

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable George M. McFaddin, Circuit Court Judge

DAVID G. JOHNSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000813

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE } GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

STATE,)

TRANSCRIPT OF RECORD
09-GS-21-1564

v.)

DAVID GERRARD JOHNSON,)

DEFENDANT.)

February 09, 2012
Florence, South Carolina

BEFORE :

THE HONORABLE THOMAS A. RUSSO, JUDGE;
AND JURY

APPEARANCES:

E. L. CLEMENTS, III, ESQ.
Solicitor

JOHN C. JEPERTINGER, ESQ.
Assistant Solicitor

W. JAMES HOFFMEYER, ESQ.
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1 THE COURT: Solicitor, you ready to
2 proceed?

3 MR. CLEMENTS: We are, Your Honor.

4 THE COURT: And what motion do you want to
5 take up first, what issue?

6 MR. CLEMENTS: Your Honor, I think the
7 first issue Mr. Hoffmeyer and I both agree that
8 should be handled first logically would be the Blair
9 hearing, Your Honor.

10 THE COURT: All right. If you will
11 present —

12 MR. CLEMENTS: Your Honor, for the record,
13 this is State versus David Gerrard Johnson,
14 indictment number 2009-GS-21-1564, and Mr. Johnson
15 is in the courtroom with his court appointed
16 attorney Mr. Hoffmeyer.

17 THE COURT: All right, sir.

18 MR. CLEMENTS: Your Honor, if it please
19 the Court, we'd like to call Doctor Alicia Hall to
20 the witness stand.

21 THE COURT: Doctor Hall, if you'd please
22 come around here.

23 THE CLERK OF COURT: Place your left hand
24 on the Bible and raise your right hand.

25 WHEREUPON,

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1 **ALICIA V. HALL,**
2 **having been duly sworn by the Clerk of Court,**
3 **testified as follows:**

4 THE CLERK OF COURT: Please be seated and
5 state your full name for the record.

6 THE WITNESS: Doctor Alicia V. Hall.

7 **DIRECT EXAMINATION**

8 BY MR. CLEMENTS:

9 Q Doctor Hall, good afternoon.

10 A Good afternoon.

11 Q Doctor Hall, can you please tell us where you
12 work.

13 A I work for the Department of Disability and
14 Special Needs.

15 Q And where in the state do you work?

16 A Columbia, South Carolina.

17 Q And what is the location that you work for
18 Disability and Special Needs?

19 A Our central office.

20 Q Okay. And is that at the William S. Hall
21 Psychiatric Institute or is that in another
22 building?

23 A No, that's another building.

24 Q How long have you worked for the Disability and
25 Special Needs?

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1 A Since April of 2010.

2 Q In what capacity do you work for them?

3 A I am a state evaluator for forensic evaluations.

4 Q Okay. And what is -- you're a doctor; is that
5 correct?

6 A I have a Ph.D. in clinical psychology.

7 Q Can you please tell the Court about your
8 educational background.

9 A Okay. I have a Master's degree in experimental
10 psychology from Indiana State University -- I have a
11 doctorate in clinical psychology with a minor in
12 forensics from the University of South Florida. And
13 I received my final training of internship at
14 William S. Hall Psychiatric Institute.

15 Q Okay. And how long have you been so employed at
16 the Department of Disability and Special Needs?

17 A Since April of 2010 I believe.

18 Q April of 2010?

19 A Uh-huh.

20 Q And did you have an occasion to do an evaluation
21 of David Gerrard Johnson?

22 A Yes.

23 Q Was that pursuant to the order signed by the
24 Honorable Thomas A. Russo?

25 A Yes.

SW - A. HALL - DIRECT

1 Q Okay. And did you conduct an evaluation to
2 determine competency pursuant to State versus Blair?

3 A Yes.

4 Q Now how many prior forensic evaluations have you
5 participated in for State versus Blair purposes?

6 A Gosh, I would say probably over or close to a
7 hundred.

8 Q Okay. And how many times have you been qualified
9 to testify as an expert on competency in state or
10 federal court?

11 A Five.

12 Q Five times?

13 A Yeah.

14 Q Okay, all right. Did you do this evaluation in
15 conjunction with anyone else?

16 A Yes.

17 Q Who?

18 A Doctor Gordon Brown.

19 Q Who was the lead examiner, who was the secondary
20 examiner?

21 A I was the lead examiner. He was secondary.

22 Q Okay. And how long has Doctor Brown been working
23 for the Department of Disability and Special Needs?

24 A I believe he's been there for six or seven years;
25 I'm not sure.

SW - A. HALL - DIRECT

1 Q Okay, all right. Has he also to your knowledge
2 been qualified to testify as an expert in state or
3 federal court?

4 A Yes.

5 Q Okay. Y'all did this jointly?

6 A Yes.

7 Q Okay.

8 MR. CLEMENTS: Your Honor, at this time
9 we'd offer Doctor Hall as an expert, Your Honor, in
10 forensic psychology particular to conducting an
11 evaluation, forensic evaluation, pursuant to State
12 versus Blair.

13 THE COURT: All right. Wish to voir dire
14 the witness?

15 MR. HOFFMEYER: Your Honor, I don't care
16 to voir dire the witness at this time on that issue.
17 I may ask a few questions that go to the weight of
18 her testimony later.

19 THE COURT: All right, sir. I find Doctor
20 Hall is so qualified and allow you to proceed.

21 MR. CLEMENTS: Okay.

22 BY MR. CLEMENTS:

23 Q Doctor Hall, what date or dates did you do an
24 evaluation of Mr. Johnson?

25 A We saw Mr. Johnson on two occasions. The first

SW - A. HALL - DIRECT

1 was December 6th of 2011, and the second was
2 January 12 of 2012.

3 Q All right. And you say "we". That was you and
4 Doctor Brown?

5 A Yes.

6 Q On both occasions?

7 A Yes.

8 Q Where did you do your examination?

9 A We did the examination here in Florence at our
10 Pee Dee center.

11 Q And when you conduct your evaluation what exactly
12 do you do? How do you start the evaluation? Do you
13 do Miranda rights or anything like that, or explain
14 it to them? What exactly do you do?

15 A Yes, we do an explanation of procedures so we
16 talk it over with the defendant what we're gonna do
17 today, what the limits of confidentiality are, and
18 then we assess to make sure they understood the
19 purpose of the evaluation.

20 Q Did you do that with David Johnson?

21 A Yes.

22 Q Did he understand what you were talking about?

23 A Yes.

24 Q So he understood the purpose and what it was for?

25 A Yes.

SW - A. HALL - DIRECT

1 Q Okay. Was he able to conduct himself in a
2 appropriate manner and answer questions
3 appropriately during the evaluation?

4 A Yes, he was not any problem.

5 Q Okay, all right. So he understood what y'all
6 were doing?

7 A Yes.

8 Q Now when you do an evaluation what other types of
9 information other than just talking to the examinee
10 do you review and look at?

11 A We review all records that are available to us.
12 In Mr. Johnson's case we reviewed the legal
13 documents, the court order, the police reports,
14 witness statements. We also reviewed his
15 educational records.

16 Q Okay. So witness statements, that would also
17 include his witness statement?

18 A Yes.

19 Q Okay. And did you review all his educational
20 school records?

21 A Yes.

22 Q Did you review the result of any testing
23 performed by Doctor David Price?

24 A No. From what I understand Mr. Price shared his
25 results with Doctor Brown, but we never received a

SW - A. HALL - DIRECT

1 formal report.

2 Q Okay. So you just saw the test results, you
3 didn't see the exact testing itself?

4 A We just got numbers, correct.

5 Q Okay. All you got were numbers?

6 A Yes.

7 Q So you weren't able to review his test at all?

8 A No.

9 Q Or report?

10 A No.

11 Q During this evaluation did you have a opportunity
12 to review any and all information that you felt was
13 needed?

14 A Well, yes.

15 Q There was nothing that you felt like you needed
16 to review or look at that was not provided to you?

17 A No, everything was provided to make a
18 determination.

19 Q So you had everything you needed to make
20 determination?

21 A Yes.

22 Q And as a result of that did you make a
23 determination?

24 A Yes.

25 Q Did you make a determination on Mr. Johnson's

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1 competency to a reasonable degree of certainty in
2 your field of expertise?

3 A Yes.

4 Q And can you please tell the Court what your
5 evaluation rendered as far as your conclusion?

6 A We opined that Mr. Johnson was competent to stand
7 trial.

8 Q Okay. Did you make any other conclusions or have
9 any other opinions in regards to any type of
10 disability or any problems that Mr. Johnson might
11 have?

12 A Yes, we determined that Mr. Johnson met criteria
13 for intellectual disability.

14 Q Is that formerly referred to as mental
15 retardation?

16 A Yes, it is.

17 Q And there are different ranges of that; is that
18 correct?

19 A Yes.

20 Q And what range was he in?

21 A Mild.

22 Q Mild?

23 A Yes.

24 Q So not moderate, not severe, but mild?

25 A Yes.

SW - A. HALL - DIRECT

1 Q Is it possible for people with mild mental
2 retardation to function independently?

3 A Yes.

4 Q Okay, all right. And is it possible people with
5 mild retardation to know the difference between
6 right and wrong?

7 A It depends on their developmental level. It
8 varies across the spectrum; but it is possible,
9 yes.

10 Q Did you form any opinions on anything that you
11 didn't assess?

12 A No, not on what we assessed.

13 Q And all that assessed was whether there was a
14 presence of mental retardation and whether he was
15 competent to stand trial?

16 A That is correct.

17 Q That is it? Okay. All right. Was there
18 anything in Doctor Price's test scores that you were
19 provided that show he was assessed for anything else
20 by Doctor Price?

21 A All we got were IQ scores so.

22 Q Were his IQ scores consistent with other IQ
23 scores that were available to you from school
24 records and from testing you did yourself?

25 A Yes.

SW - A. HALL - DIRECT

1 Q And all that was consistent?

2 A It was consistent.

3 Q Okay. So it's your opinion here today before
4 this Court that Mr. Johnson suffers from mild mental
5 retardation?

6 A Yes.

7 Q But he is competent to stand trial?

8 A Yes.

9 Q Okay, all right. If someone is competent to
10 stand trial does that mean that they understand the
11 judicial process?

12 A Yes.

13 Q Does that mean they understand the difference
14 between going to trial and entering a guilty plea?

15 A Yes.

16 Q Does that mean they understand the rights they
17 have to a guilty -- to have a trial and the rights
18 they give up when they plead guilty?

19 A Yes.

20 Q Okay. Now you issued a report; did you not?

21 A Yes, I did.

22 Q All right.

23 MR. CLEMENTS: I'd like to have this
24 marked as a Court's exhibit at this time, Your
25 Honor.

SW - A. HALL - DIRECT

1 THE COURT: All right, sir.

2 MR. CLEMENTS: And then permission to show
3 this to the witness.

4 THE COURT: Yes, sir.

5 (Court's Exhibit Number 1 was marked
6 and made a part of the record.)

7 BY MR. CLEMENTS:

8 Q Does this look familiar to you, Doctor?

9 A Yes.

10 Q Can you please tell us what that is.

11 A This is the report that we issued after our
12 evaluation of Mr. Johnson.

13 Q Okay. That's not the original, is it? That's a
14 copy?

15 A It's a copy.

16 Q Is that a correct copy?

17 A Yes, this is a correct copy.

18 Q Okay, all right.

19 MR. CLEMENTS: Your Honor, at this time
20 for purposes of this hearing we'd enter this into
21 the record as Court Exhibit 1.

22 MR. HOFFMEYER: No Objection, Your Honor.

23 THE COURT: All right, without objection.

24 BY MR. CLEMENTS:

25 Q Now I'm gonna ask you to refer to a couple of

SW - A. HALL - DIRECT

1 things on this report, if I may. Could you please
2 turn to page 3. That's Court Exhibit 1 which you
3 said is basically the same as what I hold in my
4 hand.

5 A Yes.

6 Q Other than on page four ---

7 A Other than the highlights.

8 Q I have some highlights I want to ask you about.

9 A Okay.

10 Q If you'd kindly turn to page 4. You questioned
11 Mr. Johnson, didn't you, about the roles of the
12 defense attorney and the solicitor?

13 A Yes.

14 Q Okay. And what did Mr. Johnson, pursuant to your
15 report, what did he say he knew about talking to the
16 solicitor?

17 A He understood that he should not talk to the
18 solicitor without his attorney being present.

19 Q Does that go along with his right to remain
20 silent so he won't say anything that could be used
21 against him?

22 MR. HOFFMEYER: Your Honor, I object to
23 the leading.

24 THE COURT: Sustained as to the leading.

25 BY MR. CLEMENTS:

SW - A. HALL - DIRECT

1 Q Okay, all right. Let me ask this, in the next
2 paragraph there, what did Mr. Johnson say about
3 talking in court?

4 A He said he could not be forced to talk in court
5 whether he wanted to or not.

6 Q Okay, all right. So he understood he couldn't be
7 forced to talk in court?

8 A Yes.

9 Q He understood he wasn't supposed to speak to the
10 solicitor without his attorney being present?

11 A Yes.

12 Q He understood that — did he or did he not
13 understand that was to protect his rights?

14 A I have to look back at my notes to give you a
15 quote verbatim, but — hold on for a second. I can
16 tell you verbatim what he said. He said no because
17 he could switch it up and say something he didn't
18 say.

19 Q Okay.

20 A So.

21 Q Okay, all right. Now what did you say in that
22 last paragraph there, what were your conclusions
23 regarding his ability to learn new material or learn
24 things?

25 A Part of the process to determine someone's

SW - A. HALL - DIRECT

1 competency to stand trial is to educate what they
2 don't know and to see if they're able to learn and
3 retain information that you go over with them, and
4 he was able to do that.

5 Q Okay. And in regards to his intellectual
6 disability have you heard people use, lay people
7 like myself, use the term slow?

8 A Yes, sir.

9 Q Okay. And would that be a accurate although
10 nonclinical assessment, but would that term be
11 accurate with what Mr. Johnson finds himself in?

12 A Yes.

13 Q Okay. What did you say and find in regard to
14 time with Mr. Johnson in your conclusions?

15 A That he required more time to understand and
16 answer questions than a person who did not have
17 intellectual disability.

18 Q But he did have ability to understand and answer
19 the questions?

20 A Yes.

21 Q It just took him a little more time?

22 A Yes.

23 Q And he has able to learn new material presented
24 to him?

25 A Yes.

SW - A. HALL - CROSS

1 Q And he has the knowledge not to talk to the
2 solicitor without his attorney present?

3 A Yes.

4 Q So nothing can be used against him or twisted?

5 A Yes.

6 Q And he has the knowledge that he can't be forced
7 to talk in court if he don't want to?

8 A Yes.

9 Q So he's competent to stand trial. In your
10 opinion would he be competent to enter a guilty plea
11 if he chose to do so?

12 A Yes, as long as with a caveat that he was given
13 ample time to understand.

14 Q Okay, all right. And so therefore, would it be
15 fair or not to conclude that if he gave him his
16 rights and gave him the time to understand he
17 understands those rights for a guilty plea or for
18 —

19 A For a guilty plea, yes.

20 Q Okay. Thank you. Please answer any questions
21 Mr. Hoffmeyer may have.

22 **CROSS-EXAMINATION**

23 BY MR. HOFFMEYER:

24 Q If you will excuse me one second, Doctor Hall.

25 Doctor Hall, I just have a few follow-up questions I

SW - A. HALL - CROSS

1 believe. Now you indicated to us earlier you have
2 testified five times in court or been qualified as
3 an expert five times in court related to capacity or
4 — excuse me, not capacity but competency.

5 A Yes.

6 Q All right. Now you mentioned that you met with
7 Mr. Johnson I believe, and feel free to look at your
8 report because that may help you with the dates, you
9 met with him the first time December 6th, 2011; is
10 that correct?

11 A Yes.

12 Q And you had no knowledge of him before that day;
13 is that right?

14 A Not before that date, no knowledge.

15 Q And likewise you met with him again January 12th,
16 2012; is that correct?

17 A That is correct.

18 Q Now you mentioned that you have the raw test
19 scores from Doctor David Price; is that right?

20 A Yes.

21 Q Okay. Now you did not perform any testing such
22 as the, what I believe — if you'll excuse me one
23 second. What I believe y'all call the Weschler
24 Adult Intelligence Scale. You didn't perform that
25 test; did yo u?

SW - A. HALL - CROSS

1 A No.

2 Q And that is — actually it's the WAIS-4. That's
3 a well respected and used tool in your area of
4 expertise; is that correct?

5 A Yes.

6 Q Okay. And that's a test that enables you or
7 helps people in your field to measure intelligence;
8 is that right?

9 A It is a standardized intelligence test, yes.

10 Q Yes, ma'am, and likewise, there's another test
11 called the WRAT-4, the Wide Range Achievement Test.
12 Are you familiar with that?

13 A Yes.

14 Q And that, likewise, helps people in your field of
15 expertise to understand intelligence; is that
16 correct?

17 A The WRAT-4 is not an intelligence test; it's a
18 test of achievement. Those are two different
19 constructs.

20 Q Okay. Intelligence being, I guess, kind of what
21 you're born with so to speak?

22 A Yeah.

23 Q And then the other being what you're able to
24 learn or have learned?

25 A What you have learned, yes.

SW - A. HALL - CROSS

1 Q And you and Doctor Brown neither performed either
2 of those tests on Mr. Johnson, did you?

3 A No, we did not.

4 Q Now you mentioned that you never received any raw
5 data from Doctor Price, you just received the
6 numbers; is that correct?

7 A Just the scores, yeah.

8 Q Do you recall if you or Doctor Brown ever asked
9 or sought from Doctor Price the raw data?

10 A I did not speak with Doctor Price, but I believe
11 Doctor Brown did speak with Doctor Price. And
12 that's when he sent over and reported to Doctor
13 Brown what the scores were. I was not privy to that
14 conversation so I can't say whether or not Doctor
15 Brown asked for the raw scores or not.

16 Q Yes, ma'am. Certainly to your knowledge when
17 asked Doctor Price provided the results he did, and
18 to your knowledge the other raw data so to speak
19 were never asked for. You just don't know one way
20 or the other?

21 A I don't know one way or the other.

22 Q If you'd felt it was important I'm sure you would
23 have asked for them, you were the lead examiner,
24 right?

25 A Right.

SW - A. HALL - CROSS

1 Q Now this incident for which my client is charged
2 happened in August of 2008. Are you aware of that?

3 A Yes.

4 Q And so the first time you would have met with my
5 client after the incident would have been over three
6 years after -- the first time you met with my client
7 to do your evaluation would have been over three
8 years after the incident; is that correct?

9 A That is correct.

10 Q Now as far as the other information you were
11 aware, you also had the benefit, I believe, of some
12 Florence County School District Number One records;
13 is that right?

14 A That is correct.

15 Q And I believe, Doctor Hall, that is referenced on
16 Page 1 of your report; is that right?

17 A Yes.

18 Q And that, in fact, has the Weschler Intelligence
19 Scale for children three with a full scale IQ of 58;
20 is that right?

21 A That is correct.

22 Q And that was from September of 1993?

23 A Yes.

24 Q And so at that time he would have been in the
25 intellectually disabled range; is that correct?

SW - A. HALL - CROSS

1 A Yes.

2 Q And then there was another examination done
3 September of 1996 or evaluation, another Weschler
4 Intelligence Scale and at that time his IQ was 51;
5 is that correct?

6 A That's correct.

7 Q And that is considered mildly retarded; is that
8 the correct term?

9 A No.

10 Q Okay. What would that be?

11 A For both of us tests he scored in the extremely
12 low range. To get a diagnosis of mental retardation
13 what we now call intellectual disability, it's
14 actually a two prong diagnosis, and you have to have
15 not only the extremely low intellectual quota or the
16 IQ, you also have to have deficits in adaptive
17 functioning. And based on not just the Weschler
18 results but also the Vineland, the adaptive behavior
19 measures that were provided, those were in the
20 extremely low range so it's those two combined that
21 would give Mr. Johnson his diagnosis of intellectual
22 disability.

23 Q I see. And so both of these things that you've
24 described for the Court were in the very low range;
25 is that correct?

SW - A. HALL - CROSS

1 A That is correct.

2 Q And in fact, you agree with our expert that he
3 was suffering, as you have told us repeatedly, and I
4 don't mean to keep asking you the same question, but
5 he suffers from intellectual disability?

6 A Yes.

7 Q And the Solicitor asked you about, well, it's
8 possible for some people to live independently who
9 suffer from this, that some people can't. Is that
10 fair to say?

11 A That's fair.

12 Q Now when you met with him, could he tell time on
13 a analog clock?

14 A No.

15 Q And I believe that when you were evaluating him
16 for competency you found that he struggled with
17 understanding the conspiracy charge; is that right?

18 A That is correct.

19 Q Then as we proceed through your evaluation and
20 report, and that's now on page 4 of the report, the
21 Solicitor was asking you about, you indicated that
22 he was unfamiliar with the concept of plea
23 bargaining; is that right?

24 A That is correct.

25 Q And then he was educated on the topic; is that

SW - A. HALL - CROSS

1 right?

2 A Yes.

3 Q And then you indicated that after much education
4 he was able to apply his knowledge to his case in
5 the hypothetical one, right?

6 A Yes.

7 Q So when it came to trying to get Mr. Johnson to
8 understand what you were discussing with him related
9 to the plea bargain at least, it took a good deal of
10 effort and education on y'all's part; is that
11 correct?

12 A Yes.

13 Q And of course, what time were these evaluations
14 going on? During the daytime I'm sure?

15 A During the daytime.

16 Q And that would have been sometime in the morning
17 of the afternoon?

18 A I believe it was on the a.m. both times, but I
19 can check my records to make sure. Yes, both times
20 it was — it was 9 a.m. on the January 12th, and
21 yes, sir, at 9 a.m. on December 6th.

22 Q And obviously he would have been in custody
23 during this time so he would have been transported
24 from the jail and would have been staying or, for
25 lack of better way to put it, living at the jail

SW - A. HALL - CROSS

1 until he had been brought to see you, correct?

2 A Yes, it's my understanding he was brought from
3 the detention center.

4 Q Now as far as this report, when it comes to
5 competency that's a fairly low standard, isn't it,
6 to be competent?

7 A Yes.

8 Q It's pretty much if you know what you're charged
9 with and you can understand the roles of the various
10 courtroom people and — well you tell me, what would
11 be your definition of what is competency, what you
12 have to understand in order to be competent.

13 A You have to understand the nature of your charges
14 and appreciate the consequences of your charges.
15 You have to appreciate and understand the
16 adversarial nature of the courtroom, and you have to
17 be able to assist your attorney in your defense.

18 Q And when it comes to Mr. Johnson's competency he
19 is minimally competent; isn't he?

20 A That's not a term I would use. I would say that
21 he met the standard for competency, but that he does
22 require more time to answer questions and make sure
23 that he's fully understanding what is being asked of
24 him.

25 Q Yes, ma'am. So when it comes to Mr. Johnson when

SW - A. HALL - CROSS

1 he's being asked questions you have to take more
2 time with him to make sure he understands what
3 you're talking about, right?

4 A Right.

5 Q And in fact, I believe you reference in your
6 evaluation that due to his intellectual disability
7 he requires more time to process information and to
8 answer questions that are asked of him; is that
9 right?

10 A That's correct.

11 Q And in addition you go on to say that it would be
12 important to insure that he understands the full
13 consequences of any decision he is required to make;
14 is that correct?

15 A That is correct.

16 Q So you would have to take time and make a effort
17 to make sure he understands what you're asking him
18 and the importance of what you're asking him; is
19 that correct?

20 A Yes.

21 Q If you will excuse me one second, Doctor Hall.
22 Thank you very much, Doctor Hall.

23 A Okay.

24 THE COURT: Anything further on redirect?

25 MR. CLEMENTS: Just a little bit.

SW - A. HALL - REDIRECT

REDIRECT EXAMINATION

BY MR. CLEMENTS:

Q Mr. Hoffmeyer asked you about Mr. Johnson not understanding the term conspiracy; is that correct?

A That is correct.

Q What did Mr. Johnson know about conspiracy after y'all explained it to him? Did he understand it then?

A He still struggled with it and that's not unusual because conspiracy is such a difficult concept for folks who have intellectual disability. But in the end, he was able to understand that conspiracy means planning to do something.

Q Okay, all right. So he understood it meant planning to do something after y'all explained it to him?

A Yes.

Q Beg the Court's indulgence a moment. When Mr. Johnson didn't understand something what was he able to do to let you know that he didn't understand?

A He would say I don't understand or I don't know.

Q So he knew to do that?

A Look at you, his facial expression would express his not understanding.

SW - A. HALL - REDIRECT

1 Q Did he ask questions too — when he needed to
2 know something did he ask questions?

3 A No, I don't recall him asking any questions.

4 Q But he would say I don't understand?

5 A I don't know or I don't understand.

6 Q Okay. Now one more thing about this, about the
7 court proceeding, to make sure I understand this,
8 that Mr. Hoffmeyer asked you about he educated on
9 some things. What, if anything, did you not have to
10 educate him? Did he already know some things about
11 it already? Did he volunteer?

12 A Yeah, there were some things that he didn't
13 require education on. Like, he knew that murder
14 would be the most serious charge someone could be
15 charged with. He knew that the penalty for that was
16 30 years to life without education.

17 Q What, if anything, about talking did he volunteer
18 or already know about?

19 A He understood that he didn't have to talk to you,
20 that would not be in his best interest to talk to
21 the solicitor.

22 Q And he volunteered that information?

23 A I asked the question; he gave me an answer.

24 Q Yeah. So y'all didn't have to educate him on
25 that?

1 A No.

2 Q Okay, thank you.

3 MR. CLEMENTS: That's all the questions I
4 have, Your Honor.

5 THE COURT: Anything further?

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

7 THE COURT: All right. Any objection to
8 Doctor Hall being excused?

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

10 THE COURT: All right. Thank you very
11 much, Doctor Hall.

12 Anything further, Solicitor?

13 MR. CLEMENTS: Not in regards to this
14 particular instance, Your Honor, on just the bare
15 issue on competency.

16 THE COURT: All right.

17 MR. HOFFMEYER: Your Honor, I don't have
18 anything on the issue of competency to offer the
19 Court at this time.

20 THE COURT: All right. Based on the
21 testimony and the evidence that's presented before
22 the Court here, it does appear that Mr. Johnson is
23 competent to proceed to trial in this case, to
24 assist his attorney in his defense, and that is a
25 finding of the Court pursuant to this hearing.

1 Anything further?

2 MR. CLEMENTS: In regards to competency?

3 THE COURT: Yes, sir.

4 MR. CLEMENTS: No, sir.

5 THE COURT: All right. What would be the
6 next matter that we have?

7 MR. CLEMENTS: Well, I think these are
8 Mr. Hoffmeyer's motions.

9 THE COURT: All right. Mr. Hoffmeyer.

10 MR. HOFFMEYER: Your Honor, we move to
11 suppress the statement given by the defendant under
12 Jackson versus Denno, request Jackson versus Denno
13 hearing.

14 THE COURT: All right, sir.

15 MR. HOFFMEYER: And another issue related
16 to that because that involves his consent and the
17 voluntariness of the consent. We also would inform
18 the Court the consent will be an issue related to
19 the buccal swabs that were taken for DNA testing
20 purposes. So just to make the Court aware that the
21 voluntariness of those two issues —

22 THE COURT: So —

23 MR. HOFFMEYER: ---or motion.

24 THE COURT: The voluntariness regarding
25 the statement he allegedly gave to law enforcement.

1 MR. HOFFMEYER: Yes, sir, we move to
2 suppress it.

3 THE COURT: As well as the request to
4 receive the buccal swabs?

5 MR. HOFFMEYER: The evidence derived from
6 the buccal swabs we move to suppress.

7 THE COURT: Right.

8 MR. HOFFMEYER: Your Honor, and as relates
9 to the statement itself, we also in that motion
10 request that any evidence derived from that
11 statement be suppressed which would be items that
12 were found under his home. We've also filed a
13 motion to suppress related to search and seizure on
14 that, but we initially move to suppress it based
15 upon it was derived from —

16 THE COURT: An involuntary statement.

17 MR. HOFFMEYER: Yes, sir. And similarly,
18 at some point my client informed the officers where
19 they could find the body in this case. And so we
20 are moving to suppress the fact that he, which is
21 part of his statement in essence, that he discussed
22 that with him and had showed them where the body was
23 as, again, deriving from his statement.

24 THE COURT: So his literal actions
25 regarding showing them where it was.

1 MR. HOFFMEYER: Yes, sir.

2 THE COURT: All right. So we'll proceed
3 then and we'll begin with the statement itself. And
4 Solicitor, I would recognize the State regarding the
5 Jackson v. Denno issue on his voluntariness of his
6 statement.

7 MR. CLEMENTS: Your Honor, first I guess
8 just to kind of clear up a housekeeping before we
9 call any witnesses, we have here a copy of the
10 waiver of rights form of Mr. Johnson signed that was
11 witnessed by Investigator Godwin and Investigator
12 Drayton dated August 27th, 2008. We also, Your
13 Honor, have a transcribed copy of the statement
14 Mr. Johnson gave which we would like to have these,
15 I guess, marked individually, Your Honor, as Court
16 exhibits before we proceed.

17 THE COURT: All right, sir.

18 MR. CLEMENTS: And just to inform the
19 Court, Your Honor, there was a lot about
20 Mr. Johnson's statement that was not inculpatory and
21 to the fact that he said he could take them to the
22 body, where they put the body, not where he put the
23 body and a lot of things of that nature. Also Your
24 Honor, we have something we'd like to mark as a
25 Court exhibit which we can take up at this time.

1 This is a release form where he consents to give a
2 saliva sample. When I say "he," I mean David
3 Johnson. And also to give fingerprints. And this
4 was witnessed by forensic Officer Shannon Hill who
5 took the — I'm not sure if they're boucall or
6 buccal, whichever one it is. I can spell it but I
7 can't say it. Where he took the swabs from
8 Mr. Johnson, and of course the State alleges that
9 Ms. Johnson consented freely and voluntarily.
10 Mr. Hill was diagnosed late yesterday with a
11 respiratory infection. He's sick; he's not
12 available today. So there's some parts of this
13 issue we'll need to take up later, but I can go
14 ahead and have this marked as a Court exhibit now.
15 I think Mr. Hoffmeyer has a copy.

16 MR. HOFFMEYER: Yes, sir, no objection.
17 (WHEREUPON, Court Exhibit Nos. 2, 3, 4
18 were marked for identification and
19 received into evidence.)

20 THE COURT: All right, sir.

21 MR. CLEMENTS: I believe that last exhibit
22 I gave would be Court Exhibit 4, and the Miranda
23 warning and waiver would be Court's exhibit 2, and
24 the transcript of the statement is Court's Exhibit
25 3; is that correct?

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1 THE COURT REPORTER: It is.

2 THE COURT: It is now.

3 MR. CLEMENTS: Your Honor, at this time we
4 call investigator Timmy Compton.

5 THE COURT: All right, Investigator
6 Compton, if you'd come up.

7 MR. CLEMENTS: He's risen up in the world,
8 Your Honor. It's Lieutenant Timmy Compton. I
9 apologize to the lieutenant.

10 THE COURT: Lieutenant.

11 THE CLERK OF COURT: Please place your
12 left hand on the Bible, raise your right hand.

13 WHEREUPON,

14 **TIMOTHY WADE COMPTON,**
15 **having been duly sworn by the Clerk of Court,**
16 **testified as follows:**

17 THE CLERK OF COURT: Please be seated and
18 state your full name for the record.

19 THE WITNESS: Timothy Wade Compton.

20 **DIRECT EXAMINATION**

21 BY MR. CLEMENTS:

22 Q And can you please tell us where you work and in
23 what capacity.

24 A At this time I'm the night watch commander for
25 the City of Florence Police Department. I'm in the

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1 patrol division.

2 Q And you're now lieutenant?

3 A Yes, sir.

4 Q And in August of 2008 where were you working?

5 A I was working as a detective sergeant in
6 investigations.

7 Q Okay. Were you working on the evening when Mr.
8 David Johnson was there, came down to the police
9 station?

10 A Yes, I was.

11 Q Can you please tell us what you were doing then,
12 getting ready to do?

13 A Actually I was getting, packing my stuff up, and
14 I was going on vacation at 4:30 that afternoon so I
15 was trying to get my stuff all done, paperwork, my
16 case files put away, when Mr. Johnson was brought to
17 my office.

18 Q And who brought Mr. Johnson to your office and
19 why did they bring Mr. Johnson to your office?

20 A Sergeant Godwin and Sergeant Drayton brought him
21 to my office, asked me — which is a normal
22 occurrence when they're busy trying to interview
23 other people or do other things. They brought him
24 to my office and asked me, I need you to set with
25 him, we got somebody we need to talk to. And I said

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1 no problem, so I let him come in my office and sit.

2 Q And they were talking, interviewing other people?

3 A Yes, sir.

4 Q Okay, all right. What did you do while he sat
5 there?

6 A Well, at first it's -- I guess it's around 4:00
7 when they brought him to my office. At 4:30 I was
8 supposed to get off work and start my vacation. So
9 at that time I just finished getting all my stuff
10 ready, put it on the edge of the desk, and I was
11 messing around on the computer. He sat against the
12 wall.

13 Q Let me ask you this, let me stop you right there
14 if I may. About how big is your office?

15 A It's actually a fairly big office for the area.
16 It's -- my desk here, my chair, and there's three
17 chairs on the wall and there's another desk to my
18 left with a chair. And he was sitting in the chair
19 next to me, but it's -- it has a long arm.

20 Q One of the three chairs?

21 A Kind of long, yes, sir.

22 Q So if you were sitting at your desk, Mr. Johnson
23 would have been sitting over here sitting in a
24 chair.

25 A Actually --

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1 Q Kind of behind you?

2 A —this is my desk and he would be sitting right
3 here.

4 Q Was he handcuffed?

5 A No, sir.

6 Q He wasn't handcuffed?

7 A No, sir.

8 Q Did you offer him anything to make them
9 comfortable, and if so, what?

10 A Well, at first I was playing on the computer and
11 playing a video game since I didn't have anything to
12 do.

13 Q You finished your work?

14 A Finished my work. And he was actually laughing
15 about the game I was playing. We was talking about
16 the game, did that for a while. And then finally,
17 I, you know, I asked him if he wanted something to
18 drink, something to eat. He said —

19 Q Had it been a while?

20 A Yes, sir.

21 Q About how long?

22 A Probably about an hour. And finally, you know, I
23 said would you like to get — would you like
24 something to eat, a snack, or something to drink?
25 And he said yeah. I said, well, I'm going down to

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1 the drink machine so. And I can't remember who I
2 asked to stay there and watch while I could go get
3 something so I got him a Pepsi and I think a bag of
4 chips, and I got myself something. I brought it
5 back and gave it to him and he ate and drank a
6 Pepsi.

7 Q Okay. And did you continue to play on the
8 computer game?

9 A No, at that time I decide — I didn't know how
10 long it would be until both sergeants would come
11 back so I — since I'm sitting here I might as well
12 go ahead and do some more work so I went ahead and
13 started typing reports. And he, Mr. Johnson asked
14 me if he could take a nap so I said sure, you know.
15 So he basically slept in the chair and I started
16 typing reports for a while.

17 Q Okay, all right. And then what happened next of
18 significance?

19 A It'd been quite a while. Finally I got tired of
20 typing. I'd basically already pulled eight hour
21 shift and several hours later I said enough work.
22 So I got my stuff, put it on the desk. He was still
23 sleeping. And finally, being a detective and I'm
24 curious, I decided I want to see if he'd like to
25 talk. So I woke him up and I said, listen, I said,

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1 you do know that the other detectives are down the
2 hall and they're talking to people, and how about
3 you talk to me before they tell you — before they
4 tell them what happened, how about you talk to me.
5 So he said, I'll talk to you. I said, okay, before
6 we talk I need to read your rights to you. And at
7 that time I pulled out my card and I read him his
8 rights.

9 Q Do you have that card on you today?

10 A Yes, sir.

11 Q Okay. Can I see it? Is that the same card you
12 had then or?

13 A Yes, sir, I've had that for 20 years.

14 Q So this has got standard all seven Miranda
15 rights?

16 A Yes, sir.

17 Q Did you read all of them to him?

18 A Yes, sir, I did.

19 Q All right. When you read them to him were you
20 observing him or watching him as you read them?

21 A Basically I turned around, you know. He said
22 he'd like to talk at that time so I told him I had
23 to read your rights to you.

24 Q Did you do them one at a time or take all seven?

25 A No, sir, I do one at a time. And basically I

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1 faced him and I said, listen up carefully and I, you
2 know. I said you have the right to remain silent.
3 I said, anything you say can and will be used
4 against you in a court of law. You have the right
5 to talk to a lawyer and have him present with you
6 while you're being questioned.

7 Q Okay. You don't have to read ---

8 MR. HOFFMEYER: Your Honor, I have an
9 objection for the Court.

10 THE COURT: All right, sir.

11 MR. HOFFMEYER: My objection is not I'm
12 not aware of this statement. I do recall there
13 being a report from Mr. Compton, an incident report
14 or some type of supplemental report, and that's what
15 I'm looking to find to see if he references that
16 statement in there.

17 MR. JEPERTINGER: He does.

18 MR. CLEMENTS: Your Honor, we'll find that
19 for Mr. Hoffmeyer. He does reference that and talks
20 about this, and he turned -- he turned Mr. Johnson
21 over to Godwin and Drayton, and they took a formal
22 statement from him that they taped but he put what
23 was said and it wasn't a full statement. It was a
24 little bit said to them, and he has that in his
25 incident report or his supplemental report. I'm

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1 gonna pause and let Mr. Hoffmeyer review it.

2 MR. JEPERTINGER: He's got it.

3 MR. HOFFMEYER: Your Honor, I got it. I
4 need to review it real quick if the Court will
5 allow.

6 THE COURT: Sure, go ahead.

7 (Pause.)

8 MR. JEPERTINGER: It's my understanding
9 that Defense waives his objection.

10 MR. HOFFMEYER: Your Honor, to make it
11 clear, I just wanted to make sure I had it. I'm
12 certainly not accusing them of not giving it to me.

13 THE COURT: Right.

14 MR. HOFFMEYER: I just wanted to make sure
15 I had it.

16 THE COURT: We're proceeding with the
17 hearing.

18 MR. HOFFMEYER: Yes, sir, Your Honor.

19 BY MR. CLEMENTS:

20 Q Investigator Compton, do you recognize this?

21 A Yes, sir, this is the report I typed up and this
22 is what I'm testifying to.

23 Q Okay.

24 MR. CLEMENTS: Your Honor, we'd like to
25 have this marked as a Court exhibit if we may.

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1 THE COURT: All right, sir.

2 (Court's Exhibit Number 5 was marked
3 and made a part of the record.)

4 BY MR. CLEMENTS:

5 Q All right. I'm gonna show you what's been marked
6 Court Exhibit Number 5. Lieutenant Compton, would
7 you just identify it as your supplemental report
8 that you typed up?

9 A Yes, sir.

10 Q Okay. Before I hand it to you, what did you
11 include on that report? Were you involved in the
12 investigation actually at all?

13 A The only involvement I had prior to this date was
14 Major Raines asked all of the detectives that was
15 not busy that could help with the search of the
16 victim. At that time —

17 Q For the —

18 A —it was a missing person. All I did was search
19 abandoned buildings and stuff, and I knew Sergeant
20 Godwin and Sergeant Drayton were the lead detectives
21 on it. But prior to that that's all I did was help
22 search the day that we got the call.

23 Q Okay. And that was for a missing person?

24 A Yes, sir.

25 Q Okay, all right. And the only other involvement

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1 you had was put on this supplemental?

2 A Yes, sir, it was.

3 Q Okay, all right. So you were talking to

4 Mr. Johnson and you Mirandized him?

5 A Yes, sir, I did.

6 Q Did he understand his Miranda rights?

7 A Yes, sir, he did.

8 Q And how do you know he understood his Miranda
9 rights?

10 A Well, on number six I said, do you understand
11 each of these rights I have explained to you. And
12 number seven says, having these rights in mind do
13 you wish to talk to me now, and he said yes, and ---

14 Q Did he say yes to all the questions at one time
15 or just individually?

16 A I read the whole thing to him. And then at
17 number six and number seven just what I said I, and
18 he answered yes, and he said he would talk to me.

19 Q What did you ask him about whether he understood
20 what you said or not?

21 A I mean, I basically asked him you do understand
22 your rights. He said, yes, sir, I do. And at that
23 time I had no reason not to believe he didn't
24 understand them.

25 Q Okay. So no red flags or anything like that?

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1 A No, sir.

2 Q Okay. In the past have you had any experience
3 dealing with people that might be impaired from some
4 substance or a lick in the head or anything like
5 that and tried to interview them?

6 A Plenty of times, yes, sir.

7 Q When you see something like that do you continue
8 to interview or not?

9 A Some I stop. Some of them I continue. It
10 depends on, I mean, and this is my opinion, only at
11 that point in time if they understand. And if I
12 think they do not understand I just end it right
13 then and there. And I have on occasions and some,
14 you know, after talking to them some more if I think
15 there's an issue I continue to make sure that I
16 believe he does understand what we're talking about.

17 Q What did you believe when you were talking to Mr.
18 Johnson?

19 A I had no reason to believe he — he understood
20 everything. He understood, or at least in my
21 opinion, he understood his rights. He understood
22 why he was there and what I wanted to talk to him
23 about.

24 Q Okay, all right. So what did you talk to him
25 about?

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1 A Well, I asked him, you know, and go back to my
2 report, after I mirandized him, you know, the first
3 thing he told me when I told him, you know, other
4 people, that other investigators was talking to
5 other people down the hall. He decided to talk to
6 me about the case, the murder case, and he stated he
7 wanted to talk. I asked him what happened, and he
8 first stated he was -- started saying he thinks the
9 other suspects broke into the victim's residence,
10 but he did not see anything. I felt that he wasn't
11 telling the truth so I continued to try to get him
12 to tell the truth and --

13 Q What did he say next?

14 A He stated he was outside with his girlfriend and
15 he saw the suspects messing around the victim's
16 residence. I talked to him for a few minutes and
17 told him he needed to tell the truth, and he started
18 saying he was there when the suspects went into the
19 victim's house and stole some items.

20 Q Did anybody else ever come in while you were
21 talking to him into your office?

22 A At that point Major Raines, Major Raines was --
23 basically his job is to make sure everything is
24 going good. If anybody needs anything he'll make
25 sure they get what help they need. He come in the

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1 office 'cause he heard — I can only assume — he
2 heard Mr. Johnson talking to me. He came into the
3 doorway and saw that Mr. Johnson was talking to me
4 so he decided to sit down and listen to see what
5 Mr. Johnson had to say.

6 Q All right. So what else did Mr. Johnson have to
7 say?

8 A Let's see. Once Major Raines came in the office
9 shortly after that agent, narcotics agent Bob
10 Drulis, came in the office also. Basically he heard
11 Mr. Johnson talking, and he came in and sat down.
12 Mr. Johnson then stated he went into the victim's
13 residence. I explained to Mr. Johnson, the suspect,
14 he needed to tell us where the body was because the
15 other detectives had been searching everywhere and
16 it is time we found the body for the victim's
17 family. And Mr. Johnson at that time stated he
18 could take us to the body.

19 Q Okay. What did you tell him when he said he
20 could take you to the body?

21 A I told him I did not want to go on a wild good
22 chase, and he stated he could take me straight to
23 the body and —

24 Q What did you ask him next?

25 A I asked him how do you know where the body is and

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1 he stated Amp told him where he put it.

2 Q Do you know who Amp is?

3 A At that time, no, sir. I didn't know what
4 suspect had been developed so, no, I didn't know who
5 Amp was.

6 Q Okay. Then what did you ask him after he told
7 you Amp showed him where it was?

8 A Again, asked him if he was sure he could take us
9 to the body and he stated yes. He then got up out
10 of the chair and started to walk to the door; and
11 basically I told him, I said, hold on a second. I
12 said, I appreciate you wanting to take me right now
13 but I need you to sit down for a second.

14 Q Okay.

15 A And which he did. And I told him, I said, let's
16 see, he -- I asked him before we go anywhere how was
17 she killed 'cause I said we, we know. I told him, I
18 said, we know she's dead, we need to find the body
19 and I know you want to take me there but I said
20 before we do how was she killed. And basically that
21 questioning, reason I did, I wanted to see, I knew
22 how she was killed, or at least what we suspected,
23 put it that way.

24 Q Why did you have a suspicion?

25 A Well, based on what I heard detective, Sergeant

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1 Godwin talk about is a lot of blood, the pillows,
2 and the sheets missing from the bed. I kind of
3 figured she was cut.

4 Q Okay.

5 A And at that point he said — let's go back to my
6 report. He was — I asked him how was she killed
7 and he stated they cut her throat.

8 Q Okay.

9 A At that point I said, okay. We got up and was
10 walking out. We was going to go down to the end of
11 the hall way to meet Sergeant Godwin and Sergeant
12 Drayton. Actually Sergeant Drayton was coming into
13 the detective division at that time. He asked where
14 we were going. I told him Mr. Johnson said that he
15 was going to take us to where the body was. So at
16 that time we got together who was going to drive in
17 what vehicle, and Mr. Johnson was going to take us
18 to where the body is at.

19 Q So who all went?

20 A Narcotics agent Sergeant Calhoun, narcotics agent
21 Corporal Drulis, Johnson and myself got into I think
22 Sergeant Calhoun's vehicle. Major Raines, Detective
23 Drayton, detective Sergeant Drayton, detective
24 Sergeant Godwin was in another vehicle behind us.

25 Q Where did y'all go?

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1 A Mr. Johnson started giving us directions. If I'm
2 not mistaken we went out on the Baroody Street side
3 of the complex.

4 Q Where did you end up?

5 A We ended up on Malloy Street.

6 Q What kind of road is that?

7 A It's a dirt road.

8 Q What did you find there?

9 A At that point we were driving down; it's night
10 time. And Mr. Johnson started yelling stop, stop,
11 right here, right here, right here, and we
12 immediately stopped. We started to get out. He
13 said right here, right here. Well, behind us was
14 detective Sergeant Godwin, detective Sergeant
15 Drayton, and Major Raines and immediately as soon as
16 detective Sergeant Godwin stepped out of the vehicle
17 right there was the victim laying in the ditch with
18 the sheet covered over. And I believe there was
19 some broken branches, brush laid over the top of the
20 sheets.

21 Q Okay. What did Mr. Johnson say then or what did
22 you say to Mr. Johnson?

23 A Well, at that time Sergeant Drulis, excuse me,
24 Corporal Drulis, he come up to me and said, you
25 know, Mr. Johnson has a rapport with you. I said,

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1 yeah, he does. So I got back into the vehicle where
2 Mr. Johnson sitting; and I told Mr. Johnson, I said,
3 Mr. Johnson, I told him, I said, listen, I
4 appreciate you telling us and showing us where the
5 body is, I said, but you and I both know that you
6 lied to me. And he said huh? And I said, yes, sir,
7 I said, there's no way in the world you could have
8 been told where this body is at. The only two ways
9 you knew where this body was is, one, they brought
10 you here and showed you where they dumped this body
11 or you were here when they dumped this body.

12 Q What did Mr. Johnson say?

13 A He goes, yes, sir. I said okay, said ---

14 Q Where did y'all go next?

15 A I said, well, we need to go back to the office
16 and talk more about what happened. He goes yes,
17 sir. So at that time Sergeant Drayton come up. I
18 told him. We got in the vehicle. And of course,
19 other officers stayed around cording off the area,
20 called crime scene. I think Florence County Crime
21 Scene came out too since it was in the county. And
22 we went back to the office or back to the conference
23 room on the second floor.

24 Q Okay. And when you went back to the conference
25 room what was that purpose for?

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1 A To question him further to get more details of
2 what he knew and what happened. And once detective
3 sergeant, detective Sergeant Drayton and Godwin felt
4 they had what they wanted from his statement they
5 recorded his statement and after that I went home.

6 Q Okay. Did you have anything else to do with this
7 investigation whatsoever?

8 A No, sir.

9 Q Okay. Please answer any questions Mr. Hoffmeyer
10 might have.

11 **CROSS-EXAMINATION**

12 BY MR. HOFFMEYER:

13 Q Lieutenant Compton, I just have a few questions
14 for you I believe. Now you had been made aware that
15 this was obviously a very serious investigation
16 based upon the blood that was found at the scene?

17 A Yes, sir.

18 Q All right. And you are aware that the two other
19 officers were interviewing a suspect or suspects in
20 another room while you were with Mr. Johnson; is
21 that correct?

22 A I knew they was interviewing somebody, but I
23 didn't know who they were interviewing.

24 Q I understand. And I believe you told us on
25 direct that you think this was around 4:00 in the

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1 afternoon, 4 p.m. You planned on leaving at
2 4:30 p.m., but around 4 p.m. is when Mr. Johnson was
3 brought into your office.

4 A It was somewhere around 4:00, yes, sir, 'cause I
5 knew I was getting off shortly thereafter.

6 Q When is it that you and the other officers left
7 with Mr. Johnson to go try and recover the body?

8 A I can't give you an exact time. I know it was
9 late but I never looked at what time it was.

10 Q Would it have been, Lieutenant, in the a.m. of
11 the next day?

12 A That could have been, yes, sir. Like I said, I'm
13 not sure. I know it was a long time before we went
14 out there, yes, sir.

15 Q All right. Well, if it was midnight of that same
16 day that would have been about eight hours that he
17 would have been there with you; is that correct?

18 A Correct.

19 Q And you believe that it could have been after
20 midnight, right?

21 A It could have been, yes, sir.

22 Q And y'all went to go find the body as soon —
23 pretty much as soon as he gave you the statement and
24 then indicated that he knew where the body was,
25 right?

SW - T. COMPTON - CROSS

1 A Yes, sir.

2 Q Now you at that point when you were discussing
3 this incident with him, you thought at that time it
4 was a murder investigation?

5 A Yes, sir, I believe so. I mean, based on
6 experience and what I was told about the crime scene
7 it was a missing person, but we believed there was
8 more to it than that.

9 Q I got you. And so you believed it to likely be a
10 murder investigation at 4:00 when he was first there
11 with you; is that right?

12 A Yes, sir.

13 Q Now as far as the Miranda warnings that you gave
14 him, that would have been given right before the
15 statement; is that correct?

16 A That is right before we started talking about the
17 incident itself.

18 Q And then shortly after that statement which
19 didn't take long y'all went to recover the body,
20 right?

21 A Yes, sir.

22 Q So if it was after midnight he'd been with you
23 there at least eight hours plus before you got that
24 statement, right?

25 A Yes, sir.

SW - T. COMPTON - CROSS

1 Q Okay.

2 A Somewhere around there. Like I say, I can't
3 remember the time.

4 Q Sure. Now the Miranda card that you read from, I
5 believe you told Solicitor Clements on direct that
6 you read the entire card to him and then asked if he
7 understood.

8 A Yes, sir, I did.

9 Q And when he said yes, then you went ahead and
10 started taking a statement, correct?

11 A Well, when you say take a statement —

12 Q Talk to him?

13 A Talk to him, yes, sir.

14 Q I got you. And of course, I believe you also
15 said to the Solicitor on direct when you were
16 referring to talking to him you intended to question
17 him about a likely homicide, right?

18 A Yes, sir.

19 Q Now that card that you have has a line for each
20 right in essence that you're gonna — that the
21 person that's talking to you is going to give up,
22 correct?

23 A I'm not quite sure I understand.

24 Q I think I can clear it up. For example,
25 Lieutenant, it says, you have the right to remain

SW - T. COMPTON - CROSS

1 silent. That's number one.

2 A Yes, sir.

3 Q And then number two, anything you say can and
4 will be used against you in a court of law.

5 A Yes.

6 Q And number two and then number three, okay?

7 A Uh-huh.

8 Q And you told me at the end is when you asked him
9 if he understood, right?

10 A Yeah. Number six is, do you understand each of
11 these rights I have explained to you. And he says
12 yes. And then I asked him, you know, having these
13 rights in mind would you like to answer any
14 questions I may have for you, and he said yes. But
15 I think what you was talking about does he say yes
16 after 1, 2, 3, 4 and 5, no, I waited till number 6
17 and he answered yes.

18 Q That's exactly what I'm asking.

19 A Okay.

20 Q After each question, 1, 2, 3, you didn't ask him
21 if he understood each one, did you? It was just at
22 the end, right? You agree with me?

23 A Yes, sir, uh-huh.

24 Q Now you didn't know him, Mr. Johnson, you didn't
25 really know him at all before this evening, did you?

SW - T. COMPTON - CROSS

1 A No, sir, I did not.

2 Q And you have heard some testimony in court today
3 that he suffers from mental retardation,
4 intellectual disability. You didn't know that, did
5 you?

6 A No, I did not.

7 Q And as far as what he'd been doing that day and
8 those types of things; you don't know, do you?

9 A I have no idea.

10 Q Now as far as his level of education when you
11 were talking to him, you didn't know about that, did
12 you?

13 A No, sir.

14 Q You didn't know what type of grades he made in
15 school, did you?

16 A No, sir.

17 Q You didn't know if he took special educational
18 classes, did you?

19 A No, sir.

20 Q You didn't know if he could read and write, did
21 you?

22 A No, sir.

23 Q Now may I see that card again?

24 A Yes, sir.

25 Q Now other than going over his rights and then

SW - T. COMPTON - CROSS

1 asking him if he understood and he wanted to talk to
2 you and his response was yes, you didn't do anything
3 else to make sure he understood those rights, did
4 you?

5 A No, sir, I mean, before we got into questioning I
6 mean, we did chatted. We talked about the video
7 game, and you know, just general, just general
8 chit-chat basically. So I didn't ask him any
9 questions reference education or anything like that,
10 no, sir.

11 Q And I believe you read those one time to him?

12 A Yes, sir.

13 Q And I believe that obviously and I think Court
14 Exhibit Number 2 is a Miranda waiver, you're very
15 familiar with the Miranda waiver form; is that
16 right?

17 A Yes, sir.

18 Q And I'm sure that over the course of your years
19 as a officer you have used those forms many times?

20 A Yes, sir.

21 Q And as you told us previously you were aware this
22 was a murder investigation, right?

23 A Yes, sir.

24 Q And you didn't have him -- or you didn't go over
25 and have him sign one of those forms, did you

SW - T. COMPTON - REDIRECT

1 before you're talking to him; is that correct?

2 A No, sir, I did not.

3 Q If you will excuse me one second, Lieutenant.

4 A Yes, sir.

5 Q Thank you very much, Lieutenant.

6 THE COURT: Anything on redirect?

7 MR. CLEMENTS: Just a couple, Your Honor.

8 **REDIRECT EXAMINATION**

9 BY MR. CLEMENTS:

10 Q Lieutenant Compton, Mr. Hoffmeyer was asking you
11 about how long he stayed in the office there with
12 you. How long did he sleep?

13 A Several hours.

14 Q So he slept a long time?

15 A Yes, sir.

16 Q Okay. Did you sleep any in your chair?

17 A No, no, I — they asked me to watch him so I made
18 sure he sat there and I just did my work and let him
19 sleep.

20 Q Mr. Hoffmeyer was asking you about you talking to
21 him beforehand. What, if anything, during that time
22 that y'all just carried on a conversation?

23 A I mean, we basically chit-chat mostly about the
24 video game that I was playing just to pass the time.
25 I thought it'd, you know, be an hour maybe, you

SW - T. COMPTON - REDIRECT

1 know, before they came back 'cause I have no idea
2 what they're doing, who they're talking to. He was
3 actually very cordial, I mean.

4 Q He was cordial?

5 A Yes, sir, I mean, he was very nice. We talked
6 and chatted on stuff so we had — it was actually a
7 pleasant conversation.

8 Q Was it intelligent conversation or not?

9 A It appeared to me it was.

10 Q All right. I just got one last question. Mr.
11 Hoffmeyer asked you about — you got your card?

12 A Oh, yes, sir.

13 Q I don't want to be nitpicky but Mr. Hoffmeyer
14 asked you about if you asked him a question on each
15 one. Can you tell me of these seven items how many
16 of these end in a period and are a statement and how
17 many end with a question mark and are actually a
18 question?

19 A One through five is —

20 MR. HOFFMEYER: I object to the relevance
21 of this, you know, unless he showed him the card.
22 Then it —

23 THE COURT: It goes to Lieutenant
24 Compton's actions. I'm going to allow it.

25 MR. HOFFMEYER: Thank you, sir.

SW - T. COMPTON - REDIRECT

1 BY MR. CLEMENTS:

2 Q Please answer.

3 A One through five is a period and then six and
4 seven is question marks.

5 Q So six and seven are the statements, right? I
6 mean, one through five are the statements you make,
7 right?

8 A Yes, sir.

9 Q Six and seven are questions you asked him?

10 A I asked him and he answered yes on both.

11 Q Thank you. No further questions.

12 THE COURT: All right. Anything further,
13 Mr. Hoffmeyer?

14 MR. HOFFMEYER: You -- no, sir. Thank
15 you.

16 THE COURT: Thank you very much, sir.

17 MR. CLEMENTS: Your Honor, we call right
18 now Major Carlos Raines. I think he will be kind of
19 short, and after that if we might take a real short
20 break.

21 THE COURT: That will be fine.

22 THE CLERK OF COURT: Please place your
23 left hand on the Bible and raise your right hand.

24 WHEREUPON,

25 **CARLOS WAYNE RAINES,**

SW - C. RAINES - DIRECT

1 having been duly sworn by the Clerk of Court,
2 testified as follows:

3 THE CLERK OF COURT: Please be seated and
4 state your full name for the record.

5 THE WITNESS: Carlos Wayne Raines.

6 **DIRECT EXAMINATION**

7 BY MR. CLEMENTS:

8 Q Can you please tell us where you work and what
9 your title is.

10 A I work for the City of Florence Police
11 Department. My title is bureau commander for
12 criminal investigations director/major.

13 Q Major Raines, I'm sure you have a lot of
14 involvement in this case regarding the murder of
15 Ms. Hayes; is that correct?

16 A That's correct.

17 Q Were you present when Mr. Johnson was first
18 brought to the law enforcement complex here?

19 A Yes.

20 Q Were you aware that Mr. Johnson was placed in at
21 that time Sergeant Compton's office for him to keep
22 an eye on?

23 A I know he was in the office with Sergeant Compton
24 since the time. Well, Lieutenant Compton's office
25 is adjacent to mine so, yes, sir.

SW - C. RAINES - DIRECT

1 Q All right. And what did you do in regards to
2 this or any statements that Mr. Johnson made?

3 A In this particular incident of this part of the
4 investigation I was -- well, I was at the complex of
5 course, and involved in whatever may have been going
6 on. It could have been any number of things. Of
7 course I have a responsibility of doing a lot of
8 things, communicating --

9 Q All the investigators are under you; is that
10 correct?

11 A That's correct.

12 Q And they investigate a lot more than one, just
13 one incident at a time, right?

14 A Absolutely. And that means I have a lot of
15 different things to do --

16 Q Well, that means you're kind of in and out a lot?

17 A Absolutely.

18 Q Okay, all right. Please continue on this.

19 A But in this case I was in and out a lot down the
20 hall to where other investigators were communicating
21 on the phone with, or in his office, with the chief
22 at various times trying to update as to things were
23 going on, trying to be available to do or assist in
24 any manner that I may be able to assist to help in
25 whatever I could.

SW - C. RAINES - DIRECT

1 Q Okay, all right. When did you first become aware
2 that Mr. Johnson was talking about this incident?

3 A At one point, well, I had peeked in and looked
4 into the office on more than one occasion, but at
5 one point Mr. Johnson was in there talking with
6 Investigator Compton.

7 Q Okay. Did you go in and sit down for a moment?

8 A I did.

9 Q Okay.

10 A Yes, sir, I did.

11 Q Did you see anything -- what did you see in
12 regards to anything that would have been coercive or
13 not?

14 A Nothing coercive. I mean, there was conversation
15 going on. Obviously it was some things are being
16 said that led me to believe that Mr. Johnson had
17 some knowledge or involvement in what had taken
18 place.

19 Q What were the tone or the volume of the voices?

20 A Just talking. There was nothing excessive or
21 very loud or yelling or any of that sort of thing.
22 It was just communicating back and forth.

23 Q Normal talking?

24 A Correct.

25 Q Okay. What opportunity did you have at all to

SW - C. RAINES - DIRECT

1 observe Mr. Johnson during this time period that you
2 went in there and sat down?

3 A Well, I was, again, sitting in there listening to
4 some of the, what was being said. At one point — I
5 had asked, in fact, I had asked Lieutenant Compton
6 if Mr. Johnson had been mirandized, indicated he had
7 because I had a question that I wanted to ask and
8 it's just out of curiosity because I had —

9 Q What was that question?

10 A The question was, was the intent — and I don't
11 want to be quoted exactly these words — but
12 basically was the intent to have harmed or done
13 anything to Ms. Hayes as it happened to her.

14 Q You can't remember your exact words?

15 A No, but it was questioning was basically a plan
16 to have harmed her and the answer was like dropping
17 head and that.

18 Q So he dropped his head but he didn't respond
19 verbally?

20 A If he did it wasn't — it was like an indication
21 of no.

22 Q All right. Did you participate in asking any
23 questions?

24 A That was the only thing I think I asked.

25 Q Okay. Were you in there the whole time Timmy —

SW - C. RAINES - DIRECT

1 A No.

2 Q —was talking to him?

3 A No, I was not. In fact, after I asked that
4 question I had left and going out.

5 Q What, if anything, did you observe of Mr. Johnson
6 to show that he understood what was going on or
7 didn't understand what was going on?

8 A When I spoke to — in what I was hearing I heard
9 nothing that would lead me to think that he was not
10 understanding what was being said. And when I asked
11 my question I heard, got nothing that indicated to
12 me that he didn't understand what I was asking.

13 Q How many years you been in involved in this?

14 A Thirty-eight.

15 Q Thirty-eight? Got any idea how many people
16 you've interviewed?

17 A No.

18 Q Are they all the same or not?

19 A No, it varies. Different situations people
20 respond differently. It's always something new
21 basically each time you investigate something of
22 this nature.

23 Q What, if anything, did you observe with Mr.
24 Johnson that might have raised any red flags for
25 you?

SW - C. RAINES - DIRECT

1 A Nothing.

2 Q Okay, all right. Did you ride out there to him
3 with them to the scene?

4 A Yes.

5 Q Okay.

6 A And there seemed to be no difficulty at that
7 location being found without any difficulty.

8 Q So he took y'all there pretty straight?

9 A Correct.

10 Q Okay. Did you go back to law enforcement complex
11 with him?

12 A Not with him I don't think, but I did go back to
13 the complex.

14 Q And whose custody did he go into at that time?

15 A I really can't say for sure who he went back to
16 be honest with you. I was there at the scene and
17 stayed there a while because —

18 Q Who did you assign this investigation to?

19 A Well, Sergeant Drayton. Sergeant Drayton and
20 Sergeant Godwin were the lead investigators.

21 Q Okay.

22 A But I don't remember exactly who may have taken
23 him back.

24 Q Okay, all right. Beg the Court's indulgence.

25 Major, I appreciate it. Please answer any

SW - C. RAINES - CROSS

1 questions.

2 Mr. Hoffmeyer has.

3 **CROSS-EXAMINATION**

4 BY MR. HOFFMEYER:

5 Q Good afternoon, Major Raines, just a few
6 questions for you. How long were you in there with
7 Mr., or Lieutenant Compton and Mr. Johnson?

8 A Oh, I was in and out a short period of time just
9 to kind of peek in and see what was going on. If
10 like at one point I think his head was on the desk
11 or something, and I just turned around and left but
12 when they were talking I wasn't there that long.

13 Q Okay. And I should have done a better job of
14 telling you when I'm talking about. I understand
15 you're around a lot up there this type of
16 circumstance. But when the discussions with
17 Lieutenant Compton were going on related to what
18 happened, related to this homicide, how long were
19 you in there then?

20 A I don't know, maybe ten minutes or something of
21 that nature.

22 Q And was he already talking with -- was Lieutenant
23 Compton already talking with Mr. Johnson at that
24 time about what happened when you came in and heard
25 that?

SW - C. RAINES - CROSS

1 A Yes, sir, I would think they were.

2 Q Okay, so —

3 A That's why I would have stayed.

4 Q So they were already talking about it so based
5 upon your asking Lieutenant Compton about the
6 Miranda he would have been mirandized before you
7 came in, correct?

8 A Correct.

9 Q So you would not have been present when he was
10 Mirandized, right?

11 A No, I was not.

12 Q And so if he appeared to not understand Miranda
13 you would not know that, correct?

14 A I wasn't present, that's correct.

15 Q Yes, sir. Now you didn't have Lieutenant Compton
16 have a form or Miranda waiver form signed at that
17 time, did you? You didn't direct him to do that?

18 A No, I didn't.

19 Q And this typically or sometimes, at least we have
20 a recorded statement, several in this case, there's
21 recording equipment up there. Did you direct
22 Lieutenant Compton to record this conversation?

23 A No, I did not.

24 Q And I take it that you did not know Mr. Johnson
25 before this evening; is that correct?

SW - C. RAINES - CROSS

1 A I don't have a recollection of having known him
2 prior.

3 Q Yes, sir. Thank you Major Raines. I don't have
4 any further questions.

5 THE COURT: Anything on redirect?

6 MR. CLEMENTS: Your Honor, I ask Major
7 Raines be excused from his subpoena for today but
8 not for Monday.

9 THE COURT: Any objection?

10 MR. HOFFMEYER: No objection.

11 THE COURT: Thank you, sir, you're free to
12 go.

13 MR. CLEMENTS: Your Honor, may we take
14 just a brief...

15 THE COURT: We'll do that. We'll take a
16 short recess and then we'll get started back.

17 (WHEREUPON, a recess was taken from the
18 proceedings and Court Exhibit Numbers 6
19 through 14 were marked and made a part of
20 the record.)

21 MR. CLEMENTS: If it the please the Court,
22 Your Honor, we'd call Sergeant Melvin Godwin.

23 THE COURT: Sergeant Godwin, if you'd
24 please come around, sir.

25 THE CLERK OF COURT: Please place your

SW - M. GODWIN - DIRECT

1 left hand on the Bible and raise your right hand.

2 WHEREUPON,

3 **MELVIN JUNIOR GODWIN,**

4 having been duly sworn by the Clerk of Court,

5 testified as follows:

6 THE CLERK OF COURT: Please be seated and
7 state your full name for the record.

8 THE WITNESS: My name is Melvin Junior
9 Godwin.

10 **DIRECT EXAMINATION**

11 BY MR. CLEMENTS:

12 Q Can you please tell the Court where you work and
13 in what capacity.

14 A I work for the City of Florence as a police
15 officer. I'm assigned to the criminal investigation
16 unit as a sergeant of criminal investigations.

17 Q How long you been in law enforcement?

18 A 22 years.

19 Q How long have you been serving in investigations?

20 A About 17 years.

21 Q Okay. Were you the lead investigator or assigned
22 to the case involving the death of Ms. Willie Mae
23 Hayes?

24 A That is correct. The initial call came out. The
25 family went to Ms. Hayes' home and had some concerns

SW - M. GODWIN - DIRECT

1 because she didn't show up for work that day. It
2 started out as a missing person case.

3 Q Ended up as a murder?

4 A That's correct.

5 Q Now do you know who brought David Johnson up to
6 the city-county complex?

7 A Mr. Johnson came in on his own accord. He had
8 got word that his name was coming up in this
9 situation.

10 Q Had y'all gone previously to his father's house?

11 A That's correct. Me and Sergeant Drayton had some
12 information from another codefendant that his father
13 lived in the west Florence area off Sumter Street.

14 Q On the corner of Sumter and Sanborn?

15 A That's correct.

16 Q And y'all left word with his father y'all were
17 looking for him?

18 A Yes, sir. Went up, stated we was looking for his
19 son. He said, well, he's not here, he had been here
20 earlier, cleaned up and he left.

21 Q Okay. And y'all told him to have Mr. Johnson get
22 in contact with y'all?

23 A That is correct.

24 Q Mr. Johnson came to the city-county complex on
25 his own?

SW - M. GODWIN - DIRECT

1 A Yes, he did.

2 Q Okay. Were you present when he came, or were you
3 busy doing something else?

4 A We was — me and Sergeant Drayton was engaged in
5 a interview with another codefendant Rashawn Bailey
6 at the time.

7 Q Where was Mr. Johnson put so somebody could keep
8 an eye on him, if you know?

9 A Yes, sir. We — we touched bases with him but we
10 was in the conference room with Rashawn Bailey
11 interviewing him. He went to our main office area
12 where Compton and Major Raines were.

13 Q Okay, all right. When were you first made aware
14 that Mr. Johnson had given a statement to anyone?

15 A Sergeant Drayton had left. We had broke — he
16 had broke for a minute to come out of the interview
17 with Rashawn Bailey and went back to the main area.
18 And when he came back he informed me. I stayed in
19 the conference room with the other defendant.

20 Q Okay, all right. And did you go out to the scene
21 on Malloy Street?

22 A That is correct, yes, sir.

23 Q Okay, all right. And who did you ride out to the
24 scene on Malloy Street with?

25 A It was me and Drayton in I think it was my unit.

SW - M. GODWIN - DIRECT

1 No, I think Drayton's, it was his unit.

2 Q Okay. And did you talk to Mr. Johnson prior to
3 going out to Malloy Street?

4 A No, sir, not after he — Drayton informed me that
5 he had told Compton what was going on, no, sir.

6 Q Okay, all right. And can you tell the Court —
7 can you describe Malloy Street for the Court.

8 A It's a dirt road in the east, northeast corner of
9 Florence.

10 Q Close to Wilson High School?

11 A Not too close. It's probably about two miles
12 away from Wilson High School.

13 Q Okay.

14 A That runs behind a community called Woodmont,
15 it's got a ditch, a drainage that runs along. It's
16 woods —

17 Q On either side or both sides?

18 A There's a small one on the left, and there's a
19 bigger one on the right side where the victim was
20 located at and a wooded area off to the left.

21 Q And what kind of road is it?

22 A It's just a dirt road and they halfway maintain
23 it basically.

24 Q Dirt road?

25 A Dirt road.

SW - M. GODWIN - DIRECT

1 Q Okay, all right. When you got to Malloy Street
2 and y'all stopped what did you find?

3 A We all came to a stop. Apparently he had
4 informed them to stop whenever. I don't know; I
5 wasn't in it. When I stopped and got —

6 Q Were y'all following that vehicle he was in?

7 A That's correct, yes, sir.

8 Q Okay.

9 A And when they stopped, when I got out of my
10 vehicle, looked off to right to the ditch, Ms. Hayes
11 laying down in the ditch covered with weeds wrapped
12 in sheets.

13 Q Okay, all right. Did you know it was Ms. Hayes
14 at the time?

15 A No, sir, not -- no, sir.

16 Q Not for sure?

17 A No, sir.

18 Q Okay, all right. After that and after she was
19 found what did y'all do next, where did y'all go
20 next?

21 A Once we got everyone coordinated Compton
22 testified to earlier, the Sheriff's Department
23 responded 'cause it was in the county where she was
24 located at. Our crime scene responded. Several
25 units maintained the area. Then we all loaded back

SW - M. GODWIN - DIRECT

1 up, Drayton, myself, the defendant, and came back to
2 the complex.

3 Q All right. How about Compton, did he come with
4 you?

5 A Yes, sir. He came back in the vehicle with
6 Drulis. I think he was with Drulis. The vehicle he
7 went out in, that's the vehicle he came back with.

8 Q And when y'all got back to this building what did
9 y'all do?

10 A We all went down to the conference room, myself
11 and Drayton. Compton was behind us but the
12 defendant, myself, and Drayton went into the
13 conference room.

14 Q Compton ever come in there with y'all?

15 A Yes, he did.

16 Q What was the purpose for going in the conference
17 room?

18 A To get a formal statement from the defendant.

19 Q All right. What did you do in regards to
20 mirandizing Mr. Johnson when y'all got in the room
21 then?

22 A I also carry a Miranda card, advised him of his
23 rights, and we -- the waiver of rights form was read
24 before we took the official statement that he signed
25 and myself and Drayton signed.

SW - M. GODWIN - DIRECT

1 Q Okay. Now when you read him off your Miranda
2 card how did you read it to him?

3 A Verbatim.

4 Q And how many things are there on there that you
5 tell him?

6 A I read the card completely and then I ask whether
7 you understand or not.

8 Q How many questions?

9 A Seven questions on the card.

10 Q Seven questions or seven items?

11 A Seven items.

12 Q Okay, all right. And did you ask him the
13 questions on the card?

14 A Yes, I did.

15 Q And what was his response?

16 A I understand my rights.

17 Q Okay. And how did you feel about his answer?
18 What was your perception of him at that time?

19 A He was very clear, coherent. I didn't notice
20 anything out of the ordinary with him, understood
21 what was going on.

22 Q After reading the rights who was there with you
23 when you read his rights?

24 A Sergeant Drayton. And like I stated, Compton
25 came in.

SW - M. GODWIN - DIRECT

1 Q Okay. Now did y'all talk to him first and then
2 come back and cut the tape recorder on and record it
3 or did y'all just start with the tape recorder?

4 A We talked to him first to try to clear the
5 matter, anything, discrepancies, to get more detail
6 about what happened before we take the official
7 recorded statement.

8 Q Okay, all right. And about how long does that
9 take normally? Varies or not?

10 A Varies, just depends.

11 Q Okay. During that time, any questions you asked
12 him that you felt like he didn't understand what you
13 were saying or did he ever ask you to explain
14 anything? Did you have any kind of conversation
15 like that?

16 A He seemed to understand everything that was being
17 stated in the room. He never made any statement
18 that he didn't understand anything.

19 Q Okay, all right. What else did you have him do
20 other than just talk to you?

21 A Once we completed the statement he informed us
22 that there were some items that was from the
23 victim's house over at his father's house.

24 Q Okay.

25 A Once the statement was complete, myself and

SW - M. GODWIN - DIRECT

1 Drayton went back over to his father's house.

2 Q Okay, all right. Well, let me show you what's
3 been marked Court's Exhibit Number 2. Tell me, do
4 you recognize that, and if you do, please explain
5 what that is.

6 A Yes, sir. This is a waiver of rights form that
7 we use to read to the defendant and fill out and
8 have it signed.

9 Q Now did y'all go over that with him and read that
10 to him?

11 A Yes, sir, I did.

12 Q All right. Did you know whether he could read
13 himself or not?

14 A No, sir, I don't.

15 Q Okay. Is that why you read it to him?

16 A That is correct.

17 Q Instead of just handing it to him?

18 A That is correct.

19 Q All right. Now at the bottom here on Court's
20 Exhibit Number 2, there's a date, what is that date?

21 A August 27, 2008.

22 Q Okay. There are three signatures there. Do you
23 know those signatures?

24 A Yes, sir.

25 Q How do you know those signatures?

SW - M. GODWIN - DIRECT

1 A 'Cause we were all present when he signed and I
2 signed and as well as Sergeant Drayton. He also
3 print -- where it says I, he printed his name which
4 is very legible and readable.

5 Q Okay.

6 A He also signed in a very good penmanship his name
7 here is David Johnson. I signed --

8 Q Was his signature was in cursive you're saying?

9 A That is correct. I signed, then Sergeant
10 Drayton.

11 Q Okay, all right. Was there any doubt in your
12 mind or did you have any questions at all, and if
13 so, what, regarding his understanding of this form?

14 A There was none. Seemed to be clear about what
15 was happening and what I read.

16 Q Okay. Did you rush him through this form, did
17 you give him all the time he needed, did you take
18 your time?

19 A I took my time explaining. I read the form to
20 him and -- he wasn't rushed. He wasn't rushed.

21 Q Okay. And can you please read the important
22 notice there?

23 A The important notice on the waiver of rights form
24 reads: If you do not understand any part of this
25 form do not sign until you do.

SW - M. GODWIN - DIRECT

1 Q Did you read that to him?

2 A That was read to him, yes, sir.

3 Q Did he understand that?

4 A Yes, sir.

5 Q Now y'all took a audio statement; is that
6 correct?

7 A That's correct.

8 Q Okay. Was that audio statement preserved?

9 A Yes, it was.

10 Q Okay. And y'all keep that on a disk?

11 A It's turned over to our crime scene unit and they
12 maintain all the disks and stuff and statements and
13 ten turn the disks over to our secretary who types
14 them out.

15 Q Types out transcription?

16 A Correct.

17 Q I'm gonna show you what's been marked as Court'
18 Exhibit Number 3. Do you recognize that? If so,
19 what is that?

20 A This is the statement from that night. David
21 Johnson and the case number and time notated on here
22 and the statement from that night that he gave.

23 Q Is that the transcription from the Florence P.D.
24 of the audio recording that's still available and in
25 evidence with forensics?

SW - M. GODWIN - DIRECT

1 A Yes, sir.

2 Q Okay. Tell me please how many pages this is. I
3 think it's marked on the last page.

4 A If none is missing. If there's none actually
5 missing — it's 18 complete.

6 Q So you don't see any pages missing?

7 A That's correct.

8 Q 18 pages. At any time during this 18 pages what,
9 if anything, did Mr. Johnson exhibit by his behavior
10 or facial expression or words that he didn't
11 understand what was going on or didn't understand
12 what you were talking about or what you were asking
13 him?

14 A There were none. He understood.

15 Q Okay, all right. Now you say after you finished
16 your statement he took you where?

17 A Over to [REDACTED], and I believe their
18 address is [REDACTED] to his father's house.

19 Q Okay. And what was the purpose for him to take
20 you to his father's house?

21 A There was some items stolen from the victim's
22 home that was taken by him over to that location.

23 Q And did he lead you to those items?

24 A Yes, sir, he did.

25 Q And what were those items?

SW - M. GODWIN - DIRECT

1 A If I remember correct, VCR, some other
2 electronics. I can't remember exactly what the
3 other two items were.

4 Q So three pieces of electronic equipment?

5 A Yes, sir.

6 Q And how did he say those things got there?

7 A In his statement he said the co-defendant Amp,
8 which is Anthony Wilson, took them over to his house
9 but he was with him.

10 Q Okay. That's what he told you?

11 A Yes, sir.

12 Q Okay. And did he tell you it was all right to go
13 to the house and he took you there, right?

14 A Yes, sir. We had no idea that where those items
15 were without his guidance.

16 Q Okay, all right. Do you know how old Mr. Johnson
17 was at the time?

18 A No, sir.

19 Q If you don't, that's fine.

20 A No, sir, no, sir.

21 Q Okay, all right. That's all for this time period
22 right now, Sergeant Godwin. Please answer any
23 questions Mr. Hoffmeyer has.

24 THE COURT: Mr. Hoffmeyer.

25 MR. HOFFMEYER: Thank you, sir.

SW - M. GODWIN - CROSS

CROSS-EXAMINATION

BY MR. HOFFMEYER:

Q Sergeant Godwin, just a few questions for you now. I believe you testified on direct that you asked or requested that Lieutenant Compton keep an eye on Mr. Johnson?

A It was either myself or Drayton. I know he went to the main area to wait there. We was already engaged with another interview with another codefendant that was very lengthy in time so he was actually going to be staying there. Compton was there so he was securing him for us until we try to get through with the other interview.

Q Yes, sir, I understand. It was Lieutenant Compton's job to secure him until y'all could get through with the lengthy interview to interview him, correct?

A That is correct.

Q So when you say secure him you mean that Mr. Johnson was not free to leave; isn't that correct?

A He never requested, as far as I know, he never requested to leave. He wasn't under arrest at that time.

Q Yes, sir.

SW - M. GODWIN - CROSS

1 A At that time.

2 Q And maybe I'm not asking the question as well as
3 I should. I'm not talking about what he thought
4 necessarily, but in your mind's eye you had a murder
5 suspect and you did not want him to leave the
6 complex before interviewing him, correct?

7 A That's correct.

8 Q Now as far as your interview it appears by
9 Court's Exhibit Number 3 — let's let you take a
10 quick look at it. That's the transcription of your
11 interview?

12 A Uh-huh.

13 Q It appears, Sergeant, that this interview began
14 at 3:15 a.m. on August 27th of 2008; is that right?

15 A That's correct.

16 Q Now according to testimony we had earlier
17 Mr. Johnson would have been at the complex around 4
18 so when you start the recorded interview, and that
19 would have been 4 p.m., when you start the recorded
20 interview he would have been at the complex 11 hours
21 and 45 minutes. Does that sound right to you?

22 A Yes, sir.

23 Q Or perhaps 11 hours and 15 minutes. It'd been
24 over 11 hours while he'd been there, you agree with
25 that?

SW - M. GODWIN - CROSS

1 A Yes, sir.

2 Q Now as far as the conversations you had with him
3 you said that you discussed some things with Mr.
4 Johnson before you actually started recording the
5 interview; is that right?

6 A Right. He had called up and said that he
7 understand his name was involved in this situation,
8 and he was directed to come up here to the complex.

9 Q And I'm referring to your testimony in direct
10 where you told us that you and Mr. Johnson, or you
11 asked Mr. Johnson a few questions after mirandizing
12 him, and at that point did not record him initially
13 but eventually did record him.

14 A Oh, yes, sir.

15 Q All right. And during that time period do you
16 have any notes related to that conversation with him
17 before you started the recording device?

18 A Notes? No, sir.

19 Q And I take it that none of these statements are
20 video recorded; is that right?

21 A That's correct. We didn't do that at that time.

22 Q And so you discussed things with my client Mr.
23 Johnson after Miranda and before beginning the
24 recording but you don't have any notes or incident
25 report or anything that could tell us what was said

SW - M. GODWIN - CROSS

1 at that point, do you?

2 A No, sir. No, sir.

3 Q Now as far as the defendant Mr. Johnson, you did
4 not know his level of education when you interviewed
5 him, did you?

6 A No, sir.

7 Q And you would not have known that he was in
8 Special Ed at school, would you?

9 A No, sir.

10 Q And you would not have even known whether he
11 could read or write, would you?

12 A He could write his name. I know he could write
13 that.

14 Q You were aware he could write his name. If you
15 asked him to write what happened that evening you
16 don't know if he could do that.

17 A That's correct.

18 Q And in fact, you never asked him to write out
19 what happened that evening, did you?

20 A No, sir.

21 Q And when you went through those rights, you as
22 Lieutenant Compton, read the rights off a card and
23 asked if he understood, correct?

24 A Correct.

25 Q And he said yes?

SW - M. GODWIN - CROSS

1 A That's correct.

2 Q You did not go line by line as to each individual
3 right and ask him if he understood, did you?

4 A No, sir.

5 Q When it comes to the waiver of rights form that's
6 a Court's exhibit, do you know if he even
7 understands or knows what the term waiver means?

8 A He stated he understood.

9 Q And he stated he understood that form after you
10 had read the entire form, correct?

11 A That's correct.

12 Q Did you ever ask him specifically if he
13 understood what the word waiver meant?

14 A No.

15 Q Other than going on Miranda rights and asking him
16 if he understood, and which he said yes, did you do
17 anything else in particular to make sure he
18 understood his rights other than signing the form?

19 A No, sir.

20 Q And I take it you wouldn't have known he was
21 mentally retarded when you interviewed him, would
22 you?

23 A No, sir, he didn't give no indications that he
24 had any kinds of issues.

25 Q Yes, sir, I'm just trying to find out what you

SW - M. GODWIN - CROSS

1 knew is all. And as relates to the search or when
2 y'all went and got the items from his father's home,
3 it was your understanding that Mr. Johnson lived
4 there too?

5 A Yes, sir.

6 Q Okay. And I take it based upon the circumstances
7 as you had described them you did not get a search
8 warrant to get those items, did you?

9 A That's correct. We had consent from the father
10 who I understand now deceased, that we could go
11 ahead on and check for the items and he directed us
12 where they were at.

13 Q I see. So you asked the father if you could look
14 for the items?

15 A Yes, sir. We made contact with him twice, yes,
16 sir.

17 Q Okay. And did you -- and David, Mr. Johnson,
18 directed where the items were?

19 A The defendant, yes, sir.

20 Q Did you ask him if you could look under the porch
21 for the items? Mr. Johnson?

22 A No, he told us where they were.

23 Q Sergeant Godwin, thank you.

24 THE COURT: Anything further?

25 **REDIRECT EXAMINATION**

SW - M. GODWIN - REDIRECT

1 BY MR. CLEMENTS:

2 Q Sergeant Godwin, Mr. Hoffmeyer asked you what you
3 knew about Mr. Johnson being mentally retarded,
4 having mental or intellectual disability and you
5 said you didn't know he did, right?

6 A That's correct.

7 Q You've seen mentally retarded people before;
8 haven't you?

9 A Yes, sir, severe, yes.

10 Q And how you know?

11 A Because of their behavior and actions.

12 Q Okay. Now what if any behavior actions did you
13 see Mr. Johnson have that raised any red flags for
14 you?

15 A None.

16 Q Okay. What did Mr. Johnson exhibit when he
17 called up to the city-county complex and said, I
18 know y'all are looking for me?

19 A Just concern about his name being involved with
20 the incident. He seemed coherent. There was
21 nothing to give us indication that there was
22 something wrong with him.

23 Q And what did he exhibit when y'all asked him to
24 come up and talk to you and he showed up? Actually
25 came on his own; didn't he?

SW - L. DRAYTON - DIRECT

1 A Yes, sir. He know to follow instructions and
2 came right to the complex to the second floor.

3 Q And how did he get there, do you know?

4 A No, I don't know exactly how he got up here.

5 Q You don't know whether he brought himself or
6 somebody brought him?

7 A Correct.

8 Q Okay. No further questions, Sergeant Godwin.

9 MR. CLEMENTS: Your Honor, we'd like to
10 call Sergeant Larry Drayton.

11 THE COURT: All right. Thank you, sir.
12 You may step down.

13 Sergeant Drayton please.

14 THE CLERK OF COURT: Please place your
15 left hand on the Bible and raise your right hand.

16 WHEREUPON,

17 **LARRY DRAYTON,**
18 **having been duly sworn by the Clerk of Court,**
19 **testified as follows:**

20 THE CLERK OF COURT: Please be seated and
21 state your full name for the record.

22 THE WITNESS: Larry Drayton.

23 **DIRECT EXAMINATION**

24 BY MR. CLEMENTS:

25 Q Please tell us where you work and in what

SW - L. DRAYTON - DIRECT

1 capacity.

2 A City of Florence Police Department. I'm
3 currently assigned investigation division as a
4 sergeant in criminal investigations.

5 Q How long have you been in criminal investigation?

6 A This is my second, I wouldn't say time in
7 criminal investigation, second time would have been
8 from 1990 to present.

9 Q So from 1990 to the present so 22 years this
10 second time?

11 A Yes, sir.

12 Q How many years you got in law enforcement total?

13 A 31 plus.

14 Q How many times did you interview people, suspects
15 or witnesses?

16 A Too many to count.

17 Q Hundreds?

18 A I would.

19 Q Thousands?

20 A Hundreds.

21 Q Hundreds?

22 A Yes.

23 Q What do you do when someone does something or
24 responds in a way or acts that way that causes you
25 to have a red flag in your mind about whether they

SW - L. DRAYTON - DIRECT

1 understand what's going on or not?

2 A Would make sure they understand by asking the
3 questions to make sure they understand, or asking
4 just basic general, basic conversation, sometimes
5 with the individual just to make sure they
6 understand conversation.

7 Q And what would be some reasons why they might not
8 understand?

9 A Under the influence of alcohol and/or drugs,
10 mental state of mind.

11 Q Okay. And what do you do when you see something
12 indicates to you and you followup on it that they
13 don't understand what's going on? Do you continue?

14 A No -- excuse me, I'm sorry. Once I determine an
15 individual does not understand what's going on then
16 communication that in reference to what type
17 interview being conducted, we stop at that time.

18 There's no need for it. The individual to
19 understand and not responding to the question,
20 there's no need to continue with the investigation,
21 the interview.

22 Q Why is that?

23 A Because whatever that person say I can't use it
24 later on because they don't understand, then
25 there's no need for me to keep asking questions over

SW - L. DRAYTON - DIRECT

1 and over again if he don't understand what I'm
2 saying.

3 Q Therefore, how important is it to you for you to
4 observe to make sure when you're talking to somebody
5 they understand what's going on?

6 A It's real important.

7 Q Is it important to you every time you talk to
8 somebody?

9 A Each and every time reference interview or
10 interrogation, each and every time.

11 Q So how closely do you watch and listen to make
12 sure?

13 A My entire focus is on the individual asking the
14 individuals questions and stuff. A lot of times
15 with technical issues we just ask basic questions
16 holding normal conversation with a person just to
17 check and see if they're competent in reference to
18 understanding what's going on or coherent enough.

19 Q So what did you do as far as observing and
20 talking to David Johnson to make sure he understood
21 what was going on?

22 A Talking that was done with him was when we
23 conducted, myself and Sergeant Godwin and Lieutenant
24 Compton was present, the initial interview that we
25 had with him just talking in general like his

SW - L. DRAYTON - DIRECT

1 Miranda just talking about the incident that took
2 place and making sure that he understood every
3 question, any questions he asked. A lot of the
4 answers corroborated information we already had by
5 talking to other co-defendants or persons of
6 interest at the time.

7 Q Okay. Now what, if anything, did he do in a
8 verbal or physical response or lack of a response to
9 indicate any red flags for you to cause you to
10 hesitate?

11 A Absolutely nothing.

12 Q Nothing verbal?

13 A Nothing.

14 Q Nothing with facial expression or —

15 A No.

16 Q —physical?

17 A No, sir.

18 Q No inappropriate failure to respond appropriately
19 or talk appropriately?

20 A No, sir, there's no behavior, no indications that
21 he did not understand what we were saying.

22 Q Okay. What — were you able to tell he might
23 have been a little slow?

24 A No, sir.

25 Q Okay, all right. Were you able to tell that if

SW - L. DRAYTON - DIRECT

1 he was on any kind of alcohol or drugs or anything,
2 any indication of that?

3 A Did not appear.

4 Q What, if anything, was any indication if someone
5 had overborn his will or threatened him or
6 frightened him?

7 A No, sir. He appeared to be willing and cooperate
8 with what we, what we would have called at the time
9 cooperating with us with the investigation at the
10 time.

11 Q Okay. What, if anything, to indicate that he
12 might have been coerced?

13 A There was nothing to indicate coercion.

14 Q Okay. Is it true that he came up on his own?

15 A That is correct.

16 Q Okay. What knowledge do you have if anyone told
17 him he was under arrest when he came?

18 A I have no knowledge. He was not under arrest
19 when he came up.

20 Q Was he under arrest when he came up?

21 A No, sir.

22 Q What do y'all do when somebody, when they're
23 under arrest?

24 A When they're under arrest?

25 Q Yes.

SW - L. DRAYTON - DIRECT

1 A They're told they're under arrest, placed in
2 handcuffs.

3 Q Was he placed in handcuffs in Lieutenant
4 Compton's office?

5 A No, he was not.

6 Q Was he told he could not leave to your knowledge?

7 A To my knowledge he was not.

8 Q Okay. So no one told him that?

9 A Correct.

10 Q What, if anything, was done to prevent him from
11 trying to leave?

12 A I think when he was with — I can't speak for
13 Lieutenant Compton; but when he was with us, myself
14 and Sergeant Godwin, that was a different situation.
15 But when he was with Lieutenant Compton I don't know
16 anything.

17 Q After y'all went to see the body?

18 A That was when he was with us.

19 Q He was with y'all after he showed you the body?

20 A Yeah, after he showed us where the body was.

21 Q What was he prior to that? How would you
22 describe him as far as the investigation?

23 A Before he — prior to showing us where the body?

24 Q Yes.

25 A A person of interest.

SW - L. DRAYTON - DIRECT

1 Q Person of interest?

2 A Correct.

3 Q After he showed you where the body was, what was
4 he then?

5 A He admitted to Lieutenant Compton and showed us
6 where the body was he was a suspect.

7 Q He was a suspect?

8 A Correct.

9 Q Okay. Do you commonly arrest persons of
10 interest?

11 A No, sir.

12 Q Okay, all right. So he wasn't under arrest?

13 A Not at the time.

14 Q Not at the time?

15 A Yeah. In fact ---

16 Q When he was with Compton?

17 A Right. But that led him to becoming a suspect
18 and then arrested.

19 Q He wasn't handcuffed?

20 A No, sir.

21 Q He wasn't coerced in any way to your knowledge?

22 A No, sir. Like I said earlier, he came up on his
23 own free will when he got the word that we were
24 looking for him, wanted to talk to him, and got the
25 word. I'm not sure whether it was his father or

SW - L. DRAYTON - CROSS

1 who. I told people in the streets also. He did
2 come to the police department on his own to see why
3 we wanted to talk to him.

4 Q Okay. What in your mind would make his talking
5 to you anything different other than freely and
6 voluntarily talking to you?

7 A Nothing.

8 Q Okay. Please answer any questions Mr. Hoffmeyer
9 have may have.

10 **CROSS-EXAMINATION**

11 BY MR. HOFFMEYER:

12 Q Sergeant Drayton, just a few questions for you
13 now. This was a murder investigation obviously, a
14 very serious crime investigation, correct?

15 A That's correct, sir.

16 Q All right. And y'all had put the word out to his
17 dad and to others, as you just told the State, that
18 you were looking to talk to him, correct?

19 A That's correct.

20 Q And you heard sergeant -- excuse me, Lieutenant
21 Compton tell us earlier that he -- or rather, it
22 would have been around 4:00 when Mr. Johnson came in
23 and it was in Lieutenant Compton's office; is that
24 correct?

25 A That's correct.

SW - L. DRAYTON - CROSS

1 Q And I believe you heard Sergeant Drayton indicate
2 that you or he had asked that Sergeant Compton keep
3 him secured, secure Mr. Johnson; is that correct?

4 A That was Sergeant Godwin that made that
5 statement, yes, sir.

6 Q Yes, sir. So when it comes to Mr. Johnson he was
7 not free to leave, was he?

8 A He was not under arrest, but he was a person of
9 interest that we wanted to talk to.

10 Q Yes, sir, I understand he wasn't under arrest
11 yet; but y'all had a potential homicide
12 investigation, you got a suspect there whose name
13 has already been brought up by another witness, and
14 you asked Lieutenant Compton to secure him. He was
15 not free to leave under those circumstances, was he?

16 A We would have preferred for him to stay and wait
17 till we talked to him.

18 Q And that would have been made apparent to him,
19 correct?

20 A We would ask him to stay, yes, sir.

21 Q And there were you and Sergeant -- Lieutenant
22 Compton and Sergeant Godwin so there were three law
23 enforcement officials that wanted to talk to him,
24 right?

25 A Initially it was myself and Sergeant Godwin who

SW - L. DRAYTON - CROSS

1 wanted to talk to with him.

2 Q And so Lieutenant Compton participated in the
3 interview at 3:15 a.m. though; didn't he?

4 A Yes, sir, he did.

5 Q Thank you. Now as far as what you have told us
6 about making sure, figuring out whether he
7 understood his conversations with you and Sergeant
8 Compton, Lieutenant Godwin, you indicated that you
9 would have or y'all had conversation with him before
10 you started the recording; is that correct?

11 A It's common practice to what we consider just a
12 basic interview before we do a recorded statement,
13 recorded statement, yes, sir.

14 Q I see. And you would have mirandized him before
15 that —

16 A Yes, sir.

17 Q —first interview, correct?

18 A Yes, sir.

19 Q And you do not record that interview?

20 A No, sir.

21 Q And you don't have any notes from that initial
22 interview?

23 A No, sir.

24 Q And when it comes to this normal conversation
25 that y'all are having about, with him to determine

SW - L. DRAYTON - CROSS

1 what happened, and you said you used that to help
2 you determine if someone understands what you're
3 asking them, was that conversation about a homicide
4 investigation?

5 A No, sir.

6 Q What was it about?

7 A I don't remember exactly; but it's just normal,
8 normal just talk, you know, what's your name, where
9 you live, where are you from, stuff like that. Just
10 normal conversation.

11 Q How long was that conversation?

12 A It wouldn't have been more than a couple of
13 minutes.

14 Q Couple of minutes. So you are — part of what
15 you base your belief that he understood everything
16 you're asking him and his Miranda rights and those
17 types of things is a two minute, what you consider
18 normal conversation, right?

19 A Just brief conversation, yes, sir.

20 Q Brief conversation, okay. And as I understand
21 you would not have had knowledge of Mr. Johnson's
22 education or background or any of that before this
23 evening; is that correct?

24 A No, sir, I did not.

25 Q So his suffering from mental disability is

1 something that you just wouldn't have known?

2 A No, sir, would not have known that.

3 Q All right. So other than this normal, brief
4 conversation that you had with him and asking if he
5 understood, what else did you do affirmatively?

6 What else did you do on your own accord to make sure
7 he understood his rights? What you were asking him?

8 A There was nothing else that was done.

9 Q If you will excuse me one second, Sergeant.

10 A Yes, sir.

11 Q Thank you, Sergeant. I don't have anything
12 further.

13 THE COURT: Anything further, Solicitor?

14 MR. CLEMENTS: No, Your Honor, not on this
15 issue.

16 THE COURT: All right. Thank you, sir.
17 You may step down.

18 Yes, sir, Mr. Hoffmeyer.

19 MR. HOFFMEYER: Your Honor, we do have a
20 witness on this particular issue.

21 THE COURT: All right. Has the State
22 concluded its presentation then?

23 MR. CLEMENTS: It is, Your Honor, on this
24 issue.

25 THE COURT: All right, Mr. Hoffmeyer.

DW - D. PRICE - DIRECT

1 MR. HOFFMEYER: Thank you. At this time
2 we call Doctor David Price.

3 THE COURT: Doctor Price, if you'd please
4 come around to be sworn, sir.

5 THE CLERK OF COURT: Please place your
6 left hand on the Bible and raise your right hand.

7 WHEREUPON,

8 **DAVID RICHARD PRICE,**

9 having been duly sworn by the Clerk of Court,
10 testified as follows:

11 THE CLERK OF COURT: Please be seated and
12 state your full name for the record.

13 THE WITNESS: David Richard Price.

14 THE COURT: Yes, sir.

15 MR. HOFFMEYER: Thank you, sir.

16 **DIRECT EXAMINATION**

17 BY MR. HOFFMEYER:

18 Q Doctor Price, you are a psychologist; is that
19 right?

20 A That is correct.

21 Q I'd like to talk to you just briefly for a few
22 minutes about your background. It's my
23 understanding that you graduated from Clemson
24 University in 1977 with a major in psychology and a
25 minor in sociology; is that correct?

DW - D. PRICE - DIRECT

1 A Yes, sir, that's correct.

2 Q You followed that up by going to Auburn
3 University where you graduated in 1979 with a
4 Masters of science in clinical psychology; is that
5 right?

6 A Yes, sir.

7 Q Then you ---

8 MR. JEPERTINGER: Your Honor, we would
9 stipulate to his expertise in the field, I guess, of
10 clinical psychology.

11 MR. HOFFMEYER: I'm offering him as a
12 expert in the field of clinical psychology, forensic
13 psychology, and neuropsychology.

14 MR. JEPERTINGER: We would stipulate to
15 his qualifications in these areas, Your Honor.

16 THE COURT: All right.

17 MR. HOFFMEYER: Your Honor, I won't go
18 through the whole thing, just a few further
19 questions.

20 THE COURT: All right.

21 BY MR. HOFFMEYER:

22 Q Now you graduated with a degree in clinical
23 psychology, a doctor -- excuse me, of clinical
24 psychology from Auburn 1982?

25 A Yes, sir.

DW - D. PRICE - DIRECT

1 Q And since that time you have been in private
2 practice, one of the things you've done?

3 A Yes, sir.

4 Q And in addition to that you have participated in
5 doing psychology in the area of forensic
6 evaluations?

7 A Yes, sir.

8 Q And what is that, Doctor?

9 A That's applying the knowledge and data base of
10 psychology and other mental health professions to
11 questions in the legal system such as competency
12 today.

13 Q And as far as clinical psychology what does that
14 involve?

15 A That involves the diagnosis and treatment of
16 mental disorders.

17 Q And neuropsychology, what does that involve?

18 A The evaluation and treatment of brain behavior
19 relationships, issues with the central nervous
20 system including the brain.

21 Q And you have been involved in all three of those
22 since your graduation with a doctor in psychology?

23 A Yes, sir.

24 Q And you also are an adjunct professor; is that
25 correct?

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1 A I'm an adjunct professor with the Medical
2 University of South Carolina as well as USC upstate
3 currently. And actually at Medical University of
4 South Carolina I started the forensic psychiatry
5 program and lectured in the forensic psychiatry
6 program there.

7 Q You have been published obviously?

8 A Yes, sir.

9 Q And as far as your private practice or the
10 practices you're involved in, you are involved in
11 the assessment center and the forensic network at
12 this time?

13 A Yes, sir.

14 Q And one of the things you do is evaluate
15 childhood development disorders?

16 A Through the assessment center we evaluate child
17 development disorders such as autism, mental
18 retardation, things like that.

19 Q I see. Now it's my understanding that it's been
20 agreed to by the State, or they don't have any
21 objection to your being qualified as an expert in
22 the fields of forensic psychology, clinical
23 psychology, and neuropsychology. Have you been
24 qualified by other courts both state and federally
25 as an expert in all three of those areas?

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1 A Yes, sir, I have.

2 Q Now prior to -- well, I got you involved in this
3 case; is that right?

4 A Yes, sir, you did.

5 Q Now before meeting or maybe coinciding with
6 meeting with Mr. Johnson and doing some other
7 things, did you have the benefit of reviewing his
8 school records?

9 A Yes, sir, I reviewed his school record before I
10 met with him.

11 Q And do those records also include testing related
12 to his mental capabilities?

13 A Yes, sir, it did.

14 Q In addition to reviewing his school records and
15 testing records related to his mental capability,
16 did you also have the benefit of reviewing some of
17 the evidence in this case such as his audio
18 statement?

19 A Yes, ma'am, I did.

20 Q Did you also have the benefit of a transcription
21 of his audio statement?

22 A Yes, sir, I did.

23 Q And in addition to those things you met with
24 Mr. Johnson on how many occasions?

25 A On two occasions.

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1 Q And how many hours were spent with Mr. Johnson?

2 A Approximately seven hours.

3 Q In addition to meeting with Mr. Johnson and
4 spending time with him did you spend any time with
5 his family?

6 A Yes, sir, I got to interview several members of
7 his family.

8 Q In addition to those things, did you give some
9 tests, psychological tests to Mr. Johnson?

10 A Yes, sir, I did.

11 Q Now when it comes to Mr. Johnson's overall mental
12 capabilities, in other words, any limitations he
13 would have mentally, what is his IQ?

14 A Mr. Johnson has an IQ by my testing of 59
15 overall.

16 Q And what range would that put him in?

17 A Well, when you speak of range that's at a .3
18 percentile. It's not the first percentile; it's the
19 .3 percentile. So to give you a visual aid in that,
20 if you line up a thousand people he'd be number
21 three, two, or one as far as intellectual ability.
22 When we're talking about range there's been terms
23 used here today like mentally deficient, mentally
24 retardation, it'd be at the low end of the mild
25 range of mental familiar retardation.

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1 Q And when we talk in terms of mild -- excuse me,
2 that range of mental retardation we're talking about
3 his overall capacity to understand?

4 A His overall capacity to understand, to plan,
5 things of that nature.

6 Q Now with regard to the tests that you performed I
7 believe that you did a test that's called a wide
8 range achievement test or WRAT-4 and a Weschler or
9 Adult Intelligence Scale Test or WAIS-4; is that
10 right?

11 A That's correct.

12 Q I'd like to talk to you or ask you some questions
13 for a few minutes about the Wide Range Achievement
14 Test. Now in that particular test there are
15 particular items that are stored to help you assess
16 a patient, is that right, or a person?

17 A Yes, sir.

18 Q And one of those is sentence comprehension; is
19 that right?

20 A That's correct.

21 Q Tell us what sentence comprehension on the Wide
22 Range Achievement Test is measuring, Doctor.

23 A Sentence comprehension on the Wide Range
24 Achievement Test reflects to someone's ability to
25 read a sentence and comprehend and interpret its

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1 meaning.

2 Q How about sentences that aren't read but are read
3 to the person?

4 A It affects the same thing although we also get a
5 better measure of that on Weschler Adult
6 Intelligence Scale 4. His verbal comprehension IQ
7 is actually 58 which is again the .3 percentile so
8 we have two measures of verbal comprehension if you
9 will, both of which are extremely low.

10 Q Well, let's talk and we'll get to the Weschler
11 test in just a minute. But on the Wide Range
12 Achievement Test the sentence comprehension was
13 what, Doctor?

14 A His score was 64 but that is actually on this
15 test beneath the first percentile. This test
16 doesn't measure any lower than that. So like when I
17 tell you on the WAIS it's .3 percentile, the WRAT
18 doesn't go below the first percentile but he was
19 below the first percentile. But an interesting
20 score from the WRAT on that measure would be what we
21 call grade equivalency, what is their academic
22 functioning as reflected on that and his was K-9.
23 That means in the last toward the end of year for a
24 kindergartener, kindergartener.

25 Q So as relates to that a descriptive or way to

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1 understand his intelligence level with that type of
2 comprehension would be a kindergartener toward the
3 end of their kindergarten year?

4 A Yes, sir.

5 Q Now with regard to the Weschler Adult
6 Intelligence Scale that you touched on just a minute
7 ago is a verbal comprehension score; is that right?

8 A Yes, sir.

9 Q And what was his?

10 A His was 58 which, like his IQ, is at the .3
11 percentile.

12 Q And when we talk in terms of his verbal
13 comprehension how would that affect his ability to
14 understand when people are talking to him or
15 questioning him?

16 A He would not understand complex words, complex
17 sentences, complex phrases. You know, one of the
18 things, to put this in context, one of the measures
19 off the WRAT is what we call word reading, be able
20 to look at a list of words and read them. At that
21 level he's also beneath the first percentile, but
22 it's at a grade equivalency of a 2.8 so it's like a
23 second grader in that regard so he can read some
24 words. But when we look at sentence comprehension
25 and the verbal comprehension it shows that he is not

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1 able to comprehend complex phrases and things of
2 that nature.

3 Q Now as far as his testing that was done prior to
4 your becoming involved while he was in school, did
5 those corroborate what you found?

6 A They did. They used the version of the Weschler
7 that was developed for children, and that's a
8 Weschler intelligence Scale for children third
9 edition. In 1939 his full scale IQ was 88 which is
10 not significantly different from a 59; but
11 interestingly, in '96 his full scale IQ was 51. 51
12 would be then right at the cusp of the moderate
13 range of mental retardation. In fact, moderate and
14 mild overlaps between the IQs of 50 and 55.

15 Q So he would be in the mild, moderate mental
16 retardation range?

17 A Yes, sir, that's correct.

18 Q Can he read and write?

19 A He can write very simply, and he can read very
20 simply. That's the word recognition. But he can
21 read a sentence out loud to you, but that doesn't
22 necessarily mean he comprehended what that sentence
23 meant.

24 Q Now as far as his ability to comprehend, in the
25 State's exhibit that was used during the Blair

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1 hearing, you had an opportunity to review that; is
2 that correct?

3 A Yes, sir, I did.

4 Q And that indicates that he requires more time to
5 process information and to answer questions that may
6 be asked of him and that it would be important to
7 insure that he understands the full consequences of
8 any decision he is required to make. Do you agree
9 with the State's exhibit in that regard?

10 A I agree with that statement in the State's report
11 —

12 MR. JEPERTINGER: Your Honor, I would
13 object since he did not — for this very regard.
14 This was issue in terms of competency, Your Honor,
15 that we already discussed and handled and which Mr.
16 Hoffmeyer did not put up anything with in terms of
17 that, Your Honor, and the Court's already ruled on
18 it.

19 THE COURT: What's the issue we're dealing
20 with now?

21 MR. HOFFMEYER: Well, Your Honor, I'm
22 getting there, but I'm establishing that he agrees
23 that he has to be explained a good bit just as the
24 State indicated in order for Mr. Johnson to
25 understand, as they put it, the full consequences.

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1 THE COURT: Sure. And I think that he
2 has, in fact, testified to that.

3 MR. HOFFMEYER: Okay, all right.

4 BY MR. HOFFMEYER:

5 Q Now Doctor Price, as far as the waiver of Miranda
6 did you review that form?

7 A I did.

8 Q And you also reviewed the form as relates to his
9 consenting to the buccal swab?

10 A Yes, sir.

11 Q As far as what you have reviewed you also had the
12 chance to listen in court today to the way the
13 officers indicated they went over Miranda rights
14 with him; is that right?

15 A Yes, sir.

16 Q And you have reviewed the statement itself,
17 correct?

18 A Yes, sir.

19 Q Do you have an opinion as to whether he would
20 have understood his Miranda rights?

21 A He would have understood them as well as any
22 kindergartener would have understood them.

23 Q All right, sir. And by that what do you mean?

24 A He would have understood them as well as any five
25 or six year old would and that he wouldn't have

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1 understood them as far as the implications for
2 stating them. When Doctor Hall testified today she
3 talked about understanding rights. She said
4 appreciate, understand, appreciate and understand
5 was her term. Actually, it's three things. It's
6 know, appreciate, and understand. Someone his
7 level, kindergarten level, can say they know
8 something but they don't appreciate and understand
9 the abstract nature of that object. He can say he
10 might understand he waived his rights, but he
11 doesn't know -- he didn't know in 2008 when he said
12 that statement that he'd be here in 2012 having to
13 deal with the implications from making that
14 decision. Actually, the last sentence of the
15 State's report was he needs full time to process in
16 order to have full understanding to make a decision.
17 He doesn't have that with an IQ of 58.

18 Q And is that opinion that you are giving us as far
19 as his ability to understand? And I'm talking about
20 in 2008 when he gave that statement, those
21 statements, your opinion to a reasonable degree of
22 certainty in your three fields of expertise is that
23 he would not have been able to understand the
24 Miranda waiver?

25 A No. He would have done exactly what he's done

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1 here today. I've been watching him since we've been
2 sitting here in court. He's made no assisting --
3 he's made no attempt to assist you in anything; but
4 whenever you've asked him something he said, yes,
5 sir, which is what he did with this, with Sergeant
6 Goodwin, he said yes, sir.

7 Q People that experience or these type of mental
8 deficits, do they have any tendency to try and
9 conform or go along with so to speak?

10 A They do. Mental retarded people are very
11 difficult for the legal system to deal with. What
12 happens with these individuals as they come to the
13 educational system they're identified as being
14 different and stigmatized for that, Your Honor.
15 They're put in self-contained classes as he was. He
16 failed courses. They get used to terms out there
17 about the nut hut or they're slow. What they learn
18 to adapt to with that is they learn to acquiesce,
19 say yes they understand something when they don't.
20 Say they laugh at a joke, they don't understand the
21 implication because they want to be like everybody
22 else and not be stigmatized by being slow. And so
23 generally what happens is that when they get caught
24 up in the legal system they say, yes, they
25 understand their rights, when they don't have a clue

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1 because they don't have intellectual capacity to do
2 that.

3 Q Is that what you are telling us to a reasonable
4 degree of certainty in your three areas of expertise
5 happened with Mr. Johnson in his waiver of Miranda?

6 A Yes, sir.

7 Q Did you discuss Miranda with him on one of your
8 visits?

9 A I did.

10 Q And could you tell us whether he understood the
11 Miranda when you talked to him about it?

12 A Well, he can't define waive so we started off
13 with that and he did not understand that and I spent
14 some time with him in talking about each right and
15 implications of that. So in effect, prior to Doctor
16 Hall and Doctor Brown seeing him he'd had some
17 education about those rights from me.

18 Q And as far as the DNA consent form you indicated
19 you reviewed that. Your opinion is what as to
20 whether he would have understood t he consent to
21 give that buccal swab?

22 A It's the same complex kind of sentence thing. He
23 would not have understood that, but he would have
24 acquiesced?

25 Q Doctor Price, you're familiar with the

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1 statements. The recorded statement was taken at
2 3:15 a.m. with three officers present. Based upon
3 your experience, training, and background and the
4 information you've been made, has been made
5 available to you in this case, would those factors
6 impact?

7 MR. JEPERTINGER: I would object to
8 leading, Your Honor.

9 THE COURT: Overruled, go ahead.

10 BY MR. HOFFMEYER:

11 Q Would those factors have any effect upon his
12 knowing and voluntarily waiving his right?

13 A Well, after being in police custody for 11 hours
14 and 15 minutes in the middle of the night, being in
15 a conference room with three police officers I would
16 say see being more acquiescent and agreeing to
17 things that didn't -- being intimidated as well as
18 trying to acquiesce.

19 Q How about the statements that occurred earlier?
20 I've asked you if he -- and you have told this Court
21 that you don't believe he freely and voluntarily
22 waived his Miranda rights. Would that apply to the
23 statements to Mr. Compton, or Lieutenant Compton as
24 well?

25 A It would be the same issues effecting him, yes.

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1 Q So that would be correct?

2 A Yes.

3 Q If you will excuse me one second, Doctor Price.

4 A Okay.

5 Q Thank you very much, Doctor Price. I don't have
6 any further questions. Please answer any questions
7 Mr. Jepertinger or Mr. Clements has.

8 **CROSS-EXAMINATION**

9 BY MR. JEPERTINGER:

10 Q Doctor Price, good afternoon. I think we met 11
11 years ago in court; did we not?

12 A We did.

13 Q Doctor, in terms of your three specialties one of
14 the -- would you agree with me that one of the books
15 that you rely on is a diagnostic and statistical
16 manual mental disorders, the DSM-4, and I guess this
17 is the text revision, correct?

18 A That's correct.

19 Q And it's the Kurt version that's being used, and
20 I believe a new one is coming here in the next few
21 years; is that correct?

22 A 2013.

23 Q That is correct. And that will be the DSM-5; is
24 that correct?

25 A That's correct.

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1 Q And in fact, you use this book all the time when
2 you are making a diagnosis of mental retardation,
3 what they call intellectual disability now; do you
4 not?

5 A I use that book a lot. I don't know that I have
6 at this point in my career if I have to use it all
7 the time for mental retardation, but I frequently
8 refer to it. Mine looks much more worn than yours.

9 Q Okay. And there are three categories of what
10 they refer to as mental retardation. One is mild
11 mental retardation. One is moderate mental
12 retardation, and one is severe mental retardation.
13 Isn't that correct?

14 A That would be correct.

15 Q Okay. And would you say that a safe definition
16 personally to the DSM-4 text revision would be that
17 mild mental retardation is roughly equivalent to
18 what used to be referred as the educational category
19 of educable. Would you agree that?

20 A I would agree.

21 Q This group constitutes the largest segment, about
22 85 percent, of those with the disorder; would you
23 agree with that?

24 A The disorder being mental retardation?

25 Q Yes, sir.

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- 1 A Yes, I would agree with that.
- 2 Q As a group people with this level of mental
- 3 retardation typically develop social and
- 4 communication skills during the preschool years,
- 5 ages zero to five years, would you agree with that?
- 6 A Yes.
- 7 Q Have minimal impairment in sensory motor areas?
- 8 A That's correct.
- 9 Q Okay. Means they can walk and run; is that
- 10 correct?
- 11 A That's correct.
- 12 Q All right. And often are not distinguishable
- 13 from children without mental retardation until later
- 14 age. You would agree with that?
- 15 A Until the end of the school system, yes, sir.
- 16 Q By their late teens they can acquire academic
- 17 skills up to approximately the sixth grade level; is
- 18 that correct?
- 19 A Some of them can, not all of.
- 20 Q I'm not — I'm just reading from what they said.
- 21 A That is correct.
- 22 Q But that is up to the sixth grade level?
- 23 A Some of them.
- 24 Q I understand that.
- 25 A Okay.

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1 Q During their adult years they usually achieve
2 social and vocational skills adequate for minimum
3 self-support?

4 A Some of them do.

5 Q All right. And that would be inclusive of
6 someone being able to hold a job; is that correct?

7 A That's correct.

8 Q All right. But may need supervision, guidance,
9 and assistance especially when under unusual,
10 social, or economic stress; is that correct?

11 A They tend to decompensate under stress; that's
12 correct.

13 Q All right. And with appropriate support
14 individuals with mild mental retardation can usually
15 live successfully in the community either
16 independently or in supervised settings. Would you
17 disagree with that?

18 A Under some supervision, yes.

19 Q All right. Now living successfully in the
20 community could include up to being able to hold a
21 job, correct?

22 A It can.

23 Q Not many kindergarteners have the skills to hold
24 a job, do they?

25 A Kindergarteners can perform routine skills.

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1 Q But hold a working paying job with
2 responsibility?

3 A No.

4 Q They can't do that, can they?

5 A No, their job is to go to school.

6 Q All right. Now David Johnson held a job, didn't
7 he, at the McDonalds?

8 A He worked and cleaned up at McDonalds I believe,
9 yes.

10 Q Okay. So he knew that there were times when you
11 had to clean the tables and clean the floors and
12 clean the grills and so on and so forth, correct?

13 A When he was supervised, yes.

14 Q But he could hold that job and he got paid and
15 compensated for that job; is that correct?

16 A One would expect.

17 Q All right. And you say that you looked at his
18 school records in this case, correct?

19 A I did.

20 Q And he had -- his 12th grade year I guess he
21 dropped out; is that correct?

22 A Correct.

23 Q All right. And he had a reading level test; did
24 he not?

25 A Yes, should have. He had the Wide Range

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1 Achievement Test.

2 Q Right. And did the teacher say he had about a
3 third grade reading level? Is that -- am I mistaken
4 about that?

5 A You are mistaken in the sense that that is a word
6 reading level, not a reading comprehension level.

7 Q All right. Now you also familiarized yourself
8 with what's in the statement Court Exhibit 3?

9 A Yes, sir.

10 Q The statement he gave the police?

11 A Yes, sir.

12 Q Okay. And you are familiar in reading that
13 statement that he drove a car; is that correct?

14 A That's what he said. He didn't have a driver's
15 license.

16 Q But he drove a car, correct?

17 A That's correct.

18 Q So he would be familiar that there is a key that
19 goes in ignition, that you have to put the car from
20 park to drive or to reverse depending on which way
21 you go, you have to read street signs if it says
22 stop, if it requires to go stop, if it says no left
23 turn you have to be able to read that to not turn
24 left. You would have to know all those things to
25 operate a vehicle and not kill yourself, correct?

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1 A One would hope.

2 Q And how many kindergarteners do you know can
3 operate a car just like that?

4 A I don't know many kindergarteners that can
5 operate a car like that although that is a social
6 skill, not a cognitive skill per se. A lot of
7 kindergarteners know you have to put a key in it,
8 you have to put it in reverse, you have to put it in
9 drive. Interesting — I wasn't finished with it.

10 Q Go ahead, I'm sorry, if you want to look at it.

11 A One of the things in this is when he talks about
12 how to go someplace in here he can't recall street
13 names. He really has to give other directions which
14 is a sign of his academic deficits, his intellectual
15 deficits. The other thing about the DSM-4 statement
16 you're reading that does apply to this statement is
17 in times of unusual stress they tend to decompensate
18 and need special guidance and assistance. That
19 certainly wasn't given at 3:15 in the morning.

20 Q Let me ask you this, at 3:15 in the morning he
21 would have slept a great deal as Lieutenant Compton
22 said; is that correct? There was nothing in here to
23 indicate that he was sleepy.

24 A I thought Lieutenant Compton said he may have
25 napped for three hours. That's not a great deal in

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1 my book over 12 hours.

2 Q Uh-huh. Now in reading this statement when he
3 referred to a codefendant about the property that
4 was left at his house, the officers asked him why —
5 I think it was Compton — why didn't he just keep in
6 the car and try to sell in a pawn shop or to a crack
7 head, and he said he ain't got no ID. He ain't got
8 no ID to sell. I mean, to go to a pawn shop the
9 only person that has an ID is me. So it is a
10 situation, would you not agree, that a

11 kindergartener would not know that you need ID to
12 contract business to sell used goods to a pawnshop?

13 A Kindergarteners know you have to have ID to go to
14 school now.

15 Q Do they know that you need an I.D. to go to a
16 pawnshop?

17 A I would suspect some of them do. It's based upon
18 experience.

19 Q And apparently he would have had that experience,
20 correct?

21 A Apparently.

22 Q All right. Now in terms of the word waiver, you
23 looked at all his records, is that correct, in terms
24 of his past criminal behavior?

25 A I looked at all of his records, yes.

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1 Q Okay. Did you happen to see what's been marked
2 as Court's 6, 7, 8, 9, 10, and 11 and 12?

3 A I've seen these.

4 Q And these are what we refer to as sentencing
5 sheets where he would have entered a guilty plea to
6 all the charges indicated on these forms?

7 A That's correct.

8 Q All right. And as part of the guilty plea a
9 circuit court judge would have asked him various
10 questions including using the word waive?

11 A That's correct.

12 Q And he would have been educated at least once in
13 his life to the term waive, is that correct, by
14 having that situation happen on October 26, 2005?

15 A Not necessarily, he just would have said yes,
16 sir.

17 Q All right. And he would have been familiar with
18 the term plea bargain back at that time; would he
19 have not?

20 A I don't know whether he would have been at that
21 time or not.

22 Q Well, would you agree with Doctor Hall who
23 testified in that regard where she said that he was
24 — he could learn, he could learn and retain info?

25 A What part of her report are you referring to?

DW - D. PRICE - CROSS

1 Q I think it's from her testimony.

2 A Okay.

3 Q That he could retain and learn information.

4 A She reported in her report that she educated him
5 on his pleas and on the consequences of those pleas.

6 Q Yeah, but did she not also say that he knew —

7 A If I may finish my —

8 Q I'm sorry, I thought you were done, Doctor.

9 A And she said based upon that she felt that he
10 could be educated.

11 Q And retain information?

12 A For a short period. He said he retained
13 information he learned by correctly stating the
14 consequences of the pleas so she educated to him on
15 the pleas.

16 Q Yeah, but did she not also say that he
17 volunteered he should not talk to the Solicitor
18 without his attorney present?

19 MR. JEPERTINGER: Your Honor, I object.
20 He's pitting the witnesses.

21 THE COURT: I don't think he can — no, I
22 overrule. I think he can refer if the witness did,
23 in fact, make that statement.

24 BY MR. JEPERTINGER:

25 Q Would you agree that she said that, that's what

DW - D. PRICE - CROSS

1 he volunteered?

2 A I don't remember her saying that, and I don't see
3 that in her report.

4 Q Go to page 4 please of her report.

5 A What paragraph?

6 Q First paragraph, third line down beginning with
7 the word also.

8 A That's correct.

9 Q All right. And then he also volunteered that he
10 cannot be forced to talk in court whether he wanted
11 to or not, and that's the next paragraph down, third
12 line starting with the word he.

13 A That actually is a reflection of having a
14 cognitive disfunction. He stated he could not be
15 forced to talk in court whether he wanted to or not.
16 If he did not want to talk he cannot be forced to.
17 If he wanted to you can't force him to.

18 Q In fact, he would be exercising his right to
19 remain silent?

20 A If he refused to if he understood that. But you
21 have to understand she saw him in this report and
22 educate him on his pleas after I'd already gone over
23 his rights with him prior to that and educated him
24 on his rights.

25 Q Apparently some attorney educated him about pleas

DW - D. PRICE - CROSS

1 back in 2005 as well; isn't that correct?

2 A I don't have any reason to say some attorney did.

3 Q Or the Court?

4 A I don't have any reason to say the Court did.

5 Q All right.

6 A We knew he was retarded as far as back as 1993.

7 Q Now Doctor, I've looked at your curricular vitae.

8 You have a lot of publications, I understand that.

9 You have taught at a lot of places; is that correct?

10 A Yes, sir.

11 Q Of course, you get retained for your services and

12 the Defense has retained you in this case; have they

13 not?

14 A Yes, sir, I'm paid like everybody else in this

15 courtroom.

16 Q Well, probably not like everybody else. How much

17 are you making per hour for this case?

18 A 285.

19 Q I can tell you you're not making as much as

20 everybody in this courtroom. Do you happen to

21 remember a gentleman by the name of Thomas Lee Davis

22 back in 1992?

23 A No, sir.

24 Q I think the case arose from Greenwood?

25 A I remember a little bit about that case.

DW - D. PRICE - REDIRECT

1 Q Okay. And same situation, sir, you don't recall
2 giving testimony in terms of that defendant not
3 understanding Miranda rights as well?

4 A I don't remember that.

5 Q Okay, that will be fine. I appreciated it,
6 Doctor. It's always good seeing you. Hopefully it
7 won't be another 11 years.

8 A Thank you.

9 THE COURT: Anything further?

10 MR. HOFFMEYER: Just briefly, Your Honor.

11 **REDIRECT EXAMINATION**

12 BY MR. HOFFMEYER:

13 Q Doctor Price, you mentioned that when the
14 individual is under stress that suffers from
15 intellectual disability like my client Mr. Johnson,
16 they decompensate. What were you telling the Court
17 and the rest of us when you indicated that?

18 A Well, just like he was reading from the DSM-4 TR
19 that under unusual periods of stress they tend to
20 disintegrate, may need special assistance and
21 counseling. They just cannot factor and process
22 information about what's going on and understanding
23 what's happening around them, cannot make a rational
24 decision during those periods.

25 Q Would being under police investigation and being

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1 in a room for 8 to 12 hours —

2 MR. JEPERTINGER: I would object to any
3 leading.

4 MR. HOFFMEYER: May I finish the questions
5 before the objection is interposed?

6 MR. JEPERTINGER: Go ahead, I'm sorry.

7 BY MR. HOFFMEYER:

8 Q Being under those types of stressors what, if
9 any, affect would that have on someone with
10 intellectual disability?

11 THE COURT: All right, hold on.

12 MR. JEPERTINGER: Now I would object to
13 leading.

14 MR. HOFFMEYER: What effect would those
15 factors have on somebody who is mentally retarded?

16 THE COURT: Overruled, go ahead.

17 THE WITNESS: That would cause them to
18 withdraw and decrease their ability to comprehend
19 and make informed choices and decisions.

20 BY MR. HOFFMEYER:

21 Q Mr. Jepertinger was asking you about these other
22 pleas of Mr. Johnson where he pled as, waived his
23 right to jury trial and those types of things, and
24 you have reviewed the records. Are you aware as to
25 whether or not Mr. Johnson was ever evaluated in

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1 any way before entering these pleas?

2 A He was not evaluated. The only prior evaluations
3 were done in the school system are in those records.

4 Q Thank you, Doctor Price, I don't have anything
5 further.

6 MR. JEPERTINGER: Just real quickly, Your
7 Honor, excuse me.

8 **RECROSS EXAMINATION**

9 BY MR. JEPERTINGER:

10 Q If he was competent to stand trial he would be
11 also competent to enter guilty plea; is that
12 correct?

13 A It would take special education to do that, and
14 to understand implications of that and take some
15 time in arriving at that decision.

16 Q And he's competent to stand trial now in this
17 case?

18 A He meets the minimum standard to be competent to
19 stand trial, yes.

20 Q Yes, sir. Thank you.

21 THE COURT: Let me — hold on just a
22 minute please. Frances, can you hand me those.
23 (Court Exhibit Numbers 6 through 12 were tendered to
24 the Court.)

25 THE COURT: Doctor, I'm gonna ask a

1 question. Any objections to the Court asking the
2 witness a question?

3 MR. JEPERTINGER: Not from the State.

4 MR. HOFFMEYER: Well, I haven't heard the
5 question yet, but I don't think so, Your Honor.

6 THE COURT: Well, I guess I got to make
7 the call on this issue so I have a question I wanted
8 answered.

9 MR. HOFFMEYER: Yes, sir.

10 THE COURT: Earlier when you were
11 answering questions from State's counsel he made
12 reference on several occasions to, and I think he
13 was referring to the treatise or text that y'all
14 use, that a person under this category can do this
15 and you — every response you gave to him was some
16 can.

17 THE WITNESS: That's correct.

18 THE COURT: All right. Yet you seem to
19 say now though that all of these folks under a
20 stressful situation will decompose.

21 THE WITNESS: That is true of the mentally
22 retarded population.

23 THE COURT: It's not true that some don't
24 or some don't as rapidly as some do?

25 THE WITNESS: There's some variations in

1 there. This level of retardation is the most
2 problematic, Your Honor, if I could just do the
3 course here. You're basically going to IQs of the
4 50s to IQs of 70. And these IQs, the DSM-4 as it
5 says in its introduction is not meant to be a recipe
6 cook book. It's not trained to be used by a chain
7 of trained clinicians; and so therefore, it's not
8 always helpful to a legal setting. That being said,
9 the mild range of IQ actually can go as low as 50
10 and as high as 75. It depends on their social
11 functioning with that. So technically, the moderate
12 range of retardation goes up to about 55, 56 which
13 he probably would have met when he was 51. But the
14 difference in functioning in people with IQs in the
15 50 and some with an IQ of 69, which is technically
16 clearly in the mild range of retardation or someone
17 that's in the overlap of the borderline range of
18 intelligence, it's so drastically different. The
19 ability of someone in the upper 60s to understand
20 Miranda rights, although there is debate in the
21 field about even if they can, would be drastically
22 higher than someone with a .3 level percentile of
23 intellectual functioning.

24 THE COURT: Isn't it also true though, or
25 would it be true though, that so much of this

1 depends on an individual's life experiences, what
2 they've been exposed to. For example, I've never
3 been in a surgical operating room. I would imagine
4 if I went in there and I observed a surgery, I would
5 probably faint or get sick or something of that
6 nature; whereas, someone in the same position I'm in
7 but who has had numerous experiences in that
8 operating room would handle that much better.

9 THE WITNESS: Your Honor, you're of
10 average intellect or higher and ——

11 THE COURT: But I'm saying — and I ——

12 THE WITNESS: If I can help you with that,
13 sir, that would be different. The retarded
14 population, they're basically retarded by early
15 childhood.

16 THE COURT: I understand.

17 THE WITNESS: And so their ability to
18 profit from experience is different than, say, you
19 or I.

20 THE COURT: I would agree. I mean, I
21 would assume that.

22 THE WITNESS: Yeah, so that mediates that
23 sign.

24 THE COURT: But again, there — is it not
25 true there is still going to be some learning.

1 There's gonna be some exposure that's -- for
2 example, and I guess what I'm asking is, a person
3 who is intellectually disabled at, say, the same
4 level as another person and you have one that has
5 been in the court system, been through the criminal
6 justice system, made it through to enter pleas, been
7 in front of, have been interrogated by law
8 enforcement, done all that, would it not be true
9 that that person would handle differently that
10 situation than someone who had been exposed to that
11 for the very first time even though I understand our
12 intellectual level we may process it differently and
13 quickly. There's still going to be some difference
14 there; is that not correct?

15 THE WITNESS: Well, that's possible but in
16 this specific case, this intellectual level, he
17 never profited from any of those experiences and he
18 really doesn't have an ability to learn. We use the
19 term about him being in school for 12 years. Well,
20 after having 12 years of education and special
21 assistance in education, by the school's records he
22 can read words at the third grade level. When I
23 tested him he could read words at the second, 2.8
24 grade, so it's closer than third grade level.
25 Comprehension was kindergarten level. Spelling was

1 the 2.1 second grade level and math computation was
2 a 1.9. first grade level. I mean, he didn't profit
3 from education. And quite frankly, I'd be
4 surprised — Doctor Hall may have done a very good
5 job educating him on what the different pleas and
6 all were, and he may have retained that for the hour
7 that she was with him or two hours, whatever it was.
8 Two months later he may not retain it.

9 THE COURT: Okay, I understand. Okay.
10 Thank you very much.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Appreciate that. Any
13 objection to Doctor Price being excused?

14 MR. HOFFMEYER: I was going to ask the
15 Court.

16 MR. JEPERTINGER: Not from the State.

17 THE COURT: Thank you, Doctor Price. I
18 appreciate your being here today. Thank you, sir.

19 Anything further, Mr. Hoffmeyer, from the
20 Defense?

21 MR. HOFFMEYER: No further testimony on
22 this issue, Your Honor.

23 THE COURT: All right. Solicitor, what
24 other issues do we need to take up?

25 MR. CLEMENTS: Your Honor, we got other, a

1 couple of issues we need to deal with real quick.
2 Are we going to come back or are you going to allow
3 us to argue on this issue?

4 THE COURT: You got something else to
5 present or?

6 MR. CLEMENTS: Just argument on the
7 motion, not testimony.

8 THE COURT: Yeah, we'll come back. We'll
9 come back.

10 MR. CLEMENTS: Your Honor, the next issue
11 would be I'd like to take up right now, I think, is
12 on suppression, Your Honor, on the DNA and the
13 fingerprints.

14 THE COURT: I thought we were going to
15 have to put that off.

16 MR. CLEMENTS: Well, we got Shannon Hill
17 who's not here right now, but in regards to how
18 relates to this issue on Miranda.

19 THE COURT: All right.

20 MR. CLEMENTS: Okay. We take the
21 position, Your Honor, that particularly on the
22 fingerprint suppression, we got the issue of
23 inevitable discovery. He'd been through the system.
24 They had his fingerprints. Once the fingerprints
25 had been identified by SLED if they would run them

1 through AFIS we would submit it popped up as David
2 Johnson's fingerprints that were already in the
3 system. If they'd arrested him they would have
4 taken prints from him then. The fact that they
5 asked him for prints and he consented to them, even
6 if the Court finds that the consent did not stand I
7 would argue inevitable discovery on those
8 fingerprints in regards to that issue. And I
9 think — I don't think the Defense is going to put
10 up any argument there's been misidentification or
11 anything.

12 MR. HOFFMEYER: No, sir. Our argument on
13 these issues that we presented to the Court are
14 related to the voluntariness of the consent form on
15 the buccal swab and the voluntariness of statements
16 that were given. That's —

17 THE COURT: All right. So the
18 fingerprints aren't an issue as far as you're
19 concerned on this point?

20 MR. HOFFMEYER: Your Honor, I don't — I
21 haven't filed a motion related to that and I know
22 that he consented to that but...

23 THE COURT: Well, it appears that I think
24 the Solicitor is correct.

25 MR. HOFFMEYER: Yes, sir.

1 THE COURT: I think this would have
2 really have been inevitably discovery regardless.

3 MR. HOFFMEYER: Yes.

4 THE COURT: So that -- all right, so for
5 purposes of this issue I think the fingerprints are
6 fine.

7 MR. CLEMENTS: All right. Your Honor,
8 also as to the next issue which would be the DNA,
9 Your Honor, he consented to it. If the consent
10 didn't stand or if he had not consented to it I can
11 tell you the State would have sought a petition and
12 order under Smerber to take buccal swabs from him at
13 that time 'cause we knew there was some DNA present.
14 So we would argue inevitable discovery in regards to
15 that as well. At the time he consented law
16 enforcement officers in good faith thought the
17 consent is valid. We still think the consent is
18 valid; but if the Court finds it's not, we believe
19 that it would have been inevitable discovery on
20 that. It was a good faith exception.

21 MR. HOFFMEYER: Well, Your Honor, my
22 argument on that is the voluntariness of consent and
23 that's why part of what Doctor Price testified to
24 was that issue, that his consent wasn't voluntary.
25 And of course, bodily intrusions are very

1 significant and that's why the Smerber case came
2 about, why State v. Baccus came about where the
3 State is required to go through certain procedures
4 before they can make someone allow for bodily
5 intrusion although, you know, I understand it was a
6 buccal swab but be that as it may.

7 THE COURT: And yeah, I understand that's
8 a minimal intrusion, an intrusion nonetheless. But
9 let me ask you, though, based on the State's
10 argument here regarding those buccal swabs, I mean,
11 do you have a good faith argument that if they would
12 have requested it he would have denied it had he --
13 given a hypothetical -- had he requested it, had he
14 denied or refused to give it and then they proceed
15 under Smerber. Of course, I haven't seen that order
16 or their basis for it, but that it would have
17 inevitably been discovered.

18 MR. HOFFMEYER: Well, Your Honor, I do
19 because if the State is always allowed to argue,
20 well, we could have gotten a warrant if we wanted
21 one eventually, they could search any house and then
22 say that. And this is more intrusive in some ways
23 in searching a residence or searching a building or
24 whatever analogy you want to use. I don't think you
25 can say or we would have gone and got it,

1 particularly with the safeguards provided for by
2 Smerber and other cases.

3 MR. CLEMENTS: Your Honor, this is — this
4 situation is different than what Mr. Hoffmeyer says
5 that, you know, we said, oh, we could have gotten a
6 warrant. But when you think — when you're under
7 the good faith exception you got to have an officer
8 acting in good faith. When he goes to him and says,
9 you know, will you sign this waiver of form, can I
10 take your fingerprints and these swabs; and they say
11 yeah, go ahead, and there's nothing to indicate to
12 that officer there's anything wrong with that, he's
13 operating in good faith so he gets buccal swabs and
14 submits them. So Your Honor, I think that that is a
15 good faith exception. Of course, we will hash that
16 out more when forensic Officer Hill is available and
17 he's not sick. But it was just minimal intrusion
18 based upon good faith belief that it was consent, a
19 good consent, voluntary consent, and then it was
20 submitted.

21 THE COURT: All right. What next?

22 MR. CLEMENTS: Your Honor, next would be
23 Lyle and 404(b) which, Your Honor, I've put here as
24 Court exhibit for the Court to consider a couple of
25 things here, Your Honor. One is Court's Exhibits 6

1 through 12, Your Honor, which are sentencing sheets
2 signed by David Johnson and his defense attorney
3 where he pled guilty to possession of stolen
4 vehicle, grand larceny, breaking and entering of a
5 motor vehicle, failure to stop for blue light,
6 possession of a stolen vehicle which was another
7 stolen vehicle, another grand larceny, and a
8 burglary second degree nonviolent which he was
9 originally charged with burglary in the first
10 degree. These are convictions so we don't have to
11 show clear and convincing evidence because they're
12 not convictions; these are convictions.

13 Your Honor, these are submitted, also
14 submitted for the consideration that a judge went
15 through — and I've heard all of y'all say do you
16 waive or give up rights so we say that that also
17 goes for him realizing what he's doing. He
18 understands Miranda. He's been through the system.
19 He understands a whole lot more about it and what
20 the judge would instruct him on probably than Doctor
21 Price. Also, we have Court's Exhibit 13 and 14
22 which are two incident reports regarding and
23 something that happened on the 18th of June and 19th
24 of June 2005 and different officers where the first
25 incident report is where they went to [REDACTED]

1 Street in regards to a burglary and auto theft. And
2 the second, Court Exhibit 14, is where they got him
3 behind that car, failure to stop for a blue light,
4 and they caught the people in the car which was
5 David Johnson and others. But what happened and
6 what we will submit this to be under Lyle, is that
7 there was a lady lived [REDACTED] Street, Ms.
8 Alicia Miles, and came home, found her car stolen
9 and her home broken into and a bunch of electronics
10 and some jewelry and money and video games were
11 stolen. And the way they were stolen was that a
12 window was broken into, the screen was cut, and
13 somebody went through the window and opened the
14 front door, or unlocked a door, and let David
15 Johnson and others in where they got her keys and
16 stole her car and also stole stuff from the house.
17 He was caught driving the car the next day, and
18 there were co-defendants with him. And the one who
19 was the smallest was put in through the window,
20 unlocked the door, and let them in the house, which
21 is exactly what the State alleges happened here.
22 That Anthony Wilson who was the smallest, the window
23 was pried up, he was let in through a window and
24 came to the front door and unlocked and let them in
25 the house, and they stole items and stole Ms. Hayes'

1 car. The only difference in these two situations he
2 had younger individuals with him both times, was
3 that Ms. Miles was not home asleep in her bed to be
4 murdered. Other than that, they are exactly the
5 same, and we think they're evidence of prior bad
6 acts convictions that fit under State versus Lyle
7 under Rule 404(b) that show a common scheme or plan.

8 THE COURT: Mr. Hoffmeyer.

9 MR. HOFFMEYER: Thank you, Your Honor.
10 Your Honor, as you're well aware that when it comes
11 to Lyle and common scheme or plan, the 404(b)
12 evidence, there has to be a connection between the
13 prior bad act or acts in the crime. That connection
14 must be more than just general similarity, and I
15 think what we have here is general similarity. If
16 you look -- and I've been provided the incident
17 reports by the State. First of all, the evidence it
18 appears the State is gonna list in this case this
19 break-in happened at night. In this case back in
20 June 18th, 2005, it is uncertain as to when this
21 break-in occurred. The incident, 24 hour clock
22 incident dates 2 p.m., and then the next date is
23 sometime I believe after midnight because she was
24 gone. They don't know when these individuals broke
25 into the house so we -- there's not the similarity

1 that it occurred at night.

2 In addition, it appears that on the incident,
3 the prior Lyle evidence incident, the exterior
4 screen was cut in order to get into the residence.
5 The evidence in this case, I believe the State's
6 gonna elicit, will be that the screen was pushed in,
7 a small difference, but still a difference when
8 you're talking about the degree of similarity that's
9 required. Also, the State's theory in this case and
10 what they believe is part of this offense is that my
11 client was older. I believe he would have been in
12 his early 20s at the time, and the co-defendants
13 were several years younger. Whereas, in this
14 incident report that I'm provided, the people that
15 at least the first incident report references, is my
16 client being 19 and Reginald Brown being 19. So
17 there isn't this idea that this defendant is getting
18 younger folks to influence them and do these things
19 in his behalf to get into the house.

20 Obviously as the State has pointed out it's
21 not a crime in which the victim was present
22 presumably at nighttime with her car there at the
23 other residence. They would have been aware as
24 relates to the incident offense that someone was in
25 the home. In this other case a car was stolen that

1 would have been in the residence, but we don't know
2 what time of day so we have no idea to know whether
3 a person being there or not was in consideration
4 with the prior incident.

5 MR. CLEMENTS: Your Honor, I think —

6 MR. HOFFMEYER: Also —

7 THE COURT: Let him finish.

8 MR. CLEMENTS: Okay.

9 MR. HOFFMEYER: When it comes to this next
10 incident they — our incident, so to speak, they
11 abandon the car. In the incident, the previous
12 incident, they led police on a high speed chase,
13 another thing that is dissimilar about this other
14 case. Also, when it comes to the evidence about how
15 things went down and when what occurred in the prior
16 case, the incident report I have has hearsay where
17 somebody says my client and other individuals went
18 in the house and things of this nature, but the
19 initial incident report just references two so
20 that's a difference. But Your Honor, even if this
21 Court were to decide that there was enough
22 similarity, there's still the balancing test that
23 this Court would have to conduct as to whether or
24 not despite that the prejudicial impact still
25 outweighs the probative value. But I do think that

1 this Court shouldn't even get to that analysis
2 because, quite frankly, there are lots of break-ins
3 that would fit a case where someone breaks in a
4 house and ---

5 THE COURT: Let me stop you right there.

6 MR. HOFFMEYER: Yeah.

7 THE COURT: Solicitor, that's the concern
8 I've got here. What you got, you've got two
9 burglaries and although there are some similarities
10 it just appears they're generic burglaries. They
11 broke in, they stole some viable stuff, and stole a
12 car and left. It was three years prior to this
13 incident, and there's no real common scheme or plan.
14 It's an isolated incident. This three years later
15 another incident. They just seem like generalized
16 burglaries. As far as, I mean, when you're talking
17 about common scheme or plan I think you've got to be
18 able to show some type of signature, something that
19 connects the two, that would show that it's -- I
20 don't know, maybe I'm not using the right word. You
21 don't have to show like a signature crime or
22 whatever, but I mean, that's just a concern I've got
23 here. And I do think, I think you've presented
24 enough evidence or enough argument here I think I do
25 need to look at the balancing test. And I do have a

1 grave concern now about the prejudicial, the
2 prejudicial effect outweighing any probative value.
3 I haven't ruled yet; I'm just telling you where I'm
4 at. It just seems — it doesn't seem anything very
5 unique that would cause this to rise to the level of
6 common scheme or plan. I don't know.

7 MR. CLEMENTS: I understand where you are,
8 Your Honor, and just would submit that this was
9 done — this incident we're talking about right now.
10 And there was — if you look at both incident
11 reports I think there's some other information you
12 can see there was some younger people there. And
13 the screen on Ms. Hayes' house was taken off. The
14 other one was cut I would argue because they
15 couldn't get it off. I think there was enough
16 similarities, Your Honor, for us to raise it to the
17 Court's attention, however —

18 THE COURT: I think so.

19 MR. CLEMENTS: If you see that it does not
20 fit or that the probative value is outweighed by the
21 prejudicial effect we will not argue that; however,
22 to zealously represent the State we felt like there
23 was enough there we need to present this.

24 THE COURT: And I'm gonna take it under
25 advisement and look at it. I haven't seen the

1 incident reports, but I think they're up here so I
2 will look at them but. All right. Is that the only
3 Lyle situation before —

4 MR. CLEMENTS: That's the only Lyle
5 situation.

6 THE COURT: Go ahead, sir.

7 MR. CLEMENTS: The other thing that's left
8 other than us asking to present some oral argument
9 on the Miranda waiver would be the suppression of
10 evidence that was obtained on Sumter Street, Your
11 Honor, and I think that there probably is a number
12 of issues that Mr. Hoffmeyer might raise. One which
13 goes to the statement, but he might have some others
14 that we can deal with separately if he has a couple
15 other issues of regards to lack of search warrant or
16 anything like that.

17 THE COURT: Right. Mr. Hoffmeyer, now I
18 realize that one of your major issues there is that
19 it's basically a fruit of the poisonous tree
20 situation. The statement was not appropriate,
21 wasn't proper, therefore, this was as a result of
22 that so it would not be proper; but if the Court
23 were to rule the statement was voluntary and proper
24 are there other issues regarding that that — or is
25 it too complex to separate them?

1 MR. HOFFMEYER: Well, I think they are
2 intertwined. I think one argument is there wasn't a
3 search warrant that was established so it's —

4 THE COURT: But I think there was
5 testimony that the owner of the property gave him
6 permission.

7 MR. HOFFMEYER: That's true and so I'm
8 sure the State argues common authority. You know,
9 my argument is he would have had a right to consent
10 or not consent to that, but obviously couldn't
11 consent based upon my argument so a warrant was
12 necessary.

13 THE COURT: Right.

14 MR. HOFFMEYER: And under the South
15 Carolina constitution there's a slight nuance and a
16 right to privacy that we are. We would argue along
17 with the Fourth Amendment of the United States
18 constitution, but it's really just the fruit of the
19 poisonous tree, the consent, any consent he gave to
20 going under was not valid.

21 THE COURT: Because it wasn't voluntary?

22 MR. HOFFMEYER: Right, and no search
23 warrant so.

24 THE COURT: All right. And I know we have
25 to have argument regarding the Miranda, the

1 statement issue, but is there anything other than
2 that that we need to deal with 'cause I do want to
3 give y'all an opportunity to.

4 MR. CLEMENTS: Only, Your Honor, if you
5 rule that the statement does come in and it's not
6 the fruit of the poisonous tree or whether there was
7 consent by Mr. David Jordan, who's also known as Top
8 Hat who is now deceased, was Mr. Johnson's father
9 and our argument would be that they talked to him
10 and he said to look, do what you had to do. And he
11 had apparent authority under Illinois versus
12 Rodriguez to give consent to that so that they would
13 not need a search warrant.

14 THE COURT: Okay.

15 MR. HOFFMEYER: I understand that's the
16 State's position on that.

17 THE COURT: Right, okay. Is there
18 anything else that we needed to take up today?

19 MR. HOFFMEYER: Your Honor, I think the
20 other things are something that me and Mr.
21 Jepertinger and Mr. Clements are kind of going to
22 work through most probably.

23 THE COURT: I know y'all are going to get
24 together with regards to discovery and what's there
25 and everything; I realize that.

1 MR. HOFFMEYER: And there's a couple of
2 issues related to the statement if it comes in that
3 I think we're likely to agree on.

4 THE COURT: Okay.

5 MR. HOFFMEYER: So I don't know if we even
6 need to address that.

7 THE COURT: All right. Let's go then and
8 let me hear from you regarding the, your position on
9 the statement.

10 MR. CLEMENTS: That is his motion, Your
11 Honor, so if he wants to go.

12 THE COURT: Well, the State still has the
13 burden, preponderance to prove it was freely and
14 voluntarily.

15 MR. CLEMENTS: Does that mean we get to
16 argue first?

17 THE COURT: I think so.

18 MR. CLEMENTS: All right, Your Honor. I
19 would refer you to State versus Davis, Your Honor,
20 422 Southeastern Second 133. It's a 1992 case,
21 which by the way, Doctor Price did testify for the
22 defense in that case, had the same issue, Your
23 Honor, where Davis contended that his mental
24 retardation precluded him from waiving his Miranda
25 rights, and they were read to him by Michael Butler

1 of Greenwood County Police Department and ultimately
2 the Court found that a person that suffers from
3 mental retardation can knowingly and voluntarily
4 waive their rights under the Fifth Amendment to
5 remain silent and to have counsel present with them
6 in interview. They conclude — the court concluded
7 in that case that there was sufficient evidence on
8 the record, both lay and expert, to support the
9 trial judge's determination that Davis was competent
10 to waive his Miranda rights. So they found that the
11 trial judge did not err in finding Davis was
12 competent to waive his Miranda rights. They had in
13 that that — in that case they had lay people that
14 read him his rights, said he ain't seem to have any
15 problem, he understood what was going on and he
16 waived the rights. And they had a Doctor
17 Montgomery, he conceded that Davis' understanding of
18 his Miranda rights would be different and on a less
19 abstract level than a person of average
20 intelligence. But that Davis' comprehension was
21 adequate to enable Davis to knowingly and
22 intelligently waive those rights.

23 We would submit, Your Honor, also that under
24 State versus Hill, which is 604 Southeastern Second
25 696, it's a 2004 opinion, that holds that a

1 defendant's mental condition in and of itself does
2 not render a statement involuntary in violation of
3 due process absent coercive police conduct causally
4 related to a confession which there was no
5 testimony, no evidence whatsoever, there was any
6 coercive police conduct.

7 THE COURT: Did you cite that? Did you
8 give me your cite on State v. Hill?

9 MR. CLEMENTS: State v. Hill, 604
10 Southeastern Second 696.

11 THE COURT: Okay.

12 MR. CLEMENTS: And so there's no basis for
13 finding a confession constitutionally involuntarily.
14 In that case State versus Hill cites U.S. Supreme
15 Court case Colorado versus Connelly, which is 479
16 U.S. 157; State versus Hughes, South Carolina case
17 from 1999, which is 521 Southeastern Second and 500;
18 and also State versus Doby, a 1979 case southeast
19 258 Southeastern Second 896 which stands for the
20 legal principle that under state law a confession is
21 not inadmissible because of mental deficiency alone.
22 Your Honor, we feel like we put up gracious
23 sufficient evidence that Mr. Johnson knew what he
24 was doing. We talked to Doctor Price, he's talking
25 about his reading comprehension and his level. And

1 the bottom line is you have the right to remain
2 silent is the issue. And there's nothing complex
3 about those words. There is nothing confusing about
4 that, that takes a lot of intelligence to understand
5 you got the right to keep your mouth shut, you got
6 the right to remain silent. Anything you say can
7 and will be used against you in a court of law.
8 There's nothing complex about that; that is very
9 simple. And that's the rock bed of the Miranda.
10 And then it goes into you have the right to counsel,
11 right to have a lawyer with you. He knows what a
12 lawyer is; he's had a lawyer in the past. He's not
13 confused about that. In the report generated by
14 Doctor Brown and Doctor Hill — Hall, excuse me,
15 talks about he knew the defense attorney was for
16 him, knew the Solicitor was against him, knew he
17 should not talk with the solicitor without his
18 attorney present. And she said he volunteered that
19 information, which shows that he knows he doesn't
20 need to talk to the solicitor, prosecution, or law
21 enforcement. Said that he knows you can't force him
22 to talk in court.

23 He — if you read the rest of the report it
24 shows he had plenty of ability to understand, you
25 know, what was right and wrong. He couldn't tell

1 time on an analog clock, but he could name this
2 president. He could name last president; a lot of
3 people can't do that. He knew — he was oriented as
4 to space and time and place. He understood what
5 those charges were, and I believe my recollection of
6 her testimony was that he volunteered to her. She
7 didn't have to explain to him that murder was the
8 most serious charge; he didn't have to be educated
9 on that. The conspiracy he had a hard time
10 grasping, but nothing else did he have a hard time
11 grasping. He could learn; he was able to retain
12 knowledge. He knew the range of sentencing on
13 murder 30 years to life, knows he had —
14 understanding death penalty is off the table. He
15 has not had any great leaps in ability understanding
16 I would think between now and when he talked to
17 Timmy Compton that very first time. If anything,
18 being in a stressful situation he would have
19 decompensated some, or as Doctor Price would have
20 said; but yet, according to the doctors from
21 Disability Special Needs he understood all these
22 things about the court process that he volunteered.
23 What they had to educate him on was what they meant
24 by plea bargain and what they meant by conspiracy.
25 All the other things my understanding was that he

1 knew, he volunteered on his own.

2 Also, Your Honor, we would submit that he has
3 been through this system and understands and has
4 been before a circuit court judge who ascertained
5 that he understood what he was doing when he pled
6 guilty and got a reduction of a burglary first
7 charge to a burglary second in order that he could
8 get a YOA sentence so he's experienced that. I find
9 it ludicrous that you'd think that he's in
10 kindergarten or that he — or that you would try to
11 argue he was on a kindergarten scale. He held a job
12 at McDonalds for over a year. He worked; he got
13 paid. That's well beyond any kindergartener I've
14 ever met. Might not be beyond sixth grade but
15 certainly beyond kindergartener. He understood what
16 he was doing; nobody coerced him. He came up to the
17 law enforcement complex when they were looking for
18 him. Came up, he sat there, he took a nap. In
19 Compton's office they talked, talked about a lot of
20 things. Nothing gave a red flag to these officers
21 who have years of experience who know, who know that
22 if they're going to talk to somebody and spend their
23 time taking a statement and that person is not
24 competent to give a statement they know they have
25 wasted their time; and they're not going to do it.

1 And they talked to him. They recognized the fact
2 that he didn't put up any red flags. He didn't show
3 any indication. He understood what they were
4 talking about. They could talk back and forth. You
5 review his statement you can see he understood
6 everything they asked him. There's no inappropriate
7 answers on there. There's no answers like that show
8 they don't understand. They — that he didn't
9 understand their questions. He answered
10 appropriately. Your Honor, I think he might not
11 understand a lot of things abstractly, but I
12 certainly believe he understands on a basic level
13 that he had the right to keep his mouth shut. He
14 had the right to be silent and that he was not so
15 disabled that his consent to give Miranda and his
16 consent to give a statement was improper.

17 THE COURT: Thank you, Solicitor.

18 Mr. Hoffmeyer.

19 MR. HOFFMEYER: Thank you, sir. Your
20 Honor, as you're well aware, when it comes to the
21 Miranda it's important that due process of law be
22 insured in these cases and that even if the court
23 believes the statement to be true or not true, the
24 real issue is whether or not someone understood
25 their Miranda rights and then freely and voluntarily

1 chose to give up those Miranda rights. And when it
2 comes to that, we have to construct to a certain
3 extent those circumstances because Your Honor
4 considers the totality of circumstances. And we're
5 not talking about a situation when he was evaluated
6 three to three plus years later where doctors are
7 explaining to him what certain things mean and what
8 certain things are and then asking him if he
9 understands and going over it. We are left to go
10 back to the totality of circumstances back in August
11 of 2008, and what we can construct from that is that
12 we know that he has suffered from intellectual
13 disability since before then. And it's been an
14 ongoing issue for him; we know that. We are not
15 arguing that that in and of itself means that a
16 statement is involuntary. That's just part of the
17 circumstances that we believe this Court should
18 consider.

19 In addition to that, while the State quotes
20 State versus Davis it's misunderstanding from what
21 the Solicitor indicated there was testimony in that
22 case from Doctor Montgomery, I believe was the name
23 used by the solicitor about the defendant's ability
24 to understand along with lay of it. In this case we
25 have uncontradicted evidence he suffers from mental

1 retardation. We also have uncontradicted evidence
2 that the only real effort to make sure he understood
3 his rights was to read a card and say do you
4 understand and then sign a waiver. There was no
5 followup to make sure by any of the officers that he
6 understood. And sometimes I think at these hearings
7 it seems as defense attorneys coming across whether
8 or as arguing that officers should have done more.
9 That's not really what I'm arguing. I'm just
10 arguing that under these circumstance they wouldn't
11 have known to do more, but it was necessary.

12 THE COURT: Well, it sounds like you're
13 arguing that no one who is considered intellectually
14 disabled can give a voluntary statement.

15 MR. HOFFMEYER: No, sir, I don't mean to
16 infer that to the Court. What I'm arguing is that
17 —

18 THE COURT: Under that scenario.

19 MR. HOFFMEYER: One of the circumstances.
20 Along with the circumstances that they didn't know
21 so they didn't ask him further that he suffers from
22 disability. Along with those circumstances we have
23 the fact that by the officer's own testimony,
24 Lieutenant Compton, said that the statement would
25 have occurred after midnight at least so that's

1 another piece of puzzle; that he's there at least
2 eight hours plus before this statement is taken so
3 that's part of the puzzle as well. Your Honor,
4 we're also not just saying that he is mentally or
5 intellectually disabled; but we are pointing to
6 certain specifics, not just because he's got an IQ
7 of 69, he's intellectually disabled therefore he
8 can't give voluntary statement. But because we have
9 brought the evidence of the levels of his
10 intellectual disability related to those particular
11 topics; that it's less than 3 percent as relates to
12 sentence comprehension and less than as the doctor
13 described it for you. And the doctor wasn't saying
14 kindergarteners in terms of what kindergarteners can
15 do and can't do. The doctor was trying to
16 illustrate through an analogy to the Court their
17 understanding in terms of these complex issues. And
18 we don't know the total factual scenario of the
19 cases the Solicitor cited. We're left with these
20 factual situations. You can see a situation where
21 someone with mental retardation is allowed to talk
22 to their family, their parents, whatever the case
23 may be, and then gives a statement just to give an
24 example of the different circumstances. But in this
25 case we are talking about the facts that have been

1 set out before, Your Honor, and again, with the
2 backdrop that based upon the scores and what he has
3 he acquiesces when he does not understand. And I
4 realize Your Honor can certainly consider lay
5 testimony over expert testimony, but what we have
6 brought you is somebody that had the benefit of his
7 entire background to the extent we could provide it
8 and said he would not have understood. And you
9 heard the testimony, Your Honor. That's what our
10 argument is.

11 THE COURT: All right.

12 MR. CLEMENTS: Your Honor, may I submit
13 just two more things. The doctor for the Disability
14 and Special Needs said he's competent to stand
15 trial. If he's competent to stand trial he's
16 competent to enter a guilty plea. He understands
17 his right to a trial, can assist his attorney
18 understands the charges against him. He has also
19 ability to give up his rights and plead guilty.
20 He's competent to do that as well. He's competent
21 to do that, and he's competent to waive his Miranda
22 right to remain silent to give a statement. I mean,
23 those things are just — they're not apples and
24 oranges. They might be a red delicious and a granny
25 smith but those are both apples. And also, Doctor

1 Price, I think begrudgingly said the same thing.
2 He's competent to stand trial, well, at the bare
3 minimum. He's competent to stand trial. Yeah, he
4 can give — he's competent to give a guilty plea.
5 If he's competent to give a guilty plea he's
6 competent to waive his Miranda right. It's the same
7 thing, but more so when you waive your rights and
8 enter a guilty plea than when you waive your rights
9 and give a statement.

10 THE COURT: All right. I want to take the
11 opportunity to -- I want to take these exhibits that
12 have been submitted. I want to look at the case law
13 and weigh your arguments, and I'm going to take it
14 under advisement. I mean, I'll have an answer for
15 y'all tomorrow 'cause I know that this case is up
16 next week so I will have an answer for you tomorrow,
17 but I'm going to take it under advisement and give
18 myself a chance to look at this thing.

19 MR. CLEMENTS: One last thing, Your Honor.
20 I say this so we can get Sergeant Drayton and
21 Sergeant Godwin's help, and I just say before the
22 Court and the public defender, they always are a
23 tremendous help. We want to be sure that
24 Mr. Johnson's rights are fully protected and we do
25 everything right. So what I'm asking them to do

1 along with us is to gather up everything we've got
2 including what might be in record and make sure Mr.
3 Hoffmeyer has the opportunity to — we think he has
4 everything but we want to be sure that we complied
5 with Kyle versus Whitley so we want to make
6 everything available for Mr. Hoffmeyer tomorrow to
7 look through to make sure so I hadn't made a mistake
8 and nothing there. And also, Your Honor, we're
9 going to look at the statement and redact what we
10 think needs to be redacted if you do decide to let
11 it in.

12 THE COURT: Okay.

13 MR. CLEMENTS: And we have the photos that
14 we're going to go over as well so we can kind of see
15 what we can agree on before Monday.

16 THE COURT: All right.

17 MR. CLEMENTS: Thank you.

18 THE COURT: That sounds great. I
19 appreciate y'all doing all that. And like I said,
20 after I have an opportunity to digest all this I'll
21 get y'all. Now let me tell you what I anticipate
22 tomorrow. I'll give you my ruling so y'all will
23 know what you've got as far as preparation and
24 stuff, and then Monday I'll actually put all that on
25 the record because I know we won't have a court

1 reporter tomorrow so. All right, well having said
2 that court will be adjourned till — well, it's
3 adjourned this week. We'll see y'all Monday.

4
5 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
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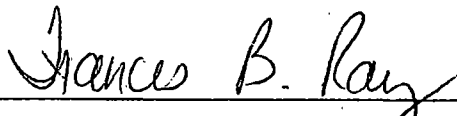
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 12th day of June, 2012.



FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)
STATE,)

v.)

TRANSCRIPT OF RECORD
09-GS-21-1564

DAVID GERRARD JOHNSON,)
DEFENDANT.)

February 13, 2012
Florence, South Carolina

BEFORE :

THE HONORABLE THOMAS A. RUSSO, JUDGE;
AND JURY

APPEARANCES:

E. L. CLEMENTS, III, ESQ.
Solicitor

JOHN C. JEPERTINGER, ESQ.
Assistant Solicitor

W. JAMES HOFFMEYER, ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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EXHIBITS**STATE'S:**

No.	Description	I.D./EVD
1	Aerial map of area	58/104
2	Aerial map of area	58/104
3	Photo of victim (head shot)	58
4	Photo of window	58/104
5	Photo of front of house	58/104
6	Side view of front porch	58/104
7	Closeup of window	58/104
8	Photo of hallway to door	58/104
9	Photo of pillows	58/104
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13	Photo of wall with hook	58/104
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15	Photo of kitchen	58/104
16	Photo from kitchen showing refrigerator	58/104
17	Photo of kitchen w/table	58/104
18	Closeup of kitchen showing window	58/104
19	Photo of table w/vase	58/104
20	Photo of leg of furniture w/candlestick	58/104
21	Photo of window lock	58/104
22	Photo of door	58/104
23	Photo of storage corner	58/104
24	Photo of door	58/104
25	Photo of blue room	58/104
26	Photo of blue room	58/104
27	Photo of wall	58/104
28	Photo of wall	58/104
29	Photo of wall	58/104
30	Photo of wall	58/104
31	Photo of window	58/104
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39	Photo of house through greenery	58/104
40	Photo of mattress	58/104
41	Photo of mattress	58/104
42	Photo of blood on mattress	58/104
43	Photo of recliner showing mattress	58/104

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45	Photo of bed w/evidence markers	58/104
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77	Photo of gold bracelet	58/104
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79	Photo of credit card (SAFE)	58/104
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81	Photo of car in sally port	58/104
82	Photo of Corolla	58/104
83	Photo of Corolla	58/104
84	Photo of front floorboard	58/104
85	Photo of front seat	58/104
86	Photo of trunk	58/104

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1 THE COURT: Ladies and gentlemen,
2 Solicitor, would you like to call the first case for
3 trial, sir.

4 MR. CLEMENTS: If it please the Court,
5 Your Honor, the State would call indictment
6 2009-GS-21-1564. Your Honor, this is a indictment
7 against David Gerrard Johnson. It charges him with
8 multiple counts, Your Honor, of murder, burglary
9 first degree, armed robbery, possession of a weapon
10 during the commission of a violent crime, and
11 conspiracy.

12 THE COURT: All right. Thank you, sir.
13 Ladies and gentlemen, you heard Solicitor Clements
14 call the case for trial that we're going to be
15 trying this week and that is the State of South
16 Carolina versus David Gerrard Johnson. Let me
17 before I get into the case itself, let me mention
18 this to you, ladies and gentlemen. What the
19 Solicitor shared with you, you heard him indicate
20 that Mr. Johnson was charged under indictment number
21 2009-GS-21-1564. An indictment, ladies and
22 gentlemen, is simply a piece of paper or in this
23 case two pieces of paper, that have or that contain
24 the charges or the allegations that the State has
25 made against a defendant, in this case Mr. Johnson.

1 The indictments and the charges and the allegations
2 that are contained therein to those charges,
3 Mr. Johnson had pled not guilty and that plea of not
4 guilty places the burden of proof on the State to
5 prove his guilt. The indictment is simply the
6 allegations.

7 I'm going to go over these charges with you
8 in just a moment, ladies and gentlemen, but the
9 allegations that are contained in this indictment
10 are not evidence against Mr. Johnson. It is simply
11 the allegations of the charges that the State has
12 made against him. The first charge in this
13 indictment, ladies and gentlemen, the State alleges
14 count one, the charge of murder, that David Gerrard
15 Johnson did in Florence County on or about August
16 the 24th of 2008 feloniously, willfully, and with
17 malice aforethought kill one Willie Mae Hayes by
18 means of stabbing her with a knife and that the said
19 Willie Mae Hayes did die as a proximate result of
20 thereof in violation of Section 16-3-10-20 and-60 of
21 South Carolina Code of Laws 1976 as amended.

22 Count two of this indictment alleges a charge
23 of burglary in the first degree and alleges that
24 David Gerrard Johnson did in Florence County on or
25 about August the 24th of 2008 willfully and

1 unlawfully enter the dwelling of Willie Mae Hayes
2 located at 200 West Liberty Street in Florence,
3 South Carolina, without consent and with the intent
4 to commit a crime therein and/or said defendant
5 entered or remained in the said dwelling in the
6 nighttime and/or when effecting entry or while in
7 the dwelling or in immediate flight therefrom he or
8 another participant in the crime was armed with a
9 deadly weapon and/or caused physical injury to a
10 person who is not a participant in the crime and/or
11 used or threatened the use of a dangerous instrument
12 and/or displayed what appeared to be a knife -- and
13 in this case it lists several other things, but I
14 think in this particular cases the statute lists
15 several weapons, but I believe the weapon in this
16 case was a knife. Is that the allegation?

17 MR. CLEMENTS: (Nods.)

18 THE COURT: All of that in violation of
19 Section 16-11-311 and 16-1-69 of the South Carolina
20 Code of Laws as amended. Count three is the charge
21 of armed robbery, and it alleges that David Gerrard
22 Johnson did in Florence County on or about August t
23 he 24th of 2008 while armed with a deadly weapon or
24 while alleging either by actions or words that he
25 was armed while using the representation of a deadly

1 weapon or any object which a person present during
2 the commission of robbery reasonably believed to be
3 a deadly weapon to wit, a knife, did feloniously rob
4 one Willie Mae Hayes by means of force or
5 intimidation of goods or moneys of said Willie Mae
6 Hayes in violation of Section 16-3-30(a) of the
7 South Carolina Code of Laws as amended.

8 Count four on the indictment alleges that
9 David Gerrard Johnson did in Florence county on or
10 about August 24th, 2008, possess and/or visibly
11 displayed a weapon, to wit, a knife, during the
12 commission of a violent crime, to wit, murder,
13 burglary first degree, and/or armed robbery all in
14 violation of Section 16-23-490 of the South Carolina
15 Code of Laws as amended. And in Count 5 on the
16 indictment alleges conspiracy and alleges that David
17 Gerrard Johnson did in Florence County on or about
18 August 24th of 2008 unlawfully, willfully,
19 knowingly, wickedly and feloniously unite, combine,
20 conspire, confederate, agree between and among three
21 other co-defendants and have as to it understanding
22 each other for the purpose of committing the crimes
23 of murder, burglary first degree, and/or armed
24 robbery all in violation of Section 16-17-410 of the
25 South Carolina Code of Laws as amended.

1 Now as I said, ladies and gentlemen, to each
2 of these charges Mr. Johnson has pled not guilty and
3 that plea of not guilty place, as I said, the burden
4 of proof on the State to prove each allegation of
5 these charges beyond a reasonable doubt. Is there
6 any member of jury panel who knows anything about
7 this case based on what I've shared with you from
8 the indictment or the allegation contained in the
9 indictment, if so, please stand.

10 (There was no response.)

11 THE COURT: Thank you, there are none.

12 I apologize, there is someone. All right,
13 ma'am, let me get you to come forward if I could
14 please. Come on up here please. Thank you.

15 (Potential juror approached the Bench for an
16 on-the-record discussion.)

17 THE COURT: Your name, ma'am?

18 THE POTENTIAL JUROR: My name is Tiffany
19 Murray.

20 THE COURT: Ms. Murray, give me one second
21 here. Let me find you here.

22 MR. CLEMENTS: 130, Your Honor.

23 THE COURT: Juror number 130. Ms. Murray,
24 what do you know?

25 THE POTENTIAL JUROR: I am not a family

1 member. She's my client and I live in the
2 neighborhood that it happened at.

3 THE COURT: Ms. Hayes is your client?

4 THE POTENTIAL JUROR: The Johnson family,
5 her daughter, Daisy Johnson is my client. I am a
6 hair dresser. I wish to be excused because I do
7 know the family. Is that a reason to be excused?

8 THE COURT: Yeah. I mean, in other words,
9 that relationship or that understanding that you
10 have, would that affect your ability to be fair and
11 impartial?

12 THE POTENTIAL JUROR: I would be fair, but
13 I just don't want that overhead. I just wouldn't
14 feel comfortable on that case. I am -- I do her
15 hair, the sister's hair.

16 THE COURT: I understand. Have you had
17 any conversation as far as you know about this case?

18 THE POTENTIAL JUROR: Well, I haven't
19 discussed the case. We haven't heard anything.
20 That's something you don't want to talk about so
21 like that happened in the neighborhood.

22 THE COURT: You would not be comfortable
23 being on this case?

24 THE POTENTIAL JUROR: (Nods.)

25 THE COURT: All right.

1 THE POTENTIAL JUROR: The case happened on
2 Liberty Street. I don't know her brother per se. I
3 don't know him but —

4 THE COURT: Okay.

5 THE POTENTIAL JUROR: I don't know him but
6 I know her as a client.

7 THE COURT: Right, I understand.

8 THE POTENTIAL JUROR: I know the mother.
9 I have did the mother hair in the past.

10 THE COURT: Mother and sister.

11 THE POTENTIAL JUROR: It's an aunt and
12 sister, uh-huh.

13 THE COURT: All right. That would put you
14 in a bad position.

15 THE POTENTIAL JUROR: I think so to be on
16 trial. And she do come and get her hair done, and
17 she come get hair done. I can't discuss any of that
18 information and so I'm on that trial. That's my
19 opinion. You ask me did I know.

20 THE COURT: Yeah, I understand.

21 THE POTENTIAL JUROR: I don't know per se
22 what happened, but you know —

23 THE COURT: Yes, ma'am.

24 MR. HOFFMEYER: May I ask something,
25 Judge? Just to clarify for me initially, the

1 potential juror said that she can be fair. I think
2 the concern that she's raising is in the future
3 depending on what happens being able to have that
4 same relationship with the mother of the defendant,
5 sister of the defendant, and I don't know that that
6 would disqualify her. She said she could be fair.

7 THE COURT: Well —

8 THE POTENTIAL JUROR: I mean, I don't
9 want — I don't know anything about the case.

10 MR. HOFFMEYER: Yes, ma'am.

11 THE COURT: Let me ask you this, he's —
12 I'm talking about — I'm saying be fair. If after
13 listening to all of the evidence, understanding the
14 State has the burden, that the State has to prove
15 someone guilty of a crime beyond a reasonable doubt,
16 if after the conclusion of that case you felt that
17 based on the evidence either he was not guilty or
18 was guilty, could you go with what you —

19 THE POTENTIAL JUROR: In my opinion, yeah,
20 I would give my opinion. Yeah, I would have to do
21 what I have to do; but I just don't feel comfortable
22 being on it being that I do her hair.

23 THE COURT: Right. Got a position on it,
24 Solicitor?

25 MR. CLEMENTS: Your Honor, somebody

1 knowing somebody that closely would be uncomfortable
2 I would think that would put them in a position
3 where —

4 THE POTENTIAL JUROR: I mean, the sister
5 was just there last week.

6 MR. CLEMENTS: It might be hard for them
7 to deliberate with a free conscious, free mind.

8 THE POTENTIAL JUROR: If he's guilty I
9 wouldn't know how to —

10 THE COURT: I understand.

11 MR. CLEMENTS: I didn't think it would be
12 inappropriate to excuse the juror, Your Honor.
13 That's the State's position.

14 THE COURT: Well, Ms. Murray has indicated
15 that she could be fair and impartial. I respect you
16 for that. I agree with that.

17 THE POTENTIAL JUROR: I don't want — I
18 don't know him. I wanted to come up here and say
19 that.

20 THE COURT: Let me ask you this, when you
21 go back to your seat just don't have any
22 conversation with anybody in the jury panel about
23 the case or about knowing them or anything like
24 that. And I'm gonna think about it for a moment and
25 let you know. Go ahead and have a seat if you

1 would.

2 Come on up here.

3 (WHEREUPON, counsel approached the Bench
4 for an off-the-record discussion.)

5 THE COURT: The concern I have is with the
6 juror who clearly doesn't want to serve because it
7 puts her in a very difficult position although she
8 can say she can be fair and impartial.

9 MR. CLEMENTS: Well, it would affect
10 pecuniary interest because if she decides against
11 them they might not come to get their hair done
12 there anymore.

13 MR. HOFFMEYER: All I can go by she said
14 she could be fair.

15 MR. JEPERTINGER: But I think part of the
16 danger that we have in seating her is that somebody
17 extraneous other than evidence would enter that jury
18 room in terms of deliberation and that would be what
19 effect is this going to have if I have to rule
20 against him.

21 MR. HOFFMEYER: Well of course she's going
22 to be instructed by the Court as to what can be
23 considered back in that jury room, and she
24 reiterated more than once she could be fair and
25 impartial. And I believe the Court asked her if she

1 thought the evidence show guilty or the burden had
2 been met she could do what she thought was
3 appropriate.

4 MR. CLEMENTS: Well, Your Honor, there's
5 potential there to —

6 THE COURT: The concern I have is —

7 MR. CLEMENTS: Well, there's plenty of
8 other jurors that don't have this predicament—

9 THE COURT: I understand.

10 MR. CLEMENTS: —that can be fair and
11 impartial.

12 THE COURT: I'm going to excuse her. I
13 think the problem that I have, I appreciated her
14 response that I believe she's telling me but she
15 said that if he were to be guilty that she doesn't
16 know how she could every face them. And there's a
17 pecuniary interest there that they're clients of
18 hers, and I'm afraid that could enter into. We've
19 got plenty of jurors at this point that may come
20 back to — let me put it this way, I'm going to —
21 we're gonna go ahead and do qualification that I can
22 see —

23 MR. CLEMENTS: And see where we stand.

24 THE COURT: I'm inclined if we have enough
25 jurors, I'm going to be inclined to excuse her; but

1 I'll let you know that before we get to the
2 selection process so you will know how to handle it.

3 MR. HOFFMEYER: What number was she?

4 THE COURT: Number 130.

5 MR. CLEMENTS: 130.

6 MR. HOFFMEYER: Thank you. Okay.

7 (End of Bench conference.)

8 THE COURT: All right. Ladies and
9 gentlemen, I'm going to — there are obviously there
10 are lawyers and folks here and that will be
11 participating throughout the course of this trial.
12 And I'm gonna get them to introduce themselves and
13 then I'll have some additional questions for you.
14 Solicitor, I'll begin with you, sir. If you would
15 introduce yourself and your table there please.

16 MR. CLEMENTS: Thank you, Your Honor.
17 Good afternoon, ladies and gentlemen of the jury, my
18 name is Ed Clements and I'm the solicitor here for
19 the Twelfth Judicial Circuit, Florence and Marion
20 Counties. Here seated with me and will be helping
21 me try this case is deputy solicitor John
22 Jepertinger. Christine Von Lutcken who is my
23 administrative assistant. Clerical staff is here
24 with us seated here helping us with the trial. The
25 other attorneys in my office are Mr. Robert Wells,

1 Ms. Patricia Singleton Parr, Mr. Steven Hill,
2 Ms. Catherine Anderson, Mr. Todd Tucker, Mr. Mat
3 Ozment, and also working with us over in Marion
4 part-time is Mr. FitzLee McEachin, and also working
5 in magistrate court we have Ms. Emily Creighton.
6 And I believe that's all the attorneys we have.
7 Thank you.

8 THE COURT: Thank you, Solicitor.

9 Ladies and gentlemen, is there any member of
10 the jury panel who is either related by blood,
11 connected by marriage, or who has any close business
12 or personal relationship with any of the attorneys
13 associated with the Solicitor's office or who has
14 been represented in the past by any of those folks,
15 if so, please stand.

16 All right. Let me begin up front here.
17 Ma'am, your name please.

18 THE POTENTIAL JUROR: Kimberly Scott, 152.

19 THE COURT: All right. Ms. Scott, and who
20 on the Solicitor's do you know or are related to?

21 THE POTENTIAL JUROR: Pat Parr, I know
22 her.

23 THE COURT: All right. Now ma'am, the
24 fact that you know Ms. Parr and have that
25 relationship would that in any way affect your

1 ability to be fair impartial giving both the State
2 and the Defense a fair trial?

3 THE POTENTIAL JUROR: No.

4 THE COURT: Thank you very much, ma'am.
5 You may have a seat.

6 Ma'am, your name?

7 THE POTENTIAL JUROR: Ann Parks.

8 THE COURT: Ms. Parks, this is juror 136.

9 THE POTENTIAL JUROR: Ed Clements and his
10 son and my daughter go to school together.

11 THE COURT: All right. Ma'am, the fact
12 that you know the Clements family in that way would
13 that in any way affect your ability to be fair and
14 impartial?

15 THE POTENTIAL JUROR: No.

16 THE COURT: Thank you, Ms. Parks. You may
17 have a seat.

18 Anyone else?

19 (There was no response.)

20 THE COURT: All right, ladies and
21 gentlemen. Mr. Hoffmeyer, if you would introduce
22 yourself as well as your client, sir.

23 MR. HOFFMEYER: Yes, sir, Your Honor. My
24 name is Jim Hoffmeyer. I have a law office here in
25 Florence and this is my client Mr. David Johnson.

1 Please stand up. Face the jury would you.

2 Come right here. This is my client. And
3 this is Ms. Francie Benton who is a paralegal in my
4 office who is helping this morning.

5 THE COURT: Thank y'all very much. Ladies
6 and gentlemen, first let me begin with Mr.
7 Hoffmeyer, is there any member of the jury panel two
8 who is related by blood, connected by marriage, or
9 who has any close business or personal relationship
10 with Mr. Hoffmeyer or who has been represented by
11 Mr. Hoffmeyer, if so, please stand. Yes, ma'am.

12 THE POTENTIAL JUROR: Jim Hoffmeyer is my
13 cousin.

14 THE COURT: Your name please.

15 THE POTENTIAL JUROR: Tracy Christmas.

16 THE COURT: All right. Ms. Christmas,
17 juror number 35. What degree of relationship, first
18 cousin, second cousin?

19 THE POTENTIAL JUROR: Probably second, I
20 believe.

21 THE COURT: Ms. Christmas, let me ask, the
22 fact that Mr. Hoffmeyer and you are related to some
23 degree would that in any way affect your ability to
24 be fair and impartial?

25 THE POTENTIAL JUROR: No.

1 THE COURT: All right. Thank you very
2 much, ma'am. You may have a seat.

3 Yes, sir.

4 THE POTENTIAL JUROR: David Dubose, number
5 48.

6 THE COURT: All right, Mr. Dubose.

7 THE POTENTIAL JUROR: Mr. Hoffmeyer and I
8 were roommates at the University of South Carolina
9 for three years.

10 THE COURT: All right. The fact that you
11 had that relationship and experience with Mr.
12 Hoffmeyer, would that in any way affect your
13 ability to be fair and impartial?

14 THE POTENTIAL JUROR: I don't think so,
15 no, sir.

16 THE COURT: All right, sir. Thank you
17 very much, Mr. Dubose. You may have a seat.

18 Anyone else?

19 (There was no response.)

20 THE COURT: All right. Now ladies and
21 gentlemen, you met Mr. Johnson, David Johnson. Is
22 there any member of the jury panel who is related by
23 blood, connected by marriage, or who has any close
24 business or personal relationship with Mr. David
25 Johnson, if so, please stand.

1 (There was no response.)

2 THE COURT: Thank you. There are none.

3 Now ladies and gentlemen, I'm gonna call out a list
4 of names. These names that I'm gonna call out are
5 folks that are possible or potential witnesses that
6 may appear during the course of this trial. When I
7 first look at this list I would venture to tell you
8 that not everyone of these people are going to
9 testify; however, these are all subject to
10 testifying so it's important that I call these names
11 out and you listen carefully. The question that I
12 just asked you as it related say, for example, to
13 Mr. Johnson, that is, are you related by blood,
14 connected by marriage, or have any close business or
15 personal relationship with any of these folks,
16 that's the question that I'm going to be asking of
17 you. As I go through these names, if you hear a
18 name and that question applies to you, go ahead and
19 stand as soon as you hear the name, but continue to
20 listen 'cause there are bunch of names that I'm
21 gonna be calling out. It may be that you know more
22 than one of the folks that are gonna be a potential
23 witness so please listen carefully as I go through
24 this list. It is somewhat lengthy, but if you hear
25 a name that triggers that question for you, go ahead

1 and stand and keep listening.

2 All right. Michael Beckham, Mike Brandt, Tim
3 Compton, Lawrence David, Larry Drayton, Terrance
4 Ford, Melvin Godwin, Allen Heidler, Shannon Hill,
5 Chase Izeman, Llewellyn Jordan, London Jordan, Chris
6 Moreau, Thomas Bo Myers, Carlos Raines, Chris
7 Walters, Keith Von Lutcken, Adam Moore, Erin
8 Presnell, David Black, Maryann Boehm, Jeremy Weis,
9 Gordon E. Brown, Jr., Alicia V. Hall, Chris Antwine,
10 Rashawn Bailey, Curly Dolford, Wilma Hayes Epps,
11 Rakim Floyd, Brittany Fludd, David Hayes, Leah
12 Mitchell, Terrance Mitchell, Gregory Montgomery,
13 Anthony Wilson, David Price. Okay. Now let me
14 begin over here.

15 Sir, your name please.

16 THE POTENTIAL JUROR: My name is Ron
17 Pruitt.

18 THE COURT: All right, Mr. Pruitt, this is
19 juror 142. Who on that list, Mr. Pruitt?

20 MR. HOFFMEYER: Mr. Keith Lutcken I know
21 as a friend. I may have misunderstood your question
22 earlier. No business or not close personal
23 relationship, but I have had some dealing with Keith
24 in the past.

25 THE COURT: All right. Well, let me ask

1 you, sir. The fact that you've had that
2 relationship with Officer Lutcken, would that in any
3 way affect your ability to be fair and impartial if
4 he were to be a witness in this case?

5 THE POTENTIAL JUROR: No, sir.

6 THE COURT: Thank you very much. You may
7 have a seat.

8 Let me start on the far end over here.

9 Ma'am, your name please.

10 THE POTENTIAL JUROR: Natalie Howell.

11 THE COURT: Ms. Howell, juror number 86.

12 Ms. Howell, who on that list does that apply?

13 THE POTENTIAL JUROR: Keith Lutcken.

14 THE COURT: All right. You're not
15 related, just know him?

16 THE POTENTIAL JUROR: He and I worked
17 together previously, worked with the Florence County
18 Sheriff's Office.

19 THE COURT: All right. During that — the
20 fact you've had that with relationship with Officer
21 Lutcken, would that in any way affect your ability
22 to be fair and impartial giving both the State and
23 the Defense a fair trial?

24 THE POTENTIAL JUROR: No, sir.

25 THE COURT: Thank you, Ma'am. You may

1 have a seat.

2 Ma'am, your name please.

3 THE POTENTIAL JUROR: Lisa McKnight.

4 THE COURT: Juror number 117, Ms.

5 McKnight. Who on that list?

6 THE POTENTIAL JUROR: Chris Walters.

7 THE COURT: Are you related to Chris
8 Walters or just know Chris Walters?

9 THE POTENTIAL JUROR: Just know him.

10 THE COURT: The fact that you have that
11 relationship, would that in any way affect your
12 ability to be fair and impartial?

13 THE POTENTIAL JUROR: No, sir.

14 THE COURT: Thank you very much, ma'am.
15 You may have a seat.

16 Yes, ma'am, in the back please.

17 THE POTENTIAL JUROR: Charlene Thompson.

18 THE COURT: Ms. Thompson, this is juror
19 162.

20 THE POTENTIAL JUROR: Chris Antwine.

21 THE COURT: All right. And would that in
22 any way affect your ability to be fair and
23 impartial?

24 THE POTENTIAL JUROR: No.

25 THE COURT: Thank you very much,

1 Ms. Thompson. You may have a seat.

2 Is there any member of the jury panel or a
3 member of your, a close member of your family, who
4 has ever been prosecuted or charged with a criminal
5 offense, had been prosecuted by the Twelfth Circuit
6 Solicitor's Office, or has been charged with a
7 criminal offense whether or not the case was
8 dismissed or pursued, if so, please stand. All
9 right.

10 You just told me, ma'am, I forgot your name.

11 THE POTENTIAL JUROR: Tracy Christmas.

12 THE COURT: Ms. Christmas. Yourself or
13 family member, ma'am?

14 THE POTENTIAL JUROR: Family member.

15 THE COURT: Would that in any way, that
16 experience in any way, affect your ability to be
17 fair and impartial?

18 THE POTENTIAL JUROR: No.

19 THE COURT: All right. Thank you very
20 much, ma'am. You may have a seat.

21 Yes, ma'am, your name please.

22 THE POTENTIAL JUROR: Darlene Keith, 95.

23 THE COURT: All right. Ms. Keith,
24 yourself or family member?

25 THE POTENTIAL JUROR: Family member,

1 nephew.

2 THE COURT: Would that in any way affect
3 your ability to be fair and impartial giving both
4 the State and the Defense a fair trial?

5 THE POTENTIAL JUROR: Possibly. I'm not
6 going to say for sure, no.

7 THE COURT: Well, I'm gonna set you aside
8 if you think that could possibly affect your
9 ability, but I'm gonna get you to have a seat,
10 Ms. Keith, but I'm gonna set your name aside, okay.
11 Thank you very much. Juror 95.

12 Is there any member of the jury panel or
13 member of your immediate family who has ever been
14 the victim of a crime, if so, please stand.

15 (There was no response.)

16 THE COURT: Thank you. There are none.
17 Is there any member of the jury panel or member of
18 your immediate family who has ever worked in law
19 enforcement whether it be in South Carolina or any
20 other state, if so, please stand. All right.

21 Let me start over here. Ma'am, your name
22 please.

23 THE POTENTIAL JUROR: Juror number 22,
24 Angela Brooks.

25 THE COURT: All right. Ms. Brooks,

1 currently or formerly?

2 THE POTENTIAL JUROR: Currently.

3 THE COURT: All right. And family member?

4 THE POTENTIAL JUROR: Yes, sir.

5 THE COURT: All right. And who do they
6 work for if you know?

7 THE POTENTIAL JUROR: Highway patrol,
8 state trooper.

9 THE COURT: Now the fact that you have a
10 family member who works with the South Carolina
11 highway patrol, would that in any way affect your
12 ability to be fair and impartial, ma'am?

13 THE POTENTIAL JUROR: No, sir.

14 THE COURT: Thank you very much. You may
15 have a seat.

16 All right, I'm gonna start on this side.
17 Ma'am, your name please.

18 THE POTENTIAL JUROR: Dian Graham, number
19 67.

20 THE COURT: All right. And Ms. Graham,
21 yourself or family member?

22 THE POTENTIAL JUROR: Family member.

23 THE COURT: Currently work or used to
24 work?

25 THE POTENTIAL JUROR: Currently.

1 THE COURT: And he's sheriff in here in
2 Florence County?

3 THE POTENTIAL JUROR: No, Sumter County.

4 THE COURT: Sumter county. Ma'am, the
5 fact that you have that relationship in your family,
6 would that in any way affect your ability to be fair
7 and impartial?

8 THE POTENTIAL JUROR: No, sir.

9 THE COURT: Thank you very much,
10 Ms. Graham.

11 Sir, your name please.

12 THE POTENTIAL JUROR: Patrick Nettles.

13 THE COURT: All right, Mr. Nettles. This
14 is juror 131. Yourself or a family member?

15 THE POTENTIAL JUROR: Family member. My
16 father was a constable here in Florence County.

17 THE COURT: The fact you've had that
18 relationship in law enforcement, would that in any
19 way affect your ability to be fair and impartial?

20 THE POTENTIAL JUROR: No, sir.

21 THE COURT: Thank you, sir, I appreciate
22 that.

23 Ma'am, your name please.

24 THE POTENTIAL JUROR: Linda Davis.

25 THE COURT: Ms. Davis, okay.

1 THE JUROR: Number 42.

2 THE COURT: Number 42. Ms. Davis,
3 yourself or a family member?

4 THE POTENTIAL JUROR: Family member, my
5 sister.

6 THE COURT: All right, and —

7 THE POTENTIAL JUROR: Serve as a police
8 officer.

9 THE COURT: What agency, ma'am?

10 THE POTENTIAL JUROR: Postal service.

11 THE COURT: The fact that you have that
12 relationship in your family, would that in any way
13 affect your ability to be fair and impartial?

14 THE POTENTIAL JUROR: No.

15 THE COURT: Thank you, Ma'am. You may
16 have a seat.

17 Your name, ma'am?

18 THE POTENTIAL JUROR: Susan Tedder, 161.

19 THE COURT: All right, Ms. Tedder?
20 Currently or formerly?

21 THE JUROR: Currently.

22 THE COURT: What agency?

23 THE POTENTIAL JUROR: North Carolina state
24 highway patrol.

25 THE COURT: Ma'am, the fact that you have

1 that relationship in your family, would that in any
2 way affect your ability to be fair and impartial?

3 THE POTENTIAL JUROR: No, sir.

4 THE COURT: Thank you, Ms. Tedder. You
5 may have a seat.

6 Ma'am, your name please.

7 THE POTENTIAL JUROR: Gloria Johnson, 91.

8 THE COURT: Ms. Johnson, give me one
9 second. Ms. Johnson, currently employed or formerly
10 employed?

11 THE POTENTIAL JUROR: Formerly.

12 THE COURT: And what agency?

13 THE POTENTIAL JUROR: Highway patrol
14 office, that's all I know.

15 THE COURT: Ma'am, the fact that you have
16 that relationship in your family, would that in any
17 way affect your ability to be fair and impartial?

18 THE POTENTIAL JUROR: No.

19 THE COURT: Thank you very much, ma'am.

20 And ma'am, you gave me your name earlier, I'm
21 sorry.

22 THE POTENTIAL JUROR: Natalie Howell, 86.

23 THE COURT: Ms. Howell, okay. And
24 Ms. Howell, you formerly, correct?

25 THE POTENTIAL JUROR: Yes, sir.

1 THE COURT: And anyone else in your
2 family?

3 THE POTENTIAL JUROR: Just myself.

4 THE COURT: Ma'am, the fact that you've
5 had that experience former experience in law
6 enforcement, would that in any way effect your
7 ability to be fair and impartial?

8 THE POTENTIAL JUROR: No, sir.

9 THE COURT: Thank you very much. You may
10 have a seat.

11 The gentleman behind, yes, sir?

12 THE POTENTIAL JUROR: Rudy Blaine.

13 THE COURT: Juror 19, okay. Mr. Blaine, I
14 know that you work security at Santee Cooper,
15 correct?

16 THE POTENTIAL JUROR: Yes, sir.

17 THE COURT: Any other members of your
18 family work involved in law enforcement?

19 THE POTENTIAL JUROR: No, formerly.

20 THE COURT: All right.

21 THE POTENTIAL JUROR: You want names?

22 THE COURT: Well, do you know where they
23 work?

24 THE POTENTIAL JUROR: Sheriff deputy,
25 sheriff.

1 THE COURT: All right. The fact that you
2 have these relationships in law enforcement would
3 that in any way affect your ability to be fair and
4 impartial, sir?

5 THE POTENTIAL JUROR: No, sir.

6 THE COURT: Thank you very much,
7 Mr. Blaine. You may have a seat.

8 Yes, ma'am.

9 THE POTENTIAL JUROR: Shannon Anderson,
10 number 7.

11 THE COURT: Ms. Anderson.

12 MR. HOFFMEYER: I have an uncle who works
13 for the Florence County Detention Center.

14 THE COURT: All right. Would that
15 relationship in any way affect your ability to be
16 fair and impartial, ma'am?

17 THE POTENTIAL JUROR: No, sir.

18 THE COURT: Thank you very much. You may
19 have a seat.

20 Yes, sir, again.

21 THE POTENTIAL JUROR: David Dubose.

22 THE COURT: Dubose.

23 THE POTENTIAL JUROR: My father-in-law is
24 working with the Florence County Sheriff's
25 Department and my brother-in-law with the governor's

1 detail.

2 THE COURT: All right. Mr. Dubose, the
3 fact that you have those relationships, would that
4 would that in any way affect your ability to be fair
5 and impartial?

6 THE POTENTIAL JUROR: No, sir.

7 THE COURT: Thank you, sir.

8 THE POTENTIAL JUROR: Tracy Christmas, my
9 son-in-law is a deputy sheriff in Marion County and
10 my daughter works magistrates court in Marion
11 County.

12 THE COURT: Ma'am, would that affect your
13 ability to be fair and impartial?

14 THE POTENTIAL JUROR: No.

15 THE COURT: Thank you.

16 THE POTENTIAL JUROR: Ms. Parks, 136. My
17 brother was a deputy sheriff and DARE officer in
18 Greenwood County.

19 THE COURT: All right. And Ms. Parks,
20 would that have any affect on your ability to be
21 fair and impartial?

22 THE POTENTIAL JUROR: No, sir.

23 THE COURT: Yes, ma'am.

24 THE POTENTIAL JUROR: If I can add one.
25 Number 2, Angela Brooks, I've got a cousin that

1 works with the Sheriff's Department.

2 THE COURT: No, ma'am, it won't bother me.
3 It will not affect your ability?

4 THE POTENTIAL JUROR: No, sir.

5 THE COURT: Thank you very much,
6 Ms. Brooks.

7 Is there any member of jury panel who has
8 ever been a member of a grand jury whether it be
9 Florence or elsewhere, if so, please stand.

10 (There was no response.)

11 THE COURT: Member of a grand jury?

12 (There was no response.)

13 THE COURT: Thank you. There are none.

14 Ladies and gentlemen, is there any member of the
15 jury panel who has either been a contributor either
16 financially by way of donation or by way of donating
17 your time or services to any of the following
18 organizations or organizations of these types:

19 MADD, Mother's Against Drunk Drivers; SADD, Students
20 Against Drunk Driving; CAVE, Citizens Against
21 Violence; South Carolina Association, South Carolina
22 Sheriff's Association, any of those types of
23 organizations that you've either been a contributor
24 either financially or by volunteering of your time,
25 if so, please stand. All right.

1 And first I have here Ms. Brooks would be
2 juror number 22.

3 THE POTENTIAL JUROR: Yes, sir.

4 THE COURT: Ma'am, the fact that you've
5 had those, that relationship with those
6 organizations, would that in any way affect your
7 ability to be fair and impartial if you were
8 selected for this case?

9 THE POTENTIAL JUROR: No, sir.

10 THE COURT: Thank you very much, ma'am.
11 Yes, sir, your name please.

12 THE POTENTIAL JUROR: Griffith Henry,
13 number 80.

14 THE COURT: All right. Mr. Henry, the
15 fact that you have been a contributor for those
16 types of organizations, would that in any way affect
17 your ability to be fair and impartial, sir?

18 THE POTENTIAL JUROR: No, sir.

19 THE COURT: Thank you, Mr. Henry. And I
20 think Ms. Davis, correct?

21 THE POTENTIAL JUROR: Davis, Linda Davis.

22 THE COURT: All right, Ms. Davis. Ma'am,
23 the fact that you've been a contributor to those
24 organizations, would that in any way affect your
25 ability to be fair and impartial?

1 THE POTENTIAL JUROR: No, it wouldn't.

2 THE COURT: Thank you very much.

3 And I think Ms. Tedder, correct?

4 THE POTENTIAL JUROR: South Carolina
5 Trooper's association, and no, sir, it wouldn't
6 affect.

7 THE COURT: Thank you very much,
8 Ms. Tedder.

9 Is there any member of the jury panel who has
10 either read in the paper or seen on the news or read
11 on the internet, is there any member of the jury
12 panel who knows anything about this case from any
13 media outlet or any source that may have carried
14 something — I don't know if there have been — but
15 just asking if there has been, is there any member
16 of the jury panel who knows anything about this case
17 based on your reading of either newspapers, media,
18 whether it be internet, or Twitter or Facebook or
19 television, if so, please stand.

20 (There was no response.)

21 THE COURT: Thank you, there are none.
22 Ladies and gentlemen, I've gone through a lot of
23 questions here; and if you haven't already picked up
24 on it, obviously the purpose of asking these
25 questions is to determine if you can be fair and

1 impartial. All of the questions end with that
2 premise, that question, as you can tell from what
3 I've asked. I could ask you questions all afternoon
4 to try to determine your ability to be fair and
5 impartial, and it may be that I hit on a question
6 that many of you have answered and we could be here
7 all day. But you understand that any time, whether
8 it be this case or any case we try, whether it be a
9 criminal or civil case, the objective is to impanel
10 a jury that can set aside any outside influences,
11 listen to the evidence, listen to the facts, listen
12 to the case, and base your decision solely on the
13 evidence that is presented during the course of this
14 trial eliminating any outside influences. That's
15 the goal. And to find a jury of folks that can
16 listen and give both the State and the Defense a
17 fair trial and base your verdict solely on the facts
18 and evidence presented during the course of that
19 trial and on nothing else. That's the goal of these
20 questions and trying to go about selecting a jury.

21 So I'm gonna ask because I don't want it to
22 come up that I didn't ask a particular question, is
23 there any reason -- and I'm asking basically this as
24 a catchall -- is there any member of the jury panel
25 who knows of any reason why you would not be able to

1 be fair and impartial if you were selected as a
2 member of this jury panel giving both the State and
3 the Defense a fair trial? Is there any member of
4 the jury panel who knows of any reason that you
5 would not be able to do that, if so, please stand.

6 All right, let me, now -- ma'am, your name
7 again?

8 THE POTENTIAL JUROR: Darlene Keith.

9 THE COURT: Ms. Keith, I've already taken
10 your name out so you're okay.

11 But sir, if I can get you to come forward
12 please.

13 (Potential juror approached the Bench for an
14 on-the-record discussion.)

15 THE COURT: If I could get your name.

16 THE POTENTIAL JUROR: Johnathan McGee,
17 Johnny.

18 THE COURT: All right, sir.

19 MR. JEPERTINGER: I'm in a wrongful death
20 suit now with my son.

21 THE COURT: That's okay, take your time.
22 That is basically your emotions and everything are
23 tied up in this?

24 THE POTENTIAL JUROR: (Nods.)

25 THE COURT: Let me ask you this, just ask

1 you, you're involved with that, having to deal with
2 that now is what you're telling me is that you're
3 not able to serve on this jury and give a fair
4 verdict in this matter?

5 THE POTENTIAL JUROR: Yes, sir.

6 THE COURT: All right. Jim, did you hear?

7 MR. HOFFMEYER: No, I'm sorry.

8 MR. CLEMENTS: He's involved in a wrongful
9 death suit.

10 THE COURT: So I'm going to excuse him
11 from this case. Mr. McGee, you just go back and
12 have a seat. I'm going to excuse you.

13 THE POTENTIAL JUROR: Thank you, sir.

14 MR. HOFFMEYER: Can I ask you about 95,
15 the one, I'm not sure.

16 THE COURT: She said that she didn't know
17 whether or not she could be fair and impartial.

18 MR. HOFFMEYER: Okay.

19 THE COURT: Asked her, I said, the fact
20 that you have that situation could you be fair and
21 impartial. She said I don't know if I could or not.

22 MR. CLEMENTS: She said I don't think so.

23 MR. HOFFMEYER: Okay, I didn't hear that.

24 THE COURT: That's the reason I said that
25 at the bench. Based on the numbers we have I'm

1 going to set Ms. Byrd aside as well.

2 MR. CLEMENTS: That's number? That's
3 number 130.

4 (End of bench conference.)

5 THE COURT: Let me inquire of the State,
6 are there any further questioning asked for by the
7 State?

8 MR. CLEMENTS: Your Honor, it just
9 occurred, one of the voir dire questions, ask if
10 they were contributors to several organization, we'd
11 like to add one organization to that, if anybody is
12 a contributor or participates in the ACLU.

13 THE COURT: Is any member of the jury
14 panel or member of your immediate family who is a
15 contributor or member of the ACLU, if so, please
16 stand.

17 (There was no response.)

18 THE COURT: Thank you. There are none.
19 Anything further, sir?

20 MR. CLEMENTS: No, Your Honor, thank you.

21 THE COURT: Any further questions from
22 Defense?

23 MR. HOFFMEYER: No, sir, Your Honor.
24 Thank you very much.

25 THE COURT: All right. Ladies and

1 gentlemen, let me give you a little explanation of
2 how we go about drawing jurors here in general
3 sessions court. Your names, those of you who I've
4 excused your names have been taken off of the list.
5 But those of you who remain, your juror list which
6 has you listed in alphabetical order, but what the
7 computer does is it takes that list and Madam Clerk
8 will hit a certain key and it takes that list and it
9 completely takes your names and jumbles them up in
10 random order and creates a new list and it's a
11 complete random list. It throws out — it's
12 basically the same thing as what we used to do. And
13 that is, put your name in here, spin it around,
14 reach in, and pull a name out. That's essentially
15 what the computer is doing and so there's no order
16 to it.

17 It may, like for example, if I was on the
18 juror roster, and I'm Tommy Russo, and I was juror
19 134 I may end up on this new list and be juror
20 number 5. I just — just don't know. It takes your
21 names randomly reorders them, and it makes a new
22 list. From that new list Madam Clerk will start at
23 the top and call your name, call the names. If she
24 calls your name I would ask that you please come
25 forward. Come around to the little swinging gate

1 here and come up where the microphone is, stand next
2 to this microphone, and face the back of the
3 courtroom as I'm doing. Once you're up here at the
4 front she will ask of the State something along
5 these lines, what say you for the State. And the
6 State will have the right to either excuse you or to
7 present you. If they excuse you you'll go back and
8 have a seat. If they present you you'll just remain
9 standing. And then she'll ask of the Defense
10 something along these lines, what say you for the
11 Defense. The Defense has the same options. They
12 can either excuse you, and if they excuse you you'll
13 go back and have a seat in the audience. Or they
14 can seat you. And if they seat you then you'll come
15 around and have a seat in the jury box. And we'll
16 go through that process until we've selected our
17 jury.

18 Now there's no way of knowing when your name
19 is called if you're going to be selected or excused.
20 So when your name is called, or if your name is
21 called and you come forward, please bring with you
22 any items that you may have brought to the courtroom
23 because if you are selected you're gonna come
24 around, have a seat in the jury box, so just make
25 sure that if you hear your name called bring with

1 you any items that you brought to the courtroom with
2 you, okay.

3 Is the State ready to proceed to jury strike?

4 MR. CLEMENTS: We are, Your Honor.

5 THE COURT: Defense ready?

6 MR. HOFFMEYER: Yes, sir, Your Honor.

7 THE COURT: All right. Five and ten,
8 gentlemen.

9 THE CLERK OF COURT: 131, Patrick Nettles
10 (black male). What say the State?

11 MR. CLEMENTS: Please present Mr. Nettles.

12 THE CLERK OF COURT: What say the
13 Defendant?

14 MR. HOFFMEYER: Please seat, Mr. Nettles.

15 THE CLERK OF COURT: Please have a seat in
16 the jury box.

17 15, T. D. Belflower (white male). What say
18 the State?

19 MR. CLEMENTS: Please present
20 Mr. Belflower.

21 THE CLERK OF COURT: What say the
22 Defendant?

23 MR. HOFFMEYER: Please excuse
24 Mr. Belflower from this trial.

25 THE CLERK OF COURT: You've been excused

1 from this trial, Mr. Belflower. You may return to
2 your seat.

3 118, Ashley McMillian (white female). What
4 say the State?

5 MR. JEPERTINGER: Beg the Court's
6 indulgence one moment.

7 THE COURT: Yes, sir.

8 MR. CLEMENTS: Please excuse Ms. McMillian
9 from the trial of this case only.

10 THE CLERK OF COURT: You've been excused
11 from this case only.

12 Number 122, Larry Miller (white male). What
13 say the State?

14 MR. CLEMENTS: Please present Mr. Miller.

15 THE CLERK OF COURT: What say the
16 Defendant?

17 MR. HOFFMEYER: Please excuse Mr. Miller
18 from the trial of this case.

19 THE CLERK OF COURT: You've been excused
20 from the trial please, sir. You may return to your
21 seat.

22 86, Natalie Howell (white female). What say
23 the State?

24 MR. CLEMENTS: Please present Ms. Howell.

25 THE CLERK OF COURT: What say the

1 Defendant?

2 MR. HOFFMEYER: Please excuse Ms. Howell
3 from the trial of this case.

4 THE CLERK OF COURT: You've been excused,
5 Mr. Howell. You may return to your seat.

6 124, Devin Mitchell (black male). What say
7 the State?

8 MR. CLEMENTS: Please present
9 Mr. Mitchell.

10 THE CLERK OF COURT: What say the
11 Defendant?

12 MR. HOFFMEYER: Please seat Mr. Mitchell.

13 THE CLERK OF COURT: Please have a seat in
14 the jury box, sir.

15 138, William Parrott (black male). What say
16 the State?

17 MR. CLEMENTS: Please present Mr. Parrott.

18 THE CLERK OF COURT: What say the
19 Defendant?

20 MR. HOFFMEYER: Please seat Mr. Parrott.

21 THE CLERK OF COURT: Please have a seat in
22 the jury box, sir..

23 164, John Ward (white male). What say the
24 State?

25 MR. CLEMENTS: Present Mr. Ward.

1 THE CLERK OF COURT: What say the
2 Defendant?

3 MR. HOFFMEYER: Please seat Mr. Ward.

4 THE CLERK OF COURT: Please have a seat in
5 the jury box, sir.

6 67, Dianne Graham (black female). What say
7 the State?

8 MR. CLEMENTS: Please present Ms. Graham.

9 THE CLERK OF COURT: What say the
10 Defendant?

11 MR. HOFFMEYER: Please seat Ms. Graham.

12 THE CLERK OF COURT: Please have a seat in
13 the jury box, ma'am.

14 26, Olivia Brown (black female). What say
15 the State?

16 MR. CLEMENTS: Please present Ms. Brown.

17 THE CLERK OF COURT: What say the
18 Defendant?

19 MR. HOFFMEYER: Please seat Ms. Brown.

20 THE CLERK OF COURT: Please have a seat in
21 the jury box, ma'am.

22 61, Jeremy Flowers (white male). What say
23 the State?

24 MR. CLEMENTS: Please excuse Mr. Flowers
25 from the trial of this case.

1 THE CLERK OF COURT: You've been excused
2 from this trial only. You may return to your seat.

3 31, Kendra Carson (black female). What say
4 the State?

5 MR. CLEMENTS: Please present Ms. Carson.

6 THE CLERK OF COURT: What say the
7 Defendant?

8 MR. HOFFMEYER: Please seat Ms. Carson.

9 THE CLERK OF COURT: Please have a seat in
10 the jury box, ma'am.

11 175, Clarence Zantt (black male).

12 MR. CLEMENTS: Number again please, Madam
13 Clerk.

14 THE CLERK OF COURT: 175. What say the
15 State?

16 MR. CLEMENTS: Please present Mr. Zantt.

17 THE CLERK OF COURT: What say the
18 Defendant?

19 MR. HOFFMEYER: Please seat Mr. Zantt.

20 THE CLERK OF COURT: Please have a seat in
21 the jury box, sir.

22 88, Christopher Jackson (black male). What
23 say the State?

24 MR. CLEMENTS: Please present Mr. Jackson.

25 THE CLERK OF COURT: What say the

1 Defendant?

2 MR. HOFFMEYER: Please seat Mr. Jackson.

3 THE CLERK OF COURT: Please have a seat in
4 the jury box, sir.

5 27, Kaneasa Brunson (black female). What say
6 the State?

7 MR. CLEMENTS: Please excuse Ms. Brunson
8 from the trial of this case.

9 THE CLERK OF COURT: You've been excused
10 from this trial only. You may return to your seat.

11 34, Laurie Causey (white female). What say
12 the State?

13 MR. CLEMENTS: Please present Ms. Causey.

14 THE CLERK OF COURT: What say the
15 Defendant?

16 MR. HOFFMEYER: Please seat Ms. Causey.

17 THE CLERK OF COURT: Please have a seat in
18 the jury box, ma'am.

19 168, Christina Fraley (white female). What
20 say the State?

21 MR. CLEMENTS: Please present Ms. Fraley.

22 THE CLERK OF COURT: What say the
23 Defendant?

24 MR. HOFFMEYER: Please seat Ms. Fraley.

25 THE CLERK OF COURT: Please have a seat in

1 the jury box, ma'am.

2 114, Avery McFadden (black male). What say
3 the State?

4 MR. CLEMENTS: Please excuse Mr. McFadden
5 from the trial of this case.

6 THE CLERK OF COURT: You've been excused
7 from this trial, sir. You may return to your seat.

8 80, Griffith Henry (white male). What say
9 the State?

10 MR. CLEMENTS: Please present Mr. Henry.

11 THE CLERK OF COURT: What say the
12 Defendant?

13 MR. HOFFMEYER: Please excuse Mr. Henry.

14 THE CLERK OF COURT: You've been excused
15 from this trial. You may return to your seat.

16 22, Angela Brooks (white female). What say
17 the State?

18 MR. CLEMENTS: Please present Ms. Brooks.

19 THE CLERK OF COURT: What say the
20 Defendant?

21 MR. HOFFMEYER: Please excuse Ms. Brooks
22 from this trial.

23 THE CLERK OF COURT: You've been excused
24 from this trial only, ma'am. You may return to your
25 seat.

1 78, Adam Heeg (white male). What say the
2 State?

3 MR. CLEMENTS: Please present Mr. Heeg.

4 THE CLERK OF COURT: What say the
5 Defendant?

6 MR. HOFFMEYER: Please seat Mr. Heeg.

7 THE CLERK OF COURT: Please have a seat in
8 the jury box, sir.

9 THE COURT: Two alternates, one and two.

10 THE CLERK OF COURT: 167, James Washington
11 (black male).

12 MR. CLEMENTS: Is this the alternate, Your
13 Honor?

14 THE COURT: Yes.

15 MR. JEPERTINGER: One and two?

16 THE COURT: One and two. We're gonna do
17 two of them.

18 MR. JEPERTINGER: Thank you.

19 THE CLERK OF COURT: 167. What say the
20 State?

21 MR. CLEMENTS: Please excuse Mr.
22 Washington from the trial of this case.

23 THE CLERK OF COURT: You've been excused
24 from this trial only, sir. You may return to your
25 seats.

1 119, Nancy McQueeney (white female). Does
2 the State wish to challenge this juror for cause?

3 MR. CLEMENTS: State does not wish to
4 challenge this juror for cause.

5 THE CLERK OF COURT: What say the
6 Defendant?

7 MR. HOFFMEYER: Please excuse
8 Ms. McQueeney from this trial.

9 THE COURT: You've been excused from this
10 trial, ma'am. You may return to your seat.

11 Number 7, Shannon Anderson (white female).
12 Does the State wish to challenge this juror for
13 cause?

14 MR. CLEMENTS: State does not wish to
15 challenge this juror for cause.

16 THE CLERK OF COURT: What say the
17 Defendant?

18 MR. HOFFMEYER: Please seat Ms. Anderson.

19 THE CLERK OF COURT: Please have a seat in
20 the jury box.

21 Second alternate, Judge?

22 THE COURT: Yes, ma'am.

23 THE CLERK OF COURT: 151, Denise Scott
24 (black female). What say the State?

25 MR. CLEMENTS: Please present Ms. Scott.

1 THE CLERK OF COURT: What say the
2 Defendant?

3 MR. HOFFMEYER: Please seat Ms. Scott.

4 THE CLERK OF COURT: Please have a seat in
5 the jury box, ma'am.

6 THE COURT: All right. Are there any
7 motions regarding jury selection from the State?

8 MR. CLEMENTS: None from the State, Your
9 Honor.

10 THE COURT: Anything from Defense?

11 MR. HOFFMEYER: No, sir, Your Honor, none
12 from the Defense.

13 THE COURT: All right. Solicitor, let me
14 get y'all to step up real quick.

15 (WHEREUPON, counsel approached the Bench
16 for an off-the-record discussion.)

17 THE COURT: While they are filing out let
18 me address you. I'm fixing to send you out as well
19 and let you go to lunch, but I need to send you out
20 with some instructions though. As you sit here
21 right now hopefully you know about this case is what
22 we've discussed here in this courtroom this morning.
23 What is important is that when you return from lunch
24 you don't know any more about that case than you
25 know right now. That's a complicated way of

1 basically saying please don't talk to anyone about
2 that case. Don't allow anyone to approach and talk
3 to you about it. If someone does approach you and
4 they ask anything about the case, just let them know
5 that you're a juror and you're not allowed to have
6 any conversation. That should end it. If it
7 doesn't, if they persist, then you let me know and
8 I'll make sure I can put them in a place where they
9 won't be asking any nosy questions, okay.

10 It's very important that you protect your
11 ability to be fair and impartial. And the way to do
12 that is just to not have any conversation with
13 anybody. We used to not have to tell juries this,
14 but in this day and age, let me say this to you as
15 well. Throughout the course of this trial I'll give
16 you an instruction that you're not to read anything
17 about the case, you're not to look at any television
18 reports or -- and I don't know that there will be
19 any, but I'm just saying -- you're not to read
20 anything about the case or look at any newspapers or
21 anything like that. And now that extends to the
22 internet. You're not to do any internet searching
23 about this case, no Twitter or Facebook or anything.
24 Again, there may not be a thing out there about this
25 case; but if there was, it would be improper for you

1 to expose yourself to that because when you return
2 you're gonna be under oath to try this case and base
3 this case solely on the evidence that is presented
4 in this courtroom. So please do that for me when
5 you go out and you go to lunch, please do not allow
6 anyone to compromise your ability to be fair and
7 impartial.

8 Now I'm gonna give you an extended lunch
9 break here because I've got some matters that I need
10 to take up with the attorneys so I'm gonna ask you
11 to be back up here in your jury room at 3:15, okay.
12 So that gives you a little over two hours for lunch.
13 And if you'll be back at 3:15 we'll get started when
14 we get everybody assembled. Ladies and gentlemen,
15 when you return and you reassemble you can introduce
16 yourselves to each other, get to know each other,
17 but don't talk about the case at all, okay. Some
18 jurors sometimes will look at me a little funny
19 about that because they think, well, I thought's
20 what we're supposed to do as a jury. Well, you are,
21 once it's time for you to deliberate. But until all
22 of the evidence is in and everything about the case
23 is in the record, you're not to have any
24 conversation about the case and that even means
25 amongst yourselves in there. So talk about anything

1 else you want to while you're in the jury room, but
2 don't discuss this case, okay.

3 So having said all that, again, everyone else
4 remain in the courtroom. If you can get an elevator
5 for our jury. And ladies and gentlemen, enjoy your
6 lunch. When you come back to the building, those
7 stickers that you've got there, if you will be
8 wearing that, that lets people here know that you're
9 a member of a jury and so they won't approach you
10 and say anything, okay. So members of the jury,
11 you're excused. See you back at 3:15.

12 (WHEREUPON, the jury was removed from the
13 courtroom at 1:11 p.m., and State Exhibit Numbers 1
14 through 102 were marked for identification.)

15 THE COURT: Court will be in recess then
16 until 3:15. But for the folks out there, but we're
17 gonna need to start back 2:15, okay, taking up any
18 motions and anything like that. But let me say this
19 for y'all's purposes, I'm gonna sit here at the
20 office and eat lunch at my desk if y'all need me
21 before 12:15 like, you know, if you've gone over
22 photos you want to run them by me before we go on
23 record or anything you like to, feel free, I'll be
24 there in my office, okay. We'll start back on the
25 record at 2:15.

1 (WHEREUPON, a lunch break was taken.)

2 THE COURT: All right, first let me, we're
3 going to go on the record. We had hearings on
4 Thursday of last week regarding the admissibility of
5 a statement made by the defendant. Well, the first
6 thing we had, the Blair hearing which, and we
7 resolved on the record, and then the next matter was
8 the Jackson v. Denno and I took testimony from
9 Officer Compton, Officer Raines, Officer Godwin,
10 Drayton, and then on behalf of the State and then on
11 behalf of Defense Doctor Price testified. And so I
12 took under advisement that issue with regards to the
13 admissibility of the statement. I have ruled that
14 based on the testimony before the Court that at
15 least for purposes of Jackson v. Denno I've ruled
16 that the statement is admissible under that standard
17 taking all of the evidence into consideration and
18 appreciating and certainly recognizing Doctor
19 Price's expertise. Just the evidence overall taking
20 into consideration both expert and the lay
21 testimony, I believe that it was appropriate for the
22 statement to come in. There did not appear to be
23 any undue coercion or threats or force with regards
24 to the statement. Mr. Johnson was at the police
25 department for some length of the time, I mean, an

1 inordinate length of time with regards to waiting to
2 give his statement. But the testimony that the
3 Court understood was that he had heard, or his
4 father had heard or someone had heard on the street,
5 that there was interest and the police had interest
6 in speaking with him regarding this case and he came
7 in voluntarily. He wasn't called in by law
8 enforcement, but he was -- he came in on his own.
9 He was placed in a room where there was a couch and
10 seating; officer Compton was there. He was given
11 food and drink when he asked for it. He was allowed
12 to sleep for some period of time. He had
13 conversation with Officer Compton. He was, in fact,
14 read his Miranda rights both by Officer Compton,
15 initially by Officer Compton, then by Officer Godwin
16 and Drayton. He signed a waiver of rights form.

17 The issue that Doctor Price raised was that
18 his belief that the defendant would not have been
19 able to comprehend or understand his rights and
20 therefore that his waiver would not have been a free
21 and voluntary waiver. However, the testimony that
22 was before the Court was that he had been through
23 the criminal justice system in the past. He had, in
24 fact, entered guilty pleas some years prior to this.
25 He'd been through the system before and was able to

1 successfully go through the process at that time.
2 He did not indicate at any time during this case in
3 questioning his, in going over his rights, that he
4 had any question about these rights. He appeared to
5 all persons present that he had the wherewithal. I
6 read the transcript of the statement he gave. And
7 throughout that transcript all of his responses were
8 appropriate to the questions that were asked, did
9 not seem to have any difficulty understanding those
10 questions. And I realize that was post-Miranda, but
11 again, it's evidence to indicate that at the time
12 that the statement was given that he was lucid and
13 appeared to understand the things which were asked
14 of him. Also, he has in fact been found to be
15 competent to stand trial; and by Doctor Price's own
16 testimony, that he believed that he was, in fact,
17 competent to stand trial and that if this case were
18 to change direction and resolve toward guilty plea
19 that he would be able to enter a guilty plea. And
20 obviously that would require him understanding his
21 rights regarding that.

22 All this is to say that I have considered all
23 of the evidence before the Court, all of the lay
24 testimony, the expert testimony, the circumstances
25 surrounding the rights, and I do believe that under

1 Jackson v. Denno that the rights and were done owe
2 appropriately. I believe that he did, in fact, was
3 not under any coercion or any undue stress or
4 threats and that the rights were given properly and,
5 that it's appropriate to be admitted into this case.

6 Now that doesn't — obviously, Mr. Hoffmeyer,
7 that doesn't relieve the State of their burden of
8 proving to the jury that the statement was freely
9 and voluntarily given. The jury still makes that
10 decision, and certainly at the appropriate time when
11 I charge the jury on the law that, you know, whether
12 or not they believe it was freely and voluntarily
13 given is a decision they'll make based on the
14 testimony and the evidence that they perceive. So
15 and I certainly would note the Defense's exception
16 to the ruling regarding that.

17 Now we also dealt with Lyle testimony under
18 Rule 404(b), and it dealt with a prior burglary and
19 whether or not there was sufficient evidence there
20 to establish a common scheme or plan or; and based
21 on hearing all of the evidence or all of the
22 presentation regarding the Lyle issues I have, in
23 fact, ruled that I would not allow the State to go
24 into that prior burglary and the facts and
25 circumstance surrounding that so I would not allow

1 that testimony. We dealt with at least peripherally
2 dealt with the buccal swabs and the fingerprints,
3 but we were going to continue with that today
4 because I believe the State had Officer Hill.

5 MR. CLEMENTS: Shannon Hill, Your Honor.

6 THE COURT: Officer Hill was not available
7 on Thursday, but he is here today and the State
8 prepared to go forward there?

9 MR. CLEMENTS: We are, Your Honor.

10 THE COURT: And let me, before we do that
11 let me ask of Mr. Hoffmeyer, is there anything else
12 you wish to put on the record?

13 MR. HOFFMEYER: Yes, sir, Your Honor. Of
14 course the arguments that I put on the record the
15 other day and I know they're in the record and the
16 Court has considered, I would ask, Judge, do you
17 intend at the time that the statement comes into
18 evidence giving a jury, a charge that time at that
19 time.

20 THE COURT: I did not. My intention was
21 to include it in my charge when I charge them on the
22 law.

23 MR. HOFFMEYER: Would you consider doing
24 that if I provided something to the Court along
25 those lines?

1 THE COURT: I'll certainly look at it and
2 hear from you and the State regarding that, sure.

3 MR. HOFFMEYER: Thank you, sir. The other
4 thing relates to the items found under my client's
5 home. I believe, and the call I received from your
6 office, that you had indicated you were going to --
7 had ruled those would come in and so I'm following
8 up with that.

9 THE COURT: Well, thank you, Jim. I did
10 forget. There was an issue as to the, whether or
11 not the State go into the items which were found and
12 I did rule that that would be allowed based on the
13 testimony and the evidence that the Court heard.
14 And what I read through the transcript that
15 Mr. Johnson had given law enforcement the
16 information, took them to the house his father,
17 Mr. Johnson's father who was alive at the time and
18 living there, gave permission and Mr. Johnson as
19 well showed them where the things were. And I
20 believe all of that was also done pursuant to the
21 his Miranda rights having been read and his rights
22 against self-incrimination I think were understood
23 and he appeared to voluntarily offer that
24 information. So you are correct, I did rule that
25 that would be admissible as well.

SW - S. HILL - PROFFER

1 MR. HOFFMEYER: Thank you, sir, that's all
2 I have at this time.

3 THE COURT: All right, Solicitor.

4 MR. CLEMENTS: Your Honor, I guess the
5 most logical thing do right now would be to call
6 Shannon Hill to the stand since kind of as a
7 continuation of the rulings you just set on the
8 record. Then we have some other issues as well.

9 THE COURT: All right.

10 MR. CLEMENTS: At this time, Your Honor,
11 we call forensic Officer Shannon Hill to the stand.

12 THE COURT: Officer Hill, if you'd come
13 around to be sworn, sir.

14 THE CLERK OF COURT: Please place your
15 left hand on the Bible and raise your right hand.
16 WHEREUPON,

17 SHANNON HILL,
18 having been duly sworn by the Clerk of Court,
19 testified as follows:

20 THE CLERK OF COURT: Please be seated and
21 state your name for the record.

22 THE WITNESS: My name is Shannon Hill.

23 **DIRECT EXAMINATION**

24 BY MR. CLEMENTS:

25 Q And can you please tell us where you work and

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1 what your job entails and what's your job
2 description.

3 A I'm employed with the City of Florence Police
4 Department at this time. I am currently assigned to
5 the crime scene unit at the police department.

6 Q Okay. And how long have you worked in law
7 enforcement?

8 A 19-and-a-half years.

9 Q How long have you been with the crime scene unit?

10 A A little -- about four-and-a-half.

11 Q Were you working in the crime scene unit in 2008
12 of August 25th?

13 A Yes, sir, I was.

14 Q And thereafter?

15 A Yes, sir.

16 Q Did you have occasion to become involved in the
17 investigation of what was first classified has a
18 missing person case on Liberty Street?

19 A Yes, sir, I was.

20 Q And did you respond to the house there on Liberty
21 Street?

22 A Yes, sir, that's correct.

23 Q At that time was it determined that there was
24 perhaps foul play involved?

25 A Yes, sir, there were some suspicious

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1 circumstances that started to arise soon after we
2 arrived.

3 Q Okay. Later in the investigation you have the
4 opportunity to talk to David Gerrard Johnson?

5 A Later on in the investigation?

6 Q Yes?

7 A Yes, sir.

8 Q Do you see him?

9 A Yes, sir, I do.

10 Q Can you please tell us where he is.

11 A He is sitting in the defense table next to Mr.
12 Hoffmeyer.

13 MR. CLEMENTS: Your Honor, may the record
14 reflect he's identified the defendant.

15 THE COURT: All right, sir.

16 BY MR. CLEMENTS:

17 Q Did you have an occasion to talk with Mr. Johnson
18 about gathering any information from him?

19 A Yes, sir, I did.

20 Q Can you please tell specifically what were you
21 talking to Mr. Johnson about?

22 A Well, September of 2008 I traveled to the
23 Florence County Detention Center to meet with
24 Mr. Johnson. I had with me a voluntary consent
25 form, and I was told to meet with him and to discuss

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1 getting a buccal swab and latent print, fingerprints
2 from him.

3 Q Okay?

4 A Voluntary.

5 Q Okay. Can you please tell us what buccal swabs
6 and how you do that.

7 A Basically it's just a saliva sample. You take a
8 sterile tip.

9 Q Like a Q-tip?

10 A Like a Q-tip. And you just rub it inside the
11 individual's mouth along his gum line and then you
12 stick it back up.

13 Q Is that a painful process?

14 A No, it's not.

15 Q And how do you take latent prints?

16 A Basically we have a ink pad with us, and we have
17 several pieces of paper and we roll the person's
18 fingerprints, his palms, the side of his palms. And
19 we use that and make the latent impressions on
20 pieces of paper.

21 Q Okay. And what do you do with those pieces of
22 paper?

23 A We send those in to SLED to be analyzed by their
24 latent technicians.

25 Q Okay. What do you do with the swabs?

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1 A We send those in to SLED as well as their DNA
2 people can take look at it and can analyze it.

3 Q I'm going to show what's been marked Court
4 Exhibit 4. You recognize that?

5 A Yes, sir. This is the Florence Police Department
6 release form that I used on September 5th.

7 Q Okay. And who did you use that form with?

8 A Mr. David Johnson.

9 Q Whose signatures are on that form?

10 A David Johnson and myself.

11 Q Did you see David Johnson sign that?

12 A Yes, sir, I did.

13 Q All right. Can you please tell the Court what
14 you did with that form when you talked to David
15 Johnson, how you explained it to him, how he came to
16 sign the form, and any explanation or conversation
17 you had with Mr. Johnson?

18 A When I met with Mr. Johnson I showed him the
19 consent form, gave him a chance to look at it, but I
20 also in my own words explained to him what it was
21 for. I explained —

22 Q Can you please tell us, did you read it to him?

23 A I explained in my own words.

24 Q Can you relate that to us.

25 A What the release form was for basically I was

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1 advising him that I had been directed to ask him to
2 voluntarily give a saliva sample, which is a buccal
3 swab, and take fingerprints from his person. And I
4 explained to him that the saliva samples were DNA
5 evidence that related to the case, as well as the
6 latent fingerprints, and that they would be sent to
7 SLED for further analysis. And then I asked if he
8 had any questions about them or if he understood
9 what I was telling him, and to my understanding he
10 understood what I was explaining to him. And then
11 he signed in cursive on the line where he supposed
12 to sign his signature. At that point in time is
13 when I retrieved the samples.

14 Q Okay. Did he ask you any questions about what it
15 was about?

16 A Not to my knowledge, nothing specific.

17 Q Okay. When you pulled the swabs out how did he
18 respond, how did he act, what did he do?

19 A I didn't see any response, just sitting there
20 waiting for me to do whatever I had to do.

21 Q Did you tell him what you had to do, or did he
22 voluntarily open his mouth, or what exactly
23 happened.

24 A When I collect — most people don't know what it
25 is so I do a step by step process. In other words,

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1 when I get ready to take the buccal sample I'll
2 explain to him this is the sterilized cotton tip
3 applicator. I show the it person it is sterilized,
4 already sealed, hadn't been prior opened or anything
5 like that. Then in front of him I open it up and
6 then asked — tell him what I'm going to do first.

7 Q What did you tell him you were going to do?

8 A I'm gonna ask him to open his mouth. I was going
9 to take a Q-tip and rub it just along gum lines.

10 Q Did he have any questions at that time?

11 A No, sir.

12 Q Okay.

13 A When I asked him if he was ready he said yes so I
14 said, open your mouth, and then I took that
15 applicator sample along his gumline.

16 Q Did he have any questions about the swab, any
17 questions about DNA, or what you were going to do
18 with it?

19 A No, sir, because I explained what I was going to
20 do with it and what it was for.

21 Q Did he appear to understand what you were telling
22 him?

23 A To my understanding, yes, sir.

24 Q Okay. Did he do anything or act any kind of way
25 that would cause you to have any question about

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1 whether he understood?

2 A No, he was very cooperative. And I didn't sense
3 that that he did not understand what was going on
4 because if he would have or if I believed that what
5 I was explaining to him wasn't being comprehended in
6 some way I wouldn't have took the sample. I would
7 have returned to the police department and advised
8 the investigator that I didn't think he really
9 understood then I would let the investigator tell me
10 what the next step to take.

11 Q Okay. But he understood and he complied and
12 opened his mouth?

13 A Yes, sir.

14 Q All right. Now what did you tell him after you
15 took the swab and rubbed it on the gum in his mouth,
16 what did you then do with it?

17 A It was placed back in sealed envelope.

18 Q Did you do that in his presence?

19 A Yes, sir, I did.

20 Q And did you tell him what you were going to do
21 with that swab?

22 A Yes, sir, I told him it would go to the DNA
23 department at SLED.

24 Q Okay. Now tell us about the fingerprint process.
25 What did you say to him, what did he say back to

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1 you, and what did you do.

2 A Then I would explain that I was going to roll
3 some ink on his hands and get the tips and of
4 course, I had you have to hold their hands get real
5 close then explain to them, you know, one
6 finger at a time which finger what we're going to do
7 and you know, not to resist or fight because you
8 couldn't, you know, anyway couldn't get a proper tip
9 just relax.

10 Q Let me ask you this, did he resist in any way?

11 A No, sir, he was very cooperative and followed my
12 instructions that I gave him.

13 Q He didn't draw back?

14 A No, sir.

15 Q All right. Did he ask you any questions about
16 that process?

17 A No, sir, not that I can recall.

18 Q Is there anything that he did or said or facial
19 expression, body movement, anything that would have
20 signaled to you that perhaps he did not understand
21 what you were doing?

22 A No, sir, I didn't sense any of that. I felt he
23 fully understood everything that was going on and
24 everything that I had said and explained to him.

25 Q Okay. So after you explained it to him you

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- 1 showed him the ink pad?
- 2 A Well, it was right there in front of him and you
- 3 could see it.
- 4 Q All right. And then how did you take the tips?
- 5 A Usually we start with the fingertips.
- 6 Q Yeah.
- 7 A Once we get the fingertips we ink them and start,
- 8 you know, one by one, kind of work down the line.
- 9 Then once we do what then we'll go to a palm print
- 10 where we ink the whole palm and ask them to place
- 11 their palm down on a piece of paper. And then what
- 12 we do is kind of the karate chop we call it on the
- 13 side of your hand, and then on the ball of your palm
- 14 and do that for each hand.
- 15 Q Okay.
- 16 A The left and right.
- 17 Q And did he cooperate on each hand?
- 18 A Yes, sir, he did.
- 19 Q Okay. Did he ever ask any questions?
- 20 A No, sir.
- 21 Q Did he ever ask you to explain anything to him?
- 22 A Not any further than what I'd already explained
- 23 to him, no, sir.
- 24 Q Did he ever act puzzled in any way?
- 25 A No, sir.

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1 Q What did you tell him that you were going to do
2 with those palm prints and fingerprints that you
3 took?

4 A That was just to collect them and that I was
5 going to send them in to SLED to be analyzed further
6 processed.

7 Q So after you inked him all up, then what
8 happened, and you took the prints, what happened
9 after that?

10 A I asked him if he had anymore questions and he
11 said no, so then I left.

12 Q Okay, all right. Now there are circles here and
13 on — there are seven items listed. Can you please
14 tell the Court who circled those items, and did you
15 talk about any of those other five items that
16 weren't circled?

17 A I didn't talk about any of the other five items
18 that weren't circled because it didn't pertain to
19 what I was requesting from him. I am the one that
20 circled the saliva sample and the fingerprints so he
21 would know as I showed him the paper what items, the
22 two items that were gonna be collected.

23 Q And he understood what those two were as opposed
24 to the other five?

25 A Yes, sir, it's my understanding that he did.

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1 Q Did he ever ask any questions about the other
2 five?

3 A No, sir.

4 Q Okay. Beg the Court's indulgence. During any of
5 this process did he ever say anything, do anything,
6 act any kind of way, and if so what, to signify that
7 he was withdrawing his consent.

8 A No, sir.

9 Q Okay.

10 A He didn't say anything to signify to me that he
11 was withdrawing his consent, and he didn't do
12 anything to.

13 Q And when you explained it to him in your own
14 words what was your understanding of what he
15 understood about consenting?

16 A I was assuming that he was understanding
17 everything I told him.

18 Q Okay, all right. I don't have any other
19 questions at this time. Please answer any questions
20 mess Mr. Hoffmeyer has.

21 THE COURT: Mr. Hoffmeyer.

22 **CROSS - EXAMINATION**

23 BY MR. HOFFMEYER:

24 Q Thank you. I just have a few questions for you.
25 I believe, Officer Hill, now as far as your contact

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1 with Mr. Johnson this would have been your first
2 contact with him?

3 A Yes, sir.

4 Q Now you did not read him his Miranda warnings
5 before taking these samples, did you?

6 A That's correct.

7 Q Okay. And so on either occasion, either before
8 taking the collection sample or before getting the
9 fingerprints, you did not read him his rights,
10 correct?

11 A That's correct.

12 Q Now this it appears by the form that's a court
13 exhibit that these samples were taken on September
14 5th, 2008; is that correct?

15 A Yes, sir, that's correct.

16 Q Now are you aware that he had been in custody
17 since approximately August the 26th of 2008?

18 A No, sir. Before this day right here I never
19 heard the name David Johnson or met him or anything
20 like that.

21 Q I see. Do you know if when you met with him to
22 see about retrieving these samples if he was
23 represented?

24 A I didn't ask him that, no, sir.

25 Q And as far as your involvement with Mr. Johnson,

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1 and you've told us you didn't know him before this
2 occasion, you would have had no knowledge of his
3 educational background, would you?

4 A That's correct, I would not have known that.

5 Q And you weren't present for some of the evidence
6 that was placed before the Court last week, but you
7 would have no knowledge when you met with him on
8 September 5th, 2008, that he suffers from
9 intellectual disability. You would not have known
10 that, would you?

11 A That's correct.

12 Q You indicated to him that you were -- I believe
13 you told us this on direct examination -- that you
14 were taking these samples you told him related to
15 the buccal swab or DNA analysis?

16 A Yes, sir.

17 Q Did you explain to him what DNA analysis is?

18 A The scientific part of it, no, sir. I don't know
19 if I could fully explain it scientifically.

20 Q I certainly understand. Do you have any idea if
21 he understood that?

22 A No, I do not.

23 Q And as far as when you went out there to meet
24 with him you didn't -- before you went obviously
25 based upon your direct testimony, you didn't have a

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1 warrant to retrieve the buccal swab evidence, did
2 you?

3 A No, sir.

4 Q I'm sure in the past you have been part of the
5 process of using a warrant to retrieve DNA type
6 evidence?

7 A Yes, sir.

8 Q And likewise, you didn't have an order which set
9 out that you could collect DNA evidence, did you?

10 A That's correct.

11 Q And I'm sure in the past you have done that?

12 A It depends on the situation.

13 Q So the answer is yes, in the past you have?

14 A Yes, yes.

15 Q And I take it perhaps you didn't think it was
16 necessary in this particular case, you did not — or
17 through the solicitor's office or whomever you did
18 not pursue a warrant or a court order to retrieve
19 that evidence, correct?

20 A That's correct.

21 Q What did you do in terms of making sure he
22 understand — he understood rather, the release
23 form?

24 A I asked him if he had any questions.

25 Q Did you do anything further?

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1 A I asked him if he had any questions, if he
2 understood what, you know, what I wanted and he said
3 no — or said he did understand.

4 Q So I take it —

5 A Didn't have any questions.

6 Q Yes, sir. So I take it you're telling us once
7 you asked him if he understood it he said he did and
8 that was the end of it?

9 A Yes, sir.

10 Q And you indicated that he was very cooperative
11 with you?

12 A That's correct.

13 Q And I take it you didn't discuss any other
14 aspects of the case with him at that time?

15 A No, sir.

16 Q If you will excuse me one second, officer. Thank
17 you very much, Officer Hill.

18 **REDIRECT EXAMINATION**

19 BY MR. CLEMENTS:

20 Q Officer Hill, did you interrogate Mr. Johnson?

21 A No, sir.

22 Q If you had planned on interrogating him wouldn't
23 you have read his Miranda rights to him?

24 A Yes, sir, I would.

25 Q Did you ask him if you could take his

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1 fingerprints?

2 A Yes, sir.

3 Q And did you ask him if you could take the buccal
4 swabs?

5 A Yes, sir.

6 Q And then you went over the consent form with him;
7 is that correct?

8 A Yes, sir.

9 Q Beg the Court's indulgence a second.

10 THE COURT: Yes, sir.

11 BY MR. CLEMENTS:

12 Q How often when someone consents to give you
13 fingerprints and consents to give you buccal swab do
14 you go get a court order?

15 A If they consent then we do not — we don't need a
16 court order.

17 Q You don't get a court order when they consent?

18 A That's right.

19 Q What do you do when they don't consent?

20 A We will advise the investigator, advise him he
21 needs to get a court order.

22 Q And you get a court order then?

23 A That's correct.

24 Q All right. Was there any need to get Smerber
25 order on this case?

1 A No, sir. He voluntary signed the consent form
2 so.

3 Q Okay. Thank you. No further questions.

4 THE COURT: Thank you very much, sir. You
5 may step down.

6 MR. CLEMENTS: Your Honor, can
7 Investigator Hill be released until later in the
8 trial?

9 THE COURT: Any objection?

10 MR. HOFFMEYER: No Objection, Your Honor.

11 THE COURT: That's fine, thank you.

12 MR. CLEMENTS: Thank you.

13 THE COURT: Anything further,
14 Mr. Clements?

15 MR. CLEMENTS: Not on this issue, Your
16 Honor, other than if we need to have any argument at
17 the appropriate time.

18 THE COURT: I mean, I'll certainly hear
19 from you if you like to.

20 MR. HOFFMEYER: Your Honor, nothing on
21 this issue from the Defense as far as testimony.

22 THE COURT: All right.

23 MR. CLEMENTS: Your Honor, we just submit
24 that the collection of fingerprints and buccal swabs
25 are admissible, Your Honor. He consented, and he

1 had ability to consent on Miranda, had the ability
2 to consent on his right to trial so his Fourth
3 Amendment rights here are no different than Fifth
4 Amendment rights and Sixth amendment rights. I
5 don't think a rocket scientist would be needed when
6 you go and ask somebody, hey, can I take your
7 fingerprints, and he could say no. Or can I take a
8 buccal swab; you can say no. It's not exactly
9 rocket science. He told him he was taking his
10 fingerprints and taking his DNA to submit it to
11 SLED. He didn't exceed the scope of search. He
12 didn't interrogate him. He merely informed him what
13 he wanted to do, asked him if he would comply, be
14 willing to do it, and he did it, and he got him to
15 sign a consent form.

16 THE COURT: All right, sir.

17 MR. HOFFMEYER: Your Honor, and I know
18 Your Honor remembers my arguments from last week
19 related to his understanding of things and how as
20 you heard Doctor Price indicate that these types of
21 situations are very stressful. These types of
22 issues are very hard for someone in my client's
23 position to understand. And the investigators asked
24 if they can take this information or take the
25 sample, and so under the totality of circumstances

1 was the consent voluntary. Our position is it would
2 not be based upon my client's mental disability
3 along with the fact that it's we flesh out what went
4 on these occasions. Although conceivably my client
5 never asked what is this for or I don't understand.
6 As was indicated to, or testified to rather, by
7 Doctor Price people with his type of mental
8 disability just go along. So those arguments that
9 I'm making before Your Honor today are reiterating
10 those that I made last week, and of course, I would
11 incorporate those as well. And that's all I have at
12 this time.

13 THE COURT: All right, sir. You know, I
14 do recall the testimony from Doctor Price. The
15 thing is, you know, as I've read case law on these
16 issues and looked at into these matters, you know,
17 Doctor Price is basically giving an opinion based on
18 what clinically he knows, how these things reacts.
19 And you know, for example, he — he seemed to
20 discount, I mean, again, and it's, I guess it
21 depends on how you perceive the testimony. But
22 Doctor Price seemed to have be of the belief that
23 because of Mr. Johnson's intellectual disability
24 that he's unable to understand anything beyond that
25 of a kindergartener, be able to consent to anything;

1 and yet, he's shown throughout that he, at least the
2 evidence that was before the Court, that he did
3 understand. Doctor Price seemed to completely
4 discount the testimony that Mr. Johnson held a job,
5 received wages, worked a job, that he understood or
6 knew certain things. That Doctor Price says he's
7 operating as a kindergarten level, but clearly,
8 he — the reality of it is he operates well above
9 that level when you consider those things. And so
10 based on the totality of the circumstances before
11 the Court and the evidence that's been before the
12 Court, I believe that the samples were requested
13 appropriately. I don't believe there was any
14 coercion or undue force or stress under the
15 situation. I'm going to allow the evidence of those
16 samples in. What do we have next?

17 MR. CLEMENTS: Your Honor, I think the
18 next issue would be the statement that you ruled is
19 going to be admitted. We have gone over the
20 statement with counsel for the Defense, Mr.
21 Hoffmeyer, and we have agreed, Your Honor —

22 THE COURT: Solicitor, I apologize, I
23 don't mean to interrupt. I just got word that we've
24 got seven of the jurors are out in the hall. How
25 about let's let them come through and then we'll

1 resume.

2 MR. CLEMENTS: Yes, sir.

3 THE COURT: I don't want to have them all
4 just sitting out there. Go ahead and bring them
5 through.

6 (Pause.)

7 THE COURT: Solicitor, go ahead, sir.
8 Thank you.

9 MR. CLEMENTS: If I may approach, Your
10 Honor.

11 THE COURT: Yes, sir.

12 MR. CLEMENTS: I think Court Exhibit
13 Number 3, Your Honor if you would turn to page 16.

14 THE COURT: All right.

15 MR. CLEMENTS: Down, if you look down
16 where it says Godwin, uh-huh.

17 THE COURT: Uh-huh, got it.

18 MR. CLEMENTS: The line below that
19 Compton, let me ask you this, how do you feel about
20 what happened. We're redacting that line down until
21 Johnson's response. And then Compton says, what
22 gets me is I haven't seen any emotion whatsoever,
23 you know. I haven't -- I didn't see anything.
24 Johnson, yes, sir. That section there, the two --

25 THE COURT: Two Compton questions?

1 MR. CLEMENTS: Statements by Compton and
2 two responses by Johnson are redacted.

3 THE COURT: All right.

4 MR. CLEMENTS: Then on page 17, Your
5 Honor, down at the bottom of the page where Compton
6 says, on liberty. And then we're redacting starting
7 with Johnson's response. You know, I'm really sorry
8 about that happening, sorry. Compton, what you
9 done. Johnson, sorry, I apologize. Those three
10 lines, Your Honor, we're redacting.

11 THE COURT: All right, sir.

12 MR. CLEMENTS: And that I believe is the
13 only thing that's been being redacted.

14 THE COURT: You concur with that, Mr.
15 Hoffmeyer?

16 MR. HOFFMEYER: Yes, sir, Your Honor.

17 THE COURT: All right, sir. That — and
18 you've done that, or Keith is going to do that?

19 MR. CLEMENTS: Keith Godbolt in my office
20 has prepared a disk with those two portions
21 redacted. We've given a copy of that disk to
22 Mr. Hoffmeyer. We have a copy of that disk. It's
23 going to be a good while before we put it up so
24 we're both going to listen to it and make sure it's
25 correct.

1 THE COURT: Okay, great. Thank you.

2 MR. CLEMENTS: The next issue, Your Honor,
3 is the photos and Mr. Hoffmeyer and Mr. Jepertinger
4 have gone through those photos together so I'm going
5 to defer to Mr. Jepertinger at this time. I think
6 it will be quicker than him telling me.

7 THE COURT: All right, sir.

8 MR. JEPERTINGER: Your Honor, I would say
9 that — Your Honor, the first photo we will just do
10 it here for, Your Honor, if that's okay. Would be
11 state's exhibit three which is a blowup shot of the
12 victim while she was living.

13 MR. CLEMENTS: Off of her driver's
14 license. It's a DMV photo.

15 THE COURT: Okay.

16 MR. JEPERTINGER: And I understand the
17 State — I mean, the Defense objects to that
18 photograph and I will give our reason for trying to
19 put it in. Your Honor, of course, Your Honor there
20 was a missing person type situation. There was a
21 driver's license, her driver's license, found at the
22 scene of 200 West Liberty Street where this all
23 occurred. And in terms of missing photo type
24 situation, I believe the police used it when they
25 were looking for her 'cause they had no idea where

1 she was.

2 THE COURT: All right. Mr. Hoffmeyer.

3 MR. HOFFMEYER: Your Honor, I do not
4 believe that that photograph is relevant to any
5 contested issue in this case to make some proof that
6 the State's put to more likely than not. Your
7 Honor, nobody has disagreed it was a missing person
8 situation. So our position is the reason they seek
9 to introduce that is to in essence have irrelevant
10 evidence come in that's a very nice picture of a
11 nice lady to then impassion the jury related to
12 guilt in this case.

13 THE COURT: All right. What — Mr.
14 Jupertinger —

15 MR. JEPERTINGER: Yes, sir.

16 THE COURT: —what need would the State
17 have for this photograph? I mean, I certainly
18 understood your position, but if that's certainly
19 the testimony what's the need for the photograph?

20 MR. JEPERTINGER: Judge, just to show what
21 the police did in terms of beginning to investigate
22 the case. It was an initial type thing that they
23 do, we're looking for this individual, have you seen
24 her.

25 THE COURT: Okay, all right.

1 MR. CLEMENTS: And Your Honor, that would
2 be the first driver's license photo I've ever seen
3 that would enrage someone's passion but.

4 MR. HOFFMEYER: Well, the issue is whether
5 it's relevant or not to an issue in the case, at
6 least that's the issue I'm voicing to the Court, the
7 concern.

8 THE COURT: I agree. I agree. All right,
9 I agree. I'm not gonna allow three in. And it has
10 nothing to do with anything other than relevance. I
11 think they can testify that they started out as a
12 missing person, that they got her photograph off her
13 driver's license and started showing it around to
14 try to find her, but I don't think that's relevant
15 to any of the issues we're dealing with in this
16 case.

17 MR. JEPERTINGER: The next series of
18 photographs.

19 (Jepertinger and Hoffmeyer confer about
20 photographs.)

21 MR. JEPERTINGER: Judge, I'm gonna show
22 you what is State's 56, 57, 58, 59, 60, 61, and 62.
23 The testimony will be elicited from the stand that
24 they found Ms. Hayes' cadaver thrown in a ditch off
25 Malloy Street, Your Honor. And certainly some of

1 the photos are a little more graphic than others; we
2 understand that. But we think that it will give a
3 full and complete presentation to the jury of
4 injuries sustained, Your Honor. We're not putting
5 in any autopsy photos, but this will corroborate
6 what some of the testimony will be in terms of
7 manner of death in terms that would be the only
8 reason. Certainly I understand the initial looking
9 at them they would be graphic.

10 MR. CLEMENTS: And Your Honor, I would
11 submit, though, that none of those are any more
12 graphic — and as a matter of fact I would contend
13 less graphic, than what's on prime time television,
14 on NCIS or CSI, or any of those shows, because the
15 body is wrapped up in bed clothes.

16 MR. HOFFMEYER: I'm ready whenever you
17 want me to be heard.

18 THE COURT: I'll hear from them and then
19 I'll hear from you.

20 MR. HOFFMEYER: Yes, sir.

21 MR. CLEMENTS: Hold on, Your Honor. We
22 don't need say to anything for a moment, got one of
23 the jurors coming in.

24 (Pause.)

25 THE COURT: All right, Mr. Hoffmeyer.

1 MR. HOFFMEYER: Thank you, Your Honor. I
2 believe we're referring to photographs 56 through
3 62. I can talk about them generally. Some of them
4 are more specific.

5 THE COURT: Do you need them to refer to?

6 MR. HOFFMEYER: Thank you. Your Honor,
7 they are obviously highly prejudicial, and it's our
8 position that the prejudicial value clearly
9 outweighs the probative value. When it comes to the
10 manner of death I believe the State's going to
11 produce testimony from a forensic pathologist. I was
12 saying that the prejudicial value outweighs the
13 probative value. The State, I believe, is going to
14 have testimony that or from the forensic pathologist
15 about the manner of death being seven stab wounds
16 and led to a loss of blood that caused the death. I
17 don't think the pictures and the argument of the
18 State was that it helps in understanding the manner
19 of death, and I don't think that it does based upon
20 what the forensic pathologist at least autopsy
21 shows.

22 As far as the other evidence that's gonna
23 come in this case we're gonna have it, I believe,
24 from officers that found the body, will describe
25 where the body was and how they found it. These

1 pictures, therefore, don't have a lot of probative
2 value as far as the manner of death or where they
3 found the body. They do have a high prejudicial
4 impact, the first one, probably 56, is the least of
5 which. But as we move through the pictures they
6 kind of get worse and worse in their severity as far
7 as potential for prejudice. Paragraph — excuse me.
8 State's Exhibit 57 has her not as she was found but
9 on, I presume, some type of board that was used by
10 EMT or whoever handles those situations, which has
11 no relevance to the case. But as we go through
12 State's Exhibits 58, 59, 60, 61, and 62 they're
13 extremely inflammatory pictures, Your Honor. And
14 the fact that conceivably somebody watches CSI and
15 sees somewhat, some kind of gruesome picture is of
16 course very different than real life on a television
17 set. And the issue before this Court, as I
18 understand it, of course I know the State has a
19 right to present their case as they see fit in terms
20 of the proof as long as it meets Your Honor's test
21 as far as admissibility, but it's gonna be who was
22 involved in this lady's death and these graphic
23 pictures don't aid in that. But they do have a
24 severe probability, we believe, of impassioning a
25 jury as those pictures are gruesome. That's all I

1 have at this time.

2 THE COURT: All right. I'm going to allow
3 56 in clearly that shows it appears that shows that
4 what they found when they came on to the scene where
5 her body was. And I think that's relevant because
6 it goes to — and I'm assuming you're referencing,
7 and again, I don't know what the testimony will be
8 although I do know the contents of the statement
9 that Mr. Johnson gave and that would corroborate the
10 body being wrapped in the bed sheet —

11 MR. JEPERTINGER: That's correct.

12 THE COURT: —and disposed of. And so I
13 think that is appropriate for that. I don't think
14 57 is necessary. It's really cumulative of that one
15 over there. So 57 is out. I'm not going to allow
16 60, State's 60. Now let me ask, Mr. Jepertinger, on
17 behalf of the State —

18 MR. JEPERTINGER: Yes, sir.

19 THE COURT: —what the relevance to the
20 issues here of 58, 61 and 62, clearly that's —
21 those are photographs after they found her body and
22 they basically unwrapped it.

23 MR. JEPERTINGER: Well, well it is
24 corroboration if she was in her bed asleep as the
25 Solicitor was saying. Plus it identifies it as

1 being Willie Mae Hayes, not Doris Jones or form I
2 can't Smith. It corroborates that we went into this
3 woman's house and his statement we went into Willie
4 Mae's Hayes house and this is Willie Mae Hayes.

5 THE COURT: Okay.

6 MR. HOFFMEYER: Judge, I'll be glad to be
7 heard on that whenever Your Honor.

8 THE COURT: I'm gonna hand these to you in
9 just a second.

10 MR. HOFFMEYER: Thank you.

11 THE COURT: All right, sir.

12 MR. HOFFMEYER: Your Honor, we've never
13 argued that this is Ms. Hayes, and of course,
14 there's gonna be ample testimony that this was, in
15 fact, her. And as far as the officers taking her
16 from where she was located and taking off the items
17 that she had been wrapped in, I don't see how that
18 has any relevance. It shows Ms. Hayes in a very
19 disturbing position that in 58 — excuse me 58, 61,
20 and 62, again, we think is very gruesome and could
21 impassion the jury and the relevancy doesn't seem to
22 be there. That's all.

23 THE COURT: I'm gonna allow 61 and not
24 allow 58 and 62. And the purpose that I'm seeing
25 there, it's the State's position that they should be

1 allowed to, number one, show that that is, in fact,
2 Ms. Hayes although 61 doesn't see her face but
3 there's people that can certainly testify after
4 seeing her that that was her. But it does also
5 corroborate the fact that she is apparently there in
6 a night gown and was in her bed clothing. I think
7 that that allows the State to corroborate that
8 testimony without any more than necessary.

9 Now Mr. Hoffmeyer, I'm dealing with
10 photograph 59, whether or not to allow that in. I
11 mean, the State certainly has an interest again in
12 corroborating testimony and the evidence that they
13 intend to put up. I wouldn't want to get it to the
14 point as you stated earlier that it becomes so
15 inflammatory that it becomes prejudicial. And of
16 course, I mean, you wouldn't be the first to
17 attorney to argue that no photos of the victim
18 should come in because we agree that they were
19 either shot or stabbed or whatever, strangled. But
20 I do agree with you that that other photograph was
21 highly inflammatory, but all photographs involving
22 someone who has been killed are gonna be difficult
23 for lay folks. But it certainly, that one seems to
24 depict the injuries that I'm assuming the testimony
25 is going to discuss. It does not seem to be

1 overly -- well, you know, as I said, it depends on
2 the view of it. It doesn't seem to be overly
3 gruesome's, not extremely a bloody or difficult
4 picture. I'm inclined -- what number is that again?

5 MR. HOFFMEYER: 59. Your Honor, if I may,
6 whenever the Court?

7 THE COURT: Yes, sir, go ahead.

8 MR. HOFFMEYER: Your Honor, of course
9 we're dealing with a situation in which the body was
10 found some time period after her death, and the
11 forensic pathologist is gonna testify about the stab
12 wounds. And I think that Your Honor is saying,
13 well, the State can corroborate that because it
14 shows the stab wounds. At least that's maybe part
15 of your analysis; maybe it's not. But at any rate,
16 it's relevancy again, Your Honor, I -- it's a
17 question that relates to the probative value
18 argument. It's relevant because it corroborates the
19 stab wounds. But because of the condition that
20 Ms. Hayes was found in it leads to somewhat of a
21 distorted image. And so, the cause of death, while
22 we don't disagree with the cause of death and the
23 forensic pathologist will testify about it, the
24 distorted picture that the jury will see will not
25 relate to the time of her death or what caused her

1 death but the way, unfortunately, it is depicted
2 days later. And so I don't think that the relevance
3 outweighs the probative — excuse me, I do not think
4 the probative value of it outweighs its prejudice.

5 THE COURT: All right. And I'm gonna note
6 your exception to that. I'm gonna allow 59. So
7 based on the, if I may recap, the photographs that
8 are shown to the Court is I am allowing 58 and 59
9 and —

10 THE COURT REPORTER: No, 58 —

11 MR. CLEMENTS: 56, 59.

12 THE COURT: 56 — I'm sorry. 56, 58 and
13 59. No?

14 THE COURT REPORTER: I have —

15 MR. CLEMENTS: 56, 59, 61 is what I have,
16 Your Honor.

17 THE COURT REPORTER: I have 58 as being
18 I.D.

19 MR. JEPERTINGER: 59.

20 THE COURT: So we got 56 and 59 in.

21 MR. CLEMENTS: And 61, is in.

22 THE COURT: 61 in. Out is 62, 60, 58, and
23 57.

24 MR. HOFFMEYER: Yes, sir.

25 MR. JEPERTINGER: That's correct.

1 THE COURT: And those three 56, 59, and
2 61, the Defense's objections to those are noted.

3 MR. JEPERTINGER: Your Honor, the other
4 photographs listed on the sheet are all in evidence
5 without objection.

6 MR. HOFFMEYER: I believe that is the
7 case.

8 MR. JEPERTINGER: Those are all the other
9 things that we saw in the aerial photographs and
10 everything else.

11 THE COURT: Jim, if you would, go ahead
12 and take those to your seat real quick and I'm gonna
13 let the last four jurors come in through.

14 MR. CLEMENTS: And Your Honor, if I might
15 suggest just so we're clear here on the record, if
16 Mr. Hoffmeyer can say number so and so without
17 objection as he -- when the jurors are out of the
18 courtroom -- and that way we'll have the numbers on
19 the record that he agrees to.

20 THE COURT: Well --

21 MR. CLEMENTS: The ones he's looking at
22 now.

23 THE COURT: We've got these exhibits that
24 are numbered 1 through 101 or -2.

25 MR. CLEMENTS: Yes, sir.

1 THE COURT: They're all consecutive. It
2 might be easier for the record to state — assuming
3 he doesn't find any problems — the ones that are
4 out.

5 MR. JEPERTINGER: What I suggest, too, is
6 if we could have those we know they're not in
7 evidence, but I need to give those to Keith to say
8 we need to take those out of the CD or DVD, whatever
9 he's going to play for you so they don't come in.

10 THE COURT: You can let him look at those
11 while we take up those other matters. Go ahead,
12 Jim. Let's go ahead, Jim, if you would hold off
13 just a moment while we bring those jurors through so
14 they don't...

15 Bring the jurors in.

16 (Pause while Attorney Hoffmeyer reviews exhibits.)

17 MR. HOFFMEYER: Your Honor, I've looked at
18 the exhibits, the photographs rather, and the only
19 objections I would have are related to the
20 photograph — other than those I've already pointed
21 to the Court — are exhibit numbers 67, exhibit 68,
22 exhibit 69 and exhibit 70. The basis for that
23 objection, Your Honor, is those show the items that
24 were found under the defendant's residence, and I
25 don't want to waive my prior objection on the search

1 and seizure issue by bringing the photographs in.

2 THE COURT: I understand. 67, 68, 69 and
3 70, I'm gonna allow those in over objection but note
4 those objections pursuant to your earlier position
5 that that was a result of an improper search or
6 illegal search.

7 MR. HOFFMEYER: Yes, sir.

8 THE COURT: All right, sir. I'm going to
9 allow those in and note your objections.

10 THE COURT REPORTER: How about the aerial
11 boards?

12 MR. JEPERTINGER: Jim has no objection to
13 that.

14 MR. HOFFMEYER: No objection to those.
15 You know, Your Honor, if I may, as I was standing
16 here I was thinking they also objected to the buy of
17 my client showing them where the body was and I
18 don't want to waive any objection by some of the
19 scene related to where the body was from I'm not
20 objecting to those particular photographs.

21 THE COURT: Okay.

22 MR. HOFFMEYER: But my objection really in
23 that regard was more toward my client leading them
24 and telling them than actually where the body was so
25 as I think through it I don't need to —

1 THE COURT: I don't know that those
2 photographs would — by your not objecting to those
3 photographs I don't think that would deter or take
4 away from your objection that your client telling
5 them or any statement your client made were done
6 outside of being freely and voluntarily given.

7 MR. HOFFMEYER: Thank you, sir.

8 MR. CLEMENTS: Your Honor, also we have
9 State's Exhibit 1 and 2 which are two aerial maps,
10 Your Honor, one showing the neighborhood and Liberty
11 Street, Roughfork Street where Ms. Hayes' house was
12 and where Ms. Hayes' car was found. The other, Your
13 Honor, showing the neighborhood and aerial where
14 Malloy — where Ms. Hayes' body was found; and I
15 believe those, Your Honor, are coming into evidence
16 without objection.

17 MR. HOFFMEYER: Your Honor, that is
18 correct.

19 THE COURT: Okay.

20 MR. CLEMENTS: And that being said, Your
21 Honor, I would move State's Exhibit 1 and 2 into
22 evidence at this time, Your Honor. They might be
23 used on opening statement.

24 THE COURT: I was going to suggest let me
25 take my list, note Mr. Hoffmeyer's objection, and

1 let's move everything in that's without objection.

2 MR. JEPERTINGER: That's correct.

3 MR. CLEMENTS: Yes, sir.

4 THE COURT: Then we don't have to deal
5 with that.

6 MR. CLEMENTS: Yes, sir.

7 THE COURT: So let me, Mr. Hoffmeyer,
8 please, you and the Solicitor listen carefully. I
9 think I've got this written out. The State has
10 submitted for identification purposes 102 exhibits,
11 and they're numbered sequentially. The Court has
12 agreed with Defense counsel number 3 photograph,
13 number 3 is out. Photograph 57, 58, 60, and 61.

14 MR. HOFFMEYER: 62, Your Honor.

15 THE COURT: 62.

16 THE COURT REPORTER: 62.

17 THE COURT: Okay, let me repeat those.
18 57, 58, 60, and 62 are out.

19 MR. JEPERTINGER: Did you say 3 was out?

20 THE COURT: Yes. All right, now,
21 everything else is in evidence; but with the caveat
22 that number 56, number 59, number 60, 67, 68, 69,
23 and 70 are in over Defense's objections.

24 THE COURT REPORTER: Did you say 60?

25 THE COURT: I did say 60.

1 THE COURT REPORTER: I've got that one
2 down as I.D.

3 MR. CLEMENTS: It's supposed to be 61.

4 THE COURT: 61 is in.

5 THE COURT REPORTER: You said 60. I have
6 that down as I.D.

7 MR. CLEMENTS: 60 is out and 61 is in. So
8 Your Honor, my understanding is photos 56, 59, 61,
9 67, 68, 69, and 70 are in over objection.

10 THE COURT: Over Defense objection.

11 MR. CLEMENTS: And photos number 3, number
12 57, number 58, number 60, and number 62 are out,
13 objection sustained on those.

14 THE COURT: Correct. Now everything else
15 on that 102 list, other than the ones we've just
16 noted, are in evidence. Now anything else regarding
17 the photographs on those issues?

18 MR. JEPERTINGER: No, sir.

19 (WHEREUPON, State Exhibits Nos. 1, 2,
20 4-56, 61, 63-102 were admitted into
21 evidence.)

22 MR. JEPERTINGER: No, sir.

23 THE COURT: Let me ask this, we went
24 through some exhibits Thursday that were marked as
25 Court's exhibits. I think you might want to show

1 those to Mr. Hoffmeyer to see if there's going to be
2 any objection to having those moved in. If you
3 intend -- I guess you're not going to move them all
4 in you're not going to move the --

5 MR. CLEMENTS: Court Exhibit Number 1
6 we're not going to move into evidence. Court's
7 Exhibit Number 2 is the Miranda waiver of rights
8 form. We would seek to move that into evidence.
9 Court's Exhibit 3, which is going to be the
10 statement, Your Honor, we would ask that it be
11 redacted as we said, and we will move it in the
12 evidence as it's redacted.

13 THE COURT: But that's going to be moved
14 in as an audio exhibit.

15 MR. CLEMENTS: Yes, sir. Yes, sir.

16 THE COURT: Correct.

17 MR. CLEMENTS: And Court's Exhibit Number
18 4 we would ask to have it moved in evidence as well
19 which is the release form from the police department
20 regarding the saliva sample and the fingerprints.

21 THE COURT: All right. And of course --

22 MR. CLEMENTS: The other Court exhibits,
23 Your Honor, we do not seek to move them into
24 evidence at this time and probably never.

25 THE COURT: What I think we'll need to do

1 then is just we'll address those as they come up
2 because I know Mr. Hoffmeyer does have objection to
3 those.

4 MR. CLEMENTS: Yes, sir.

5 THE COURT: So we'll deal with those as it
6 comes up in the course of the trial.

7 MR. CLEMENTS: The only other remaining
8 issue, Your Honor, is we would like to put on the
9 record that we have complied with Kyles versus
10 Whitley. And Your Honor, we asked the City Police
11 Department to meet and pull everything to make sure
12 they had everything out so everything was made
13 available. Mr. Hoffmeyer, I think, I was in court
14 Marion Friday, I believe Mr. Jepertinger and Mr.
15 Hoffmeyer went through all our file and all the city
16 police file and I think that we have complied with
17 Kyles very Whitley if Mr. Hoffmeyer agrees with
18 that.

19 MR. HOFFMEYER: Your Honor, I do agree
20 that they have provided me with everything in which
21 I'm aware, and I have no reason to doubt that that's
22 not been everything as well as I met with
23 Mr. Jepertinger. We went through the police entire
24 file. My understanding is related to co-defendants
25 in this case and any potential testifying witnesses

1 that have some type of criminal offense pending,
2 there's been no offers made by the State to them
3 other than you testify and are truthful and that
4 will be taken into consideration or something along
5 those lines.

6 MR. CLEMENTS: That is correct, Your
7 Honor.

8 MR. HOFFMEYER: And so I have also
9 received the criminal record of testifying
10 witnesses, and at the appropriate time I guess we
11 will need to address what Your Honor will allow as
12 far as the questioning of those. I don't think
13 there are any criminal records or juvenile records
14 which I have not been made aware of.

15 THE COURT: All right. Now —

16 MR. JEPERTINGER: We did — and I will
17 point out for the record that we did give his honor
18 two sets of what are called form fives which will be
19 juvenile wrap sheets on —

20 THE COURT: One was on Mr. Wilson.

21 MR. JEPERTINGER: And one on Mr. Bailey
22 for the Court to consider whether Mr. Hoffmeyer will
23 be able to impeach on any of that.

24 THE COURT: And we'll take that up at the
25 appropriate time. Now looking at the time that we

1 got, about 17 minutes to four, is there anything
2 else that we need take up before we begin?

3 MR. CLEMENTS: No, sir, not that I'm aware
4 of.

5 THE COURT: 'Cause my preliminary is going
6 to take 15 minutes maybe, and then I don't know how
7 long your openings are going to be. And I don't
8 know who your first witness. We may not get to
9 witnesses.

10 MR. CLEMENTS: Your Honor, I can tell you
11 our first couple of witnesses are going to be real
12 quick. Our first four witnesses we anticipate is
13 Curly Dolford, the brother of the deceased, Wilma
14 Epps and David Hayes, the children of the deceased.
15 Their testimony will be very short. And then
16 Officer London Jordan with the Florence P.D, and his
17 testimony will be very short.

18 MR. JEPERTINGER: I would point out it's
19 4:00.

20 THE COURT: It they can be extremely
21 short, if we're going to try to adhere to the 5:00
22 time frame.

23 MR. CLEMENTS: That's just who my first
24 four witnesses will be whether they get up today or
25 tomorrow.

1 THE COURT: We'll get started. Anything
2 else, Mr. Hoffmeyer, before we get started?

3 MR. HOFFMEYER: No, sir, Your Honor, other
4 than my understanding is these people, I don't know
5 what they're going to be put up for, I presume that
6 she was missing and started looking for her.

7 MR. CLEMENTS: Yes, sir.

8 MR. HOFFMEYER: Also concerned with
9 relevance at some point. I don't know what they're
10 going to say.

11 THE COURT: Every case has a starting
12 point. All right. Let's make it short and
13 everybody go ahead and get something to drink and
14 use the restroom if you need to and then we'll get
15 started.

16 (WHEREUPON, a recess was taken from the
17 proceedings.)

18 THE COURT: Mr. Hoffmeyer has one other
19 matter before we begin. Yes, sir.

20 MR. HOFFMEYER: Your Honor, previously
21 when jury voir dire selection took place in this
22 case I believe it was juror number 130, Tiffany
23 Murray.

24 THE COURT: Yes..

25 MR. HOFFMEYER: Who indicated that as I

1 remember, what she told Your Honor was she would be
2 fair but she was concerned about later on the fact
3 that she was a hair dresser for my client's family,
4 maybe a sister and mother, she would feel
5 uncomfortable serving on this jury. And my position
6 that Your Honor indicated you would allow me to put
7 into the record later was that the juror indicated
8 she could be fair, and therefore, she should be
9 allowed to remain on the jury panel.

10 THE COURT: All right. And we did have a
11 side bar regarding that during the jury selection,
12 juror number 130. She is, in fact, she's a hair
13 dresser. She did indicate that she does not know
14 Mr. Johnson personally, but that she is -- that his
15 mother and his sister are clients of hers and that
16 she cuts their hair on a regular basis, that she
17 knows them well, she does not know him. She has not
18 discussed the case with them 'cause she felt that
19 that was inappropriate just as a relationship
20 between a hair dresser and a client that wasn't an
21 appropriate topic and so they have not had
22 conversations. And she did indicate that she could
23 be fair or felt like she could be fair; however, she
24 also indicated to the Court that she asked to be
25 excused because she was very, very uncomfortable

1 about it. And that's when I asked her, you know, I
2 understand being uncomfortable but could you be fair
3 and impartial; and she said, well, I can be fair.
4 And I asked her further, if the evidence — if you
5 were on this jury and the evidence were to show that
6 Mr. Johnson was either not guilty or guilty based on
7 the evidence, would you be able to go either
8 direction, and she felt that she could. I excused
9 her because she was very concerned about serving.
10 She made the comment that she didn't — that if she
11 served and if the evidence showed him to be guilty
12 and she had to vote that direction, she doesn't feel
13 that she could face his family again.

14 And the concern the State raised, and I
15 concurred, was that there is a pecuniary interest in
16 the fact that they are clients of hers. They pay
17 her for her services. And even though I don't have
18 any reason to doubt her telling the Court that she
19 could be fair when there's a pecuniary interest
20 involved and there are plenty of jurors in the pool
21 by which a jury can be selected, I felt it was
22 appropriate since she clearly was uncomfortable
23 serving, that based on — I didn't want her to have
24 to be in the jury room and even though, you know, I
25 have no doubt that she would do exactly as she told

1 me she would try to do, that that would be on her
2 mind or could weigh on her mind. And I felt that it
3 was appropriate under the circumstances since there
4 were plenty of other jurors in the pool and we had
5 enough jurors, that it was appropriate to excuse her
6 and I do want to note that you took exception to
7 that; you felt that she should not be excused
8 because of her indication she could be impartial or
9 could be fair. And so I want that to be noted; but
10 you are absolutely correct, the Court did over your
11 objection removed her name from the jury list.

12 MR. HOFFMEYER: Lastly, Judge, my
13 understanding is this isn't necessary but just out
14 of abundance of precaution I do not know if the
15 State will reference some of the evidence that I
16 have objected to in their opening statement, and
17 Your Honor has ruled on those previous motions. But
18 I certainly don't want to wind up objecting to them
19 referencing those items waive any prior objection
20 that I have. Of course during the trial I will make
21 the appropriate objection.

22 THE COURT: All right, sir.

23 THE DEFENDANT: Thank you.

24 THE COURT: All right. Anything from the
25 State?

1 MR. CLEMENTS: No, Your Honor, except
2 would that include referring to any kind of
3 statement or anything like that as well to be sure
4 Mr. Hoffmeyer is covered on the record on that as
5 well?

6 THE COURT: Right. I mean, you can refer
7 to those items which I've ruled on.

8 MR. CLEMENTS: Yes, sir.

9 THE COURT: He's not -- what he's
10 basically what he's saying he's not going to stand
11 up and interrupt your opening, but as those issues
12 arise in trial he will voice his objection.

13 MR. CLEMENTS: Contemporaneously.

14 THE COURT: Contemporaneously.

15 MR. CLEMENTS: Just want to be sure he was
16 covered, Your Honor, he had that clear.

17 THE COURT: We're good.

18 MR. CLEMENTS: We want to be sure it's a
19 clean trial. Thank you.

20 THE COURT: All right. Ms. Joe, ask the
21 jury to join us.

22 (WHEREUPON, the jury was returned to the
23 courtroom at approximately 3:55 p.m., and
24 the following proceedings commenced in
25 open court.)

1 THE COURT: As far as for the jury box for
2 purposes in the jury box, there's only three
3 assigned seats. Where Ms. Anderson and Ms. Scott
4 are, those are y'all's seats. And then this first
5 seat at some point we're going to have a foreperson
6 for the jury, and the foreperson will occupy that
7 very first seat. The rest of you feel free to sit
8 wherever you're comfortable. If it's easier just to
9 flow in and out and which means one day you may be
10 sitting on the end, one day you may be in the
11 middle, one day you may be in the back, one day you
12 may be on the front. It doesn't matter just as long
13 as you're in the jury box. There's really, again,
14 other than those three chairs there's no assigned
15 seating in the jury box, okay.

16 We're about to get started; but before we do
17 that, I'm gonna ask, if you would, to give Madam
18 Clerk your attention. She is going to place you
19 under your oath for your role as jurors in this
20 case, okay?

21 THE CLERK OF COURT: If all of you will
22 please stand and raise your right hand.

23 (WHEREUPON, the jury was sworn at 3:57
24 p.m.)

25 THE CLERK OF COURT: Please be seated.

1 THE COURT: All right. Ladies and
2 gentlemen, we're about to begin the trial of the
3 case of State of South Carolina v. David Gerard
4 Johnson. Before we begin I want to tell you that
5 this trial may very well be, or most likely will be
6 very different from what you might expect. Most
7 people's experience with jury trials is what they
8 have seen on television, read in books, or seen in
9 the movies. Very few people have had the
10 opportunity to do as you're doing and just sit in on
11 an actual trial. Of course, those trials that we
12 see on television and the movies and read in books,
13 that's Hollywood. Those trials are always full of
14 high drama, intense action, and rivetting
15 circumstances because it's there to entertain you.
16 While any number of those things may occur during
17 the course of this trial, what is important for you
18 to understand is that this trial is not for your
19 entertainment. This trial, ladies and gentlemen, is
20 a fundamental part of our democracy. It is a search
21 for the truth i an effort to make sure that justice
22 is done between the parties that are before the
23 Court. Searching for the truth and making sure that
24 justice is done often times can be very deliberate,
25 sometimes repetitive, maybe slow. In other words,

1 very different from what you've experienced from
2 your watching of television or movies or read in
3 books.

4 This courtroom is a place of honor that is
5 dedicated to the protection and to the preservation
6 of citizens' rights through what many have called
7 the greatest justice system ever created. The
8 attorneys that appear before you are advocates for
9 the parties that they represent; but first and
10 foremost, they are officers of the Court sworn to
11 uphold the integrity and the fairness of our
12 judicial system and to help you in your search for
13 the truth. You should expect them to be
14 professional and competent and ethical in the
15 representation of their client's interest.

16 Remember that you have just taken an oath to
17 try this case and to reach a fair and a just verdict
18 so you are also expected to be professional,
19 reasonable, and ethical in the performance of your
20 duties which I have absolutely no doubt you will do.
21 Now I want to thank you for your contribution to our
22 system of justice here in Florence County and in
23 South Carolina for your service this week.

24 What I'm gonna tell you now, ladies and
25 gentlemen, is intended to serve as an introduction

1 to the trial of the case. These remarks are not a
2 charge on the law. I will instruct you on the law
3 that is applicable to this case at the close of this
4 trial before you retire to your jury room to
5 deliberate and reach a verdict. What I'm gonna go
6 over with you now is merely an explanation of the
7 procedures that we're gonna follow so that you can
8 better follow along with the trial as it progresses
9 through the week.

10 Now the defendant in this case is charged
11 under an indictment that has been filed with this
12 court. Mr. Johnson is charged as you heard me say
13 earlier, with five different allegations. Count one
14 is murder; count 2, burglary first degree; count 3
15 armed robbery; count 4, possession of a weapon
16 during the commission of a violent crime; and count
17 5, conspiracy. The elements of those charges, the
18 elements of those allegations, I will explain to you
19 later when I give you the charge on the law. But
20 what I told you earlier is the indictment is simply
21 the charge by which this case is brought into court,
22 and it is not in any sense evidence of any of the
23 allegations which are contained in the indictment.

24 To those charges and to that indictment
25 Mr. Johnson has pled not guilty. The State,

1 therefore, has the burden of proving each of the
2 elements of the indictment beyond a reasonable
3 doubt. It will be your duty, ladies and gentlemen,
4 to decide whether or not the State has met that
5 burden. Your purpose as jurors is to find and
6 determine the facts of this case. You are the sole
7 judges of the facts in this case. If at any time I
8 make any comment about the facts you must disregard
9 those comments because only you, the jury, can
10 determine what the facts are in this case. You are
11 to determine the facts from the testimony that you
12 hear and any other evidence that may be introduced
13 during the course of the trial. It is up to you to
14 determine the inferences which you feel may be
15 properly drawn from the evidence. It is especially
16 important that you perform your duty of determining
17 the facts diligently and conscientiously because
18 ordinarily there's no way for us to correct an
19 erroneous determination of facts by a jury.

20 Now on the other hand but with equal
21 emphasis, the same law that makes you the judges of
22 the facts makes me the judge of the law. The law as
23 given by the Court is the only law that you may
24 consider. You must accept and follow it even though
25 you may disagree with it. I'm not allowed to tell

1 you what I think about the facts in this case, and
2 you are not allowed to disagree with me about what
3 the law is or what you feel that the law should be.
4 Your job is to take the law as I give it to you,
5 apply it to the facts as you find from the testimony
6 of witnesses and any other evidence that comes in to
7 this court. And after doing that you will then
8 render a verdict in this case which speaks the
9 truth.

10 Now until I advise you to begin your
11 deliberations you are not to discuss this case with
12 anyone, and that includes even amongst yourselves.
13 It is very important that you not have any
14 conversation with this case. Only after this case
15 has been submitted to you for your deliberations are
16 you to have any discussion about the case; and even
17 then, your discussion must be confined to the jury
18 room and all jurors are present.

19 Now during this trial as I told you earlier,
20 you are not to read listen to, or watch any news
21 reports about the case. As I said to you earlier, I
22 don't even know if there will be any; but if there
23 are, you're not read or expose yourself to any of
24 those things. You're not to go on the internet and
25 try to look up anything about this case or do any

1 investigation on your own. You're to decide this
2 case, ladies and gentlemen, based solely on the
3 evidence that is presented here in this courtroom
4 while you're here this week. It is important that
5 you keep an open mind and that you do not decide any
6 issue in this case until all of the evidence has
7 been presented, the parties have made their closing
8 arguments, and I have instructed you on the law that
9 is applicable to this case. It is your solemn
10 responsibility to determine the guilt or innocence
11 of the defendant and your verdict must be based
12 solely on the evidence as it is presented during the
13 course of this trial and on the law as I give it and
14 instruct it to you at the close of trial.

15 Now in just a moment the Solicitor will have
16 an opportunity to make, address you with what is
17 called an opening statement. An opening statement
18 is his opportunity to explain to you what the issues
19 are in this case mor at least what he believes the
20 issues are in this case. Once he has completed his
21 opening remarks then Mr. Hoffmeyer would have an
22 opportunity to address you with any opening remarks
23 that he may wish to make, although he is not
24 required to do anything. What is important for you
25 to understand and to know, is that what the lawyers

1 tell you in their opening remarks is not evidence.
2 It is merely their belief or their contention as to
3 what they think the evidence will prove to you. The
4 evidence in this case, the evidence that you'll base
5 your verdict on, will be presented to you by the
6 testimony of witnesses who are placed under oath and
7 take the witness stand and testify as well as any
8 other items that may come into this trial during the
9 course of the case.

10 Now during the course of this case you may
11 occasionally hear one of the lawyers say something
12 like this, judge, we have a matter of law we need
13 take to up with the Court; or Your Honor, may we
14 approach the bench. During those times, ladies and
15 gentlemen, if it's a matter that I can deal with up
16 here at the bench I will do that; but it may be that
17 I have to ask you to step back into your jury room.
18 If I do that there's only one reason I'm doing that.
19 As I told you earlier, I'm not allowed to have any
20 conversation or make any comments to you that relate
21 to the facts in this case because only you, ladies
22 and gentlemen, can decide the facts in this case,
23 and I'm not to have any influence over you with
24 regards to that. Sometimes when I'm dealing with a
25 matter of law from the lawyers in deciding on how to

1 make a ruling sometimes it's necessary for me to
2 make a comment about the evidence in connection with
3 a ruling. Well, in order to protect you from that I
4 may ask you to step into your jury room so that I
5 don't unduly influence you in any way. So if I ask
6 you to step into your jury room that would be the
7 reason because I have to deal with a matter of law,
8 and in doing that sometimes it requires me to make
9 some comment about the facts.

10 In determining what the true facts are in
11 this case you must decide whether or not the
12 testimony of a witness is believable. It's gonna be
13 my job to determine whether testimony is admitted
14 into this trial at all or not; but once evidence or
15 testimony is admitted into this record, whether or
16 not you believe it is solely up for you to decide.
17 In deciding whether to believe a witness you have to
18 right to consider the interest of a witness, the
19 bias of a witness, the opportunity the witness has
20 to see the things and matters about which that
21 witness testifies, the way a witness acts on the
22 witness stand. You have the right, ladies and
23 gentlemen, to consider anything that is in this
24 record to help you in evaluating the testimony of
25 the witnesses. That's why it is important that you

1 pay close attention to the witnesses, listen
2 carefully, observe them, listen to the attorneys,
3 listen to the Court, pay close attention to what's
4 going on so that — and try not to let your thought
5 or your minds wander so that at the end of this case
6 after all of the testimony has been in, the
7 attorneys have had an opportunity to present to you
8 their closing remarks and I've given you the law,
9 you will then be in a position to go into your jury
10 room, deliberate, discuss this case, decide the
11 facts, apply the law, and reach a verdict in this
12 case.

13 Now before I turn it over to the attorneys
14 let me first inquire from the State, are there any
15 objections or exceptions to the Court's opening
16 remarks from the State?

17 MR. CLEMENTIS: No, Your Honor.

18 THE COURT: Anything from the Defense?

19 MR. HOFFMEYER: No, sir, Your Honor.

20 THE COURT: All right. Ladies and
21 gentlemen, please, if you would give the lawyers
22 your undivided attention as they address you with
23 their opening remarks.

24 MR. JEPERTINGER: Good afternoon, ladies
25 and gentlemen of the jury. My name once again is

1 John Jepertinger. I'm a deputy Solicitor and Mr.
2 Clements and I will be trying this case for the
3 State. Now when I was a boy, I got to tell you, I
4 was afraid of the dark. At night time I always
5 heard things outside, rassling -- and you can tell
6 by my by accent I'm not from around here originally.
7 I was afraid of the wrussling of the lilac bushes.
8 And I saw strange forms in the shadows cast by the
9 elm trees. I was. Lived right near a cemetery
10 scared to death if I had to walk by it at night
11 time. But the one place where I felt totally immune
12 from any perceived harm, from any imaginary boogie
13 man, was in my house, more specifically, in my
14 bedroom in my bed under my covers.

15 Near midnight on August 24th, 2008, the one
16 place that Willie Mae Hayes, a 69 year old senior
17 citizen, the mother of Wilma Hayes Epps and David
18 Hayes, should have felt safe was in her house in her
19 bedroom in her bed under her covers. But folks,
20 danger was lurking close by. And it was not the
21 made up ghost of a little boy's imagination; it was
22 evil incarnate. It was evil in flesh. For near
23 midnight on August 24th, 2008, and breaching into
24 the new day of August 25th, 2008, David Johnson, the
25 accused in this case, had other plans for Ms. Hayes.

1 Leading a group of younger intruders, one you will
2 hear was 14 years of age at the time, David Johnson
3 who was 22 years old at the time and his
4 conspirators, entered her home at 200 West Liberty
5 Street in the city of Florence. It is this home
6 that I show you on State's Exhibit 1 that I'm
7 pointing at. That was Ms. Hayes' home at that time.
8 And once they gained entry into her home — and you
9 shall hear how they gained entry into her home —
10 they stole by force what Ms. Hayes had earned. That
11 is, her property, some jewelry, electronic goods,
12 and ultimately her car that was parked under her
13 aluminum carport. And they took while she was in
14 her bed pleading for mercy, what God had given her.
15 They took her life by stabbing her repeatedly.

16 Now you, ladies and gentlemen, shall hear
17 what happened that faithful night in explicit and
18 more bone chilling details than I can summarize here
19 in the few minutes I have with you. And you shall
20 hear these details from this witness stand and from
21 the exhibits introduced. To begin with, you will
22 hear from Wilma Epps and David Hayes, and Ms. Hayes'
23 brother Curly Dolford, as they recount to you about
24 how they frantically searched for their mother and
25 sister when she didn't report in to work at

1 Muldrow's Day Care off Alligator Road on
2 August 25th. You're gonna hear how they went to
3 200 West Liberty Street and realized something was
4 awry, something wasn't right. She wasn't there; her
5 car wasn't there. Of course that led them to call
6 the police. You shall hear from law enforcement
7 about their investigation, what they did, who they
8 spoke to, who they found, what they discovered, what
9 they analyzed. You shall also hear — and I'm just
10 gonna warn you; this is somewhat graphic — where
11 and under what circumstances Willie Mae Hayes'
12 remains were finally found.

13 Now I know the judge alluded to this in his
14 opening remarks to you, that this is not Hollywood.
15 Now many of you may watch television, shows about
16 crime and detective work. And one thing the judge
17 and I often laugh about, it's all these district
18 attorneys here always have a full head of hair and
19 that's not — that is Hollywood; it's not real life.
20 And in most of these cases there's always
21 fingerprint evidence and DNA, DNA evidence, that
22 helps solve the case. I got to tell you, ladies and
23 gentlemen, most of the time in the 20 plus years
24 I've been doing this, it is a rare occasion —

25 MR. HOFFMEYER: I object. That's improper

1 opening argument, Your Honor. He's talking other
2 cases he's prosecuted over 20 years.

3 MR. JEPERTINGER: I'm just talking about
4 it is rare to have DNA evidence and fingerprint
5 evidence in a case.

6 THE COURT: All right.

7 MR. HOFFMEYER: Same objection.

8 THE COURT: All right. Overruled.

9 MR. JEPERTINGER: It is rare to have
10 fingerprint evidence and DNA evidence. However, in
11 this particular case in this case you will have both
12 fingerprint evidence and DNA evidence linking David
13 Johnson to the crimes for which he's charged. And
14 all this evidence shall be introduced and all the
15 testimony that you shall hear shall lead you to
16 believe to one inevitable conclusion, and what is
17 that conclusion? David Johnson is guilty of murder.
18 He's guilty of armed robbery. He's guilty of
19 burglary in the first degree. He's guilty of
20 possession of a weapon during the commission of a
21 violent crime, and he's guilty of conspiracy as he
22 planned with others to commit these deeds.

23 Now when the judge announced the case he read
24 through the indictment, read through the accusation,
25 and he gave you some of the elements of these

1 crimes. At the end of this trial during his jury
2 charge he will read and explain to you each and
3 every element of these crimes in more detail. He
4 will also instruct you about other important
5 principles which you must consider in your
6 deliberations. And one of these things that he is
7 going to discuss with you is the principle of
8 accomplice liability or what we call in the state of
9 South Carolina the hand of one being the hand of
10 all. For in this case you will hear that David
11 Johnson, the 22 year old, and Anthony Wilson the 14
12 year old at the time, went into the bedroom of
13 Ms. Hayes and they jointly stabbed her with a knife.
14 You will hear that testimony, that the hand of all
15 is the hand of all.

16 Now in this case as in all criminal cases,
17 the State bears the burden of proving Mr. Johnson
18 guilty; and here's the legal standard, beyond a
19 reasonable doubt as to each element as to each crime
20 for which he is charged. That is a legal standard,
21 proof beyond a reasonable doubt. I want you to
22 focus in your attention on that term because it is
23 not proof beyond all doubt or proof beyond a shadow
24 of a doubt. It is proof beyond a reasonable doubt.
25 Solicitor Clements and I do not shrink from that

1 responsibility; rather, we will embrace it. For
2 we're confident that the evidence shall be
3 convincing, convicting, and damning for Mr. Johnson
4 beyond a reasonable doubt. The judge alluded to
5 this as well; but I know at the end of this trial
6 Solicitor Clements will ask you to render a verdict,
7 a verdict of guilty, for it will be a decision that
8 speaks the truth in this case. For it's only in
9 truth as t he judge told you where justice may be
10 found. It is in truth where the darkness caused by
11 David Johnson and the others that happened on
12 August 24th 2008, can be vanquished. It is in truth
13 that you will have fulfilled your duty as jurors,
14 and it is in truth where peace may be found for the
15 poor victim and her family. Thank you so much.

16 THE COURT: Thank you, Mr. Jepertinger.
17 Mr. Hoffmeyer.

18 MR. HOFFMEYER: Thank you, Your Honor.
19 Ladies and gentlemen of the jury, I want to thank
20 you on behalf of Mr. David Johnson. My client who
21 now you can see a little bit better over there at
22 counsel table who is seated there beside, me I want
23 to thank you on his behalf and, quite frankly,
24 everybody's behalf for being here today. The State,
25 the Court, that side of the room so to speak and our

1 side of the room as well. I think that when you're
2 called in here and asked to participate in this type
3 of serious thing, this type of proceeding, lots of
4 things occur, one of which is we take you away from
5 your families and your work day world, all those
6 things you need to be doing so we burden you with
7 taking you away from things you want to do and need
8 to do. In addition to that, we burden you in the
9 sense that we ask you to listen carefully and
10 intently to the evidence and facts in the case so we
11 burden you with that. And then we burden you even
12 further so to speak when we ask you to go back there
13 and deliberate with one another, share with one
14 another, and then give us justice, give us truth,
15 because you are the folks that have to make the
16 difficult decisions. And while I call it a burden
17 and I suspect in some ways it is, I hope each and
18 every one if you individually and then later
19 collectively will remember what a remarkable thing
20 you're giving us in this courtroom. It's an amazing
21 thing when you take folks with different
22 backgrounds, different upbringing from all across
23 the county, and they listen carefully, intently to
24 evidence in a case and apply the law that his honor
25 will tell you about, and then they come back and

1 give people justice. That's an amazing thing and
2 that's what you're going to do doing for us in this
3 courtroom.

4 And of course, Mr. Johnson is on trial he
5 desperately needs folks to come in here and listen
6 to the facts and evidence in the case. And he
7 desperately needs folks to listen and apply the law
8 that his honor will tell you about at the end of
9 case. He desperately needs your here. He's on
10 trial. And when it comes to this case, as you have
11 been made aware, it is a criminal case. That means
12 the State has the burden of proof beyond a
13 reasonable doubt. And you know there are different
14 standards of proof in the law. To sit over there
15 charged with a crime this serious takes probable
16 cause, a very low lesser standard. And in civil
17 cases you have a preponderance of the evidence
18 standard, again, a much lesser standard than beyond
19 a reasonable doubt. And then in some civil cases
20 parts of a case may call for clear and convincing
21 evidence. But all of those, including that, the
22 clear and convincing, falls way beneath, way below
23 beyond a reasonable doubt. And when it comes to
24 this standard of the burden of proof the State has
25 it throughout the trial as to each and every — we

1 call them elements a lot, but all that means is each
2 and every part of what is charged. Each and every
3 part of whatever crime is charged they have the
4 burden of proof beyond a reasonable doubt.
5 Mr. Johnson sits over there presumed innocent,
6 totally presumed innocent. A cloak of innocence
7 surrounds him. And unless and until that is torn
8 away from him beyond a reasonable doubt as to each
9 and every part of the offense, you can't convict
10 him. And you will have the opportunity as you view
11 and listen to the evidence and hear the evidence,
12 you'll have the opportunity to view the witnesses,
13 listen to the witnesses, and see the stories whether
14 they're consistent and not consistent, and whether
15 stories have changed and all those types of things.
16 And that's where the wonderful thing y'all do comes
17 in because y'all have the opportunity to view all of
18 this stuff with all the State's resources and see if
19 it meets that test of beyond a reasonable doubt.
20 Does the evidence they're going to bring you meet
21 that test. And we hope and trust, and quite
22 frankly, believe we know that when you do hear the
23 evidence and when you do go back there and share
24 with one another and deliberate, and when you do
25 apply the law to this case, you will find that they

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1 have not met their burden of proof and you'll find
2 Mr. Johnson not guilty. Thank you very much on
3 behalf of David Johnson's behalf.

4 THE COURT: Mr. Clements, you may call
5 your first witness, sir.

6 MR. CLEMENTS: Thank you, Your Honor. We
7 call Mr. Dolford to stand.

8 THE COURT: Mr. Dolford, if you will come
9 around to be sworn, sir.

10 THE CLERK OF COURT: Sir, if you will
11 please place your left hand on the Bible, raise your
12 right hand.

13 WHEREUPON,

14 **CURLY DOLFORD,**
15 having been duly sworn by the Clerk of Court,
16 testified as follows:

17 THE CLERK OF COURT: Please be seated and
18 state your name for the record.

19 THE WITNESS: My name is Curly Dolford.

20 **D I R E C T E X A M I N A T I O N**

21 BY MR. CLEMENTS:

22 Q Okay. Mr. Dolford, how are you doing today?

23 A I'm doing fine.

24 Q I'm gonna ask you if you will slide that
25 microphone up close to you so we can all hear you.

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1 And if you don't understand what I'm saying I'm
2 gonna stand back over here so if I can hear you you
3 know these jurors can hear you. If you don't
4 understand what I'm saying or the question I ask, if
5 you ask me to I'll rephrase it, okay?

6 A Okay.

7 Q Mr. Dolford, where do you live?

8 A I live at 158 North Pettigrew in Florence, South
9 Carolina.

10 Q And how long have you lived in Florence?

11 A Oh, I was born in Darlington County, but I've
12 lived in Florence most of my life.

13 Q Okay. And how old are you, Mr. Dolford?

14 A I'm 76.

15 Q Okay. You have any brothers and sisters?

16 A Yes.

17 Q And how many brothers you got?

18 A I got two brothers sitting over there now.

19 Q Okay.

20 A That is Marion Dolford and Earnest Dolford.

21 Q All right. And how many sisters do you have?

22 A I have two remaining sisters. One of my sisters
23 is sitting over there now, Viola Lovell, Lovell.

24 Q What relation were you to Willie Mae Hayes?

25 A That was my oldest sister.

SW - C. Dolford - Direct

- 1 Q Your oldest sister?
- 2 A Yes.
- 3 Q Where does she live?
- 4 A Live at 200 West Liberty Street.
- 5 Q Okay. How old was Ms. Hayes?
- 6 A She was 69.
- 7 Q 69 years old?
- 8 A Yes.
- 9 Q She have children?
- 10 A Yes.
- 11 Q How many nieces and nephews you have from
- 12 Ms. Hayes?
- 13 A Well, nieces, I have two nieces from my nephew
- 14 there.
- 15 Q Okay. And so she had one son and two daughters?
- 16 A Yeah, one son and two daughters, uh-huh.
- 17 Q Okay. Do you recall waking up and getting up
- 18 August 25th, 2008?
- 19 A Yes, I do.
- 20 Q Did you have an occasion to go to 200 West
- 21 Liberty Street?
- 22 A Yes, I did, I got a call.
- 23 Q Okay. And as a result of that call where did you
- 24 go?
- 25 A I went over to my sister's house at 200 Liberty

SW - C. Dolford - Direct

1 Street.

2 Q Why did you go to her house?

3 A I got a call she had not reported to work, and
4 that was very unusual. She is very punctual, always
5 go to her job.

6 Q When you got to 200 West Liberty Street can you
7 please tell this jury what did you find?

8 A When I rode up I noticed that her car was gone.
9 And then I checked the front door; it was locked.
10 And so I walked around to the back and that was
11 strange the back door was open and normally she keep
12 that back door locked. I put a board on there to
13 make sure it was bolted from the inside.

14 Q Okay. So many it had a board across the back?

15 A Normally when she leave home she put the board
16 across the back.

17 Q And that back door was open?

18 A Was open.

19 Q All right. When you noticed all that what did
20 you do?

21 A When I noticed, I walked in the house and I
22 checked all the rooms and at the time I didn't
23 notice anything too much out of the ordinary and so
24 I returned back home. I called my sister to see if
25 she heard anything, and she notified me she hadn't

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1 heard anything so I waited to hear later on to hear
2 further that day that she was missing.

3 Q Okay. And you didn't see anyone in the house?

4 A No one was in the house.

5 Q Didn't see anyone hanging around the house?

6 A No one hanging around the house.

7 Q Did you contact your sister, did you contact your
8 niece Wilma or your nephew David?

9 A I didn't.

10 Q How about your sister?

11 A I understand that she did.

12 Q Okay, all right. Where was her habit, if you
13 were aware of it, about leaving her doors unlocked?

14 A She always locked those doors.

15 Q Okay, all right. Beg the Court's indulgence.

16 And where did she work?

17 A She worked out there on Alligator Road. She did
18 child care.

19 Q Okay. So she worked at a day care center?

20 A I beg your pardon?

21 Q She worked at a day care center?

22 A Day care center, right.

23 Q All right. Please answer any questions Mr.
24 Hoffmeyer may have if he has any.

25 MR. HOFFMEYER: Mr. Dolford, I don't have

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1 any questions for you. Thank you, sir.

2 THE WITNESS: Okay.

3 THE COURT: Thank you very much, sir. You
4 may have a seat.

5 MR. CLEMENTS: Your Honor, we would call
6 Wilma Hayes Epps to the stand.

7 THE COURT: All right, Ms. Epps, if you'd
8 please come around, Ma'am.

9 THE CLERK OF COURT: Ma'am, if you would
10 please place your left hand on the Bible, raise your
11 right hand.

12 WHEREUPON,

13 **WILMA MAE HAYES EPPS,**

14 having been duly sworn by the Clerk of Court,
15 testified as follows:

16 THE CLERK OF COURT: Please be seated.
17 State your full name for the record.

18 THE WITNESS: My name is Wilma Mae Hayes
19 Epps.

20 **DIRECT EXAMINATION**

21 BY MR. CLEMENTS:

22 Q Ms. Epps, where do you live?

23 A I live at 817 Miller Drive in Darlington, South
24 Carolina.

25 Q Where were you born and raised?

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1 A I was born and raised in Florence, South
2 Carolina.

3 Q Who is your mom?

4 A Ms. Willie Mae Hayes.

5 Q Okay. You remember what you were doing the
6 morning of August 25th, 2008?

7 A Yes, I do.

8 Q And what were you doing?

9 A I was at work and I was sitting at my desk and I
10 received a message that my mother was missing and no
11 one had seen her that, seen her that day.

12 Q What did you do as a result of getting that call?

13 A As a result of getting that call I left my place
14 of employment. I went by her house and I didn't see
15 a car in the yard and then I went to my brother
16 place employment.

17 Q And you did what now?

18 A Then I went to my brother's place of employment,
19 and I spoke with him there and told him that we
20 couldn't find our mother.

21 Q What is your brother's name?

22 A David Allen Hayes.

23 Q Where did he work?

24 A At ABB in Florence, South Carolina.

25 Q Okay. And where do you work?

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1 A At the South Carolina Department of Disabilities
2 and Special Needs.

3 Q In Florence?

4 A Yes, I do.

5 Q Okay. Now when you went by the house was anyone
6 there at the time when you rode by there?

7 A There was no one there.

8 Q Did you get out and check anything yourself?

9 A When I got out I waited until my brother also got
10 there. We went through the house together.

11 Q Okay, all right. And what did you find in the
12 house?

13 A We looked around the house. At first nothing
14 looked strange until we went into the dining area.
15 My mother is a very neat person, and there was a
16 broken vase on the floor.

17 Q Okay.

18 A And then we went around to the front room and
19 that's when we saw the television was missing.

20 Q Okay.

21 A And then we kept going through the house and
22 different little things were out of place.

23 Q All right. And so as a result of noticing all
24 that what did y'all do?

25 A I immediately called the police department.

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1 Q Okay, all right. Did you notice her car there at
2 all?

3 A Her car was not there.

4 Q Okay. And did you let law enforcement — when
5 you called did you let them know her car was missing
6 as well?

7 A I can't remember exactly, but we just assumed
8 that since her car wasn't there — that wasn't the
9 main focus. The main focus was her just not being
10 where she was supposed to be.

11 Q Were you there when the police arrived?

12 A Yes, I was.

13 Q Please answer any questions Mr. Hoffmeyer has.

14 MR. HOFFMEYER: Ms. Epps, I don't have any
15 questions for you this afternoon. Thank you though.

16 THE COURT: Thank you, Ms. Epps, you may
17 step down, ma'am.

18 MR. CLEMENTS: Your Honor, we call David
19 Hayes to the stand.

20 THE COURT: All right. Mr. Hayes, if
21 you'd please come around to be sworn, sir.

22 THE CLERK OF COURT: If you would place
23 your left hand on the Bible, raise your right hand.
24 WHEREUPON,

25 **DAVID A. HAYES,**

SW - D. HAYES - DIRECT

1 having been duly sworn by the Clerk of Court,
2 testified as follows:

3 THE CLERK OF COURT: Please have a seat
4 and state your full name for the record.

5 THE WITNESS: Yes, I'm David A. Hayes, the
6 son of Ms. Willie Mae Hayes.

7 **DIRECT EXAMINATION**

8 BY MR. CLEMENTS:

9 Q And David, how old are you?

10 A 40 years of age.

11 Q And where do you work?

12 A ABB of Florence.

13 Q Where do you live?

14 A 1125 Rose (ph) Lane.

15 Q How far is that from your mom's house?

16 A I can get there in like two to three minutes.

17 Q Okay. You recall what you were doing the morning
18 of August 25th, 2008?

19 A Yes, I was at work.

20 Q Okay. Did you get any phone calls from anyone?

21 A My sister came by the job.

22 Q She came by the job?

23 A Right.

24 Q Okay. And after she came by the job what did you
25 do as a result of her visit?

SW - D. HAYES - DIRECT

1 A She said that my mother was missing so I
2 immediately got off work.

3 Q Okay. Where did you go?

4 A Straight to 200 West Liberty Street.

5 Q And when you got there who was there?

6 A At the time just my sister.

7 Q Okay.

8 A She was already at the house.

9 Q Had your uncle already been there?

10 A I didn't know at the time but I heard they had.

11 Q What did you find when you got to 200 West
12 Liberty Street?

13 A Once we walked inside we walked around the whole
14 house. I noticed a bedspread all messed up. Then I
15 walked around some more then we noticed a lamp
16 broken in the den part, and then I noticed a flat
17 screen TV on the wall was missing. That's when I
18 knew something was going on. Then we walked around
19 the yard and there was a screen was taken down that
20 I actually put up.

21 Q Screen was taken down off the window?

22 A Window, right.

23 Q And what side of the house was that window where
24 the screen was missing?

25 A It was on the left side.

SW - D. HAYES - DIRECT

- 1 Q Okay.
- 2 A Off the carport.
- 3 Q If you're standing at the front of the house,
- 4 like I'm standing in the front looking at the front
- 5 of the house, it was on down the left side of the
- 6 house here?
- 7 A It was on the left side.
- 8 Q All right. And that window, where did that
- 9 window enter into, which room?
- 10 A Basically into the den area.
- 11 Q Okay.
- 12 A It's the den. Den and kitchen I would say and
- 13 the bedroom was right across.
- 14 Q All right. And when you noticed all those things
- 15 out of order and things missing, what did y'all do?
- 16 A First we knew something was wrong right off. We
- 17 knew something was wrong so the first thing we did,
- 18 I told my sister she need to call. First she called
- 19 around to her job and everything. But after that
- 20 she called the hospital 'cause we was thinking maybe
- 21 she got into an accident, and then after that she
- 22 called the police.
- 23 Q Okay. Did the police respond to the house while
- 24 you were there?
- 25 A Yes.

SW - D. HAYES - DIRECT

1 Q Okay. Did you point out to them what you saw
2 that was out of order?

3 A I pretty much told them the same thing I was
4 saying before about I noticed the flat screen. That
5 was the biggest thing I noticed.

6 Q So you told the police officer what you're
7 telling this jury?

8 A Right, correct.

9 Q Okay, all right. Beg the Court's indulgence a
10 moment. How many bedrooms are in your mother's
11 house?

12 A It's two.

13 Q Okay. And you said you noticed something wrong
14 with bed linens?

15 A My mother's a very neat person and in both of her
16 rooms I noticed the bed linens all twisted up.
17 That's not her.

18 Q Okay. And were bed linens missing at all off any
19 of the beds?

20 A Before I didn't know whether or not they was
21 missing, but I know they was messed up.

22 Q You knew something didn't look right?

23 A Right, correct.

24 Q Was that in the room she slept in or the other
25 room?

SW - L. JORDAN - DIRECT

1 A Both.

2 Q Both?

3 A Yes.

4 Q Okay, all right. When you saw that did y'all
5 call the police and then you waited for them?

6 A I guessed something was wrong. That's what
7 happened.

8 Q Please answer any questions Mr. Hoffmeyer may
9 have.

10 THE WITNESS: All right.

11 MR. HOFFMEYER: Thank you, Mr. Hayes. I
12 don't have any questions for you this afternoon.

13 THE COURT: Thank you, Mr. Hayes. You may
14 step down, sir.

15 MR. CLEMENTS: Your Honor, we call Officer
16 London Jordan.

17 THE COURT: Officer Jordan, if you will
18 come around please.

19 WHEREUPON,

20 **LONDON JEROME JORDAN, JR.,**

21 having been duly sworn by the Clerk of Court,
22 testified as follows:

23 THE CLERK OF COURT: Please be seated.
24 State your full name for the record.

25 THE WITNESS: My name is London Jerome

SW - L. JORDAN - DIRECT

1 Jordan, Jr.

2 **DIRECT EXAMINATION**

3 BY MR. CLEMENTS:

4 Q I can tell where you work from your uniform.
5 Could you please tell us where you work and what
6 your specific job duties are?

7 A Yes. I'm involved with the City of Florence
8 Florence Police Department working patrol division.

9 Q How long have you been in law enforcement?

10 A Since May of 1985.

11 Q All right. And Officer Jordan, were you working
12 the morning of August 25th, 2008?

13 A Yes, sir, I was.

14 Q Did you have an occasion to respond to a call,
15 and what type of call was that that you responded
16 to?

17 A Yes, sir. I was dispatched to a missing person
18 call at 200 West Liberty Street approximately
19 1:46 p.m. on the 27th of August, 2008.

20 Q And when you were responding there where is that
21 located?

22 A It's on the northeast side of town.

23 Q Is that in the city limits of Florence?

24 A It's in the city limits of Florence, yes, sir.

25 Q Okay. And that's in Florence County as well?

SW - L. JORDAN - DIRECT

1 A Yes, sir.

2 Q Okay. When you got to that location any other
3 officers respond with you?

4 A I was the first one on the scene that I recall,
5 but several officers responded shortly thereafter.

6 Q Okay. And when you got to that location at West
7 Liberty Street can you tell this jury what you found
8 there?

9 A I met with the victim's daughter and son and I
10 believe brother. Those individuals were already
11 there, and they started informing me things that
12 seemed to be out of order of being, number one, that
13 Ms. Hayes wasn't there, didn't report to work, and
14 they didn't know her whereabouts.

15 Q Okay. And was her vehicle missing?

16 A And the vehicle was missing.

17 Q What, if anything, was there that you observed
18 that in your training of as a law enforcement
19 officer would cause you to have any type of
20 suspicions?

21 A Well, being that was a missing person call we
22 take a real big interest on making sure that we
23 notify neighbors, gather information we possibly
24 can. Like I said, the victim's children were
25 already there and they knew it was out of ordinary,

SW - L. JORDAN - DIRECT

1 one, being a window screen down on the east side of
2 the residence, a TV being missing, and the victim's
3 purse and driver's license were still at the
4 location but her vehicle wasn't there.

5 Q Okay. And what, if anything, did this cause you
6 to have suspicion of?

7 A Definitely foul play. I mean, it's more than
8 just she, the victim just leaving home; but maybe
9 she was, you know, left I guess. Something didn't
10 seem right.

11 Q Okay.

12 A Especially when the immediate family did not know
13 her whereabouts.

14 Q Okay. And you said the other officers responded
15 as well?

16 A That's correct.

17 Q And when they responded what did y'all begin to
18 do in the neighborhood?

19 A Talk to the neighbors, secure the scene, limit
20 amount of folks in the area. As a matter of fact, I
21 was — my duties after the investigators respond was
22 to initiate and maintain a crime scene log
23 indicating who came in and outside of the residence.

24 Q All right. So did you call dispatch and ask for
25 investigations?

SW - L. JORDAN - DIRECT

1 A Yes. I basically through my supervisor when the
2 call came out and it was seen that it was, you know,
3 we needed to do some investigation in a hurry
4 several units responded.

5 Q Forensics respond and investigation respond?

6 A That's correct, sir.

7 Q And you maintained the scene like a crime scene
8 at that time?

9 A That's correct, sir.

10 Q And what's your purpose for doing that?

11 A Basically limit the amount of traffic in and out
12 of the crime scene to protect any evidence and
13 documentation of who actually entered inside the
14 crime scene.

15 Q Okay. Did anyone enter other than the family
16 members and law enforcement or police personnel?

17 A No, sir, not to my knowledge.

18 Q And you maintained that?

19 A Yes, sir.

20 Q Okay, all right. Beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 BY MR. CLEMENTS:

23 Q You recall which investigators and which forensic
24 officers responded?

25 A Sergeant Godwin was one of the first ones on the

SW - L. JORDAN - DIRECT

1 scene.

2 Q Detective Godwin. How about forensics, do you
3 recall which one of them?

4 A Agent Mike Brandt was one of the first forensic
5 officers there, but I'm pretty sure there were a few
6 other ones but I know he was one of the first ones
7 because he was the one kind of initiated me to go
8 ahead and do the crime scene log, maintain the crime
9 scene log.

10 Q Okay. And did you put that yellow crime scene
11 tape up as well?

12 A They did, yes, sir.

13 Q The forensic guys did that?

14 A Yes, sir.

15 Q Okay, all right. Did you have a accurate
16 description of the car that Ms. Hayes had, the type
17 of car, or do you know?

18 A I don't recall. We went ahead eventually filed a
19 stolen vehicle report, but I couldn't tell you right
20 off the top of my head exactly what kind it was.

21 Q Is that what's commonly referred to as a bolo
22 perhaps?

23 A Yes, sir, that does.

24 Q What does bolo stand for?

25 A Be on the look out for. That was relayed to the

SW - L. JORDAN - CROSS

1 other patrol units out there.

2 Q All right.

3 A In the field.

4 Q Did the police begin a search for—

5 A Yes, they did.

6 Q —Ms. Hayes?

7 A Exactly.

8 Q And her car?

9 A And her vehicle, yes, sir.

10 Q Please answer any questions that Mr. Hoffmeyer
11 may have.

12 **CROSS - EXAMINATION**

13 BY MR. HOFFMEYER:

14 Q Officer Jordan, now later on several days after
15 your initial investigation you were involved with
16 the arrest of a suspect at 525-B Stackley Street; is
17 that correct?

18 A That's correct, sir.

19 Q And that was Rakim Floyd, right?

20 A Yes, sir.

21 Q And he was hiding at 525-B Stackley?

22 A Yes, sir.

23 Q And he'd shaved his head; hadn't he?

24 A Yes, sir.

25 Q If you will excuse me one second. Now Rakim

SW - L. JORDAN - REDIRECT

1 Floyd, if you know, did he live on Liberty Street?

2 A Yes, sir, I believe he did.

3 Q And of course, Liberty Street is where this crime
4 was committed, right?

5 A That's right. 200 West Liberty.

6 Q And his residence was very near Ms. Hayes'
7 residence; is that right?

8 A That is correct.

9 Q And when you found Rakim Floyd at that residence
10 he had items there to make an effort to live in that
11 area where he was hiding; isn't that correct?

12 A If I recall it was an abandoned apartment, yes.
13 Apparently he had been staying there for a little
14 while.

15 Q Not his typical residence, right?

16 A That's correct.

17 Q Thank you very much, Officer Jordan.

18 THE COURT: Anything on redirect?

19 **REDIRECT EXAMINATION**

20 BY MR. CLEMENTS:

21 Q Officer Jordan, was or was not Rakim Floyd 14
22 years old?

23 A I'll have to look at my notes, but I believe he
24 was —

25 Q Or 13 even?

SW - L. JORDAN - REDIRECT

1 A He may have been — I want to say 14 at the time.
2 According to my — okay, I'm showing Rakim Floyd
3 being 17.

4 Q At that time?

5 A Yes, sir.

6 Q Okay.

7 A If this is Rakim Floyd that's what I'm showing,
8 17.

9 Q Okay, all right. Thank you no further questions.

10 THE COURT: Thank you very much, sir. You
11 may step down.

12 MR. CLEMENTS: Your Honor, that was about
13 as far as we thought we would get today. We've got
14 some other witnesses in the building, but by the
15 time we got them up here it would be —

16 THE COURT: All right, we'll adjourn at
17 this time. Ladies and gentlemen, it's about ten
18 minutes to five. We'll stop at this point. Any
19 other witness the State would call would probably
20 take us considerably past 5:00, and I told you when
21 we started that we try to adhere to that 5:00 time
22 frame so we're gonna stop at this point. Now this
23 is where things great a little more interesting as
24 far as you having to protect your right or your
25 abilities to be fair and impartial 'cause now

1 you're about to go home; and family friends, loved
2 ones are gonna be curious as to whether or not
3 you've been selected to be on a jury. You can tell
4 them that you have been selected and that you are
5 serving on a jury and that you have to be back
6 tomorrow. Of course, the next thing they're gonna
7 want to know is what kind of case is it, who does it
8 involve, things like that. What you need to tell
9 them is that you're not allowed to talk about the
10 case at all. Something as innocent as saying it's a
11 case that involves a young man who's been charged
12 with murder, something as innocent as that could
13 possibly elicit a response that might compromise
14 your ability to be fair and impartial. So the way
15 to answer that is to just say, listen, the judge has
16 given us very strict instructions we're not to have
17 any conversation about the case at all. But you can
18 tell them, if you'll be patient, when the case is
19 over I'll tell you everything you want to know.
20 Just let them know that you can't talk about it and
21 ask them to please respect that.

22 I tell folks in your position and you haven't
23 really gotten a taste of it yet 'cause we got
24 started late this afternoon, although jury service
25 is not physically taxing from a muscular standpoint

1 but it can be very taxing from a mental standpoint
2 and an emotional standpoint. So what I would
3 encourage you to do is when you go home this evening
4 just put this out of your mind, just relax, enjoy
5 being home, enjoy being with your family if that's
6 what you're gonna be doing or whatever you're doing.
7 Try to get a good meal, try to get a good night's
8 rest tonight. That's really the main thing is that
9 you get a good night's rest because when you come
10 back in the morning we'll probably have a full day
11 of it tomorrow so you need to be well rested so that
12 when you're sitting there in the jury box you can be
13 alert and be paying attention, okay. So please do
14 those things for me. Try very hard to guard your
15 ability to be fair and impartial.

16 Again, I don't know that there would be
17 anything in the papers or on the television; but if
18 you're watching TV and you see something comes up
19 and it talks about the Florence courthouse, switch
20 it, just don't listen to it. Be back if you would,
21 we're gonna start at 9:30 in the morning. And we'd
22 like to start at 9:30 so if everybody can leave your
23 homes and understand you got to find parking when
24 you get here. Now parking should be better tomorrow
25 because I don't know if you realize this, when you

1 came today — of course all of y'all were here, your
2 whole group of folks who were on the jury panel with
3 you, but we also had a jury panel down on the 10th
4 floor so there were all those folks too. Well, all
5 those folks aren't coming back tomorrow so you
6 should have an easier — if you had a difficult time
7 finding parking you should find it easier tomorrow.
8 But keep in mind you got to travel from home to
9 here, get a parking space, get back up, get back up
10 here and report to your jury room.

11 My wife and I have this constantly in our
12 life together. If we have to be somewhere across
13 town at 7:00 she thinks we're doing great if we
14 leave the house at 7:00. And I try to tell her,
15 baby, we're late. We haven't even got out the door
16 and we're late. Got to take into consideration
17 travel time. So if I tell you that we want to start
18 at 9:30 that means you can't leave your house at
19 9:30; you got to be here at 9:30, okay. So please
20 try to do that if you could. When you get here in
21 the morning and you come up there will be somebody
22 that will direct you straight back here and we'll
23 get ready, we'll get started as soon as everybody is
24 reassembled, okay.

25 So everyone else please remain in the

1 courtroom. Ladies and gentlemen, we'll see you back
2 here tomorrow morning at 9:20.

3 (WHEREUPON, the jury was removed from the
4 courtroom at 4:55 p.m., and the following
5 proceedings commenced in open court.)

6 THE BAILIFF: Let the rest of them go.
7 There's one that needs to speak to the judge and the
8 lawyers. Let the rest go.

9 (Juror approached the Bench for an on-the-record
10 discussion.)

11 THE COURT: Yes, ma'am. Have they
12 answered all the questions?

13 MR. JEPERTINGER: I don't know the
14 gentleman, but when he reported he worked at ABB my
15 step dad works at ABB. And I didn't know if that
16 would be a concern or. I don't know anything about
17 the case. I don't remember hearing anything but
18 just wanted to let you know that my step dad does
19 work there.

20 THE COURT: Okay, no, as long as — and
21 hear's the thing and what's really important is,
22 number one, you didn't know anything any way. And
23 then number two, now that you're on the case of
24 course, they don't know what case you're on and it's
25 just important that. Like I said, to everybody else

1 that just not have any conversation about it.

2 THE POTENTIAL JUROR: Okay.

3 THE COURT: You're good. No, you're fine.
4 Thank you.

5 (Juror exits the courtroom.)

6 THE COURT: The young lady, the alternate,
7 I think is Ms. Anderson, just wanted to let me know
8 that she did not realize at the time when the names
9 were called out because she doesn't — didn't dawn
10 on her by the names, but apparently a witness has
11 testified who works at ABB or something. She said,
12 judge, I just want y'all to know that my stepfather
13 works at ABB. I don't know if my stepfather knows
14 him, I don't know him, I don't know anything about
15 the case but I just wanted to make the Court aware
16 of that.

17 MR. CLEMENTS: Well, if she obeys your
18 admonition and doesn't talk to her stepfather it
19 won't be a problem, Judge.

20 THE COURT: I just confirmed that with
21 her. That is not a problem. She just wanted to let
22 the Court know, and I told her that was not a
23 factor. Just wanted to share with y'all what her
24 conversation was. That's what it was. Now is there
25 anything we need to take up before we adjourn for

1 the afternoon?

2 MR. HOFFMEYER: No, sir, Your Honor.

3 THE COURT: Mr. Hoffmeyer, what time would
4 you like Mr. Johnson over here in the morning? You
5 tell me and they'll have him here.

6 MR. HOFFMEYER: I think 9:00 is okay. We
7 may need to get him dressed or something. We will
8 work through it.

9 THE COURT: Okay. You just communicate
10 with William and them and they'll accommodate you on
11 that.

12 MR. HOFFMEYER: Thank you.

13 THE COURT: Solicitor, anything from the
14 State before we adjourn?

15 MR. CLEMENTS: No, sir, Your Honor.

16 THE COURT: Okay. We'll start back at
17 9:30 then, ladies and gentlemen.

18 MR. CLEMENTS: Oh, Your Honor, I'd just
19 like put on the record how we all stayed so close to
20 our time schedule.

21 THE COURT: Let me tell you, you knew
22 what you were talking about.

23 MR. CLEMENTS: You did well too.

24 (Court was adjourned at 5:00 p.m. and
25 resumed on February 14, 2012.)

1 (WHEREUPON, State Exhibit Nos. 103 through
2 116 were marked for identification only.)

3 THE COURT: Yes, sir, Solicitor.

4 MR. CLEMENTS: Good morning, Your Honor.
5 Your Honor, just a couple of housekeeping matters
6 before we get started. Your Honor, we have physical
7 evidence we have premarked, Your Honor, and we've
8 gone over those with the court reporter and with Mr.
9 Hoffmeyer. And I ask Mr. Hoffmeyer to correct me if
10 I misstate anything, but my understanding is that
11 these are items that are coming into evidence
12 without objection except for the continuing
13 objection that Mr. Hoffmeyer had on search and
14 seizure issues.

15 THE COURT: Correct, okay.

16 MR. CLEMENTS: And his other prior
17 objection. And let me delineate what these items
18 are and make sure that I am correct on this. I
19 think this begins with items 113 through items 116;
20 is that correct, Ms. Court reporter? Or excuse me,
21 103 through 116. 103 would be the crime scene
22 diagram, Your Honor, that we put into evidence.
23 Number 104 is going to be some items, Your Honor,
24 from a autopsy package which we're just marking that
25 for I.D. right now because we don't want to open

1 that package; that's just I.D. 105 is swabs from
2 the vehicle belonging to the victim and her house.
3 106 are buccal swabs from David Johnson. 107 are
4 buccal swabs from Anthony Wilson. 108 are buccal
5 swabs from Gregory Montgomery. 109 are buccal swabs
6 from Rakim Floyd. 110, buccal swabs from Rashawn
7 Bailey. 111 is the latent print evidence from the
8 house and the car and the major case prints. Number
9 112 is a VCR that was stolen from Ms. Hayes' house.
10 Number 113 is a Emerson DVD player that came from
11 her house that was found at the home at the corner
12 of Sanborn and Sumter Street which the VCR was too,
13 which is subject to Mr. Hoffmeyer's continuing
14 objection.

15 THE COURT: Correct.

16 MR. CLEMENTS: Number 114 is the Samsung
17 combo DVD/VCR belonging to Ms. Hayes that was found
18 at Sanborn/Sumter street. Number 115 is a box
19 containing various items that had come from the
20 victim's house: Blinds to a window, jewelry, bank
21 cards, some other items, plus a white T-shirt,
22 sleeveless T-shirt, that was found one of the
23 houses, on the ground outside close to Ms. Hayes'
24 house. And then number 116 is a disk containing the
25 redacted statement of David Johnson. And we would

1 move to put all those items into evidence at this
2 time except for the box containing the package from
3 the autopsy. We will just have that marked for
4 I.D., which is number 104.

5 THE COURT: All right. And of course,
6 with the continuing objections that Mr. Hoffmeyer
7 has regarding the search items.

8 MR. HOFFMEYER: Yes, sir. But in addition
9 to that, as I'm sure you recall I objected to the
10 buccal swab for my client related to the DNA and his
11 voluntary or lack from our position, voluntary
12 consent of giving that without a warrant without a
13 court order so naturally we would object to that
14 buccal swab of my client.

15 THE COURT: Yes, sir.

16 MR. HOFFMEYER: And along with that the
17 case prints for my client.

18 THE COURT: Those are the latents on 111?

19 MR. HOFFMEYER: Yes, sir. That relates to
20 just renewing my previous objections to those items.

21 THE COURT: All right. And I'm gonna mark
22 those as being in over objection.

23 (WHEREUPON, State Exhibit Nos. 103, 105
24 through 116 were admitted into evidence.)

25 THE COURT: All right, anything else?

1 MR. HOFFMEYER: I did have one other thing
2 and I mentioned this to the Solicitor. I didn't at
3 the beginning of this trial move to sequester their
4 State's witnesses. What I'm concerned with are what
5 I described to Mr. Clements as fact witnesses which
6 were those defendants or witnesses that came to that
7 scene later, not law enforcement.

8 THE COURT: Okay. So lay witnesses,
9 you're asking that all the lay witnesses be
10 sequestered?

11 MR. HOFFMEYER: Yes, sir.

12 THE COURT: All right.

13 MR. CLEMENTS: Your Honor, I believe to be
14 sure I'm clear, I think those would include
15 potential witnesses Anthony Wilson, Rakim Floyd,
16 Rashawn Bailey, and Gregory Montgomery I believe are
17 the individuals that are potential witnesses Mr.
18 Hoffmeyer referred to. Did I leave anyone out?

19 MR. HOFFMEYER: No, sir, that is correct.

20 MR. CLEMENTS: And possibly Terrance
21 Mitchell as well, Your Honor.

22 THE COURT: All right.

23 MR. CLEMENTS: And those individuals, Your
24 Honor, we will not have in the courtroom at the same
25 time.

1 THE COURT: Okay. None of them are in the
2 courtroom at this time?

3 MR. CLEMENTS: No, sir, they're
4 sequestered now.

5 THE COURT: Okay. And make sure we keep
6 it that way as long as they have not testified yet.

7 MR. CLEMENTS: Yes, sir.

8 THE COURT: Anything further?

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

10 MR. CLEMENTS: Your Honor, there is — I
11 talked to Mr. Hoffmeyer about this. Wed like to
12 re-call a witness from yesterday for one brief
13 question regarding a matter of time I want to be
14 sure is clear and that we wanted to let you know
15 that before we get the jury out to make sure you're
16 okay with that.

17 THE COURT: Okay, all right. I don't see
18 a problem with that. Any objection to that?

19 MR. HOFFMEYER: Your Honor, my
20 understanding he's just going to testify to the date
21 of birth of a particular individual which will come
22 in later anyway so if Mr. Clements wants to put him
23 up just to say that I don't really have a problem
24 with that.

25 THE COURT: Okay, all right, we'll begin

1 with that I guess.

2 MR. CLEMENTS: Yes, sir.

3 THE COURT: All right. And I think we do
4 have all our jurors. We'll go ahead and get
5 started. Mr. Propps, would you ask the jury to join
6 us please.

7 THE BAILIFF: Yes, sir.

8 (WHEREUPON, the jury was returned to the
9 courtroom at approximately 9:40 a.m., and
10 the following proceedings commenced in
11 open court.)

12 THE COURT: All right, ladies and
13 gentlemen, I hope everyone had a good evening. And
14 let me inquire of the jury before we get started, is
15 there any member of the jury panel that has seen
16 anything about this case whether it be newspaper,
17 internet, television, anything?

18 JUROR: I heard something about it, but I
19 don't know anything about it.

20 THE COURT: And heard that it was in the
21 paper?

22 JUROR: I live in that section of town.

23 THE COURT: All right, sir. Let me get
24 you to step up here if I could, and yeah, if y'all
25 wanted to come around.

1 (Juror approached the Bench for an on-the-record
2 discussion.)

3 JUROR: 138.

4 THE COURT: Yes, sir, what is it you
5 heard?

6 JUROR: I just heard about it, don't know
7 no details.

8 THE COURT: That it was going to trial
9 this week?

10 JUROR: No, it wasn't nothing about that.

11 THE COURT: So nothing that would affect
12 your —

13 JUROR: I don't think so.

14 THE COURT: All right. Thank you, sir.

15 (End of bench conference with juror 138.)

16 THE COURT: Ladies and gentlemen, if you
17 recall when we adjourned yesterday the State was in
18 the process of putting up their case and so we'll
19 resume with that so I would recognize the State for
20 your next witness.

21 MR. CLEMENTS: Thank you, Your Honor. If
22 it please the Court, Your Honor, we re-call Officer
23 London Jordan.

24 THE COURT: Officer Jordan, if you would
25 come around and, sir, you are still under oath, sir,

SW - L. JORDAN - DIRECT

1 so if you would please take the stand we won't
2 re-swear you. You are still under oath from
3 yesterday.

4 THE WITNESS: Yes, sir.

5 **DIRECT EXAMINATION**

6 BY MR. CLEMENTS:

7 Q Officer Jordan, you recall yesterday you were
8 asked about Rakim Floyd's age; is that correct?

9 A Yes, sir.

10 Q And I think you referred to some document you
11 had?

12 A Yes, sir, I did. I referred to a 2011 document.

13 Q All right. So and that -- what was the age of
14 that document?

15 A Seventeen.

16 Q Would that be the age he is now or the age he was
17 in 2008 when this occurred?

18 A That would be the age he is now, sir.

19 Q The age he is now. What is his birthday?

20 A It is August 23rd, 1994.

21 Q So he would have been 14 at the time of
22 August 25th, 2008; is that correct?

23 A Yeah, that's correct.

24 Q Okay, thank you. Please answer any questions
25 that Mr. Hoffmeyer may have.

SW - L. JORDAN - CROSS

CROSS - EXAMINATION

1

2

BY MR. HOFFMEYER:

3

Q Officer Jordan, this Rakim Floyd you're referring
4 to you testified to yesterday I believe as well and
5 tell us his age, this is the same individual that
6 was a suspect in this crime that was found hiding at
7 525-B Stackley Street?

8

A That is correct.

9

Q Thank you. I don't have anything further.

10

THE COURT: All right. Thank you very
11 much, sir. You may step down.

12

MR. CLEMENTS: Your Honor, we ask that
13 Officer Jordan be released from his subpoena.

14

THE COURT: Any objection, Mr. Hoffmeyer?

15

MR. HOFFMEYER: No, sir, Your Honor.

16

THE COURT: Thank you, Officer Jordan.
17 You're free to go, sir.

18

MR. CLEMENTS: Your Honor, next we'd call
19 Corporal Terrance Ford.

20

THE CLERK OF COURT: Sir, if you would
21 place your left hand on the Bible, raise your right
22 hand.

23

WHEREUPON,

24

TERRANCE FORD,

25

having been duly sworn by the Clerk of Court,

SW - T. FORD - DIRECT

1 testified as follows:

2 THE CLERK OF COURT: Please be seated and
3 state your full name for the record.

4 THE WITNESS: Corporal Terrance Ford.

5 **DIRECT EXAMINATION**

6 BY MR. CLEMENTS:

7 Q Corporal Ford, can you please tell this jury
8 where you work and explain what you do?

9 A Yes, I work at the City of Florence Police
10 Department. I've been employed there 12 years. I'm
11 supervisor for the north region part of the patrol
12 division.

13 Q And how long have you been in law enforcement?

14 A Twelve years.

15 Q Twelve years?

16 A Yes, sir.

17 Q All with the Florence Police Department?

18 A Yes, sir.

19 Q Did you have occasion to be involved in a missing
20 person situation and investigation in August of
21 2008?

22 A Yes, sir, I did.

23 Q Can you please tell this jury how you came to be
24 involved in it and what you did.

25 A Well, I heard the call come out via the radio and

SW - T. FORD - DIRECT

1 then Officer Jordan had called me to advise me of
2 what the situation was, and shortly thereafter I
3 called investigations.

4 Q Okay. And when you called investigations did you
5 continue to do work in this case?

6 A Oh, yes, sir.

7 Q What specifically were you doing as a patrol
8 supervisor in this situation?

9 A I was just making sure that the scene was
10 maintained and also checking the area, canvassing
11 the area for anybody who might have seen anything
12 that occurred or know any whereabouts of the missing
13 individual.

14 Q What were y'all looking for in the area or what
15 were you hunting for?

16 A We were looking for Ms. Hayes' vehicle.

17 Q Okay. You recall what kind of vehicle that was?

18 A Sure, it was a Toyota Corolla four door.

19 Q Toyota Corolla four door?

20 A Yes.

21 Q Did you ever find that vehicle?

22 A Yes. After we started canvassing the
23 neighborhood shortly after found the vehicle on
24 Roughfork Street.

25 Q Okay. And where was Ms. Hayes' home?

SW - T. FORD - DIRECT

1 A It's pretty much once we got over there, probably
2 a couple of feet down almost in the back yard of
3 where the home was, that where the vehicle was
4 located.

5 Q Are you familiar with that area?

6 A Yes, sir, very familiar with that area.

7 Q Are you familiar at all with a aerial view of
8 that area?

9 A Yeah, I could be because the way everything out
10 and certain housing apartments are located.

11 Q Well, I'm going to ask with the Court's
12 permission that you step down and I think there
13 might be a yardstick right up here. I want you to
14 hold this. If you can, if you can stand on this
15 side so the court reporter can hear your voice, and
16 I'm gonna show you what's been marked State's
17 Exhibit 1. And you can tell by looking at it it's a
18 aerial photograph. Is it at all, any of that look
19 familiar to you or —

20 A Yes, sir.

21 Q Can you describe what that is to the jury.

22 A Yes, sir, I can. What we have here is a duplex
23 three duplexes that were familiar to the — this is
24 Ms. Hayes' house. The reason I notice this is
25 Ms. Hayes' house because that's the only house on

SW - T. FORD - DIRECT

1 the block that has the right car shed in the front
2 of it.

3 Q So that was a car shed?

4 A Yes, sir.

5 Q Okay, all right. And so this is her house where?

6 A Located right here.

7 Q Okay. And what's this street that she lived on?

8 A That's Liberty Street.

9 Q All right. Now you found the car, was that you
10 actually found it or —

11 A Yes, sir, I found the car.

12 Q And what street was that on?

13 A Roughfork Street.

14 Q Where is Roughfork Street?

15 A Roughfork Street is the street that leads here.

16 Q Do you know about where you found the car at?

17 A Yes, sir, the car was found here.

18 Q Okay. And what is located right here? What is
19 that building right there?

20 A That's a duplex that's located right there.

21 Q And what kind of parking area is that?

22 A It's just like probably a single or double car
23 parking area.

24 Q Concrete or —

25 A Yes, sir, concrete slab.

SW - T. FORD - DIRECT

1 Q And the car was parked there?

2 A Car was backed up right there.

3 Q And it was backed up with the rear-end towards
4 the —

5 A With the rear-end towards the back of the
6 building right here.

7 Q Okay.

8 A So the car was facing Roughfork Street.

9 Q Okay, all right. Are you aware that there any
10 ways of getting from here to here without walking
11 around the whole block? Can you cut through —

12 A Oh, yeah.

13 Q —in the back of these places?

14 A Place right through here where you can cut
15 through that comes through Liberty Street to
16 Roughfork Street. It's a path that's kind of it's
17 fenced in, but the fence is kind of worn down so you
18 can pretty much access right through the backyard.

19 Q Okay, all right. Thank you Officer, if you can
20 sit back down. Do you recall what day it was you
21 found the car?

22 A I don't remember the exact day.

23 Q Was it the same day or the next day? Do you
24 remember?

25 A It was the same day.

SW - T. FORD - DIRECT

1 Q Same day?

2 A Yes, sir.

3 Q And did you find Ms. Hayes? You found the car
4 did you find ---

5 A No, just found the vehicle and after that
6 apartment radio that the vehicle was located where
7 it was located at it was unoccupied at the time.

8 Q Okay. Did you set up on that car to watch that
9 car till law enforcement, the other law enforcement
10 got there?

11 A Yes, I did sit on the car until crime scene and
12 some other police department members got there.

13 Q Okay. And so which unit came that wasn't a
14 patrol unit?

15 A It was Corporal Moreau, which was the crime scene
16 unit, and then there was people from the command
17 staff and other officers that showed up.

18 Q Okay, all right. After that were your particular
19 duties over or, with that car, or did you move on to
20 other things? What did you do next?

21 A Well, my particular duties were over with the car
22 but I moved on to other things which is canvassing
23 the neighborhood since we found the vehicle and
24 started looking towards the missing individual
25 again.

SW - T. FORD - DIRECT

1 Q Okay. Were you participating at all when
2 Ms. Hayes was found.

3 A No, sir, I was not.

4 Q Okay. Is there anything else you were involved
5 in this investigation?

6 A No, sir, just like I say, just canvassing of the
7 area, speaking to witnesses, and looking for a
8 missing person that was it.

9 Q Okay. Did you yourself come up with any leads
10 or?

11 A No, sir.

12 Q Gain any information?

13 A No, sir, I did not.

14 Q Okay, all right. Thank you. Beg the Court's
15 indulgence a moment. Just a couple of more
16 questions, Corporal. When you found the car did you
17 go up to see if it was locked or if it was unlocked?
18 Did you get inside the car yourself? What did you
19 do?

20 A No, I didn't get inside the car. I approached
21 the car just to look inside to see if anybody was
22 inside the car, and then also verified the tag that
23 was on the car and the VIN number to make sure it
24 was the same car that belonged to Ms. Hayes.

25 Q Were you able to verify that?

SW - T. FORD - DIRECT

1 A Yes, sir.

2 Q Did you see anybody in the car?

3 A No, sir.

4 Q Did you see if the car was locked or unlocked?

5 A I didn't check it at all. No, sir.

6 Q You just turned that over to forensics and crime
7 scene?

8 A Exactly, yes, sir.

9 Q Please answer any questions that Mr. Hoffmeyer
10 might have.

11 MR. HOFFMEYER: Corporal Ford, I don't
12 have any questions for you this morning. Thank you
13 very much.

14 THE COURT: Thank you very much, sir. You
15 may step down.

16 MR. CLEMENTS: Your Honor, may Corporal
17 Ford be excused from his subpoena.

18 THE COURT: Any objection?

19 MR. HOFFMEYER: No objection, Your Honor.

20 THE COURT: You're free to go, sir. Thank
21 you.

22 MR. CLEMENTS: Your Honor, next we'd call
23 Shannon Hill.

24 THE COURT: All right. Mr. Hill, if you'd
25 come around to be sworn, sir.

SW - T. FORD - DIRECT

1 THE CLERK OF COURT: If you would place
2 your left hand on the Bible and raise your right
3 hand.

4 WHEREUPON,

5 **SHANNON HILL,**

6 having been duly sworn by the Clerk of Court,
7 testified as follows:

8 THE CLERK OF COURT: Please be seated and
9 state your full name for the record.

10 THE WITNESS: My name is Shannon Hill.

11 **DIRECT EXAMINATION**

12 BY MR. CLEMENTS:

13 Q And Officer Hill, can you tell this jury where
14 you work and what you do.

15 A I'm employed with the City of Florence Police
16 Department. The past four-and-a-half years I've
17 been assigned to the crime scene unit within the
18 investigation division at the police department.

19 Q And prior to working with the crime scene unit
20 were you involved in law enforcement?

21 A I was -- I've been my whole career, which is
22 19-and-a-half years, with the City of Florence
23 Police Department. I spent the first two-and-a-half
24 years working the street as a patrol officer, about
25 13 years as a traffic officer, and the last

SW - S. HILL - DIRECT

1 four-and-a-half years as crime scene.

2 Q Okay. You used to ride a motorcycle; didn't you?

3 A Yes, sir.

4 Q And you've been with crime scene for
5 four-and-a-half years?

6 A That's correct.

7 Q Okay. Can you please explain to the jury what
8 you do as a crime scene officer.

9 A When we're called to a scene of any crime scene
10 the first thing we want to do is make sure the scene
11 is secure. Then what we do is we'll walk-through
12 with the first responding officer have him brief us
13 on what he seen or what the reason for the call was
14 and why we were needed. Once we do that, we walk
15 through with the officer, look for any type of
16 evidence that we feel might be important. Once
17 we've done the general walk-through what we will do
18 is take pictures, general photos of the scene.
19 Usually we'll start from the outside, then we will
20 work out way to the inside. And then once we're
21 through with the general photographs, any specific
22 evidence that we think we might recover, whether it
23 be biological evidence such as DNA, whether it be
24 evidence for latent prints, whether it be physical
25 evidence like something that maybe a suspect left

SW - S. HILL - DIRECT

1 behind, we will recover those items and process them
2 later.

3 Q All right. Now how long and how time consuming
4 is this job that you do on a crime scene?

5 A Being a crime scene technician when you go to a
6 scene it's very -- it can last a long time. It can
7 last anywhere from an hour, depending on the scene,
8 to 16 or more hours stretching on into two or three
9 days which it has before many times.

10 Q Okay. How is your job different or the same as
11 what we see on TV with CSI and all these other kind
12 of shows?

13 A Things don't happen as fast obviously as they do
14 on TV, but I would say it's nothing like what you
15 see on TV.

16 Q Okay. Well on TV always got something; don't
17 you?

18 A And it's perfect.

19 Q Okay. Is that the case in real life?

20 A No, sir. No, it's not.

21 Q Okay. When you got -- tell us how you got to be
22 called to Liberty Street and tell us exactly what
23 you did when you got there and how you received that
24 call and what you did to respond.

25 A On the 25th of August, 2008 I heard a call coming

SW - S. HILL - DIRECT

1 out of the radio of a missing person. The first
2 responding officer arrived on scene. A few minutes
3 later an investigator was called. And then a few
4 minutes later after that I was notified by Sergeant
5 Godwin that he wanted me to respond to that scene.

6 Q How do you know investigators were called. Were
7 you — was that all that on the radio that you were
8 over here?

9 A Sometimes it's radio, but procedures that we have
10 is when a patrol officer arrives on scene and thinks
11 it may be crime scene, investigator protocol to call
12 an investigator first. And then once the
13 investigator gets on scene he will assess the
14 situation and see if there's anything he can take
15 care of or if he needs crime scene. If he needs
16 crime then we'll make the call to someone in crime
17 scene and we will respond.

18 Q Did you get the call yourself from Melvin Godwin?

19 A Actually I got call from headquarters who had
20 received the call from Sergeant Godwin.

21 Q Okay. And where were you when you received the
22 call? Were you home or out here at the complex or
23 where were you?

24 A It was about 2:00 in the afternoon when I
25 received the call, somewhere in that time frame. I

SW - S. HILL - DIRECT

1 was here in the complex building in my office.

2 Q Okay. And what did you do to respond?

3 A Once I received the call I immediately left the
4 City-county Complex and went to 200 Liberty Street
5 where the scene was at. I arrived around 14:25 to
6 14:30 hours. And when I arrived there I spoke with
7 Investigator Godwin, Sergeant Godwin, and he briefed
8 me on what he had at that time.

9 Q And when you go and respond to a scene you have a
10 lot of stuff you carry with you?

11 A Yes, sir. We have a lot of equipment such as lap
12 top computers, camera, equipment we use to do latent
13 fingerprints, collect DNA or biological evidence.

14 Q You took all your tools of the trade with you?

15 A Everything that's assigned to me as far as tools
16 that we need for the job is kept in our vehicle.

17 Q Okay.

18 A And so when we were assigned vehicle the vehicle
19 belongs to us so whenever we go to a scene we have
20 everything there with us.

21 Q Okay. And you had all that with you?

22 A Yes, sir.

23 Q And what did you find when you got to Liberty
24 Street?

25 A Well, I met, like I said, with Sergeant Godwin.

SW - S. HILL - DIRECT

1 I asked him, you know, what he had and he basically
2 advised me that we had a missing person, that the
3 individual was missing and no one knew where she
4 was, that her vehicle was missing. No one knew
5 where her vehicle was at. And that it appeared from
6 what he'd seen inside the house there were some
7 things that were disrupted, like some things might
8 have slumped over cooking equipment and little odds
9 and ends, figurines dropped over, and that was all
10 wrapped that was all around the area of a window
11 that was on the east side of house.

12 Q Okay.

13 A He also advised that there was a TV that was
14 reported missing from the den area of the house.

15 Q Now once you got there and you got advised as to
16 what they had, what did you do next?

17 A First thing I did was take photographs of the
18 inside of the house. Our normal procedure is to
19 take photographs of the outside of the house first.
20 But that particular day when I was about to do that
21 a real heavy rain storm came so I wasn't able to do
22 that. So I started with the inside of the house
23 first. I started my pictures at the front door and
24 worked my way from the front of the house towards
25 the back of the house. And while I was at the back

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1 of the house also I noticed and it had been brought
2 up to by Sergeant Godwin, that the back door to the
3 house is secured by a two by four. And what I mean
4 is the back door of the house swings in so it
5 doesn't swing out. And the homeowner had a two by
6 four that was secured to the back so no one could
7 make entry from the outside of the home, and the two
8 by four had been removed and the back door was found
9 open when the family members had arrived on scene.

10 Q Okay. What else did you notice there as you were
11 taking pictures?

12 A I was also advised by Sergeant Godwin that the
13 east side of the window, which was next to the
14 kitchen, was found open or unlocked. And in that
15 area from the window is the area where a crock pot
16 was kind of knocked over, some figurines, and other
17 things that were in the immediate area under the
18 window. Then when I went into the bedroom of the
19 individual that was missing I noticed that the
20 mattress, all the blankets and sheets had been
21 removed. And you could see the indentation on one
22 side of the mattress. The top part of the mattress
23 was visible. The indentations left by the springs
24 and support part that was underneath it.

25 Q Okay. So on top of the mattress were

SW - S. HILL - DIRECT

1 indentations from the springs?

2 A Yes, sir.

3 Q What's unusual about that?

4 A Well, the indentations are left on the mattress
5 usually when a mattress is on top of the support
6 springs or the support bar. And you wouldn't see
7 them unless the mattress was flipped over.

8 Q Okay. So this clued you in and perhaps the
9 mattress was flipped over?

10 A Yes, sir, that's correct.

11 Q And you took pictures of all this?

12 A I took general photos of the inside of the house;
13 and then once we started processing the scene, more
14 detailed and specific photos were taken.

15 Q Explain to this jury what you mean by general
16 photos and why you take general photos before you
17 begin to process things.

18 A General photos are going to be what if you were
19 observing the photos kind of gives you an overall
20 picture of what the scene looks like when we get
21 there. Nothing has been moved or disturbed as far
22 as we know. That's what you're seeing when you look
23 at those pictures what we're seeing for the first
24 time. Now once we have completed those general
25 photographs what we will do is when we start getting

SW - S. HILL - DIRECT

1 into processing certain items or certain areas of
2 the home such as for processing latent fingerprints
3 or something like that, then we will take detailed
4 photos of the area that we're processing so they can
5 be looked at later on in the future.

6 Q So you got general photos and then you got
7 detailed photos?

8 A Yes, sir, that's correct.

9 Q And you began to process the house by yourself,
10 or was someone else there then to assist you?

11 A I had started the process myself. About the time
12 I had finished with the general photographs Sergeant
13 Brandt arrived on scene to assist with the
14 furthering of the investigation.

15 Q Okay. And did he help you process the house?

16 A Yes, sir, we completed it together.

17 Q Okay. When y'all take those photos what do y'all
18 do with the photos?

19 A Once we leave the scene and come back to the
20 police department what we do immediately because
21 it's evidence, is we transfer those photos from our
22 camera to a right protected CD or DVD using our
23 laptop or desk top computers. And then once we do
24 that we lock them into our evidence safe until we're
25 ready to lock them into the evidence room at the

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1 police department.

2 Q Did you do that with these photos?

3 A Yes, sir, I did.

4 Q Okay. What else is something y'all do to
5 document how a scene looks?

6 A At this particular scene we also took some
7 pictures with a 35-millimeter camera which that was
8 completed by Sergeant Brandt.

9 Q Do you ever make any diagrams or anything of that
10 nature?

11 A I believe Sergeant Brandt completed a diagram,
12 sketch diagram of the victim's house.

13 Q Okay. I want to show you what's been marked as
14 State's Exhibit Number 103. I want to ask if you'd
15 grab that yardstick up there and ask permission for
16 you to step down. And I'm gonna ask, Officer Hill,
17 if you'd stand over here so the court reporter can
18 hear what you say.

19 A (Witness complies.)

20 Q And if you can tell us what State's Exhibit 103
21 is and how it relates to what you found and describe
22 that for us please.

23 A This is a sketch diagram of the victim's house,
24 the inside of the victim's house at 200 West Liberty
25 Street.

SW - S. HILL - DIRECT

- 1 Q Did you make that sketch?
- 2 A No, sir, I did not.
- 3 Q Who made that sketch?
- 4 A Sergeant Brandt completed this sketch diagram.
- 5 Q And is that while y'all were there at the house?
- 6 A Yes, sir.
- 7 Q Is it to scale?
- 8 A No, sir, it's not to scale which was that —
- 9 which what that means it's shrunk down. It's not
- 10 actual exact measurements as they exist today.
- 11 Q But this is a general, reasonable facsimile of
- 12 what you saw?
- 13 A Yes, sir, that's correct.
- 14 Q Please explain to this jury how the house looked
- 15 and what you've already told us about how that's
- 16 demonstrated on that diagram.
- 17 A This will be the front porch of the house as you
- 18 can see here, right here, and this is the front
- 19 door. If you come to the front door you go to the
- 20 den which walk straight through to the kitchen and
- 21 walk straight through to the dining room. And then
- 22 here is your rear door back here at the rear of the
- 23 house.
- 24 Q And is that the one that had the two by four?
- 25 A Yes, sir.

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1 Q —set up where that two by four can block it?

2 A This is the rear door which swings inward like
3 this, and normally there's a big two by four that
4 secures the door so it can't swing in and nobody can
5 come in from the outside.

6 Q Okay. Now let me ask you this real quick. When
7 y'all come in and when you got areas open and y'all
8 take pictures of those areas; is that correct?

9 A Yes, sir.

10 Q Like the window or the door, you know. When you
11 leave the scene how do you leave the scene? You
12 leave it still unlocked or what do you do?

13 A We leave the scene — if you have open doors or
14 open windows or anything like that, what we would do
15 is secure it to the best that we can. If there is a
16 owner of the business, owner of the property there,
17 we'll leave it his custody and we'll take
18 responsibility for it. Or we'll lock all the doors,
19 look all the windows, make sure everything is secure
20 best we can.

21 Q Did you take pictures of it after you've locked
22 it and show it secure?

23 A Yes, sometimes we do.

24 Q Okay, all right. Please continue.

25 A To the west side of the house it's a two bedroom

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1 house. You have the first bedroom which is on the
2 west side of the house, north west side of the house
3 towards the front of the house. And then kind of in
4 the middle you have the bedroom that we were told
5 that the -- belonged to the victim.

6 Q Okay. And what did you find there in that
7 bedroom?

8 A In her bedroom was a chair which was like a
9 recliner type chair; and she had a wardrobe, little
10 closet that kept her purse and her dresses and her
11 clothes like that. And then she -- this is her bed
12 right here, and this will be the head of her bed,
13 what we think is the head of her bed where she was
14 asleep. And then behind the bed up against the wall
15 with some other little shelves and some tables to
16 keep books and odds and end items and stuff like
17 that.

18 Q Now how was that bed made up?

19 A As I said, earlier when we walked into the
20 bedroom the first time all we had on the spring was
21 just a mattress. There wasn't any pillows. There
22 wasn't any sheets and blankets or anything like
23 that.

24 Q All right. What did you notice about that
25 mattress?

SW - S. HILL - DIRECT

1 A And then when we saw the mattress you could see
2 about midway the indentations or kind of the rust
3 stains that were left by the support wall.

4 Q Okay. What do y'all do to that mattress, if
5 anything?

6 A What we did -- and Sergeant Brandt was with me --
7 is we picked the mattress up to flip it over to see
8 what it looked like on the other side. And when we
9 did that up towards this end of the bed was a large
10 red stain.

11 Q Okay. And what was -- or did you do anything to
12 determine what that large red stain was?

13 A We have a -- we conducted a phenyl blood test and
14 what that is is a three part process where we
15 moisten a sterilized Q-tip swab, and then we have
16 three different -- and then we take that moistened
17 swab and rub it on the red stain. Then we have
18 three little other chemical items that we drop on
19 it, and if it's blood of some sort it will
20 immediately turn pink.

21 Q When you say we drop on it, you drop on the stain
22 or you drop on the swab?

23 A You drop on the swab. And we conducted that test
24 on it and it immediately showed -- turned pink,
25 which is a positive sign of blood.

SW - S. HILL - DIRECT

1 Q When you find blood like that on a scene and you
2 test it and you find out, that's called a
3 presumptive test; is that correct?

4 A That's correct, which means we believe it to be
5 blood but still has to be tested further.

6 Q So once you have that presumptive test and it's
7 positive for blood, then what do you do with that
8 information?

9 A Then we will actually take a sample which is
10 another swab, and I moisten that tip and rub it in
11 the red stain and that will be — we'll allow it to
12 dry thoroughly, and then we seal it in an envelope
13 and that at a later point in time is send to SLED so
14 the DNA department can analyze it to see if it truly
15 is blood.

16 Q Okay. And that swab, that collects the blood?

17 A Yes, sir, that's correct.

18 Q Okay. And you send it off and you test it for
19 DNA and also test it to see if you can match it with
20 anybody?

21 A Yes, sir, that's correct.

22 Q And if it's really human blood; is that correct?

23 A That's correct.

24 Q Do you ever find something that's blood that's
25 not human any time?

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1 A Sometimes we do. We'll get a presumptive
2 positive test on something, and it will be blood but
3 will turn out to be maybe animal blood or something
4 like that.

5 Q Like in a kitchen and cooking chicken or
6 something like that?

7 A Yeah, something like that.

8 Q Okay, all right. So you tested that, what else
9 did y'all do to process this house? If you can,
10 using that diagram to explain to the jury where and
11 what you did, please tell us what you did to process
12 the house.

13 A All right. Like I said earlier, the first thing
14 I did when I finished the general photographs I
15 started processing the scene for latent prints. And
16 I first started in the den area. And to be
17 methodical about it, I started here, and just went
18 and worked my all the way through the house each
19 room so to make sure I wouldn't forget anything.
20 And then once I did that we went into each bedroom.
21 Now right here I was told by Sergeant Godwin in the
22 den area on the wall is where a big screen TV was
23 mounted, and he said was missing. And I also
24 noticed at that time hanging out the wall was a
25 cable vision cable hanging out. And so what I did

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1 is I processed the wall area where the TV was. And
2 there's sort of an HVAC duct work that sticks off
3 the wall; I processed that for latent prints. And
4 when I completed that I went into the kitchen.

5 Q Do you always find prints when you process them?

6 A No, sir, not all the time. I can tell you that
7 on the HVAC unit we did collect, I think, it was two
8 or three latent prints were collected from that
9 area.

10 Q When you collect latent prints can you also
11 identify them?

12 A No, sir, we take our latent prints and we send
13 those to SLED as well for a latent examiner to
14 examine them.

15 Q Why? What would be a reason why you can't
16 identify prints?

17 A Well, for me personally I'm not trained in that
18 area as far as being a latent print examiner. That
19 is something that you have to take, get certified
20 in.

21 Q Okay.

22 A So that's why we send it to SLED because those
23 are the people that have the training to accomplish
24 that.

25 Q Okay. And what else did you do? You — as far

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1 as looking at windows and doors tell us what you
2 did.

3 A Once I finished this room I went into the kitchen
4 and the window on the east side of the house that I
5 mentioned earlier that was found unlocked was
6 located right here right above the shelf. I was
7 also told that a -- it had plastic blinds, and I
8 don't know if you're familiar with them. You can
9 turn a little rod on the side to open them or close
10 them. The rod was off of the blinds and actually
11 found outside on the ground; and I think a family
12 member, when they had first arrived on the scene
13 picked it up and brought it in. But this window was
14 found open when the family members arrived on scene.
15 I processed the inside of the window and recovered
16 two latent prints from that area.

17 Also, the crock pot that I mentioned earlier
18 that was knocked over was located just below the
19 window right in this area here. I started to
20 process that for prints when I noticed a smear that
21 appeared to be left by a handprint. At that point
22 in time I went ahead rather than continuing with the
23 latent print, took a swab and swabbed it for
24 possible DNA evidence in the future. Also in this
25 area there were some things like I mentioned earlier

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1 that were knocked over, some vases and some little
2 figurines and stuff like that. Also on the outside
3 of this window found on the ground was the screen
4 that was on the outside of the window. That was
5 found taken off and just laying on up against side
6 of house.

7 Q Did you collect that?

8 A Yes, before we left the scene it was collected as
9 evidence.

10 Q Okay, all right. Now you took pictures of all
11 this; is that correct?

12 A Yes, sir, that's correct.

13 Q Okay. I think we're done with this right now.
14 If you can have a seat back there.

15 A (Witness complies.)

16 Q Officer Hill, when you gather this information
17 and you collect it, tell us what you do to preserve
18 it and explain to us what the chain of custody is
19 and how you maintain that evidence.

20 A Any kind of evidence we recover from a scene
21 we'll take it back to the police department. And
22 down in the basement of this building there's a room
23 where we take all our evidence. We do some
24 processing there such as latent prints on something
25 like that. Once we're through with it or we're not

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1 ready to actually store into evidence we have a
2 evidence safe, and we'll take our evidence and put
3 it in there, and myself and the other crime scene
4 technicians are the only individuals that have
5 access to that safe and it stays locked. And we're
6 the only ones that have the combination or have
7 access to it. And once we're ready to log it into
8 the evidence room we'll take it from that location
9 straight over to the evidence room which is also
10 located in the basement of this building. And at
11 that point in time we turn it over to the evidence
12 custodian, and then they enter everything into their
13 computer system. It stays there until it's ready to
14 go to SLED. When it's ready to go to SLED one of us
15 — it may not be necessarily the person who
16 collected the evidence — but one of the crime scene
17 technicians will log it out from the evidence
18 custodian and it will go straight from there. We
19 check out. On the day before we go we will lock it
20 back in our safe and then we'll take it from there
21 straight to SLED headquarters in Columbia and turn
22 it over to them.

23 Q And all this evidence that you collected did you
24 go to the City-County Complex and log it in?

25 A Yes, sir, that's correct.

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1 Q Now you talked about taking a swab off something
2 trying to get DNA. What kind of DNA is that called?

3 A Touch DNA is the technical term for it.

4 Q Can you always get DNA?

5 A Not always. It just depends on how good the
6 sample is. Sometimes it's good and sometimes it's
7 not.

8 Q Is that the same with fingerprints as well?

9 A Yes, sir. Sometimes you can get some good latent
10 prints off some and sometimes you can't.

11 Q Okay, all right. Beg the Court's indulgence a
12 minute, Your Honor. I've got a lot of photos that
13 have been admitted into evidence, and I'm gonna ask
14 you if you can identify a lot of these photos. And
15 if you can, then we're gonna ask the Court if we can
16 publish these to the jury with some of this new
17 technology that I've got to have help with.

18 MR. CLEMENTS: So Your Honor, I apologize
19 if it takes a little bit of time, but I think in the
20 long run it will be better for them to see it
21 easier.

22 THE COURT: That's not a problem. Take
23 whatever time you need.

24 MR. CLEMENTS: I need Mr. Godbolt here.
25 He's a whole lot smarter than I am. He can do

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1 magic. At least it's magic to me.

2 BY MR. CLEMENTS:

3 Q I'm gonna show you State's Exhibits 4, 5, 6, 7,
4 and 8. And first let me ask you, can you identify
5 those?

6 A Yes, sir, I can identify these photos.

7 Q Who took those photos?

8 A I did.

9 Q Okay. Now if I — all right, I'm gonna first ask
10 you about State's Exhibit 4. Can you tell us about
11 that and what that depicts and what that is.

12 A This is an outside view of the window, the east
13 side window that we were told was found unlocked.
14 And as you can see the screen is leaning up against
15 the wall that was taken off the window, —

16 Q Okay.

17 A —outside wall.

18 Q All right. And State's Exhibit 5.

19 A This is just a photo of the front of the house at
20 200 Liberty Street.

21 Q And the front of the house is on which side
22 directionally?

23 A That would be the north side.

24 Q State's Exhibit 6.

25 A This is the north side of the house again. This

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1 is just the front, the front porch area, just kind
2 of a angle shot.

3 Q Okay. And when you got there what was your
4 information on that front door? Was it locked or
5 not, or do you know?

6 A I do not know.

7 Q State's Exhibit 7?

8 A This is the window on the east side of the house
9 that I've discussed earlier that was found unlocked,
10 and this is what it looked like from the inside if
11 you were standing there in the dining room.

12 Q All right. And that is unlocked or locked?

13 A It was found unlocked when we got there. I can't
14 tell you if it was locked in that position or not.

15 Q When y'all leave how do you ---

16 A We lock it so it may have been already secured
17 when I the photo was taken.

18 Q All right. State's Exhibit 8?

19 A There is an inside photo from the back door to
20 the house. If you're standing in the dining room
21 looking towards the back of the house which would be
22 the south side of the house, you can see the back
23 door and that's the brackets that held up the two by
24 four that I mentioned earlier.

25 Q And who secured that?

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1 A That was put up by me before I left.

2 Q And that is not how it was when people came to
3 the scene; is that correct?

4 A That's correct.

5 Q So when Ms. Hayes was discovered missing that two
6 by four was down and that door was not secure?

7 A Yes, sir, that's correct.

8 Q All right. I want to show you State's Exhibit 9
9 through 49 please. Can you look through those as a
10 group. When you finish looking through them hand
11 them to me as you finish. And then when you get
12 through with that tell me if you recognize those and
13 tell me who took those pictures.

14 THE COURT: Solicitor, those are in
15 evidence. If you don't want do go through all
16 they're in evidence without objection.

17 MR. CLEMENTS: Okay, all right.

18 BY MR. CLEMENTS:

19 Q Well tell you what, hand me a few of them first
20 'cause I'm gonna have to show them to Mr. Godbolt.
21 All right, State's Exhibit 9, tell us what that is
22 please.

23 A This is a photo of actually the twelfth floor of
24 this building. It's an area where we use to take
25 some items that need to be stored that we couldn't

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1 really put into evidence and mostly kind of let
2 things dry out. And this is a photo of the pillows
3 that were found in a black plastic bag.

4 Q Okay. And is that the black plastic bag?

5 A Yes, sir, that's the bag that the pillows were
6 found in.

7 Q And this is in this building on the twelfth
8 floor?

9 A Yes, sir.

10 Q Now where were these pillows and this bag found?

11 A The bag was actually first found by Sergeant
12 Godwin who then advised me, and I went to it. But
13 it was in -- it was next to a vacant lot which was
14 next to 200 Liberty Street.

15 Q So the vacant lot was behind, was beside
16 Ms. Hayes' house?

17 A And then it was beside, beside there, yes, sir.
18 It was in the tree line.

19 Q In the back?

20 A Yes, sir.

21 Q Okay, all right. State's Exhibit 10?

22 A This is a photo of the inside of the house. This
23 would be standing in the den area looking down
24 through towards the kitchen.

25 Q State's Exhibit 11?

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1 A This would be in the same den area. Basically
2 it's a photo looking back towards the front door
3 towards the north side of the house.

4 Q State's Exhibit 12, what does that depict?

5 A This is in the den area and this is a photo of
6 the wall that I had mentioned that I was advised
7 that a flat screen TV had been taken. As you can
8 see on the wall there's a mount and there's some
9 cables coming out of the wall. And next to that to
10 the right the item you can see with a wood grain is
11 the HVAC unit that I'd mentioned I'd got ten a
12 couple of latent prints off of.

13 Q Was that a air conditioner or just a heating
14 unit?

15 A I'm not sure exactly what it was. That's why I
16 call it a HVAC, to cover them all.

17 Q State's Exhibit 13?

18 A It's just a close-up photo of the same wall.

19 Q And did you process this area?

20 A Yes, sir, I did.

21 Q Okay. And do you know when you process the area
22 whether you will or won't find anything of
23 evidentiary value?

24 A No, sir, you never know if you're gonna get
25 anything unless you have to try and do it anyway.

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1 Q State's Exhibit 14?

2 A This is the photo just stepping inside the
3 kitchen looking toward the back of the house kind of
4 towards her sink area as you can see.

5 Q Okay. And that's not where the entrance was
6 made, was it?

7 A No, sir, the window is actually in the next room.

8 Q Okay. Now I see sinks in there. Did y'all test
9 these drains to see if you can find anything out of
10 those drains?

11 A Yes, sir. The knobs and drains of the bathroom
12 and the kitchen, we did a presumptive blood test on
13 all those areas. All of them were negative for
14 blood except for the drain on the right side sink.
15 It indicated a positive result for blood.

16 Q And that turned out not to be human blood, right?

17 A Yes, sir, that's correct.

18 Q State's Exhibit 15?

19 A Another photo of the kitchen and basically it's
20 looking back towards the den area. As you can see
21 just another shot of the sink and stove area.

22 Q Okay. State's Exhibit 16?

23 A This is inside the dining room. The refrigerator
24 was in the dining room, not the kitchen. And it's a
25 photo looking into the victim's bedroom.

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1 Q So that was Ms. Hayes' bedroom there?

2 A That's correct.

3 Q As you look through that door?

4 A Yes, sir.

5 Q And there's another door open through that door,
6 where does that lead to?

7 A That is the bathroom which is shared by another
8 bedroom that was on the other side.

9 Q All right, State's Exhibit 17?

10 A This is a photo of the dining room just standing
11 in the kitchen looking back into the dining room.
12 As you can see in the photo on your left is the
13 crock pot I mentioned just underneath the east side
14 of the window.

15 Q State's Exhibit 18?

16 A It's another photo of the kitchen looking toward
17 the window.

18 Q Is that the window where entrance was made into
19 the house?

20 A Yes, sir, that's correct.

21 Q And that was the crock pot you're talking about?

22 A Yes, sir.

23 Q That you saw a swipe and you tried to get DNA off
24 of it?

25 A Yes, sir, that's correct.

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1 Q Were you able to get DNA off of that?

2 A No, sir.

3 Q State's Exhibit 19?

4 A This is just an item, like I mentioned earlier,
5 around the area where the window was at. I stated
6 saw some things were knocked over, found on the
7 floor. I'm not sure where this came from, but it
8 was just in the area. It's a flower vase obviously,
9 but it's been broken on the bottom as you can see.

10 Q Now you've gone to many different crime scenes;
11 haven't you?

12 A Yes, sir.

13 Q Where would you rank this crime scene as far as
14 neatness and things being in place as compared to
15 other crime scenes?

16 A Other than the few things that were knocked over
17 her whole house was neat and in order.

18 Q So anything out of place was really out of place?

19 A Yes, sir, it was pretty noticeable.

20 Q Okay. State's Exhibit 20?

21 A That's an item that was found in the dining room
22 near the window, was laying on the floor.

23 Q State's Exhibit 21?

24 A This is a photo of the inside of the window above
25 the lock and which you can see barely on there is

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1 actually that reflective material. It's latent
2 print tape where some fingerprints were attempted to
3 be lifted.

4 Q So you tried to get some prints off of that?

5 A That's the location where two, the two prints
6 that I took off the window. That's where they were
7 at, right above the area.

8 Q Was a match able to be made with those?

9 A No, sir.

10 Q State's Exhibit 22?

11 A This is a photo of the south side of the house
12 which this is the rear door. The main door is open,
13 and this is just look out through the screen door to
14 the backyard.

15 Q Is that the way it was found?

16 A It was found open, yes, sir, the main door.

17 Q Okay, that is the back?

18 A Yes, sir, that's correct.

19 Q State's Exhibit 23?

20 A That is a photo of the two by four that she used
21 to brace up the rear door of the house.

22 Q All right.

23 MR. CLEMENTS: Your Honor, may I ask
24 permission for the witness to step down?

25 THE COURT: Yes, sir. Yes, sir.

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1 (Witness complies).

2 BY MR. CLEMENTS:

3 Q I'm gonna hand you this little laser point. I'm
4 used to that technology. This is new to me. If
5 would use that please and stand over on that side
6 where the court reporter can hear you and explain to
7 the jurors what you're talking about.

8 A This is the two by four we've talked about
9 earlier that was used to force up the back door.
10 Right here on this where I'm pointing at now is the
11 bottom of the metal brace that the two by four sat
12 in.

13 Q All right, state's Exhibit 24?

14 A And that's the photo of the brace I was talking
15 about. The two by four, one end goes in there and
16 directed straight across the back of the door.

17 Q State's Exhibit 25?

18 A Just as you walk inside the victim's bedroom and
19 look to your left this is what you would see. She
20 had a little TV here, a dresser, space heater. And
21 this is the wardrobe that I pointed out earlier in
22 the scale diagram where she kept her purses and some
23 clothing items.

24 Q Now where would her bed be in conjunction with
25 looking at this picture?

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1 A In this picture the bedroom would actually — i
2 mean, the actual bed would be behind this wardrobe
3 right in this area here.

4 Q And where would the door entering in be?

5 A The door would be right here right next to the
6 TV.

7 Q Okay, all right. Is that a old style heavy TV?

8 A Yes. I would say so, yes, sir.

9 Q All right, state's Exhibit 26?

10 A Standing in the same spot that I took the
11 previous photo, just a photo looking down in the
12 ground and you can see a couple of her purses that
13 we believed were kept in her wardrobe here. That's
14 how — that's where they were at when we walked into
15 the room the first time.

16 Q On the floor?

17 A Yes, sir.

18 Q Okay. State's Exhibit 27?

19 A This is a photo going back to the main living
20 room or the den area where the flat screen was taken
21 from. This is the side of the HVAC, the heating
22 unit duct work you saw, sticking off the side of the
23 wall. Those are the first two latent prints I took
24 from that area.

25 Q Those appear to be clear, or were those smudged?

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1 A Well, they weren't able to get an identification
2 off of them because the detail on the latent prints
3 wasn't very good.

4 Q Okay. State's Exhibit 28?

5 A That's another photo of the same location just
6 kind of a little bit up close.

7 Q 29, State's Exhibit 29?

8 A And that is the same unit we've been looking at.
9 This is just latent print number three and that's
10 the fingerprints there.

11 Q State's Exhibit 30?

12 A Same location as the first three latent prints
13 you saw. This is just number four a little bit
14 further down in the duct work.

15 Q State's Exhibit 31?

16 A This is the east side window again that we talked
17 about in the dining room. This is looking from
18 inside to outside of the house. And that right
19 there, that is tape, latent print tape, and which
20 typically to get one latent print off of and then we
21 got a piece of tape that's right up here there.

22 Q So you tried everywhere you tried to get a latent
23 print you tried to get it?

24 MR. HOFFMEYER: Object to the leading Your
25 Honor.

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1 THE COURT: Sustained.

2 BY MR. CLEMENTS:

3 Q Let me rephrase my question. Where all did you
4 try to get latent prints from?

5 A Every area based on information that we had that
6 the suspects or suspects might have been.

7 Q Okay. Back up a minute to State's Exhibit 19.
8 Can you please tell us what is up there in the upper
9 left hand corner right there.

10 A Right here, this is the — I don't know what the
11 actual term for it would be called, but when you
12 have blinds on your windows, that's the little thing
13 that hangs off the side, the little plastic bar that
14 you would turn in order to open and close the
15 blinds. This was found actually by a family member
16 on the outside of the house, and they brought it
17 back inside and laid it on the table.

18 Q Okay, all right. Let's go back to State's
19 Exhibit 31. And do you see — where are the blinds
20 at in this picture?

21 A They're pulled up as you can see right there.

22 Q Okay, all right. State's Exhibit 32 please.
23 Tell us about that.

24 A All right. This is a photo of the east side of
25 the house right here. I'm standing at the north

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1 side of the house looking back in a southerly
2 direction towards the rear of house. This is the
3 east side window right here. That's the screen that
4 was taken off and laid up against the side of the
5 house. Of course those windows here are the ones
6 that are right directly over the kitchen sink.

7 Q Okay. Tell us about that gate. How big is that
8 gate?

9 A I guess it's your typical 4 feet chain link
10 fence, 4 foot high chain link fence.

11 Q So both of those gates swing open?

12 A Yes, sir.

13 Q Big enough for a car to drive back there?

14 A Yes, sir.

15 Q Okay. And what is over that area where that gate
16 is?

17 A As you can see right up in here is a top of a
18 metal carport awning type to cover a car.

19 Q All right, thank you. State's Exhibit 33 please.

20 A That's another photo, direct photo of the
21 exterior side of the east side window, the one in
22 the dining room. Of course, again, there's a screen
23 that was taken off and laid up on the side of the
24 house.

25 Q State's Exhibit 34?

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1 A That is the house there, and this gray stuff you
2 see all around here is where the area was processed
3 for latent prints. That's the actual latent print
4 fingerprint dust you can still see on the wall.

5 Q And what were you able to find outside there,
6 anything?

7 A No latent prints were able to be obtained from
8 the outside windows.

9 Q Okay. State's Exhibit 35?

10 A This is standing at the very back of the house in
11 the victim's back yard looking towards the back door
12 which is right here.

13 Q State's Exhibit 36?

14 A This is a photo of the black plastic trash bag
15 that was first found by Sergeant Godwin that
16 contained the four or five pillows that had the red
17 stains on it.

18 Q And what did those red stains turn out to be?

19 A We conducted the presumptive blood test on those
20 stains on all the pillows and they all indicated a
21 positive result for blood.

22 Q All right. State's Exhibit 37?

23 A That's just another closeup shot of the bag as it
24 sat in the wood line.

25 Q State's Exhibit 38?

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1 A And when you open up the bag the first thing you
2 saw, what I took a picture of, is this red stain
3 right here.

4 Q Okay. And that was presumptive for blood?

5 A Yes, sir.

6 Q Okay. State's Exhibit 39?

7 A Standing where the trash bag was located and
8 looking back in a northerly direction to the
9 apartment or building there that it was found
10 behind.

11 Q Okay. And which direction would Ms. Hayes' house
12 have been in?

13 A From this location her house would have been
14 going about that way.

15 Q Okay. And the back of her house would have been
16 over here?

17 A That's correct, but it would have been further
18 west.

19 Q Okay, all right. State's Exhibit 40 please?

20 A This is a picture of the mattress that was found
21 in the victim's bedroom, and I testified earlier of
22 a stain or imprint left by the support bar and that
23 is it right there as you can see. It runs all the
24 across from one side of the mattress to the other.

25 Q And when you saw that — well, let's look at

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1 State's Exhibit 41 before I ask you that question.

2 All right, can you explain to us more?

3 A This is standing just if you take a step or two
4 inside the victim's bedroom, look towards her bed,
5 this is what we saw, how we saw it. This is the
6 mattress here with the indentation left by the
7 support bar, and then there was a pair of glasses
8 left right there folded up right there at the head
9 of the bed.

10 Q Okay. And did you see any other kind of imprints
11 there?

12 A I think there might have been another one further
13 down on the mattress.

14 Q And what is this right here?

15 A That is the wardrobe that you saw a picture off
16 earlier. This is the side of it. That right there
17 is on the side of it, and then right here in the
18 front is the opening to it where you get to the —
19 her clothing and purses and stuff.

20 Q Okay, what would this be right here?

21 A This is a recliner chair that I mentioned was
22 also in her room. It sat just inside the door.

23 Q How big was that space in there?

24 A It was very small. Basically as soon as you walk
25 into the room you just had enough walk space to walk

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1 from the door to the bed or to the left to the front
2 of her wardrobe there.

3 Q All right. State's Exhibit 42?

4 A When we lift up the mattress that is the red
5 stain, as you can see, that we found at the head of
6 the mattress.

7 Q Okay, all right. Who is that in the picture
8 there?

9 A That would be Sergeant Brandt.

10 Q Okay, all right. State's Exhibit 43?

11 A This is me standing behind the recliner that you
12 saw partial of it in the photographs, and that's
13 just where it sits right there.

14 Q State's Exhibit 44?

15 A This is a photo of her room again. What you see
16 right here with the numbers on it, 1, 2, 4, is what
17 we call evidence markers. What these markers are
18 indicating, number one, is that red stain right
19 there. Number two is you had some reds stains on
20 the curtain and bed rail area. And then number four
21 down here was also another red stain that was across
22 the front of the bottom of the chair.

23 Q What type of stain was that on four?

24 A On the chair? It appeared to be a swipe stain,
25 in other words, like something brushed up against it

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1 from the floor from the side.

2 Q All right, State's Exhibit 45?

3 A Same — or same photo, just a different angle.

4 That's number one, the red stain. Number two
5 indicating the red stains that were found on the
6 curtain and bed rail here. From this angle now you
7 can see the number three that was missing from the
8 previous photo, and it's gonna indicate some red
9 stains that were found on this part of the wood
10 rail.

11 Q Was all that presumptive for blood?

12 A Yes, sir, it was. It tested positive.

13 Q All right, State's Exhibit 46?

14 A This is the red stain area you can see here,
15 indicated by number four. Kind of goes around here.
16 You can see how it's all a different shade than the
17 rest of the chair and how it's red in color.

18 Q And you said it was like a swipe?

19 A That's what it appeared to me, like someone came
20 across and brushed up against it.

21 Q Some —

22 A From the side, started here and went across it.

23 Q Okay. All right, State's Exhibit 47?

24 A This is a photo of the Q-tip that we used to do
25 the presumptive test on, how I mentioned earlier

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1 where we take a Q-tip, moisten it, and drop --
2 moisten it and then take it and rub it into the red
3 stain. Then we'll take the other three parts, drop
4 it on there. It should turn pink just like you see
5 here if it's a positive result for blood.

6 Q State's Exhibit 48?

7 A And that's another photo of the test that was
8 taken on this part of the bed rail which would have
9 been number three, and you can see it's pink as
10 well, turned pink.

11 Q State's Exhibit 49?

12 A This is a photo of the inside of a trash can that
13 was found in the kitchen area, just underneath the
14 microwave oven.

15 Q Did you collect what was in that trash can?

16 A Yes, sir, took the whole trash, the whole -- took
17 plastic bag that was inside the trash can collect
18 whole thing took it back in as evidence.

19 Q I'm going to hold up what's been marked State's
20 Exhibit 103 and you got a photo of that. Pull that
21 up. Can you please point out to us on this where
22 that trash was you were talking about you collected.

23 A Right here this is the kitchen area, and it was
24 up against this little side wall which is right
25 underneath the microwave and there was a scrub brush

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1 laying on the floor that we marked later as evidence
2 marker number five right in front of it.

3 Q All right. And what was in that trash bag?

4 A Once I got the trash bag back to the police
5 department for them was able to go through it,
6 basically it was your kitchen like napkins and stuff
7 like that. And there was a cigarette butt that was
8 found at the bottom of the trash can. And I was
9 told by a family member when I arrived on scene the
10 first time that no one at the house smoked
11 cigarettes so that cigarette butt was collected as
12 possible evidence.

13 Q And what did you end up doing with that cigarette
14 butt?

15 A We sent it to — we packed it up in an envelope
16 then we send it to SLED to have them analyze it for
17 any kind of DNA evidence.

18 Q Okay. And how would you get DNA evidence on a
19 cigarette butt?

20 A If it was put in someone's mouth then you have
21 DNA evidence.

22 Q From saliva?

23 A Or if you touched it and left it from your hands
24 —

25 Q Okay.

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1 A —would leave evidence, DNA evidence.

2 Q All right. We go to State's Exhibit 50 please.

3 Will you please tell us what State's Exhibit 50 is?

4 A About a day or two after the 25th — I'm not sure
5 the exact date right now — Sergeant Godwin asked me

6 to respond out to this address here which if I
7 remember correctly is, I think, 100 Liberty Street.

8 In other words, it was like one or two apartments
9 down from where the victim lived at, and there was a
10 white tank top of some sort that he wanted to
11 collect for possible evidence maybe later on down
12 the road. So this is a photo of the front of that
13 apartment and —

14 Q Is that the front side or the back side of it?

15 A I'm thinking it's the front side of the
16 apartment, and the T-shirt as you can see is right
17 there.

18 Q Okay, all right. How about State's Exhibit 51,
19 can you tell us what that is or if you took that
20 picture.

21 A I didn't take that picture.

22 Q Okay, all right. State's Exhibit 71 please.

23 A This is a photo of a trash bag that I collected
24 from the kitchen. What I did is when I collected it
25 I immediately put it in a brown paper bag. This is

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1 a photo of the bag that it was put in inside our
2 processing room which is in the basement of this
3 building.

4 Q All right, State's Exhibit 72?

5 A This is a photograph of what was inside the trash
6 can, a closeup shot. As you can see you have
7 napkins, some food items such as rice and some other
8 things, and then you have a cigarette butt that was
9 collected as evidence.

10 Q All right, state's Exhibit 73?

11 A This is everything that was in that trash can
12 pulled out and laid out on the table so I could get
13 a good look at it and examine it properly. Just
14 have all the napkins that were in there pulled out
15 as well as a receipt from Wal-Mart. This looks like
16 a wrapper from maybe some kind of snack or something
17 like that. Then I have a photo of a cigarette that
18 was found in the trash can.

19 Q All right, State's Exhibit 74?

20 A That is a closeup photograph of the cigarette
21 butt.

22 Q State's Exhibit 75?

23 A This is a photo of the screen that I collected it
24 that was found leaning up against the side of the
25 house that you saw earlier. It was processed for

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1 latent prints all around the front and everything
2 like that, and no identifiable prints were found.

3 Q State's Exhibit 76?

4 A This is the green mini-blinds -- that's I'd want
5 to call them -- that was found on the east side
6 window. From top to bottom both sides was processed
7 for latent prints as well but no prints were found.

8 Q All right. I show you what's been marked State's
9 Exhibit 77. Can you identify that for us.

10 A On the 5th of September -- sorry, not the 5th of
11 September, but a couple of days after the incident
12 date, Sergeant Drayton had received a small white
13 plastic bag that contained some jewelry and some
14 credit cards and some other items which he turned
15 over to me. And this is a photo of one of the
16 bracelets that was inside the bag.

17 Q All right. And State's Exhibit 78?

18 A That's some more jewelry that was found inside
19 the bag which is a necklace as you can see with some
20 sort of pendant in it.

21 Q State's Exhibit 79?

22 A This is a, as you can see, just a Visa card with
23 Safe Federal Credit Union. You can make out the
24 name Willie, I think, last name Hayes right here on
25 the card.

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1 Q All right. State's Exhibit 80?

2 A Another Visa credit card. You can make out the
3 name down here on the bottom, Willie Hayes.

4 Q Officer Hill, did you participate in the
5 processing of Ms. Hayes' vehicle?

6 A No, sir, I did not.

7 Q So you didn't take any photos of the vehicle; is
8 that correct?

9 A That's correct.

10 Q Did you participate in going to the scene where
11 Ms. Hayes' body was found?

12 A Yes, sir, I did.

13 Q Did you participate in taking photographs there?

14 A I did, yes, sir.

15 Q Okay. Can you please tell us how you came to
16 that scene and where that was?

17 A I was called from home. I think this was — I'm
18 not sure the exact time, but I know it was early
19 morning hours. That body had been located on Malloy
20 Street, the dirt road portion of Malloy Street, and
21 so I arrived, went to that location.

22 Q Where is Malloy Street?

23 A It's in Florence County. It's — one way you can
24 get to it is off Royal Street or you can get to it
25 from old Marion Highway.

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1 Q Okay. I show you State's Exhibit Number 2. If
2 you can, and I hope all the jurors see this. Can
3 you tell us where exactly you were and where Malloy
4 Street is.

5 A Okay. This is —

6 Q Actually we got it right there. You can use that
7 laser pointer.

8 A This is Malloy Street. This is old Marion
9 Highway.

10 Q Where is Wilson High School?

11 A If you go down old Marion Highway, this
12 direction, where you'll run across Wilson High
13 School.

14 Q Okay. All right, and what's back this direction?

15 A It's Pat Superette here. This is a northerly
16 direction. This is more of a westerly direction.
17 You stay on Wilson Road here it goes back to Irby
18 Street.

19 Q Or TV road —

20 A TV road. Yeah.

21 Q —as I call it.

22 A Yeah.

23 Q Okay, all right. Locate for us where y'all were.

24 A All right. Malloy Street runs right through here
25 as I stated earlier. And I'm not sure of the exact

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1 location, but it was in this general area here.

2 Q Would it have been on that side of Malloy Street
3 or that side of Malloy Street?

4 A It would have been in a ditch on this side of
5 Malloy Street on the east side.

6 Q If you could, go back please to State's Exhibit
7 54. All right, explain to us what that is.

8 A That's the photo of looking back towards the east
9 side of the dirt road right here. That's the east
10 side, and this is looking exactly where the body was
11 found at.

12 Q All right. State's Exhibit 55 please.

13 A And that's a photo of the body as it was found
14 lying in the ditch. As you can see that's the
15 outline of it right there.

16 Q That was before it was moved?

17 A Yes, sir, that's correct.

18 Q Okay. Was it covered up, was anything on it
19 prior to that; and if so, what?

20 A Now this particular photograph, some of the
21 foliage may have been moved just so we could see the
22 body to take a photo of it. But they — all these
23 weeds and stuff that you see around it were pulled
24 out of the ground and laid across the body in
25 attempt to hide.

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1 Q Okay. State's Exhibit 56 please.

2 MR. HOFFMEYER: Your Honor, subject to my
3 objection previous put on the record.

4 THE COURT: It's noted, yes, sir.

5 THE WITNESS: After a lot of the foliage
6 was removed this how the body looked wrapped up in
7 sheets and blankets.

8 BY MR. CLEMENTS:

9 Q State's Exhibit 59?

10 MR. HOFFMEYER: Your Honor, again, this is
11 subject to my prior objection.

12 THE COURT: Yes, sir, it's noted.

13 BY MR. CLEMENTS:

14 Q What does that depict?

15 A That's a photo of the victim. Once we were able
16 to remove her body from the ditch and lay her on the
17 road and unwrap her from the blankets and the bed
18 linens, this was the first photo that we took.

19 Q How was she injured?

20 A She had several what appeared to me to be
21 puncture marks on her neck or her side of her face
22 and mostly underneath her neck area.

23 Q Okay. State's Exhibit 61?

24 MR. HOFFMEYER: Your Honor, again, subject
25 to my prior objection.

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1 THE COURT: So noted.

2 THE WITNESS: That's just another photo of
3 how she was as we removed the bed linens that were
4 — she was wrapped up in.

5 BY MR. CLEMENTS:

6 Q And what is that yellow beneath her?

7 A That is actually a backboard that EMS used to
8 transport patients on. When we removed her from the
9 ditch we placed her on that backboard that was
10 provided by EMS.

11 Q State's Exhibit 63?

12 A This is another shot of the ditch area as you can
13 see where it's all been kind of cleared out. This
14 is the foliage that was pulled off of the top of her
15 body. This is looking back south down Malloy
16 Street.

17 Q Is that towards town?

18 A In a southerly direction, yes, sir. It would be
19 looking back towards Florence.

20 Q Officer Hill, did you have occasion to go
21 anywhere else to process any items or gather any
22 evidence or take any other photographs?

23 A Once I cleared this area here I was contacted by
24 Sergeant Drayton to meet him at 419 West Sumter
25 Street.

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1 Q Okay. Can you please show us State's Exhibit 64,
2 and where exactly on Sumter Street is 409.

3 A At the corner of Sumter and Sanborn.

4 Q And who did you meet up there?

5 A Sergeant Drayton.

6 Q Okay. Anyone else out there with him?

7 A I'm not sure. That's the only investigator I
8 remember at the time.

9 Q See anyone in any cars or anything?

10 A No, sir.

11 Q Okay. And where did Officer Drayton direct you
12 to?

13 A He took me to the rear of the house which would
14 be the north side of the house.

15 Q Okay, all right. First show me State's Exhibit
16 65. Can you recognize that?

17 A Yes, sir. This is a photo standing on Sumter
18 Street looking back towards the house in a northerly
19 direction, and this will just be a photo of the
20 front of the house.

21 Q All right. And State's Exhibit 66?

22 A This is a photo standing at the rear of the house
23 right here looking back in a southerly direction
24 toward the rear of the house. This would be the
25 back door.

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1 Q Is that where Officer Drayton directed you to?

2 A Yes, sir, it is.

3 Q At the back door what is that there at the back
4 of the house?

5 A It looks like it's a extended porch area off the
6 main house.

7 Q Okay. State's Exhibit 67, what does that depict?

8 MR. HOFFMEYER: Your Honor, I would note
9 my objection. I think the Solicitor is gonna now
10 ask about exhibit number 67, 68, 69 and 70, and I
11 note same objection I previously put on the record.

12 THE COURT: All right. And for each of
13 those, 67, 68, 69, and 70 your objection is noted.

14 THE WITNESS: All right. He directed
15 me — and this is a photo of the back of the house.
16 He was directing me towards this bottom corner right
17 here where you see this white drum and on the other
18 side of it there is a piece of plywood.

19 BY MR. CLEMENTS:

20 Q All right. State's Exhibit 67 please.

21 A This is just a closer shot. You can see the
22 plywood, and it was being held up against the side
23 of the porch where there was an opening underneath
24 the porch.

25 Q And what's that big white thing holding that

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1 plywood up?

2 A Just some sort of plastic 55-gallon drum.

3 Q All right. State's Exhibit 68?

4 A Once I removed the piece of two by four Sergeant
5 Drayton, you know, asked me to look under the house
6 to recover these items which is some audio/video
7 equipment. And they were located as you can see
8 just inside the opening underneath the back porch.

9 Q All right. And State's Exhibit 69?

10 A Those items were pulled out and placed on that
11 piece of plywood that was up against the whole, and
12 there were laid out just so I could get a better
13 photograph of what was actually under there. You
14 have three audio/video items as well as some cords
15 that went with it.

16 Q Keep that picture up there a moment for me
17 please. Can you tell us what State's Exhibit 113
18 is?

19 A That is a silver Emerson DVD player.

20 Q And is that depicted there in this photograph?

21 A Yes, sir.

22 Q Okay, where at?

23 A I believe it's gonna be this one right here.

24 Q Okay. State's Exhibit 112?

25 A That's a black Orion VCR and patch cable, and

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1 that would be this item right here as well as those
2 cables back in the back.

3 Q And State's Exhibit 114?

4 A It's a silver Samsung combination DVD and VCR
5 player with the remote control it to, and that's
6 what the item is right there and that's the remote
7 control that's on top.

8 Q Who boxed this up?

9 A I did.

10 Q And labeled it?

11 A I did.

12 Q And the other two exhibits I just showed you, who
13 boxed those up and labeled those?

14 A I did. On the red evidence tape on each item you
15 can see my initials and the date that I sealed it
16 up.

17 Q So you know these are the same three items
18 depicted there?

19 A Yes, sir, that's correct.

20 Q Do you know where these three items came from or
21 who they belonged to?

22 A At that time, no, sir, I did not.

23 Q Okay. State's Exhibit 70?

24 A This is a photograph of the rear of the Orion VCR
25 player.

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1 Q And why would you take that photograph?

2 A So I would know what the name brand was and
3 possibly the serial number for later purposes maybe.

4 Q Okay. And those are all the areas that you
5 processed and photographed in this investigation?

6 A Yes, sir.

7 Q Okay. You can have a seat back up here.

8 A (Witness complies.)

9 Q Officer Hill, as part of this process you
10 testified about logging items into evidence and
11 securing them and chain of custody so they could be
12 submitted to SLED?

13 A Yes, sir, that's correct.

14 Q And retrieved later for court; is that correct?

15 A Yes, sir.

16 Q All right. What did you do regarding any swabs
17 that were taken from a steering wheel of Ms. Hayes'
18 car? Did you collect those?

19 A No, sir, I did not.

20 Q What did you do with those things, those swabs,
21 if anything?

22 A They were turned over to me from Sergeant Brandt.
23 I logged them into the evidence room.

24 Q All right. Now how about swabs from the mattress
25 in her home, what did you do with those swabs?

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1 A They were logged into the Florence Police
2 Department evidence room.

3 Q And you collected those as well?

4 A Yes, sir.

5 Q And logged them into evidence?

6 A Yes, sir, that's correct.

7 Q All right. How about buccal swabs taken from
8 Anthony Wilson, di you have anything to do with
9 that?

10 A I don't believe so.

11 Q Did you log them into evidence?

12 A Yes, sir.

13 Q Okay. But you didn't have anything to do with
14 collecting those?

15 A That's correct.

16 Q All right. Did you have anything to do with
17 collecting a fingerprint card or buccal swab from
18 David Johnson?

19 A Yes, sir, I did.

20 MR. HOFFMEYER: Subject to my prior
21 objection, Your Honor.

22 THE COURT: Yes, sir.

23 BY MR. CLEMENTS:

24 Q And after you collected the fingerprint card and
25 buccal swab, what else did you do with them?

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1 A Returned to the police department, put them into
2 our evidence safe that we have downstairs in our
3 processing room. And then at a later date when all
4 evidence was collected from everything it was logged
5 into the Florence Police Department evidence room.

6 Q Okay. Now what did you do with the cigarette
7 butt that you collected from the trash can at
8 Ms. Hayes' house?

9 A It was sealed in a Manila envelope and then it
10 was logged into the Florence Police Department
11 evidence room.

12 Q All right. Now there were latent prints taken
13 from Ms. Hayes' car to my knowledge. Did you have
14 anything to do and, if so what, with collecting
15 those latent prints?

16 A I did not collect any latent prints as far as
17 from the car. What I collected — what was taken
18 from the car was turned over to me and then I logged
19 it into the Florence Police Department evidence
20 room.

21 Q Okay, all right. Now I want to talk to you a
22 moment about collecting fingerprints from an
23 individual and collecting buccal swabs from an
24 individual. Can you please tell this jury what you
25 do, what a buccal swab is, and what you do to

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1 collect a buccal swab from an individual and why you
2 collect a buccal swab.

3 A A buccal swab is what we call basically a saliva
4 sample. We take a sterile cotton tip applicator.
5 We explain to the suspect or the individual that
6 we're getting a sample from, what we're gonna do
7 with it, what it's for. And then what you do with
8 it you unzip it from the wrapper, rub it just inside
9 the individual's gum line to get a good saliva
10 sample. Then you seal it back up. And then it's --
11 what we do is we send it to SLED to be analyzed for
12 DNA evidence.

13 Q Now would it be true or not true to say that
14 suspects aren't the only people you get buccal swabs
15 from, are there?

16 A That's correct. That's why I made the
17 distinction between suspect pertaining to an
18 individual because it could be for a number of
19 reasons.

20 Q Can you get some buccal swabs from a victim as
21 well sometimes?

22 A Yes, we do that sometime for elimination purposes
23 basically.

24 Q Okay. And that's basically just a way to collect
25 DNA without having to draw somebody's blood?

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1 A That's correct, yes, sir.

2 Q Okay. Now how do you collect fingerprint samples
3 from an individual?

4 A We will ink the individual's palms and his
5 fingertips, and we have a template that we use that
6 we put the fingerprints on. And then we have a
7 piece of paper that we put the palm prints on. And
8 then once we collect those and dry we send them to
9 SLED as well to be analyzed by their latent, latent
10 people.

11 Q All right. Use like an ink pad, or what, how --

12 A Yeah, it's a ink pad.

13 Q --paint it on, or what do you do?

14 A Sometimes we have a tube of actual ink that we
15 put on a piece of glass and we smooth it out on a
16 roller and then take that roller and put it on the
17 individual's palms.

18 Q So if this was the ink pad and that was the paper
19 and I was somebody you were taking fingerprints
20 from, how would you do that? Show the jury how
21 you'd take my finger and what you'd do with it?

22 A What we always do is I will give the person's --
23 I would be standing beside him. And then I would
24 explain to them to don't resist or tense up or
25 anything like that, or even don't help me out by

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1 trying to roll for me because what that does a lot
2 of times it will actually mess up the print. So we
3 tell them to ---

4 Q It will smear?

5 A Yeah. There won't be a good ridge texture on the
6 latent prints. So what we tell them to do is just
7 relax, relax your hands and let us do all the work.
8 We'll take their finger once it's inked, and we'll
9 place it on the tab and then we'll just roll it and
10 go from one finger to the next. Then we'll do the
11 palms last. We'll ink the palms and just have them
12 gently place it on the piece of paper and then
13 generally remove it from the piece of paper in order
14 to make sure we get a good print.

15 Q Why is it so important that they don't tense up,
16 that they relax?

17 A Well, if you tense up or if you try to help us
18 out like I said, you know, hey, I know he's going to
19 roll them so I'm going help him roll, that will mess
20 up the print. You won't get a good ridge detail
21 that you see in the fingerprints, and then that will
22 sometimes not allow you to get a good latent print
23 from that individual.

24 Q Okay, because ---

25 A The examiner will have a hard time trying to

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- 1 identify them.
- 2 Q So it's the ridge detail that's important to get
- 3 smooth and accurate?
- 4 A That's correct, yes, sir.
- 5 Q Okay, all right. And if it's not you can't
- 6 compare it?
- 7 A Yes, sir, that's correct.
- 8 Q All right. Is this something you do often?
- 9 A Yes, sir, I do it quite a bit.
- 10 Q Did you have an occasion to take a saliva sample
- 11 via a buccal swab from David Johnson?
- 12 A Yes, sir, I did.
- 13 Q Did you have a opportunity to take the
- 14 fingerprints from David Johnson?
- 15 A Yes, sir, that's correct, I did.
- 16 Q Okay. Now did you take buccal swabs from anyone
- 17 else in this case?
- 18 A Rashawn Bailey.
- 19 Q Did you take buccal swabs from Anthony Wilson?
- 20 A Not that I recall.
- 21 Q Okay. How about Rakim Floyd?
- 22 A I don't think so.
- 23 Q Who else takes buccal swabs for the police
- 24 department other than yourself?
- 25 A Just the crime scene technicians.

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1 Q So there are other people —

2 A The only ones that take them, yes, sir.

3 Q So there's other people other than you that do
4 it?

5 A Yes, sir.

6 Q Did you take fingerprint samples from anybody
7 else in this case other than David Johnson?

8 A Rashawn Bailey.

9 Q Okay, all right. How about Anthony Wilson?

10 A Not that I recall, no, sir.

11 Q How about Rakim Floyd?

12 A I don't believe so.

13 Q How about Gregory Montgomery?

14 A No, sir.

15 Q Okay, all right. I'm gonna show you what's been
16 marked right now as Court Exhibit 4, ask you, number
17 one, can you identify this and number two, do you
18 know what this is?

19 A Yes, sir, I can identify it. It's a Florence
20 Police Department release form.

21 Q Okay. Release form for what purpose?

22 A For the suspect to voluntarily give permission to
23 take any number of one type of sample that we have
24 listed on there.

25 Q All right.

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1 A On this particular situation I indicated
2 permission to obtain saliva sample and fingerprints.

3 Q All right. And is your signature on that?

4 A Yes, sir, it is.

5 Q Okay.

6 MR. CLEMENTS: All right. Your Honor, at
7 this time I ask that Court Exhibit 4 be admitted
8 into evidence as State's Exhibit 117.

9 MR. HOFFMEYER: Your Honor, I previously
10 put my objection on the record and I stand by that.

11 THE COURT: All right, sir. Objection is
12 noted, overruled. State's 117.

13 (WHEREUPON, State Exhibit No. 117 was
14 marked for identification and received
15 into evidence.)

16 BY MR. CLEMENTS:

17 Q Whose signature is this other than yours on
18 State's Exhibit 117?

19 A David Johnson's.

20 Q And did he sign that in your presence?

21 A Yes, sir, he did.

22 Q What did you do to explain this to him?

23 A I met with Mr. Johnson down at the Florence
24 County Detention Center on September 5th. When I
25 met with him I explained to him while I was there, I

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1 showed him the release form. I let him look at it.
2 While he was looking at it I explained to what
3 exactly it was; that basically he was voluntarily
4 giving me consent to obtain a swab sample and
5 fingerprints. And then if he had any questions, you
6 know, about the process or anything like that before
7 I started.

8 Q Did you explain to him what a buccal swab was and
9 how you were going to do that?

10 A I did. I explained that the fingerprints
11 obviously was for fingerprint comparison if any
12 evidence was found in relation to the charge he was
13 being charged with. And the buccal swab would be
14 for DNA evidence if any DNA evidence was related to
15 the charges that he was being charged with.

16 Q What, if anything, did he do to indicate to you
17 that he didn't understand what you were talking
18 about or he didn't know what was going on?

19 A He was very cooperative to me. I didn't sense
20 any inclination that he might not understand what I
21 was explaining to him.

22 Q What questions, if any, did he ask?

23 A None that I'm aware of, that I can recall.

24 Q And after you explained that form to him and
25 talked to him what did he do with that form?

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1 A Well, first I had him sign it before I did
2 anything to make sure that he was giving me consent
3 to take those samples from him. So he signed it in
4 cursive on the line that he was supposed to sign on,
5 and once he did that I proceeded to taking the
6 saliva sample then the fingerprints.

7 Q Now he signed it, did he look at the form to see
8 where to sign it or did you point to him and say
9 sign right there? What happened?

10 A I always put an X where I want them to sign, but
11 he signed it right where I indicated for him to
12 sign.

13 Q Okay, all right. And what did he do in regards
14 to relaxing and letting you take fingerprints the
15 way you needed to take them?

16 A Well, like I explained to you, I do this with
17 everybody. When I'm taking latent fingerprints from
18 them, you know, I tell them relax, don't fight it,
19 don't try to help me out any, and just relax and let
20 me do all the work. And he did that, and I didn't
21 have any problems getting fingerprints from him.

22 Q So he understood what you were talking about
23 there?

24 A Yes, sir.

25 Q How about when you went to do the buccal swab?

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- 1 A That's the first thing I did. And as I did each
2 step I explained it to him. I showed him the
3 sterile tip applicator I was going to use, showed
4 him that it was still sealed, and that it hadn't
5 been tampered with in any way. And then I told him
6 once I take it out the package I'm gonna ask you to
7 open your mouth and I'm gonna get a saliva sample.
8 And the way I do it is I take this Q-tip and I rub
9 it inside between your gums and your cheek, and it
10 won't hurt or anything like that. It might taste a
11 little bad, you know, it tastes like wool, like a Q-
12 tip would, but it wouldn't hurt. So when I
13 explained that to him I said, you know, open your
14 mouth, and he opened his mouth and I took the sample
15 from him.
- 16 Q Okay, all right. And you collected those,
17 maintained them?
- 18 A Yes, sir.
- 19 Q Okay. Logged them into evidence?
- 20 A I took them back and logged them or placed them
21 in our evidence safe and then at a later date they
22 were logged into police department evidence room.
- 23 Q And were they submitted to SLED to your
24 knowledge?
- 25 A Yes, sir, from there they were taken to SLED.

SW - S. HILL - DIRECT

1 Q Okay, all right. Officer Hill, I asked you a
2 lot of questions. Is there anything I haven't asked
3 you that you did pertaining to this investigation?

4 A No, sir.

5 Q That's it?

6 A Yes, sir.

7 Q Please answer any questions that Mr. Hoffmeyer
8 has.

9 THE COURT: Mr. Hoffmeyer.

10 **CROSS - EXAMINATION**

11 BY MR. HOFFMEYER:

12 Q Officer Hill, I just have a few questions for
13 you. I believe now it's my understanding that you
14 would have arrived to the scene on Liberty Street to
15 do what you do, that is, to recover evidence and
16 things of that nature; is that right?

17 A Yes, sir, that's correct.

18 Q And one of the things that you told this jury
19 about is collecting DNA evidence; is that right?

20 A Yes, sir.

21 Q You also mentioned on direct I believe that
22 there's a term called touch DNA evidence, right?

23 A Yes, sir.

24 Q And that's, I believe -- and you can correct me
25 if I'm wrong -- but when someone touches something

SW - S. HILL - CROSS

1 they can at times leave their DNA behind; is that
2 right?

3 A Yes, sir, at times.

4 Q Did you do any DNA swabbing to touch for DNA
5 evidence on the front doorknob?

6 A Of the house, no, sir.

7 Q Okay. On the back doorknob of the house did you
8 do any swabbing to check touch DNA?

9 A No, sir. Like before we'd gotten there the
10 family members had already been in and out the back
11 of the house so we didn't see that it was
12 evidentiary import or get a sample.

13 Q How long does it take to do that?

14 A Just a few seconds or few minutes.

15 Q And how about any touch DNA on the two by four?

16 A No, sir.

17 Q Now as far as what you did from there forward,
18 you told this jury about at some point going — and
19 the photographs had been put into evidence subject
20 to my objection — over on Sumter Street; is that
21 right? I may have the wrong address, the address
22 where you took the photographs of with the items?

23 A That would be Sumter Street, yes, sir.

24 Q Yes, 409 Sumter.

25 A It was in the 400 block, yes, sir.

SW - S. HILL - CROSS

1 Q 400 block, that's fine. Now other than taking
2 those photographs there at 400 block of Sumter did
3 you do anything else there?

4 A No, sir, I did not.

5 Q Now it's your understanding from your view of the
6 scene and that mattress that unfortunately and
7 tragically this would have been a fairly bloody
8 scene; is that correct?

9 A I'm sorry, repeat the question.

10 Q Do you believe this was a bloody scene?

11 A Yes, sir.

12 Q Now you indicated to this jury previously how you
13 can check for blood, one, using a Q-tip and
14 appropriate solution, and then of course you can
15 take it and have it checked other ways; is that
16 right?

17 A Yes, sir, that's correct.

18 Q Now at any point did you or anybody else that
19 you're aware of conduct any test over on the 400
20 block of Liberty Street, my client's residence, to
21 see if there was any blood there?

22 A No, sir, I wasn't directed to go to that
23 residence for that purpose, no, sir.

24 Q All right, sir. And of course, you went to that
25 residence, my client's residence, one time, right?

SW - S. HILL - CROSS

1 A Are we talking about Sumter Street?

2 Q Yes, sir.

3 A Yes, sir, that's correct.

4 Q Okay. And as far as my client Mr. Johnson, were
5 you ever provided any clothes from him or from his
6 residence to test by law enforcement?

7 A No, sir, not that — no, sir, I don't think so.

8 Q Did law enforcement ever provide any shoes for
9 you to test for blood?

10 A No, sir.

11 Q And related to Rashawn Bailey were you ever
12 provided any clothes or shoes by law enforcement to
13 test for blood on his clothing or shoes?

14 A Not that I can recall, no, sir.

15 Q And how about Anthony Wilson, did law enforcement
16 provide you any clothes or shoes or anything to test
17 for blood related to him?

18 A No, sir.

19 Q And of course, we're not just talking about their
20 blood necessarily. We're talking about you can test
21 to see if Ms. Hayes' blood would be on those items,
22 right?

23 A Yes, sir.

24 Q Now you were provided some items from 525-B
25 Stackley Street; is that right?

SW - S. HILL - CROSS

1 A Yes, sir.

2 Q That's where Rakim Floyd was found hiding, are
3 you aware of that?

4 A That's what I've heard, yes, sir.

5 Q Yes, sir. Now he was a suspect in this murder
6 case at that time; is that right?

7 A I believe so, yes, sir.

8 Q Now you were provided a nap sack or back sack
9 that was found at that Stackley residence; is that
10 right?

11 A Yes, sir, that's correct.

12 Q And you were also provided a blue handled pocket
13 knife from that site; weren't you?

14 A Yes, sir, that's correct.

15 Q And you did conduct tests on the knife to
16 determine if there was any blood; is that right?

17 A Yes, sir.

18 Q And there was not presumptively, right?

19 A That's correct.

20 Q Now you received those items on August 29th of
21 2008; is that correct?

22 A I believe that's when they were recovered.
23 Probably got them later on that day or the next day.

24 Q And if this incident happened August 24th, 2008
25 or into August 25th, 2008, you would have first had

SW - S. HILL - CROSS

1 an opportunity to analyze those items four to five
2 days after this crime, right?

3 A The items that were recovered on Stackley Street?

4 Q Yes, sir?

5 A Yes, sir.

6 Q And so naturally, and it's only fair you wouldn't
7 have had any idea what had happened or who had
8 touched those items or whether those items had been
9 cleaned up by the time they got to you, right?

10 A That's correct.

11 Q If you'll excuse me one second, Officer Hill.

12 Are you aware of Rashawn Bailey and Rakim Floyd
13 living on Liberty Street? Are you aware of that?

14 A No, sir, I'm not.

15 Q And I believe you answered this question earlier.

16 You haven't -- that's okay, I withdraw that for now.

17 Now as far as your contact with Mr. Johnson you told
18 us earlier about that, and you indicated to the jury
19 that when you met with him he was very cooperative;
20 is that correct?

21 A Yes, sir, that's correct.

22 Q And Officer Hill, he was very willing to allow
23 you to get the buccal swab evidence; is that right?

24 A Yes, sir.

25 Q And he was very willing to allow you to

SW - S. HILL - CROSS

1 fingerprint him; is that right?

2 A That's correct.

3 Q And that's not always the case with some
4 suspects. Is that fair to say?

5 A That's fair to say, yes, sir.

6 Q And you indicated that he was very cooperative,
7 and I believe he was very pleasant with you
8 throughout; is that right?

9 A Yes, sir, he was cooperative.

10 Q Well, wasn't he pleasant as well?

11 A I guess.

12 Q Thank you very much, Officer Hill.

13 THE COURT: Redirect.

14 MR. CLEMENTS: Beg the Court's indulgence
15 one moment.

16 **R E D I R E C T E X A M I N A T I O N**

17 BY MR. CLEMENTS:

18 Q Officer Hill, from what you told Mr. Hoffmeyer
19 was there any clothes submitted to you from any
20 suspect to test for blood?

21 A No, sir.

22 Q What blood did you see anywhere in the house
23 other than the bedroom?

24 A On the pillows that were recovered in that
25 black trash -- the trash bag.

SW - S. HILL - REDIRECT

1 Q And they came from the bedroom, right?

2 A We believe so, yes, sir.

3 Q And she was really -- was she or was she not
4 really wrapped up well in bed clothes?

5 A She was wrapped up in really tight in a fitted
6 sheet and a regular sheet and a comforter-type
7 blanket, and they all had the same pattern design as
8 the pillows that were recovered in the trash bag.

9 Q What, if any, blood was there trailing from the
10 bedroom out the door?

11 A Only thing we could see was the, what we believed
12 was a swipe mark on the bottom of the recliner
13 chair.

14 Q And nothing else?

15 A That's correct.

16 Q Okay. What, if any, evidence was there that
17 presented you any thought that somebody had blood on
18 their clothes?

19 A None.

20 Q Okay, thank you. No further questions.

21 MR. CLEMENTS: Your Honor, we ask Officer
22 Hill be released from his subpoena.

23 THE COURT: Any objection?

24 MR. HOFFMEYER: No objection, Your Honor.

25 THE COURT: Thank you very much, sir.

SW - S. HILL - REDIRECT

1 MR. CLEMENTS: May we approach, Your
2 Honor.

3 THE COURT: Yeah, we're gonna break at
4 this time.

5 MR. CLEMENTS: Then I don't need to
6 approach.

7 THE COURT: Yeah. Ladies and gentlemen of
8 the jury, I'm gonna get you to step back into your
9 jury room. We're going take a short break. Y'all
10 have been sitting here being attentive all morning,
11 and if you need anything let Mr. Propps know. We
12 got — should have some sodas and crackers,
13 whatever. Please have no conversation about the
14 case. Talk about anything else you want to talk
15 about. We will just take a short break and then
16 we'll get started back, okay.

17 (WHEREUPON, the jury was removed from the
18 courtroom at 11:29 a.m., and the following
19 proceedings commenced in open court.)

20 (WHEREUPON, a recess was taken from the
21 proceedings.)

22 (WHEREUPON, counsel approached the Bench
23 for an off-the-record discussion.)

24 THE COURT: Mr. Propps, would you ask
25 Mr. Parrott if he would step out here please.

1 THE BAILIFF: The guy you had up here
2 earlier?

3 THE COURT: Yeah, I think his name is
4 Mr. Parrott.

5 (Juror is returned to the courtroom and approached
6 the Bench for an on-the-record discussion.)

7 THE COURT: Hey, Mr. Parrott, come on up
8 here if you would please. I just wanted to ask just
9 a few more questions about earlier you had mentioned
10 that you had heard something in the neighborhood I
11 think it was; is that right?

12 JUROR: Yes, sir, and that's just I was
13 going on and I realized I knew more than...

14 THE COURT: Well, let me ask you this.
15 Just sharing with me up here, was it stuff that
16 about this trial —

17 JUROR: Yes, sir.

18 THE COURT: —that you haven't heard in
19 here?

20 JUROR: Yes, sir. Down to a certain of
21 the evidence there I realize I know a lot more than
22 what I initially told you guys.

23 THE COURT: From things you had heard in
24 the neighborhood; is that correct?

25 JUROR: Yes. And what I knew, you know,

1 'cause it's just common knowledge in the
2 neighborhood.

3 THE COURT: Yeah, I understand that, sure,
4 absolutely.

5 JUROR: Just general conversation.

6 THE COURT: So what ---

7 JUROR: And also I seen him before in
8 public.

9 THE COURT: All right. Do you think
10 knowing the things you know now that you didn't know
11 before, do you think that has had a impact on
12 whether or not you can be fair and impartial?

13 JUROR: After that I got — I just had a
14 strange feeling that I'm too much, too involved at
15 one point.

16 THE COURT: So you think it would affect
17 your ability?

18 JUROR: I don't know because I don't know
19 how much I know.

20 THE COURT: Yeah, okay. Well, I'll tell
21 you my thought process. I'm thinking, you know,
22 'cause we have two alternates. I'm thinking if
23 maybe excusing you from this case and let one of the
24 alternates substitute in because I'm concerned that
25 maybe some of the stuff that you know from outside

1 the courtroom could affect your ability about what's
2 in the courtroom.

3 JUROR: I understand, and that's why I
4 felt uncomfortable.

5 THE COURT: Okay. Well, I appreciate your
6 bringing that to my attention 'cause that's
7 important.

8 You have any further questions?

9 MR. HOFFMEYER: I don't have any further
10 questions.

11 THE COURT: I want to do that, Mr.
12 Parrott, just so that, just to make sure that
13 whatever decision that the jury makes is based just
14 on what happens here in this courtroom and anything
15 else out the courtroom.

16 JUROR: I understand.

17 THE COURT: Okay?

18 JUROR: Yes, sir.

19 THE COURT: Do you have anything in the
20 jury room that you need to get?

21 JUROR: Yes, sir, my jacket is there.

22 THE COURT: Okay. I'm gonna get you to go
23 ahead and get that when you get your jacket, just
24 don't say anything to any of the other jurors, okay?

25 JUROR: I will not.

1 THE COURT: Mr. Propps, let Mr. Parrott
2 get his belongings from the jury room, and I'm going
3 to excuse him.

4 Do you need anything further on the record?

5 MR. HOFFMEYER: Judge, I think based upon
6 his responses I don't think Your Honor — of course,
7 it's your decision — I don't think Your Honor has
8 any choice.

9 THE COURT: Yeah. You know, he — I think
10 he apparently —

11 MR. CLEMENTS: I agree, Your Honor. I
12 don't think you have any other choice.

13 THE COURT: I think he knew more than —
14 and I think what happened is as the testimony came
15 forward today —

16 MR. CLEMENTS: It jogged his memory.

17 THE COURT: Well, and I think he realized
18 that some of the things he's heard has come to light
19 so.

20 Mr. Parrott, thank you very much, sir, I
21 appreciate it.

22 THE POTENTIAL JUROR: Thank you, sir.

23 (Juror exits.)

24 THE COURT: All right. Now Mr. Hoffmeyer,
25 Mr. Clements, let me, my understanding under the

1 code is that you don't seat the next, the first
2 alternate. You put them in a hat, spin them around
3 and pull one so I'm gonna get Nicole -- when she
4 gets back in I'm gonna get her to put the two names
5 in the hopper, spin it, and pull one. And then
6 we'll seat that person and then when the jury comes
7 out all I'm gonna let them know --

8 MR. CLEMENTS: You let them choose the
9 foreman at the end, or you choose the foreman at the
10 end or what?

11 THE COURT: I'm going -- I haven't decided
12 if I'm going to select the foreman or let them
13 choose it.

14 MR. CLEMENTS: Because usually you let the
15 foreman sit in the first seat.

16 THE COURT: Yeah, I know until we get one
17 but what I'm gonna tell them is that it was
18 necessary for me to excuse Mr. Parrott from this
19 case. And so the alternate, whichever one it is,
20 you're now on the main panel and then we're just
21 going to proceed. I'm not going to tell them
22 anything further unless you think there's anything
23 else they need to know. I don't think they need to.

24 MR. HOFFMEYER: No, sir.

25 THE COURT: Nicole, if you could take

1 Ms. Shannon Anderson and Ms. Denise Scott, put them
2 in a cup, spin it around.

3 (Pause.)

4 THE COURT: All right. Now I'll inform
5 Ms. Anderson that she is now on the main panel, then
6 we will just proceed at that point. Is the State
7 ready to proceed?

8 MR. CLEMENTS: We are, Your Honor.

9 THE COURT: Defense ready proceed?

10 MR. HOFFMEYER: Yes, sir, Your Honor.

11 THE COURT: All right, Mr. Propps, ask the
12 members of the jury to join us please.

13 (WHEREUPON, the jury was returned to the
14 courtroom at approximately 12:09 p.m., and
15 the following proceedings commenced in
16 open court.)

17 THE COURT: All right, ladies and
18 gentlemen, thank you for your patience.
19 Ms. Anderson, if I could get you to move up to that
20 front seat right there. You are moving from
21 alternate status to being on the main panel. It
22 was, after speaking with Mr. Parrott, it was through
23 his request and the Court found it appropriate that
24 he needed to be excused and so it was -- doesn't
25 happen often, but it does happen occasionally and so

1 I found it was appropriate to do so. So
2 Mr. Parrott has been excused and that's why we have
3 alternates so, you know, it makes it possible to
4 continue the case. And, you know, we have Ms. Scott
5 who's also an alternate and so we'll just proceed at
6 this point. If you recall when we took a break the
7 State was still in their case, and so what we'll do
8 is we'll continue.

9 And Mr. Clements, you may call your next
10 witness.

11 MR. CLEMENTS: Thank you, Your Honor. If
12 it please the Court we call Investigator Thomas Bo
13 Myers.

14 THE CLERK OF COURT: If you will, sir,
15 place your left hand on the Bible and raise your
16 right hand.

17 WHEREUPON,

18 **THOMAS WALLACE MYERS,**
19 having been duly sworn by the Clerk of Court,
20 testified as follows:

21 THE CLERK OF COURT: Please be seated and
22 state your name for the record.

23 THE WITNESS: My name is Thomas Wallace
24 Myers.

25 **D I R E C T E X A M I N A T I O N**

SW - T. MYERS - DIRECT

1 BY MR. CLEMENTS:

2 Q Also known as?

3 A Bo.

4 Q Bo. Bo, where do you work?

5 A Work for the Florence Police Department; in the
6 crime scene unit under the criminal investigation
7 division.

8 Q And how long have you been worked for the
9 Florence Police Department?

10 A November of — well, for the Department, the
11 department is going on I believe nine years.

12 Q Okay. So nine years with the police department?

13 A That's correct.

14 Q How long you been in crime scene?

15 A Well, it's been 5-and-a-half? 5.

16 Q 5-and-a-half years?

17 A 6.

18 Q 6, all right. So you've been doing that for
19 quite some time?

20 A Yes, sir.

21 Q All right. And what are some of the duties that
22 you have to do in the crime scene unit?

23 A Each crime scene technician works a rotation
24 basis where as needed we respond to process crime
25 scenes. We do followup work with evidence in our

SW - T. MYERS - DIRECT

1 crime scene lab here in the basement of this
2 building. We transfer digital evidence whether it's
3 obtained from our patrol division or our
4 investigations division. We're also responsible for
5 delivering evidence that needs to have further
6 analysis performed. We deliver that to the State
7 lab at SLED in Columbia.

8 Q And what specifically did you do in this
9 investigation on the murder of Ms. Willie Mae Hayes?

10 A This particular case I was given the task of
11 delivering evidence to SLED to the State lab so that
12 it could be analyzed.

13 Q Okay. And did you do this one time or on several
14 occasions?

15 A I believe I have two -- actually I had three
16 separate trips.

17 Q And you could take a number of things or one
18 thing or what?

19 A Really anything that needs to go at that time.

20 Q On one case or several cases possibly at one
21 time?

22 A Several, several.

23 Q So whatever needs to go however many different
24 cases, you only make one trip, take everything that
25 needs to go at one time?

SW - T. MYERS - DIRECT

1 A That's correct.

2 Q And three times you said you went and delivered
3 items to SLED involving this investigation?

4 A Yes, sir.

5 Q Okay. And is that the only thing you did
6 involving this investigation?

7 A Yes, sir, I believe that was my only involvement
8 in this case.

9 Q You didn't process any scenes and you didn't
10 collect any evidence?

11 A No, sir.

12 Q Okay, all right. Investigator Myers, what did
13 you do in regard to steering wheel swabs that were
14 collected by Mike Brandt from Ms. Hayes' car?

15 A Initially on September 16th of 2008 they were
16 delivered to SLED lab along with some other
17 evidence.

18 Q And swabs from the mattress in Ms. Hayes' house
19 that was collected by Shannon Hill what did you do
20 with that?

21 A The same.

22 Q Transport it to SLED?

23 A Transport it to SLED for analysis.

24 Q Buccal swabs collected by Mike Brandt from
25 Anthony Wilson, what did you do with that?

SW - T. MYERS - DIRECT

1 A Those were transported as well by myself to SLED
2 lab.

3 Q Fingerprint cards from David Johnson collected by
4 Shannon Hill, what did you do with those?

5 A They were delivered to SLED.

6 Q And how about buccal swabs from David Johnson
7 collected by Hill?

8 A Also delivered to SLED.

9 Q Cigarette butt that Shannon Hill collected from
10 Ms. Hayes' house, what did you do with that?

11 A Transported it to SLED lab.

12 Q Latent fingerprints collected by Mike Brandt from
13 Ms. Hayes' car, what did you do with that?

14 A Those were delivered to SLED for latent analysis.

15 Q All right. Beg the Court's indulgence. Now when
16 you transport these items that you transported, how
17 do you transport them?

18 A The process begins with us logging any evidence
19 that needs to go to SLED to be analyzed from our
20 evidence custodian. We typically do that the day
21 prior to going to SLED. After we take custody of
22 all evidence, and as you mentioned there's several
23 cases that can go at one time, we secure that
24 evidence in our safe in the crime scene lab.
25 There's paperwork that SLED requires be done; that's

SW - T. MYERS - DIRECT

1 completed. Again, typically the following morning
2 we remove the evidence from our safe and take the
3 evidence that needs to go to SLED. We drive it to
4 their lab.

5 Q All right. Say my keys were are a piece of
6 evidence, tell me what would you do with them.
7 Would you just pick them up, throw them in your
8 safe, next day put them in your pocket take them to
9 SLED, or what would you do to package them or what
10 do you?

11 A I mean, as it's -- as we -- it passes through our
12 hands through the crime scene unit we will package
13 evidence. I believe you saw some packaging earlier
14 from Investigator Hill. That's packaged, labeled,
15 sealed by the sealing technician and it's turned
16 into evidence in that manner. That's also the way
17 that I would log it out of the evidence, and it
18 would remain that way. The technician that seals
19 the package is responsible for doing the completing
20 the SLED paperwork.

21 Q I'm gonna show you instead of showing you all
22 these items I'm just going to show you State's
23 Exhibit 107. Tell me how does this demonstrate, if
24 it does demonstrate, what you're talking about.

25 A This does. The Manila envelope inside of the

SW - T. MYERS - DIRECT

1 plastic bag is what I would start with. Prior to my
2 taking custody of it Sergeant Brandt, as I can tell
3 by his initials and the date on the evidence seal
4 tape, he packaged this item. So for SLED's required
5 paperwork he would describe what is in this package
6 as well as you see with the black magic marker on it
7 describe the inside of the package as well. I would
8 log the sealed envelope out of evidence out of our
9 evidence room, sign for it into my custody; and upon
10 arriving at SLED's lab they package it in this
11 plastic bag. Sometimes they have plastic bags,
12 sometimes they have just a larger Manila envelope or
13 boxes depending on where in their lab that that
14 evidence goes. Once it's packaged there it's
15 sealed. And this is my initials and date and time
16 or date that it's sealed and then this gets left
17 with the SLED evidence technician.

18 Q So it's kept uncorrupted till they can analyze
19 it?

20 A Yes, sir.

21 Q And whose name is this on this sealing official?

22 A That's my name.

23 Q Who sealed this?

24 A I sealed that.

25 Q At SLED?

SW - T. MYERS - DIRECT

1 A Yes, sir.

2 Q And would it be a similar process with all these
3 items?

4 A Every one.

5 Q Okay. And what is maintained as far as chain of
6 custody paperwork or verified chain of custody?

7 A I'm sorry, at SLED?

8 Q Yes.

9 A SLED, there's an electronic signature pad that we
10 sign as it's scanned in with a bar code of part of
11 their required paperwork. It will print us a
12 receipt, and that's also, that's the time and date
13 stamped with the delivering technician's name,
14 signature, as well as the evidence technician from
15 SLED who accepted the evidence. That report is
16 generated and returned to the department to be filed
17 in records.

18 Q Okay, all right. Now let me ask you this, does
19 everything y'all submit for analysis come back with
20 evidentiary value, or does it vary?

21 A It vary.

22 Q Okay. Sometimes it does; sometimes it doesn't?

23 A That's correct because a lot of times when we
24 submit it a lot of things are unknown. We're
25 relying on the lab to enlighten on some of the

SW - T. MYERS - DIRECT

1 evidence.

2 Q Okay, all right. Beg the Court's indulgence.
3 Investigator Myers, is all you did was transport in
4 this case?

5 A Yes, sir, for this case.

6 Q Thank you. Thank you for explaining that process
7 to us and please answer any questions Mr. Hoffmeyer
8 may have if he has any.

9 A Yes, sir.

10 MR. CLEMENTS: Investigator Myers, I
11 appreciate your time today. I don't have any
12 questions for you.

13 THE WITNESS: Okay.

14 THE COURT: Thank you very much, sir. You
15 may step down.

16 MR. CLEMENTS: Your Honor, if Investigator
17 Myers could be excused from his subpoena to go back
18 to work.

19 THE COURT: All right, any?

20 MR. HOFFMEYER: No objection.

21 THE COURT: Thank you very much. You're
22 free to go, sir.

23 MR. CLEMENTS: Your Honor, our next
24 witness will be Investigator Moreau with the
25 Florence County crime scene, Chris Moreau.

SW - T. MYERS - DIRECT

1 MR. JEPERTINGER: City.

2 MR. CLEMENTS: City, sorry. Florence
3 city.

4 THE CLERK OF COURT: Please place your
5 left hand on the Bible and raise your right hand.
6 WHEREUPON,

7 **CHRISTOPHER MOREAU,**
8 having been duly sworn by the Clerk of Court,
9 testified as follows:

10 THE CLERK OF COURT: Please be seated and
11 state your full name for the record.

12 THE WITNESS: Corporal Christopher Moreau.

13 **DIRECT EXAMINATION**

14 BY MR. CLEMENTS:

15 Q Okay. Corporal Moreau, where do you work and
16 what do you do?

17 A I work with the City of Florence Police
18 Department assigned to the crime scene unit.

19 Q And how long have you worked with the crime scene
20 unit?

21 A Since July of 2005 I've been with crime scene.

22 Q Okay. So that's been about seven years?

23 A Yes, sir.

24 Q All right. And how long have you been in law
25 enforcement?

SW - C. MOREAU - DIRECT

- 1 A I'm in my 12th year with this department.
- 2 Q Twelfth year all with Florence P.D.?
- 3 A Yes, sir.
- 4 Q And does your job vary at all from what Shannon
- 5 Hill and Bo Myers do?
- 6 A I do the same thing that they do.
- 7 Q Do the same?
- 8 A Wide variety.
- 9 Q All in the same unit?
- 10 A Yes, sir.
- 11 Q Who else is in that unit with the three of you?
- 12 A Sergeant Brandt and of recently Investigator
- 13 Scott Williamson.
- 14 Q And who is the head of the crime scene unit?
- 15 A That would be Sergeant Brandt.
- 16 Q Okay, all right. Corporal Moreau, did you have
- 17 an occasion to become involved in the investigation
- 18 of the disappearance of Willie Mae Hayes?
- 19 A Yes, sir, I did.
- 20 Q Can you please tell this jury how you came to be
- 21 involved, when you received the call, and what you
- 22 did in response to the call.
- 23 A Yes, sir. It was on August 25th of 2008, roughly
- 24 3:05 in the afternoon, and Sergeant Brandt called me
- 25 and asked me to go to 107 West Roughfork Street

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1 where I met with Corporal Ford who spoke earlier
2 where they located the victim's vehicle backed into
3 a parking lot at the driveway of a residence.

4 Q Okay. And this is on Roughfork Street?

5 A Yes, sir.

6 Q That's in the city limits of Florence?

7 A Yes, sir, it is.

8 Q All right. When you responded to that scene and
9 you got there tell this jury what the weather
10 conditions were like and what you did.

11 A It was pouring down rain that morning. Basically
12 all I did there was insure that everything was
13 secure around the vehicle, used a golf umbrella that
14 I have to take pictures as quick as I could. I
15 didn't want to damage my camera. And once we got
16 pictures and everything we had a tow truck respond
17 to take the vehicle to the complex in the basement
18 of this building where it was roped off where nobody
19 could access it except for crime scene.

20 Q All right. And tell us what you did when you got
21 the car back here into what I call the sally port.

22 A Yes, sir. That's where it was secured and the
23 doors were -- the rolled up doors to the basement
24 were shut, taped off, to where nobody could open
25 them. The crime scene tape was put up in there just

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1 to as a precaution to let anybody know to stay away
2 from that vehicle. And it stayed there secured
3 until I assisted Sergeant Brandt with processing the
4 vehicle.

5 Q How difficult would it have been to process that
6 car outside.

7 A It would be pretty much impossible —

8 Q Okay.

9 A —given the current conditions.

10 Q What impact, if any, would rain like that do on
11 possible evidence that would have been outside of
12 that car?

13 A Well, fingerprint powder is much like dust and
14 when you mix water with dust you get mud so pretty
15 much no way to do that type of processing in the
16 rain.

17 Q Okay. And you said Sergeant Brandt did most of
18 the processing?

19 A Yes, sir.

20 Q And what, you called it something before, dusting
21 and what? What did you call it he did the dusting
22 and the wiping? You used a term earlier talking
23 with me about what he was doing —

24 A I —

25 Q —on the inside of the car?

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1 A I'm trying to remember. I know he took some
2 swabs from inside the vehicle.

3 Q So he was doing all the swabbing and the dusting?

4 A Yes, sir.

5 Q And what were you doing?

6 A I was taking photographs.

7 Q Okay. I'm gonna ask permission if you can step
8 down, if you would come step right over here. I'm
9 going show you here what's State's Number 51 and ask
10 you to please explain what this is, where this is
11 for the jury.

12 A That is at 107 West Roughfork Street. This is
13 the victim's Toyota Corolla backed into the driveway
14 at that location. You can see the 107 address right
15 behind the vehicle on the side of the building.

16 Q All right. And State's Exhibit -- is that
17 exactly as you found it?

18 A Yes, sir.

19 Q State's Exhibit 52?

20 A That is just a photograph from behind the vehicle
21 showing the license plate number looking out towards
22 Roughfork Street.

23 Q Who is that in the picture?

24 A That is Corporal Ford.

25 Q Okay. Did you verify that license plate as being

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1 Ms. Hayes' car?

2 A Yes, sir.

3 Q State's Exhibit 53? Can you explain that to us.

4 A Yes, sir. That's just a broader view looking
5 from the side showing the vehicle and the residence
6 toward the backyard.

7 Q Now it was raining out there and you were under
8 the golf umbrella taking pictures; is that correct?

9 A Yes, sir.

10 Q Did you, while you were there, did you go and
11 look around any of the area around that car? Did
12 you have that opportunity in the rain or not?

13 A Yes, sir. Yes, sir, we looked around the
14 residence, the back, the front yard, sides and all
15 around the vehicle.

16 Q What was there in that area regarding any kind of
17 paths or any walkways that you might have looked at,
18 if any?

19 A I remember there being a path sort of back in
20 this direction. If I have my bearings here east or
21 west, but it would have been behind the house.

22 Q Back towards that fence —

23 A Heading roughly back toward Liberty Street from
24 Roughfork.

25 Q Okay. Through the fence and the tree line?

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1 A Yes, sir.

2 Q Okay, all right. Thank you. All right, State's
3 Exhibit 81 please. Can you please explain to the
4 jury what that is and what the purpose is for all
5 that.

6 A Yes, sir. This is what he referred to as the
7 sally port here in the complex. In the very
8 basement would be where the police motorcycles
9 normally park here. This would be the door that
10 exits out on to Baroody Street as you come by just
11 before you pull into the complex. This is generally
12 where we secure any vehicles that we have to process
13 further, and I just use these metal racks to hold up
14 the crime scene tape across and put my name and case
15 number on this form here.

16 Q Now you're in the complex, right —

17 A Yes, sir.

18 Q —and police area, well what's the need to put
19 the crime scene tape up for?

20 A Added precaution.

21 Q Okay. State's Exhibit 82 please?

22 A This is the backside of the same vehicle showing
23 the same tag number as requested in the sally port.

24 Q State's Exhibit 83.

25 A Just a view from the front driver's side of the

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1 vehicle looking back.

2 Q State's Exhibit 84?

3 A That is gonna be the driver's compartment of the
4 vehicle.

5 Q And what was the purpose for taking that
6 photograph? What are you attempting to document
7 there?

8 A Just document how we find everything, what may be
9 on the seat, in the seat, under the seat.

10 Q And when you process a car what are some of the
11 things you do, what are some of the things you look
12 for?

13 A Anything out of the ordinary. When it comes to
14 vehicles we're looking for keys, signs of who may or
15 may not have been in it, just anything that
16 shouldn't be there, whether it should and it's gone.

17 Q State's Exhibit 85?

18 A That's just a view from, of the driver's seat
19 with the cushion.

20 Q State's Exhibit 86?

21 A That would be the trunk of the vehicle.

22 Q Okay. Was anything found in the trunk?

23 A I don't believe so other than what you see here.

24 Q State's Exhibit 87? Is that all that was in the
25 trunk?

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1 A That's all I remember, yes, sir.

2 Q What, if any, blood was found in the trunk?

3 A I don't recall exactly. Sergeant Brandt did most
4 of that processing.

5 Q State's Exhibit 88, what's the purpose for that?

6 A I took a picture of that showing the current date
7 just to give a general idea of how long it could
8 have been in the trunk.

9 Q And this was around the what, 25th?

10 A This was the 25th and the newspaper was dated
11 August 13th, 2008.

12 Q Okay. State's Exhibit 89, what is that?

13 A That is picture of a swab being taken from the
14 steering wheel I believe.

15 Q And was — a swab was used for what purpose?

16 A Those are generally for touch DNA analysis.

17 Q All right. State's Exhibit 90?

18 A Sergeant Brandt taking a swab from the back seat
19 of the vehicle from the stain on the back of the
20 seat.

21 Q And what would be the purpose for that?

22 A I don't know if this one is the presumptive test
23 testing for blood. I don't believe so. Well, I
24 only see one swab so this may be the presumptive
25 blood test that he did on it. After that additional

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1 swabs were taken from the stain.

2 Q Was any blood found back there to your knowledge?

3 A Not that I recall. I don't believe any blood was
4 found but areas were swabbed there.

5 Q State's Exhibit 91.

6 A That is the back seat and that is Sergeant Brandt
7 as well. I believe he's moving in the seat out the
8 way for me to get a picture.

9 Q And what's the purpose for the white get-up he
10 has on?

11 A Basically we don't know what kind of biological
12 fluids we may be dealing with. This is something
13 offers us that protection from that.

14 Q Does it also protect the scene from any of y'all
15 contaminating?

16 A It also keeps anything from hair or touch from us
17 from contaminating the scene.

18 Q State's Exhibit 92?

19 A That's another shot of the back seats of the
20 vehicle.

21 Q And what all those little dots there or those
22 type that look like tape?

23 A Should be markers. If you can zoom in on one of
24 them. It should be numbered.

25 Q So those were markers?

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- 1 A There should be a closer, closeup photo on it.
- 2 Q State's Exhibit 93, can you tell us what that's a
- 3 picture of.
- 4 A That looks to be a shot of where some potential
- 5 latents may have been.
- 6 Q And when you say latents, what does that refer
- 7 to?
- 8 A Latent fingerprints.
- 9 Q Okay. State's Exhibit 94?
- 10 A That's a shot of the driver's door of the
- 11 vehicle?
- 12 Q State's Exhibit 95?
- 13 A That is a closeup one-to-one shot, as we call it,
- 14 of the latent print that was developed.
- 15 Q Where was that developed from?
- 16 A Backup to the picture before it I can probably
- 17 tell you.
- 18 Q Okay.
- 19 A I'm trying to see. It should be right in this
- 20 area we generally come in on them.
- 21 Q Okay, all right. State's Exhibit 96?
- 22 A I believe that's glass, but I can't tell you what
- 23 door or where it came from.
- 24 Q Okay. And who was doing — who was lifting those
- 25 latents?

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- 1 A Sergeant Brandt lifted all the latents.
- 2 Q Okay. State's Exhibit 97.
- 3 A That's another shot of the driver's door.
- 4 Q State's Exhibit 98?
- 5 A That is a large piece of fingerprint tape
- 6 actually lifting any developed latent prints.
- 7 Q Okay. How does that work?
- 8 A The whole process?
- 9 Q With the tape, what's the purpose of the tape?
- 10 A Well, it's the powder that sticks to the actual
- 11 oil residue of the fingerprint. It lets us see the
- 12 print. The tape actually picks up all of it. That
- 13 way it gives us a perfect outline everything exactly
- 14 as it was on the surface that we lifted it off of.
- 15 And we turn around and put the tape on to either
- 16 usually a white backing card. It just lets it stand
- 17 out even there 'cause it's a dark color the powder
- 18 and that's when we send it to SLED.
- 19 Q State Exhibit 99?
- 20 A That is another latent print that was developed.
- 21 I cannot tell you where it's at without a broader
- 22 view of the area.
- 23 Q State's Exhibit 11, I mean, excuse me, 100?
- 24 A Same thing, another developed latent print.
- 25 Q As fingerprints go do you do latent print lifts

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1 as well?

2 A Yes, sir, I lift them but I don't analyze.

3 Q State's Exhibit 101?

4 A That is inside the driver's door on the interior
5 side of the glass near the top. That would be lift
6 number 12 as it's labeled.

7 Q State's Exhibit 102?

8 A This is a closeup view on the same lift. It's
9 inside of the driver's window.

10 Q Okay. And at the scene on Roughfork Street and
11 in the sally port while Sergeant Brandt was
12 processing Ms. Hayes' vehicle, other than those two
13 locations what, if anywhere, did you take any other
14 pictures?

15 A 525 Stackley Street.

16 Q You can sit back on the stand.

17 A (Witness complies.)

18 Q And Stackley Street, was that where Rakim Floyd
19 was?

20 A Yes, sir.

21 Q And what were the items that you took pictures of
22 that he had with him?

23 A He had, I believe it was a backpack with some
24 clothing items in it and some -- a couple of hoop
25 earrings that were on the bed he was found on.

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1 Q A couple of hoop earrings?

2 A Yes, sir.

3 Q What, including those earrings and anything else,
4 what if anything, came back from SLED identified
5 with Ms. Hayes' DNA?

6 A Nothing.

7 MR. HOFFMEYER: Your Honor, I object to
8 that. This witness isn't qualified to testify to
9 that.

10 THE COURT: Step up here real quick.

11 (WHEREUPON, counsel approached the Bench
12 for an off-the-record discussion.)

13 THE COURT: Sustain your objection.

14 BY MR. CLEMENTS:

15 Q Let me rephrase my question, Corporal Moreau.
16 What items did you submit to SLED for DNA analysis
17 to compare to Ms. Hayes?

18 A The earrings were later swabbed by Corporal Hill,
19 Investigator Hill, who sent those swabs to SLED.

20 MR. CLEMENTS: Okay, all right. Beg the
21 Court's indulgence.

22 THE COURT: Yes, sir.

23 BY MR. CLEMENTS:

24 Q Now Corporal Moreau, did you go to the scene
25 where Ms. Hayes' body was found?

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1 A No, sir, I did not.

2 Q Did you — well, let me ask you this, who went
3 with Ms. Hayes' body to the autopsy?

4 A I did.

5 Q Okay. And what's the purpose for you as a crime
6 scene technician to go with the body to the autopsy?

7 A Our main purpose in that is to collect and bring
8 back any physical evidence found on or about the
9 body during the autopsy.

10 Q Okay. And what's the purpose for you to go to
11 that in relation to chain of custody?

12 A We like to maintain possession of any evidence in
13 the case as closely as possible without having to go
14 through third parties such as MUSC. We retain
15 anything that they find generally before we leave
16 autopsy we gather with us.

17 Q What, if anything, was found there that you
18 brought back to maintain for evidence?

19 A The bed linens that she was found in, the —
20 there was two sheets, a blanket, clothing that she
21 had, I want to say a bra and some underwear, any
22 personal items that may have been in her pockets and
23 any samples that needed to go to SLED from the
24 victim's body.

25 Q When you say samples what are you referring to?

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1 Swabs, hair, what do you refer to as samples?

2 A They — swabs are taken, fingernail clippings,
3 tissue samples as well as blood samples.

4 Q Okay. And you maintain that in your custody?

5 A Yes, sir.

6 Q So it can then be submitted to SLED if need be?

7 A Yes, sir.

8 Q Okay. Now you heard Investigator Meyers'
9 testimony; is that correct?

10 A Yes, sir, I did.

11 Q Do you ever have to transport items to SLED?

12 A Yes, sir.

13 Q All right. Do you recall, did you get involved
14 in the chain of custody of transporting any items to
15 SLED in this case?

16 A Yes, sir, I did. The initial items from autopsy
17 were transferred to SLED by me as well as several
18 items that had to be resubmitted to SLED, I believe
19 it was in May of 2011. I also took them to SLED.

20 Q Okay. And did you — do y'all ever have to
21 transport things back from SLED?

22 A Yes, sir.

23 Q Okay. Did you have to transport anything back
24 from SLED?

25 A Yes, sir, I did. Several of the items listed I

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1 brought back from SLED.

2 Q And that's after they analyze them?

3 A Yes, sir.

4 Q Do sometimes they not analyze send them back to
5 you?

6 A That happens a lot I'm afraid.

7 Q Okay, all right. And would that be the reason or
8 not as to why you have to sometimes resubmit things
9 to SLED?

10 A That's one reason; there could be several. It
11 could be that conditions weren't right for them to
12 test something based on what we had information at
13 the time, didn't fit their policy for testing it.

14 Q Okay.

15 A Some items, you know, may be omitted and not
16 tested at first, they have to be tested later. Or
17 there may be other items that we come up with
18 through the investigation, and we want comparisons
19 to related to that we didn't have at first and we'll
20 submit those as well.

21 Q So correct me -- tell me if this is right or not,
22 you would have something that might have been tested
23 as to one individual and you might have to resubmit
24 it to test against another individual--

25 A Yes, sir.

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1 Q ---that comes up later?

2 A Yes, sir.

3 Q Okay, all right. Corporal Moreau, I believe
4 that's all the questions I have for you right now.
5 Please answer any questions Mr. Hoffmeyer might
6 have.

7 A Yes, sir.

8 **CROSS - EXAMINATION**

9 BY MR. HOFFMEYER:

10 Q Corporal Moreau, I have a few questions for you I
11 believe. Now you indicated you became aware of some
12 potential evidence at 525 Stackley Street; is that
13 correct?

14 A Yes, sir.

15 Q And that's where Rakim Floyd was found hiding
16 from law enforcement?

17 A Yes, sir.

18 Q A suspect in this case, right?

19 A That's what I was advised, yes, sir.

20 Q Now as far as what the -- I believe you told this
21 jury earlier there was a backpack that was found at
22 525 Stackley; is that correct?

23 A Yes, sir.

24 Q And there were some clothes found at 525
25 Stackley, correct?

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1 A Yes, sir.

2 Q And there was a knife found at 525 Stackley,
3 correct?

4 A I believe it was a blue pocket knife that was in
5 the backpack, yes, sir.

6 Q And in addition to that there were the earrings
7 that you told us about found at Stackley Street —

8 A Yes, sir.

9 Q —is that right?

10 A Yes, sir.

11 Q Now touch DNA analysis takes just a few seconds,
12 correct?

13 A I'm not sure how long the actual analysis part
14 takes but —

15 Q I didn't ask that question very well.

16 A Okay.

17 Q As far as getting the evidence, the touch DNA
18 getting the sample for it to then be directed to
19 SLED that doesn't take very long, does it?

20 A No, sir. The actual swabbing process is fairly
21 quick.

22 Q That's the best way to put the swab to look and
23 see there's DNA it doesn't take very long, right?

24 A The swab itself, but we have no way of telling
25 what's on it until SLED gets it.

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1 Q I got you. And of course DNA, as has been
2 testified to and I think there's a general
3 understanding, is found in our skin, our blood, our
4 hair, correct?

5 MR. CLEMENTS: Your Honor, I don't know if
6 Corporal Moreau is qualified to answer any type of
7 scientific questions about DNA. I know he can
8 answer questions about how they collect the swabs
9 for DNA, but I don't know if he can begin to answer
10 this line of questioning.

11 BY MR. HOFFMEYER:

12 Q My question is, do you know of your own knowledge
13 if DNA is found in blood?

14 A Yes, sir.

15 Q Okay. Now that would be obviously potentially
16 the blood of a victim, right?

17 A If it's blood it's blood. We don't show where it
18 comes from until SLED tells us otherwise.

19 Q Yes. And touch DNA was, you testified on direct,
20 was done as relates to the earrings, correct?

21 A I believe that the earrings and I'm not not sure
22 if he swabbed the knife or not.

23 Q You're not sure?

24 A I wasn't involved with the analysis of those
25 items. I turned them over to Investigator Hill so.

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1 Q Well, you told us I believe that you felt
2 comfortable based upon your knowledge that the
3 earring was touched DNA analyzed.

4 A Yes, sir, yes, sir, I remember that one.

5 Q And as you sit here today you can't tell us of
6 your own knowledge if the backpack was touch DNA
7 analyzed, can you?

8 A No, sir.

9 Q And you can't tell us of your own knowledge if
10 the clothes were touch DNA analyzed, can you?

11 A No, sir.

12 Q And you can't tell us if the investigators took
13 the time to touch DNA analyze the knife that was
14 found, can you?

15 A No, sir.

16 Q If you'll excuse me one second. Corporal
17 Moreau, thank you very much.

18 THE COURT: Anything on redirect?

19 MR. CLEMENTS: No, Your Honor, and our
20 next witness will probably be quite lengthy.

21 THE COURT: All right. Well, let me
22 excuse this witness. Thank you very much, sir. You
23 may step down. And we'll go ahead and take a break
24 at this point.

25 Ladies and gentlemen, it's about 13 minutes

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1 to 1. Let's see, I'm gonna ask you if you would to
2 be back at 2:15. That should give you an
3 hour-and-a-half. Please have no conversation with
4 anyone about this case. Do not allow anyone to talk
5 with you. Continue as I told you before to protect
6 your ability to be fair and impartial. Enjoy your
7 lunch. Please, if you would be back here at 2:15
8 and we'll resume at that point. So if everyone else
9 will remain in the courtroom, ladies and gentlemen,
10 we'll see you back 2:15.

11 (WHEREUPON, the jury was removed from the
12 courtroom at 12:49 p.m., and the following
13 proceedings commenced in open court.)

14 THE COURT: All right, court will be in
15 recess then till 2:15.

16 (WHEREUPON, a lunch break was taken.)

17 THE COURT: Anything we need to take up
18 before we bring the jury out?

19 MR. HOFFMEYER: Yes, sir, Your Honor.
20 Potentially, I'm not sure what order the State is
21 going in, Mr. Jupertinger handed me the DNA results
22 which I have already had, I just have a new copy.
23 But I understand from Mr. Jupertinger that he is
24 going to seek to introduce the report itself into
25 evidence, and I anticipate an objection to that. I

1 did not know if that's something Your Honor wanted
2 to take up now or later.

3 THE COURT: I don't mind taking it up now
4 if y'all want to address it.

5 MR. HOFFMEYER: Well, my understanding is
6 they're gonna submit — of course she's going to
7 testify about what the DNA results show and I
8 imagine she'll reference the report. But Your
9 Honor, several concerns about the report coming into
10 evidence. One is naturally that tends to put a
11 certain emphasis on a particular piece of evidence
12 when you have SLED, South Carolina Law Enforcement
13 Division at the top of it, forensic services as the
14 governor's name attached to it, the chief Mark Kiel
15 attached to it.

16 THE COURT: That could be detrimental to
17 the State.

18 MR. HOFFMEYER: Well, I guess it depends
19 on your party affiliation. Be that as it may,
20 there's a lot of things in here that have nothing to
21 do with this case. And also attached to the report
22 itself are the actual tables that accompany the
23 report. So Judge, I think, one, that it could serve
24 to bolster inappropriately the State's evidence with
25 some of the information that's on it without that

1 information having any aspect related to this case.
2 It's going to be cumulative, of course, to what she
3 says. She's going to testify to everything that's
4 of substance in the report. And also, Your Honor,
5 we believe it could confuse the jury. While they
6 will have the benefit of her testimony this report
7 in and of itself could confuse the jury.

8 THE COURT: Could I see a copy of the
9 report.

10 MR. JEPERTINGER: Yes, sir.

11 THE COURT: It might help for me to look
12 at it.

13 (Pause.)

14 THE COURT: Mr. Jepertinger, what's the
15 State's position?

16 MR. JEPERTINGER: Well, the State's
17 position, Your Honor, that instead of confusing
18 issues I think it clarifies issues she should
19 testify from it verbatim, Your Honor. And I think
20 that the jury is entitled to have what she's
21 testified from, and it is her analysis, Your Honor.
22 And if I can use this analogy, it's not unlike a
23 circuit court judge after reading its charge to the
24 jury handing them a copy of the charge so they'll
25 have it back in the room so in case they have any

1 questions in terms of —

2 THE COURT: No, it's completely different;
3 that's not evidence.

4 MR. JEPERTINGER: I understand that, but
5 the purpose Your Honor is for them to —

6 THE COURT: Well, I tell you the analogy I
7 have, Mr. Hoffmeyer, and the question I have is, as
8 long as I've been practicing law it's been common
9 standard in drug cases to have the SLED chemist
10 testify that, for example, the item was, in fact,
11 crack cocaine and then to submit the report into
12 evidence showing that finding. And I've rarely ever
13 had that objected to when I was practicing law or as
14 a judge, but when I have had it objected to it's
15 always come in.

16 MR. HOFFMEYER: Well Your Honor, I don't
17 have one of those reports. I'm sure there's some
18 differences, but I do understand Your Honor's point.

19 THE COURT: Yeah, I mean, this is
20 lengthier obviously.

21 MR. HOFFMEYER: Yes, sir. And you know,
22 there's discussion in here about short tandem,
23 repeat analysis, and STR, and PCR and all kinds of
24 things such as that, and I imagine she will touch on
25 some of those things in her testimony. That's on

1 page at the bottom, Your Honor. But I do think the
2 nature of this document is substantially more
3 complex than a drug analysis document. And of
4 course, I don't know the stance of the drug case or
5 cases; but I know that sometimes I haven't objected
6 in the sense in my own practice because there's no
7 issue as to the drug as to what it is. It's who had
8 it or constructive or actual possession.

9 THE COURT: Oh, sure I realize every case
10 is, stands on its own merit.

11 MR. JEPERTINGER: Your Honor, just a
12 little bit for the — I think it instead of being
13 confusing I think it would help present on pages
14 one, two, when she's testifying I think it would
15 clarify to the jury for their recollection, Your
16 Honor, where certain items were found, where certain
17 of the swabs came from, and where some of the swabs
18 did not come from, Your Honor. And because of the
19 volume I think there is very few that could remember
20 17, actually more than 17, Your Honor, you're
21 dealing with 68 items, Your Honor, you know.

22 THE COURT: Well, but the vast majority of
23 those no analysis was performed.

24 MR. JEPERTINGER: Right, but what I'm
25 afraid of is without the report they're gonna say

1 ah, did item three come from —

2 THE COURT: Let me ask you, if you turn to
3 the pages 8, 9 and 10.

4 MR. JEPERTINGER: Yes, sir. Those charts?

5 THE COURT: Those charts. I'm not to
6 believe those charts would have any value.

7 Obviously they do to the —

8 MR. JEPERTINGER: To the jury I don't
9 think they would.

10 THE COURT: Obviously to the DNA expert
11 but not to the jury.

12 MR. JEPERTINGER: Right.

13 THE COURT: So I'm going to -- and again,
14 all of this is based on what foundation you lay and
15 all that, but I would allow if you do move to admit
16 this report I would allow it absent the charts on
17 pages 8, 9, and 10.

18 MR. JEPERTINGER: That will be fine.

19 THE COURT: And of course, as I said,
20 that's subject to you laying the proper foundation
21 and of course —

22 MR. JEPERTINGER: Sure.

23 THE COURT: You'll impose your objection.

24 MR. HOFMEYER: Yes, sir, Your Honor. And
25 I have previously objected to the DNA evidence on

1 the other grounds and I renew that.

2 THE COURT: Okay, all right, yeah, and
3 that is right. You objected actually from the very
4 beginning regarding the retrieving of the buccal
5 swabs and stuff.

6 MR. HOFFMEYER: Yes, sir, Your Honor.

7 THE COURT: Okay, all right.

8 MR. JEPERTINGER: Your Honor, the — well,
9 we would redact, Your Honor, at the bottom of page 5
10 it did say DNA analysis was performed on the items
11 above the results of short tandem repeat STR, PCR,
12 DNA analysis are shown in table 1, and that would
13 have been on page 8.

14 THE COURT: Okay.

15 MR. JEPERTINGER: And we will just redact
16 that.

17 THE COURT: Absolutely, any reference to
18 the tables, I don't think the tables should go back.

19 MR. JEPERTINGER: That's fine, and I'm
20 just taking a magic marker and —

21 THE COURT: Well, yeah, do that, but then
22 make a copy of it because you can see through a
23 magic marker.

24 MR. JEPERTINGER: I don't believe there's
25 any other reference to a table.

1 MR. CLEMENTS: I don't think so. Just
2 give us a second to get that done, Judge.

3 (Pause.)

4 THE COURT: All right. Anything else
5 before we bring the jury out?

6 MR. JEPERTINGER: No, sir, we're good.

7 THE COURT: Mr. Propps, would you ask them
8 to join us please.

9 (WHEREUPON, the jury was returned to the
10 courtroom at approximately 2:40 p.m., and
11 the following proceedings commenced in
12 open court.)

13 THE COURT: All right. Ladies and
14 gentlemen, everybody had a good lunch and ready to
15 resume your work this afternoon. We will continue
16 with the State's case.

17 Mr. Jepertinger.

18 MR. JEPERTINGER: We call Ms. Maryann
19 Boehm to the stand.

20 THE COURT: Ma'am, if you'd please come
21 around to be sworn.

22 THE CLERK OF COURT: If you would please
23 place your left hand on the Bible and raise your
24 right hand.

25 WHEREUPON,

1 **MARYANN E. BOEHM,**
2 having been duly sworn by the Clerk of Court,
3 testified as follows:

4 THE CLERK OF COURT: Please be seated and
5 state your full name for the record.

6 THE WITNESS: My name is Maryann E. Boehm.

7 MR. JEPERTINGER: If it please the Court,
8 counsel.

9 **D I R E C T E X A M I N A T I O N**

10 BY MR. JEPERTINGER:

11 Q Ms. Boehm, where do you work?

12 A I work at the South Carolina Law Enforcement
13 division commonly known as SLED.

14 Q Okay. And what are your responsibilities at
15 SLED?

16 A I'm assigned to the serology and DNA case work
17 section.

18 Q How long have you worked at SLED?

19 A Approximately six years.

20 Q And has it always been to serology and DNA?

21 A Yes, sir.

22 Q I would ask you to tell the ladies and gentlemen
23 of the jury, what special training you have received
24 to become your field of study to do what you do.

25 A All right. I have a bachelor of science from

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1 James Madison University in intergrade science
2 technology with concentration in biotechnology.
3 Upon graduating from James Madison University I
4 received training from a court qualified analyst in
5 proper techniques and procedures used in our
6 laboratory. And I've also attended outside training
7 in specification instrumentation and techniques used
8 in our laboratory.

9 Q Have you ever testified in court before?

10 A Yes, I have.

11 Q Okay. And have you been qualified as an expert
12 in the field of DNA analysis and serology?

13 A Yes, I have.

14 Q All right. And approximately how many times have
15 you testified?

16 A Approximately 20 times.

17 Q And in the course of your work in the DNA
18 analysis and serology fields there at SLED, how many
19 cases have you analyzed approximately over your six
20 year tenure?

21 A Hundreds, maybe even a thousand cases.

22 MR. JEPERTINGER: At this time, Your
23 Honor, I would move to have Ms. Boehm qualified as
24 an expert in the fields of DNA analysis and
25 serology.

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1 THE COURT: Mr. Hoffmeyer, you wish to
2 voir dire the witness on that.

3 MR. HOFFMEYER: No, sir, Your Honor, I do
4 not wish to voir dire her. I leave that up to the
5 Court.

6 THE COURT: All right. I am going to
7 recognize Ms. Boehm as an expert in those areas.

8 BY MR. JEPERTINGER:

9 Q Mr. Boehm, can you tell the ladies and gentlemen
10 of the jury what serology is.

11 A Serology is the identification of biological body
12 fluid, semen, saliva, and blood.

13 Q All right. And can you tell the ladies and
14 gentlemen of the jury what DNA is.

15 A Sure. DNA stands for deoxyribonucleic acid. It
16 is a chemical found in all the cells of our body
17 except for red blood cells. It is important for
18 giving us our physical features like our hair color
19 and our height. It's also important for passing on
20 traits from generation to generation. We get half
21 of our DNA from our mother and half from our father.
22 With the exception of identical twins, no two
23 individuals have the same DNA. So forensic science
24 we are interested in portions of DNA between
25 individuals. We test 15 different locations, and

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1 the combination of those test results make up what
2 we call DNA profile.

3 Q All right. In this particular case I take it
4 that you received samples from several individuals;
5 is that correct?

6 A Yes, sir.

7 Q All right. And I'm going to show you a report
8 dated January 11th, 2012, do you recognize that,
9 ma'am?

10 A Yes, this is a copy of my report.

11 Q All right. And I notice on that report it's
12 referred to as a supplemental report; is that
13 correct?

14 A Yes, sir.

15 Q Is that a compilation of all the reports you've
16 done in this case?

17 A That's correct. I did actually three reports. I
18 did some of the evidence that matches initial
19 reports based on those findings and this third and
20 final report is a compilation of all of my testing.

21 Q All right. Can you tell the ladies and gentlemen
22 of the jury how you conduct DNA tests, and if you
23 can, when you receive subject samples.

24 A I received subject samples as well as evidence
25 samples. I first look at the paperwork to see what

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1 I'm looking for. If there's a request for, you
2 know, some kind of body fluid like blood. If
3 there's a request for blood then I'll do a serology
4 test to determine whether that body fluid is present
5 or not. If it is. Then I'll do DNA analysis on it.
6 Other items such as touch swabs or ownership swabs
7 all this — there's no kind of serology testing for
8 that; we just perform DNA analysis on that. I
9 perform DNA analysis on evidence samples as well as
10 the known standard submitted for this case and
11 compare the two profiles and write a report based on
12 those findings.

13 Q All right. You used a term here, ladies and
14 gentlemen of the jury, of touch DNA. Can you tell
15 the ladies and gentlemen how you define that term.

16 A Touch DNA basically is a possible source of DNA
17 where someone has touched. I touch this counter
18 type I mainly leave my DNA there. Someone may swab
19 it and I can try to perform DNA analysis on what is
20 left working for basically skin cells that were left
21 with touch DNA.

22 Q Within your expert opinion is it more likely more
23 probably if there's usage over a period of time to
24 find those shed of skin cells?

25 A Yes. If I'm going to come in contact with a

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1 certain item over and over again, I'm more likely to
2 leave cells each time so there is more chance or
3 higher probability that I would leave DNA there.

4 Q Now in this particular case you received
5 subjected samples from who?

6 A Rakim Floyd, Anthony Wilson, David Johnson,
7 Rashawn Bailey, Willie Mae Hayes, and Gregory L.
8 Montgomery.

9 Q And I think you have the deceased victim as being
10 Willie Mae Hayes; is that correct?

11 A Yes, sir.

12 Q All right. Now how many items were submitted to
13 you, ma'am, per your report?

14 A Approximately 60, 68 samples.

15 Q 68?

16 A Yes, sir.

17 Q All right. And I guess there's no easy way of
18 doing this so we're gonna go down these samples
19 submitted, okay?

20 A Uh-huh.

21 Q And before we do that, as a result of you testing
22 all these 68 samples and looking at them, did you
23 prepare this supplemental report and other reports
24 you were talking about?

25 A Yes, I did.

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1 Q Okay. And when you analyze something you have
2 results included with your analysis, correct?

3 A That's correct.

4 Q All right. And you have analyzed, if you could,
5 all the samples submitted to you if possible; is
6 that correct?

7 A I didn't perform analysis on all the items
8 submitted.

9 Q All right. Let's go down with item number one.
10 What was that?

11 A It was swabs from the steering wheel.

12 Q Okay. And what did you find in terms of swabs
13 from that steering wheel?

14 A The DNA profile developed from item one is a
15 mixture of at least two individuals. The DNA
16 profile of the major contributor to this mixture
17 matches the DNA profile of David Johnson. The
18 probability of randomly selecting an unrelated
19 individual having a DNA profile matching the major
20 contributor to this mixture is approximately 1 and
21 5.1 quadrillion. The partial DNA profile of the
22 minor contributor is insufficient for reliable
23 interpretation.

24 Q Could you interpret that for us please.

25 A Sometimes when looking at the DNA results there

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1 may be multiple contributors. In this sample
2 there's at least two individuals who contributed to
3 this DNA profile. In this profile we can tell that
4 one person contributed the majority of the DNA and
5 that profile happens to match the DNA profile of
6 David Johnson. Whenever we make a match statement
7 we have to put a statistic to state how rare is this
8 profile in the words. So my one in 5.1 quadrillion
9 stat is basically saying I expect to see this
10 profile once in every 5.1 quadrillion individuals.

11 Q Do you know just roughly what the population of
12 the planet earth is?

13 A Approximately 7 billion.

14 Q Now this quadrillion is how many billion?

15 A It's a million times a billion.

16 Q A million times a billion.

17 A Right.

18 Q All right.

19 A A million times more.

20 Q So we would be talking about at least one million
21 planet earths?

22 MR. HOFFMEYER: Object to the leading,

23 Your Honor.

24 BY MR. JEPERTINGER:

25 Q What would be ---

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1 THE COURT: Sustained.

2 BY MR. JEPERTINGER:

3 Q Could you give us an example of what — how many
4 earths would that be?

5 A Approximately a million with the same type of
6 genetic makeup of the individuals on planet earth.

7 Q And just to humor, me could you write on the
8 board how many zeros there are in one quadrillion.

9 A (Witness complies.)

10 Q And we'd have to multiply that figure by 5.1,
11 correct, to get —

12 A Right.

13 Q To get what you found as being the major
14 contributor on the steering wheel from the swab?

15 A That's correct.

16 Q Correct, okay. By the way, can — there was not
17 enough DNA to determine who the minor contributor
18 was; is that correct?

19 A That's correct.

20 Q All right. Now number 2?

21 A Number 2 is swabs from upholstery seam on rear
22 driver's side seat approximately 6 inches from door
23 and 2 inches from back, and I did not perform
24 analysis on that item.

25 Q And do we know why?

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1 A With discussion -- while discussing it with the
2 investigator I was told not to do that sample.

3 Q All right. How about swabs from the rear
4 passenger side seat approximately 20 inches from
5 passenger door and 6 six inches from front to the
6 seat?

7 A That is our lab item number three and I did not
8 perform analysis also on that item.

9 Q Number 4?

10 A That's swabs from large stain on rear passenger
11 side seat, and I did not perform analysis on that
12 item.

13 Q Number 5?

14 A Swabs from stain on rear middle lap belt. I did
15 not perform analysis on that item.

16 Q Number 6?

17 A Swabs from rear driver's side seat back
18 approximately 6 inches high and 8 inches from door.
19 I did not perform analysis on that item.

20 Q Number 7?

21 A Swabs from left side of driver's seat, and I did
22 not perform analysis on that item.

23 Q Number 8?

24 A Swabs from rear driver's side seat back
25 approximately 10 inches from door and 12 inches

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1 high, and I did not perform analysis on that item.

2 Q Number 9?

3 A Swabs from rear driver's side seat back
4 approximately 12 inches high and 18 inches from
5 door, and I did not perform analysis on that item.

6 Q Number 10?

7 A Swab from rear driver's side seat back
8 approximately 20 inches from door and 6 inches high,
9 and I did not perform analysis on that item.

10 Q Number 11 and 12, I'll throw both those in there.

11 A 11 was swabs from interior trunk release latch
12 and item 12 was swabs from gear selector, and I
13 didn't perform analysis on either of those two
14 items.

15 Q Let's go down to 13 through 16 please.

16 A Okay. Item 13 was swabs from the interior door
17 handle on the driver's side, and I performed DNA
18 analysis on that. And the results of my analysis is
19 that David Johnson cannot be excluded from the
20 partial DNA profile developed from item 13.

21 Q So that would be the interior door handle from
22 the driver's side?

23 A Yes, sir.

24 Q And he cannot be excluded?

25 A Yes, uh-huh.

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1 Q All right. How about 14?

2 A Swabs from the interior front passenger door
3 handle, I performed analysis on that. And my
4 results are the partial DNA profile developed from
5 item 14 is a mixture of at least two individuals.
6 No conclusive statement can be made regarding the
7 inclusion or exclusion of Willie Mae Hayes, Rakim
8 Floyd, Anthony Wilson, David Johnson, Rashawn
9 Bailey, and Gregory Montgomery as possible
10 contributors to this mixture.

11 Q So we really can't garner any information one way
12 or the other in terms of that?

13 A That's correct.

14 MR. HOFFMEYER: Object to the leading,
15 Judge, and move the response be stricken.

16 BY MR. JEPERTINGER:

17 Q Can you draw any conclusions from —

18 THE COURT: Hold on. Sustained to your
19 objection. The answer will be stricken and you can
20 rephrase the question.

21 BY MR. HOFFMEYER:

22 Q Can you draw any conclusions about who to be
23 included and excluded based on the subjects given to
24 you?

25 A I cannot make a determination.

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1 Q All right, thank you. Number 15 please?

2 A Swabs from the interior rear driver's side door
3 handle, I performed analysis on this item. And the
4 results are, the DNA profile developed from item 15
5 is a mixture of at least three individuals, Willie
6 Mae Hayes, Rakim Floyd, Rashawn Bailey, David
7 Johnson, and Gregory Montgomery could not be
8 excluded as possible contributors to this mixture.
9 The probability of randomly selecting unrelated
10 individual who could have contributed to this
11 mixture is approximately one in one. Anthony Wilson
12 can be excluded as a possible contributor to this
13 mixture.

14 Q Can you explain that to the jury and especially
15 in terms of one to one.

16 A Well, the statistics like one what -- any time
17 you say can be excluded we have to say how rare, you
18 know, it is for that person to be in that profile or
19 not. In this case the statistic is one in one means
20 pretty much anyone can be found in that mixture.

21 Q Except Anthony Wilson?

22 A Right, he is excluded.

23 Q Number 16 please?

24 A That was swab from the interior rear passenger
25 door handle. I performed analysis on that. And the

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1 results are, the DNA profile developed from item 16
2 is a mixture of at least two individuals, Willie Mae
3 Hayes, Rakim Floyd, Anthony Wilson, David Johnson,
4 Rashawn Bailey, and Gregory Montgomery can be
5 excluded as possible contributors to this mixture.

6 Q So everyone involved in this case whose samples
7 were given to you can be excluded; is that correct?

8 A Yes, sir, that's correct.

9 Q Now that brings up a question that I have. In
10 terms of DNA is there a length of time? Does it, I
11 mean, does it disappear quickly or can it be there
12 for any extended period of time?

13 A It really depends. It depends on where that
14 sample is from. If it's exposed to extreme heat or
15 moisture that basically eats away DNA, and it will
16 destroy the DNA.

17 Q So the environment is going to have some effect
18 on DNA?

19 A Yes, sir.

20 Q But on a situation where it's from the interior
21 rear passenger door handle where it's not subject to
22 getting wet or among sunshine it might last longer?

23 MR. HOFFMEYER: Your Honor, I object to
24 leading.

25 BY MR. JEPERTINGER:

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1 Q Would it last longer?

2 THE COURT: Sustained.

3 MR. JEPERTINGER: I'm sorry, let me
4 rephrase the question.

5 BY MR. JEPERTINGER:

6 Q If you know, from an interior rear passenger door
7 handle would you expect as many external
8 environmental conditions to effect that?

9 A Not external, environmental.

10 Q Just quickly item 17 through 19.

11 A Those were swabs from — item 17 was swabs from
12 oval shaped stain on rear driver's side seat
13 approximately 10 inches from the door and 8 inches
14 from the back. Item 18 was swabs from two coin
15 shaped stain on rear driver's side seat
16 approximately 10 inches from the door and 8 inches
17 from the back. Item 19 was swabs from stain on rear
18 driver's side seat near the seatbelt. And I didn't
19 perform analysis on any of those three items.

20 Q All right. The next item, item 32?

21 A That was a swab from the power plug and coaxial
22 plug to the TV. I performed DNA analysis on that;
23 however, no DNA was obtained from that item.

24 Q Would it be correct to say what type of — was
25 there any DNA?

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1 A No.

2 Q Human?

3 A No human DNA. That's what we test for.

4 Q No human DNA, all right. Items 33 and 34?

5 A They were swabs from a multicolored pillow.

6 Pillow three, number three was item 33. Pillow
7 number four was item 34. There was a request for
8 blood on these swabs. Blood was indicated so I
9 performed DNA analysis.

10 Q All right. And your results?

11 A The DNA profile developed from items 33 and 34
12 matches the DNA profile of Willie Mae Hayes. The
13 probability of randomly selecting an unrelated
14 individual having a DNA profile matching these items
15 is approximately one in one hundred quadrillion.

16 Q All right. Numbers 35 and 36 please.

17 A 35 was swabs from a plastic cup found on kitchen
18 table. 36 was swabs from side of crock pot lid.

19 Q And your analysis please.

20 A The DNA profile developed from item 35 matches
21 the DNA profile of Willie Mae Hayes. The
22 probability of randomly selecting an unrelated
23 individual having a DNA profile matching this item
24 is approximately one in one hundred quadrillion.
25 And no human DNA was obtained from item 36.

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1 Q All right. Number 37 please?

2 A That was swabs from mattress side, marker number
3 one. Blood was also indicated on this item so I
4 performed DNA analysis. And the results are the DNA
5 profile developed from item 37 matches the DNA
6 profile of Willie Mae Hayes.

7 Q And it's the same statistical amount you just ---

8 A Yes, sir.

9 Q ---testified to the one in one hundred
10 quadrillion?

11 A Yes, sir.

12 Q And likewise 38 and 39?

13 A Yes, sir.

14 Q The 38 is from where?

15 A Swabs from the bedroom curtain marker number 2.

16 Q And 39?

17 A Swabs from the bed rail marker number three.

18 Q And the results again?

19 A Blood was indicated on both of those items. And
20 the DNA profile developed from items 38 and 39
21 matches the DNA profile of Willie Mae Hayes.

22 Q All right. Swab number 40?

23 A That was a swab from the front light colored
24 chair marker number four. I did not perform
25 analysis on that item.

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1 Q All right. Swab 41?

2 A That was a swab from the front right kitchen sink
3 drain. Blood was indicated so I performed DNA
4 analysis. No human DNA was obtained from item 41.

5 Q All right. Items 42 and 43?

6 A Item 42 was a swab from a blue pillow, pillow
7 number one. And item 43 was swabs from a blue
8 pillow, pillow number two. Blood was indicated on
9 both items. The DNA profile developed from item 42
10 is a mixture at least two individuals. The DNA
11 profile of the major contributor to this mixture
12 also matches the DNA profile of Willie Mae Hayes.
13 The partial DNA profile of the minor contributor is
14 insufficient for reliable interpretation.

15 Q When you put that down what are you telling us
16 when you say the profile of a minor contributor is
17 insufficient for reliable interpretation?

18 A There's not enough DNA there for me to say
19 anything about it.

20 Q Okay.

21 A And for item 43, the DNA profile developed from
22 item 43 matches the DNA profile of Willie Mae Hayes.

23 Q Okay. Now items 44, 45, 50 and 51, are what,
24 ma'am?

25 A Those are known buccal swabs from Rakim Floyd,

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1 Anthony Wilson, David Johnson, and Rashawn Bailey.

2 Q All right. And you used those buccal swabs for
3 comparison to items submitted to you?

4 A Right, I compare those standards to the evidence.

5 Q All right. Item 52 please?

6 A That was swabs from two gold hoop earrings found
7 at 525-B Stackley Street.

8 Q And what was your analysis in regards to that
9 item.

10 A The partial DNA profile developed from item 52 is
11 from an unidentified female individual.

12 Q In your opinion would that exclude the victim in
13 this case Willie Mae Hayes?

14 A Yes, sir.

15 Q We go to item 53 and 54 please.

16 A Item 53 was a cigarette butt found outside of
17 east side dining room window. And the results were
18 that was, the partial DNA profile developed from
19 item 53 is insufficient for reliable interpretation.
20 And item 54 was another cigarette butt found in the
21 kitchen trash can. The results for that is the DNA
22 profile developed from item 54 is a mixture of at
23 least two individuals. Anthony Wilson and Gregory
24 Montgomery cannot be excluded as possible
25 contributors to this mixture. The probability of

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1 randomly selecting an unrelated individual who could
2 have contributed to this mixture is approximately
3 one in 98,000. Willie Mae Hayes, Rakim Floyd, David
4 Johnson, and Rashawn Bailey can be excluded as
5 possible contributors to this mixture.

6 Q Once again, the mixture of the two individuals
7 were whom?

8 A Anthony Wilson and Gregory Montgomery cannot be
9 excluded.

10 Q Okay. The next items would be items 55 and 56.

11 A Five was hair rollers from the victim and 56 were
12 dentures, was a denture plate from the victim, and I
13 did not perform analysis on those items.

14 Q And 57 and 58, can you tell the jury what that
15 was please.

16 A 57 was a blood standard from Willie Mae Hayes. I
17 did not — I performed DNA analysis on that; but 58,
18 I did not receive for DNA.

19 Q 59 please?

20 A 59 are clippers used to cut the fingernails from
21 the victim. I did perform analysis on that item.

22 Q 60 and 61?

23 A Those were both fingernail clippings. 60 was
24 from Willie Mae's right hand and 61 was from Willie
25 Mae Hayes' left hand.

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1 Q And what was your analysis of those items on I
2 guess fingernail clippings?

3 A No DNA profile to the victim was developed for
4 items 60 and 61.

5 Q What are you telling us with nothing being
6 performed to the victim?

7 A The DNA profile was the same or a match of from
8 item 60 and 61 to the victim Willie Mae Hayes.
9 Since it's an intimate sample we can say nothing was
10 pointing to her.

11 Q Okay. Items listed here 62, 63, 64, 65, 66, and
12 67?

13 A They were 63 is known head hairs from Willie Mae
14 Hayes. 63 were rectal swabs from Willie Mae Hayes.
15 64 were vaginal swabs from Willie Mae Hayes. 65 was
16 oral swabs from Willie Mae Hayes. 66 was pubic hair
17 combings from Willie Mae Hayes. And 67 was known
18 pubic hairs from Willie Mae Hayes. And I didn't
19 perform analysis on any of those items.

20 Q And the last item was what, ma'am?

21 A Item 68 was buccal swab from Gregory L.
22 Montgomery and I didn't perform analysis on that.

23 Q All right. I think the question I asked earlier,
24 once you completed your analysis would you say that
25 everything you analyzed and all your results were

SW - M. BOEHM - DIRECT

1 within a reasonable degree of serological and DNA
2 analysis that they were certain?

3 A Yes, sir.

4 Q Okay. Or certainty should be the correct word I
5 should have used. And then you reduced all your
6 findings to this document we've just been over; is
7 that correct?

8 A That's correct.

9 Q Okay.

10 MR. CLEMENTS: At this time, Your Honor, I
11 would move Ms. Boehm's report into evidence.

12 MR. HOFFMEYER: Your Honor, I'll just
13 renew the previous objections I put on the record
14 both related to our motion hearing and the objection
15 that I provided to the Court just before this
16 testimony.

17 THE COURT: All right. sir. I'm gonna
18 overrule that objection. I'm gonna allow the report
19 in and note your exception to that.

20 (WHEREUPON, State Exhibit No. 118 was
21 marked for identification and received
22 into evidence.)

23 MR. JEPERTINGER: This would be State's
24 Exhibit 118.

25 Beg the Court's indulgence.

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1 BY MR. JEPERTINGER:

2 Q At the time you were assigned this case,
3 Ms. Boehm, did SLED have limits set for a number of
4 items that could be submitted for testing at one
5 testing?

6 A Yes. With the first admission we try to go with
7 the violent crimes such as a homicide it would be
8 five items. We try to limit that number so the
9 analyst can prioritize those items as well as other
10 cases so we don't get too much of a back log. It's
11 to help our back log.

12 Q So that's why three reports would have been
13 generated ---

14 A That's correct.

15 Q ---initially, okay. Let me ask you, would you
16 test an item for touch DNA that you recovered from
17 an individual?

18 A If I understand your question correctly, no,
19 wouldn't take touch DNA off of an individual.

20 Q Okay. And if an item was recovered on that
21 individual, for example, if you recovered this
22 wallet on me would you test it for my DNA?

23 A Not for your DNA, no.

24 Q Thank you. Please answer any questions Mr.
25 Hoffmeyer might have for you.

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CROSS - EXAMINATION

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BY MR. HOFFMEYER:

Q Good afternoon, Ms. Boehm, I just have a few questions for you I believe. Now you started off, I believe, by telling us a little bit about DNA and how identical twins have identical DNA, they're the only folks, according to what you told us; is that right?

A That's correct.

Q And if you did an analysis of identical twins' DNA, if you analyzed a hundred percent of their DNA, all of their DNA, it would be identical; is that correct?

A I believe so.

Q And in this case like many others, you do not analyze a hundred percent of the DNA, do you?

A No, sir.

Q You analyze less than one percent of the total DNA; is that right?

A Yes, sir.

Q Now that would leave millions upon millions upon millions of DNA that you do not analyze; is that right?

A Millions? We test the DNA. It's not we're leaving millions out. We're just testing certain

SW - M. BOEHM - CROSS

1 locations on that strand of DNA.

2 Q Y'all testing 15 locations, right?

3 A Yes.

4 Q And how many locations are there?

5 A I don't know off the top of my head.

6 Q You don't know off the top of your head?

7 A No.

8 Q Is it millions?

9 A It could be.

10 Q Could be millions. And so if you tested 15 it
11 could be millions that you're not testing, right?

12 A That's correct.

13 Q Now when it comes to this testing that you're
14 doing, you're doing the testing as you've described
15 it to the jury, but it takes more than that. And I
16 believe you also told us a little bit about that.
17 You have to use statistics in order to determine the
18 number that you come up with; is that right?

19 A We use statistics to estimate the frequency of
20 that profile within a population.

21 Q Well, without the statistics you couldn't give us
22 that number that you've come up with, right?

23 A No.

24 Q Is that correct?

25 A That is correct.

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1 Q All right. And I guess what I'm talking about is
2 you kind of have a lab part to your DNA analysis,
3 then you have a statistical part to your DNA
4 analysis, right?

5 A That's correct.

6 Q And without the statisticals I believe you just
7 shared with the jury you can't come up with this
8 gazillion billion number, right?

9 A That's correct.

10 Q Now as far as the report that we have and you
11 went through with Mr. Jeperfinger, I tried to count
12 as you were testifying and it looks like there were
13 approximately 21 items that no DNA analysis was
14 performed regarding; is that correct?

15 A I don't know the number off the top of my head.

16 Q Would you like to count, look at it with me?

17 A 24.

18 Q Oh, 24. Okay, I miscounted. So there were 24
19 items that were submitted that no DNA analysis was
20 performed, correct?

21 A That's correct.

22 Q And in fact, the item — well, more than one
23 item. It looks like on page 7 of your report it
24 looks like items 1, 32, 37, 42. Are you there,
25 Ms. Boehm?

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1 A I'm here now.

2 Q Sorry about that.

3 A That's fine.

4 Q I'll back track a little bit. Looks like of your
5 report items 1, 32, 37, 42, 52, 53 and 54 were
6 resubmitted; is that correct?

7 A They were resubmitted along with the other
8 evidence. Like I said before, that I had to do DNA
9 analysis in batches because of that minimum sample
10 requirement. So those items 1, 32, 37, 42, 52, 53
11 54 were in a container that we are interested in
12 testing other items that weren't tested for. So it
13 was submitted to SLED, but I did further testing on
14 it but I did have those in my custody.

15 Q I got you. So what you're telling us is you
16 received those items, they were resubmitted in that
17 form, and I guess you could have tested them again
18 if it were determined to do so but you did not
19 retest them; is that right?

20 A There would be no point in retesting them.

21 Q Okay. There'd be no point in retesting items
22 that you had already tested and come to a conclusion
23 regarding; is that right?

24 A That's correct.

25 Q Okay. As far as your report, and I'm gonna move

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1 on over, Ms. Boehm, to page 6 of your report. You
2 indicate — are you there, Ms. Boehm?

3 A Yes.

4 Q You indicated that the DNA was found on the
5 steering wheel, and you used the number that you
6 used regarding my client. But you also indicated
7 that there was another contributor to the steering
8 wheel that you didn't have enough, I suppose, DNA to
9 come up with reliable interpretation of that DNA; is
10 that correct?

11 A That is correct. There was such little bit of
12 small amount of that minor contributor I didn't feel
13 comfortable interpreting at all.

14 Q But it was somebody obviously?

15 A Most likely.

16 Q Well, you're testing for human DNA, right?

17 A At least one person.

18 Q Okay. So at least there was another person,
19 correct?

20 A That's correct.

21 Q All right. Now in addition to that it looks like
22 with item 42 you had a mixture of at least two
23 individuals, is that correct, and one of which was
24 Ms. Hayes?

25 A Yes, that is correct.

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1 Q Don't know who the other one was?

2 A Again, that one was minor contributor was
3 insufficient for reliable interpretation.

4 Q So don't know who the other person was?

5 A There wasn't enough there for me to interpret.

6 Q So is the answer no, you do not?

7 A That's correct.

8 Q Okay. Now, then we have a DNA profile developed
9 from item 54. Do you see that portion of your
10 report?

11 A Yes, sir.

12 Q Now item 54 is a cigarette butt found in the
13 kitchen trash can; is that right?

14 A That's correct.

15 Q Now item 54, the kitchen trash can, obviously
16 would have been in the home of Ms. Hayes; is that
17 right?

18 A I believe so.

19 Q Okay. Now with regard to item 54 you indicate
20 that it could have been Anthony Wilson, and it could
21 have been Gregory Montgomery because they could not
22 be excluded; is that right?

23 A Right, they cannot be excluded from that item.

24 Q So one of those individuals was in the kitchen,
25 right?

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1 A The cigarette butt that was found in the kitchen
2 could have their DNA on it.

3 Q Okay, that's fair. All right. Is there anything
4 in your report that finds any conclusion related to
5 Mr. Davis Johnson's DNA in the kitchen or in the
6 house?

7 A No, sir.

8 Q And in fact, when it comes to that cigarette that
9 was found in the house, Mr. Johnson can be excluded
10 as a contributor to that particular piece of
11 evidence; is that right?

12 A That's correct.

13 Q Then we have some items that you tested, items 13
14 which was the inside of the door handle of the car,
15 and you indicated that Mr. Johnson could not be
16 excluded in the car at the door handle; but you're
17 not saying it was him, he just can't be excluded,
18 right?

19 A That's correct.

20 Q And then we have 14, item 14, which again is the
21 swab from the front passenger door handle and you
22 indicate that that particular, item 14, is a mixture
23 of at least two individuals; is that right?

24 A That's correct.

25 Q But you list I believe six individuals that you

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1 can't exclude or include as being the contributor
2 to that particular sample; is that right?

3 A That's correct.

4 Q And then we have profile from item 15, again,
5 this is the interior of the driver's side door
6 handle, and you indicate that it's a mixture of
7 three, at least three individuals; but you've listed
8 five individuals that could potentially be
9 contributors, right?

10 A Right, that was a swab from the interior rather
11 driver's side door handle and — right, five out of
12 the six could not be excluded from that —

13 Q Okay.

14 A —mixture.

15 Q Then we have item number 16 which is, again, the
16 interior door handle of the vehicle, and you
17 similarly indicate it's a mixture of at least two
18 individuals, but then you list that six folks can be
19 excluded; is that right?

20 A That's correct.

21 Q And one of them being Mr. Johnson, right?

22 A That's correct.

23 Q If you will excuse me one second, Ms. Boehm.

24 Ms. Boehm, you were asked by Mr. Jupertinger a
25 little while ago about finding his DNA on his wallet

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1 and you wouldn't typically, I guess, test for that
2 perhaps because you would assume it would be on his
3 wallet. Do you recall that?

4 A We call that non-probative information. You
5 expect to find your own DNA on your own items.

6 Q How about the blood of a victim on a knife?
7 Would you at times in your experience and background
8 as somebody who is experienced in DNA analysis and
9 serological analysis test that, a bloody knife?

10 A Yes, most likely.

11 Q Or a knife that can potentially have some DNA on
12 it somewhere?

13 A It's possible.

14 Q And you weren't asked to test a knife from
15 Stackley Street, were you?

16 A There's not a knife submitted to me in this case.

17 Q Were -- was a backpack from Stackley Street
18 submitted to you in this case?

19 A No, sir.

20 Q And when it comes to DNA analysis, for example,
21 if somebody bleeds on an item you could potentially
22 get DNA off of that item; is that correct?

23 A Yes, that's correct.

24 Q And a scene that unfortunately and tragically is
25 a bloody scene and a bloody situation can lead to

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1 transfer of blood to other items, right?

2 A It's possible.

3 Q Now were you ever asked to test any clothes from
4 Stackley Street?

5 A No, sir.

6 Q Were you ever — were any clothes ever submitted
7 to you from Sumter Street?

8 A No, sir.

9 Q Were any clothes ever submitted to you from, not
10 Ms. Hayes' residence but any other residence on
11 Liberty Street?

12 A No, sir.

13 Q Now when it comes to DNA, as you indicated on
14 direct there are certain things that influence how
15 long DNA is around, for lack of a better way to put
16 it, how long that evidence is still there; is that
17 right?

18 A There are factors that could affect it, yes.

19 Q But when you analyze this DNA you certainly can't
20 tell this jury or tell me or the Court or the State
21 how long that particular DNA sample has been on the
22 item you're testing, can you?

23 A No, sir.

24 Q You don't know when it was put there?

25 A No, sir.

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1 Q And DNA can't tell you the race of an individual,
2 can it?

3 A Not the kind of testing we do, no, sir.

4 Q So there's testing that can go further than the
5 testing you did?

6 A Not offered at SLED. I believe there, you know,
7 if you sequence the DNA or something like that you
8 could probably tell the race of an individual but
9 nothing we do at SLED.

10 Q And SLED, y'all don't have that capability?

11 A No, sir.

12 Q And in addition, DNA analysis that you perform
13 cannot tell you the age of whoever submitted the
14 DNA; is that right?

15 A No, sir.

16 Q And it cannot tell you -- excuse me one second.
17 Touch DNA analysis, when we touch things oftentimes
18 we leave our DNA; is that right?

19 A It's possible.

20 Q Okay. Was there any items, any doorknobs
21 submitted to you in this case from the victim's
22 residence?

23 A No, sir.

24 Q And how about any two-by-four, was that submitted
25 to you?