready and went over to the Conway Hospital, and I arrived
19 there around 8 -- around 8:50 in the morning.

20 Q Okay. And before we get to the Conway Medical Center, to
21 be a volunteer for the Rape Crisis Center do you have to have
22 any training?

23 A Yes. Yes.

24 Q Okay. Tell us about that.

25 A There is a week-long training that, that you go through,

Lenore Bolig - Direct by Ms. Wooten

405

1 and they, they just give you instructions on what you do when
2 you get to the, to the emergency rooms, how you handle it. We
3 have, you know, what we're -- what we -- what we're to tell
4 the people, taking notes, filing the report. So it's just the
5 basics of what we should do as a volunteer.

6 Q And could you tell the jury a little bit about the
7 protocol that volunteers go through on a typical call for a
8 victim that's at the hospital getting tested?

9 A Sure. We're -- we have clothing that we keep, and we
10 have three different sizes because when a rape victim is, is
11 examined, all of their clothing is confiscated. So the -- so
12 the volunteer's job really is just to give them clothing so
13 that they can leave and have something to wear, and we take
14 down a statement of what happened, and then I -- my job is
15 also to give them some brochures and pamphlets and phone
16 numbers of services, HIV testing that they can -- the free HIV
17 testing that they're, that they're entitled to, free
18 counseling at the Rape Crisis Center that they're entitled to,
19 and so that's basically what we do, and then, and then as the
20 volunteer, we're to type up our or type or hand write a report
21 and send that to the Rape Crisis Center so that they have it
22 on file.

23 Q Okay. So, on August 19th, 2012, you arrived, you
24 testified that you arrived at Conway Medical Center around
25 8:50 in the morning?

1 A Yes.

2 Q Okay. What happened when you got there?

3 A I did what I normally do. I report to the, the desk at
4 the emergency room center there and just say that -- tell them
5 who I am and that I was -- had a call that there was a rape
6 victim, and they just direct me to the room that that person
7 is in. So I was told to go to Room 18.

8 Q Okay. And was the -- who was in the room whenever you
9 arrived to Room 18?

10 A In the room it was, was the victim, Ms. Locklear, and the
11 nurse, Janet, who was the rape kit nurse. She was doing the
12 examination on her.

13 Q Okay. And then when you say the victim, Ms. Locklear, is
14 she present here today?

15 A Yes.

16 Q Okay. And could you describe, describe her as she is in
17 the courtroom?

18 A She's sitting there next to the gentleman on the right to
19 the, to the -- my right of the gentleman.

20 Q Okay. And did you take any notes when you met with her?

21 A Yes. Yes.

22 Q And is that typical protocol?

23 A Absolutely. Yes.

24 Q And that helps you with your report?

25 A Yes.

Lenore Bolig - Direct by Ms. Wooten

407

1 Q Okay. And you said Ms. Janet was in the room. Who's --
2 tell us who Ms. Janet was.

3 A She would be the nurse that does the rape kit. There's
4 always a, a kit, and, you know, they take samples. They, they
5 process all of that information. When -- the volunteer, we
6 kind of just -- we'll, we'll just stay there. We're there to,
7 to calm down the victim, talk to the victim and just offer
8 comfort.

9 Q Okay. And when did you get to -- did you ever get to
10 talk to the victim who's now the Defendant in this case?

11 A Yes.

12 Q Okay. When did you get to talk to the Defendant?

13 A When I arrived the nurse was busy with the examination,
14 and I just sat off to the side for a while, and I really
15 didn't take her statement until after she came back from an x-
16 ray.

17 Q Okay. Before you took her statement what was her typical
18 -- what was your overall impression of her demeanor and
19 behavior before she went off to get x-rays?

20 A Well, my impression wasn't -- it's just I walked into the
21 room, and she was sitting there kind of whimpering, and she
22 just kept repeating, "I need to get to Amos. I need to get to
23 Amos." I had no idea at that point who Amos was or what --
24 why she was saying that. That's all, she just kept repeating,
25 "I need to get to Amos."

1 Q And when she came back from getting her ankle and other
2 x-rays did you get to talk to her again?

3 A Yes. I then asked her if she would give me a statement
4 but then -- so I could file a report. I explained the report
5 to her. She signed a confidentiality release so that that
6 information could be transferred to the Rape Crisis Center.

7 Q And she felt comfortable talking to you as you could
8 tell?

9 A She seemed to be quite comfortable and very willing to
10 tell me the story, give me a statement.

11 Q And if you could please tell us today what you remember
12 was told to you about what happened to her.

13 A Ms. Locklear's statement said that, that she gave me that
14 day was that she and Amos, she told me that she and Amos were
15 married on July 22nd of 2011, and that -- but that she lived in
16 Tabor City and Amos lived in Loris. She said that -- she told
17 me how Amos was 67 years old. He was retired from the Air
18 Force, but that he lived in Loris with his son, Tommy, and
19 that he had to live with Tommy because Tommy was a drug addict
20 and alcoholic and he couldn't take care of the house that he
21 lived in, but it was also Amos's house, and she said, "He's
22 not allowed in my house. I live in Tabor City with my four
23 year old daughter and I -- and he -- and Tommy isn't allowed
24 in my house." That's, that's, not Amos. Tommy was not
25 allowed there. So Amos was living with Tommy. These were --

Lenore Bolig - Direct by Ms. Wooten

409

1 and she said on that night of Saturday, August -- of August
2 18th, Saturday evening, she got a call from Amos about 11:00
3 o'clock p.m., and he asked her to come over to watch the golf
4 game on the Golf Channel and she said that because her
5 daughter was on vacation with her parents she could go because
6 she was alone. So she said she arrived there about 11:30 and
7 that they were -- they were watching the golf game on TV, and
8 she said it was about 1:30, 2:00 o'clock in the morning they
9 got hungry, and so they went into the kitchen to make
10 something to eat, and while they were in the kitchen the back
11 door flew open, and two men burst in yelling, "Where's Tommy?
12 Where's Tommy? We want our money," and they told them -- she
13 said they were two tall men. One was white and one was of
14 mixed race but light in color, and she said they told them to
15 get down on the floor, and they -- and Amos said to them,
16 "Don't hurt Sandy," and they said, "Oh, we're going to F her
17 good," and she said that the one did proceed to rape her and
18 then Tommy -- and he was hitting her and then Tommy tried to
19 get up and they put the gun to the back of his head, not
20 Tommy, I'm sorry, Amos, Amos tried to get up, and they put the
21 gun to the back of his head and that then they took her by her
22 hair and drug her down the hallway and raped her, and then the
23 other man raped her, and then they tied her hands with black
24 electrical tape, and she said to me, "See, I even still have
25 glue on my hands from the tape," pointed it out.

1 She said and then she was screaming for help, and she
2 broke loose. She heard two gunshots. They tied her up, and
3 then she heard two gunshots, and then she was screaming for
4 help, and she finally broke loose of the electrical tape, and
5 that's when she said, "See, I still have it on my hands,"
6 pointed it -- made, made sure to point out that she had glue
7 on her hands.

8 She said she ran out of the house, went to the neighbors,
9 was banging on the door, and no one came to the door, and then
10 I asked her if she called 911. She said, "No, I don't know
11 who called or what happened. I lost my cell phone. I don't
12 know where it is, and the next thing I remember I woke up in
13 the police car."

14 Q What time did she say that they broke into the back that
15 you remember?

16 A 1:30 to 2:00 o'clock in the morning.

17 Q Okay. And she said that one of the guys raped her where?

18 A In the kitchen.

19 Q And then the second?

20 A Well, first she said they dragged her down to the
21 bedroom, and then she said the hallway. So I don't -- not
22 really sure where because she told me two locations.

23 Q Okay. What was her demeanor like when she was explaining
24 this?

25 A She'd be calm. She'd lay on the, you know, she'd be

Lenore Bolig - Direct by Ms. Wooten

411

1 laying on the, on the, the bed, and then she'd whimper and not
2 sobbing at any point.

3 Q Was she crying?

4 A Just crying, more whimpering crying, and at one point she
5 just said, "My nerves are shot. I really need a cigarette."

6 Q Okay. Did you speak with her any other time besides
7 these two times in that morning?

8 A No.

9 Q How long would you say your conversation was with the
10 Defendant?

11 A Well, my total time there was -- I left the hospital at
12 10:20. So I was there an hour, about an hour and a half. You
13 know, I had total conversation maybe 45 minutes because I was
14 just making small talk first of all. That's what I would like
15 to do. I always like to just get to know the victims and get
16 them comfortable just so that they're, you know, because
17 they're, you know, a rape victim is pretty distraught usually
18 and, and she was not my first person that I had attended to.

19 Q And what happened after you left the hospital? Did you
20 make a report?

21 A I filed my report. I faxed it that afternoon, Sunday
22 afternoon. I always make a note when I fax things, and my
23 note says faxed 8-19 at two p.m.

24 Q And did you ever talk to the Defendant again?

25 A No.

1 Q Thank you so much for answering my questions. Please
2 answer any questions Mr. Wilson may have.

3 A You're welcome.

4 CROSS EXAMINATION

5 BY MR. WILSON:

6 Q Good afternoon, how you doing?

7 A Fine. Thank you.

8 Q While you were with Sandy did you notice any bite marks
9 on Sandy?

10 A I did not, but the nurse did make comment of them.

11 Q So you were aware there were good bite marks on her?

12 A That was what the nurse said. She said she saw bite
13 marks on her stomach.

14 Q Okay. Now, did you ever ask Sandy if she was on any
15 medication when you took her statement?

16 A No, sir. It's not a question that I'm required to ask.

17 Q Okay. So you don't know if she was on Ambien?

18 A I do not.

19 Q You don't know if she had been drinking alcohol that
20 night?

21 A I do not.

22 Q You don't know if she was on muscle relaxers?

23 A I do not.

24 Q You don't know if she was on Xanax?

25 A No, sir.

Lenore Bolig - Cross by Mr. Wilson

413

1 Q Okay. And you never asked that question to her, did you?

2 A No, sir.

3 Q All right. You also said that she told you that she
4 didn't remember making a 911 call; correct?

5 A Yes, sir.

6 Q She specifically said that to you?

7 A Uh-huh.

8 Q Did you discover later on that she did make the 911 call?

9 A No, sir. I have no idea.

10 Q Thank you.

11 MR. WILSON: The Court's indulgence, Your Honor.

12 THE COURT: All right.

13 BY MR. WILSON:

14 Q Let me ask you this, when you saw her at the hospital
15 your testimony today is that she wasn't sobbing, but she was
16 crying and whimpering? Do you know how long it had been since
17 the actual murder took place that morning that she witnessed?

18 A No, sir. I did not know how long.

19 Q Okay. Well, let me ask you this, you've been doing rape
20 crisis evaluations or mentoring or, or interviewing folks for
21 some time; correct?

22 A Yes, sir.

23 Q Is it common for folks who are traumatized or who are
24 obviously distraught to sit there basically in a trance? Is
25 that common?

1 A I don't know.

2 Q Thank you very much. No further questions.

3 THE COURT: Redirect?

4 MS. WOOTEN: Nothing on redirect, Your Honor.

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

6 MS. WOOTEN: The State would ask that Ms. Bolig be
7 excused --

8 MR. WILSON: No objection, Your Honor.

9 THE COURT: All right.

10 MR. RICHARDSON: Clayton Hatfield.

11 Whereupon, Clayton Hatfield was called to the stand, duly
12 sworn by the clerk and testified as follows:

13 THE CLERK: Please state your full name and spell your
14 last name.

15 MR. HATFIELD: Clayton Hatfield, H-A-T-F-I-E-L-D.

16 DIRECT EXAMINATION

17 BY MR. RICHARDSON:

18 Q Mr. Hatfield, good afternoon.

19 A Good afternoon.

20 Q Thank you for being with us this afternoon. Could you
21 help, help us out a little bit. Tell us about yourself, how
22 old you are, where you're from, what your line of work is?

23 A Well, I'm from Florida, St. Petersburg, Florida. I'm a
24 retired accountant.

25 Q And Mr. Hatfield, if you can just move a little bit

Clayton Hatfield - Direct by Mr. Richardson

415

1 forward to that microphone. Sometimes it doesn't pick up all
2 that well.

3 A Okay.

4 Q Thank you. I can hear you just fine now, and you're --
5 did you say you were a retired accountant?

6 A Yes.

7 Q Okay. And I know we, we've talked previously, but could
8 you tell us how you were related to Amos and Tommy Hatfield?

9 A Amos Hatfield is my brother and Tommy's my nephew.

10 Q Okay. And prior to the murder of Amos Hatfield how close
11 were you and he?

12 A He was my younger brother, very close.

13 Q Could you, could you tell us briefly about how you and
14 Amos grew up?

15 A Well, we grew up in the mountains of West Virginia, and
16 we were just country boys.

17 Q Country boys. And so you all were pretty tight
18 throughout your life?

19 A Throughout our life.

20 Q Okay. And what caused you all to leave West Virginia?

21 A We went in the military.

22 Q Okay. So both of you went in the military?

23 A Six of seven boys went in the military.

24 Q Pretty good?

25 A Yes.

1 Q Do you know approximately when Amos moved to South
2 Carolina?

3 A I'd say probably, about '87, '88, somewhere in that
4 neighborhood.

5 Q Okay. And at that time was he married?

6 A Yes. He was.

7 Q Okay. Who was his wife then in '87?

8 A Rosie.

9 Q And what happened to her?

10 A She died of cancer a few years ago.

11 Q Do you know about when that was?

12 A About 12, 13 years ago.

13 Q About 12 or 13 years ago. From that time on had -- was
14 -- I guess Amos was a widower for some time?

15 A Yes. He was.

16 Q How often -- once Amos moved to South Carolina in we'll
17 say '87, '86, somewhere in there, how often would you all
18 talk?

19 A As often as we could. He was hard to get a hold of
20 sometimes. He, he worked for a while and so forth.

21 Q And back '87 that's before everybody had a cell phone;
22 right?

23 A Yeah. I still don't have one.

24 Q Okay. How often would you see Amos?

25 A Every time I came to South Carolina. My home office was

Clayton Hatfield - Direct by Mr. Richardson

417

1 in Columbia, and every time I came I would spend a few days
2 with him and Rosie.

3 Q Was that once a year, a couple of times a year?

4 A At least two or three times a year.

5 Q So two or three times a year from the time he moved to
6 South Carolina you would get to see him?

7 A I would.

8 Q I guess you would see -- would you see your nephew?

9 A Yes.

10 Q Okay. And so, that, that went on for some time?

11 A Several years. Yes.

12 Q And after -- what's her name, Ruthie?

13 A Rosie.

14 Q Rosie, after Rosie passed about 12 or 13 years ago, would
15 you continue to come see Amos?

16 A Every chance I got. Yes.

17 Q That's your baby brother?

18 A Yes.

19 Q Okay. Now, as I understand it, you, you've been living
20 in Florida for some time; correct?

21 A I have.

22 Q And your home office was here in South Carolina in
23 Columbia, and you'd come up to see Amos from time to time.

24 Prior to the murder of Tommy and Amos, when had been the last
25 time you had seen Amos?

1 A I don't recall. It's -- just seems like if I saw --
2 whenever I saw him it just seemed like it was the next day,
3 you know, it was -- we'd catch up on things and move on.

4 Q Did there ever come a time or prior to the murder of Amos
5 and Tommy Hatfield did -- what did you know, if anything, with
6 regard to the relationship Amos had with the Defendant?

7 A With his son?

8 Q With the Defendant, Ms. Locklear.

9 A I've never met her before.

10 Q You never met her before?

11 A No.

12 Q Do you know if Amos ever got remarried?

13 A I, I don't know. I didn't see anything.

14 Q Okay. So you were very close to Amos and yet you didn't
15 know -- you'd never met the Defendant before?

16 A No.

17 Q At the time of the murder do you know where Amos was
18 living?

19 A I don't know exactly where he was living. The last time
20 I, I saw him we was in Conway, I believe.

21 Q To your knowledge was he still living in South Carolina?

22 A Oh, yes.

23 Q Okay. Now, could you tell us about any property of which
24 you were aware, which you're aware of that Amos had bought in
25 North Carolina?

Clayton Hatfield - Direct by Mr. Richardson

419

1 A He had two or three pieces of property at one time.
2 First off he lived on the river, and he got washed out. So
3 and I think he owned a couple of other pieces of property, one
4 of them in Conway where he lived with his son, Tommy, and his
5 --

6 Q Okay. Did there ever come a time when you gave anything
7 of value to Amos that he requested?

8 A Oh, just quite a few times.

9 Q Okay. Any types of valuables like coins or anything?

10 A Quite a few times.

11 Q Okay. Prior, prior to his death do you recall giving two
12 coins to him?

13 A Yes, sir.

14 MR. WILSON: Objection, Your Honor. He's leading the
15 witness, Judge.

16 THE COURT: All right. Sustained.

17 Q Are there any particular types of coins that you remember
18 giving to him?

19 A Oh, yes.

20 Q Could you describe those coins?

21 A One of them was an un-circulated Indian head penny. I
22 don't remember the year, and one of them was an Indian head
23 nickel 1913, very hard to find coins.

24 Q Were, were you aware of why Amos requested these coins?

25 A He wanted to buy them.

1 Q Okay. He wanted to buy them from you?

2 A Uh-huh.

3 Q Do you know what, what the purpose of that was?

4 A Not at the time, but he, but he tried it before. I never
5 would sell him a coin.

6 Q Okay. Prior to giving Amos -- I'm sorry. Prior to
7 giving Amos those coins, did there ever come a time when, when
8 you -- when Amos asked to borrow anything else from you?

9 A Yes.

10 Q Okay. And specifically did you ever speak with police
11 about what he had borrowed from you?

12 A Yes.

13 Q Okay. And what did you tell police that Amos had
14 borrowed from you?

15 A A 1925 pistol, automatic pistol with white grips on it.

16 Q You say a, a 25, 25-caliber?

17 A Yes.

18 Q Okay. When was it that you had loaned Amos that pistol?

19 A It was about 10 or 12 years ago. I can't remember
20 exactly.

21 Q That's your brother?

22 A Yes.

23 Q You don't keep up with the dates on when you loan him
24 anything?

25 A No.

Clayton Hatfield - Direct by Mr. Richardson

421

1 Q And once again, the -- could you describe that handgun?

2 It was a handgun?

3 A Yes. It was a 25-caliber, white handles, and a stainless
4 steel, I believe it was polysteel.

5 Q Okay. So polished, it was very shiny?

6 A It can be. Yes.

7 Q And about how big was it?

8 A About four, maybe four and a half, five inches.

9 Q And you said you did talk to police about this; correct?

10 A I did.

11 Q After you spoke with the police and you told them, you
12 told them about the weapon, a 25-caliber stainless steel
13 polished white grip, when and where was that?

14 A At his funeral.

15 Q At the funeral?

16 A Yes.

17 Q Did you give anything to the Horry County Police
18 Department associated with that pistol that you had loaned to
19 Amos?

20 A I did. I gave him the box it came in with the receipt in
21 it.

22 Q I'm going to show you what's been marked for
23 identification as State's Number Ten. See if you recognize
24 that item. Feel free to open it up if you need to, Mr.
25 Hatfield.

1 A That's the -- it's the tag.

2 Q Is that the box and tag and all the paperwork you gave to
3 the Horry County Police Department?

4 A Yes. It is.

5 Q And you gave them that at Amos's funeral; correct?

6 A I did.

7 Q And looking at the paperwork what -- who's the
8 manufacturer of that handgun?

9 A Looks like Lorcin.

10 Q Lorcin. Okay. No doubt about it this is the box that,
11 that at one point housed the handgun you lent to Amos?

12 A I have no doubt at all.

13 MR. RICHARDSON: The State would seek to introduce
14 State's Number Ten, Your Honor.

15 THE COURT: Any objection?

16 MR. WILSON: Absolutely, Judge.

17 THE COURT: All right.

18 MR. WILSON: Your Honor, I'm concerned with the relevancy
19 of this actual piece and as well as there's no chain of
20 custody from the police. This gun comes from -- a box comes
21 from ten years ago and that's my concern, Your Honor.

22 THE COURT: Okay.

23 MR. WILSON: And it's --

24 MR. RICHARDSON: Your Honor, it's non-fungible under --
25 the witness said this is, indeed, the box he gave to the

Clayton Hatfield - Direct by Mr. Richardson

423

1 police.

2 THE COURT: All right. I'm going to admit State's
3 Exhibit Number Ten over Defendant's objection.

4 MR. WILSON: Thank you, Your Honor.

5 THE COURT: Thank you.

6 MR. RICHARDSON: Thank you, Your Honor.

7 (State's Exhibit Number Ten [Gun Box] admitted into
8 evidence and appropriately marked.)

9 BY MR. RICHARDSON:

10 Q Mr. Hatfield, other than you talking with the police at
11 your brother's funeral and giving them that, that gun box, did
12 you take any other steps in this investigation?

13 A I did. I called my brother up in West Virginia about it.
14 I used to take the pistol with me to West Virginia when my
15 children were small, and we used to fire it into an old locust
16 post, and I was going to make a trip back there just to get
17 that post if I could, just -- but it had got washed out, so.

18 Q Okay. So the post wasn't there anymore?

19 A No.

20 Q Couldn't find any rounds?

21 A No.

22 Q And you had not seen that pistol in some time?

23 A Not since I let Amos have it.

24 Q Okay. Well, that's what I'm talking about. That had
25 been some time ago?

1 A Yes.

2 Q And no doubt about it you gave it to Amos, no one else?

3 A No. Actually I loaned it to him.

4 Q Loaned it to him, I apologize, Mr. Hatfield. Mr.

5 Hatfield, once again, I'm sorry for your loss.

6 A Thank you.

7 Q If you'll answer any questions Mr. Wilson may have.

8 A Absolutely.

9 MR. WILSON: May it please the Court, Your Honor?

10 THE COURT: Yes, sir.

11 CROSS EXAMINATION

12 BY MR. WILSON:

13 Q Mr. Hatfield, how you doing today, sir?

14 A I'm fine. Thank you.

15 Q I just have a few questions to ask you about a couple of
16 things, and if you need to take a break just let me know.

17 Okay?

18 A Yes.

19 Q Okay. Let me first ask you about this gun. At some
20 point in time you asked your brother Amos for this gun back;
21 correct?

22 A I did.

23 Q Okay. Can you tell me why you asked for it back?

24 A I wanted it back. That's all.

25 Q Okay. Do you remember what year you asked him for this

Clayton Hatfield - Direct by Mr. Richardson

425

1 gun back?

2 A I would say probably, probably about maybe the year
3 before he died.

4 Q Okay. And at the time when you asked him for the gun
5 back, did he ever give you the gun back?

6 A No.

7 Q Okay. Did you talk to him why he never gave the gun
8 back?

9 A I tried.

10 Q Did he ever tell you why?

11 A No.

12 Q Okay. All right. Do you know -- have you seen this gun
13 in the last 10 to 12 years?

14 A Not since I gave it to him.

15 Q Okay. And you've been down to visit him several times --
16 correct -- in that time I would imagine?

17 A I have.

18 Q Because you all were very close?

19 A Yes.

20 Q Okay. And let me ask you this, also. When you asked him
21 for the gun back, did you also give him these coins that the
22 Prosecutor was asking you about? Was that around the same
23 time?

24 A It was around the same time. Yeah.

25 Q Okay. And did Amos tell you why he wanted these

1 particular coins?

2 A No. He just wanted to buy them.

3 Q Okay. So, is it your testimony today you don't know if
4 Amos sold the gun?

5 A I was told -- he told me at one time that he hadn't sold.

6 Q All right. Do you know if he pawned it?

7 A No.

8 Q Do you know if Tommy pawned it?

9 A I don't even know if Tommy knew he had it.

10 Q Okay. Why would you think that Tommy wouldn't know that
11 he had the gun if it was in the house?

12 MR. RICHARDSON: Your Honor, calls for speculation.

13 THE COURT: Sustained.

14 MR. WILSON: Thank you, Judge.

15 BY MR. WILSON:

16 Q Let me ask you this. Did you ever know Tommy to use
17 drugs?

18 A I think he had some involvement with them. Yes.

19 Q How many years have you known him to use drugs?

20 A I probably knew it when I first went to see him back
21 years ago in South Carolina.

22 Q When you say years ago, how many years are you talking
23 about, ten years ago, 20 years ago?

24 A It's somewhere between 10 and 20. I don't know.

25 Q Okay. And do you know if Amos tried to help his son get

Clayton Hatfield - Direct by Mr. Richardson

427

1 off drugs numerous times?

2 A Yes. I'm sure he did.

3 Q Do you know if Amos tried to help his son, you know, when
4 he had drugs debts?

5 A I don't know.

6 Q Did he ever talk to you about trying to get his son into
7 rehab?

8 A I don't think he did. No.

9 Q Okay. Do you know why Amos moved out of his house in
10 Conway at Wagon Wheel Court?

11 A No.

12 Q Did he ever discuss that with you?

13 A I don't even know where Wagon Wheel Court is.

14 Q You said earlier under testimony when Mr. Richardson was
15 asking you questions that, that he had property here in
16 Conway.

17 A In Conway.

18 Q Okay. He had a house here in Conway; right?

19 A Yes.

20 Q And Tommy -- sorry.

21 A I'm sorry. He had a house on the river. Now, I don't
22 know if he had a house in Conway.

23 Q Okay. Do you recall at some point in time that Tommy
24 lived with him in Conway?

25 A Yes.

1 Q Okay. All right. And do you recall Amos ever moving out
2 of that house and then moving in with his daughter?

3 A I don't remember him ever moving in with his daughter.

4 Q Okay. Well, let me ask you this. How did he move from
5 Conway to Loris, which is where he lived, where he passed
6 away?

7 A I think he sold the property.

8 Q Okay. He sold the property? Do you know if Tommy ever
9 lived in that property --

10 A That --

11 Q -- in Conway?

12 A That he died in?

13 Q No. In Conway.

14 A Yes. He did.

15 Q Okay. All right. And then Tommy also lived with him in
16 Loris; correct?

17 A I believe so. Yes.

18 Q Okay. Did he ever tell you that he had to call the
19 police on Tommy?

20 MR. RICHARDSON: Your Honor, he keeps asking him what Mr.
21 Hatfield may have told him. Of course, any of that would be
22 hearsay.

23 MR. WILSON: Judge, that's not hearsay. That's not
24 hearsay.

25 MR. RICHARDSON: How was that not hearsay?

Clayton Hatfield - Direct by Mr. Richardson

429

1 MR. WILSON: May we approach, Your Honor?

2 THE COURT: Yeah.

3 (Whereupon, a bench conference is held in the presence
4 but out hearing of the jury.)

5 THE COURT: Sustained.

6 BY MR. WILSON:

7 Q Do you ever know from your personal knowledge if Tommy
8 worked?

9 A He did work at one --

10 Q Do you know where he worked at? Can you tell me?

11 A I think he worked at the police station at one time, but
12 other than that I don't know beyond that.

13 Q Do you know if his father was taking care of him when he
14 passed away?

15 A I'm sure he probably helped him if he needed it. I don't
16 know though.

17 Q Let me ask you this. You also said that you didn't know
18 that Amos was married to the Defendant; correct?

19 A Right.

20 Q He never told you that; did he?

21 A Amos stayed under the radar.

22 Q He stayed under the radar?

23 A Right.

24 Q Why, why do you think so?

25 A He didn't tell people things that he didn't, didn't want

1 to.

2 Q Okay. All right.

3 MR. WILSON: No further questions, Your Honor.

4 THE COURT: All right. Redirect.

5 MR. RICHARDSON: Oh, no, sir, Your Honor. I'd just
6 ask that Mr. Hatfield be excused and be allowed to stay in the
7 courtroom at this time.

8 THE COURT: All right. Any objection?

9 MR. WILSON: May we approach, Your Honor?

10 THE COURT: Yeah.

11 (Whereupon, a bench conference is held in the presence
12 but out hearing of the jury.)

13 THE COURT: All right. He can step down.

14 MR. RICHARDSON: It's a good stopping point today, Your
15 Honor.

16 THE COURT: Do what?

17 MR. RICHARDSON: That's a good stopping point for today.

18 THE COURT: All right. All right. Ladies and gentlemen,
19 it's five o'clock. We're going to go ahead and break for the
20 day. I'm going to excuse you to go home for the evening.
21 Please be back in the jury room tomorrow morning at 9:00
22 o'clock, okay. Then we'll try to get started as soon after
23 9:00 o'clock as we can. I caution you, again, do not listen
24 to any news reports about the case. I don't know that there
25 will be any, but if there is don't listen to them, don't go

Clayton Hatfield - Direct by Mr. Richardson

431

1 looking through the newspaper to find out anything, don't read
2 any accounts about the case if anything is reported, don't
3 discuss the case with anyone. I hope everybody has a good
4 evening and we'll see you back tomorrow morning at 9:00
5 o'clock. Thank you very much. All right. If everybody else
6 please remain seated while the jury is excused.

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right. Anything from the State before we
10 break for the evening?

11 MR. RICHARDSON: No, sir, Your Honor.

12 THE COURT: Anything from the Defense?

13 MR. WILSON: Your Honor, only one thing at this time.

14 THE COURT: All right.

15 MR. WILSON: I know we had a sidebar about this. I've
16 discussed it with my staff and with the Defendant. We want to
17 go ahead and release Mr. Hatfield, Judge.

18 THE COURT: All right. He's free to go.

19 MR. RICHARDSON: Thank you, Your Honor.

20 MR. WILSON: Thank you, Your Honor.

21 THE COURT: All right.

22 MR. RICHARDSON: And he may stick around. As stated,
23 he just has appointments next week.

24 THE COURT: Well, but I mean, do we want to sequester
25 him? Is there a chance that he might be recalled?

1 MR. WILSON: We won't recall him, Judge.

2 THE COURT: Okay.

3 MR. WILSON: Not going to recall him.

4 THE COURT: That'll be fine.

5 MR. RICHARDSON: Thank you, Your Honor.

6 THE COURT: All right. Anything further from the
7 Defense before we recess?

8 MR. WILSON: Nothing, Your Honor.

9 THE COURT: All right. We'll stand in recess, have the
10 jury coming back at 9:00 o'clock. I'll try to take the bench
11 right at 9:15. Okay?

12 MR. RICHARDSON: Yes, sir, Your Honor.

13 MR. WILSON: Yes, Your Honor. Thank you.

14 MR. RICHARDSON: Thank you, Your Honor.

15 THE COURT: Thank you very much.

16 MR. WILSON: Thank you, Judge.

17 (Adjourned for June 2, 2014.)

18

19

20

21

22

23

24

25

State v. Locklear

433

1 (State v. Sandy Lee Locklear, 2013-GS-26-302, 304. On the
2 record, June 3, 2014. The following takes place outside the
3 presence of the jury.)

4 THE COURT: All right. Anything from the State before we
5 bring the jury in?

6 MR. RICHARDSON: No, sir, Your Honor.

7 THE COURT: Anything from the Defense?

8 MR. WILSON: Nothing at this time, Your Honor.

9 THE COURT: All right. Let's bring the jury in.

10 (Whereupon, the following takes place in the presence of
11 the jury.)

12 THE COURT: All right. Ladies and gentlemen, welcome
13 back. I hope everyone had a good evening. We're now ready to
14 resume the trial of the case. I do want to ask you at this
15 point in time if you have any cell phones or pager devices or
16 other communication devices and you brought them into the
17 courtroom, if you would please turn them off at this time so
18 that the trial is not interrupted.

19 All right. The State can call their next witness.

20 MR. RICHARDSON: Thank you, Your Honor. The
21 State would call Jennifer Dalmida, Cellco, doing business as
22 Verizon Wireless.

23 Whereupon, Jennifer Dalmida was called to the stand, duly
24 sworn by the clerk and testified as follows:

25 THE CLERK: If you'd just state your full name and spell

1 your last name.

2 MS. DALMIDA: Jennifer Dalmida, D-A-L-M-I-D-A.

3 DIRECT EXAMINATION

4 BY MR. RICHARDSON:

5 Q Thank you for being with us this morning, Ms. Dalmida.

6 A You're welcome.

7 Q Could you help us out a little bit and tell us a little
8 bit about yourself, about your employment, where you work, how
9 long and in what capacity?

10 A Okay. I'm an executive relations analyst for Verizon
11 Wireless. I've been with the company for approximately seven
12 years. As an analyst, I'm basically a record custodian for
13 the company, and I handle all their small claims litigations.

14 Q Okay. And is it common practice for you to appear in
15 court?

16 A Yes.

17 Q Okay. Could you tell us a little bit about Verizon
18 Wireless, what type of business it conducts, what types of
19 records it keeps and so forth?

20 A We're a wireless carrier. We basically keep any type of
21 billing records as it pertains to calls that are made and
22 received in our network as far as text messages and any data
23 transmitted.

24 Q Okay. And could you tell us how these records are kept,
25 how they're stored, how they're retrieved and whatnot?

Jennifer Dalmida - Direct by Mr. Richardson

435

1 A All our records are kept at our switch. We have
2 individual switches throughout the enterprise, and this
3 information is kept electronically.

4 Q Okay. And how are the, how are those records retrieved?

5 A Well, once we submit a query, it's retrieved
6 electronically.

7 Q Okay. So you just basically pull it back off the server
8 if I understand?

9 A Correct.

10 Q Okay. Can you give us an example? For instance, I have
11 a Verizon account. Pretend this is a phone.

12 A Uh-huh.

13 Q I go and I make a call or I make a text. What, if any,
14 information is received by your company?

15 A Well, first, we would keep track of the actual, if it's a
16 call, we keep track of the actual cell site that processed the
17 call as well as the sector, the date, the time, the number
18 being called or, you know, receiving the call from and the
19 length of the call in seconds.

20 Q And you say cell location. Are you referring to the
21 actual GPS location where the phone is or --

22 A No. The actual location of the cell tower that processed
23 the call.

24 Q Okay. The tower, the cell phone call is basically radio
25 signals; correct?

1 A Correct.

2 Q Okay. So whatever tower that signal is bouncing off of,
3 that's the location?

4 A Correct.

5 Q Okay. And how about if I send a text?

6 A If you send a text message, we keep track of the time
7 that it was actually delivered and who you're sending or
8 receiving that text message from. In some cases we also keep
9 content, which would include verbatim exactly what was said in
10 the message.

11 Q And that's how Verizon obtains these records?

12 A Correct.

13 Q Okay. And you said that sometimes you keep the, the
14 actual context of what's texted?

15 A Correct.

16 Q How long do you all store that information?

17 A It can be held up to ten days. It just depends on the
18 capacity of the network.

19 Q Okay. So at some point it leaves the system?

20 A Yes.

21 Q It's purged?

22 A Yes.

23 Q Okay. Unless it's captured before then?

24 A Correct.

25 Q Is there a way to capture it before then, to, to save it?

Jennifer Dalmida - Direct by Mr. Richardson

437

1 A If we receive a preservation letter, we will save that
2 information until needed.

3 Q Okay. In the ordinary, ordinary normal course of
4 business, when is this, when is, this information contained in
5 the records, when is it obtained and when is it actually
6 recorded?

7 A Real-time.

8 Q Real-time.

9 A Uh-huh.

10 Q So instantaneously.

11 A Correct.

12 Q I make a call, it goes in right there.

13 A Correct.

14 Q Do these entries in these records accurately reflect
15 calls and/or texts to and from certain, a certain phone
16 number?

17 A Correct.

18 Q Okay. So for instance if I make a call to Madam Clerk
19 over here, they'd be able to tell what number I called?

20 A Yes.

21 Q And if she calls me, they'll be able to tell who called
22 me?

23 A Yes.

24 Q Okay. And by who called me, what cell number?

25 A Correct.

1 Q And now, the calls themselves, if I make a voice call to
2 somebody, is that voice call actually recorded?

3 A It's not recorded.

4 Q What, what information is recorded, the length?

5 A We actually capture the, yeah, the length, the date, the
6 time and who's being called as well as the cell site
7 information for that call.

8 Q And you've already told us the actual text is kept in the
9 records as well.

10 A Yes.

11 Q For a short period. And these records, they're completed
12 in the normal course of business?

13 A Yes.

14 Q And once that information is recorded, is obtained by
15 Verizon, it's stored, can that information summarily be
16 printed out or sent to anyone?

17 A Yes.

18 Q You received a subpoena to appear in court today;
19 correct?

20 A Correct.

21 Q Or your company did?

22 A Yes.

23 Q Okay. And in preparing to testify today what if any
24 homework did you do?

25 A I basically received a clean copy of the records, and I

Jennifer Dalmida - Direct by Mr. Richardson

439

1 went over the records with you and basically just outlined
2 specific calls.

3 Q Okay. So we've gone over, over the records?

4 A Correct.

5 Q Okay. And you're prepared to, to talk about that today?

6 A Yes.

7 Q And identify any records?

8 A Yes.

9 Q All right. Now, from, from your research, can you tell
10 us to whom the phone number [REDACTED] belonged to or to
11 whom it was billed?

12 A No.

13 Q Okay. And why not?

14 A Because that was actually a TracFone device. So we're
15 just basically the network carrier for a TracFone.

16 Q Okay. So TracFone is a different company?

17 A Correct.

18 Q And all their calls go through Verizon?

19 A For that specific number, yes.

20 Q For that specific number, all -- any calls made from that
21 number would go through Verizon?

22 A Correct.

23 Q And those records would be kept at Verizon?

24 A Yes.

25 Q On August 19th, 2012, can you tell us if your company

1 received an exigent search request regarding that particular
2 number?

3 A Yes.

4 Q Okay. Can you tell us what information was requested?

5 A Subscriber info, Social Security, call detail with cell
6 site information, text detail and text content.

7 Q Okay. And I'm going to show you State's Number 11 for
8 identification. See if you recognize State's Number 11.

9 A Yes.

10 Q Okay. And how do you recognize State's Number 11?

11 A Because that's a copy of the order that we received.

12 MR. WILSON: Without objection, Your Honor.

13 THE COURT: All right. State's Exhibit Number 11
14 admitted into evidence without objection.

15 (State's Exhibit Number 11 [Exigent Search Request]
16 admitted into evidence and appropriately marked.)

17 BY MR. RICHARDSON:

18 Q Okay. And so that's the request Verizon received?

19 A Yes.

20 Q You might need it again. I'm going to ask you -- put
21 that down so I don't have to make a trip. Looking at State's
22 Number 11, could you tell when that was received by Verizon?

23 A August 19th.

24 Q 2012?

25 A Yes.

Jennifer Dalmida - Direct by Mr. Richardson

441

1 Q Okay. And from that can you tell if it was afternoon,
2 morning or anything?

3 A It appears to be in the afternoon based on the date stamp
4 on the coversheet.

5 Q Okay. Can you tell us what information, if any, Verizon,
6 Verizon provided as a condition of that request?

7 A Based on the search warrant that we received, we did
8 provide call detail as well as cell site information, text
9 content, text, our text detail report as well as specific
10 content for actual text messages sent.

11 Q Okay. So you provided some of the context of the text
12 messages?

13 A Yes.

14 Q And that request, it covered a specific time period;
15 correct?

16 A Yes.

17 Q Two days?

18 A Yes.

19 Q Okay. So 19th through the 17th?

20 A Yes.

21 Q Allow me to show you State's Number 13. If you could
22 take a moment, look through that and tell us if you recognize
23 State's Number 13?

24 A Yes.

25 Q And how do you recognize State's Number 13?

1 A This is a copy of our text content report.

2 Q And was that information provided to anybody?

3 A Yes.

4 Q Who was it provided to?

5 A To the Solicitor's Office when they requested.

6 Q And on the 19th was it provided to Horry County Police
7 Department?

8 A Yes.

9 Q Okay. And State's Number 13, does it accurately reflect
10 the records that were contained at Verizon on August 19th,
11 2012?

12 A Yes.

13 Q Okay. And you all, you all captured that, you all kept
14 that; correct?

15 A Correct.

16 Q And you've reviewed that?

17 A Yes.

18 Q Is it a fair and accurate copy of the information your
19 company provided on that exigent request for [REDACTED] on
20 August 19th, 2012?

21 A Yes.

22 MR. RICHARDSON: Your Honor, at this time the State would
23 seek to introduce Number 13.

24 THE COURT: Any objection?

25 MR. WILSON: I'd just like to see the document, Judge.

Jennifer Dalmida - Direct by Mr. Richardson

443

1 THE COURT: All right.

2 MR. RICHARDSON: I'm sorry. I thought Mr. Wilson had
3 seen it.

4 MR. WILSON: Your Honor, without objection.

5 THE COURT: All right. State's Exhibit 13 admitted into
6 evidence without objection.

7 (State's Exhibit Number 13 [Text Message Records]
8 admitted into evidence and appropriately marked.)

9 BY MR. RICHARDSON:

10 Q Ms. Dalmida, if you'll keep State's Number 13 I'm going
11 to ask you some questions about that, please. I think you
12 already identified that's the -- all the information with
13 regard to texts; correct?

14 A Yes.

15 Q On those specific dates, and does, does that include all
16 texts that are made?

17 A All texts for the content that we were able to retrieve.

18 Q Okay. For that short period of time?

19 A Yes.

20 MR. RICHARDSON: The Court's indulgence, Your Honor.

21 THE COURT: All right.

22 BY MR. RICHARDSON:

23 Q Now, in that, in that content of what we're looking at in
24 State's Number 13, what all information is contained in these?
25 I know you said that it's the actual text, but what other

1 information is contained in them?

2 A We have the log written time, the message arrival time,
3 the final deposition and the originating DN and the
4 terminating DN?

5 Q Okay. On the first page, the first page in front of you,
6 if you'll go down one, two, the third block. They're each
7 separated by blocks?

8 A Yes.

9 Q Okay. So, each block pertains to what?

10 A To each individual message.

11 Q Okay. And as you go down to that third block is there a
12 text message you see there?

13 A Yes.

14 Q Okay. Can you tell what the originating number is?

15 A The originating number is [REDACTED].

16 Q Okay. And that's the number you all had been requested
17 to get information on; correct?

18 A Yes.

19 Q So that would be a text from that phone?

20 A Correct.

21 Q Okay. Can you tell what phone number it was texted to?

22 A [REDACTED].

23 Q Okay. And what is the content -- and what time of day is
24 that?

25 A 9:53 and 31 seconds.

Jennifer Dalmida - Direct by Mr. Richardson

445

1 Q Okay. And do you all keep track of everything in
2 military time?

3 A Yes. We do.

4 Q 24 hour clock. So 9:53 would be 9:53 in the morning?

5 A Correct.

6 Q Okay. And what's the context of that, of that particular
7 call?

8 A (As read) "Hi. Good morning, Jim. I need a loan again
9 till you know when AD will help me pay my cell bill."

10 Q Okay. So whoever has that phone number is requesting
11 some help with their phone bill?

12 A Yes.

13 Q Somebody named Jim. Okay. And that was on August 17th?

14 A Correct.

15 Q Let's see.

16 MR. RICHARDSON: The Court's indulgence, Your Honor

17 THE COURT: All right.

18 BY MR. RICHARDSON:

19 Q The records, are they in chronological order, Ms.
20 Dalmida?

21 A Generally, they're not.

22 Q Okay. Let's go to page one, two, three, four, five, to
23 page six, and the pages aren't numbered right now; correct?

24 A Correct.

25 Q Okay. Appears to be four blocks on that page?

- 1 A Yes.
- 2 Q And the second block, could you tell us when that text
3 was made?
- 4 A August 18th, 2012, at 10:17 and 27 seconds.
- 5 Q Okay. And the originating number in that text message,
6 what's the originating number?
- 7 A [REDACTED].
- 8 Q Okay. And who is that text going to?
- 9 A [REDACTED].
- 10 Q Okay. So [REDACTED] area code?
- 11 A Correct.
- 12 Q Okay. And what's the content of that text?
- 13 A (As read) "I need money to do that."
- 14 Q Okay. Now, let's go forward to, let's go about three
15 pages more. On that particular page, the second block, what
16 time of day is that or what day is that? Could you tell us
17 the date and time?
- 18 A August 18th, 2012, 9:40 and 53 seconds.
- 19 Q And in looking at that particular -- and what's the
20 originating number on that?
- 21 A [REDACTED].
- 22 Q And who is that going to?
- 23 A [REDACTED].
- 24 Q And what's the content of that text?
- 25 A (As read) "Hi, I'm at the beach getting my car looked

Jennifer Dalmida - Direct by Mr. Richardson

447

1 at."

2 Q Okay. And if you go down to the next, next one, what
3 time and what date is that?

4 A August 18th, 2012, at 10:01 and 40 seconds.

5 Q Okay. And who is the originating number on that?

6 A [REDACTED].

7 Q Okay. And who is it going to? It's going to the [REDACTED]
8 number?

9 A Correct.

10 Q And what is that? What's the content of that text?

11 A (As read) "Oh, okay. Good luck."

12 Q Okay. And that's shortly after the first text talking
13 about getting the car fixed?

14 A Correct.

15 Q Let's flip that page, the next, the next, the next, and
16 it should be a page with just one text on it?

17 A Okay.

18 Q Okay. Looking at that page can you tell the date and
19 time of that text message?

20 A August 18th, 2012, 23:30 and 49 seconds.

21 Q 23:30, that'd be 11:30 in the evening?

22 A Correct.

23 Q And what's the originating text on that?

24 A The originating DN?

25 Q Yes, ma'am. I'm sorry.

- 1 A Okay. [REDACTED].
- 2 Q Okay. And what is the -- and it's dialed to this [REDACTED]?
- 3 A [REDACTED].
- 4 Q Okay. And what's the content?
- 5 A (As read) "Are you up?"
- 6 Q And if you'll flip two more pages, and when's the date
- 7 and time on that call?
- 8 A The date and time on the text is eight, August 18th, 2012,
- 9 10:16 and 52 seconds.
- 10 Q And what's the originating number on there?
- 11 A [REDACTED].
- 12 Q Okay. And what's the content of that?
- 13 A (As read) "Welcome, when you trying to come see me?"
- 14 A Okay. And that's at 10:00 o'clock in the morning. So
- 15 back at about the same time where the text was going out about
- 16 the car dealership?
- 17 A Yes.
- 18 Q Okay. Let's flip one more page, please, ma'am. If you
- 19 go down to the, I guess, third block on that, can you tell us
- 20 the date and time of that text?
- 21 A August 19th, 2012, 2:39 and 50 seconds.
- 22 Q Okay. And that's when the message was received?
- 23 A That's when it was sent. Uh-huh.
- 24 Q That's when it was sent. Okay. And what number is
- 25 sending that?

Jennifer Dalmida - Direct by Mr. Richardson

449

1 A [REDACTED].

2 Q And what is -- and to what number, again?

3 A [REDACTED].

4 Q What is the content of that text?

5 A (As read) "Unlock door."

6 Q Okay. So [REDACTED] is sending a text to [REDACTED]
7 to unlock the door?

8 A Correct.

9 Q Okay. Go down to the next, please, and could you tell us
10 the date and time on that text?

11 A August 19th, 2012, 2:42, 35 seconds.

12 Q And who is the originating DN on that text?

13 A [REDACTED].

14 Q And who's it going to?

15 A [REDACTED].

16 Q Okay. So that's shortly after that original text asking
17 about unlock door?

18 A Correct.

19 Q And it's to the number that it said unlock door?

20 A Yes.

21 Q And what is the content of that text?

22 A (As read) "The back is on."

23 Q Let's go down to the next one, date and time, please,
24 ma'am?

25 A August 19th, 2012, 2:44 and 24 seconds.

1 Q And who's the originating DN on that number?

2 A [REDACTED].

3 Q Okay. So [REDACTED] is sending a new text at 2:44 in

4 the morning. What's the content and who are they sending it

5 to?

6 A [REDACTED].

7 Q What is the content of that text?

8 A (As read) "It's locked."

9 Q (As read) "RE. It's locked." Correct?

10 A Uh-huh.

11 Q And then, finally, the next one, please, date and time?

12 A August 19th, 2012, 2:51 and 41 seconds.

13 Q Okay. So seven minutes after the preceding text it says,

14 "It's locked," there is a new text going out?

15 A Correct.

16 Q Okay. And who's sending that text?

17 A [REDACTED].

18 Q And to whom?

19 A [REDACTED].

20 Q What's the content of that text?

21 A (As read) "The back is open."

22 Q And those were sent to the police -- do you know what

23 time those -- and these text messages were provided to the

24 police on August 19th, 2012?

25 A Correct.

Jennifer Dalmida - Direct by Mr. Richardson

451

1 Q Do you know about what time they were sent?

2 A No. I don't.

3 Q I'm going to hand you State's 14 and 15.

4 MR. WILSON: Without objection, Your Honor.

5 THE COURT: State's 14 and what?

6 MR. RICHARDSON: 14 and 15, Your Honor.

7 THE COURT: All right. State's Exhibit 14, State's
8 Exhibit 15 admitted into evidence without objection.

9 (State's Exhibit Number 14 [Call Detail Report] and
10 State's Exhibit Number 15 [Text Detail Report] admitted into
11 evidence and appropriately marked.)

12 BY MR. RICHARDSON:

13 Q Looking at State's 14 and 15, take a moment and look at
14 those and tell us what those are.

15 A One is our text detail report and the other one is our
16 call detail report.

17 Q In the text detail report, could you tell us which one
18 that is?

19 A Exhibit 15.

20 Q Exhibit 15 is text detail report. What information can
21 we glean from State's 15, text report?

22 A It would have the switch information, our target
23 telephone number for the records, the message receipt date,
24 sent time and delivery time, as well as the origination
25 address and the destination address.

1 Q And from looking at State's 15, can you tell if those
2 texts about "unlock the door" and "the back is on" and "it's
3 unlocked now", can you tell if those messages were ever
4 received?

5 A Based on this report you can.

6 Q Okay. And were they received?

7 A Do we have a specific date that --

8 Q August 19th, 2012, around 2:39 in the morning.

9 MR. WILSON: Objection, Your Honor. Leading.

10 THE COURT: Yeah. Sustained.

11 BY MR. RICHARDSON:

12 Q If I may draw your attention to August 19th, 2012, in the
13 early morning hours, can we tell any details with regard to
14 messages received?

15 A Yes.

16 Q Okay. And what information can we draw?

17 A On August 19th, 2012, basically our target telephone
18 number [REDACTED] sent a message at 2:39 to [REDACTED].

19 Q Okay. And you can tell whether or not those were
20 received?

21 A Yes.

22 Q Okay. Are there any other text messages from [REDACTED]
[REDACTED] after 2:50 in the morning?

24 A Not on this report, just 2:51.

25 Q 2:51, okay.

Jennifer Dalmida - Direct by Mr. Richardson

453

- 1 A Uh-huh.
- 2 Q That's the last text message?
- 3 A Correct.
- 4 Q And you stated that State's Number 14 is what again?
- 5 A This is a copy of our call detail report.
- 6 Q Okay. And what information is contained in that call
7 detail report?
- 8 A This has the switch, the call date, time, the target
9 telephone number, the number called, the calling party number
10 and the length of the call.
- 11 Q If you can look through that call detail report, have you
12 had time to review that prior to this court date?
- 13 A Yes.
- 14 Q Okay. And from looking at that can you tell how many
15 calls were made to [REDACTED] from [REDACTED]?
- 16 A It was a total of six.
- 17 Q A total of six calls were made to this 742 number or from
18 it? And I'm asking you?
- 19 A Actually, can I get my notepad, Your Honor?
- 20 Q Did you prepare notes?
- 21 A Yes.
- 22 Q Would looking at those notes help refresh your
23 recollection?
- 24 A For the exact number, correct.
- 25 MR. RICHARDSON: Your Honor, if I may?

1 THE COURT: All right.

2 BY MR. RICHARDSON:

3 Q Where is your notepad, in your briefcase?

4 A It's in the bag. Uh-huh.

5 Q Sure.

6 A I do not go through a lady's purse?

7 A Thank you. Would you repeat the question?

8 Q If you can look at the call detail record. Around the
9 early morning hours of August 19th, 2012, the time surrounding
10 that, in those two days that were requested do you, do you see
11 a -- I'm sorry. First of all, do you see a call from [REDACTED]-
12 [REDACTED]?

13 A Yes. There's several calls.

14 Q And on August 19th, specifically, is there a call?

15 A On August 19th I am not seeing any calls from that number.

16 Q Okay. May I see the document? If I may draw your
17 attention where my thumb is.

18 A You said from that number?

19 Q I'm sorry. I'm sorry. Is there a call at about 12:30 in
20 the morning August 19th or 0:30 in the morning?

21 A Yes.

22 Q And 0:30, that's shortly after midnight; correct?

23 A Correct. It's 36. Uh-huh.

24 Q Okay. So 0:36, about 12:36 in the morning?

25 A Yes.

Jennifer Dalmida - Direct by Mr. Richardson

455

- 1 Q Is there, is there a call at that specific time period?
- 2 A Correct.
- 3 Q And who's, who's the originating number on that?
- 4 A Our subscriber [REDACTED].
- 5 Q Okay. So that person calls what number?
- 6 A [REDACTED].
- 7 Q And from looking at your records can you tell how long
- 8 that call lasted?
- 9 A 223 seconds.
- 10 Q 223 seconds. So that's about 4 minutes?
- 11 A Yeah. I would have to do the math.
- 12 Q I'm not going to try to do the math.
- 13 A Okay.
- 14 Q Okay. So, so we'll say four, less than five minutes?
- 15 A Correct.
- 16 Q Okay. And that's shortly after midnight?
- 17 A Yes.
- 18 Q Okay. Any calls to or from that particular number at
- 19 that -- after that 12:30 midnight call?
- 20 A From the [REDACTED] number? Any calls from that number?
- 21 Q From that number or to that number?
- 22 A Not on the 19th.
- 23 Q From looking at your records -- and you've done a review
- 24 of the records -- in looking at those records during that two-
- 25 day period how many times did [REDACTED] call [REDACTED]?

1 A A total of six times.

2 Q Okay. So the [REDACTED] number called the [REDACTED] number six times?

3 A Correct.

4 Q And how many times did it occur in reverse?

5 A A total of 11 times.

6 Q 11 times. So, so the [REDACTED] called this target
7 number 11 times?

8 A Yes.

9 Q Okay. When was the last time that [REDACTED] called
10 [REDACTED]?

11 A To ensure I understand, you said when was the last time
12 [REDACTED] called the subscriber?

13 Q Yes, ma'am.

14 A August 18th, 2012, at 20:30 and 16 seconds.

15 Q So that's about 8:30 at night?

16 A Yes.

17 Q Okay. Once again, that math is going to get me. The
18 rest of the information in here, those are calls, and just so
19 the jury -- the jury will have this document when they take
20 the evidence, so they can understand, where will they find the
21 -- how will they be able to tell whether the call is incoming
22 or outgoing?

23 A Under the call-in party number, if it indicates our
24 subscriber telephone number, that means our subscriber is
25 placing an outgoing call. If it has another number other than

Jennifer Dalmida - Direct by Mr. Richardson

457

1 our subscriber number, that means our subscriber is receiving
2 a call.

3 Q Okay. So on, on this particular document, if it says
4 CPN, that is the number that is actually making that call?

5 A Correct.

6 Q Initiating the call?

7 A Yes.

8 Q And in your research on this did you ever find any other
9 instances in these two days where [REDACTED]--

10 MR. RICHARDSON: The Court's indulgence.

11 BY MR. RICHARDSON:

12 Q I'm getting mixed up with all the numbers here. Did you
13 find any other instances where there was any contact between
14 the target number and [REDACTED]?

15 A Not for that day.

16 Q Not for those particular days?

17 A Correct.

18 Q Now, from, from looking at all this information, did
19 there time come a time whenever your company provided the
20 tower locations from where calls were made or received?

21 A Yes.

22 Q Okay. And in no particular order, I'm going to show you
23 State's 16. See if you recognize State's 16.

24 A Yes.

25 Q Okay. And what is State's 16?

1 A It's a copy of our cell site address listing.

2 Q Okay. And all these documents were they provided in
3 paper, in electronic, electronically?

4 A Electronic.

5 Q Electronically. So you could see it on a computer
6 screen?

7 A Yes.

8 Q Okay. And you provided that at the same time as the cell
9 records?

10 A Correct.

11 Q And in looking at that, could anybody that's not familiar
12 with cell phones, would they be able to tell anything about
13 that?

14 A Honestly, no.

15 Q Okay. It would have to be somebody that knows something
16 about cell phones?

17 A Yes.

18 Q Okay. And the information contained therein is what
19 again?

20 A It's our -- a copy of our addresses. So it's basically
21 the latitude, longitude and the addresses of our cell sites.

22 Q Okay. And that's the tower locations?

23 A Yes.

24 MR. RICHARDSON: The State would seek to introduce 16.

25 MR. WILSON: Judge, we have no objection.

Jennifer Dalmida - Direct by Mr. Richardson

459

1 THE COURT: All right. State's Exhibit Number 16
2 admitted into evidence without objection.

3 (State's Exhibit Number 16 [Cell Site Address Listing]
4 admitted into evidence and appropriately marked.)

5 BY MR. RICHARDSON:

6 Q Okay. And on these cell towers, I want you to tell me if
7 you know, particular cell tower how -- what, what information
8 -- when you -- I believe you used the term switch earlier?

9 A Yes.

10 Q What's a switch?

11 A Basically that's burden of our network. So it -- it's
12 the control factor of our network.

13 Q And on a particular tower is there a way to calculate
14 where a call's being made from?

15 A Based on the sector information.

16 Q Okay. And the sector, there are three satellite dishes?

17 A Three sectors. Correct.

18 Q Okay. So you go out three different directions from any
19 particular tower?

20 A Correct.

21 Q And you can kind of narrow it in?

22 A Uh-huh.

23 Q Okay.

24 A Exactly.

25 Q All the remaining text and call traffic to and from this

1 phone, [REDACTED], that's all in those, in those records;
2 correct?

3 A Yes.

4 Q And with regard to texts, it's anything that was still in
5 the system that had not been purged?

6 A Yes.

7 Q In looking back at the call records --

8 MR. RICHARDSON: The Court's indulgence.

9 BY MR. RICHARDSON:

10 Q -- that the other numbers that are involved in this, the
11 -- whether it's the 742 or the 212, are you, is your company
12 able to tell us anything with regard to who belongs to those
13 numbers?

14 A No.

15 Q Or who those numbers belong to?

16 A No.

17 Q Okay. Just about the records that you all have?

18 A Yes.

19 MR. RICHARDSON: And Your Honor, for the record 14 and 15
20 are into evidence?

21 THE COURT: Right.

22 MR. RICHARDSON: Without objection. Ms. Dalmida, thank
23 you so much for being with us today.

24 A You're welcome.

25 THE COURT: Cross examination?

Jennifer Dalmida - Cross by Mr. Wilson

461

1 MR. WILSON: If it please the Court, Your Honor.

2 CROSS EXAMINATION

3 BY MR. WILSON:

4 Q How you doing today, ma'am?

5 A Hi. Well. Thank you.

6 Q I just have a few questions that I want to run through
7 with you. It shouldn't take terribly long, and thank you for
8 being here today as well.

9 A You're welcome.

10 Q Let me ask you this. When someone has a TracFone -- all
11 right -- you testified earlier under oath that there is no
12 person associated with that particular phone; correct?

13 A Correct.

14 Q Okay. So when I go out and get a TracFone, and let's say
15 I go to the -- get a -- I go to Best Buy and I get a TracFone
16 and I sign up for service with Verizon Wireless, you don't
17 know who has that particular phone; correct?

18 A Well, for the, for the TracFone because they're a
19 reseller of us, basically, they're their own business.

20 Q Okay.

21 A So we're just simply the network provider. So we won't
22 keep their subscriber info. They would have to keep those,
23 that information.

24 Q Okay. And so that would be why you couldn't tell us who
25 actually the phone belonged to?

1 A Correct.

2 Q Now, also on the other end, if someone is sending a text
3 message to one of the, the, I guess the folks, I am not well-
4 versed on cell phones. I have one, but I'm not well-versed on
5 that. But if somebody was sending an actual text to one of
6 your, I guess the people who had a cell phone with Verizon
7 that was a TracFone, you wouldn't be able to determine who
8 that person was either?

9 A Correct.

10 Q Okay. And if that person was also a TracFone subscriber,
11 you definitely wouldn't know who it was?

12 A I wouldn't know. We wouldn't know.

13 Q Okay. I want to --

14 MR. WILSON: Your Honor, may I approach the witness?

15 THE COURT: Yes.

16 MR. WILSON: Thank you, Your Honor.

17 BY MR. WILSON:

18 Q I want to show you State's Exhibit 13, and I want to go
19 through just a couple of things. I believe on the first page,
20 and I believe the date is 8-17-2012, is there a text message
21 that went out at 20:41:25 from that phone?

22 A On 8-17?

23 Q Yes, ma'am?

24 A Based -- this would only provide our text content. So I
25 wouldn't be able to determine that.

Jennifer Dalmida - Cross by Mr. Wilson

463

1 Q Okay. Do you see the text content for that day?

2 A On 8-17 at -- yes.

3 Q Okay. And what is the text content?

4 A It starts at 10:17. The next entry would be 14:42.

5 Q Okay. And what does it say?

6 A At 14:42?

7 Q Yes, ma'am?

8 A (As read) "Okay."

9 Q Can you tell me what it says?

10 A (As read) "Okay."

11 Q "Okay", okay. You know what it says after that?

12 A The next listing right beneath it I have at 9:53, and
13 that says, (as read), "Hi. Good morning. Jim, I need a loan
14 again until, you know, when AD will help me pay my cell bill."

15 Q Okay. Let me show you this. Do you recognize this
16 document?

17 A Looks like our text content report.

18 Q Okay. And can you read the text message that is circled?

19 A (As read) "Baby, please let me know your son got back
20 safe, then call me please."

21 Q All right. And can you tell based on that who sent that
22 text message or which number sent the text message?

23 A The originating DN was [REDACTED] to [REDACTED].

24 Q Thank you so very much, ma'am.

25 MR. WILSON: The Court's indulgence, Your Honor.

1 THE COURT: All right.

2 BY MR. WILSON:

3 Q Now, also in these text messages, is there ever a part of
4 the conversation in the texts that would not be received by
5 Verizon for any particular reason?

6 A What, what are you referring to?

7 Q Well, what I'm saying is if let's say that a person
8 e-mails someone something to their SmartPhone and then that
9 person responded by text, would Verizon wireless have a copy
10 of the e-mail?

11 A Not a copy of the initial e-mail because e-mail is
12 basically provided on a different kind of records. These are
13 specifically only for text messaging.

14 Q Okay. All right. All right. And, and my question
15 really is then would Verizon Wireless have those, those e-
16 mails that would have come in before or after?

17 A Not the actual e-mails, only if the reply was done by a
18 text then we would keep the text portion.

19 Q Thank you very much, ma'am. Thank you. So, if an e-mail
20 came in and said anything, Verizon Wireless wouldn't have
21 that?

22 A No.

23 Q Okay.

24 MR. WILSON: Your Honor, may I approach?

25 THE COURT: Yep.

Jennifer Dalmida - Cross by Mr. Wilson

465

1 BY MR. WILSON:
2 Q Do you recognize that document?
3 A Yes.
4 Q All right. And can you tell me what that this?
5 A It's the text content report.
6 Q Okay. And can you read the text content report that I
7 have circled on that particular document?
8 A (As read) "Nicki and Ali gone, mama sleep, and I -- and
9 in all alone.
10 Q Thank you. Thank you, ma'am.
11 MR. WILSON: Your Honor, may I approach?
12 THE COURT: Yep.
13 BY MR. WILSON:
14 Q Do you recognize this document?
15 A Yes.
16 Q All right. On that document where I have it circled, can
17 you tell me the date and the time that that actual text was
18 sent?
19 A August 18th, 2012, 16:09 and 45 seconds.
20 Q And tell this jury what that says?
21 A (As read) "Bored, need to get high".
22 Q Thank you very much. And I know you testified about this
23 earlier, if I may give you that document. Now, you said that
24 there were six phone calls made from a [REDACTED] number to the [REDACTED]-
25 [REDACTED] number; correct?

1 A Correct.

2 Q Okay. All right. And can you give me from your notes,
3 or however you can do it, the first phone call that was made
4 that morning on the 18th from the [REDACTED] number to the [REDACTED]
5 number?

6 A Can I look at the other because I didn't testify to this
7 one.

8 Q Absolutely. Yes, ma'am. That's good, and I apologize.

9 MR. WILSON: Your Honor, may I approach the witness,
10 Judge?

11 THE COURT: Yes.

12 BY MR. WILSON:

13 Q Thank you.

14 A So, you said calls received from the --

15 Q Calls received from the [REDACTED] number to the [REDACTED] number,
16 beginning that morning.

17 A On August 18th?

18 Q 18th. Yes, ma'am.

19 A The first call that I have that was received from
20 [REDACTED] was on August 18th, 2012, at 18:48 37 seconds.

21 Q Okay. All right. And what was the first time that [REDACTED]
22 -- the [REDACTED] number called the [REDACTED] number?

23 A August 18th, 2012, 20:28 and 37 seconds.

24 Q Okay. Do you see a phone call that began at 8:38:47 in
25 the morning?

Jennifer Dalmida - Cross by Mr. Wilson

467

- 1 A Yes.
- 2 Q Okay. So that would've been the first phone call that
- 3 day; correct?
- 4 A Correct.
- 5 Q So that number called the [REDACTED] number in the morning?
- 6 A Correct.
- 7 Q All right. Do you know how long that phone call lasted?
- 8 A 36 seconds.
- 9 Q Okay. All right. And then I also want to ask you the
- 10 last time that the [REDACTED] number called the [REDACTED] number, what
- 11 time was that?
- 12 A The last time?
- 13 Q I think it was at 12:40 a.m. -- on the 19th. I'm sorry?
- 14 A Okay.
- 15 Q My apologies.
- 16 A The last call that I have.
- 17 Q Well, the first call actually on the 19th, that would be
- 18 the more appropriate question.
- 19 A Okay. So the first call that I have on the 19th from
- 20 [REDACTED] to [REDACTED] is at 12:36 a.m. 17 seconds.
- 21 Q Okay. It was 17 seconds?
- 22 A No, that was the second for the call, but the actual call
- 23 was 223 seconds.
- 24 Q Okay. And during that time of that phone call Verizon
- 25 Wireless doesn't have the content of that phone call; do you?

1 A Not the actual phone call.

2 Q Not the words that were spoken on the phone?

3 A Correct.

4 Q All right. Just the actual time, the length of the call
5 and the time of the call?

6 A Correct.

7 Q All right. And which numbers were actually involved in
8 the phone call?

9 A Correct.

10 Q Okay. Fair enough.

11 MR. WILSON: Your Honor, I have no further questions.

12 THE COURT: All right.

13 MR. WILSON: Thank you so much, ma'am.

14 A You're welcome.

15 THE COURT: Redirect?

16 MR. RICHARDSON: Very briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. RICHARDSON:

19 Q Mr. Wilson pointed out a couple of things, Ms. Dalmida,
20 if you can get the, the text log one more time. Yes, ma'am,

21 and if you'll flip to, if I have it right, the seventh page.

22 Is that -- go one, two, three down, the "Nikki and Ali gone,
23 mama sleep." Do you see that? It may be on the next page.

24 I'm sorry, the very next page. The "Nikki and Ali gone, mama
25 sleep and all alone," who originates that call?

Jennifer Dalmida - Cross by Mr. Wilson

469

1 A This text originated from [REDACTED].

2 Q Okay. And it's to the target number?

3 A Correct.

4 Q So the target number is receiving it. They're not,
5 they're not sending the message?

6 A Correct.

7 Q Okay. If you'll flip, I think, three more pages. I'm
8 sorry, two more pages over. Again I miscount. Go down to
9 that, that text Mr. Wilson asked you about, the "Bored, need
10 to get high." Who originates that text?

11 A [REDACTED].

12 Q And it's sending it to the target number?

13 A Correct.

14 Q Okay. So it'd be the -- it wouldn't be the target number
15 that was initiating that message saying they need to get high?

16 A Correct.

17 Q And I know we talked about earlier a [REDACTED] number,
18 and if you go down, not the next text, but the very, the very
19 next one. that [REDACTED] -- I'm sorry. Could you, could you read
20 that text?

21 A (As read) "Okay. Lamont."

22 Q And who is sending that?

23 A [REDACTED].

24 Q And who are they sending it to?

25 A [REDACTED].

1 Q And at what time?

2 A At 18:41 and 38 seconds.

3 Q Okay. So Lamont's getting a text from [REDACTED]?

4 A Correct.

5 Q At 6:41?

6 A Correct.

7 MR. RICHARDSON: Your Honor, I have no further questions.

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

9 MR. RICHARDSON: I'd ask that Ms. Dalmida be excused to
10 return to her home office.

11 THE COURT: Any objection?

12 MR. WILSON: Your Honor, absolutely no objection.

13 THE COURT: All right. Let me see the attorneys for a
14 second.

15 (Whereupon, a bench conference is held in the presence
16 but out of the hearing of the jury.)

17 THE COURT: All right. Ladies and gentlemen, we're
18 going to go ahead and take a break, a short break for the
19 morning while we prepare for the next witness. We'll take
20 about a 10, 15-minute break. I caution you again, do not
21 discuss the case even among yourselves at this point in time.
22 You can check your phones, you can return phone messages, but
23 do not discuss the case. We'll bring you back in in about 10
24 or 15 minutes. Thank you very much.

25 (Whereupon, the following takes place outside the

Jennifer Dalmida - Cross by Mr. Wilson

471

1 presence of the jury.)

2 THE COURT: All right. Anything from the State before we
3 break?

4 MR. RICHARDSON: No, sir, Your Honor.

5 THE COURT: Anything from the Defense?

6 MR. WILSON: Nothing at this time, Your Honor.

7 THE COURT: All right. Let's take about a 15-minute
8 break.

9 OFF THE RECORD

10 (On the record. The following takes place outside the
11 presence of the jury.)

12 THE COURT: Thank you very much. Please be seated. All
13 right. Anything from the State before we bring the jury in?

14 MR. RICHARDSON: No, sir, just getting a few items
15 marked.

16 THE COURT: All right. Anything from the Defense?

17 MR. WILSON: Your Honor, may we approach ---

18 THE COURT: Yeah.

19 MR. WILSON: --- briefly?

20 (Whereupon, a bench conference is held.)

21 THE COURT: All right. Anything from the Defense before
22 we bring the jury in?

23 MR. WILSON: Nothing at this time, Your Honor.

24 THE COURT: All right. Let's bring the jury in.

25 (Whereupon, the following takes place in the presence of

1 the jury.)

2 THE COURT: All right. Ladies and gentlemen, welcome
3 back. I remind you to turn off all cell phones or pagers or
4 other communication devices. The State can call their next
5 witness.

6 MR. RICHARDSON: Thank you, Your Honor. The State would
7 call former detective, Neil Frebowitz to the stand.

8 THE COURT: All right.

9 Whereupon, Neil Frebowitz is called to the stand, duly
10 sworn by the clerk and testified as follows:

11 THE CLERK: Please state your name and spell your last
12 name.

13 MR. FREBOWITZ: Yes, ma'am. Neil Frebowitz, F-R-E-B-O-W-
14 I-T-Z.

15 DIRECT EXAMINATION

16 BY MR. RICHARDSON:

17 Q Good morning.

18 A Good morning, sir.

19 Q Detective, I know you recently retired, but if you don't
20 mind, I'll continue to call you detective.

21 A That'll be fine, sir.

22 Q Okay. Detective Frebowitz, prior to your recent
23 retirement, could you please tell us where you were employed,
24 how long and in what capacity?

25 A I was with the Horry County Police Department. I had

Neil Frebowitz - Direct by Mr. Richardson

473

1 been there for about nine and a half years. The last seven to
2 eight, I believe, was with the detective division with the
3 violent crimes, major crimes unit.

4 Q Okay. And before beginning with the Horry County Police
5 Department did you have any prior law enforcement experience?

6 A I did. I spent 25 years with the Metro Police Department
7 in Washington, D.C., where I retired.

8 Q Okay. So 25 plus nine gives us right around 35 years,
9 34, 35?

10 A A little more, but yes, sir. That's close.

11 Q Total law enforcement. Tell us a little bit about your,
12 your law enforcement training, your education and whatnot.

13 A Yes, sir. You know, obviously, been in law enforcement
14 most of my adult life. I actually started as a desk officer
15 in a small town outside of Philadelphia when I was 18 years
16 old and I was still in college. When I was 23, I got hired by
17 the Metro Police Department, spent 25 years there. I rose
18 through the rank and became a section leader. Graduated the
19 FBI National Academy where I studied with the behavioral
20 science unit, specifically interview and interrogation. I've
21 had many, many classes and training and given classes in
22 investigative techniques.

23 Q Okay. And seven to eight years actual experience here in
24 Horry County?

25 A That's correct, sir.

1 Q Now, as a detective with the Horry County Police
2 Department, was there a particular branch of the investigation
3 division you were, you were assigned to?

4 A Yes, sir. It's now called the major crimes unit. At
5 that time it was called the violent crimes unit.

6 Q And could you take, tell us a little bit about what the
7 violent crimes unit back August 2012 what kind, what types of
8 crimes did they, they investigated?

9 A Yes, sir, certainly. The violent crimes unit was
10 responsible for investigating crimes against persons, most
11 prevalently homicides, aggravated assaults that might lead to
12 homicide and sexually based offenses.

13 Q Okay. And when you say sexually based offenses you're
14 talking about rape or --

15 A Rape and most of the cases I worked were sexual abuse of
16 children.

17 Q Okay. Now, at any point in time approximately how many
18 murder investigations have you been involved in?

19 A Here in Horry County?

20 Q Sure. We'll just go with Horry County.

21 A Okay. Probably average close to 10 a year and that
22 doesn't include death and suspicious death investigations when
23 we didn't know what, what had happened, whether it was a
24 homicide or not. Ten a year is a very safe number, 80.

25 Q Okay. Definitely more than 50 that you've been involved

Neil Frebowitz - Direct by Mr. Richardson

475

1 in?

2 A Oh, yes, sir.

3 Q Now, back -- were you on duty back August 19th, 2012?

4 A I was the on-call detective. It was a -- I believe it
5 was a weekend and I was the on-call detective that weekend.

6 Q Okay. So that was prior to your retirement?

7 A Yes, sir. It was.

8 Q And you were the on-call detective. What does that mean?

9 A There's a rotation because we don't have investigators
10 assigned to work through the weekend generally, and there's a
11 rotation list and that means you have to sleep with your phone
12 and keep it with you so that if there's an emergency or a
13 violent crime, an incident, they, they can call you and reach
14 out to you and you can respond.

15 Q Okay. And so you were on call in the early morning of
16 August 19th, 2012?

17 A Yes. Yes, sir.

18 Q On that date did you have the opportunity to become
19 involved in the investigation of the murders of Amos Hatfield
20 and Thomas Hatfield?

21 A Yes, sir, I did.

22 Q If you could, if you'd just take us back to that morning
23 and tell us how you became involved. What caused you to
24 become involved and whatnot?

25 A Yes, sir. I received a phone call at my residence. I

1 think it was around 4:15 in the morning from the CID
2 supervisor. I believe it was Lieutenant DeBerry at the time,
3 who advised that their units had been on the scene of a --
4 what appeared to be a murder on Red Bluff Road. The address
5 is [REDACTED], Loris Section of Horry County.

6 Q Were there any other crimes alleged at this particular
7 time?

8 A Well, that's all the information I was given.

9 Q Okay. But you had a couple of possible murders?

10 A There were -- it was a multiple homicide at that address.

11 Q Okay. And after you received this call, what steps did
12 you take?

13 A I responded directly to the scene.

14 Q You got up, got dressed?

15 A Yes, sir.

16 Q Okay. Got your badge, everything and went out there?

17 A Yes, sir, I did.

18 Q And you just said that for jurisdictional purposes that
19 address, [REDACTED] is here in Horry County?

20 A It is, sir.

21 Q When you arrived on scene, what time was that?

22 A About 4:20, 4:25.

23 Q Okay. And you got called out at 4:15. You got there --

24 A It would have been a little later than that, closer to
25 maybe 4:30, 4:35. I remember driving pretty fast to get

Neil Frebowitz - Direct by Mr. Richardson

477

1 there.

2 Q Drove pretty fast. Okay. And when you first got there
3 what were the lighting conditions like?

4 A It was still dark outside.

5 Q Were there any exterior lights on or anything?

6 A I don't believe so. No, sir.

7 Q Okay. And were there any other officers on scene when
8 you got there?

9 A There were. This crime scene had already been
10 established. They had placed crime scene tape at certain
11 sections of the building, and Detective Martin was a crime
12 scene investigator at the time. He, he was in the -- his
13 vehicle was in the driveway, and he had already begun
14 processing the crime scene.

15 Q Okay. And were there patrol vehicles there?

16 A There, there were.

17 Q Now, you got there, you said, now Detective Martin --

18 A Yes, sir.

19 Q -- he was the crime scene officer at the time. He was
20 there?

21 A Yes, sir.

22 Q You had patrol officers there?

23 A Yes, sir.

24 Q Any other officers that you recall?

25 A There were patrol supervisors there, but they weren't

1 actively involved in protecting the crime scene at the time.

2 Q Okay. And so when you first get on the scene, it was
3 pretty dark. The patrol car is there. Do they have their
4 lights on --

5 A Yes, sir.

6 Q -- off.

7 A They had -- their blue lights were on at -- well, on the
8 side of the road to slow down traffic.

9 Q Okay. So there is some ---

10 A There's ambient.

11 Q --- not pitch black. You can see some things.

12 A There's headlights. There's ambient lights there. You
13 can see.

14 Q Okay. What'd you do when you first got on scene?

15 A Well, the first thing I did is there was a patrol car in
16 the driveway. I approached the first responding officer. I
17 wanted to know exactly what he had seen. He said they had
18 entered the dwelling. It was a, a home, like a doublewide
19 trailer, for want of a better term. He had entered. There
20 was a report of a shooting. Noticed there were two dead
21 bodies. They had cleared the home, which meant that they had
22 done a cursory sweep looking to make sure there was nobody
23 still in the home for their safety. They had found an
24 additional victim who had claimed to be a victim of a sexual
25 assault and sequestered her in the back of a police car.

Neil Frebowitz - Direct by Mr. Richardson

479

1 Q Okay. And so you get on scene. After you're told that
2 there's two bodies and an alleged victim of a rape ---

3 A Yes, sir.

4 Q -- and they have her in the patrol car, what, if
5 anything, did you do next?

6 A I communicated with Detective Martin, along with
7 everybody else, that the scene was to remain secure until
8 Detective Martin, who was processing it, gave the okay to
9 enter the scene to make sure that he had all the evidence
10 collected that he needed before somebody could have tampered
11 or contaminated it.

12 Q Okay. And as you were the first responding detective,
13 you were, you were on call. Is this your case?

14 A Yes, sir. It is.

15 Q Now, prior to entering that residence, did you all seek
16 any type of permission to go into that residence, any search,
17 any search warrants or anything?

18 A I, I honestly don't recall.

19 Q Okay. Okay. You didn't personally get a search warrant?

20 A No, sir. I did not.

21 Q And with regard to, to -- you spoke to John Martin. You
22 said that the victim was in the back of a patrol car. Did you
23 go over and speak with her?

24 A Yes, sir, I did.

25 Q And do you see that person in the courtroom today?

1 A I do, sir.

2 Q Okay. If you could just direct everybody's attention.

3 A At the -- the young lady with the black sport jacket at
4 the Defendant's table.

5 Q Okay. And she was in the back of the patrol car?

6 A Yes, sir.

7 Q Allow me to show you State's 21, 22, 23, 24 and 25. If
8 you could take a moment and look at those, Detective. Tell me
9 if you recognize those.

10 A Yes, sir, I do.

11 Q And what do you recognize State's, I believe, 21 through
12 25 as being?

13 A That appears to be photographs taken the night of the
14 incident of Ms. Locklear in the police car.

15 Q When you say night, early morning hours?

16 A Early morning hours. Yes, sir.

17 Q Okay. I know it was still pitch black outside, and so is
18 it a fair and accurate representation of how she appeared to
19 you?

20 A Yes, sir.

21 Q Okay. Did you have the opportunity to speak with her?

22 A Yes, sir, I did.

23 MR. RICHARDSON: Your Honor, at this time the State would
24 seek to introduce 21 through 25 into evidence.

25 THE COURT: Any objection?

Neil Frebowitz - Direct by Mr. Richardson

481

1 MR. WILSON: Judge, there's no objection to that.

2 THE COURT: All right. State's Exhibits 21, 22, 23, 24
3 and 25 are admitted into evidence without objection.

4 (State's Exhibits 21 through 25 [Photographs] entered
5 into evidence and appropriately marked.)

6 MR. RICHARDSON: And permission to publish, Your Honor.

7 THE COURT: All right.

8 BY MR. RICHARDSON:

9 Q Now, Detective, as you spoke with her she was in the back
10 of the patrol car?

11 A Yes, sir. She was.

12 Q Was she secured in any fashion?

13 A No handcuffs or shackles. No, sir.

14 Q Okay. And your understanding was of her at this point
15 was what?

16 A She was a victim.

17 Q She was a victim?

18 A Absolutely.

19 Q And what did you all speak about?

20 A I introduced myself, told her I would be the lead
21 detective on the case. She told me that she had been raped.
22 At that point I said that, "We need to get you to the hospital
23 because your safety and welfare is the most important," and I
24 requested another detective in this case -- it was Detective
25 Chatfield -- to either -- and I don't recall whether he

1 accompanied her or actually transported her to hospital.

2 Q Before speaking with her, did you advise her of her
3 Miranda Rights?

4 A Oh, no, sir.

5 Q Why not?

6 A She's not a suspect at this time.

7 Q She's a victim?

8 A She was a victim.

9 Q And at this point could you tell -- how'd she appear to
10 you?

11 A She was -- she appeared generally distraught.

12 Q She appeared genuinely, genuinely distraught?

13 A Yes, sir.

14 Q At this point had you listened to the 911 call?

15 A No, sir, I had not.

16 Q And you'd briefly spoken with officers?

17 A Yes, sir.

18 Q Did she appear to be under the influence, intoxicated,
19 anything of that nature?

20 A No, sir. I couldn't detect that.

21 Q Okay. And tell us about any bruising or injuries you saw
22 on the Defendant at this point.

23 A Well, it was dark out as you've said. The police car
24 light I think came on when they opened -- I opened the door,
25 but I didn't remember seeing anything.

Neil Frebowitz - Direct by Mr. Richardson

483

1 Q And tell us about any, any dirt or anything else you saw
2 on her.

3 A Again, I didn't examine her that closely in the back of
4 the car. I didn't notice anything.

5 Q And you stated that after you got done speaking with her
6 -- that was brief?

7 A It was very brief.

8 Q She was taken to the hospital?

9 A Conway Hospital. Yes, sir.

10 Q And what was the purpose of that?

11 A Well, a couple of reasons, she is a victim of a crime.
12 At the time I thought a brutal, you know, brutal rape the way
13 she described it. We needed to get her medical attention.
14 That's -- in our protocols that's the right thing to do and
15 that's what you do. That was the most important thing on my
16 to-do list, had her taken to the hospital, and the second part
17 is she's actually a crime scene. The suspects at that time I
18 thought had left evidence at her, in her, on her, and that
19 needed to be collected by a professional.

20 Q Okay. And that's in the course of your, your -- all your
21 experience with investigations.

22 A Yes, sir. That's standard protocols.

23 Q Standard protocol. Now, while she was being transported
24 to the Conway Hospital, you didn't ride with her?

25 A No, sir.

1 Q What, if anything, were you doing at this point?

2 A I was just ensuring the management of the crime scene. I
3 also requested additional responding investigators do what's
4 called a neighborhood canvas, speak to the neighbors on every
5 side around, you know, across the street, see if anybody heard
6 or saw anything.

7 Q And after she was transported, did there come a time
8 whenever that scene was processed?

9 A Yes, sir. It was.

10 Q The protocol at that time, what was the protocol with
11 regard to obtaining a search warrant to go into a residence?

12 A Well, you'd either get consent to search or a search
13 warrant.

14 Q Okay. And you didn't personally get it. Someone else
15 would have had to have done it?

16 A Somebody else probably got it.

17 Q Because you're lead investigator?

18 A There's, there's a supervisor on the scene that takes
19 care of the administrative minutia of getting warrants and
20 things like that where you can focus on trying to catch the
21 guy who did or girl who did it in this case.

22 Q Now, you detailed some officers because as the lead agent
23 you kind of manage everything, too; correct?

24 A Yes, sir.

25 Q So you detailed some officers to canvas the neighborhood?

Neil Frebowitz - Direct by Mr. Richardson

485

1 A Yes, sir.

2 Q Knock on doors?

3 A Yes, sir.

4 Q Were you able to find any witnesses?

5 A I think they did identify people that were aware there
6 was a commotion, but they didn't know anything specific to the
7 crime.

8 Q Didn't know anything specific to the crime?

9 A No, sir.

10 Q They woke up and police cars were there?

11 A Pretty much. Yes, sir.

12 Q Okay. Now, you get this done and you've talked about
13 Detective John Martin; correct?

14 A Yes, sir.

15 Q And what was his -- what were his duties?

16 A Well, as the crime scene technician, his job was to
17 document the scene, which would be photographs, sketches,
18 whatever he felt necessary, consistent with his training,
19 collect any evidence, which would include ammunition, shell
20 casings, blood, any biological fluid that might have been left
21 behind, along with anything that he thought was of evidentiary
22 value.

23 Q Okay. And you don't -- do you micromanage that?

24 A Absolutely not.

25 Q Okay. Now, as he's processing the crime scene, you

1 arrive after 4:30. He's processing the crime scene. Do you
2 stay at the scene while it's all being processed?

3 A Yes, sir, I did.

4 Q Okay. Did there ever come a time that you traveled to
5 Conway Hospital?

6 A Yes, sir. There was.

7 Q And when was that?

8 A It was around 7, 7:30 in the morning.

9 Q Okay. And what was the purpose of you going to Conway
10 Hospital?

11 A Again, to check on the victim and to communicate with
12 Detective Chatfield to see if he needed anything or how the
13 medical protocols were going.

14 Q Did you meet with the Defendant again at that point?

15 A Briefly. Yes, sir.

16 Q Okay. And was there any conversation of any substance
17 there?

18 A No, sir.

19 Q Okay. And what was going on at the hospital at that
20 point?

21 A Well, a -- they had called in a, what's called a SANE, a
22 sexual assault nurse examiner, who's specifically trained to
23 examine victims, and she was about ready to perform her
24 protocols.

25 Q Okay. So you were just checking in on everything?

Neil Frebowitz - Direct by Mr. Richardson

487

1 A Yes, sir.

2 Q Now, when you leave the hospital, about what time was
3 that?

4 A It wasn't much longer after that, maybe 8:00 o'clock or
5 so.

6 Q And from the hospital, Conway Hospital, where do you go?

7 A I went back to the office.

8 Q And where is the office?

9 A The office is the M.L. Brown Building on Main Street in
10 Conway.

11 Q Okay. Heading out towards Loris?

12 A Yes, sir.

13 Q Okay. Now, after you leave the hospital, you return to
14 the M.L. Brown Building, that's where your office is, what
15 are, what are you doing while the Defendant's at the hospital?

16 A Again, getting some background information on the victims
17 and, and the Defendant, or in this case it was the victims,
18 three, we thought we had three victims, along with just trying
19 to organize the paperwork in a case like this.

20 Q How many detectives were, were involved in this
21 investigation approximately?

22 A Off -- about -- I think five or six of us responded to
23 the scene.

24 Q Okay. So you've got a lot of people answering to you?

25 A Well, there's a lot of people going in different

1 directions. We're trying to get the information.

2 Q Okay. And they're bringing information where?

3 A Either to myself or one of the other supervisors.

4 Q Okay. And so eventually it all gets to you?

5 A Eventually.

6 Q At any point as you're trying to assimilate all this
7 information, do you ever have the opportunity to speak with
8 the Defendant again?

9 A Not at that point.

10 Q Okay. At some point that day, later on that morning, do
11 you have the opportunity to speak with the Defendant?

12 A I do.

13 Q And where does that conversation take place?

14 A Again, at the -- in our offices at the major crimes unit
15 offices, M.L. Brown Building on Main Street in Conway.

16 Q Now, how did the, how did the Defendant arrive at the
17 M.L. Brown Building?

18 A I believe she was transported by law enforcement. Again,
19 I wasn't there. So it was either Detective Chatfield or, or
20 maybe a patrol officer brought her back.

21 Q Now, when she arrived at the M.L. Brown Building at your
22 office --

23 A Yes, sir.

24 Q -- what time of day is that?

25 A I think it was around 10:30 in the morning.

Neil Frebowitz - Direct by Mr. Richardson

489

1 Q Okay. And whenever she does arrive, how did she appear?

2 A She had been changed into medical scrubs I recall, and
3 she was still appeared to be upset, but she had gotten a
4 medical clearance. So we, we spoke. We ended up speaking
5 with her for a little bit.

6 Q Okay. And was she in -- was she handcuffed or restrained
7 in any way?

8 A Oh, no, sir. Not at all.

9 Q And where'd you speak with her, out in the hallway or
10 where?

11 A Eventually we went to an interview room. An interview
12 room is just a room. It's got relatively comfortable chairs,
13 but it's got the capability of being away from everybody.
14 It's relatively quiet. Someone wants to tell a story or
15 someone who's a victim of a crime, you don't want them telling
16 that story in a big room for everybody to hear. You, you want
17 them to have some privacy and some dignity, and we use that
18 room for that purpose.

19 Q Now, the interview room, why, why did you want to speak
20 with the Defendant again?

21 A She knew what happened. She was there when this horrific
22 crime occurred.

23 Q Okay. And you knew this from speaking with her
24 previously?

25 A Briefly. Yes, sir.

1 Q Is it customary to interview alleged victims in a case
2 like this?

3 A Every single time.

4 Q How about witnesses?

5 A Every single time.

6 Q Is it customary to speak with them at the M.L. Brown
7 Building?

8 A In a case like this. Yes, sir.

9 Q Now, at this point when you speak with her, she arrives,
10 you said, around 10:30 or so?

11 A But I think it was a little later. I think it was a
12 little later, but it was approaching noontime at the -- I
13 believe.

14 Q Okay. As you speak with her, what are the specific
15 allegations that you're investigating at this point?

16 A Oh, that she was the victim of a sexual assault, that at
17 this time I had learned it was her husband and stepson had
18 been murdered.

19 Q Okay. Now, how, how did she appear to you at this point?
20 You said still distraught but --

21 A Still distraught. She had crutches. They had -- she had
22 complained of a leg or knee injury at the hospital. Their
23 protocol was to give crutches, just take the weight off the
24 leg or the injury, and she, she came into the interview room
25 using those crutches.

Neil Frebowitz - Direct by Mr. Richardson

491

1 Q Now, at this point did you threaten the Defendant in any
2 way?

3 A Oh, no, sir.

4 Q Anything you do to try and scare her?

5 A No. She was the victim.

6 Q And what was your goal in speaking with her?

7 A Get, just recover the information. Again, she was at the
8 scene of a double murder, was victimized, had been raped,
9 according to her, her statements to us, wanted to find out who
10 did it and see if she knew anything.

11 Q Now, in speaking with the Defendant, and you're in the
12 interview room, did she appear to understand what you're
13 saying?

14 A Yes, sir.

15 Q Did she respond appropriately?

16 A Yes, sir. She did.

17 Q At any point did the Defendant decline to be interviewed?

18 A No, sir.

19 Q As a matter of a fact what would have happened if the
20 Defendant said, "I just want to go home?"

21 A We probably would have taken her home, and I've done it
22 in the past, you know. So I understand that. You know, like
23 I said, most of the crimes I investigate are sex crimes and a
24 lot of them involving kids, and they want to go home. It's
25 not uncommon for me to put them in a car and take them home

1 and continue the conversation on the way to the house.

2 Q Okay. And what if she would have just said, "I just
3 don't want to talk to police?"

4 A We would have had to arrange for another conversation.
5 Because of the nature of this crime, we still had -- at this
6 time we thought we had two people out there. So I think she
7 acknowledged that there were two people that had broken in and
8 murdered her, her family. We would have needed that
9 information. You know, two murderers out there, we can't let
10 that happen.

11 Q In any way did she ever tell you she wanted to go home?

12 A No, sir.

13 Q In any way did she ever tell you she didn't want to talk?

14 A No, sir.

15 Q Okay. And at any point did she attempt to cease the
16 interview?

17 A Oh, no, sir.

18 Q The room she was in, the room she was placed in, this
19 interview room --

20 A Yes, sir.

21 Q -- when she was first placed in there, was the door open,
22 shut?

23 A Open.

24 Q Open?

25 A Open. Yes, sir.

Neil Frebowitz - Direct by Mr. Richardson

493

- 1 Q And is there a lock on the door?
- 2 A No. There is not.
- 3 Q Okay. So you can just get up, open it even if it is
- 4 shut?
- 5 A Yes, sir.
- 6 Q And was she in cuffs at this point?
- 7 A No, sir.
- 8 Q Was she restrained in any way?
- 9 A Not at all.
- 10 Q What kind of chair was she in?
- 11 A Just a regular soft chair.
- 12 Q Okay. Has a back on it?
- 13 A Yes, sir. It does.
- 14 Q Okay. So she's not just sitting up on a bench?
- 15 A No. No, sir.
- 16 Q Did you take any steps at this point to record the
- 17 conversation you had with the Defendant?
- 18 A Yes. We did.
- 19 Q And at this point did you advise her of her Miranda
- 20 Rights?
- 21 A No, sir.
- 22 Q Once again, why not?
- 23 A Again, she's a victim. A victim's, you know, that's
- 24 reserved for folks who become suspects.
- 25 Q And per prior arrangement we will listen to the interview

1 here shortly, but as Sandy Lee Locklear sat in your interview
2 room can you just, during the interview as a victim, as a
3 witness, can you just summarily tell us what went on?

4 A Yes, sir. Initially she described how a good-looking
5 white guy and a light-skinned black person had broken into the
6 home that she -- at the time I thought she shared with her
7 husband and stepson, forced the husband and stepson on the
8 ground while one of them raped her. She heard shots, and then
9 ultimately realized that both her son and husband had been
10 shot in the back of the head.

11 Q Okay. So she told you originally that it was a white guy
12 and a light-skinned black guy?

13 A Specifically, I believe she indicated he was a good-
14 looking white guy and a light-skinned black guy.

15 Q Did she describe any type of beatings or anything?

16 A She said that they were thrown to the ground and forced
17 to stay there. Yes, sir. It was a violent assault.

18 Q Okay. And how about the violence inflicted upon her?
19 What, if anything, did she tell you?

20 A Well, she described initially how she was forced to the
21 ground, her clothes were pulled off her, specifically her
22 undergarments, and she was raped first by one, who then
23 uttered some vulgarities about -- to the other one, who then
24 -- she described how the second person raped her.

25 Q Okay. Did she give any descriptions of weapons at any,

Neil Frebowitz - Direct by Mr. Richardson

495

1 at any point during this initial interview?

2 A I think they said he had a long gun, a bat. You know,
3 there were, there were several -- there were a couple of
4 different stories she told, and there was a long gun in there
5 somewhere and a bat in there somewhere.

6 Q At some point during this interview, did you make any
7 requests with regard to her cell phone records?

8 A Yes, sir, I did.

9 Q And what'd you ask?

10 A If we could find her phone and find her cell phone
11 records. She had acknowledged early on that she thought she
12 might have lost her phone. We were under the impression or
13 concern that the suspects may have taken it. You can track
14 these phones these days, some of them, and if we had those
15 records we may be able to track her phone to find out who had
16 it.

17 Q When you asked her about going for her cell phone
18 records, how did she respond?

19 A She agreed.

20 Q She agreed. She wanted you to look at them?

21 A Yes, sir.

22 Q And now, at that juncture, is that something that happens
23 like that?

24 A Oh, no, sir. It's -- I am not a technician when it comes
25 to that, but it takes a while I understand.

1 Q And how, how did you arrive at her cell phone number?

2 A She told us.

3 Q Okay. Now, when you began to interview this, this rape
4 victim, this eyewitness to a double murder, had you gotten any
5 kind of information with regard to her demeanor at the
6 hospital?

7 A No, sir. I know I spoke to Chatfield briefly, but I
8 don't recall what he said, but it was nothing that stood out
9 that I needed to be aware of.

10 Q And how long did this initial interview last?

11 A About an hour.

12 Q About an hour. Now, at some point during this interview,
13 this initial witness victim interview, did there come a time
14 when you got suspicious?

15 A Yes, sir.

16 Q Why was that?

17 A After about an hour she had given us information about --
18 very specific information about possible suspects, where she
19 might have seen them, where they may be, where they might have
20 come from, any passing acquaintances she may have had with at
21 least one of them, and we followed every single lead. We went
22 -- they had sent detectives to Loris, to an IGA to look at a
23 video, to a gas station, I think into North Carolina. Every
24 lead she gave us turned out to be a dead end, and not only
25 that, but the timelines couldn't have matched up, and the

Neil Frebowitz - Direct by Mr. Richardson

497

1 description of the events leading up to what she said just
2 physically could not have happened.

3 Q How about injuries to her, did you, did you notice any
4 injuries on her?

5 A I did look. I didn't see any injuries, and the more she
6 reported the type of brutality thrust upon her, the more I
7 realized that there was something amiss.

8 Q So all of it, as that initial statement coalesced, just
9 made you suspicious?

10 A Yes, sir.

11 Q And at that point you said you took a break?

12 A Yes, sir.

13 Q How long was that break?

14 A I don't recall. I know these breaks, could have been 15,
15 20 minutes, could have been maybe an hour, you know.

16 Q Okay.

17 A Sometimes time, yeah, it could be some time.

18 Q Now, after coming back from that break, that break, what
19 steps, if any, did you take? You're curious now. You're
20 suspicious now. What steps, if any, did you take to advise
21 the Defendant of her constitutional rights?

22 A Well, at that point I had made the determination that she
23 was more involved in this scenario, in the crime than just as
24 a victim or a witness. At that time policy, protocol requires
25 that we issue her her what's called the Miranda Rights.

1 MR. WILSON: No objection, Your Honor.

2 Q Allow me to show you what's been marked as State's Number
3 19 for identification.

4 A Yes, sir.

5 Q And how do you recognize State's Number 19?

6 A It's affixed with my signature on the bottom of it, and I
7 recognize my handwriting on it.

8 Q Okay. Could you tell us what State's Number 19 is?

9 A Yes, sir. It's a standard advisement of Miranda Rights
10 form.

11 Q Okay.

12 MR. RICHARDSON: Your Honor, at this time the State would
13 seek to introduce State's Number 19 into evidence.

14 THE COURT: Any objection?

15 MR. WILSON: No objection at this time, Your Honor.

16 THE COURT: All right. State's Exhibit Number 19
17 admitted into evidence without objection.

18 (State's Exhibit Number 19 [Miranda Rights Form] admitted
19 into evidence and appropriately marked.)

20 BY MR. RICHARDSON:

21 Q Could you tell us how State's Number 19 is relevant to
22 the case?

23 A Yes, sir. Ultimately Ms. Locklear confessed to
24 involvement in the crime. The fact that she had been given
25 her Miranda Rights was important at that point.

Neil Frebowitz - Direct by Mr. Richardson

499

1 Q Okay. And you just indicated previously --

2 MR. WILSON: Objection, Your Honor, objection. Can we
3 approach?

4 THE COURT: Yeah.

5 (Whereupon, a bench conference is held in the presence
6 but out of the hearing of the jury.)

7 THE COURT: All right. The jury will disregard the last
8 comment and the last testimony given by Officer Frebowitz.

9 BY MR. RICHARDSON:

10 Q Detective Frebowitz, you indicated you had advised the
11 Defendant of her Miranda Rights.

12 A Yes, sir.

13 Q Is that the form you advised her on?

14 A Yes, sir.

15 Q Okay. And with regard to advising her of her Miranda
16 Rights, could you demonstrate for us today how you advised her
17 of her Miranda Rights?

18 A Certainly. First we read from -- and I've given these
19 Miranda Rights hundreds and hundreds of time. It's
20 ubiquitous, the same as you see on television, but I read them
21 from the paper just so that I don't miss anything, and they
22 read, (as read) "You have the right to remain silent.
23 Anything you say can and will be used against you in a court
24 of law. You have the right to talk with a lawyer, have him
25 present with you while you're being questioned. If you cannot

1 afford to hire a lawyer one will be appointed to represent you
2 before any questioning if you so desire. If you make a
3 statement or answer questions you have the right to stop at
4 any time." Then the next line says, (as read) "Do you
5 understand your rights as I've read them to you?" It is
6 checked yes. I also -- there's a signature that contains Ms.
7 Locklear's signature. I witnessed her signature, as well as
8 printing on the paper. She took some time when I handed her
9 the form to read it herself, and she appeared to digest what
10 it, what it said.

11 Q Did she make any indication on there in any way that she
12 -- that she had been advised of her rights?

13 A Yes, sir. She signed the rights form.

14 Q She signed it. Now, after reading her her Miranda Rights
15 and after she signed her Miranda Rights, you'd been talking to
16 her for at least an hour before; correct?

17 A Yes, sir.

18 Q At this point tell us about any concerns you had with
19 regard to her ability to understand the English language.

20 A None. She understood what I was saying.

21 Q Tell us about any concerns you had with regard to her
22 being intoxicated.

23 A She appeared to understand and respond appropriately. I
24 didn't detect intoxication.

25 Q And you've been in law enforcement for well over 30 years