

VOLUME FOUR OF EIGHT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Steven H John, Circuit Court Judge

THE STATE,

RESPONDENT,

V

STEPHEN CHRISTOPHER STANKO,

APPELLANT

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**** DEFENDANT'S EXIBITS 2-19 (NORMAL BRAIN/STANKO BRAIN)
HAVE BEEN TRANSPORTED TO THIS COURT****

TESTIMONY OF RUSSELL JORDAN

227

1 Uh -- State's 12, is that a
2 landline or a cell phone? Or do you know?

3 A It's a landline

4 Q Okay And I'm taking it that's an HTC service
5 call?

6 A Yes

7 Q Okay On a typical HTC bill, are they -- uh --
8 itemized? Meaning -- uh -- the call where you -- calling
9 out whose numbers came in -- things like that?

10 A No, there wouldn't be, not on local calls, no

11 Q Local calls, not?

12 A No

13 Q They would just show a charge?

14 A Right

15 Q But long distance calls are itemized, correct?

16 A Right Outgoing would be, not incoming

17 Q Outgoing is itemized

18 A (Nods in the affirmative)

19 Q Okay Now let me ask you this

20 Uh -- But part of what the phone
21 company does is -- I mean, you actually track the
22 records

23 Is that right?

24 A Yes

25 Q And that's what these are

1 A Well --

2 Q The tracking of --

3 A -- that would be what that is that you have in your
4 hand there

5 Q Number 13?

6 A Right

7 Q Uh -- Let me ask you this

8 Doesn't HTC also do cell phones?

9 A Yes

10 Q Uh -- Do you on these cell phone bills -- uh -- how
11 those calls are typically tracked on a typical cell phone
12 bill?

13 A Well they show incoming and outgoing calls

14 Q Okay So on your cell phone bill, you can have
15 both?

16 A Yes

17 MS WILLIAMS

18 Thank you

19 That's all the questions that I
20 have

21 THE COURT

22 Anything in reply?

23 MR HUMPHRIES

24 Nothing further I ask he be

25 excused

TESTIMONY OF JOHN MARVIN COOPER

229

1 THE COURT

2 Any reason the witness can not
3 be excused?

4 MS WILLIAMS

5 Your Honor, we don't object So

6 --

7 THE COURT

8 Mr Jordan, you are released
9 from your subpoena and may go back to your regular
10 business

11 WITNESS

12 Thank you

13 THE COURT

14 All right, Solicitor, your next
15 witness, please

16 MR HUMPHRIES

17 Marvin Cooper

18 THE COURT

19 All right, sir If you would
20 come up front, please, sir

21 WHEREUPON MARVIN COOPER WAS

22 DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS

23 CLERK

24 Please watch your step Please

25 sit right there Speak into the microphone State your

TESTIMONY OF JOHN MARVIN COOPER

230

1 name and spell the last for the record

2 WITNESS

3 My name is John Marvin Cooper,

4 C-o-o-p-e-r

5 DIRECT EXAMINATION BY MR HUMPHRIES

6 Q Good afternoon, Mr Cooper

7 A (Nods in the affirmative)

8 Q Tell the jury, how are you employed?

9 A I am a sales rep -- uh -- with GEMCO here in the
10 Myrtle Beach area I sell Hotel, Motel, and Restaurant
11 supplies

12 Q Back in April of 2005, in what area did you reside?

13 A I lived on Kimberley Drive, which is a cul de sac
14 off of 544

15 Q And let me ask you

16 Uh -- Did you know the victim in
17 this case, Henry Turner?

18 A Yes sire, I did

19 Q Tell the jury how you knew him

20 A I didn't know him very well But he was my exact
21 next door neighbor

22 Uh -- Nice old gentlemen

23 Liked to play with his

24 motorcycle

25 Spoke to me and my family in

TESTIMONY OF JOHN MARVIN COOPER

231

1 passing

2 That was about it, just a good

3 neighbor

4 Q I've asked you about Mr Turner Let me ask you
5 about the Defendant, Steven Stanko

6 Did you have occasion to meet
7 Steven Stanko?

8 A Yes sir

9 Q Tell the jury how, and under what circumstances?

10 A It was very brief I was either coming or going
11 from my home Mr Turner was outside Steven Stanko was
12 present

13 And I was just introduced
14 briefly -- you know

15 My friend, Steven, blah blah
16 blah, and -- pretty much it

17 Q That was the -- uh -- the time that you met him
18 Did you have occasion to see him there at Mr Turner's
19 residence on one or more occasions?

20 A Yes sir, I did

21 Q And on how many occasions, would you say?

22 A Several -- uh -- half a dozen at least

23 Q Let me ask you

24 When -- uh -- When he was there,
25 was there often a particular vehicle that -- uh -- he

TESTIMONY OF JOHN MARVIN COOPER

232

1 would have been associated with or been driving?

2 A To the best of my knowledge, a '96 -- '97 Mustang
3 convertible, burgundy in color

4 Q Let me show you State's 14 And tell me if you can
5 identify it?

6 A Yes sir, that's the vehicle

7 MR HUMPHRIES

8 Move to introduce, Your Honor

9 MR DIGGS

10 No objection

11 THE COURT

12 What's the -- uh -- Exhibit

13 Number, again?

14 MR HUMPHRIES

15 It's 14, Your Honor

16 THE COURT

17 All right

18 State's 14 is in evidence

19 without objection

20 WHEREUPON A PHOTO WHICH WAS

21 EARLIER MARKED AS STATE'S EXHIBIT NUMBER 14 WAS ENTERED

22 INTO EVIDENCE WITHOUT OBJECTION

23 DIRECT EXAMINATION BY MR HUMPHRIES

24 Q Mr Cooper, lets talk about 8th of April 2005

25 Did you have occasion -- Well,

TESTIMONY OF JOHN MARVIN COOPER

233

1 let's do this

2 Tell me a bit about your early
3 morning routine

4 A At that time, pretty much the same as now, I get up
5 in the morning between 5 30 and 6 00

6 Uh -- Coffee, news, newspaper
7 once in a while before I get ready for work

8 Q Let me ask you

9 Was your -- uh -- Would your
10 experience on the -- uh -- the 8th of April, 2005, be
11 consistent with that?

12 A Very much so

13 Q Did you have an occasion on that morning to see the
14 victim in this case, Henry Turner?

15 A Yes sir, I did

16 Q Approximately what time and in what circumstance did
17 you see him?

18 A The first time was somewhere around 6 00 AM, give or
19 take

20 Uh -- I always had coffee --
21 particular chair at a window And it was facing Henry's
22 house

23 Henry left out in his vehicle --
24 his truck And left like he would do quite often
25 He'd got for breakfast or a morning paper or whatever

1 I wasn't really into his
2 business But -- uh -- he left Did his normal thing
3 So I didn't pay much attention
4 before I got ready for work

5 Q And let me ask you

6 Referring again to State's 14,
7 on that morning, did you see that vehicle at Henry
8 Turner's home?

9 A Yes sir, I did

10 Q Now, tell the jury

11 Did you see the Defendant Stanko
12 that morning?

13 A No sir I cannot say that

14 Q Did there come a time when it was time for you to go
15 work?

16 A Yes sir I left around 8 15

17 Q And did you then have another occasion to see Henry
18 Turner?

19 A Yes sir

20 Q And -- uh -- what did you observe him doing at that
21 time?

22 A Mr Turner returned home As I was leaving, he got
23 out of his truck

24 He had breakfast and coffee with
25 him, from McDonalds if I'm not mistaken, which was right

TESTIMONY OF JOHN MARVIN COOPER

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1 around the corner from our home

2 And I

3 Henry, have a good day, buddy

4 Marvin, you have the same

5 And that was the last time I saw

6 him

7 I left for work, and he was

8 still --

9 Q What time?

10 A Right around 8 15 AM

11 Q Now you worked that day?

12 A Yes sir

13 Q When you returned home that evening -- uh -- was the
14 red Mustang still present at Henry Turner's?

15 A Yes sir, it was

16 Q And was Henry Turner's truck there?

17 A No sir, it was not

18 Q Did you see Henry Turner?

19 A Not at all I saw no one

20 Q And approximately what time did you get home from
21 work?

22 A Somewhere around the neighborhood of 9 00 PM

23 Q Was there a point at which, later that evening -- uh
24 -- when -- uh -- you were notified that law enforcement
25 was at your door?

1 A Yes sir

2 Q And do you recall approximately what time that might
3 have been?

4 A Around 1 15 --

5 Q Actually going into the next day?

6 A Into the next morning, yeah It was late that
7 night We were awoke from bed

8 Q And as result of their request of you, what did you
9 have to do?

10 A They asked me to gather my family as quickly and
11 quietly as possible, turn on very few lights, that there
12 was a possible murder suspect in the home next door based
13 upon the vehicle being present

14 Q Your family went to another location?

15 A Yes sir My family lives right up the street from
16 that area So we just went around the corner to my
17 parents'

18 Q Uh -- Did you have an occasion, then, to return that
19 day, after that?

20 A Yes sir The next morning, when I got to go to
21 work, I was concerned So I went back home just to see
22 And I couldn't even get into the
23 cul de sac for the law-enforcement

24 And I actually spoke to one of
25 the detectives on the scene -- uh -- to -- to let him

TESTIMONY OF JOHN MARVIN COOPER

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1 know where I lived and -- you know -- why I was coming
2 back

3 I was just concerned

4 Q And at that time, or sometime very soon thereafter,
5 did you provide law enforcement with a statement of
6 basically what you told us here today?

7 A Yes sir, I did It was given to a young lady that
8 came out to my work

9 After the fact is when I wrote
10 that statement

11 MR DIGGS

12 Your Honor, could we approach?

13 THE COURT

14 Sure

15 (WHEREUPON Counsel for each
16 party conferred off the record with The Court at the
17 bench at 2 43 PM, November 13, 2009)

18 THE COURT

19 All right

20 Ladies and gentlemen of the
21 jury, y'all go to your jury room for a few minutes,
22 please

23 Just leave your pads and pens in
24 your chair, please

25 (WHEREUPON The jury empanelled

1 in the case withdrew from the courtroom at 2 43 PM,
2 November 13, 2009, and was no longer present during the
3 following proceedings)

4 THE COURT

5 Mr court reporter, you got all
6 the exhibits?

7 COURT REPORTER

8 I don't have the photos from the
9 last --

10 THE COURT

11 Go collect them

12 COURT REPORTER

13 Okay (Did as instructed)

14 I have them all

15 THE COURT

16 All right

17 Mr Court Reporter, you have all
18 the exhibits?

19 COURT REPORTER

20 (Nods in the affirmative)

21 THE COURT

22 Very good, sir

23 All right

24 Mr Diggs, you have a motion

25 before The Court?

TESTIMONY OF JOHN MARVIN COOPER

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1 MR DIGGS

2 No, Your Honor I stand

3 corrected

4 I -- I don't -- I don't know if

5 I have that

6 I know I just had a chance to

7 review what Ms Humphreys handed to me

8 Uh -- At that time that I

9 objected, we at the table were of the consensus that we
10 didn't have that statement from this particular witness

11 And so that was the base --
12 basis for my objection

13 I still don't -- uh -- Now, that
14 we've had a chance to look at it -- uh -- we're not -- I
15 don't have any objection or any -- uh -- uh -- motion
16 with respect to that particular statement

17 THE COURT

18 All right, so -- All right

19 Are you telling me then, y'all
20 have been provided with the statement?

21 Is that what you're saying?

22 MR DIGGS

23 Your Honor, I'm saying that it's
24 been provided to us -- uh -- we're -- to our
25 satisfaction

1 THE COURT

2 Very well

3 MR DIGGS

4 Your Honor, as far as before --

5 Well --

6 THE COURT

7 Good That answers the

8 question

9 MR DIGGS

10 And I apologize to the

11 Solicitor

12 THE COURT

13 That -- That's all right

14 That's all right

15 Now -- uh -- Ms Williams, you

16 had a matter you wanted The Court to address?

17 MS WILLIAMS

18 Yes sir

19 I would -- I would appreciate --

20 uh -- One of the -- our pretrial motions, we discussed

21 the matters of -- I think you captioned it under prior

22 concerns

23 And -- And, I think -- you know

24 -- Your Honor discussed that

25 And I just would like for us --

1 as you said -- be careful about the -- the victim, Henry
2 Turner, because if -- if The Court would so instruct, we
3 can call him in the field

4 I just think it would be more
5 appropriate in this forum, at this point

6 THE COURT

7 The Court finds

8 The use of the word -- uh --
9 "victim" is -- uh -- proper That is the charge as
10 against this Defendant

11 I do not feel that that
12 inappropriately characterizes the matter in any way

13 I do not believe that it causes
14 any prejudice of any kind to the Defendant in this
15 matter

16 And I will not so instruct the
17 State to avoid using the term, "victim "

18 MS WILLIAMS

19 Thank Your Honor

20 THE COURT

21 Now, talk about this -- Y'all --
22 Y'all can sit down

23 Counsel, I've asked y'all -- Now
24 I'm telling you, all of you, Solicitors and Defense
25 attorneys are experienced professionals

1 You're well respected in the
2 community

3 You will, in my courtroom, treat
4 each other with that respect

5 I will not tolerate any kind of
6 bickering, any kind of arguments between counsel

7 If you have any issue, you will
8 direct it to The Court

9 I do not want to talk about this
10 again in these proceedings

11 If I have to address it with you
12 again, there will be consequences

13 I'm asking you not to put me in
14 that position

15 But if you do, I will handle it

16 Thank you very much

17 Ask the jury to come back in

18 MR DIGGS

19 Judge, could we take just a
20 couple of minutes before we get started again?

21 THE COURT

22 We'll take a break shortly

23 MR DIGGS

24 All right

25 THE COURT

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1 Thank you very much

2 (WHEREUPON The jury empanelled
3 in the case was escorted back into the courtroom at 2 50
4 PM, November 13, 2009, and was in fact present during the
5 following proceedings)

6 THE COURT

7 You may continue

8 MR HUMPHRIES

9 I don't have any further
10 questions

11 Thank Your Honor

12 THE COURT

13 All right

14 Cross-examination?

15 MR DIGGS

16 May it please The Court?

17 THE COURT

18 Yes sir

19 CROSS-EXAMINATION BY MR DIGGS

20 Q Mr Cooper, how are you this afternoon?

21 A I'm well, sir

22 Q Good I want to ask you how long you've lived there
23 at the -- uh -- Kimberly Drive?

24 How long have you lived in that
25 location?

1 A I no longer live at that location, sir

2 Q At that time, how long had you lived there?

3 A I moved a little bit before Christmas that prior
4 year

5 Q Okay And how long did you live there?

6 A Two and a half years, maybe

7 Q All right And -- uh -- if you would, can you tell
8 us where Kimberly Drive is located?

9 A On 544, there is a -- uh -- small road just past
10 Jackson Bluff Road which cuts down to the Grand Strand
11 Water and Sewer

12 Uh -- Heading toward Socastee,
13 it would be on the right hand side of the highway, right
14 across from Quail Village -- or Quail Creek Golf Course

15 Q Okay Now, in connection with Conway Hospital --
16 uh -- could you tell us where it is in connection with
17 that landmark?

18 A You come off of -- uh -- Singleton Ridge Road at
19 Conway Hospital onto 544, take a right, go about a
20 hundred and thirty yards, give-and-take, and it's on the
21 left

22 Q All right So it's pretty close behind the
23 hospital?

24 A Yes sir

25 Q All right And -- uh -- if I'm not mistaken -- uh

1 -- you said Mr Turner went to get breakfast -- uh --
2 that morning? Or he came home with some -- some food?

3 A Yes sir

4 Q Did you know where they he typically went to get his
5 food?

6 A No sir, I did not

7 Q All right But are there any restaurants just
8 right out there on 544 -- uh -- within a stone's throw,
9 you might say, of Kimberly Drive?

10 A Right at the corner of Singleton Ridge Road and 544
11 is a McDonalds

12 Q Okay And that's the McDonalds that is behind the
13 Hospital, out there on 544?

14 A Yes sir

15 Q And -- uh -- you don't remember -- You saw him, Mr
16 Turner, with some food, in a bag, I think you said?

17 A Yes sir

18 Q But you didn't have an opportunity to see what kind
19 of bag?

20 A No sir, not that my memory can serve me

21 Q All right Did Mr Turner, to your knowledge, ever
22 go down to that McDonalds?

23 A I wouldn't know Mr Turner's morning routine and his
24 haunts

25 Q Okay And in your direct testimony, I thought you

1 said he went out to do his normal things

2 A Which was leave for the morning I don't know
3 where it was he went on a daily basis

4 Q Then you just know he left the house You do know
5 if he did his normal thing or not?

6 A Yes sir

7 Q Okay So he left the house and he came home a
8 couple of hours later?

9 A No sir Well, yeah, give-or-take a couple of
10 hours, somewhere in there

11 Q I believe you said --

12 A Well, no Wait a minute Just a moment, sir

13 I woke up I was up about 6 00

14 Q Yes sir

15 A I didn't specify that I saw him leave his house at
16 6 00

17 I was up, getting my coffee at
18 6 00

19 Q All right, sir

20 A Somewhere between 6 00 and 8 15 was when he had left
21 and returned

22 Q Okay Did you see him leave or not?

23 A Yes sir, I saw him leave

24 Q But you're not prepared to tell us what time it was?

25 A No sir

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1 Q Okay But you're pretty sure it was about 8 15
2 when he got back?

3 A Yes sir

4 Q And -- uh -- the red car was there in the yard?

5 A Yes sir, it was

6 Q All right And Mr Turner was driving his vehicle?

7 A Yes sir

8 Q Now, do you know who owned the red car?

9 A After the fact, I know

10 Q Did you know at that time?

11 A I knew Steven Stanko was the driver of the car

12 Q Okay

13 A I didn't know who owned it

14 Q Okay So you did not know who owned it?

15 A No sir

16 Q Now, your testimony is that Mr Stanko was over at
17 Mr Turner's pretty regularly?

18 A Yes sir

19 Q And when you first met Mr Stanko, it was Mr Turner
20 who said

21 This is my friend, Steven

22 A Correct I didn't actually meet Steven face-to-
23 face He was across the yard when Henry just --

24 Q Okay

25 A -- briefly introduced him

1 Q But Henry characterized Steven as 'a friend?

2 A Yes sir, he did

3 Q And do you have any knowledge about what the two of
4 them used to do together?

5 Uh -- How much time they would
6 spend together?

7 Or what they would talk about?

8 Or the things they had in
9 common?

10 Did you have any information
11 about those kinds of things?

12 A The only thing I ever remember Henry ever mentioning
13 was something about an attorney -- Steven possibly being
14 an attorney that he was trying to secure, or helping him
15 with something illegal, something of that nature

16 Q All right And do you remember about how long a
17 time period this was?

18 For example

19 You had said

20 I think I've seen him over there
21 several times, maybe a half a dozen

22 Do you know what time frame?

23 Was that a few days, or a few
24 weeks, can you tell us?

25 A You mean the collective time that I've seen them?

1 Q Yeah

2 A Uh -- Off and on for several weeks

3 Q Okay

4 A He'd be over there They'd just -- They'd be in the
5 house

6 They would be in the house

7 They would come out, you know

8 Q All right And -- uh -- did Mr Stanko spend a lot
9 of time over there?

10 Or was it a little bit of time?

11 Can you shed some light on that?

12 A No sir I didn't really pay that much attention to
13 my neighbors and their business

14 I just would see stuff while I
15 was in and out of my yard, which was --

16 Q All right Now -- uh -- Kimberly Drive ends in a
17 circle, doesn't it?

18 A Correct

19 Q So it's not outlet?

20 A It's a cul de sac, sir

21 Q Cul-de-sac And there are number of homes located
22 on that cul-de-sac?

23 Is that true?

24 A Yes sir

25 Q And these are mobile homes?

1 A Yes sir

2 Q And do you know how many mobile homes are on that
3 cul-de-sac?

4 A Maybe 7, give or take

5 Q All right And would you agree with me that the
6 cul-de-sac is maybe about the size of This Courtroom?

7 A Give or take, sir

8 Q All right Pretty close?

9 A (Nods in the affirmative)

10 Q And within this size, we've got seven mobile homes?

11 A Okay

12 Q Uh -- And so would you agree with me that thank you
13 all pretty closely situated?

14 A Very

15 Q You can almost hear the neighbors talk?

16 A Yes sir

17 Q And you can certainly hear a gunshot if it were to
18 occur when you were there?

19 A That's probably be correct, unless it was muffled

20 Q Okay Unless it was muffled? Now, do you know
21 anything about the facts of this case?

22 A No sir, I don't

23 Q All right Well, why did you add "muffled?"

24 A Because I wasn't the one home My wife and child
25 were at the time, sir

TESTIMONY OF JOHN MARVIN COOPER

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1 Q Did somebody tell you to say "muffled?"

2 A No sir

3 Q How did you come up with that characterization?

4 A The only way you wouldn't hear a gunshot that close
5 in mobile homes

6 Q You came up with that completely on your own?

7 A It's a fair guess

8 Q All right But you didn't answer me

9 Did you come with that on your
10 own?

11 A Yes sir

12 Q All right

13 A We've had several times to talk about it with my
14 wife, my family, and you know, tossing around our own
15 little --

16 Q All right Have --

17 A -- ideas

18 Q Go ahead

19 A I was just saying Tossing around our own ideas,
20 sir I'm sorry

21 Q Have you ever talked to any police officers, law
22 enforcement, or Solicitors about muffling that shot?

23 A No sir

24 Q All right Were you in the courtroom today when
25 the Solicitor made his opening statement?

1 A No sir, I wasn't

2 Q And your testimony is that nobody ever mentioned to
3 you about the muffling?

4 A No sir

5 Q All right But if the shot were not muffled, then
6 you would hear? .

7 A Most likely

8 Q Most likely

9 Q Do you have any personal knowledge as to whether or
10 not the shot or shots that we are here about today were
11 muffled?

12 A Please repeat, sir

13 Q Do you have any knowledge about whether or not any
14 of the shots that we are about here -- that we're here
15 for this afternoon -- were muffled?

16 A No sir

17 MR HUMPHRIES

18 I -- I would object at this time
19 as to relevance --

20 THE COURT

21 I -- I'm --

22 MR HUMPHRIES

23 -- of what this witness --

24 THE COURT

25 I'm going to allow him to --

1 MR DIGGS

2 Thank you

3 MR HUMPHRIES

4 Very good Thank Your Honor

5 CROSS-EXAMINATION BY MR DIGGS CONTINUED

6 Q Now when you returned home about -- uh -- excuse me
7 -- strike that

8 You saw Mr Turner return home
9 about what time?

10 A Right around 8 15 or so

11 Q Now, is that when you were leaving for work?

12 A It was

13 Q And -- uh -- where did you work at the time?

14 A Auto Zone

15 Q Auto Zone?

16 A On Highway 501 in Myrtle Beach

17 Q Okay And -- uh -- you went -- What were your
18 hours that day?

19 Do you recall?

20 A That day I didn't get off until -- uh -- 8 o'clock

21 Q All right And -- uh -- did you go straight home?

22 A I stopped by my -- uh -- mother's house to collect
23 some things

24 Q Okay And then went on home?

25 A Yes sir

1 Q And when you stand and look at Henry Turner's home
2 -- Now, put that in your mind, if you would?

3 A Uh-huh

4 Q You're standing in the cul-de-sac looking at his
5 home, did you live to the right side or the left side?

6 A Looking from the road, I lived to the immediate
7 right

8 Q To the immediate right?

9 A Yes sir

10 Q Okay Do you remember who lived on the left?

11 A No sir, just Mr Turner

12 Q Okay Uh -- You -- You don't know who lived to the
13 left of him?

14 A No sir, never cared to get to know them They're --

15 Q Okay

16 A -- unsavory types

17 Q And so you returned home about what time?

18 A Sir?

19 Q From work? You returned home about what time?

20 A Just a little bit before 9 00

21 Q Before 9 00 PM?

22 A Yes sir

23 Q All right And at that time -- uh -- what did you
24 see in terms of the automobiles?

25 A Well, the mobile homes weren't facing --

TESTIMONY OF JOHN MARVIN COOPER

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1 Q Uh-huh

2 A -- the road per se They're in like sardines, kind
3 of

4 Q Right Okay

5 A So parking on our homes was right directly to the --
6 to the end of the mobile homes

7 Q Okay

8 A Uh -- Mr Turner generally would park his truck down
9 into the yard

10 On occasion, sometimes the
11 driveway, but the red Mustang was parked in front of the
12 home to the far side of the property

13 Q Uh-huh

14 A And Mr Turner's truck was not in the yard

15 Q Okay Now -- uh -- how did that differ from when
16 you left at about 8 15?

17 A It didn't

18 Q All right Uh -- Was Mr Turner's truck there?

19 A When I returned?

20 Q Yeah No, at 8 15 that morning --

21 A At --

22 Q -- when you left?

23 A At 8 15 --

24 Q Yes

25 Q -- no His truck -- wait a minute, I'm -- You've

1 confused me

2 Q Okay

3 A I apologize

4 Q I tend to do that

5 A I'm sorry

6 Q When you left -- uh -- Mr Turner's truck was there?

7 A That morning when I left for work?

8 Q Yeah Yeah

9 A Yes sir

10 Q And the red car was there?

11 A Yes sir

12 Q And this is broad daylight? It was 8 15 in the
13 morning?

14 A Uh-huh

15 Q The sun was up by that time?

16 A Yes sir

17 Q And plenty of light? Not any -- It wasn't dawn or
18 -- you understand what I'm saying?

19 A Yes sir It was --

20 Q It was full daylight?

21 A Yes sir

22 Q Okay And -- uh -- nothing unusual at that time
23 when you left?

24 A No sir

25 Q You agree with that?

TESTIMONY OF JOHN MARVIN COOPER

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1 A Nothing unusual

2 Q All right And then, when you came home about 8 00

3 -- 9 15 in the evening --

4 A Just around 9 00

5 Q Okay And tell me one more time -- I'm sorry, but

6 I want to get it straight

7 The red car was parked where?

8 A In the same place

9 Q Same place Hadn't been moved by anyone?

10 A Not that I could tell, no sir

11 MR DIGGS

12 All right Bear with me just a

13 second

14 Uh -- Mr Cooper, thank you very

15 much

16 That's all I have, Your Honor

17 THE COURT

18 All right

19 Any redirect?

20 MR HUMPHRIES

21 No, Your Honor, thank you

22 THE COURT

23 All right

24 Do you wish the witness to be

25 excused?

1 MR HUMPHRIES

2 Please, Your Honor

3 THE COURT

4 Any objection?

5 MR HUMPHRIES

6 No sir

7 THE COURT

8 All right, sir

9 You are excused and released

10 from your subpoena You may go back to your regular
11 activities

12 WITNESS

13 Thank you

14 THE COURT

15 All right

16 Uh -- Solicitor, your next

17 witness, please

18 MR HEMBREE

19 The State calls Robert Todd to

20 the witness stand

21 THE COURT

22 All right

23 Mr Todd, come around, please,

24 up front, sir

25 WHEREUPON ROBERT TODD WAS DULY

TESTIMONY OF ROBERT TODD

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1 SWORN AND TESTIFIED UNDER OATH

2 AS FOLLOWS

3 CLERK

4 Please ever seat right here

5 Speak into the microphone State your name and spell

6 your last for the record

7 WITNESS

8 My name is Robert Todd, T-o-d-d

9 DIRECT EXAMINATION BY MR HEMBREE

10 Q Mr Todd, who do you work with these days?

11 A Excalibur Security and Investigations as a private
12 investigator

13 Q And how long have you been working with Excalibur?

14 A Uh -- For approximately the last 4 years

15 Q And with whom were you employed before going to work
16 with Excalibur?

17 A Uh -- The City of Myrtle Beach Police Department

18 Q Let me take you back to April the 8th of 2005

19 Uh -- Who -- Who were you
20 working with on that day?

21 A At that time, I was a police officer with the City
22 of Myrtle Beach

23 Q And what -- How long had you been with the City at
24 that point in time?

25 A Uh -- Approximately 13 years

1 Q And where did you live back at that time?

2 A I lived in -- uh -- Socastee, in Temperance, off of
3 Temperance Drive in Oak Forrest

4 Q What was your employment status at that very time,
5 in April of 2005 at Myrtle Beach Police Department?

6 A I had been injured on the job -- uh -- while on
7 duty And I was on leave in workers -- in a workers comp
8 status

9 Q And how did that work? If -- You go on leave until
10 the doctor clears you to go back home?

11 A That's correct I stay on leave until the doctor
12 clears me to go back to work, or either, they retire me

13 Q Uh -- Now April 8th, I want to take -- call your
14 attention to the -- to that evening

15 Uh -- About 11 o'clock, what
16 were you doing, 11 00 o'clock at night?

17 A At that time, I was taking a shower -- uh -- getting
18 ready for bed, when -- uh -- my wife had come up and told
19 me that -- uh -- Roger Turner, who was my neighbor, said
20 that he needed to speak with me

21 Q Now is Roger -- Roger Turner was your next door
22 neighbor?

23 A Uh -- He lived across the street in front of me

24 Q And Roger Turner is what relationship, if you know,
25 to the victim in this case, Henry Turner?

TESTIMONY OF ROBERT TODD

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•
1 A Uh -- Roger is Henry Turner's son

2 Q And did you -- had you met Roger before this
3 particular night?

4 A Uh -- Yes sir We've talked several times out in
5 the front yard

6 Q He knew you were with law-enforcement?

7 A Uh -- That is correct, yes sir

8 Q All right And you had your uniform on at times
9 when you'd come home from work when you lived there?

10 A Uh -- Yes sir

11 Q Now, tell us what happened

12 A Uh -- After getting dressed, I went over and talked
13 to Roger

14 Uh -- He said he had some
15 concerns about what he had saw on the 11 o'clock news

16 Uh -- And he had tried to get in
17 touch with his father and was unable to

18 He asked me if I would ride out
19 to the house

20 Uh -- He'd asked me if I had
21 watched it -- uh -- uh -- as a reference to -- uh --
22 Steve Stanko?

23 I told him I hadn't

24 So while -- He was real
25 concerned about his father, so --

1 Q What was his general demeanor?

2 A Uh -- He was upset, nervous -- uh -- real concerned
3 about his dad. Couldn't get him on the phone Had been
4 trying -- trying several times to get him

5 And he said it wasn't like him

6 Q Now -- uh -- what -- what was -- what plan did y'all
7 -- uh -- undertake at this point

8 Once you -- you talked him and
9 find out that he was concerned, what did y'all do?

10 A At this time, I told Roger to -- uh -- meet at
11 McDonalds in Conway off of 544, which was right across
12 the street from where Roger's dad lived

13 And -- uh --

14 Q Y'all -- Did y'all take your own vehicles?

15 A Yes sir

16 Q Okay And -- And how far was it from where y'all
17 were to that McDonalds?

18 A Uh -- It was probably about 20 minutes

19 Uh -- As I was traveling down
20 the road, I called the County Dispatcher to find out some
21 information about -- uh -- what was going on, because I
22 hadn't watched the news

23 Uh -- They said that they were

24 -- uh --

25 MR DIGGS

TESTIMONY OF ROBERT TODD

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1 Your Honor, we would object to
2 what they said I'm not sure where he's going But I
3 have an objection on a hearsay basis

4 THE COURT

5 Why -- Why don't you just -- uh
6 -- ask another question --

7 MR HEMBREE

8 Let me rephrase that, Your
9 Honor

10 THE COURT

11 Yes sir

12 DIRECT EXAMINATION BY MR HEMBREE CONTINUED

13 Q Uh -- As a result -- You had a conversation with the
14 dispatch?

15 A Right

16 Q And as a result of that conversation -- uh -- what
17 did you do?

18 A Uh -- I asked -- uh -- who the supervisor was on the
19 road at that night

20 Uh -- Asked for a couple of guys
21 that I knew

22 Uh -- They said they -- uh --
23 they weren't working

24 They told me that -- uh --

25 Officer Jimmy Edwards was working He was a Road

1 Supervisor

2 So I asked him to give me a
3 call

4 Q Okay Let me see ask you

5 You -- uh -- You said you worked
6 for Myrtle Beach Police Department

7 Uh -- You called the dispatch

8 Did you call Myrtle Beach

9 Dispatch or County Dispatch?

10 A Uh -- that would be County Dispatch

11 Q And why did you call County Dispatch?

12 A Uh -- That's the jurisdiction in where Roger's
13 father's house was

14 Q Okay Got you So -- But you didn't -- So you
15 were not duty as a police officer in this process?

16 A Uh -- No sir I was off-duty on a workers comp in
17 workers comp status

18 Q Essentially, just helping out your neighbor?

19 A Correct, yes sir

20 Q Uh -- And you contacted County Dispatch?

21 A (Nods in the affirmative)

22 Q Now after you found out -- I think you testified you
23 found out Jimmy Edwards was the -- was the supervisor on
24 duty -- the Road Supervisor on duty for the County?

25 A Yes sir

TESTIMONY OF ROBERT TODD

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1 Q And what did you do?

2 A Uh -- I pulled into the neighborhood

3 Uh -- Actually, I picked up

4 Roger from McDonalds

5 We pulled into the neighborhood

6 -- uh -- where Roger's father lived

7 And -- uh -- I saw the red

8 Mustang -- uh -- sitting to the right of Roger's father's

9 house

10 Q Mr Todd, let me show you State's Exhibit 15 for
11 identification purposes, and ask if you can identify that
12 for me?

13 A Uh -- Yes sir This is the -- the vehicle that was
14 sitting at -- uh -- Roger Turner's father's house

15 Q And this vehicle, was is it the same location --

16 A Yes sir

17 Q -- as far as you can tell?

18 A As far as I can tell, in the same location

19 Q I'm going to go ahead and have you identify State's
20 16 for identification purposes also

21 A Uh -- Would be Henry Turner's house This is the
22 house in which I went to that night

23 Q But this is a picture taken in the daytime,
24 obviously?

25 A Yes sir

1 MR HEMBREE

2 Your Honor, we would offer these
3 as State's Exhibit 15 and 16 in evidence

4 MR DIGGS

5 Your Honor, no objection

6 THE COURT

7 All right

8 Into evidence without objection,
9 15 and 16

10 WHEREUPON TWO PHOTOS EARLIER
11 MARKED BY AS STATE'S EXHIBITS NUMBERS 15 AND 16 WERE
12 ENTERED INTO EVIDENCE WITHOUT OBJECTION

13 WHEREUPON MR HEMBREE SHOWS
14 BOTH EXHIBITS TO THE JURY

15 CROSS-EXAMINATION BY MR HEMBREE CONTINUED

16 Q Once you had pulled into the yard there, was it
17 close -- Did you pull into the yard? Actually drive up
18 in the yard?

19 A Uh -- It's in -- uh -- The trailer sits like in a
20 cul de sac

21 And what I did was, when I
22 pulled up and I identified the red Mustang I took the
23 tag off of it and -- uh --

24 Q Did you take -- You took the tag off of it? You
25 mean --

TESTIMONY OF ROBERT TODD

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1 A Well, I mean -- I'm sorry I read the tag, wrote it
2 down And then I called the dispatcher to confirm this
3 might be the vehicle they were looking for

4 At that time, I backed up to a
5 side street where I could keep observation on the house
6 to be able to see if anybody left it or -- uh -- had
7 arrived or entered it -- uh -- while I was waiting for
8 Officer Edwards to arrive

9 Q And tell us about -- How did you make contact with
10 Officer -- with -- uh -- I guess now Captain Edwards --
11 at the time, Sergeant Edwards?

12 A Uh -- What I did was, I left my cell phone number
13 with the dispatch for the County Police

14 And in turn, they had -- uh --
15 Officer Edwards give me a call on my cell phone

16 Q And what did you tell him?

17 A Uh -- I explained to him the information that was
18 given to me by Roger, and that the red Mustang with the
19 tag that I had already checked through dispatch was the
20 vehicle that they were looking for

21 Uh -- And I told him that I had
22 backed out to a side street where I could keep
23 observation until he got there

24 Q And so you're watching the property -- watching the
25 house?

1 A Uh -- Yes sir

2 Q Well, tell me about the condition of the house

3 Uh -- What were your general
4 observations of the house itself?

5 A Uh -- It wasn't dark Uh -- I could see the red
6 Mustang -- uh -- parked there

7 Uh -- In the back, there was a
8 -- another vehicle parked to the side of the house in the
9 back

10 I couldn't maintain -- or I
11 couldn't tell you what it was -- identify what type of
12 vehicle it was

13 Uh -- And it appeared to be no
14 movement that I could tell from the outside

15 Q How about the lighting?

16 A Uh -- No lighting at all that I could see

17 Q So during the time frame that you observed the
18 house, did you see any movement on the property at all?

19 A No sir There was no movement whatsoever

20 Q How about -- uh -- How long were you there? For --
21 Where was Mr Roger Turner at this point in time?

22 A Uh -- He was in the passenger seat of my truck with
23 me

24 Q Now, how long did you wait before Officer -- the
25 Horry County Police arrived?

TESTIMONY OF ROBERT TODD

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1 A Uh -- It was just a couple of minutes before -- uh
2 -- Officer Edwards had arrived

3 Q All right And was -- This was in his
4 jurisdiction?

5 A That is correct It was in his jurisdiction And
6 he was the supervisor over the road shift that night

7 Q At that point, is it fair to say that he took over
8 the -- the process?

9 A Yes sir Once -- uh -- Officer Edwards arrived --
10 uh -- he took control of everything that was going on

11 Uh -- He at that time pulled
12 around to the house And he walked along the side of the
13 house -- uh -- to the far right hand side to see if he
14 could see any movement

15 Uh -- I pulled up behind Officer
16 Edwards And I got out also

17 And I walked a little bit
18 further just to keep an eye on -- uh -- Officer Edwards
19 while he was out checking the outside of the house

20 Q And what was your purpose on keeping an eye on
21 Officer Edwards?

22 A Uh -- It's just an officer safety thing An officer
23 gets out alone -- uh -- it's just a back up, just to make
24 sure, if anything goes on -- uh -- you got another
25 officer there to lookout for him

1 Q Now, how long were you on the scene?

2 A Uh -- I was probably at the house a total of maybe 5
3 or 6 minutes, and that's about it

4 Q After Officer Edwards arrived, did you leave or did
5 you stay around?

6 A Uh -- Once Officer Edwards walked -- uh -- the side
7 of the house there, he came back, and we all backed out

8 Uh -- I took Roger, and me and
9 him went back over to McDonalds to staging area, and --
10 uh -- let Officer Edwards and the other officers that
11 arrived at that time take over

12 Q Do you know what time you went home that night? Do
13 you recall?

14 A What time I went home?

15 Q Yeah

16 A Uh -- No sir I stayed at the staging area for
17 several hours, just being there for Roger

18 MR HEMBREE

19 Thank you, Mr Todd

20 Please answer any questions

21 Defense Counsel may have for you

22 THE COURT

23 Cross-examination?

24 All right, Ms Williams

25 MS WILLIAMS

TESTIMONY OF ROBERT TODD

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1 Thank you, Your Honor

2 CROSS-EXAMINATION BY MS WILLIAMS

3 Q Hi Mr Todd How are you?

4 A Good

5 Q Briefly

6 State's Exhibit Number 16,
7 that's the mobile home that you watched, is that correct?

8 A Uh -- Yes ma'am

9 Q Okay Uh -- Let me ask you

10 This picture doesn't show the
11 neighboring houses does it?

12 A Uh -- No ma'am

13 Q Do you know -- Can you give me an estimate of -- of
14 how close the houses might be next door to that?

15 A Uh -- They're pretty close, but if -- I don't know
16 -- probably if I had to guess -- maybe 40 -- 50 feet over
17 to the right I'm not sure on distance

18 Q Okay

19 A It's a pretty close neighborhood

20 Q It's a close neighborhood, is that correct?

21 A Yes ma'am

22 Q Let me ask you this

23 If -- If somebody characterized
24 it as packed in -- packed in there like sardines, do you
25 think that would be an accurate description?

1 A Uh -- I wouldn't say so much as sardines They got
2 a few -- They got some room in between them -- pretty
3 good room in between the trailers

4 I've seen some neighborhoods
5 that are a lot -- a kit closer together that are stacked
6 on top of each other

7 Q Okay Okay Uh -- And something else I wanted --
8 You said that you went there initially with Mr Turner's
9 son

10 Uh -- Didn't see anything So
11 you backed up to a side street?

12 A Yes ma'am

13 Q Is that right?

14 A Uh-huh

15 Q Uh -- How far back do you think you backed up from
16 this house?

17 A Uh -- It's probably -- It's not very far The
18 street wasn't too far I think there was only one street
19 in the neighborhood

20 Uh -- If you're looking at the
21 cul-de-sac where Mr Turner house is, it's probably about
22 3 or 4 trailers to the left of it

23 And then right behind those
24 trailers, there's a little short street

25 Q Three or four trailers to the left?

TESTIMONY OF ROBERT TODD

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1 A Uh-huh

2 Q And then, how many to the right?

3 A Uh -- I don't know It's -- It carries right on
4 around

5 Q It's in the back of a cul de sac, right?

6 A Uh -- The trailers to the right of me go all the way
7 back around and then back to the entrance of the
8 neighborhood

9 Q Okay So this home is actually at the end of the
10 cul-de-sac?

11 A Yes ma'am It's at the end of the cul de sac

12 Q And when you pulled in there with him, did you tell
13 me you actually pulled into the yard, or did you have to
14 --

15 A No ma'am I -- I actually went into the cul-de-sac
16 and just turned right on around

17 I didn't pull into the yard at
18 all, or even up close to the house

19 I got enough distance to be able
20 to see the tag on the car, and then backed out

21 MS WILLIAMS

22 Okay

23 That's all the questions that I
24 have Thank you

25 THE COURT

1 Redirect

2 MR HEMBREE

3 Nothing on redirect, Your Honor

4 Thank you

5 Can we ask that this juror --

6 this witness be excused?

7 THE COURT

8 Any objection?

9 MR DIGGS

10 No, Your Honor

11 THE COURT

12 All right

13 All right, sir You are

14 released from your subpoena and you can go back to your

15 regular duties

16 WITNESS

17 Thank you

18 The next witness, please

19 MR HEMBREE

20 The State calls Captain Jimmy

21 Edwards to the witness stand

22 THE COURT

23 All right

24 Captain, if you would come up

25 around to the witness stand please, sir

TESTIMONY OF CAPTAIN JIMMY EDWARDS

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1 WHEREUPON CAPTAIN JIMMY
2 EDWARDS WAS DULY SWORN AND TESTIFIED UNDER OATH AS
3 FOLLOWS
4 CLERK

5 Please watch your step Please
6 have a seat Speak into the microphone State your name
7 and spell the last please for the record
8 WITNESS

9 Jimmy Edwards, E-d-w-a-r-d-s
10 DIRECT EXAMINATION BY MR HEMBREE

11 Q Captain Edwards, you work with the Horry County
12 Police Department?

13 A Yes sir

14 Q For how long?

15 A 18 and a half years

16 Q And you -- uh -- What is your rank today?

17 A Captain

18 Q You are -- uh -- What -- What division are you
19 assigned to?

20 A Patrol Division, South Precinct

21 Q Back on April the 8th, what was your rank?

22 A Uh -- I was a Sergeant on A-Squad

23 Q On A-Squad? And did you have a particular area that
24 you patrolled at that time Or was it a different
25 structure?

1 A Uh -- We had two Sergeants covering the whole county
2 at that particular time

3 Q You would have been in a supervisory role --

4 A Yes sir

5 Q -- at that time, as you are now, in a specific
6 supervisory role But you were in supervisory role

7 Tell us how the shifts would
8 typically work back in -- in -- the way they worked back
9 in April of 2005?

10 A Uh -- We had two shifts working -- uh -- each day
11 The first shift coming out at
12 6 00 o'clock in the morning, getting off at 6 00 PM And
13 the secondary shift come in at 6 00 PM and finish up at
14 6 00 AM

15 Q All right Did you have a particular part of the
16 county that you were responsible for back at that time?

17 A Uh -- Two sergeants were working the whole county at
18 the time

19 Uh -- That particular night, the
20 other Sergeant was off He was out sick So I had the
21 whole county

22 Q And did you at some point receive a message from
23 Robert Todd?

24 A Yes sir, I did I got a message from dispatch to
25 give -- uh -- Robert Todd a phone call

TESTIMONY OF CAPTAIN JIMMY EDWARDS

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1 Q And did you make that phone call?

2 A Yes sir, I did

3 Q Uh -- What was the content of that conversation?

4 A Uh -- Mr Todd was concerned that a family friend of
5 his that he was helping -- uh -- his father wasn't --
6 hadn't shown up for a dinner date

7 Q And had he -- At that point, what was he doing? Did
8 you have any idea?

9 A I didn't have any idea what he was doing at that
10 particular time But he asked me to check into
11 something And I -- I followed up on it

12 Q Fair enough Uh -- When did you first make
13 personal contact with -- uh -- with Mr Todd?

14 A Uh -- A short time after about 11 o'clock in the
15 evening

16 Q All right And where did that contact take place?

17 A At McDonalds parking lot

18 Q And who was there?

19 A Uh -- Mr Todd was there, and Mr Turner

20 Q Mr Turner, Mr Roger Turner?

21 A Yes sir, that's correct

22 Q And what did you find out?

23 A They advised me that his father didn't show up for a
24 dinner date and they were concerned, and that -- uh --
25 they had some other family members coming into town, I

1 believe

2 The daughter was coming in for a
3 dinner And the father never showed up And that really
4 alarmed them

5 And it was really frightening on
6 his part, because -- you know -- the father would never
7 miss a dinner date with the family

8 And asked me to go check an
9 address And I proceeded to go to that address

10 Q And had you been advised about a red Mustang at that
11 point?

12 A Yes sir, I was

13 Q Uh -- Did you have knowledge about that car?

14 A No sir, I didn't

15 Q You didn't --

16 A Uh -- It was a car of interest from a previous
17 incident that happened somewhere else

18 Q Now what action did you take after you met with Mr
19 Todd and Mr Turner at McDonalds for that briefing on it,
20 what did you do?

21 A I drove over to the incident location Uh --
22 Observed a vehicle matching the description -- you know
23 -- in question, and -- uh -- ran the tag with out
24 dispatcher to confirm it was the car of interest that
25 everybody was looking for

TESTIMONY OF CAPTAIN JIMMY EDWARDS

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1 And I called Lieutenant Creel

2 Q Now the location that you -- that you went to look
3 at the car turned out to be Mr Henry Turner's address?

4 A It was Mr Henry Turner's residence

5 Q And that residence is located in Horry County?

6 A Yes sir

7 Q So as a result of -- Did you say you ran the tag --
8 you had the tag --

9 A We ran the tag through dispatch

10 Q Through dispatch?

11 A Yes sir

12 Q And at that point, what did you do?

13 A Well, it just myself, Mr Todd, and Mr Turner in
14 the general vicinity at that particular time

15 So I called some other guys that
16 were working the Conway area to come support my role

17 Uh -- Once they arrived on
18 scene, I gave them a brief synopsis of what was going on
19 And we set up a perimeter

20 Q Uh -- And you and how many -- how many other
21 officers arrived? Were these Horry County Police
22 Officers?

23 A Three other Horry County officers from the Conway
24 area showed up

25 Q And you say you "Set up a perimeter " What does

1 that involve?

2 A Uh -- Giving each man a detailed section of the
3 residence to make sure nobody leaves or gains entry into
4 that residence

5 Q What was the -- If you recall, what was the
6 condition of the residence?

7 Did you go in the residence?

8 A No sir Never made entry into the residence We
9 basically observed the residence

10 I didn't see any lights on or
11 anything like that So we just setup on it Secured the
12 4 corners of the premises

13 And then we made contact with --
14 uh -- SWAT Team

15 Q With the SWAT Team? And -- uh -- tell me

16 What -- uh -- Y'all elected --
17 It appears that you elected not to make entry into the
18 residence?

19 Tell us why?

20 A That's correct Uh -- I didn't make entry into the
21 residence our self

22 Being a supervisor, with the
23 newer people we have on the road, it was a condition that
24 was -- uh -- really alarming to us

25 So instead of putting other

TESTIMONY OF CAPTAIN JIMMY EDWARDS

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1 people in the fear factor, we called the SWAT Team, which
2 they practice -- uh -- high level entries such as those

3 Q So is -- I'm hearing you say that you're concerned
4 about the officer's safety?

5 A I was concerned about my personnel that I assigned
6 from Conway to -- at my disposal, yes sir

7 Q So -- And -- uh -- tell us the role of the SWAT
8 Team?

9 A Uh -- There is a team at the Horry County Police
10 Department that trains every month for high level entries
11 such as -- uh -- narcotics -- uh -- robbery and stuff
12 like that, when they're trying to make entry into a
13 building when they have no known conditions on the
14 inside

15 Q So if it's a particular dangerous -- or perceived it
16 could be a dangerous situation, you call out the SWAT
17 Team?

18 A That's correct

19 Q All right Where did you -- Where did you, I
20 guess, pull back to at this stage?

21 A After I got the personnel from Conway -- uh -- in
22 position, I retreated back to the McDonalds' parking lot
23 there on Singleton Ridge Road

24 And I conferred with Lieutenant
25 Creel and -- uh -- Captain Scott Rutherford

1 Q And Captain Rutherford is -- is part of his
2 responsibility, the SWAT Team?

3 A Yes sir He's the commander

4 Q And what position did you ultimately make?

5 A Our ultimate decision was to activate the full,
6 entire squad from the SWAT Team, and to meet there at the
7 parking lot, get briefed, and then -- uh -- devise a plan
8 of entry

9 Q You weren't involved -- At that point, you weren't
10 involved in the entry?

11 That -- That -- Is it fair to
12 say that was the end of your --

13 A That pretty much ended my involvement

14 Q All right

15 A There was another call within the county that I had
16 to respond to shortly after that

17 Q While you were on the scene prior to returning the
18 scene over to SWAT and the other officers, did you
19 maintain the integrity of that crime scene?

20 A Yes sir, we did

21 Q Didn't go into the building?

22 A Never made entry into the building or set foot on
23 the property

24 We secured outer edges of the --
25 uh -- mobile home

TESTIMONY OF CAPTAIN JIMMY EDWARDS

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1 MR HEMBREE

2 Fair enough

3 Captain Edwards, that's all I

4 have for you

5 Please answer any questions the

6 Defense may have

7 THE COURT

8 Cross-examination

9 MS WILLIAMS

10 One moment please, Your Honor,

11 beg The Court's indulgence

12 MR DIGGS

13 Your Honor, could we approach

14 for just a second?

15 THE COURT

16 Sure

17 (WHEREUPON Counsel for each

18 party conferred off the record with The Court at the

19 bench at 3 26 PM, November 13, 2009)

20 THE COURT

21 All right

22 Uh -- Mrs Williams?

23 MS WILLIAMS

24 Your Honor, we do not have any

25 questions of this officer at this time

1 If we could just not have him
2 released from his subpoena?

3 We think he needs to be returned
4 at some point during this trial

5 THE COURT

6 All right

7 Uh -- Captain -- uh -- you're
8 released to -- uh -- go back to your regular activities

9 Just understand, that at some
10 point in time you -- uh -- there's a potential that you
11 might be recalled

12 You understand?

13 WITNESS

14 Thank you, sir

15 THE COURT

16 Very good, sir

17 All right

18 The -- uh -- next witness,

19 Solicitor?

20 MR HEMBREE

21 The State calls Sergeant Craig
22 Hutchinson to the stand

23 THE COURT

24 Sergeant Hudson, you need to
25 come up to the witness stand please, sir

TESTIMONY OF SERGEANT CRAIG HUTCHINSON

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1 WHEREUPON SERGEANT CRAIG
2 HUTCHINSON WAS DULY SWORN AND TESTIFIED UNDER OATH AS
3 FOLLOWS
4 CLERK

5 Please have a seat Speak into
6 the microphone State your name and spell your last for
7 record, please

8 WITNESS

9 Craig David Hutchinson, H-u-t-c-
10 h-i-n-s-o-n

11 DIRECT EXAMINATION BY MR

12 Q Sergeant Hutchinson, you are employed with the Horry
13 County Police Department?

14 A That's right

15 Q How long you been working with Horry County?

16 A Since October of 93

17 Q And -- uh -- what are you assigned duties at this
18 time?

19 A At the current time I'm a Sergeant -- uh -- assigned
20 to the Special Operations Division, Narcotics and Vice,
21 and also to SWAT

22 Q To SWAT?

23 A Yes sir

24 Q Were you working with the SWAT Team back on April
25 the 8th of 2005?

1 A Yes sir, I was

2 Q And did you -- did the SWAT Team have occasion to be
3 dispatched out in the early -- I guess it would be early
4 morning hours of -- uh -- April the 9th?

5 It would be the early morning
6 hours of a9 April the 9th of 2005? April the 8th of 2005?

7 A Yes sir, we did

8 Q Could you tell the jury the circumstances under
9 which you were called out?

10 A Uh -- We were called out to an address on Kimberly
11 Court off of Highway 544 -- uh -- in the Conway Section
12 of Horry County, for a -- uh -- They had located a
13 possible wanted suspect's vehicle

14 Uh -- The description had
15 matched that -- uh -- that was given out on the BOLO

16 Q You said given out on a BOLO What's a BOLO?

17 A A -- basically a -- a bulletin that's sent out to
18 State and Nationally

19 Any time they have a suspect
20 they're looking for like that, it can be sent out over
21 the -- uh -- National Crime Computer

22 And also, adjoining agencies
23 share information A lot of times they'll call and give
24 those BOLOs to each other

25 Q Okay

TESTIMONY OF SERGEANT CRAIG HUTCHINSON

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1 A Uh -- I met on the scene with our Captain, who was
2 out Team Commander -- uh -- Captain Scott Rutherford, to
3 brief me on the situation

4 Uh -- He had been in contact
5 with a -- uh -- a gentleman that stated his father lived
6 at this residence, and that he had tried to make contact
7 with his father during the day and in the evening, and
8 was unable to do so -- uh -- at which time, this vehicle
9 was located at the residence and a set of keys was
10 actually given to my Captain -- uh -- from this gentleman
11 -- uh -- so as we could make an entry into the residence
12 if it was deemed to be necessary

13 Q And -- uh -- y'all formulated an entry plan into the
14 residence?

15 A Yes sir

16 Q How many officers were involved? How many SWAT Team
17 officers were involved in the entry?

18 A There was a 8-man -- uh -- that was developed,
19 myself included -- uh -- that was actually put into place
20 to make entry into the residence

21 Q When you -- And you -- I believe you testified that
22 you were provided a set of keys to actually get in the
23 residence?

24 A Yes sir, we were

25 Q So forced entry was not required by actually

1 breaking in an outside door?

2 A No sir, it wasn't

3 Q Well, let me -- Let me just ask you

4 What -- uh -- Tell this jury
5 about the entry into the residence

6 A Uh -- The entry team was moved up into place -- uh
7 -- to a staging area, which was the actual residence
8 adjacent to -- uh -- I believe it was 736 Kimberly Court,
9 Mr -- uh -- Turner's residence

10 Uh -- Once we were in place, I
11 notified my -- my commander, Captain Rutherford that we
12 were in place

13 And the negotiations team that
14 we had was already in place to try to make contact They
15 we're going to make a phone call, or try to make some
16 type of contact with the -- uh -- occupant of the
17 residence -- uh -- at which time they -- they did that

18 And there was no response

19 Q Is that sort of a standard protocol?

20 A That's a standard protocol

21 Q You try to -- Before you go inside --

22 A Try to call him out

23 Q Okay So, what was the result of those attempts?

24 A No -- No results whatsoever We couldn't --
25 couldn't achieve any contact, or make any contact with

TESTIMONY OF SERGEANT CRAIG HUTCHINSON

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1 anybody with -- inside the residence There was no
2 answer on the telephone or anything like that

3 Q All right What was your next step?

4 A The next step was

5 We were given the -- a -- a --
6 uh -- go-signal to move up into place to -- uh -- go
7 ahead and make an entry into the residence that we were
8 already armed with the keys -- uh -- to open the door so
9 we wouldn't have to force entry into the residence

10 Uh -- And at such time, we did

11 Q Tell us about the lighting at the residence

12 A Very little lighting that I -- I noticed -- uh --
13 going up to the residence

14 Uh -- It actually appeared dark as far as I was
15 concerned

16 Uh -- I vaguely remember that
17 there might have been a light on in the living room area,
18 but we saw no changes during the -- uh -- time they tried
19 to make contact, the time that we were on the scene

20 We actually asked the perimeter
21 officers had they seen any changes in the residence,
22 which is standard And we do that

23 They're there 30 minutes to an
24 hour before we are So any changes they could inform us
25 about could useful for our plan of -- of entry

1 Q But there had been no changes?

2 A No changes whatsoever

3 Q From the time that they took up their positions and
4 kept their observation of the residence until the time
5 that you entered the residence?

6 A No changes whatsoever, no sir

7 Q Tell us about the entry -- Tell us about your entry
8 into the residence

9 A Uh -- My part in it, I was actually -- uh -- the
10 number 3 man in our element

11 Uh -- We had a -- Our number one
12 guy was toting a ballistic shield

13 The number two guy actually had
14 the keys to the residence He was what we consider a --
15 a breach -- he is to open the door with whatever means
16 necessary

17 He was armed with the keys so he
18 could open the door without any -- uh -- force or
19 anything like that as far as having to force entry into
20 it

21 Uh -- Once the door was open,
22 the number one guy with the shield moved in

23 I moved in behind him, and I
24 actually went to the left, ended up in the kitchen area -
25 - uh -- headed down the hallway

TESTIMONY OF SERGEANT CRAIG HUTCHINSON

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1 Uh -- The kitchen area was
2 clear There was no one was there
3
4 So I moved down the hallway
5 Had -- uh -- a couple of operators that came up behind
6 me

7 We -- uh -- negotiated the
8 hallway to a closed-door at the end of the hallway, at
9 which time -- uh -- I realized that I had plenty of help
10 with me So I breached that door via kicking it open

11 Uh -- Actually, the whole door
12 fell in when I kicked it And I stepped inside and
13 observed a -- what appeared to be a male subject laying
14 on the floor, face down

15 Q Sergeant Hutchinson, let me ask you to take a look
16 at State's 17 for identification and State's 18 for
17 identification, and tell us if you recognize those
18 photographs?

19 A Uh -- Number 17 here depicts the front door of the
20 residence where we actually made entry at

21 Uh -- As you can see, right
22 inside here, there's a pool table with a light right over
23 the top of it That is the front door, also the porch
24 that we had to negotiate to get up to that

25 Q And State's 18?

A Uh -- State's 18 was my actual first glimpse of my

1 -- once I kicked the open, this is what I saw, saw the --
2 uh -- subject laying on the floor, face down

3 Uh -- I actually had to enter
4 the room and pass him to get into the bathroom to make
5 sure there wasn't anybody hiding in there or anything

6 Once I come out of the bathroom,
7 I lifted the mattress up just to make sure there wasn't
8 anybody -- you know -- up under the mattress

9 And we exited out the room

10 WHEREUPON Mr Hembree shows
11 State's Exhibits 17 and 18 to Defense Counsel

12 MR BIGGS

13 No objection, Your Honor

14 THE COURT

15 All right

16 State's 17 and 18 are in
17 evidence without objection

18 MR HEMBREE

19 Thank you, Your Honor

20 WHEREUPON TWO PHOTOS EARLIER

21 MARKED AS STATE'S EXHIBITS NUMBERS 17 AND 18 WERE ENTERED
22 INTO EVIDENCE OBJECTION

23 DIRECT EXAMINATION BY MR HEMBREE CONTINUED

24 Q Sergeant, let me take you back to State's 18 And
25 tell us about -- You said you entered You kicked the

1 door in Observed a white male on the floor that
2 appeared to be face down?

3 A Yes sir

4 Q What was his condition?

5 A Uh -- At the time, he appeared to be deceased at --
6 at my first glance

7 My -- My first initial -- uh --
8 glance at him was, he was not moving

9 Uh -- Naturally when we enter a
10 room if we encounter anybody, whether they're moving or
11 -- or not, I don't really take time to stop and check
12 pulses

13 I just order him to stay on the
14 ground and don't move

15 Once we had cleared the room, I
16 took a second glance and observed that he had obviously
17 -- he was obviously diseased

18 Q You -- uh -- You indicated you cleared the room

19 What do you mean when you say
20 you're going to clear the room?

21 Q Basically, when we -- we enter a room, we're
22 scanning the entire room

23 And any -- like under the bed --
24 or any closets or anything like that where somebody can
25 hide, that's -- Our sole purpose is, we're looking for

1 people

2 Uh -- I'm not in there looking
3 for anything other than that

4 We're just looking for people
5 to secure them, to hold the residence until somebody else
6 can come in and conduct an investigation

7 We cleared the room Cleared
8 the bathroom

9 And then we routed back to the
10 front door once the residence was deemed secure

11 Q And in your -- uh -- Did you in any way disturb the
12 body or the crime scene?

13 A No sir

14 Q Other -- Obviously other than kicking the door in?

15 A Kicking the door in

16 Q Once you had cleared -- Anything else or any other
17 persons found in the house?

18 A No one else was found in the house

19 Q And your team, I guess at that point -- point, you
20 turned it over to whom?

21 A We turn it over to crime scene

22 Q And this is what you did?

23 A Yes sir

24 MR HEMBREE

25 Thank you, Sergeant Hutchinson

TESTIMONY OF SERGEANT CRAIG HUTCHINSON

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1 Please answer any questions

2 Defense may have on cross

3 THE COURT

4 Cross-examination?

5 MR DIGGS

6 May it please The Court?

7 THE COURT

8 Yes sir

9 CROSS-EXAMINATION BY MR DIGGS

10 Q And Sergeant Hutchinson, how are you this afternoon?

11 A Good How are you, sir?

12 Q Uh -- Just a couple of questions

13 On your photographs, did you

14 take the photographs?

15 A No sir, I didn't

16 Q Okay But they fairly depict what you saw?

17 A Yes sir

18 MR DIGGS

19 And are the jurors looking at

20 those photographs at this point?

21 THE COURT

22 The last two, yes sir

23 MR DIGGS

24 Okay

25 CROSS-EXAMINATION BY MR DIGGS CONTINUED

1 Q Uh -- What I want to ask you

2 Let me draw your attention

3 what's been marked as -- uh -- State's six -- Exhibit 16,

4 which is the mobile home --

5 A Yes sir

6 Q -- where Mr Turner resided

7 Uh -- Could you -- Could you

8 tell us -- Look at this -- uh -- Exhibit 16, and -- uh --

9 let me ask you this

10 Is this the door you went

11 through? Or did you enter a door on the other side?

12 A That's the door there on the steps on the left side

13 of your picture there facing --

14 Q Okay So -- uh -- as we face from the cul de sac,

15 you entered on the door on the left side of the dwelling?

16 A Yes sir

17 Q Now, am I right or not, there is a door also on the

18 opposite side of the home?

19 A Yes sir, there is

20 Q Okay And that picture that's been introduced into

21 evidence, Number 18 --

22 A Yes sir?

23 Q -- uh -- is that picture taken from the door on the

24 right side or is it taken from the perspective of

25 standing in the hallway?

1 Do you -- Do you remember?

2 A Uh -- You've got me confused now on picture numbers

3 I have to look at, if you can secure it back

4 Q Yes sir

5 MR DIGGS

6 Can I look at Number 18?

7 Thank you

8 CROSS-EXAMINATION BY MR DIGGS CONTINUED

9 Q Uh -- Okay Can you -- Let me ask you to look at
10 this And -- uh -- tell me -- uh -- can you tell where
11 the -- inside the home -- where the -- the -- the persons
12 would have been standing that shot that particular
13 photograph -- took that photograph?

14 A Entering the door from the left side of the
15 residence, like we did --

16 Q Yes sir

17 A I went to the left

18 Q Okay

19 A So this -- this room is actually in the rear most
20 part of the residence

21 Q All right, there on the left-hand?

22 A Yes sir

23 Q Okay And -- uh -- is this exact photograph taken
24 from the doorway into the bedroom?

25 A Yes sir, right where you go in

1 MR DIGGS

2 Okay All right

3 All right Uh -- I appreciate

4 your time That's all I have at this point

5 THE COURT

6 Any redirect?

7 MR HEMBREE

8 No, Your Honor We ask that

9 Sergeant Hutchinson be allowed to return to his regular
10 duties

11 THE COURT

12 Any objection?

13 MR DIGGS

14 No sir

15 THE COURT

16 All right, sir You're excused

17 and released from your subpoena, sir

18 MR HUMPHRIES

19 Your Honor, may we approach?

20 THE COURT

21 Absolutely

22 (WHEREUPON Counsel for each
23 party conferred off the record with The Court at the
24 bench at 3 42 PM, November 13, 2009)

25 THE COURT

1 All right

2 All right, ladies and gentlemen,
3 we're going to take a -- uh -- short break So if you
4 want to just leave pens and paper in your seats and we'll
5 come back in just a few minutes

6 Thank you

7 (WHEREUPON The jury empanelled
8 in the case withdrew from the courtroom at 3 43 PM,
9 November 13, 2009, and was no longer present during the
10 following proceedings)

11 THE COURT

12 All right

13 We'll be at ease for about 5 or
14 10 minutes

15 MR HUMPHRIES

16 Your Honor --

17 THE COURT

18 Yes sir

19 MR HUMPHRIES

20 One -- One matter, just so the
21 record is clear, regarding the statement of John Marvin
22 Cooper -- uh -- dated 5/2/05, consisting of two pages,
23 that -- those documents collectively were delivered to a
24 representative of Mr Diggs on October 31st, of 2005, and
25 signed

TESTIMONY OF SERGEANT CRAIG HUTCHINSON

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1 THE COURT

2 Okay Thank you very much

3 (WHEREUPON The court was

4 declared in recess at 3 44 PM, November 13, 2009)

5 (WHEREUPON The court was

6 called to order by the Bailiff at 3 53 PM, November 13,

7 2009, and all pertinent parties, along with their

8 counsel, were back and present in the courtroom)

9 DEPUTY

10 Order in the court

11 THE COURT

12 Thank you very much You may

13 be seated Thank y'all

14 All right

15 Solicitor, is the State ready to

16 proceed?

17 MR HUMPHRIES

18 The State's ready

19 THE COURT

20 All right

21 Defense?

22 MR DIGGS

23 Yes sir

24 THE COURT

25 Ask the jury to come in, please

TESTIMONY OF JEFF CAUSE

301

1 (WHEREUPON The jury empanelled
2 in the case was escorted back into the courtroom at 3 54
3 PM, November 13, 2009, and was in fact present during the
4 following proceedings)

5 THE COURT

6 All right

7 Solicitor, your next witness,
8 please

9 MR HUMPHRIES

10 The State calls Jeff Gause

11 THE COURT

12 All right Please come around
13 and be sworn, sir

14 WHEREUPON JEFF CAUSE WAS DULY
15 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS

16 CLERK

17 Please watch your step ' Please
18 have a seat Speak into a microphone State your name
19 and spell your last for the record

20 WITNESS

21 Uh -- Jeffrey W Gause, G-a-u-s-
22 e

23 DIRECT EXAMINATION BY MR HUMPHRIES

24 Q Sergeant Gause, how are you employed?

25 A I'm employed with the Horry County Police Department

1 the rank of Sergeant

2 Q And tell us in -- in what capacity are you employed
3 at this point with the Horry County Police Department?

4 A At this point in time, I'm a Shifts Supervisor,
5 which is a supervisor that supervises basically patrolman
6 over the road

7 Uh -- We're kind of like the --
8 the first responders, if someone calls 911 at that time

9 Q Now, have you always done that?

10 A No sir

11 Q Let me ask you

12 Back in 2005, specifically April
13 of 2005, in what capacity were you employed by the Horry
14 County Police Department?

15 A I was assigned to the -- uh -- Horry County Police
16 -- uh -- CID crime scene unit

17 My primary function was a crime
18 scene investigator

19 Q Very good Now let me ask you

20 Uh -- Would you tell the jury
21 basically what duties the crime scene investigative unit
22 encompasses?

23 What do they do?

24 A Well -- uh -- I'm sure that -- uh -- everyone's
25 probably watched CSI on TV And it's somewhat fashioned

TESTIMONY OF JEFF CAUSE

303

1 behind that

2 But in the real reality -- uh --
3 the primary function of my job is to -- uh -- photograph,
4 document, and collect the evidence from a crime scene

5 And crime scenes can vary from
6 robbery, rapes, and murders, to burglaries and anything
7 else in between

8 Q Very good Now, let me ask you

9 In that capacity, did you have
10 occasion to process a crime scene at Kimberly Drive on
11 April 9th, 2005, the Henry Turner residence?

12 A Yes sir, I did

13 Q Let's talk just briefly before we get to the
14 photographs

15 Is there a protocol that you
16 employ -- uh -- in the processing of any scene?

17 A Oh, basically, when we're first contacted and -- and
18 summoned to the scene by other officers for our services,
19 once we get there, I pretty much contact -- uh -- or make
20 contact with the -- uh -- the officer that's the first
21 responder on the scene, which would most likely have most
22 of the general knowledge of what's taking place at that
23 time

24 Then, I pretty much walk around,
25 assess the scene

1 Uh -- Just do what we call a
2 brief walk-through

3 And that just gives me an idea
4 of what -- uh -- how to tackle the situation and which
5 direction I need to -- to start that investigation

6 Q Now, let me ask you

7 Do you document the crime scene
8 in any fashion?

9 A Yes sir It's a pretty much a step at the time
10 We usually start out by
11 photographing the scene as it is in place when we first
12 arrived, pretty much in a natural state or pristine
13 state

14 Q And is there a -- is there a method by which you do
15 that, which is to say

16 Do you start from the outside
17 and move in?

18 A Well, you -- you kind of -- kind of sort of do that

19 But basically, you -- uh --
20 start out wide, and then you narrow in to the focused
21 area

22 In other words, the -- the area
23 -- you would start from the -- the -- uh -- curtilage or
24 the area of the home, the yard, so to speak, and then you
25 just move in

TESTIMONY OF JEFF CAUSE

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1 And by moving in, that keeps it
2 narrowed to within a certain point of the yard to the
3 interior of the home and so forth

4 But you start out with a wide
5 spec -- spectrum, and then narrow down

6 Q You document the scene by photograph?

7 A Yes sir

8 Q Is that correct?

9 A Yes sir

10 Q Uh -- Do you collect evidence as well?

11 A Yes sir, we do

12 Q Let me ask

13 Uh -- Do you also, at some point
14 either during or after the processing of the scene -- uh
15 -- draw a -- a diagram of the crime scene?

16 A Part of the documentation is -- is -- uh -- a sketch
17 of the crime scene

18 Uh -- The crime scene sketch
19 that I did in this case is not to a scale

20 Uh -- In other words, if you
21 measured it one inch to -- uh -- one inch, it wouldn't
22 match

23 But it's not really to scale

24 It's just a rough -- uh --
25 depiction of what the crime scene would look And it

1 aids me in reflecting back to the point in time

2 Q Let me ask you this

3 It aids you Would it aid you
4 in your testimony -- aid you in your testimony before
5 this jury regarding the processing of this particular
6 scene

7 A Certainly it would

8 Q Let me show you a series of exhibits

9 I am going to show you a series
10 of photograph numbered State's 19 through 33

11 I'll ask you to look at those
12 and tell me if you can identify them?

13 WITNESS

14 If it please The Court, just a
15 second?

16 THE COURT

17 Yes sir

18 WITNESS

19 A Yes sir

20 DIRECT EXAMINATION BY MR HUMPHRIES CONTINUED

21 Q And what are those photographs?

22 A These are photographs that were taken of the -- uh
23 -- crime scene within the home

24 Q And do they fairly and accurately represent the
25 crime scene as you observed it that evening?

TESTIMONY OF JEFF CAUSE

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1 A Yes sir, it does

2 Q Let me show you State's 39 for identification Can
3 you identify this item?

4 A Yes sir That's -- uh -- an enlarged sketch that
5 -- uh -- I drew

6 WHEREUPON Mr Humphries shows
7 the exhibits to Defense Counsel

8 MR HUMPHRIES

9 At this time, we would move
10 State's 19 through 33 and States 39 into evidence

11 THE COURT

12 Any objection to State's -- uh
13 -- photographs 19 through 33?

14 MR DIGGS

15 Your Honor, we don't have any
16 objection, other than to 24, 25, and 26

17 THE COURT

18 All right, let me -- uh -- look
19 into those

20 MR HUMPHRIES

21 If I could, just let me -- I
22 believe if I can get him to testify about how it would
23 assist him, so I could establish a basis for their
24 introduction?

25 THE COURT

1 All right

2 All right, well first, he was --

3 uh --

4 MR HUMPHRIES

5 The ones that he did not, I

6 won't object to --

7 THE COURT

8 Just read them in the record

9 MR HUMPHRIES

10 State's 19, State's 20, State's

11 21, State's 22, State's 23, State's 27, State's 28,

12 State's 29, State's 30, State's 31, State's 32, and

13 State's 33

14 THE COURT

15 All right

16 All right those are in evidence

17 without objection

18 WHEREUPON 12 PHOTOS EARLIER

19 MARKED AS STATE'S EXHIBITS NUMBER 19 THROUGH 23 AND 27

20 THROUGH 33, WERE ENTERED INTO EVIDENCE WITHOUT OBJECTION

21 DIRECT EXAMINATION BY MR HUMPHRIES CONTINUED

22 Q I'm showing you now State's 24, 25, and 26, for

23 identification purposes

24 Referring to the first, State's

25 24, can you tell me what's depicted in the photograph?

TESTIMONY OF JEFF CAUSE

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1 A It's the -- uh -- It's the victim on the floor in
2 the State of which that I first arrived on the scene and
3 observed him

4 Q State's 25?

5 A Uh -- Again, it's the -- a photograph of the victim
6 in the position that he was found a little closer up with
7 -- uh -- items that was -- uh -- drawing interest to me
8 in my investigation

9 Q Specifically what items are those?

10 A Uh -- There is a razor, and also the position of the
11 pants on the victim

12 Q Very good And State's 26?

13 A Again, it's -- uh -- a photograph of the victim from
14 -- in the -- another closer-up shot that shows another --
15 the item that was collected as evidence is right next to
16 the body

17 MR HUMPHRIES

18 Thank you

19 Your Honor, at this time, the
20 State withdraws 26 and 25, and submits that 24 is
21 necessary for that officer's testimony

22 THE COURT

23 All right

24 Any objection to -- uh --

25 State's 24?

TESTIMONY OF JEFF CAUSE

310

1 MR DIGGS

2 Your Honor, can we look at it
3 one more time?

4 THE COURT

5 Yes sir

6 MR DIGGS

7 Your Honor, we --

8 WHEREUPON The Court waved for
9 counsel to approach the bench

10 (WHEREUPON Counsel for each
11 party conferred off the record with The Court at the
12 bench at 4 05 PM, November 13, 2009)

13 THE COURT

14 All right

15 So -- uh -- State's 24 is in
16 evidence without objection

17 And was there any objection to
18 State's -- uh -- 39?

19 MR DIGGS

20 No sir

21 THE COURT

22 All right, sir

23 State's 39 is into evidence
24 without objection

25 MR HUMPHRIES

TESTIMONY OF JEFF CAUSE

311

1 Thank Your Honor

2 WHEREUPON A PHOTO, EARLIER
3 MARKED STATE'S EXHIBIT NUMBER 24, AND A DIAGRAM EARLIER
4 MARKED STATE'S EXHIBIT NUMBER 39, WERE ENTERED INTO
5 EVIDENCE WITHOUT OBJECTION

6 MR HUMPHRIES

7 Thank Your Honor

8 THE COURT

9 Yes sir

10 DIRECT EXAMINATION BY MR HUMPHRIES CONTINUED

11 Q What I'm going to ask you to do, Sergeant

12 As we go through these
13 photographs, I want you to tell the jury what it is And
14 I want you to orient them on the crime scene sketch

15 Let's start at the very top
16 If you will begin with State's
17 Exhibit 19 in evidence

18 You'll have to keep your voice
19 up Stay and -- You can stand up, so you can stay at
20 the microphone

21 A Number 19 is a -- uh -- photograph of the interior
22 of the mobile home depicting the living room section,
23 which would be in this general area here (indicating)

24 If you were standing in the
25 home, you would be looking -- you would be standing in

1 this area here looking in this direction up the hall
2 (indicating)

3 Q And let me ask you

4 While you are there, Sergeant
5 Gause, can you point out on the crime scene sketch, the
6 point of entry where the main entrance to the residence
7 is?

8 A This would be the main entrance, which was
9 considered to be the front door, which was in front --
10 front of the hallway (indicating)

11 Q Or is it --

12 A I'm sorry It was this one This would be the --
13 the rear of the home, the back door (indicating)

14 The front door (indicating)

15 Backdoor (indicating)

16 Q very good Looking at State's 20?

17 A Number 20 is another -- also another photograph of
18 the interior of the home

19 If you were standing -- Near the
20 front door here would be where I would be standing at
21 taking a photograph back toward this general area
22 (indicating)

23 MR HUMPHRIES

24 And that's State's 20

25 WHEREUPON Mr Humphries shows

TESTIMONY OF JEFF CAUSE

313

1 State's 20 to the jury

2 DIRECT EXAMINATION BY MR HUMPHRIES CONTINUED

3 Q State's 21?

4 A State's -- uh -- Number 21 would be an item which
5 would be a close-up photograph of the item 10 on my
6 evidence log

7 It's a receipt from McDonalds of
8 -- uh -- 1467 Highway 544, which would be very close to
9 the area where the -- uh -- residence is located

10 The -- uh -- item was recovered
11 here off of the kitchen table (indicating)

12 Q Let me show you what's been marked State's 34 for
13 identification purposes

14 Tell me if you can identify that
15 item?

16 A Yes sir It's the same item that was depicted in
17 the photograph here

18 MR HUMPHRIES

19 Move to introduce, Your Honor

20 THE COURT

21 Any objection?

22 MR HUMPHRIES

23 I'm sorry, State's 34

24 MR DIGGS

25 No objection

1 THE COURT

2 And that was 34?

3 MR HUMPHRIES

4 Yes, sir, Your Honor

5

6 THE COURT

7 All right

8 State's 34 is in evidence

9 without objection

10 WHEREUPON A RECEIPT FROM

11 MCDONALDS EARLIER MARKED STATE'S EXHIBIT NUMBER 34 WAS

12 ENTERED INTO EVIDENCE WITHOUT OBJECTION

13 DIRECT EXAMINATION BY MR HUMPHRIES CONTINUED

14 Q Let me ask you

15 Is there a date and a time

16 reflected on the State's 34?

17 A There is a date on the -- uh -- receipt --

18 Q Yes

19 A -- that says that -- uh -- reflects that it was

20 April the 8th, 2005 at 07 56, which would be a AM, if

21 it's in military time

22 Q very good Referring you now to State's 22

23 A Item 22 is a photograph, again, of a little, small

24 table, which is located by a chair in the living room of

25 the home, which would be in this general area right here

TESTIMONY OF JEFF CAUSE

315

1 (indicating)

2 Q What is -- uh -- What's depicted in the center of
3 that photograph on the table?

4 A The -- uh -- items of interest, would be the empty
5 beer bottle, ashtray -- ashtray with two cigarette butts,
6 and some photos -- uh -- bills -- uh -- paper and effects
7 next to what appears to be a fax machine

8 WHEREUPON Mr Humphries shows
9 State's Exhibit Number 22 to the jury

10 DIRECT EXAMINATION BY MR HUMPHRIES CONTINUED

11 Q State's 23?

12 A Number 23 -- uh -- is a photograph of the kitchen
13 sink area, with the point of interest being a -- uh --
14 Yuenling beer up in the corner of the counter top

15 Q Yuenling beer?

16 A Yuenling, if I got it right, being in this general
17 area here in the kitchen

18 Q And is that consistent with the beer bottle that was
19 --

20 A Yes sir

21 Q -- depicted in the last photograph, State's 22?

22 A (Nods in the affirmative)

23 WHEREUPON Mr Humphries shows
24 State's Exhibit Number 23 to the jury

25 DIRECT EXAMINATION BY MR HUMPHRIES CONTINUED

1 Q Now State's 24? I'm sorry Yeah, 24?

2 A Number 24 is a photograph of the victim's bedroom,
3 which would be here where the victim is

4 The photograph would be as -- If
5 you were standing there taking the photograph, you would
6 be standing here reflecting back to this area here with
7 the victim (indicating)

8 It shows the victim on the floor
9 face down -- uh -- the pockets turned inside out, and a
10 electric shaver next to the body

11 WHEREUPON Mr Humphries shows
12 State's Exhibit Number 24 to the jury

13 DIRECT EXAMINATION BY MR HUMPHRIES CONTINUED

14 Q I show you State's 35 for identification purposes

15 Tell me if you can identify that
16 item?

17 A Yes sir It's the -- uh -- same as the -- in the
18 picture of the electric shaver in item twenty --

19 Q 24?

20 A 24

21 Q Pictured by Mr Turner's body?

22 A Yes sir, that's correct

23 MR HUMPHRIES

24 We would move to introduce 35

25 THE COURT

TESTIMONY OF JEFF CAUSE

317

1 Any objection to that?

2 MR DIGGS

3 No

4 THE COURT

5 State's 35 is in evidence

6 without objection

7 MR HUMPHRIES

8 Thank Your Honor

9 WHEREUPON AN ELECTRIC SHAVER

10 EARLIER MARKED AS STATE'S EXHIBIT NUMBER 35 WAS ENTERED

11 INTO EVIDENCE WITHOUT OBJECTION

12 DIRECT EXAMINATION BY MR HUMPHRIES CONTINUED

13 WHEREUPON Mr Humphries shows

14 State's Exhibit Number 35 to the jury

15 Q Would you remove that from the bag?

16 A (Witness does as instructed)

17 Q This item was located directly beside the victim's
18 body?

19 A Yes, sir, that's correct

20 Q State's 27?

21 A Item 27 is the lower part of the body of the victim

22 It shows the -- uh -- pockets
23 turned inside out, also some change laying outside the
24 pocket, and also blood that trails down the backside of
25 the pants and on the pants leg

1 Q Did this indicate that the victim would have had to
2 have been upright at some point after having been shot?

3 A Yes sir

4 WHEREUPON Mr Humphries shows
5 State's Exhibit Number 27 to the jury

6 Q State's 28?

7 A Number 28 is on the right side of the victim It's
8 a close-up shot with the -- uh -- coin money showing that
9 the area where the pants pockets were turned inside out
10 This would indicate that someone
11 had pulled the money our or checked the pockets for some
12 type of item

13 WHEREUPON Mr Humphries shows
14 State's Exhibit Number 28 to the jury

15 DIRECT EXAMINATION BY MR HUMPHRIES CONTINUED

16 Q States 29?

17 A It's a -- uh -- close-up shot with items marked 15
18 and 16 in a photograph It looks to be two spent 38
19 caliber casings on top of a dresser in this area right
20 here (indicating)

21 Q In conjunction with that photograph, let me show you
22 State's 37 and 38 for identification purposes

23 Tell me if you can identify
24 those items?

25 A Yes sir, I can Those are the same in the

TESTIMONY OF JEFF CAUSE

319

1 photographs that you have in your hand

2 MR HUMPHRIES

3 Move to introduce State's 37 and
4 38

5 THE COURT

6 Any objection to State's 37 and
7 38?

8 MR DIGGS

9 No, Your Honor

10 THE COURT

11 State's 37 and 38 are in
12 evidence without objection

13 MR HUMPHRIES

14 Thank you

15 WHEREUPON TWO FIRED CARTRIDGE
16 CASINGS EARLIER MARKED AS STATE'S EXHIBITS NUMBERS 37 AND
17 38 WERE ENTERED INTO EVIDENCE WITHOUT OBJECTION

18 WHEREUPON Mr Humphries shows
19 State's Exhibits Numbers 29, 37, and 38 to the jury

20 DIRECT EXAMINATION BY MR HUMPHRIES CONTINUED

21 Q State's 30

22 A Number 30 is a photograph of the bathroom sink

23 It would indicate a photograph
24 of this particular sink right here

25 Also inside of the sink appears

1 -- uh -- appears to be hair that's been possibly used by
2 this shaver

3 That would indicate that someone
4 was shaving and had dumped it out into the sink to clean
5 it out

6 MR HUMPHRIES

7 State's 30

8 WHEREUPON Mr Humphries shows
9 State's Exhibits Numbers 30 to the jury
10 DIRECT EXAMINATION BY MR HUMPHRIES CONTINUED

11 Q I show you as a series State's 31, 32, and 33

12 Can you tell me what these
13 photographs depict?

14 A Number 31 is a photograph of -- of kind of a broad
15 picture of the bed of the victim, this being the bed from
16 the bedroom where the victim was at

17 The photograph would indicate a
18 photograph of a pillow that's on the bed here
19 (indicating)

20 And on that pillow, there's a
21 stain, which would be -- uh -- considered to be -- uh --
22 connected to a gunshot -- some powder burns -- stains on
23 it

24 Item 32 is the same photograph
25 of the same bed with the same pillow with a item marker

TESTIMONY OF JEFF CAUSE

321

1 placing it as Item 19 as my evidence that I collected

2 Item 33 is a close-up of the
3 pillow from the opposite side of the photograph of -- of
4 the actual pillow One side of the -- Item 31 had showed
5 a different side of the pillow

6 In other words are two sides of
7 the pillow One side looks like it has a little blood on
8 it The other one has a much bigger -- uh -- marking of
9 -- that would indicate gunpowder

10 Q Let me show you State's 36 for identification

11 Tell me if you can identify that
12 item?

13 I'll tell you what

14 Before you take it out, let me
15 -- let me ask Defense Counsel if they any objection to
16 its introduction

17 MR DIGGS

18 No objection, Your Honor

19 MR HUMPHRIES

20 Move to introduce State's 36,
21 Your Honor

22 THE COURT

23 All right

24 State's 36 in evidence without
25 objection

1 MR HUMPHRIES

2 Thank Your Honor

3 WHEREUPON A PILLOW EARLIER

4 MARKED AS STATE'S EXHIBIT NUMBER 36 WAS ENTERED INTO

5 EVIDENCE WITHOUT OBJECTION

6 DIRECT EXAMINATION BY MR HUMPHRIES CONTINUED

7 Q If you'll display that to the jury, keeping your
8 voice up?

9 A As I said earlier from one of the photographs that
10 you will see, one shows a much more distinct pattern,
11 which would indicate that it was a powder burn -- powder
12 -- gunshot residue

13 The other side, much smaller,
14 that has a small trace of blood

15 WHEREUPON The witness shows
16 State's Exhibit Numbers 36 to the jury

17 DIRECT EXAMINATION BY MR HUMPHRIES CONTINUED

18 Q Now, when you collect these items, is it your
19 protocol in regard to certain items to maintain them for
20 transfer to -- for instance, to South Carolina Law
21 Enforcement Forensic Lab for subsequent testing?

22 A Yes sir, it is If -- If the -- If we're not able
23 or have the -- uh -- means to carry out certain testing
24 that were beyond their departments capabilities, we just
25 transport it to the State Law Enforcement Division

TESTIMONY OF JEFF CAUSE

323

1 located in Columbia, South Carolina

2 MR HUMPHRIES

3 Beg The Court's indulgence

4 Just one moment, Your Honor

5 THE COURT

6 Yes sir

7 MR HUMPHRIES

8 Your Honor, that's all we have

9 we have

10 We ask that you answer any

11 questions the Defense may have

12 THE COURT

13 All right, cross-examination?

14 MR DIGGS

15 Your Honor, we don't have any
16 questions of this witness at this time But I would ask
17 that he be subject to recall if needed

18 THE COURT

19 All right

20 Uh -- Sergeant, you are released
21 to go back to your regular duties

22 Just understand that there is a
23 potential that you might be called back, okay

24 WITNESS

25 Thank you, sir

1 THE COURT

2 Thank you very much, sir

3 You're now excused

4 All right

5 Uh -- Solicitor, the -- uh --

6 next witness please

7 MR HEMBREE

8 The State would call Debbie

9 Gallogly

10 WHEREUPON DEBBIE GALLOGLY WAS

11 DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS

12 CLERK

13 Please watch your step Please

14 have a seat Speak into the microphone

15 Please state your name and spell

16 your last for the record

17 WITNESS

18 Debbie Gallogly, G-a-l-l-o-g-l-

19 y

20 DIRECT EXAMINATION BY MR RICHARDSON

21 Q Ms Gallogly, where do you live?

22 A I live in Roswell, Georgia

23 Q And do you know, or did you know, Mr Henry Turner?

24 A I am his oldest child

25 Q Do you have any other brothers and sisters?

TESTIMONY OF DEBBIE GALLOGLY

325

1 A I do I have 2 younger brothers

2 Q And what are their names?

3 A Rodney Turner and Roger Turner

4 Q After Mr Turner's death, did there come a time that
5 you went back to his house there at Kimberly Lane?

6 A Yes, we were all assembled at Dad's house at one
7 point

8 Q Approximately how long after his death did y'all go
9 back?

10 A It was -- After his death, it was probably 2 days

11 Q All right And who all was over at his house?

12 A Uh -- My mother was there who is my dad's ex-wife
13 Uh -- My brother Roger was there and my brother Rodney
14 was there

15 Q And what was the purpose of going back to your dad's
16 house?

17 A Well, our father had been murdered And we were
18 there to see to his affairs So we would there to go to
19 --

20 MS WILLIAMS

21 Your Honor --

22 THE COURT

23 Yes ma'am

24 MS WILLIAMS

25 May we approach?

1 THE COURT

2 Certainly

3 (WHEREUPON Counsel for each
4 party conferred off the record with The Court at the
5 bench at 4 29 PM, November 13, 2009)

6 THE COURT

7 All right

8 Ladies and gentlemen, you might
9 have heard the -- uh -- witness use the -- the term
10 "murder "

11 That is a legal term that The --
12 uh -- The Court would define to you later on And I
13 instruct you to -- uh -- disregard that particular
14 subject

15 Thank you very much

16 DIRECT EXAMINATION BY MR RICHARDSON CONTINUED

17 Q Would it be fair to say that your father had been
18 killed?

19 A Yes sir

20 Q And you went back to his house to take care of some
21 of his affairs?

22 A That's correct

23 Q All right Did you find anything in the house that
24 did not belong to your father?

25 A Yes, there were several items Uh -- Initially, we

TESTIMONY OF DEBBIE GALLOGLY

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1 weren't certain of who belonged to what

2 But there were some items that
3 we knew were not Dad's

4 Q I pass to you what has been marked as State's
5 Exhibit Number 40 And I'll ask you if you recognize
6 this?

7 A Yes This was one of the items that we knew did
8 not belong to Dad But it was found in his home

9 Q Do you know who it belonged to?

10 A It belonged to Steven Stanko

11 WHEREUPON Mr Richardson shows
12 the item to Defense Counsel

13 MR DIGGS

14 No objection to that, Your
15 Honor

16 THE COURT

17 All right

18 State's 40 is in evidence

19 without objection

20 MR RICHARDSON

21 Thank you, Your Honor

22 WHEREUPON A CUE CASE WITH
23 BUSINESS CARD EARLIER MARKED AS STATE'S EXHIBIT NUMBER 40
24 WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION
25 DIRECT EXAMINATION BY MR RICHARDSON CONTINUED

1 Q Now how -- Ms Gallogly, how did you know that that
2 belonged to Steven Stanko, please?

3 A Well, it contained his business card as my -- in an
4 identification pocket in the case

5 Q And is that -- uh -- still in the case as it was
6 when you found it?

7 A I see that it is

8 Q All right Please read the business card to the
9 jury

10 A May I take it out

11 Q Yes ma'am

12 A It says

13 Steven C Stanko
14 Paralegal and Exotic Dancer
15 Discreet and Confidential
16 C -- Excuse me
17 S C Stanko @sccoast net
18 By appointment only

19 Q And what is item number Slate's Exhibit Number 40
20 already in evidence?

21 A It is a case for a pool cue

22 MR RICHARDSON

23 I have no further questions

24 Answer any questions Mr Diggs may have for you

25 THE COURT

TESTIMONY OF DEBBIE GALLOGLY

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1 All right

2 Mr Diggs and Ms Williams?

3 MR DIGGS

4 Uh -- Your Honor, we don't have

5 any questions of this witness

6 THE COURT

7 All right Very good

8 Is this -- uh -- Do you wish the

9 witness be excused if she wishes to be?

10 MR RICHARDSON

11 Yes, Your Honor

12 THE COURT

13 All right

14 Any objection?

15 MR DIGGS

16 No

17 THE COURT

18 All right, ma'am, you are

19 excused if you wish to

20 You're released from your

21 subpoena

22 THE COURT

23 All right

24 The -- uh -- next witness for

25 the State, please

TESTIMONY OF JANE TURNER

330

1 MR HUMPHRIES

2 Jane Turner

3 THE COURT

4 All right

5 Ms Turner, if you would come up
6 here and be sworn please

7 WHEREUPON JANE TURNER WAS DULY
8 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS

9 CLERK

10 Please watch your step and have
11 a seat, please Speak into the microphone and state your
12 name and spell your last for the record

13 WITNESS

14 My name is Jane Turner, T-u-r-n-
15 e-r

16 DIRECT EXAMINATION BY MR HUMPHRIES

17 Q Good afternoon, Ms Turner How are you?

18 A I'm fine, thanks

19 Q Tell the jury, how you are employed?

20 A I'm an attorney and I'm in a small private practice
21 in Columbia

22 Q And do you reside in Columbia as well?

23 A I do

24 Q Let me ask you

25 Have you had the occasion to

TESTIMONY OF JANE TURNER

331

1 come into contact with the Defendant in this case, Steven
2 Stanko?

3 A I did

4 Q Why don't you relate to the jury the -- the
5 circumstances under which you had occasion to meet him

6 A It was a Friday afternoon Uh -- A friend of mine
7 had called and asked me if I would meet her for a drink

8 She was going through a tough
9 time personally And she called and asked And I said
10 that I would

11 Uh --

12 Q Let me ask -- I hate to interrupt you This is my
13 fault Uh -- It was Friday night Was that April the
14 8th?

15 A Yes, of 2005

16 Q Okay I'm sorry Please continue

17 A And -- uh -- I told her I would be glad to meet her,
18 and that I had a -- I actually had a dinner date later,
19 and that I could meet her at the bar in the restaurant
20 where I was going to meet my date later

21 Q What -- In what restaurant?

22 A The restaurant was the Blue Marlin in downtown
23 Columbia

24 And so we agreed to meet around
25 the 5 15 or 5 30, if I remember right

1 And I got there a little bit
2 early And not -- just because I'd been at another
3 meeting So I just came straight to the restaurant

4 So when I walked into the
5 restaurant, it was probably a little before 5 00

6 And I walked over to the bar
7 area and sat at the bar And there were two men at the
8 bar

9 Uh -- I sat down towards the one
10 in

11 There was a man in the middle of
12 the bar area, and then another one at the far end

13 And as I said down, the -- the
14 man in the middle made a few comments, said sort of small
15 talk, that kind of thing

16 And --

17 Q Let me ask you

18 Did you come to know who that
19 man in the middle was?

20 A I -- I did come to know that it was Steven Stanko

21 Q Okay

22 A And -- uh -- we -- you know -- small talked, chatted
23 a little bit here and there

24 And the man at the other end of
25 the bar, we chatted

TESTIMONY OF JANE TURNER

333

1 All of -- The three of us
2 chatted just about nothing in particular

3 And the -- the talk progressed
4 And then my friend arrived And
5 she sat down to my right

6 And the -- the bar area started
7 getting more crowded

8 And then at some point, I think
9 after she came, Steven Stanko moved down and sat right
10 beside us, and continued to talk more and more, and was
11 really -- I mean, but -- you know -- it was like two
12 women in a bar And he was a guy in a bar

13 So he obviously, it seemed to
14 me, was just trying to talk to us because we were two
15 women in a bar

16 And he -- you know -- just
17 started telling us all about himself and all these things
18 about what he did for a living and where he was from

19 He told us that he lived in New
20 York City, that he was a -- uh -- he was a commercial
21 real estate developer He was in Columbia on business
22 He had been in Charleston a couple of days before He
23 was in several places in South Carolina, but had ended up
24 in Columbia and was trying to close some big deal

25 He started buying us drinks

1 He started lashing money

2 He was buying other people

3 drinks

4 He was buying the bartender

5 drinks

6 He, again, was just telling
7 stories about who he was and what he did for a living

8 And he also, I remember, has --
9 uh -- uh -- a pretty bad looking wound on the top of his
10 right hair

11 I remember specifically, when my
12 date arrived, he was going to shake hands with him

13 And Steven Stanko said

14 Oh, I can't shake you hands
15 because my hand is injured -- my right hand

16 And he told us that he had
17 injured his hand running -- uh -- had been jogging while
18 he was in Charleston the day or so before

19 He told us he had fallen on the
20 -- he mentioned specifically the cobblestone streets in
21 Charleston And that's how he -- he had fallen and hurt
22 his hand

23 And as I said, my date arrived
24 at some point So the four of us just were sort of
25 talking

TESTIMONY OF JANE TURNER

335

1 And we just kept talking
2 And his stories got a little
3 more elaborate as the night progressed

4 Uh -- I can't say at what point
5 I started sort of wondering if some of his stories were a
6 little far-fetched

7 Uh -- But I will say that
8 When I left to go with -- When
9 my date and I left to go eat dinner, I was a little
10 worried about my friend staying there with him

11 She decided to stay there at the
12 bar with him

13 But I can't really say for sure
14 how much it was just a guy in a bar telling stories or if
15 I was really feeling like he was just lying

16 Q Let me ask you this

17 About what time did you leave to
18 go with your date to dinner?

19 A I want to say it was about 7 00 or 7 30 maybe

20 Q Is it fair to say that you spent approximately two
21 hours or so with the Defendant Stanko at that point?

22 A Two or two and a half, because he was -- I mean, we
23 also ordered an appetizer at some point

24 And as I said, he was buying
25 everybody drinks

1 He had a lot of money, a lot of
2 cash

3 And he started even doing like
4 bar tricks, like with your drink Like I don't even
5 remember what it was, taking shots and doing things,
6 turning the glass over and things like that

7 So it was a pretty long time

8 Q Now, you left with your date?

9 A Yes

10 Q Uh -- You said your friend remained for a period of
11 time

12 A Yes

13 Q Uh -- The next day, did -- uh -- your meeting with
14 the Defendant -- uh -- take on a certain significance?

15 A Well, not the next day, but, that was a Friday
16 night

17 q Right

18 A So Monday morning -- uh -- I got a call from my
19 friend And she said

20 You won't believe what I just
21 heard on the Today Show

22 Q Let's do this Let's -- Let's not say what we've
23 heard

24 A Okay

25 Q Let's say what you did as a result of what you

TESTIMONY OF JANE TURNER

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1 heard?

2 A Okay She called me and told me -- Well, I'm doing
3 it again

4 She called me and said that --
5 sorry

6 We decided we needed to call
7 SLED

8 Q Okay And did you?

9 A Uh -- We called SLED We told the SLED agent that
10 we were concerned that perhaps we had had an encounter
11 with Steven Stanko on Friday night

12 Q Okay And -- uh -- as result of that call, did you
13 then go to SLED?

14 A Yes They asked us to immediately come down there

15 Q Okay And did you?

16 A We did, and spent most of the day there with the
17 SLED agent

18 At that point, they were looking
19 for him And they wanted us to stay there with them and
20 help them with identifying things like what he was
21 wearing and what kind of glasses he had on and things
22 like that to help with -- I think they were -- They had a
23 hotline and people were calling in tips

24 And so they were asking us if
25 something somebody said on the tip was consistent with

1 what we remembered

2 So we were there most of the
3 day

4 Q Now did you ultimately come to learn that an arrest
5 was made that day?

6 A Yes

7 MR HUMPHRIES

8 Okay

9 Your Honor, I don't have any
10 other questions for her

11 Please answer any questions from
12 the other side Thank you

13 THE COURT

14 Cross-examination?

15 MS WILLIAMS

16 May it please The Court?

17 THE COURT

18 Yes ma'am

19 CROSS-EXAMINATION BY MS WILLIAMS

20 Q Good afternoon, Ms Turner

21 A (Nods in the affirmative)

22 Q You're an attorney in Columbia, correct?

23 A Yes

24 Q It's a little different being in witness box?

25 A It is

TESTIMONY OF JANE TURNER

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1 Q Uh -- Let me ask you

2 That Friday afternoon, you spent

3 I think you said two -- two and a half hours with the

4 Defendant

5 Is that right?

6 A As best I can remember the timeframe, yes

7 Q Give or take? Uh -- It was enough time for you to

8 get a pretty good impression of him, would you say?

9 A Yes

10 Q And I think you said that -- uh -- he told far-

11 fetched tales

12 Is that fair?

13 A I now know that they were far-fetched

14 Q But at the time?

15 A I didn't know if they were or not

16 Q But you said, as the evening grew, you thought that

17 the tales kind of kept expanding

18 Is that fair?

19 A Well, it's hard to know whether they were

20 exaggerations, or just lies, or what

21 Q Okay Well, you obviously had some concern about

22 leaving your girlfriend there

23 A Well, I would have a concern any time I left a

24 girlfriend in a bar

25 Q Okay But I think a while ago you testified that

1 you -- you don't know if that was a concern just because
2 it was your friend leaving her at the bar with a strange
3 guy, or because of what you were now getting, kind of bad
4 vibes?

5 A I can't say for certain which

6 Q Okay Uh -- Is it safe to say that you thought that
7 he was bragging a lot, maybe even?

8 A Yes

9 Q And he was flashing money and throwing money around?

10 A Yes

11 Q Did you get an impression as to whether or not you
12 thought that he was maybe even recklessly throwing that
13 money around?

14 A I don't know what you mean by "recklessly "

15 Q Uh -- Let me rephrase that

16 Did you -- Did you think the way
17 he was throwing around money that night was kind of
18 typical of what you would've typically expected from
19 somebody you had just met?

20 A I don't know how to answer that I didn't have an
21 expectation I guess

22 Q Okay But it was safe to say

23 He was not only buying your
24 drinks, he was buying the bartender's drinks He was
25 buying other people in the bar's drinks

TESTIMONY OF JANE TURNER

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1 Is that right?

2 A That's right

3 Q So he was throwing money around, wasn't he?

4 A He was buying a lot of people drinks

5 Q Okay And -- And I think you said too that he was

6 -- uh -- he -- he had -- he was injured on his hand --

7 his right-hand?

8 A Yes

9 Q And even went so far as to explain it by having
10 fallen in Charleston on the cobblestone streets?

11 Is that right?

12 A That's what he said

13 Q And -- uh -- And you said that, again, his stories
14 just -- as he talked, the stories just kind of got more
15 and more elaborate, right?

16 A Well, like I said, I didn't know if it was just a
17 guy in a bar trying to impress two women, or if -- if
18 they were probably not true I don't know which

19 Q But they grew?

20 A Yes

21 MS WILLIAMS

22 Okay

23 That -- That's all I have

24 Thank you

25 THE COURT

1 Any redirect?

2 MR HUMPHRIES

3 No, Your Honor We ask that
4 this witness be excused

5 THE COURT

6 Okay Any objections?

7 MS WILLIAMS

8 Uh -- No sir We don't have
9 any objection

10 THE COURT

11 All right

12 Sir (sic), you're released from
13 your subpoena and You may go back to your regular
14 business

15 Call you next witness, sir

16 MR HEMBREE

17 The State calls Ryan Coleman to
18 the witness stand

19 Come around and be sworn

20 THE COURT

21 All right

22 Mr Coleman, come up front
23 please

24 WHEREUPON RYAN COLEMAN WAS

25 DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS

TESTIMONY OF RYAN COLEMAN

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1 CLERK

2 Please watch your step Please
3 have a seat Speak into the microphone State your name
4 and spell you last for the record

5 WITNESS

6 Uh -- My name is Ryan Coleman,
7 and what else?

8 THE COURT

9 She just wanted you to spell
10 your last name

11 WITNESS

12 Oh, C-o-l-e-m-a-n

13 DIRECT EXAMINATION BY MR HEMBREE

14 Q Mr Coleman, where do you live?

15 A Columbia, South Carolina

16 Q And what sort of work do you do in Columbia these
17 days?

18 A I am the Business Liaison for the City of Columbia

19 Q And -- uh -- how long have you held that job?

20 A Three years

21 Q And prior to working as the Business Liaison for the
22 City of Columbia, what job did you have?

23 A Uh -- I worked as a waiter and bartender at the Blue
24 Marlin

25 Q And the Blue Marlin is located in what city?

1 A Columbia, South Carolina

2 Q Where is it located in Columbia?

3 A Uh -- Downtown area, it's down on Lincoln Street

4 Q And it's been there quite a long time?

5 A Yes sir

6 Q Uh -- How would you describe the Blue Marlin? Is it
7 a bar, a restaurant, or what?

8 A It more -- It's more of a restaurant -- uh -- a
9 seafood restaurant

10 Q Seafood restaurant?

11 A Uh-huh

12 Q Would you say "high end "

13 A Yes

14 Q Does have a bar?

15 A Yes sir

16 Q And back on April the 8th of 2005, you working at
17 the Blue Marlin?

18 A Yes sir

19 Q Uh -- Did you happen to work that evening?

20 A Yes sir I was the closing bartender that evening

21 Q Closing bartender? Tell us, when would the closing
22 bartender check in and when would you expect to check
23 out?

24 A The shift runs from about 6 00 o'clock to 12
25 o'clock

TESTIMONY OF RYAN COLEMAN

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1 Q You got to work, roughly 6 00 o'clock?

2 A Yes sir

3 Q Now, did you have an occasion on that evening to
4 come in contact with a person you later found out to be
5 Steven Stanko?

6 A Yes sir

7 Q Tell this jury about that -- uh -- about the first
8 time you notice him

9 A Well, I got the 6 00 o'clock And I noticed him
10 immediately, because he was there with one of our regular
11 customers, Victor

12 Uh -- Uh -- So they were there
13 when I entered the restaurant

14 I talked with them as soon as I
15 got there, and -- uh -- were there throughout the
16 duration of my shift to -- till 12 o'clock that night

17 Q Okay Uh -- Did you -- Did you notice him
18 throughout the night, or did you see him that one time,
19 or did you notice him along --

20 A No I mean, he was -- he was sitting there with
21 Victor So I -- you know -- every so often I would come
22 back and sit there and -- and talk with them, you know

23 And then, as the crowd died out
24 later that evening -- uh -- I would spend more and more
25 time, kind of down there talking with them as I did my

1 closing duties

2 Q Did you observe any general conduct or demeanor of
3 Mr Stanko while at the bar?

4 A Uh -- He was just Uh -- He was there, kind of having
5 a good time

6 Uh -- Of course that was Masters
7 Week

8 Uh -- So -- you know -- he -- he
9 was in there A lot of high profile clientele come in
10 there that week

11 So he was in there just spending
12 a lot of money, buying drinks for everybody, stuff like
13 that

14 Q Okay So it's Masters Week in Augusta?

15 A Yes sir

16 Q Does that have any impact on the business of the
17 Blue Marlin?

18 A Uh -- Yeah, it does, because there -- you know --
19 there's only so many places in Augusta for people to
20 stay

21 So we get a lot of overflow --
22 uh -- from Augusta, people that will stay in Columbia and
23 drive down for the day

24 And they'll come back and go out
25 in Columbia at night and what not

TESTIMONY OF RYAN COLEMAN

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1 Q And you said he was spending a lot of money?

2 A Uh-huh He sure was

3 Q Uh -- Buying drinks for a lot of people?

4 A Uh-huh Yes sir

5 Q Uh -- You have any idea -- I mean, how many people
6 did he buy drinks for, if you could estimate?

7 A Uh -- I mean if I had to guess, 8 or 10 He -- He
8 bought some drinks for the bartenders -- uh -- drinks for
9 him and Vick

10 He bought some drinks for some
11 ladies that were at the bar

12 So -- you know -- probably 8 to
13 10

14 Q Do you have -- any recollection about roughly how
15 much he spent while he was at the Blue Marlin?

16 A No His tab alone was around \$180 00

17 Q All right And so he was running a tab there

18 What about -- You say his tab --
19 Did he spend any in addition to that tab?

20 A Well, I mean, he -- he tipped on top of that It
21 was \$300 00 total for the everything

22 Q So he was somebody you were kind of paying attention
23 to?

24 A Yeah

25 Q That's a good customer?

1 A Yeah Yes sir

2 Q Okay Now as 12 00 o'clock came around --

3 Q Uh-huh

4 Q -- what happened then?

5 A At 12 00 o'clock, we shut down

6 And some of the regulars and
7 some of the wait-staff, we all decided to go across the
8 river to State Street Pub in West Columbia

9 Uh -- Victor decided to go with
10 us over there And so Steven joined him as well, and we
11 all went over there for a couple of hours, to about 4 00
12 AM

13 Q And State Street Pub, it was -- is it -- I take it,
14 it's not exactly the same kind of place --

15 A No sir

16 Q -- as the Blue Marlin?

17 A No It's a bar, pool tables -- you know

18 Q A kind of after-hours place?

19 A Yes sir

20 Q Uh -- A lot of the waiters and bartenders go there
21 after they close up?

22 A Yeah It's just -- just another place to go I
23 mean, your restaurants are all going to close a 11 00
24 o'clock, so we went to the bars which stay open later

25 Q Who all was there in your party at the State Street

TESTIMONY OF RYAN COLEMAN

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1 Pub?

2 A I would have to say there was about 7 or 8 of us
3 altogether

4 Q All right And do you know if Mr Stanko drove his
5 vehicle?

6 A Uh -- No sir He rode with Vick to the State
7 Street Bar

8 Q Okay You -- Are you aware of what type of vehicle
9 the Defendant Stanko was driving?

10 A Uh -- I didn't see it personally, but I was told
11 that he was driving a truck

12 MR DIGGS

13 Well, Your Honor, we would
14 object unless he knows what he was driving

15 THE COURT

16 Sustained

17 MR DIGGS

18 Thank you, Your Honor

19 DIRECT EXAMINATION BY MR HEMBREE CONTINUED

20 Q The -- And what did y'all do while you were at the
21 State Street Pub?

22 A Had -- Had drinks and shot a couple of games of
23 pool

24 Q And --

25 A Just kind of hung out and unwinded

1 Q How about -- uh -- Everybody getting along pretty
2 good?

3 A Well, for the most part, yes Uh -- Steven did get
4 irate with a -- uh -- friend of mine It's my roommate's
5 brother, Neal

6 Uh -- And he -- he did not think
7 that his story was adding up as far as him telling us --
8 you know -- his type of employment and what all he does

9 And so Neal kind of went after
10 him -- you know -- asking him -- you know -- more precise
11 questions about -- you know

12 Why do you do?

13 Where'd you go to college?

14 And he got really irate when
15 Neal started picking his stories apart

16 Q Got -- uh -- angry?

17 A Yeah

18 Q And how did he demonstrate his anger?

19 A Well, he -- he started pulling money out of his
20 pocket and just throwing it at his face -- you know --
21 and yelling profanities at him and tell him -- telling
22 him -- you know

23 I cay buy you I have -- you
24 know -- this much money And you're nothing to me

25 Q Any threats or violence

TESTIMONY OF RYAN COLEMAN

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1 A Yeah He -- He actually said -- you know

2 Let's take this outside -- you
3 know

4 He wanted to fight him

5 Q What did y'all do?

6 A I -- I kind of intervened at that point and -- you
7 know -- said that this guy's -- you know -- with me And
8 he's a very close personal friend And --

9 Q This guy meaning Neal?

10 A Neal And it just kind of diffused after that

11 Q Did -- uh -- About what time did it all break? What
12 time did you -- Did you leave before the Defendant
13 Stanko, or did he leave before you?

14 A We all left right about the same time -- uh -- which
15 was around 3 30 or 4 00 clock

16 Q Okay And went your separate ways?

17 A Yes sir Uh -- Vick -- uh -- He left with Victor
18 And we all -- we all went home after that

19 Q And you don't know where he went after that?

20 A No sir

21 MR HEMBREE

22 I don't have any further
23 questions Thank you very much

24 Please answer any questions

25 Defense Counsel might have

1 THE COURT

2 Cross-examination?

3 MR DIGGS

4 May it please The Court?

5 CROSS-EXAMINATION BY MR DIGGS

6 Q Uh -- Mr Coleman, down at the Blue Marlin, do they
7 have -- uh -- security cameras in there

8 Well, let me rephrase that

9 Did they have any at that time?

10 A I don't believe so

11 Q Do you remember if anybody -- uh -- made that
12 inquiry -- uh -- back at that time, in that timeframe?

13 A I don't recall anybody acing me back then

14 Q Now -- uh -- were you able to -- to listen in on any
15 of the conversations that the Defendant was having with
16 the patrons up at the Blue Marlin?

17 A Yes sir

18 Q And can you tell us about those?

19 A Uh -- You know, he was just telling people he's a
20 business man in from out of town, in to watch the golf
21 tournament, or whatever

22 Uh -- He -- uh -- He had an
23 injury on his hand

24 I remember he talk to me and
25 some other people that he -- his car had broken down and

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1 he got frustrated and punched the -- uh -- punched the
2 block the car, which was why he had the hand injury

3 Q Okay He didn't mention anything about falling
4 down on rocks in Charleston, but he --

5 A No sir

6 Q -- described it in the fashion you just recounted?

7 A No sir

8 Q Can you tell us what that injury looked like on his
9 hand?

10 A Well he had it bandaged -- bandaged up

11 Q Okay

12 A So I never saw it

13 Q All right So you didn't get to see it You just
14 saw the bandage?

15 A Yes sir

16 Q Okay Now -- uh -- how was he dressed? Do you
17 remember?

18 A Three-piece suit

19 Q He had on a suit?

20 A Uh-huh

21 Q A three-piece suit?

22 A Yes sir

23 Q All right And then he -- uh -- left with you
24 guys, the group from the Blue Marlin, went across the
25 river

1 A Yes sir

2 Q And the -- uh -- pub State -- What's the name of it?

3 A State Street Pub

4 Q Yeah Is that -- Where is that located, West
5 Columbia, or Caycee, or --

6 A West -- yeah -- West Columbia

7 Q West Columbia?

8 A (Nods in the affirmative)

9 Q All right And about how many of you went over
10 there?

11 A Seven or eight of us

12 Q Okay And -- uh -- Steven was hanging around with
13 Neal?

14 A When we initially got there, me and some of the
15 other servers and Vick, we were sitting at a table by
16 ourselves

17 He played pool with some other
18 people for awhile --

19 Q Okay

20 A -- and did not come and join us for about an hour
21 afterwards

22 Q All right You said -- uh -- uh -- I'm sorry --he
23 went over with Victor Is that right?

24 A Victor

25 Q Okay And that's who he was hanging out with

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1 initially?

2 A Yes sir

3 Q Now, who is Victor? What can you tell us about
4 him?

5 A Uh -- His name is Victor Rodriguez Uh -- I can't
6 recall the line of work that he did But he's a Hispanic
7 male in his 50s

8 Uh -- He was a -- uh -- regular
9 at the Blue Marlin

10 And so he was in, maybe 2 or 3
11 times a week

12 Q Okay And he legitimately did have the money to
13 spend regularly in your restaurant and bar?

14 A Yes sir

15 Q Uh -- But can't recall at this time precisely what
16 he did, what kind of work he did?

17 A Not right of the top of my head

18 Q Okay Then you get over to the State Street Pub

19 And you said -- Your testimony
20 was that Steven became irate and angry

21 Well, let me ask you this

22 Do you remember any -- anything
23 happening that in your mind would have caused him to
24 become irate and that angry?

25 A Well, nothing that would cause a -- a normal person

1 to do that

2 I mean -- YOU KNOW -- we were
3 just asking him questions about himself and his
4 background

5 I mean, really --

6 Q You were simply following up on information he had
7 provided? And that made him angry?

8 A Yes sir

9 Q And it made him angry to the point he wanted to
10 fight?

11 A Yes sir

12 Q Correct?

13 A (Nods in the affirmative)

14 Q And -- uh -- tell us how that confrontation was
15 diffused and -- uh -- you were able to get on passed it?

16 A I just -- I kind of got the middle of it And I --
17 I told him and Neal -- you know -- that

18 Neal's a good friend of mine

19 His family is very close with
20 me, and that -- you know -- we didn't want any problems,
21 and -- you know -- it was unnecessary to be acting like
22 this

23 Q Okay And -- uh -- would it be fair to say that --
24 You chose the word "irate" to describe him

25 And I want to ask you if you

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1 want to stay with that

2 Would you say he was irate?

3 A Irate would probably be an understatement I mean,
4 he was mad

5 Q He was mad?

6 A Is mad preferable?

7 Q Was he ready to physically harm somebody?

8 A Yeah He was red-in-the-face mad

9 Q Okay Red Uh -- He was ready to kill?

10 A I wouldn't go that far

11 Q Well --

12 A He was definitely right, but --

13 Q Right But he was ready to fight, and physically
14 so that personal-injury got happened personal injury
15 could have happened -- personal injury could have
16 occurred?

17 A Yes sir

18 Q To your friend?

19 A Yes sir

20 Q Did at any point in time it appear to you that Mr
21 Stanko understood his conduct would have been
22 inappropriate?

23 A How do you mean?

24 Q Uh -- At any point did he appear to say -- uh --

25 A What? Was he remorseful --

1 Q Yeah

2 A -- about the outburst?

3 Q Yes

4 A No But he -- You could tell he was still
5 perturbed about it --

6 Q All right

7 A -- for a while after it happened

8 Q Okay Didn't feel remorseful to your -- in your
9 view?

10 A Well, there was no exchange of apologies or anything
11 like that

12 Q Okay All right Did he ever get over it later
13 that evening?

14 A I -- I -- I guess so I mean, I -- I can't vouch
15 for his -- what was going on with him internally

16 But he -- you know --
17 eventually, we -- we're talking with everybody else and
18 it just kind of went away

19 Q Okay And about how long did this -- uh --
20 continue on

21 When I say this, I mean hanging
22 out in the bar?

23 A This was probably about 45 minutes before he -- we
24 got ready to leave

25 So this would've happened right

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1 around 3 00 o'clock And we all left between 3 30 and
2 4 00, so --

3 Q Okay And Mr -- uh -- Stanko left at that time
4 with you?

5 Uh -- Left with -- not with you,
6 but -- but he left at the same time?

7 A We all left at the same time

8 Q Okay Did you ever notice what kind of a vehicle
9 he was driving?

10 A Uh -- I did not see it personally, no

11 MR DIGGS

12 Uh -- Mr Coleman, I appreciate
13 it That's all I have -- uh -- this afternoon Thank
14 you

15 WITNESS

16 Okay

17 THE COURT

18 All right

19 Any -- uh -- redirect?

20 MR HEMBREE

21 No, Your Honor

22 We ask that Mr Coleman be
23 excused

24 THE COURT

25 Any objection?

1 MR DIGGS

2 No sir

3 THE COURT

4 All right, sir

5 Mr Coleman, you are released

6 from your subpoena, and may go back to your regular

7 duties

8 WITNESS

9 Thank you

10 THE COURT

11 All right, Solicitor, your next

12 witness

13 MR HUMPHRIES

14 The State Dana Putnam

15 WHEREUPON DANA PUTNAM WAS DULY

16 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS

17 CLERK

18 Please watch your step Please

19 have a seat and speak into the microphone, and state your

20 name and spell your last

21 WITNESS

22 My name is Dana Putnam, P-u-t-n-

23 a-m

24 DIRECT EXAMINATION BY MR HUMPHRIES

25 Q Good afternoon, Ms Putnam?

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1 A H1

2 Q How are you?

3 A Good

4 Q I'm going to call you Dana Is that all right?

5 A That's fine

6 Q Tell the jury, if you will, where you live?

7 A I live in -- I live in Augusta, Georgia

8 Q Okay And -- uh -- tell them

9 What do you do for a living?

10 A I'm the Public Relations and Events Coordinator for
11 an environmental nonprofit there

12 My office is in Phinizy Swamp

13 Q And what is the focus of the -- of the environmental
14 nonprofit?

15 A Uh -- Promoting environmental stewardship through
16 education research and outreach

17 Uh -- We focus mainly on water
18 quality

19 Uh -- We host an Earth Day
20 celebration for the City of Augusta -- uh -- and also do
21 research along the Savanna River, things like that

22 Q Let me ask you

23 Uh -- Back the Masters Week in
24 2005, that -- uh -- that period of time, is it
25 significant to you?

1 A Yes

2 Q Did you have occasion to meet the Defendant Steven
3 Stanko during that period of time?

4 A Yes I did

5 Q Why don't you share with the jury how that meeting
6 first took place and what transpired after that

7 Q Well it was Masters Week Uh -- And that's a little
8 golf tournament we have in Augusta (laughs)

9 'It -- uh -- goes on -- the
10 practice rounds -- from Monday through Wednesday And
11 then the tournament is Thursday through Sunday

12 And -- uh -- lots of bands come
13 to Augusta And lots of -- uh -- people coming to watch
14 the golf, and -- and -- uh -- enjoy everything that
15 Augusta has to offer

16 It's a time that Augusta is
17 really on display for -- The whole world is watching the
18 Masters -- uh -- Golf Tournament

19 And -- uh -- my 30th birthday
20 was Monday of Masters Week

21 And I had lots of friends coming
22 in town -- uh -- for -- uh -- Masters, and -- uh --
23 decided they wanted to celebrate my birthday with me

24 And so, we went out and enjoyed
25 -- uh -- Masters activities

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1 I was single at the time

2 And -- uh --

3 Q You're engaged now to be married?

4 A I'm engaged now to be married --

5 Q In December?

6 A -- in December, yes

7 Q Okay

8 A Uh -- On this particular night, Saturday -- I don't
9 remember the date -- uh -- my friend -- uh -- Killian and
10 her friend Jenna had -- uh -- come in town from North
11 Carolina And they wanted to take me up my birthday

12 And I'd been out in Masters Week
13 the full, and I was just like

14 Nah, I don't know if I want to
15 go

16 And so they said

17 Come with us with us

18 And

19 We're celebrating your birthday

20 And I said

21 Okay

22 Well, Killian was single So I
23 decided I wanted go be her wing woman and help her meet
24 someone

25 Uh -- So the moment I hit the

1 door at -- uh -- Surrey Tavern, which is where we went
2 that night -- uh -- to hear a band that I really enjoy --
3 uh -- I locked eyes with -- uh -- the Defendant

4 And it was a very immediate eye-
5 locking But -- uh -- I really wasn't paying attention
6 to him, because I was there for my friend -- uh -- to
7 meet someone

8 And so, we were just enjoying
9 the evening

10 And -- And the more I attended
11 to my friend, the more out of the corner of my eye I
12 could see -- uh -- Steven kind of staring at me and
13 waving

14 And -- uh -- so finally, at --
15 uh -- some point, one of his friends took me by the
16 shoulder and just turned me around and said

17 This is Steven

18 And so, that was the point that
19 I met Steven

20 Q That -- uh -- That wasn't the end of the evening,
21 was it?

22 A No, it wasn't Uh -- He was -- When I met him, he
23 had his arms crossed And -- uh -- he was wearing a
24 bright blue -- uh -- Hooters' shirt

25 And -- uh -- a lot of times

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1 during Masters Week, a lot of business men come and like
2 to enjoy the golf and take off their wedding bands

3 So I was just like

4 You know, whatever He's

5 probably just one of those married guys that's

6 pretending, whatever

7 So -- uh -- I said

8 Hooters, well that's great,

9 Hooters -- you know

10 Do they -- Do you really give

11 free boob jobs to your girls that work at Hooters?

12 He was like

13 Oh, it -- it's just business

14 Uh -- I --

15 Q Did he -- Did he indicate some -- uh -- business

16 interests in Hooters?

17 A Yes, he did Uh -- Well, at first, I said

18 Do you work at Hooters?

19 And he said

20 No, I own Hooters I own 8

21 Hooters And I co-own 9, all around the southeast area

22 And so I said

23 Well, I'm not real impressed

24 with that

25 And -- uh -- he said

1 It's just business You give
2 people what they want

3 Most of the girls working there
4 are trying to make their way through college And I
5 don't date them anyway I'm interested in meeting classy
6 women like you

7 And -- uh -- he went on to tell
8 me that he was a Citadel graduate, and -- uh -- that he
9 had gotten his masters at Syracuse in Chemical
10 Engineering, I believe, and -- uh -- that -- let's see
11 his Masters in Syracuse -- oh, and that he had grown up
12 in Myrtle Beach, and -- uh -- as a lifeguard there, and
13 -- uh -- taught shag lessons

14 So we danced that night And I
15 was very -- uh -- impressed with him

16 And at every corner, he was --
17 uh -- explaining and -- and illustrating that -- uh --
18 that he was -- he was looking for -- uh -- someone that
19 he could respect and admire

20 Uh -- In fact, I'd been enjoying
21 the Masters festivities all week and was kind of tired
22 and -- and kept telling him -- you know

23 Hey, I'm getting up and going to
24 church in the morning I don't know about y'all

25 Uh -- So that was that

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1 Q Now -- uh -- did the evening end there at Surrey
2 Tavern?

3 A No Uh -- After Surrey Tavern -- uh -- we went to
4 -- uh -- Waffle House -- uh -- where he paid for our
5 table and I think the -- the table behind us

6 Q Now, did y'all know the people at the table behind
7 you?

8 A No

9 Q Just sort of random?

10 A He was just -- he was throwing a lot of money
11 around

12 Q Okay

13 A And it seemed that the friends that he was there at
14 Surrey Tavern with, he had just kind of met

15 They were all just enjoying the
16 tournament festivities

17 Q Uh -- Is it fair to say Dana, that you were -- uh --
18 you were taken with him just a bit?

19 A Yes It's very fair to say that

20 Q Sounded charming?

21 A Very charming Very attractive Very Smart Well
22 read Respectable guy

23 Q Uh -- You ate at the Waffle House? What did you do
24 then?

25 A Well, after Waffle House -- uh -- we went back to

1 Surrey Tavern because we had joined up cars And then we
2 went back to Surrey Tavern -- uh -- at which point -- uh
3 -- he wanted to drive me home

4 And so -- uh -- he drove me home
5 in -- uh -- the truck that he was in

6 And -- uh -- we --

7 Q Just let -- Just let me ask you this

8 Describe the truck

9 A It was a black, small truck Uh -- There was like
10 a purple diagonal shape on the truck

11 Uh -- I remember -- uh --
12 Shriner or some sort of insignia on the back

13 Uh -- It was a stick shift

14 Q Let me ask you

15 Uh -- Did he indicate to you
16 that that was his truck?

17 A No Uh -- It was his mechanic's truck

18 And he described the mechanic as
19 -- I can't remember the mechanic's name, but it was like

20 Old Joe, he -- uh -- he's just
21 an all-American old, crazy old guy

22 Uh -- And he was -- He had taken
23 his mechanic's truck -- uh -- while his car -- his Jaguar
24 was in the shop

25 Q Uh --

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1 A These things you can believe on Masters Week

2 (laughs)

3 Q I understand

4 Q Prominent folks are there during that period of
5 time

6 Q Uh -- He drives you home?

7 A Yes He drives me home

8 Uh -- My friends follow me home,
9 at which point, we were just really enjoying each other
10 and enjoying conversation

11 So he comes in my house for a
12 drink

13 Q Okay

14 A And then, I realize that he is too drunk to get back
15 on the road

16 Q And so, what did you do?

17 A I offered my couch

18 Q Uh -- Did he stay there that evening?

19 A Yes he did He stayed on my couch -- uh -- and I
20 stayed in my bedroom

21 Q You got a pet?

22 A Yes, I have a dog, a little Boston Terrier -- uh --
23 who snores really loud

24 Uh -- He -- uh -- Normally, his
25 bed was out in the den, but -- uh -- I just -- I kind of

1 offered up my couch and then thought

2 Oh, my God What am I doing?

3 This is a stranger that I just

4 met

5 And although he's great and

6 everything, I don't -- don't know him

7 So -- uh -- I took Buster -- my

8 dog's name -- his iron bed, and -- and kind of pushed it

9 up against the door, figuring -- kind of bolting myself

10 into my room

11 Q Your bedroom?

12 A My bedroom door, yes

13 Q Now, the next day was Sunday?

14 A Yes, the next day was Sunday And I had told him

15 -- uh -- that

16 I'm going to church

17 And -- uh -- he said that -- you

18 know -- he'd be glad to go to church

19 So we went on -- on to church

20 He drove me to church in the

21 truck

22 Uh -- And he had some problems

23 with the stick shift

24 Uh -- We went up a hill to get

25 to the church, and -- uh -- he kept messing up the stick

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1 shift And it was grinding And -- uh -- he said, you
2 know

3 I -- I don't drive this truck
4 very much

5 And -- uh -- or I -- you know --
6 not

7 I don't drive this truck

8 But just

9 It's not my truck

10 And so -- uh -- we got to

11 church

12 And -- uh -- it's a big Baptist

13 Church in town

14 And -- uh -- my grandmother --

15 uh -- is not in the best hope in the world And -- uh --

16 at the time I said

17 Uh -- We need to sit in the back

18 left hand side of the church, so my grandmother can see

19 us on TV

20 So -- uh -- So that's where we

21 sat

22 Q Were -- uh -- Were you proud of him?

23 A Yes, very proud of him He was good-looking He

24 was more than willing to go to church with me, really,

25 really smart -- uh -- somebody that I could respect

1 And at every moment, he was
2 opening doors for me Uh -- In fact, he wouldn't even
3 let me open car doors

4 Uh -- Just the picture of a
5 gentleman

6 So yeah, I was very proud of
7 him

8 Q Did you -- uh -- end up spending -- uh -- the
9 remainder of Sunday together?

10 A Well -- uh -- after church, we went to get lunch
11 And -- uh -- And then after that, we just kind of -- uh
12 -- laid around the house, and just kind of rested after a
13 big Sunday meal -- uh -- and just kind of hung out

14 And in fact, he said he had --
15 uh -- Masters' tickets for Sunday But he would rather
16 spend the time with me, which, in hindsight, I cannot
17 believe that -- that I fell for that -- uh -- because I
18 would be there after the tournament, and no man would
19 turn down Sunday at the Masters, who liked golf

20 Q Let me ask you this

21 While you were at your -- You
22 hung out at your place?

23 A Yes

24 Q Uh -- Listen to the radio?

25 A No

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1 Q Watch TV?

2 A No

3 Q Uh --

4 A We talked about the time he'd spent in Augusta

5 Uh -- He said he had spent some
6 time in the '80s and was a part of -- uh -- the Bachelor
7 Club

8 It's kind of an older guy's
9 fraternity, like once you're out of college, and the
10 bachelors, they do philanthropy

11 Uh -- I told him -- Since he was
12 an entrepreneur, I told him about our nonprofit -- uh --
13 and our environmental work And he told me about a
14 charity that he supported, which -- uh -- rehabilitates -
15 - uh -- folks that have been in prison

16 So, I thought

17 That's interesting

18 Q Okay All right Sunday night, he takes off?

19 A He was supposed to take off

20 Uh -- We need to wind back a
21 little bit to Saturday night

22 Q Okay

23 A He -- uh -- told me about -- about -- uh -- a little
24 -- uh -- scab -- scar on his hand that he had gotten the
25 night before in -- uh -- Columbia

1 He was there -- his friends --
2 uh -- Todd and Laura -- uh -- Todd was a friend from the
3 Citadel, and -- uh -- Laura was his wife, an
4 anesthesiologist

5 And -- uh -- he -- uh -- they
6 had set him up on a blind date And -- uh -- someone
7 had been picking on his date and tapping on her
8 shoulders, just a drunk person bothering her

9 And he'd asked -- asked the guy
10 to quit a couple of times And -- uh -- the guy just
11 wouldn't quit

12 And he asked him again nicely
13 And -- uh -- the guy -- uh -- kind of bowed up to fight

14 And then -- uh -- And then, he
15 threw a punch And Steven threw a punch back And he
16 -- uh -- he had hurt his knuckle

17 Uh -- So Sunday night, when he'd
18 explained that story on Saturday and it -- and it all fit
19 into -- uh -- the Citadel grad who was full of honor and
20 defending women who are being bothered by drunkards at
21 bars

22 Uh -- And so, after -- after
23 that -- you know -- it all went in with -- with the
24 Citadel

25 And -- uh -- And so the

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1 following night -- Sunday night -- uh -- after -- let's
2 see -- we had gone to -- also gone to dinner

3 We -- We kind of hung around the
4 house all day We walked the dog around my
5 neighborhood

6 And -- uh -- we went to Lone
7 Star Steak for -- uh -- The end of the Masters was on TV
8 Tiger Woods was winning the Masters

9 And -- uh -- And he knew --
10 Steven knew that I loved steak, or I had told him I loved
11 steak

12 So we went and -- and -- uh --
13 had some steak

14 And -- uh -- when we -- he took
15 me back home, it was supposed to be -- uh -- time -- uh
16 -- for him to leave

17 Uh -- When all of a sudden, he
18 was kind of standing near my mantel piece, and he just
19 broke out in a cold sweat

20 He -- He was -- He was
21 perspiring from head to toe You could see it on his
22 arms, his forehead And he just looked very peaked

23 He was swooning And -- uh -- I
24 was like

25 Oh my goodness, you -- you need

1 to sit down

2 And so he sat down

3 And I went to the bathroom and

4 got some wash rags and a towel, and put on him

5 Uh -- And he said

6 I think my hand's infected,

7 because it hit that guy's tooth

8 Uh -- And he just looked

9 horrible

10 And so -- I mean, he was

11 supposed to leave But you can't leave when you look

12 like you're about to pass out

13 So -- uh -- I -- uh -- put him

14 on the daybed in my -- uh -- in my guestroom, and called

15 my mom and told them -- told her that this guy just looks

16 terrible And he's over her

17 Q He -- uh -- He was there when you woke up Monday?

18 A Yes

19 Q Did you work on Monday?

20 A Yes

21 Q How did the morning go?

22 A Well, I went back to work And -- uh -- the

23 morning went great

24 We were getting ready for -- uh

25 -- Earth Day celebration was going to be the following

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1 week, which was the busiest time in my -- my work
2 schedule

3 And -- uh -- so he was supposed
4 to go to the hospital and get the -- get his hand
5 checked, because I had wanted him to call his friend --
6 uh -- his friend who was the anesthesiologist

7 Uh -- And he wouldn't do that

8 He said

9 Oh, I'll just go to the doctor
10 tomorrow

11 And -- uh -- so -- uh -- so we
12 were supposed to go to lunch that day after he went to
13 the doctor

14 And -- uh -- he shows up at
15 about 10 30 at my office with a -- with a peach rose

16 And -- uh -- the card on the
17 rose said

18 Uh -- Sometimes the best things
19 are the simple things

20 And I was so excited, because
21 I'd never gotten a rose for no reason This was just a
22 wonderful guy

23 And -- uh -- so that was really
24 exciting

25 He met my boss and -- uh --

1 administrative assistant in the office

2 Q To go to lunch?

3 A Yes, but that was 10 30 that he brought the rose

4 So he -- he left

5 And the office where I used to
6 work was really, really far removed -- it's behind an
7 abandoned museum

8 So it was interesting to me that
9 he found my office, because I couldn't even find it on my
10 job interview to get there

11 Uh -- So he -- he left -- uh --
12 left for an hour and a half, and then came back again,
13 and we went -- we went to lunch

14 Q Now this is Monday?

15 A This is Monday

16 Q Okay Did -- uh -- Did you see him Monday evening?

17 A Yes Uh -- I had to go -- Well, Monday at lunch, I
18 had a discussion with him about -- uh -- he said he was
19 getting out of the -- out of the Hooters' business -- uh
20 -- because it had him traveling too much

21 Uh -- He had just broken
22 engagement -- or an engagement was broken

23 And I had shared a story about
24 how I had a broken encasement -- uh -- a couple of years
25 before that

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1 And he was trying to down-shift
2 and work into a slower life thing

3 He -- He talked about moving to
4 Augusta

5 And anyway, he was down-shifting
6 and looking into a Checkers' franchise

7 And so over --

8 Q That's a hamburger place?

9 A A hamburger place And he -- uh -- portrayed
10 himself as a -- as a health food buff

11 And -- uh -- I'd said to him
12 over -- uh -- over lunch, like

13 Well, why do you want to do
14 Checkers? You don't -- I don't think you feel
15 passionate about hamburgers

16 Now me, I'm passionate about
17 hamburgers

18 Uh -- But -- you know -- I don't
19 understand Why are you doing that?

20 Or

21 Why are you doing Hooters? Why
22 don't you do something that means something

23 Uh -- So that was -- uh -- that
24 was Monday at lunch

25 And -- uh -- he was supposed to

1 go to Columbia and get his Jaguar from (laughs) -- from
2 the -- uh -- mechanic and bring it back for us to go on a
3 really fine date

4 And over the course of all of
5 our conversation -- because we weren't watching
6 television -- uh -- he made lots of overtures that there
7 would be a future for us

8 And it just felt like
9 Whoo, this is -- this is really
10 moving a little -- a little too fast

11 Uh -- And -- uh -- so -- uh --
12 when I was finished being on -- I went on a -- on a local
13 cable access show to promote Earth Day on Monday

14 And when I got back from that --
15 uh -- he was -- uh -- to pick me up at home, and said he
16 was going to take me to a fine restaurant

17 And again I'm feeling like
18 Umm, this may be a little too
19 much

20 Well, he -- uh -- pulled up
21 still in -- uh -- in Old -- Old Lou's -- I can't remember
22 the name he used, but Old Lou's truck, and -- uh -- the
23 -- the Jag wasn't -- wasn't fixed

24 And -- uh -- I -- And I told him
25 that I understood that, because my mom had one in the

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1 '70s that she used to call the yard ornament, because
2 foreign cars never -- are hard to repair And the parts
3 cost And you have to ordered in for the parts

4 And so -- uh -- basically, he --
5 you know -- I said

6 I know Jags are a piece of
7 junk

8 So he was still in the truck

9 But I -- I understood that

10 Q Now -- uh -- did you go to dinner that evening?

11 A Yes So -- uh -- I was about to change to get
12 ready -- uh -- to go out on our date, when he said

13 You know -- uh -- you said that
14 -- you know -- you're a little worried about us moving
15 too fast And -- uh -- as much as I'd love to take you
16 to the finest restaurant in town -- you know -- you just
17 said that -- uh -- you're really passionate about
18 hamburgers

19 So -- uh -- So while you were on
20 TV on Comcast -- uh -- I went over to Hooters to talk to
21 my local manager, and ask him where the best hamburger in
22 Augusta was

23 And so, he listed 2 places He
24 listed -- uh -- David's Sports Pub And he listed -- uh
25 -- Rinehart's Oyster Bar

1 And I said
2 Well, we can't go to David's
3 Sports Pub
4 And he asked me why
5 And I said
6 Well -- uh -- they just caught
7 the -- that murderer, Edward Cooley (? phonetic) -- uh --
8 who killed little Angela Lunsford (? phonetic) from
9 Florida
10 And they caught him on
11 surveillance tape And isn't that awful We can't have
12 there I just -- That creeps me out
13 And so, he's like
14 Oh, no, no, no We won't go
15 there Uh -- We're going to go to Rinehart's
16 So we went to Rinehart's
17 But he agreed that it was
18 terrible, what happened to the little girl
19 Q You go to dinner Does he -- uh -- anything
20 significant -- remarkable happen at dinner?
21 A Uh -- Well, actually before dinner -- uh -- he pulls
22 -- uh -- he had a duffel bag with him
23 Uh -- I really don't know why he
24 brought it I can't remember why he brought it in the
25 house But out of his duffel bag, he pulls a gold

TESTIMONY OF DANA PUTNAM

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1 bracelet

2 And -- uh -- he said that it was
3 -- uh -- his -- uh -- he had bought it for his niece, and
4 she didn't like it

5 And so -- uh -- so he can't --
6 he never, ever, takes jewelry back, so he just held onto
7 it And he wanted me to have it

8 And I let him know -- you know
9 -- the kids don't like the yellow gold The kids like
10 white gold

11 So -- uh -- So he gave me that
12 bracelet

13 Q You go to dinner Had a good hamburger?

14 A Had a really good hamburger

15 Q Uh -- After dinner?

16 A After dinner -- uh -- we come back -- uh -- to my
17 house and just kind of hang out a little bit more

18 And at that point -- you know --
19 he -- he had stayed -- uh -- at my house Saturday night
20 because he was drunk, and then Sunday night because he
21 had an infected -- uh -- hand, which -- uh -- he -- he
22 didn't -- he only put a Band-Aid on it

23 Uh -- And then, so --

24 Q Did he seem to recover fairly well?

25 A He seemed to recover just fine, yeah

1 Uh -- So -- So he was supposed
2 to go back to -- uh -- back to Columbia that night

3 Uh -- And we hung out and hung
4 out and hung out

5 But -- But I -- I did not want
6 him to stay anymore -- uh -- just because we had just
7 met

8 And so he left

9 And he knew that -- that he
10 needed to be a gentleman and -- you know -- that -- that
11 nothing was going to happen with us

12 And -- uh -- uh -- although I
13 liked him very, very, much -- uh -- he was to leave

14 And so -- uh -- he got up the
15 road -- it was probably 1 00 AM when he left

16 And -- uh -- he called me in
17 about 20 minutes after he left and said he'd been pulled
18 over

19 And -- uh -- I said

20 Wow that's -- that's too bad

21 Q Uh -- You didn't invite him back?

22 A No

23 Q Uh -- Let's go from there

24 You -- You were there at your
25 home alone?

TESTIMONY OF DANA PUTNAM

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1 A I was there --

2 Q Well, let me ask you this

3 Did you have plans to see him
4 anymore, the next day

5 A No No plans to see him the next day I think he
6 was supposed to -- uh -- come back the following weekend,
7 because he had business to do

8 But, we definitely had plans to
9 -- to see each other

10 I mean, in the course of the
11 weekend, he had called his mother and told her that he
12 had met somebody wonderful

13 And my mom called me while we
14 were at Riverwalk And I said

15 I've met somebody wonderful

16 And -- uh -- we were definitely
17 supposed to see each other again

18 Uh -- But -- uh -- But I had
19 gone to work on Tuesday

20 Q Okay Now -- uh -- something happened on Tuesday
21 that sort of changed your opinion?

22 A Yeah

23 Q Tell the jury about it

24 A On Tuesday, I got into work And -- uh -- I got a
25 call from my friend Lilly

1 Uh -- She said -- uh --

2 Q Well, let's do this

3 A Okay

4 Q Instead of saying what she said, tell the jury what
5 you did as a result of what she told you

6 A As a result of -- uh -- what Lilly told me -- uh --
7 I had to -- my boss drove me to a gas station where I got
8 a -- a newspaper and saw Steven's picture --

9 Q Okay Let's not talk about the headline But you
10 saw Steven's picture?

11 A Yes, I saw Steven's picture

12 Q Okay And -- uh -- did it indicate that he was a
13 wanted man?

14 A Yes, it did

15 Q Okay As a result of learning that, what then did
16 you do?

17 A Uh -- Then I -- uh -- cried and screamed And my
18 boss to me to -- uh -- the Sheriff's Department in
19 Augusta

20 Q Now, did you have the Defendant's cell phone number?

21 A Yes

22 Q And did you attempt to contact him?

23 A No

24 Q Did he contact you?

25 A Yes

TESTIMONY OF DANA PUTNAM

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1 Q And -- uh -- this was Tuesday morning or so?

2 A Tuesday morning, yes

3 Q Okay Did -- In fact, did he contact you while you
4 were at -- still at Sheriff's Department?

5 A Yes

6 Q As result of that contract -- uh --

7 A He wanted to know why -- uh -- why I wasn't at the
8 office

9 Q Okay Uh -- Did you assist law-enforcement --

10 A Yes

11 Q -- in the apprehension of the Defendant Stanko?

12 A Yes

13 Q And based on your corporation, do you know if, in
14 fact, that he was apprehended?

15 A Yes, he was apprehended

16 MR HUMPHRIES

17 Thank you

18 WITNESS

19 Thank you

20 THE COURT

21 Cross-examination?

22 MR DIGGS

23 Yes May it please The Court?

24 CROSS-EXAMINATION BY MR DIGGS

25 Q Ms Putnam, how are you this evening?

1 A Just fine

2 Q Uh -- This -- uh -- meeting with -- uh -- Steven
3 started -- you met him on Saturday?

4 A On Saturday night

5 Q On Saturday night, and spent -- you were with him
6 most of that time -- uh -- until Tuesday midday when he
7 was arrested?

8 A Well, Monday during the day, I worked

9 Q Sure

10 A Uh-huh

11 Q Uh -- But other than that -- when you weren't at
12 work --

13 A And Tuesday, I was at work until he was app --
14 Tuesday was just back and forth on my cell phone

15 Q And he had -- uh -- gotten to the point where he was
16 -- he seemed to be making plans with you about the
17 future?

18 A Yes

19 Q And -- uh -- was making decisions about how he could
20 make that happen?

21 A Yes

22 Q Moving to Augusta, buying business, getting out of
23 one business, getting another one?

24 A Yes He talked about -- He actually said he -- uh
25 -- got a P O Box in Augusta

TESTIMONY OF DANA PUTNAM

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1 Q All right And all of that was absolute fantasy?

2 A Yes, I found that out

3 Q Okay We agree on -- on that?

4 A (Nods in the affirmative)

5 Q Did you ever question him at that time?

6 A No

7 Q Okay

8 A Like I said, during Masters Week, you can believe
9 that there are some very important people in town

10 Q All right Did he -- Did he give the appearance of
11 being such?

12 A Yes, he spoke very, very well

13 Q All right Uh -- At any point, he -- in your
14 presence, did he -- uh -- try to act inappropriately to
15 you, or in your presence toward others?

16 A No, absolutely not

17 Q All right Otherwise, that would've turned -- uh --
18 you against him?

19 A Absolutely He -- He was a Citadel gentlemen

20 Q Okay Uh -- How about telling me -- Let's go to the
21 -- uh -- church service

22 A Yes

23 Q Uh -- What did you tell them about the particular
24 service and why you wanted to sit in a particular
25 location?

1 A Uh -- I told him that my grandmother was at home and
2 -- uh -- she liked to tell -- watch the church on TV
3 And I'd like to show her that I was there in church

4 Q And --

5 A And I also enjoy church

6 Q All right And -- uh -- did you tell him you
7 wanted him to sit somewhere so maybe you could be seen on
8 the TV?

9 A Yes, I did

10 Q And he was aware of that?

11 A Yes, he was

12 Q And did he give you any impression that he was
13 hesitant to do that?

14 A No, he didn't

15 Q That he might be -- uh -- have some concern about
16 being seen on television --

17 A No, he did not

18 Q -- in church services?

19 A In fact, he -- uh -- crossed himself very largely --
20 uh -- in -- in a Baptist service

21 Q In an effort -- I mean, while he was in the presence
22 of the camera -- you know -- while the camera had access
23 to him?

24 A I don't know if he knew that the camera saw him, but
25 he --

TESTIMONY OF DANA PUTNAM

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1 Q Okay

2 A -- he definitely made large cross signs

3 Q All right And what did he wear when he went to
4 the church?

5 A A three-piece suit

6 Q Okay And the time when he appeared to be sick to
7 you, so that you decide

8 Wait a minute I can't -- can't
9 make him leave right now because he's not well

10 Uh -- Tell us about that

11 Do you know -- Can you describe
12 for us -- or do you have any idea what it was?

13 First of all, let me ask you

14 Is there any doubt in your mind
15 as to whether he was sick?

16 A There was no doubt in my mind as to whether he was
17 sick

18 Q All right

19 A He was feverish

20 Q Okay Do you have any idea what caused that?

21 A Well he intimated that -- uh -- perhaps his hand was
22 infected, or perhaps he had an infection

23 Q Okay Did you have see his hand and observe the
24 wound?

25 A Yes

1 Q What did it look like to you? Did it appear to be
2 infected?

3 A Well, it was a -- it was a pretty deep gash

4 Q Uh-huh

5 A Uh -- But there was no puss or anything

6 Q Okay So it didn't -- it didn't appear to you at
7 that point to be something that would make him sick?

8 A But the way he was sweating -- uh -- and so suddenly
9 -- He wasn't sweating We were enjoying dinner And
10 then suddenly -- uh -- he's sweating profusely

11 Q Okay Uh -- Do you know how long he was in that
12 state?

13 A Uh -- Well, I -- I -- you know -- told him to go lay
14 down on the daybed And -- uh -- the daybed has -- uh --
15 iron bars behind it And so he'd put his hand up
16 against one of the bars -- uh -- I guess to kind of take
17 the pressure off it or something

18 And so I left him like that

19 And then I got ready for bed And then I looked in on
20 him once before I went to bed

21 And he was snoring And his arm
22 was still up

23 Q Okay And what night was this?

24 A Uh -- Sunday night

25 Q Sunday night?

TESTIMONY OF DANA PUTNAM

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1 A (Nods in the affirmative)

2 Q And -- uh -- when did you see him next?

3 A Uh -- Monday morning

4 Q About what time, do you believe?

5 A Uh -- I left for work at probably 10 after 8 00

6 Q Okay And he looked -- And did he appear to be
7 okay at that time?

8 A It appeared to be okay to time

9 Q All right And --

10 A But he promised me that he was going to go to the
11 doctor

12 Q Okay Uh -- Now, going back to the previous night,
13 about what time that you go to turn in?

14 A Uh -- Probably 10 00 -- 11 00 PM

15 Q All right So at that time until about 8 00 the
16 next morning, you didn't see him?

17 A No, I did not see him

18 Q Then when you did see him, he seemed to be okay?

19 A He seemed to be better

20 Q But still kind of --

21 A He -- He wasn't sweating Uh -- But I -- It was 4
22 years ago I mean, I think he might have held his hand a
23 little

24 But he wasn't sweating And he
25 wasn't swooning And he wasn't feverish the next day

1 Q All right Now --

2 A If he was at that bad, I might have left in the
3 house But I --

4 Q Right

5 A -- I wasn't comfortable with that

6 Q Now, this bracelet -- I want you to listen to my
7 question And I want you to limit your answer to be a
8 "yes" or no "

9 A Okay

10 Q Uh -- Did he purchase that bracelet for you?

11 A No

12 MR DIGGS

13 Okay

14 Now, Ms Putnam -- uh -- Putnam,
15 I appreciate it

16 Uh -- I don't have any
17 additional questions for you at this time, but thank you
18 for your time this afternoon

19 WITNESS

20 Thank you

21 THE COURT

22 Any redirect?

23 MR HUMPHRIES

24 No, Your Honor I ask that this
25 witness be excused

TESTIMONY OF DANA PUTNAM

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1 THE COURT

2 Any objection to that?

3 MR DIGGS

4 No sir

5 THE COURT

6 All right

7 Ma'am, you are released from
8 your subpoena and may go back to Augusta

9 WITNESS

10 Thank you

11 THE COURT

12 Yes ma'am

13 MR HEMBREE

14 Could we approach?

15 THE COURT

16 Absolutely, please

17 (WHEREUPON Counsel for each
18 party conferred off the record with The Court at the
19 bench at 5 42 PM, November 13, 2009)

20 THE COURT

21 All right, Solicitor, for the --
22 uh -- last witness for the day, if you will call that
23 person?

24 MR HEMBREE

25 Jason Watson

1 THE COURT

2 All right, sir Please come
3 around and be sworn up here, please

4 WITNESS

5 Yes sir

6 WHEREUPON JASON WATSON WAS

7 DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS

8 CLERK

9 Please have a seat Speak into
10 the microphone State your name and spell your last for
11 the record

12 WITNESS

13 It's -- uh -- Jason Watson W-a-
14 t-s-o-n

15 DIRECT EXAMINATION BY MR HEMBREE

16 Q Hi, Mr Watson Who do you work for?

17 A For the State of Georgia

18 Q In what capacity?

19 A As a fugitive investigator

20 Q And with -- with what unit are your assigned
21 permanently?

22 A The -- uh -- United States Marshal Service, Fugitive
23 Task Force

24 Q And what is -- What does the US Marshal Fugitive
25 Task Force typically do?

TESTIMONY OF JASON WATSON

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1 What y'all's job?

2 A Fugitive investigations -- uh -- anybody that's --
3 basically has a warrant -- on the run

4 Q Okay And back on April -- it must have been April
5 the 12th --

6 A Yes sir

7 Q -- 2005, where you assigned to that task force at
8 that time?

9 A Yes sir

10 Q Uh -- Did you have occasion to have your unit called
11 out on April 12th, 2005?

12 A Yes sir

13 Q And tell this jury what were you called out for?

14 A Uh -- To assist in apprehending -- uh -- Steven
15 Stanko

16 Uh -- The information we
17 received was that -- uh -- the Defendant was possibly in
18 the Augusta, Georgia area

19 Q Now, where -- What part of Georgia are you based?

20 Where is your main office?

21 A Atlanta

22 Q Atlanta?

23 A Yes sir

24 Q So what did you guys do? You got the word that he
25 might be in Augusta And what -- what happened next

(

1 A Straight down I-20

2 Q Okay Straight down I-20?

3 A Yes sir

4 Q Load up head straight there?

5 A Yes sir

6 Q Strait to Augusta?

7 A (Nods in the affirmative)

8 Q Uh -- And how many of you went down there?

9 A I would say three quarters of our unit

10 Q How many folks is that?

11 A Anywhere from 15 to 20

12 Q Okay So there's a big -- big --

13 A Yes sir

14 Q -- pretty big contingent?

15 A Yes sir

16 Q How many vehicles, do you recall?

17 A I -- I'd say probably about the same

18 Q Okay Uh -- Now, you were -- you were in a

19 vehicle

20 What do y'all do when you find

21 him, just -- do you have a vehicle that you're looking

22 for?

23 A Yes sir

24 Q All right And a tag for that vehicle?

25 A Yes sir

(

TESTIMONY OF JASON WATSON

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1 Q And y'all -- What do -- Y'all fanned out in Augusta
2 and just -- y'all were looking around?

3 A Yes sir Just different parts of the city,
4 whichever -- I wasn't the actual case investigator during
5 that time

6 Uh -- They're receiving
7 information from the original investigators here in South
8 Carolina -- uh -- as to what part of the city -- uh --
9 that they were getting information he could be in

10 You know, we fan out in the area
11 and start saturating the area in unmarked vehicles -- uh
12 -- to locate the suspect's vehicle

13 Q And did you in fact locate the suspect's vehicle?

14 A Yes sir

15 Q Tell this jury about that -- about that experience

16 A Uh -- I -- I don't recall what part of Augusta we
17 were in I'm not familiar with the city

18 Uh -- We were riding by a -- I
19 guess a shopping center, a strip-mall type area -- uh --
20 when we looked over and noticed a vehicle matching the
21 physical description of the vehicle we had

22 Uh -- Turned into the parking
23 lot --

24 Q That was a truck?

25 A Yes sir I believe it was a small, dark in color,

1 pickup truck

2 Uh -- Turned into the -- uh --
3 parking lot -- uh -- to get a better look at the car, and
4 also the vehicle's license plate

5 Compared the license plate with
6 information we had, and it was a -- it was a match

7 Q All right What did you do? Once you realized
8 that you had found -- located the vehicle -- uh -- in
9 this strip center, how many of you were there?

10 A Uh -- It was just one car of us Uh -- There was, I
11 think, myself and two others in the car

12 Q All right And what did you do when you located
13 the vehicle?

14 A Uh -- Set up on the vehicle, basically watched the
15 vehicle, calling for other units -- you know -- to that
16 area

17 Q And how long did you sit there before -- uh -- you
18 saw the Defendant?

19 A Maybe less than 5 minutes

20 Q Long enough for other -- the other agents to arrive?

21 A No sir (laughs)

22 Q But long -- You waited long enough for the other
23 agents to get there?

24 A No sir

25 Q And tell this jury the circumstances of the first

TESTIMONY OF JASON WATSON

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1 observation you had of Steven Stanko?

2 A Okay We notice the Defendant coming out of a -- I
3 think it was a Mattress Mart or mattress store --

4 Q Okay

5 A -- walking towards the target vehicle

6 Uh -- We positioned ourselves to
7 basically block him from entering his vehicle

8 Uh -- When he got close to the
9 vehicle, we pulled up and -- and put ourselves in between
10 the Defendant and the vehicle

11 Q Okay

12 A And at that time, we got out of the car and took him
13 into custody

14 Q Any -- Would -- Would you describe -- uh -- the --
15 the process of taking him into custody -- was without
16 incident?

17 A Yes sir, uneventful, without incident

18 Q Uneventful?

19 A Yes sir

20 Q Uh -- And once you took this Defendant, did you
21 recognize the Defendant --

22 A Yes sir

23 Q -- when you arrested him?

24 A Yes sir

25 Q Seated over here at the Defense Table?

1 A Yes sir

2 Q Once you took him into custody, your role concluded?

3 A Yes sir

4 Q You turned them over to other law-enforcement
5 officers?

6 A Yes sir

7 Q And that's pretty much the extent of your
8 involvement in this case?

9 A That's it

10 MR HEMBREE

11 Fair enough

12 If you would, please answer any
13 questions Defense Counsel may have

14 THE COURT

15 Cross-examination?

16 CROSS-EXAMINATION BY MS WILLIAMS

17 Q Hi Mr Watson Just briefly I just want to make
18 sure I understood you correctly

19 A Yes ma'am

20 Q That when you guys took Mr Stanko into custody, I
21 think you used the term "it was uneventful and without
22 incident "

23 Is that correct?

24 A Yes ma'am

25 Q Which means it was pretty smooth?

TESTIMONY OF JASON WATSON

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1 A Yes ma'am, very smooth

2 Q No resistance?

3 A None at all

4 Q He didn't fight you?

5 A None at all Once we got out of the vehicle and
6 identified ourselves, the Defendant -- you know -- did
7 what we told him to do And we took him into custody

8 MS WILLIAMS

9 Okay

10 That -- That's all the questions

11 that I have Thank you

12 THE COURT

13 Any -- uh -- reply or redirect?

14 MR HEMBREE

15 None, Your Honor, on redirect

16 We'd ask that -- uh -- Agent

17 Watson be allowed to return to his normal duties

18 THE COURT

19 Any objection?

20 MS WILLIAMS

21 No It's without objection,

22 Your Honor

23 THE COURT

24 All right, sir You are

25 released from your subpoena and may go back to your

1 regular duties

2 WITNESS

3 Thank you, sir

4 THE COURT

5 Thank you

6 All right

7 Ladies and gentlemen, that will

8 -- uh -- conclude the -- uh -- testimony for today

9 Your pads and pens, if you would

10 just leave them in your seats Don't -- uh -- take them

11 with you Just leave them there when they get with you

12 Uh -- The -- uh -- You can just

13 sort of go back to your jury room and kind of assemble

14 there And the -- uh -- the officials will -- uh --

15 gather you up and -- uh -- get you -- uh -- back situated

16 -- uh -- at the hotel, so y'all can kind of settle in

17 And I will see you back -- uh --

18 tomorrow morning

19 They -- uh -- understand to --

20 uh -- have you here back by 8 30 The Clerk intends to

21 have something for you here again in the morning

22 So -- uh -- you'll be back in

23 your jury room by 8 30 tomorrow morning

24 (WHEREUPON The jury empanelled

25 in the case withdrew from the courtroom at 5 50 PM,

CONCLUSION OF THE DAY'S PROCEEDINGS

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1 November 13, 2009, and was no longer present during the
2 following proceedings)

3 THE COURT

4 All right

5 Solicitor, is there anything
6 from the State at this point in time?

7 MR HEMBREE

8 Nothing from the State, Your
9 Honor, although I would just for scheduling purposes, we
10 anticipate that the State's case will be concluded --

11 THE COURT

12 That's what I was going to ask
13 you?

14 MR HEMBREE

15 -- within -- by 10 30 -- 11 00
16 o'clock

17 It's going to be -- uh --

18 THE COURT

19 All right

20 MR HEMBREE

21 -- before noon, certainly

22 THE COURT

23 All right

24 So you definitely intend to --

25 to -- uh -- you expect that -- uh -- probably before

1 lunch that you will be done?

2 MR HEMBREE

3 There is no question in my mind,

4 Your Honor We'll be done before lunch

5 THE COURT

6 All right

7 So -- uh -- Mr Diggs, Ms

8 Williams, y'all understand the State's going to be done

9 tomorrow before lunch So y'all -- y'all be prepared

10 MS WILLIAMS

11 We have some witnesses, Your

12 Honor, we anticipate we -- we think that we're okay

13 getting them in We have one witness that is scheduled

14 to fly in on Sunday And we're doing our best to get

15 him to reschedule the flight, to have him here, we think

16 by --

17 MR DIGGS

18 Your Honor, that's been done

19 But I'm going to ask Your Honor

20 to consider -- uh -- starting at 10 00 on Sunday morning

21 to allow us to meet with a couple of witnesses --

22 THE COURT

23 I'll -- I'll talk to y'all about

24 that

25 MR DIGGS

CONCLUSION OF THE DAY'S PROCEEDINGS

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1 Okay

2 THE COURT

3 But -- uh -- I really don't
4 anticipate that I'm going to be doing that

5 I anticipate that I'm going to
6 have the jury here 8 30 Sunday morning And we'll be
7 starting at 9 00 o'clock

8 But I'll talk to you about it
9 again tomorrow, in the morning

10 MR DIGGS

11 All right Maybe we'll have
12 some news

13 THE COURT

14 All right Thank you

15 MR DIGGS

16 Thank you, Your Honor

17 THE COURT

18 All right

19 See y'all back tomorrow morning,
20 then Thank you very much

21 WHEREUPON, There being nothing
22 further in this matter for the day, the matter was
23 concluded for the day at 5 52 PM, November 13, 2009

24

25

CERTIFICATE

I, the undersigned, H Eugene Buckner, CVR, Official Court Reporter at Large in and for the State of South Carolina, do hereby certify that the foregoing proceedings were taken on the 13th day of November, 2009,

That the within judicial proceedings are, to the best of my ability, an accurate and verbatim transcription of the day's proceedings,

I further certify that I am neither Counsel nor Solicitor to any of the parties in said suit, nor interested in the event of the Cause

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 23rd day of January, 2011

H. Eugene Buckner

H EUGENE BUCKNER, CVR
OFFICIAL COURT REPORTER AT LARGE
15TH JUDICIAL DISTRICT
STATE OF SOUTH CAROLINA

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
 2 COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
 3) (05-GS-26-2927)
 4 STATE)
 5)
 6 VERSUS) TRANSCRIPT OF RECORD
 7)
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STEPHEN CHRISTOPHER STANKO) November 14, 15, 16, 18, 19, 2009
 Conway, S C

B E F O R E

HONORABLE STEVEN H JOHN, Judge, and a jury

A P P E A R A N C E S

J GREGORY HEMBREE, ESQ
 SOLICITOR FOR HORRY COUNTY

FRANCIS A HUMPHRIES, JR., ESQ
 ASSISTANT SOLICITOR FOR HORRY COUNTY

JIMMY A RICHARDSON, II, ESQ
 ASSISTANT SOLICITOR FOR HORRY COUNTY
 ATTORNEYS FOR STATE

WILLIAM I DIGGS, ESQ
 BRANA J WILLIAMS, ESQ
 ATTORNEYS FOR DEFENDANT

DIXIE COX EUBANK
 CIRCUIT COURT REPORTER
 FIFTEENTH JUDICIAL CIRCUIT

(THIS COURT REPORTER WAS REPLACED ON NOVEMBER 13, 2009
 BY CIRCUIT COURT REPORTER, H EUGENE BUCKNER SEE TRANSCRIPT
 PROVIDED BY MR BUCKNER FOR THE NOVEMBER 13, 2009, PORTION OF
 THESE PROCEEDINGS)

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I N D E X

JURY QUALIFICATION (TRANSCRIBED AND FURNISHED PREVIOUSLY)

November 14, 2009

JURY OUT/ON RECORD/JURY IN 1298

WITNESSES DIRECT CROSS RD RC

JAMES GORDON

MR HEMBREE 1299

MS WILLIAMS 1314

NEAL JOHNSON

MR HEMBREE 1317

(NONE) 1319

ANNE PITTS

MR HEMBREE 1320

MS WILLIAMS 1320

KIM A COLLINS, M D

MR HEMBREE 1322

(NONE) 1338

NEAL LIVINGSTON

MR RICHARDSON 1338

(NONE) 1340

JOHN CAULDER

MR RICHARDSON 1340

(NONE) 1342

1		<u>I N D E X</u>	<u>CON'D</u>			
2	<u>WITNESSES</u>		<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
3	BREAK/JURY IN					
4	FRANK DAN DeFREESE					
5	MR HUMPHRIES	1343				
6	(NONE)			1349		
7	STATE RESTS/JURY OUT/MOTIONS			1351		
8	COURT'S RULING			1351		
9	JURY OUT					
10	BRENT E TURVEY					
11	MS WILLIAMS	1361				
12	MR HEMBREE			1380		
13	LUNCH					
14	JURY IN			1402		
15	BRENT E TURVEY					
16	MS WILLIAMS	1403				
17	MR HUMPHRIES			1463		
18	JURY OUT/ON RECORD			1482		
19	THOMAS SACHY, M D					
20	MR DIGGS	1482				
21	MR HEMBREE	1486		1500		
22	MOTIONS			1501		
23	COURT'S RULING			1502		
24	JURY IN			1504		
25						

1	<u>I N D E X C O N ' D</u>				
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
3	BERNARD ALBINIAK				
4	MR DIGGS	1504/1506		1546	
5	MR HUMPHRIES		1506/1544		1548
6	BRYAN WILSON				
7	MS WILLIAMS	1549			
8	MR HEMBREE		1553		
9	JAMES W THRASHER, M D				
10	MR DIGGS	1556		1599	
11	MR HEMBREE		1582		1601
12	END DAY				
13	<u>November 15, 2009</u>				
14	JURY OUT/ON RECORD		1602		
15	JURY IN				
16	RUBEN GUR				
17	MS WILLIAMS	1604		1661	
18	BREAK/JURY IN				
19	MR HUMPHRIES		1655		1666
20	JURY OUT/ON RECORD		1663		
21	JURY IN		1666		
22					
23					
24					
25					

	<u>I N D E X C O N ' D</u>				
	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
1					
2					
3	MARC P EINHORN				
4	MR DIGGS	1667/1673			
5	MR HEMBREE		1671/1682		
6	JURY OUT/BREAK/JURY IN				
7	JOSEPH L WU CHONG-SANG, M D				
8	MR DIGGS	1697			1765/1767
9	LUNCH				
10	MR HUMPHRIES		1753		1766
11	THOMAS SACHY				
12	MR DIGGS	1768/1773			
13	MR HEMBREE		1771/1799/1820		
14	JURY OUT/ON RECORD		1812		
15	COURT TO DEFENDANT (SWORN)		1815		
16	JURY IN				
17	MR DIGGS	1840/1846			
18	JURY OUT/MR DIGGS				
19	JURY IN				
20	MR HEMBREE		1848		
21	JURY OUT/ON RECORD (MOTIONS)		1850		
22	JURY IN (DEFENSE RESTS)		1852		
23	COURT TO JURY/JURY OUT				
24	END DAY				
25					

	<u>I N D E X C O N ' D</u>			
	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u> <u>RC</u>
1	<u>November 16, 2009</u>			
2	JURY OUT/ON RECORD	1856		
3	PAMELA CRAWFORD			
4	MR HEMBREE	1863		
5	COURT'S RULING		1866	
6	JURY IN			
7	PAMELA CRAWFORD			
8	MR HEMBREE	1869		
9	MR DIGGS		1894	
10	JURY OUT/ON RECORD	1911		
11	JURY IN			
12	WILLIAM LESTER BRANNON, JR			
13	MR HUMPHRIES	1912		
14	MS WILLIAMS		1925	
15	KENNETH M SPICER			
16	MR HEMBREE	1938		
17	MR DIGGS		1975	
18	JURY OUT/ON RECORD		2003	
19	COURT'S RULING			
20	JURY IN			
21				
22				
23				
24				
25				

1	<u>I N D E X C O N ' D</u>				
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
3	STATE'S SUMMATION (HUMPHRIES)		2025		
4	BREAK/JURY OUT/ON RECORD		2038		
5	JURY IN				
6	DEFENDANT'S SUMMATION (DIGGS)		2040		
7	OBJECTION/JURY OUT/ON RECORD		2046/2051		
8	JURY IN				
9	CHARGE BY THE COURT		2056		
10	JURY OUT/ (EXCEPTIONS)		2069		
11	JURY IN/COURT TO JURY		2072		
12	JURY OUT TO DELIBERATE @ 4 40 P M		2072		
13	JURY OUT/ON RECORD/JURY IN @ 5 10 P M				
14	VERDICT		2074		
15	JURY POLLED				
16	JURY OUT/MOTIONS		2079		
17	COURT'S RULING		2081		
18	END DAY				
19					
20					
21					
22					
23					
24					
25					

1 ((THERE WAS NO COURT HELD ON TUESDAY, NOVEMBER 17, 2009
 2 DEFENSE DID NOT WAIVE THE ONE DAY BREAK BETWEEN GUILT PHASE AND
 3 PENALTY PHASE)

4 (THE FOLLOWING TAKES PLACE ON NOVEMBER 18, 2009, OUTSIDE
 5 THE PRESENCE OF THE JURY)

6 I N D E X CON'D

7 <u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
8 <u>November 18, 2009</u>				
9 JURY OUT/ON RECORD				2080
10 COURT'S RULING				2083
11 JURY IN				2086
12 STATE'S OPENING (HUMPHRIES)				2088
13 DEFENDANT'S OPENING (WILLIAMS)				2092

14 (ALL EVIDENCE WHICH HAD BEEN PREVIOUSLY INTRODUCED IN THE
 15 GUILT PHASE OF THE TRIAL IS NOW ENTERED IN THE PENALTY PHASE OF
 16 THE TRIAL)

17 ELIZABETH M BUCKNER

18 MR HUMPHRIES 2102

19 MR DIGGS 2113

20 DARRELL LEWIS

21 MR HUMPHRIES 2123

22 MS WILLIAMS 2133

23 JURY OUT/BREAK/JURY IN 2137

24

25

1		<u>I N D E X</u>	<u>CON'D</u>			
2	<u>WITNESSES</u>		<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
3	KATHLEEN A CROLLEY					
4	MR HUMPHRIES	2138				
5	MR DIGGS			2144		
6	RICHARD S LEE					
7	MR RICHARDSON	2150				
8	MS DIGGS			2157		
9	JAMES CARSON JACKSON					
10	MR RICHARDSON	2160				
11	MS WILLIAMS			2164		
12	DON M McALISTER					
13	MR RICHARDSON	2168				
14	MR DIGGS			2177		
15	JOHN ROBERT GAUMER					
16	MR HUMPHRIES	2184				
17	MS WILLIAMS			2191		
18	ROBERT GERALD OWENS					
19	MR HEMBREE	2193				
20	PUBLISHED 911 TAPE			2196		
21	JURY OUT/ON RECORD			2197		
22	JURY IN			2198		
23						
24						
25						

	<u>I N D E X C O N ' D</u>				
	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
1	CHARLES PETRELLA				
2	MR H U M P H R I E S	2198			
3	(NONE)				
4	JURY OUT/ON RECORD			2207	
5	COURT'S RULING			2217	
6	WILLIAM PIERCE				
7	MR H U M P H R I E S	2221		2235	
8	MR D I G G S		2230		
9	KELLY WIRDZEK				
10	MR H E M B R E E	2236			
11	MS W I L L I A M S		2243		
12	SCOTT BERIN BURNS, M D				
13	MR H E M B R E E	2245			
14	MS W I L L I A M S		2262		
15	JURY OUT/ON RECORD			2266	
16	JURY IN			2267	
17	KIM A C O L L I N S, M D				
18	MR H E M B R E E	2267		2285	
19	MR D I G G S		2282		
20					
21					
22					
23					
24					
25					

1		<u>I N D E X C O N ' D</u>			
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
3	CECELIA KOTSIPIAS				
4	MR HEMBREE	2286			
5	MS WILLIAMS		2298		
6	DEBBIE GALLOGLY				
7	MR HEMBREE	2301			
8	(NONE)				
9	ROGER TURNER				
10	MR HEMBREE	2319			
11	(NONE)				
12	STATE RESTS/JURY OUT			2334	
13	END DAY			2335	
14	<u>November 19, 2009</u>			2336	
15	JURY IN			2336	
16	JAMES W THRASHER, JR				
17	MR DIGGS	2337			
18	(NONE)				
19	WANDA REED BROOKS				
20	MS WILLIAMS	2341			
21	(NONE)				
22					
23					
24					
25					

1	<u>I N D E X C O N ' D</u>				
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
3	CLARISSA WENZ				
4	MS WILLIAMS	2345			
5	(NONE)				
6	BARBARA BOLAND				
7	MR DIGGS	2350			
8	MR HEMBREE		2356		
9	HERBERT FRANK SHEALY				
10	MR DIGGS	2357			
11	(NONE)				
12	JOHN FULMER				
13	MR DIGGS	2362			
14	(NONE)				
15	ROGER STEWART				
16	MR DIGGS	2371			
17	MR HEMBREE		2375		
18	RALPH STEVEN BEARDSLEY				
19	MS WILLIAMS	2376			
20	(NONE)				
21	EVELYN C CALIFF				
22	MR DIGGS	2383			
23	MR HUMPHRIES		2403		
24	JURY OUT/DEFENSE RESTS				2408
25	COURT TO DEFENDANT				2409

I N D E X C O N ' D

	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
1					
2					
3					
4	BREAK/JURY IN				2412
5	STATE'S SUMMATION (HEMBREE)				2413
6	DEFENDANT'S SUMMATION (WILLIAMS)				2433
7	DEFENDANT'S SUMMATION (STANKO)				2433
8	DEFENDANT'S SUMMATION (WILLIAMS)				2449
9	JURY OUT/ON RECORD				2459
10	LUNCH/JURY OUT/ON RECORD				2466
11	JURY IN				2467
12	CHARGE BY THE COURT				2467
13	JURY OUT/ADDITIONS, EXCEPTIONS, DELETIONS				2483
14	JURY TO DELIBERATE AT 2 54 P M				2484
15	JURY IN AT 4 15 P M				2486
16	VERDICT				2486
17	JURY POLLED				2488
18	COURT TO JURY/JURY OUT				2490
19	SENTENCING				2494
20	CERTIFICATE OF REPORTER				2498
21	(PLEASE NOTE AN ERROR IN PAGE NUMBERING THERE ARE TWO				
22	PAGES NUMBERED 2080 AND TWO PAGES NUMBERED 2081)				
23	(FOR ALL EXHIBITS WHICH DO NOT SHOW A PAGE NUMBER FOR				
24	ADMISSION INTO EVIDENCE PLEASE SEE TRANSCRIPT PROVIDED BY				
25	ANOTHER REPORTER FOR NOVEMBER 13, 2009,				

E X H I B I T S

(SEE PREVIOUS INDEX FOR C-1 THROUGH 105)

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
C-106	STATE'S REQUEST TO CHARGE	2015/1863	
C-107	ORDER FOR EVALUATION (7/12/06)	1863	
C-108	DEFENDANT'S REQUEST TO CHARGE	2012	
C-109	COPY OF INDICTMENT (05-GS-26-2927)	2024/2073	
C-110	NOTE FROM JURY	2484	
S-001	PHOTO (Mustang)		
S-002	PHOTO (Mustang)		
S-003	PHOTO (ATM)		
S-004	PHOTO (ATM)		
S-005	PHOTO (ATM)		
S-006	PHOTO (ATM)		
S-007	PHOTO (ATM)		
S-008	PHOTO (ATM)		
S-009	PHOTO (ATM)		
S-010	PHOTO (ATM)		
S-011	LING BANK RECORDS		
S-012	PHONE RECORDS - SUBSCRIBER INFORMATION		
S-013	PHONE RECORDS		
S-014	PHOTO (Mustang - Turner's home)		
S-015	PHOTO (Mustang - Turner's home)		
S-016	PHOTO (Turner's home)		

1	<u>E X H I B I T S</u>			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	S-017	PHOTO (Turner's home)		
4	S-018	PHOTO (Turner's bedroom)		
5	S-019	PHOTO (crime scene)		
6	S-020	PHOTO (crime scene)		
7	S-021	PHOTO (crime scene)		
8	S-022	PHOTO (crime scene)		
9	S-023	PHOTO (crime scene)		
10	S-024	PHOTO (crime scene)		
11	S-025	PHOTO (crime scene)		
12	S-026	PHOTO (crime scene)		
13	S-027	PHOTO (crime scene)		
14	S-028	PHOTO (crime scene)		
15	S-029	PHOTO (crime scene)		
16	S-030	PHOTO (crime scene)		
17	S-031	PHOTO (crime scene)		
18	S-032	PHOTO (crime scene)		
19	S-033	PHOTO (crime scene)		
20	S-034	MCDONALD'S RECEIPT		
21	S-035	ELECTRIC SHAVE		
22	S-036	PILLOW		
23	S-037	FIRE CARTRIDGE CASING (see 11/13/09 Transcript)		
24	S-038	FIRE CARTRIDGE CASING (see 11/13/09 Transcript)		
25				

1	<u>E X H I B I T S</u>			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	S-039	CRIME SCENE DIAGRAM		
4	S-040	CUE CASE WITH BUSINESS CARD		
5	S-041	FLORIST RECEIPT		1301
6	S-042	PHOTO (Turner's vehicle)		1301
7	S-043	PHOTO (Turner's vehicle)		1301
8	S-044	PHOTO (Turner's vehicle)		1301
9	S-045	PHOTO (Turner's vehicle)		1301
10	S-046	PHOTO (Turner's vehicle)		1301
11	S-047	PHOTO (Turner's vehicle)		1301
12	S-048	PHOTO (Turner's vehicle)		1301
13	S-049	PHOTO (Turner's vehicle)		1301
14	S-050	PHOTO (Turner's vehicle)		1301
15	S-051	PHOTO (Turner's vehicle)		1301
16	S-052	PHOTO (Turner's vehicle)		1301
17	S-053	PHOTO (Turner's vehicle)		1301
18	S-054	PHOTO (Turner's vehicle)		1302
19	S-055	PHOTO (Turner's vehicle)		1302
20	S-056	PHOTO (Turner's vehicle)		1302
21	S-057	PHOTO (Turner's vehicle)		1302
22	S-058	PHOTO (Turner's vehicle)		1302
23	S-059	DEFENDANT'S HIGH SCHOOL RING		1302
24	S-060	BUSINESS CARD HOLDER		1302
25	S-061	DEFENDANT'S RECEIPT BOOK		1302

1	<u>E X H I B I T S</u>			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	S-062	TAURUS REVOLVER (SERIAL #ND938108)	1302	
4	S-063	VICTIM'S CHECKBOOK	1302	
5	S-064	UNFIRED CARTRIDGES/BOX	1302	
6	S-065	K-MART RECEIPT		
7	S-066	AUTOPSY PHOTO (Turner)	2269	
8	S-067	HOOTER'S RECEIPT		
9	S-068	KEY RING WITH MUSTANG KEY	1302	
10	S-069	KEY RING WITH "SCS"	1302	
11	S-070	ANATOMICAL CHART	1324	
12	S-071	PHOTO (Projectile #1)	1324	
13	S-072	FIRE PROJECTILE #1	1324	
14	S-073	PHOTO (Projectile #2)	1324	
15	S-074	FIRE PROJECTILE #2	1324	
16	S-075	CONVICTIONS - CHARLESTON COUNTY	2094	
17	S-076	CONVICTIONS - BERKELEY COUNTY	2094	
18	S-077	DONATION RECEIPT	2143	
19	S-078	DOCUMENTS GROUPING (McAlister)	2169	
20	S-079	PHOTO (Socastee Library)	2186	
21	S-080	PHOTO (Ling crime scene)	2201	
22	S-081	PHOTO (Ling crime scene)	2223	
23	S-082	PHOTO (Ling crime scene)	2223	
24	S-083	PHOTO (Ling crime scene)	2223	
25	S-084	PHOTO (Ling crime scene)	2223	

1	<u>E X H I B I T S</u>			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	S-085	PHOTO (Ling crime scene)		2223
4	S-086	PHOTO (Ling crime scene)		2223
5	S-087	PHOTO (Ling crime scene)		2223
6	S-088	PHOTO (Ling crime scene)		2223
7	S-089	PHOTO (Ling crime scene)		2223
8	S-090	PHOTO (Ling crime scene)		2223
9	S-091	PHOTO (Ling crime scene)		2223
10	S-092	PHOTO (Defendant's hands)		2229
11	S-093	PHOTO (Defendant's hands)		2229
12	S-094	PHOTO (Defendant's hands)		2229
13	S-095	PHOTO (Defendant's hands)		2229
14	S-096	PHOTO ([REDACTED])		2250
15	S-097	PHOTO ([REDACTED])		2250
16	S-098	PHOTO ([REDACTED])		2250
17	S-099	PHOTO ([REDACTED])		2250
18	S-100	PHOTO ([REDACTED])		2250
19	S-101	PHOTO ([REDACTED])		2250
20	S-102	PHOTO ([REDACTED])		2250
21	S-103	PHOTO ([REDACTED])		2250
22	S-104	PHOTO ([REDACTED])		2250
23	S-105	PHOTO ([REDACTED])		2250
24				
25				

1	<u>E X H I B I T S</u>			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	S-106	911 TAPE		2196
4	S-107	HEAD/NECK CHART (Laura Ling)		2272
5	S-108	FACE CHART (Laura Ling)		2273
6	S-109	BODY CHART (Laura Ling)		2273
7	S-110	NOT ADMITTED		
8	S-111	AUTOPSY PHOTO (L Ling)		2274
9	S-112	AUTOPSY PHOTO (L Ling)		2274
10	S-113	AUTOPSY PHOTO (L Ling)		2274
11	S-114	AUTOPSY PHOTO (Henry Turner)		2274
12	S-115	AUTOPSY PHOTO (H Turner)		2274
13	S-116	AUTOPSY PHOTO (H Turner)		2274
14	S-117	AUTOPSY PHOTO (H Turner)		2274
15	S-118	REPORT OF MEDICAL UNIVERSITY OF SC		1944
16	S-119	DVD (M U S C)		1946
17	S-120	VICTIM IMPACT PHOTO		2286
18	S-121	VICTIM IMPACT PHOTO		2286
19	S-122	VICTIM IMPACT PHOTO		2286
20	S-123	VICTIM IMPACT PHOTO		2286
21	S-124	VICTIM IMPACT PHOTO		2286
22	S-125	VICTIM IMPACT PHOTO		2286
23	S-126	VICTIM IMPACT PHOTO		2286
24	S-127	VICTIM IMPACT PHOTO		2286
25				

E X H I B I T S

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
S-128	VICTIM IMPACT PHOTO		2302
S-129	VICTIM IMPACT PHOTO		2302
S-130	VICTIM IMPACT PHOTO		2302
S-131	VICTIM IMPACT PHOTO		2302
S-132	VICTIM IMPACT PHOTO		2302
S-133	VICTIM IMPACT PHOTO		2302
S-134	VICTIM IMPACT PHOTO		2302
S-135	VICTIM IMPACT PHOTO		2302
S-136	VICTIM IMPACT PHOTO		2319
S-137	VICTIM IMPACT PHOTO		2319
S-138	VICTIM IMPACT PHOTO		2319
S-139	VICTIM IMPACT PHOTO		2319
S-140	VICTIM IMPACT PHOTO		2319
S-141	VICTIM IMPACT PHOTO		2319
S-142	VICTIM IMPACT PHOTO		2319
S-143	VICTIM IMPACT PHOTO		2319
S-144	VICTIM IMPACT PHOTO		2319
S-145	(NOT ADMITTED)		
S-146	VICTIM IMPACT PHOTO		2319

1	<u>E X H I B I T S</u>			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	S-147	DIAGRAM OF LING HOME		2224
4	S-148	DIAGRAM OF [REDACTED]		2250
5				
6	D-01	MODEL OF HUMAN BRAIN (NOT ADMITTED)		
7	D-02	PHOTO OF PET SCAN		1748
8	D-03	PHOTO OF PET SCAN		1748
9	D-04	PHOTO OF PET SCAN		1748
10	D-05	PHOTO OF PET SCAN		1748
11	D-06	PHOTO OF PET SCAN		1748
12	D-07	PHOTO OF PET SCAN		1748
13	D-08	PHOTO OF PET SCAN		1748
14	D-09	PHOTO OF PET SCAN		1748
15	D-10	PHOTO OF PET SCAN		1748
16	D-11	PHOTO OF PET SCAN		1748
17	D-12	PHOTO OF PET SCAN		1748
18	D-13	PHOTO OF PET SCAN		1748
19	D-14	PHOTO OF PET SCAN		1748
20	D-15	PHOTO OF PET SCAN		1748
21	D-16	PHOTO OF PET SCAN		1748
22	D-17	PHOTO OF PET SCAN		1748
23	D-18	PHOTO OF PET SCAN		1748
24	D-19	PHOTO OF PET SCAN		1748
25	D-20	DIAGRAM OF HUMAN BRAIN		1855

<u>E X H I B I T S</u>				
	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1				
2				
3	D-21	GUANTANAMO BAY MEDICAL RECORDS		
4	D-22	MEDICAL RECORDS		1565
5	D-23	PET SCAN VIDEO		1728
6	D-24	NEWSPAPER CLIPPING		
7	D-25	PHOTO (Defendant and others)		
8	D-26	PHOTO (Defendant and others)		
9	D-27	PHOTO (Defendant and dog)		
10	D-28	SCHOOL RECORDS		
11	D-29	CLEMSON INSIGNIA		
12	D-30	POWERPOINT PRESENTATION (Goose Creek High)		
13	D-31	DR GUR'S M R I GRAPHIC	1531	1532
14	D-32	M R I SCAN		1776
15	D-33	DR SACHY'S REPORT		
16	D-34	DR JOSEPH WU'S REPORT		
17	D-35	DR GUR'S REPORT		
18	D-36	DR EINHORN'S REPORT		
19	D-37	DR THRASHER'S REPORT		
20	D-38	HARD COPY (Brent Turvey)		1603
21	D-39	DVD (Brent Turvey)		1603
22	D-40	DR WU'S POWER POINT 1663/1620 (w/d) (1665) (2024)		
23	D-41	SLIDES FROM DR SACHY'S REPORT	2022/2024	
24	D-42	STATEMENT OF DEFENDANT		2134
25	D-43	NOTE FROM YEARBOOK	2346/2347	

E X H I B I T S

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
D-44	YEARBOOK		2348
D-45	DR CALIFF'S PRESENTATION		2407

1 (THE FOLLOWING TAKES PLACE ON NOVEMBER 14, 2009, OUTSIDE
2 THE PRESENCE OF THE JURY)

3 THE COURT All right Counsel, for the record, I
4 would like the let you know that juror, Beverly Pittman,
5 indicates that her aunt passed away Friday A M She says she
6 is the sister of my father, Carl Baker, of North Carolina,
7 arrangements are incomplete

8 At this point in time the Court tends to take no action
9 on that matter

10 All right Is the State ready to proceed?

11 MR HEMBREE Yes, Your Honor

12 THE COURT Defense?

13 MR DIGGS Yes sir

14 THE COURT Very good Ask the jury to come in,
15 please

16 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
17 JURY)

18 THE COURT All right Good morning, ladies and
19 gentlemen I trust everything has been going to your
20 satisfaction outside the courtroom, and if not I'm sure that
21 you will let the Agents know and that will be passed on to me
22 All right

23 Solicitor, are you ready to proceed?

24 MR HEMBREE Yes, Your Honor

25 THE COURT All right Call your next witness

JAMES GORDON - DIRECT BY HEMBREE

1299

1 **MR HEMBREE** The State calls Investigator Jim Gordon
2 to the witness stand

3 **THE COURT** All right, sir Please come around to be
4 sworn, sir

5 **JAMES GORDON**, being first duly
6 sworn, testifies as follows

7 **DIRECT-EXAMINATION BY MR HEMBREE**

8 Q Investigator Gordon, with whom are you employed?

9 A I work with the Richmond County Sheriff's Office in
10 Augusta, Georgia

11 Q Richmond County?

12 A Yes sir

13 Q And what are you assigned duties with Richmond County
14 Sheriff's Office at this time?

15 A I work with the Crime Scene Unit I have since the
16 year 2001

17 Q And did you have occasion on April the 12th of 2005, to
18 be called out to do a crime scene investigation on a Mazda
19 pick-up truck?

20 A I did

21 Q How did you first get involved in that -- in the
22 processing of that truck?

23 A In reference to this I was notified on the 12th that
24 they had a vehicle they needed to have processed I received
25 that vehicle on the 12th and secured it in what's called the

1 vehicle processing bay I waited then until I had received a
2 Search Warrant to continue the processing

3 Q Understood And did you receive that Search Warrant?

4 A I did

5 Q Upon receiving the Search Warrant just tell -- I tell
6 you, just tell this jury a little bit about generally, when
7 you are processing a vehicle for evidence, what is the -- what
8 is the protocol?

9 A General protocol for processing a vehicle first is, you
10 take pictures of it The next is to -- you would do an
11 inventory of the vehicle Following that, depending on what
12 you are looking for in the incident you would start to either
13 fingerprint the vehicle, look for whatever kind of trace
14 evidence you want to look for, and then after that you would
15 collect it from the vehicle

16 Q Okay The -- now when you start -- when you process
17 the vehicle for evidence, it was located at the Sheriff's
18 Office?

19 A Yes, in the vehicle processing bay

20 Q In the vehicle processing bay?

21 A That is correct

22 Q Understood Now, I want to start -- let me ask you,
23 Investigator Gordon, to come down here -- and this may move a
24 little quicker if we do it this way I want to ask you to
25 turn around this way, if you will, kind of stay up close to

JAMES GORDON - DIRECT BY HEMBREE

1301

1 this -- this -- to the microphone here, so the Court Reporter
2 can hear what you are saying, keeping your voice up as much as
3 you can since you don't have the benefit of a microphone

4 I want to go through these exhibits

5 Your Honor, for the record, I've already conferred with
6 Defense Counsel All of these exhibits that we will be
7 referring to are introduced without objection, and we will --
8 we will refer to the ---

9 THE COURT All right Do you want to state the
10 numbers?

11 MR HEMBREE Certainly, Your Honor We will do that
12 first

13 Your Honor, it would be State's 41, 42, 43, 44, 45, 46,
14 47, 48, 49, 50 -- I tell you what, I'll do the fast way It
15 goes from State's 41 through 64, and then State's 68, 69
16 That's all

17 THE COURT All right As I understand it, Mr Diggs,
18 those are being offered by the State, and they are without
19 objection by the Defense?

20 MR DIGGS Yes sir

21 THE COURT All right So State's 41 through 64, 68
22 and 69 are in evidence without objection

23 MR HEMBREE Thank you, Your Honor

24 (PHOTOS AND OTHER ITEMS ADMITTED INTO EVIDENCE AS
25 STATE'S EXHIBIT NUMBERS 41, 42, 43, 44, 45, 46, 47, 48, 49,

1 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64,
2 68, 69) (SEE INDEX FOR COMPLETE DESCRIPTION)

3 Q All right, Investigator Gordon, if you will, I'm just
4 going to go through these and have you describe what these
5 photographs depict

6 State's 42

7 A This is the 1996 -- the vehicle that I received that
8 day What the shot is, is basically you do overview shots of
9 the vehicle when you start It's just a front shot of the
10 vehicle

11 Q State's 43

12 A This is a rear shot of the vehicle Again, for just
13 orientation, description purposes Has a Georgia tag, 709
14 PYJ I'm sorry, South Carolina tag, 709 PYJ

15 Q And other distinguishing features on the rear of the
16 vehicle that you noted?

17 A It has a -- well, in the vehicle there's a blue
18 container, and it also has a Shriner's emblem on it

19 Q State's 44

20 A Driver's side of the vehicle Once again, just a shot
21 to say here is the vehicle If there was any damage in
22 reference to whatever I was investigating it would show the
23 damage

24 Q And finally, State's 45

25 A Passenger side of the vehicle, for the same purpose

JAMES GORDON - DIRECT BY HEMBREE

1303

1 Q Now, upon documenting and photographing -- documenting
2 through photography the outside of the vehicle, what's the
3 next -- what was the next step in this case?

4 A Was -- the next step in this case was to get in the
5 vehicle We opened it up and began to inventory the vehicle
6 Basically during the process of that we recovered and took
7 pictures of items that were in the vehicle

8 Q I want to draw your attention -- did you search the
9 glove compartment?

10 A I did

11 Q Did you find anything that was of evidentiary
12 significance, at least in your mind at that time?

13 A Yes Based on what we were looking for we found the
14 registration for the vehicle in the glove compartment It was
15 just registration, indicated that the vehicle belonged to Mr
16 Henry Turner

17 Q And if you will, tell us what State's 46 depicts

18 A A photograph of the registration, South Carolina
19 vehicle insurance registration and for the vehicle

20 Q Indicating the owner of the vehicle, Henry Turner?

21 A Yes

22 Q I want to take you to the area inside the vehicle, in
23 the console and front seat area Showing you State's 47 in
24 evidence, tell us what we are looking at here

25 A This is the console, just where you put your drinks in

1 the center of the vehicle The console area, the way I
2 describe it is, it's the whole area right there It might not
3 just be that one portion Basically it shows a pack of -- I
4 believe it was an empty pack of basic cigarettes There was a
5 receipt somewhere in there, and a lighter, multiple business
6 cards

7 Q Let me show you State's 49 in evidence What is that a
8 picture of?

9 A That's a picture of a ring with the name "Steve" on it

10 Q Where was that located?

11 A I believe that was in the console also

12 Q And actually, showing you State's 59 in evidence Take
13 a look at that for me and if you can, please identify that for
14 this jury

15 A That would be the ring we found in the console

16 Q And it indicates what?

17 A It indicates on it's -- it has the name "Steve" It
18 also has a date, "1986, Goose Creek High"

19 Q And this is a photograph -- 49 is a photograph of 59?

20 A Taken at the scene, yes, or at the vehicle, yes

21 Q Showing you State's 41 in evidence If you would,
22 please identify that for us

23 A It's a florist -- florist receipt, Amelia's Buds and
24 Blooms Florist, dated 4/11/05

25 Q And what is it -- what is it a receipt -- it's from

JAMES GORDON - DIRECT BY HEMBREE

1305

1 Amelia's Buds and Blooms, but what was purchased? What
2 appears to have been purchased from this receipt?

3 A It -- in Augusta, Georgia, basically, is where this
4 place is A single rose with, and then it says, "BV" for
5 Seven Fifty (\$7 50)

6 Q Seven Dollars and Fifty Cents for a single rose?

7 A That's it

8 Q And this was located, or found in the console area?

9 A That is correct

10 Q And finally, let me show you State's 69 in evidence
11 Identify that for us, please

12 A That is with the other items Whenever you collect
13 something you mark the bag because you won't be looking at it
14 right away, and what this indicates is -- I wrote all this
15 down, a set of keys on a keyring, with -- on the keyring were
16 certain items, basically Do you want me to describe it?

17 Q Sure

18 A You had Kroger's card, a Kroger's thumb card, multiple
19 keys It was on one of these -- it was on this keyring that
20 the keyring -- that the key to start the vehicle was found
21 There was no key when the vehicle first came in, but the key
22 to start the vehicle was found on this key ring There's also
23 a little itty bitty tag here that says, "SCS" Basically
24 that's it

25 Q Okay Now where was this that you got -- you've got a

1 keyring with "SCS" on it ---

2 A Yes

3 Q ---And the key that started the Mazda?

4 A Yes

5 Q Okay So the key to that vehicle?

6 A That's correct

7 Q Where was this keyring and key found?

8 A It was in the center console and there was a little bag
9 there called Ozark Mountain or ---

10 Q If you will, show the jury from -- on State's -- excuse
11 me -- State's 47

12 A Ozark Trail There was a bag there, and that's where
13 the key -- that's what the key was in, the keys -- the set of
14 keys was in

15 Q And was it in a -- where was it in the bag?

16 A In the bag it's just got -- regular duffle bag but it's
17 got side pockets and it was just in one of the side pockets

18 Q Now, taking you to State's 50 If you will tell this
19 jury what that photograph is of

20 A This was another bag also that was in the vehicle
21 This would have been in the -- I believe the passenger seat of
22 the vehicle Basically this was a duffle bag that had a
23 business cardhold -- a metal business cardholder that
24 basically said "Stephen C Stanko" on it

25 Q And State's 60 in evidence

JAMES GORDON - DIRECT BY HEMBREE

1307

1 A That would be the metal business cardholder that was at
2 that location

3 Q If you would, take a look at State's 48 for us and tell
4 us if you can describe that

5 A It was a pullover Hooter's shirt, kind of green, that
6 was in the vehicle It was in one of the bags

7 Q It was in this -- was that in that -- in that duffle
8 bag?

9 A It would have been in that duffle bag

10 Q Yes sir That's the Atlantic duffle bag?

11 A Uh huh (indicating positive)

12 Q Let me draw your attention to State's Exhibit Number
13 68 I know I don't have to keep telling you -- keep -- please
14 keep your voice up

15 A Yes sir I'm sorry

16 Q That's Okay The acoustics in here are not good

17 But State's 68, if you would, tell us where you found
18 this and what it is

19 A This is a keyring, and there were no keys on it It
20 was on the front passenger side floorboard As I -- before,
21 when you put these things in you write all these things down
22 That's my handwriting, my name

23 The keyring, as I said before, had no keys, but it had a
24 Ford Mustang opener, a vehicle -- a thing you push to open car
25 doors and for a Ford Mustang

1 The small knife was on it and a fob with some kind of
2 tool

3 Q Your investigation the -- you were not called upon to
4 search any other vehicles or process any other items of
5 evidence in connection with this case other than the truck
6 Is that correct?

7 A That is correct

8 Q Okay Drawing your attention, Investigator Gordon, to
9 State's 51 If you would, tell us what we are looking at
10 here

11 A This was a Concourse bag that was located in the
12 vehicle also You can see that there is a -- what appears to
13 be a weapon at that location It was inside the bag

14 Q And how big was this Concourse bag, roughly?

15 A It was maybe this big (**indicating**), a black vinyl type
16 thing

17 Q Now, staying with the black Concourse bag in State's
18 52, tell us what we are looking at here

19 A These were the items in the bag When -- because of
20 what we found in it what we did was just place them out to get
21 a better picture of the items that were there

22 Q It appears we see the gun ---

23 A Correct

24 Q ---Some personal hygiene items ---

25 A Uh huh (**indicating positive**)

JAMES GORDON - DIRECT BY HEMBREE

1309

1 Q ---A checkbook

2 A Correct

3 Q Let me show you State's 63 in evidence

4 A This was the checkbook with the name on it of Henry
5 Turner

6 Q And this checkbook of Henry Lee Turner was found in the
7 black Concourse bag along with the gun?

8 A That is correct

9 Q It also appears to be a -- in this photograph, a
10 receipt book

11 A Right The receipt book was marked with number eight,
12 and it had the name of Stephen Stanko on it

13 Q And showing you State's 61 in evidence Could you
14 describe that for us

15 A It has a number eight, and the name Stephen Stanko on
16 it

17 Q Once again, recovered from the Concourse bag?

18 A That is correct

19 Q Let me show you State's 53, 54, and 55, and have you
20 describe for this jury what we are looking at here

21 A Basically this is a pistol It is a Taurus 38 caliber
22 six-shot chrome pistol I don't recall the serial number in
23 my head, but if it's the same one there

24 Q There you go There we go

25 A Serial Number ---

1 Q That's on State's 54

2 A That is correct ND938108 That was the weapon that
3 was in there

4 Q And State's 55

5 A That was -- in the cylinder there were six rounds All
6 of them were live

7 Q So fully loaded?

8 A Correct

9 Q Now, when you take a handgun into evidence do you keep
10 it loaded?

11 A No, not -- well, you might keep it loaded until you
12 finish processing it In this case we didn't have to worry
13 about it because we could locate where the bullets were in the
14 cylinder when we opened it, and remove them for -- and
15 sometimes you do it for safety sake, but it depends

16 Q Okay Did you keep it loaded in this case?

17 A No

18 Q Let me show you State's 62 in evidence and ask if you
19 can describe that for us

20 A This is the weapon I misspoke earlier It was a 357
21 Magnum, not a 38, but you can shoot 38 bullets in a 357
22 Magnum weapon, but you can't shoot a 357 Magnum bullet out of
23 a 38 The bullets that were in the weapon were 38 caliber
24 bullets This would be the weapon that I saw

25 Q And you've got a safety lock on it?

JAMES GORDON - DIRECT BY HEMBREE

1311

1 A That is correct

2 Q That has been -- that was added by you or someone else
3 in evidence?

4 A By someone else

5 Q Okay And this bag that's in the box, if you can
6 identify those for us, Investigator Gordon

7 A Those would be the cartridges that were in the
8 cylinder The -- if you looked at the picture again you could
9 see there were five brass and one silver

10 Q So there's one that's -- they are all 38 specials? Do
11 you want to take a look?

12 A They are all 38 caliber bullets, yes, that is correct
13 Yes, they are all ---

14 Q And would five appear to be of the same make ---

15 A Brand, yes

16 Q ---Brand That would be Winchester?

17 A I think so, yes

18 Q And then the one ---

19 A R dot P, I believe

20 Q R & P, Remington Peters?

21 A Yes

22 Q And those are the bullets that we see in State's 55, I
23 believe Is that right?

24 A Yes, it is That one there There's one silver and
25 five brass

1 Q And now this weapon was turned over to investigators
2 with the ---

3 A Georgetown Police -- Georgetown Sheriff's Office, I
4 believe

5 Q Okay That would be Neal Johnson?

6 A That would be Mr Johnson

7 Q Let me show you State's 56 Tell us what we are
8 looking at there, Investigator Gordon

9 A This was a -- like a camera bag that would have been in
10 the rear cargo area of the truck, and it was just in the back
11 there, is pretty much what it was Inside the bag we found
12 items to include a box of cartridges

13 Q And I'll show you State's 57 and 58, together If you
14 can describe what those photographs depict

15 A Winchester 38 Specials cartridge box, brass
16 cartridges, five of which are missing All of these were live
17 rounds

18 Q I may have missed this, but I -- before taking the
19 photograph of the cartridges that are depicted in State's 58,
20 did you remove any of the cartridges from the box?

21 A No, we did not

22 Q And this is the condition -- you opened the box and
23 this is the condition that you found the cartridges in when
24 you took them out of the black bag?

25 A That is correct

JAMES GORDON - DIRECT BY HEMBREE

1313

1 Q And how many are missing?

2 A There are five cartridges missing

3 Q Now, what type of cartridges are these?

4 A 38 Special

5 Q What brand?

6 A Winchester

7 Q And finally, State's 64

8 A This would be the box of cartridges There are forty-
9 five cartridges in there

10 Q So a full box would be fifty but there are five
11 missing?

12 A Correct

13 Q And y'all have got them taped or covered?

14 A Yes, correct

15 Q Very good

16 Please take the stand

17 A Thank you

18 Q And you turned the handgun over to Neal Johnson with
19 the Georgetown County Sheriff's Office on April 19th of 2005?

20 A It was turned over to him then, yes

21 Q Did you -- other than documenting it, did you change or
22 alter that evidence in any way?

23 A No No

24 Q Any other -- you had no other role in this case I don't
25 believe

1 A Generally, no No sir

2 Q Fair enough

3 Thanks very much, Investigator Gordon Please answer
4 any questions Defense counsel might have for you

5 THE COURT Cross-examination, please

6 MS WILLIAMS Thank you, Your Honor May it please
7 the Court

8 CROSS-EXAMINATION BY MS WILLIAMS

9 MS WILLIAMS Good morning, Officer Gordon

10 A Good morning, Ma'am

11 Q Just a few questions The gun that you located, you
12 said it what kind of gun?

13 A It is a Taurus 357 Magnum Revolver, six-shot

14 Q And it has -- how many -- it's suppose to -- if it's
15 fully loaded how many bullets are suppose to be in it?

16 A If it's fully loaded the cylinder will hold six
17 cartridges

18 Q So there were six in it when you found it?

19 A That is correct

20 Q But there are five missing from the box?

21 A That is correct

22 Q Okay Bear with me

23 A Yes Ma'am

24 MS WILLIAMS Beg the Court's indulgence

25 Q Have -- how long have you been a police officer?

JAMES GORDON - CROSS BY WILLIAMS

1315

1 A About twenty-three years

2 Q What kind of gun do you carry now?

3 A A nine -- correction -- 40 caliber Glock

4 Q A Glock As part of your police training have you ever
5 shot a 357?

6 A I have

7 Q What do they sound like?

8 A It depends on what kind of bullets If you have a 38
9 in it it sounds like a 38 If you have a 357 it's a lot
10 louder

11 Q What's -- I mean, so tell me what the 38 sounds like
12 Can you -- can you tell me that?

13 A I can't explain it except to say it's a very loud
14 noise If you fired a 38 caliber weapon in here it would be
15 loud enough to hurt your ears over here If you fired a 357
16 in here it would probably be loud enough to hurt the ears of
17 the last person down here in the green

18 Q Okay So they are fairly loud?

19 A Yes

20 Q Well, did you find any business cards in the truck?

21 A We did

22 Q Do you know what was on those -- that would be a --
23 that was in this, State's 60?

24 A I do not -- I don't know that there were any in it, I
25 don't recall Okay Mr Stanko's business card was in it

1 There were other business cards in the truck

2 Q Do you recall if there were other business cards that
3 had Mr Stanko's name on it?

4 A They did not

5 Q They did not They were just other business cards?

6 A Correct

7 Q Okay I'm going to look one more time for the picture
8 that I was looking for Beg the Court's indulgence

9 THE COURT Yes Ma'am

10 Q Let me ask you, as part of your inventory in searching
11 this truck did you find -- do you recall if you found some
12 other items in there?

13 A We found lots of items in the vehicle, yes Ma'am

14 Q Do you recall specifically if you found a suitcase?

15 A I don't believe there was a suitcase found There was
16 basically bags, the Concourse bag, the Ozark Trail bag, the
17 camera bag

18 Q Were there some other bags that had some other clothes
19 in it, that you recall?

20 A I would have to look at my notes

21 MS WILLIAMS Thank you I have no further questions

22 THE COURT Any redirect?

23 MR HEMBREE Nothing on redirect, Your Honor

24 THE COURT All right Do you wish the witness to be
25 excused?

NEAL JOHNSON - DIRECT BY HEMBREE

1317

1 MR HEMBREE Yes, we do

2 THE COURT Any objection?

3 MR DIGGS No objection, Your Honor

4 THE COURT All right Sergeant, you are released from
5 your duties You may go back to your regular activities in
6 Richmond County All right, sir

7 Your next witness, Solicitor

8 MR HEMBREE The State calls Detective Neal Johnson to
9 the stand

10 THE COURT All right, Detective, if you would come
11 forward to be sworn, please

12 NEAL JOHNSON, being first duly
13 sworn, testifies as follows

14 DIRECT-EXAMINATION BY MR HEMBREE

15 Q And Neal, are you a detective? Is your rank Detective?

16 A Lieutenant

17 Q Lieutenant I'm sorry I apologize

18 Lieutenant, who do you work with?

19 A Georgetown County Sheriff's Office

20 Q And how long have you been so employed?

21 A Approximately twelve -- twelve years January will be
22 twelve years

23 Q And what are your duties and responsibilities with the
24 Sheriff's Office at this time?

25 A I'm currently the Lieutenant over the Uniform Patrol

1 Division

2 Q Now, prior to that what were your responsibilities?

3 A Prior to that I was the Public Information Officer, and
4 prior to that I was the Evidence Custodian

5 Q Very good And as the Evidence Custodian -- were you the
6 Evidence Custodian back in April of 2005?

7 A I was

8 Q And did you have occasion to retrieve State's Exhibit
9 62 from the Richmond County Sheriff's Office in connection
10 with a criminal investigation?

11 A Yes, I did

12 Q And on what day did you retrieve that?

13 A April 19th, 2005

14 Q And while it was in your custody and control did you
15 change or alter that evidence in any way?

16 A No, I did not

17 Q And at some point did you have occasion to relinquish
18 that piece of evidence to another law enforcement officer?

19 A I did

20 Q Who did you give it to?

21 A Detective Anne Pitts with the Horry County Police
22 Department

23 Q And when did you relinquish that piece of evidence to
24 her?

25 A On April 25th, 2005

NEAL JOHNSON - NO CROSS-EXAMINATION

1319

1 MR HEMBREE I don't have any further questions for
2 you, Lieutenant Please answer any questions Defense counsel
3 might have

4 THE COURT Cross-examination

5 MS WILLIAMS Beg the Court's indulgence just one
6 moment

7 Your Honor, we have no questions for this witness

8 THE COURT All right Is there any reason the witness
9 cannot be excused?

10 MS WILLIAMS Without objection from the Defense, Your
11 Honor

12 THE COURT All right, Lieutenant, you are released
13 from your Subpoena You may go back to your regular duties,
14 sir

15 A Thank you

16 THE COURT Yes sir

17 MR HEMBREE Thank you, Your Honor

18 THE COURT Your next witness, please sir

19 MR HEMBREE The State calls Anne Pitts to the witness
20 stand

21 THE COURT All right, Ms Pitts, if you would come
22 forward, please

23 MS WILLIAMS Your Honor, may we approach?

24 THE COURT Certainly

25 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD)

ANNE PITTS - DIRECT BY HEMBREE
ANNE PITTS - CROSS BY WILLIAMS

1320

1 ANNE PITTS, being first duly sworn,
2 testifies as follows

3 DIRECT-EXAMINATION BY MR HEMBREE

4 Q Ms Pitts, back in April, 2005, with whom were you
5 employed?

6 A The Horry County Police Department

7 Q And in the course of your employment -- I want you to
8 take a look at State's Exhibit 62 in evidence In the course
9 of your employment did you receive this piece of evidence from
10 Lieutenant Neal Johnson of the Georgetown County Sheriff's
11 Office on April the 25th of 2005?

12 A Yes sir

13 Q And did you relinquish control of that piece of
14 evidence to the Evidence Department at the Horry County Police
15 Department?

16 A That's correct

17 Q Please answer any questions Defense counsel has for
18 you Thanks very much

19 THE COURT Cross-examination

20 MS WILLIAMS Just briefly, Your Honor

21 CROSS-EXAMINATION BY MS WILLIAMS

22 Q Good morning, Detective Pitts How are you?

23 A Good morning

24 Q How long have you worked with the Horry County
25 Sheriff's Office -- or, you work for the Police Department,

ANNE PITTS - DIRECT BY HEMBREE
ANNE PITTS - CROSS BY WILLIAMS

1321

1 correct?

2 A Correct

3 Q And how long have you been there?

4 A I'm not currently there I was there for nine years

5 Q Oh really And currently you do -- I'm sorry, I missed
6 that I'm sorry Tell me what you do now

7 A I live in the upstate of South Carolina I'm employed
8 by the South Carolina Department of Public Safety

9 Q Okay And as part of what you did as -- in this case,
10 you got some evidence and transported it, so you are part of
11 the chain of custody in this Is that right?

12 A Correct

13 Q And tell me -- well, one second, please

14 MS WILLIAMS Thank you That's all the questions I
15 have of this witness at this time, Your Honor

16 THE COURT All right Any redirect?

17 MR HEMBREE No, Your Honor

18 THE COURT Do you wish the witness to be excused?

19 MR HEMBREE Yes, please

20 THE COURT Any objection?

21 MS WILLIAMS Without objection, Your Honor

22 THE COURT All right, Ms Pitts, you are released from
23 your Subpoena You may go back to your regular duties now

24 All right, Solicitor, your next witness

25 MR HEMBREE The State calls Dr Kim Collins to the

1 witness stand

2 THE COURT All right, sir If you would -- I'm sorry,
3 Ma'am If you would come around and be sworn, Ma'am

4 KIM A COLLINS, M D , being first
5 duly sworn, testifies as follows

6 DIRECT-EXAMINATION BY MR HEMBREE

7 Q Dr Collins, if you would, please give us the benefit
8 of your training and experience in the field of Forensic
9 Pathology

10 A I'm a physician I went to college at the University
11 of Georgia and I received my Bachelors in Micro-Biology I
12 then attended medical school at the Medical College of Georgia
13 and received my M D Following medical school I went to Wake
14 Forrest University School of Medicine for a five-year combined
15 residency in Pathology, Anatomic and Clinical

16 Following my residency I went to the Medical University
17 of South Carolina where I completed a Forensic Pathology
18 Fellowship, and I was on staff there as a Full Professor of
19 Pathology and Laboratory Medicine, and I performed autopsies,
20 scene investigations, courtroom testimonies for the statement
21 of South Carolina

22 Q Dr Collins, describe to this jury what the field, or I
23 guess the sub-specialty -- what does it mean when you say
24 Forensic Pathology?

25 A Well, Pathology is the study of disease, and most of us

KIM A COLLINS, M D - DIRECT BY HEMBREE

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1 have actually been treated by a pathologist any time you've
2 had your blood drawn, given a urine sample, had a PAP smear
3 All of that is diagnosed and received by a pathologist, and so
4 a pathologist is a physician that diagnoses diseases and works
5 with clinicians to treat patients

6 Now, Forensic Pathology is a division or sub-division of
7 Pathology where we use all the laboratories in the hospital,
8 as well as further training, including work in the autopsy
9 room, to study and investigate unnatural trauma and also
10 death, so we will use the autopsy to determine the cause of
11 death and to determine the manner of death

12 Q How many -- in your career, if you can estimate, how
13 many autopsies have you performed?

14 A Probably around twenty-seven hundred

15 Q And have you been qualified as an expert in the field
16 of Forensic Pathology in courts of record in this State or
17 other states?

18 A Yes, I have

19 Q On roughly how many occasions?

20 A About two hundred or more

21 MR HEMBREE Your Honor, we would submit, or we would
22 offer Dr Kim Collins as an expert in the field of Forensic
23 Pathology

24 THE COURT Do you wish to voir dire the witness as to
25 her credentials?

1 MR DIGGS Your Honor, we don't need to voir dire, and
2 we agree she's qualified

3 THE COURT All right I'm going to qualify the
4 witness to give her opinion

5 MR HEMBREE Thank you, Your Honor

6 Q Dr Collins, were you called upon to conduct an autopsy
7 on the victim in this case, Henry Lee Turner?

8 A Yes We were notified, and we received the body April
9 9th, 2005, and we started the examination at approximately
10 2 30 in the afternoon

11 MR HEMBREE Bear with me just a moment

12 Your Honor, I have conferred with Defense counsel and he
13 has indicated that he has no objection to the introduction of
14 State's 71 -- excuse me -- 70, 71, 72, 73, 74

15 THE COURT So that's 70 through 74 Is that correct?

16 MR HEMBREE That's correct, Your Honor

17 THE COURT And as I understand it, without objection

18 MR DIGGS Correct

19 THE COURT All right So State's 70 through 74 are in
20 evidence without objection

21 MR HEMBREE Thank you, Your Honor

22 (STATE'S EXHIBITS 70 THROUGH 74 ADMITTED INTO EVIDENCE
23 SEE INDEX FOR COMPLETE DESCRIPTION)

24 Q Dr Collins, if you will, explain to the jury the
25 process of conducting the autopsy -- sort of start -- where

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1 you start when you begin the autopsy process with Mr Turner
2 and then proceed

3 A The body was transported to the Medical University in
4 South Carolina, in Charleston, at the request of the Deputy
5 Coroner, Mr Dan Bellamy So when the body came in, what we
6 do first is, we examine the body as it is We photograph the
7 body, noting any abnormalities, certain clothing, etcetera, on
8 the body Then in certain cases, such as in this case, we x-
9 ray the body, because we are looking for any foreign objects,
10 any broken bones, any signs of trauma Then we remove the
11 clothing and we begin the autopsy And an autopsy in a
12 forensic case is always a complete autopsy, meaning that you
13 are looking at all the organs, not necessarily those that deal
14 with the cause of death but all the organ, so we examine the
15 heart, the lungs, the kidneys, the prostate, the brain We
16 examine the arms and the legs, and we notice anything on the
17 outside of the body or on the inside of the body that is
18 normal or abnormal

19 We also then remove the organs, and we dissect the
20 organs and we take tissue samples from each one, and those
21 tissue samples are then processed, and we look at those under
22 the microscope, to look for any diseases or things that you
23 just can't see with the naked eye

24 And also during the autopsy it's a time where we gather
25 evidence, including any foreign material such as bullets We

1 can take fluids for other laboratory tests that I mentioned
2 earlier, in the various pathology laboratories

3 And we also photograph the body We photograph the
4 whole body, the face, any abnormalities or any foreign objects
5 that we find on the body

6 Q And Dr Collins, let's start, I guess, with the
7 external examination Were there any particular defects that
8 you noted in the course of the external examination of Mr
9 Turner?

10 A Yes On the external examination we noticed that there
11 was an abrasion which is like a -- where you scrape off the
12 outer aspect or layer of the skin There was an abrasion on
13 the right forehead, and to the side of the right eyebrow

14 And then we noticed to the thorax, or the trunk of the
15 body, there is a gunshot wound, one on the front of the body
16 on the right chest, and then there was also one on the back of
17 the body

18 Q And I can probably do this easier if I bring this to
19 you Did you make a diagram as part of your examination ---

20 A Yes

21 Q ---Documenting your examination?

22 A Yes

23 Q And State's 70 in evidence, do you recognize that blow-
24 up?

25 A Yes That's a copy of the body diagram which I do have

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1 here This is just the naked man body diagram so that you can
2 see head to toe, front and back, and we have him just standing
3 in anatomical position, with the palm of the hands facing
4 forward, and that way we can diagram locations of any types of
5 trauma, abnormalities, things of that nature

6 THE COURT Solicitor, I don't mean to interrupt, but
7 if you want to stand here and hold it out that way in front of
8 me, probably all the members of the jury could see it then

9 MR HEMBREE Just a moment

10 THE COURT Ma'am, you've just got to remember now,
11 you've got to speak real loud because you are not in front of
12 the microphone

13 Q Now on State's 70, the diagram that you -- you
14 prepared, if you will, indicate where the defects were to the
15 thorax that you've just testified about

16 A When we are labeling gunshot wounds we use letters,
17 because one gunshot wound may have two holes as it goes in and
18 out, so letters is more -- or less confusing, more
19 understandable When we label them (A), (B), (C), (D), we
20 start just arbitrarily from the top of the head to the bottom
21 of the feet Now if one has gunshot wound (A) that does not
22 mean it came before (B) It just means it's located in a
23 higher location

24 And so what you are looking at here, we see the front of
25 the body, near the mid-line, is gunshot wound (A) So this is

1 a round entrance wound that went into the body

2 Also, look -- we'll stay on the front of the body We
3 also noticed below and medial to the left nipple was a purple
4 area that had a bump if you felt it, and what this area was is
5 a bullet underneath, so it did not come out

6 Q Would it be your testimony that it was the bullet that
7 went in this way?

8 A No

9 Q Okay Okay

10 A Then when we turn the body over, below the right
11 shoulder blade is gunshot wound (B), labeled (B) because it's
12 lower on the body, so this is gunshot wound (B) And no other
13 injuries were to the body aside from what I mentioned earlier
14 on the right forehead

15 What we designated here are other external findings such
16 as a scar, a scar, another scar So the wounds are gunshot
17 wound (A), a bruising on the left chest because the bullet is
18 underneath there, and then gunshot wound (B) So (A) and (B)
19 are both entrance wounds So (A) does not connect to (B)
20 They are two separate gunshot wounds, and when we x-rayed the
21 body there were two bullets within the body, so there were two
22 entrance wounds, two shots, (A) and (B)

23 Q And were both of the projectiles recovered during the
24 course of the autopsy?

25 A Yes, they were And we designate bullets When we

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1 recover them we do give them a number, so we had bullet number
2 one, and bullet number two

3 Q While you are here, while you are off the stand, I want
4 to talk about gunshot wound (B) This is a gunshot wound ---

5 A Yes

6 A ---To the back Taking that pointer -- were you able
7 to measure the angle of travel through the body?

8 A Yes The angle of travel means if you stand the person
9 up, such as in this fashion, have them in this position,
10 anatomical position, we connect the dots Gunshot wound (B)
11 entered in this location to the right back It traveled
12 through various organs, and ended up in this location, this
13 bullet here This connected with gunshot wound (B) And when
14 we did the angle of (B), from (B) to where we found the bullet
15 it is going forward, toward his front, into his back toward
16 his front It is going to his left, because remember this is
17 his right back, this is his left chest, so it goes about
18 forty-five degrees from right to left on his body, and
19 slightly downward, so I couldn't even give it a number it was
20 so slightly downward So it's in a straight shot from right
21 to left, is what we are looking at

22 Q And if you would take that pointer and sort of just
23 demonstrate on me the -- basically the point of entry and the
24 angle that the bullet traveled

25 A If my left finger is to the -- I'm sorry -- his right

1 chest is going -- now I'm trying to get backwards -- here we
2 go -- to the left chest It's in this angle Okay So it's
3 not really up and down, it's kind of straight in to his left
4 chest, in that direction

5 Q Dr Collins, the -- you indicated that the bullet
6 traversed or traveled through several organs

7 A Yes

8 Q What organs did it pass through?

9 A As it entered here, in the right back, it went -- it
10 hit ribs seven and eight, in this area, then it went into the
11 heart It went from the right side of the heart through the
12 central part of the heart -- there's a wall in the middle of
13 the heart -- then it went through the left side of the heart
14 and exited the heart into this location, and the heart sits
15 right under the left side of your chest So it went in, it
16 traveled to the left and through -- in and out the heart

17 Q As part of the autopsy do you measure the amount of
18 blood in that -- that you would expect to have been caused by
19 that wound and note that?

20 A Yes, we did

21 Q And tell this jury about that

22 A When we looked inside, around the heart there was sixty
23 milliliters That's about, maybe a fourth of a cup of blood
24 around the heart And then in the left chest, where there's
25 usually no blood, there was four hundred and fifty

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1 milliliters So that's about half of a quart, or half a
2 liter

3 Q All right Tell -- let's talk -- I want to shift gears
4 -- well, let's talk about the gunshot to the front part of the
5 body now

6 A Okay This was gunshot wound (A) And gunshot wound
7 (A), the direction that it went was toward his back, and it
8 went down, and ended up about in this location Right at the
9 bottom of your ribcage, where you can feel your bottom rib,
10 that's where the bullet ended up going, to that location

11 Q And this is -- point to it, please That's where
12 gunshot (A), as you noted with it -- on the diagram here where
13 the (A) is, right there

14 A Right

15 Q That's gunshot (A)

16 A So (A) goes into the right, and it stays on the right
17 side So it's going in and down, so -- get my numbers right -
18 - so it's slightly to the left, about ten degrees, but down,
19 so it's main path was down through the right side of the body

20 Q At a -- what, a forty-five degree angle?

21 A Yes

22 Q So demonstrate on me again, if you will, for this jury,
23 the path of that bullet, the angle of the bullet

24 A Okay It goes in the right chest here, and it comes
25 out about -- if you can imagine where his waist line is, so

1 it's about this direction, is where the bullet traveled And
2 that goes through the right lung, which is understandable
3 The right lung is the organ that's in that area But it also
4 goes into the liver Your liver sits in this region And it
5 goes through the liver as it's making that downward path, so
6 lung and liver

7 Q Now, if you will, tell the jury about the blood-letting
8 that took place as a result of gunshot (A)

9 A When we looked in the chest cavity where there's
10 usually no blood there was only about a hundred milliliters of
11 blood in the right chest, which isn't very much to have gone
12 through an organ that has many blood vessels such as the lung
13 We also looked in the belly area where the liver is It also
14 nicked part of the right kidney, which sits in this region,
15 and there was not any blood in that region So even though
16 the bullet went through the right lung, through the liver, and
17 tore a piece of the kidney there wasn't bleeding going on,
18 which indicates at that point the heart wasn't beating So a
19 little bit, hundred milliliters, which is about maybe a third
20 of a cup of blood, is in the right chest and nothing in the
21 belly

22 Q Based on that -- the difference, significant different,
23 four hundred fifty milliliters, I think you said ---

24 A Yes

25 Q ---Sixty plus four hundred fifty milliliters, on

KIM A COLLINS, M D - DIRECT BY HEMBREE

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1 gunshot wound (B), and then a hundred milliliters, gunshot
2 wound (A), do you have an opinion as to which gunshot was
3 fired first?

4 A It's my opinion that gunshot wound (B) was fired first
5 It caused the bleeding in the left chest, due to the tearing
6 of the heart, but then as it goes through the heart the heart
7 no longer is beating when gunshot wound (A) is fired, and that
8 is why we don't see as much blood, just some oozing from
9 gunshot wound (A) on the right side, and we don't see any in
10 the belly, which was from gunshot wound (A)

11 MR HEMBREE Thank you, Dr Collins Please -- if you
12 would go ahead and take the stand

13 Q Dr Collins, I want to show you State's Exhibits 71 and
14 73, and ask if you can identify these for us

15 A Seventy-one is a photograph taken at the time of
16 autopsy It has my identifier on it, which says "FA", and
17 that stands for "Forensic Autopsy", "05" for 2005, and "217",
18 meaning it was the two hundred and seventeenth case of that
19 year, and it has a number "1", so this is with bullet number
20 one, and then 73 has the same type of identifier It shows
21 the bullet, and it has the number "2", so this is bullet
22 number two

23 Q And if you would -- now bullet number one is -- is --
24 it's got some material in it

25 A Yes Bullet number one has what we described as

1 bloody, but it was a synthetic material that has a -- it
2 stuck, almost melted onto the bullet, and it's about four
3 inches in length so it's a type of material that sometimes if
4 a bullet goes through a material it will stick -- the material
5 will stick to it, and so it's the foreign material that we
6 found in the body

7 Q So it's literally -- the bullet is literally wrapped in
8 this material?

9 A Yes

10 Q Let me show you State's 72 Ask you to identify those
11 for us, please

12 A This is a bullet vial It has my label on it It says
13 bullet number one, and it is a gray cylindrical bullet, and in
14 this bag is that white stained material that was stuck onto
15 bullet number one, and that corresponded to the bullet that we
16 retrieved under the bruised area on the chest from gunshot
17 wound (B)

18 Q Which is -- gunshot wound (B) is the gunshot wound to
19 the back?

20 A Yes

21 Q So bullet one goes with (B) ---

22 A Yes

23 Q And then let me show you State's 70 -- I've showed you
24 73 That's bullet number two?

25 A Yes

KIM A COLLINS, M D - DIRECT BY HEMBREE

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1 Q And that bullet was recovered from which gunshot?

2 A (A) From the lower right back of (A)

3 Q And then finally, showing you State's Exhibit 74
4 Identify that for us, please

5 A This is bullet number two, which was found in the lower
6 back region, from gunshot wound (A)

7 Q Dr Collins, just to -- we started on this and I didn't
8 finish it, and I want to go back a bit to the injuries, the
9 other external injuries that you testified about to the head
10 of Mr Turner

11 A Yes

12 Q Tell the jury exactly what injuries that you observed
13 to his head

14 A To the right side of the forehead was about a one-and-a
15 half by one-and-a-half abrasion, and then there was another
16 abrasion to the side of the right eyebrow that was about a
17 half-inch by a half-inch, which abrasion is just a red area
18 where the skin has been scraped off

19 And then there was also a mark -- a post-mortem pressure
20 mark on his forehead, the right forehead, which means the body
21 was pressed up against something after death, and we get an
22 indentation

23 And when we reflect the scalp and we look underneath the
24 scalp, and we looked at the muscle, which is on the side of
25 the head that you can feel when you chew if you put your hand

1 here, when we looked at that muscle it was bruised underneath
2 there, so that would relate to all the abrasions that we saw
3 on the outside

4 Q So he essentially had a bruise on this side of his
5 face?

6 A Yes

7 Q And he had a pressure -- you said it was a pressure
8 mark from where his head -- as if his head may have -- after --
9 - you said a post-mortem, means after death -- that his head
10 was resting on the floor, perhaps

11 A Resting face down on a first surface, yes

12 Q That would be consistent with his head resting on the
13 floor

14 A Yes

15 Q The bruising to his -- this side of his head, would
16 that be consistent with falling as a result of the gunshots?

17 A Yes We get -- we call them terminal falls, and they
18 are on bony prominent, such as your forehead, your cheek
19 region, and you can see it also underneath the scalp, and we
20 see that as a result of the fall secondary to a gunshot wound,
21 or anything that would cause an individual to collapse

22 Q The -- tell the jury -- tell this jury what defensive
23 wounds are

24 A Defensive wounds are usually located on the knuckles of
25 the hands, the elbows, the surface of the forearm when you are

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1 trying to deflect a blow, such as in a fight, or if there is a
2 knife You are trying to deflect the blade coming toward you
3 Sometimes if the person is on the ground we will see defensive
4 wounds on the bottom of the feet, as they are trying to push
5 their attacker away

6 Q Were there any defensive wounds whatsoever discovered
7 during the autopsy of Mr Turner?

8 A No, there were not

9 Q The -- I guess my final question Within a reasonable
10 degree of medical certainty can you testify as to the cause of
11 death in this case?

12 A Yes, I can

13 Q What was the cause of death?

14 A The cause of death was cardiac perforation, or
15 perforating the heart, due to a penetrating, indeterminant
16 range, gunshot wound to the back, and contributory was a
17 penetrating indeterminate range gunshot wound to the chest,
18 and the word penetrating on both of those, that just means
19 that the bullet remained in the body Perforating would mean
20 the bullet exited the body, but these are penetrating

21 Q And Doctor, within a reasonable degree of medical
22 certainty, can you testify as to the manner of death?

23 A The manner of death is homicide

24 MR HEMBREE Please answer any questions Defense
25 counsel has for you

KIM A COLLINS, M D - NO CROSS-EXAMINATION
NEAL LIVINGSTON - DIRECT BY RICHARDSON

1338

1 **THE COURT** Cross-examination

2 **MS WILLIAMS** Beg the Court's indulgence for just one

3 moment

4 **THE COURT** Yes Ma'am

5 **MR DIGGS** Your Honor, we don't have any questions at

6 this time, of this witness

7 **THE COURT** All right Very good

8 Do you wish the witness to be excused?

9 **MR HEMBREE** Yes, we do, Your Honor

10 **THE COURT** Any objection to the witness being excused?

11 **MR DIGGS** No sir

12 **THE COURT** All right, Doctor, you are released from

13 your Subpoena You may go back to your regular duties

14 A Thank you

15 **THE COURT** Yes Ma'am

16 All right The next witness, please sir

17 **MR RICHARDSON** The State calls Neal Livingston

18 **THE COURT** Please come around to be sworn, sir

19 **NEAL LIVINGSTON**, being first duly

20 sworn, testifies as follows

21 **DIRECT-EXAMINATION BY MR RICHARDSON**

22 Q Mr Livingston, where are you employed?

23 A The Horry County Police Department

24 Q How long have you been with Horry County?

25 A Twenty-four years

KIM A COLLINS, M D - NO CROSS-EXAMINATION
NEAL LIVINGSTON - DIRECT BY RICHARDSON

1339

1 Q Please give us your title or rank

2 A I'm a Detective in the Violent Crimes Unit

3 Q All right, Detective Livingston, were you working on
4 April 4th, 2005 -- excuse me -- April 9th, 2005?

5 A April 9th Yes Yes sir, I was

6 Q Did you have an occasion to go to M U S C ?

7 A Yes sir I attended an autopsy there

8 Q Is that the autopsy performed by Dr Kim Collins?

9 A Yes sir, it was

10 Q What was your purpose for going to that autopsy?

11 A To be present for it, and to collect any items for --
12 collected during that procedure

13 Q I'll pass to you what is already in evidence as State's
14 Exhibit Numbers 72 and 74 Please tell me if you recognize
15 these items

16 A Yes sir, I do

17 Q And what are those items, Detective Livingston?

18 A Two projectiles, and a sealed piece of fabric

19 Q All right When you received those items were they
20 already -- how were they packaged?

21 A Just like they are now They came in these same
22 containers

23 Q And what did you do with those items?

24 A I did the paperwork from the hospital, and also did my
25 own paperwork, transported them back to the Police Department

NEAL LIVINGSTON - NO CROSS-EXAMINATION
JOHN CAULDER - DIRECT BY RICHARDSON

1340

1 in Conway, where they were placed in an evidence locker

2 Q At Horry County?

3 A Yes sir, in the Horry County Police Department

4 Q Are those items substantially the same as when you
5 collected them from Dr Collins?

6 A Yes sir, they appear to be

7 MR RICHARDSON I have no further questions If you
8 would answer any questions Mr Diggs might have for you

9 THE COURT Cross-examination

10 MS WILLIAMS Your Honor, we don't have any questions
11 of this witness

12 THE COURT Do you wish the witness be excused?

13 MR RICHARDSON Yes sir, please

14 THE COURT Any objection?

15 MS WILLIAMS Without objection

16 THE COURT All right, Detective, you are released from
17 your Subpoena You may go back to your regular duties, sir

18 A Thank you, Your Honor

19 THE COURT Yes sir

20 All right, Solicitor, the next witness, please

21 MR RICHARDSON The State would call Robbie Caulder

22 JOHN CAULDER, being first duly
23 sworn, testifies as follows

24 DIRECT-EXAMINATION BY MR RICHARDSON

25 Q Where are you employed, Mr Caulder?

NEAL LIVINGSTON - NO CROSS-EXAMINATION
JOHN CAULDER - DIRECT BY RICHARDSON

1341

1 A The Horry County Police Department

2 Q How long have you been with Horry County?

3 A For eleven years

4 Q All right What is your title, please?

5 A I am a Senior Crime Scene Investigator

6 Q All right So how should -- are you -- do you have a
7 title, I mean, would it be a detective or ---

8 A An investigator

9 Q Investigator All right, Investigator Caulder, did you
10 have an occasion to transport some items to S L E D with
11 regard to this case?

12 A Yes sir, I did

13 Q And what date did you transport those items?

14 A On the 13th of May, 2005

15 Q I'm handing you what has been marked as State's Exhibit
16 Numbers 37, 38, 62, 72 and 74 These are already in evidence
17 Please tell me if you recognize those items

18 (STATE'S EXHIBIT NUMBERS 37 AND 38 WERE ENTERED INTO
19 EVIDENCE ON FRIDAY, NOVEMBER 13, 2009 SEE TRANSCRIPT FOR
20 THAT DAY PREPARED BY COURT REPORTER BUCKNER)

21 A Yes sir These are the items that I took the S L E D
22 on the 13th of May

23 Q Okay What did you do with those items upon taking
24 them to S L E D ?

25 A I released them, or signed them into their evidence

JOHN CAULDER - NO CROSS-EXAMINATION
JURY OUT/BREAK/JURY IN

1342

1 intake there at S L E D

2 Q And during the times that you had these items, State's
3 37, 38, 72, 74 and 62, did you tamper with them or change them
4 in any way?

5 A No sir

6 Q Or did anybody in your presence do so?

7 A No sir

8 MR RICHARDSON I have no further questions

9 Please answer any questions that Mr Diggs might have
10 for you

11 THE COURT Cross-examination

12 MS WILLIAMS Your Honor, we don't have any questions
13 of this witness

14 THE COURT Do you wish to excuse the witness?

15 MR RICHARDSON Yes sir, please

16 THE COURT Any objection?

17 MS WILLIAMS No sir

18 THE COURT All right, sir Investigator, you are
19 released from your Subpoena and excused to go back to your
20 regular duties, sir

21 A Thank you, Your Honor

22 THE COURT All right, very good

23 All right Ladies and gentlemen, why don't we take a
24 short break for about -- it will be about five, ten minutes,
25 and we will come back at that point in time All right

JURY IN
FRANK DAN DeFREESE - DIRECT BY HUMPHRIES

1343

1 Just leave your pads right where they are, please
2 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND WITHIN THE
3 PRESENCE OF THE JURY)

4 THE COURT All right, Solicitor, your next witness,
5 please sir

6 MR HUMPHRIES Thank you, Your Honor

7 THE COURT All right Please come around to be sworn,
8 sir

9 FRANK DAN DeFREESE, being first
10 duly sworn, testifies as follows

11 DIRECT-EXAMINATION BY MR HUMPHRIES

12 Q Mr DeFreese, how are you employed?

13 A I work for the South Carolina Law Enforcement Division,
14 in the Forensic Services Laboratory in Columbia

15 Q And in what particular division are you currently
16 assigned?

17 A I'm assigned to the Department within the laboratory
18 where we do the analysis of Firearm and Tool Mark Evidence

19 Q How long have you been so employed?

20 A For forty-three years

21 Q Would you please give this jury the benefit of your
22 education and training as it relates to those particular
23 duties

24 A My principal training in the field of firearm and tool
25 mark identification occurred at S L E D , at the State Law

JURY IN
FRANK DAN DeFREESE - DIRECT BY HUMPHRIES

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1 Enforcement Division When I was employed I was assigned to
2 the Firearms Laboratory where we do the analysis of firearm
3 and tool mark evidence I undertook a course of instruction
4 that lasted approximately two and a half years I was
5 instructed by the gentleman that established the S L E D
6 Laboratory when S L E D itself was established in 1947 His
7 name was Millard Cate

8 I was also trained by a gentleman named Carl Stokes who
9 was also an examiner at that time

10 After approximately two and a half years of training I
11 began accepting cases on my own, and testifying as to my
12 results I've been doing that since 1969

13 Q Let me ask you, have you ever been offered and accepted
14 as an expert in the area of Firearm and Tool Mark
15 Identification?

16 A I have

17 Q And on how many occasions, if you can estimate?

18 A I actually don't know because I didn't keep track of it
19 for many years, but I estimate it between six hundred and
20 seven hundred times

21 MR HUMPHRIES Thank you

22 Your Honor, at this time we would offer Agent DeFreese
23 as an expert in the field of Firearm and Tool Mark
24 Identification

25 MR DIGGS Your Honor, we don't have any objection

JURY IN
FRANK DAN DeFREESE - DIRECT BY HUMPHRIES

1345

1 **THE COURT** All right Very good I'm going to
2 qualify the witness to give his opinion

3 **MR HUMPHRIES** Thank you, Your Honor

4 Q Agent Defreese, let's do this for the jury, first of
5 all Let's tell them what that Division actually does, the
6 Firearms and Tool Mark Identification Division of the South
7 Carolina Law Enforcement Division

8 A The most requested service that we get is for the
9 identification of bullets and cartridge cases back to the
10 firearms in which they were fired, or where the firearm is
11 lacking to determine whether two bullets were fired by the
12 same firearm barrel

13 The identification is made based on markings that are
14 placed on bullets and cartridge cases at the time of their
15 firing by the firearms in which they were fired Firearms
16 that have riffling inside of their barrels -- now riffling is
17 a series of spiraling grooves that are cut into the inside
18 surface of a gun barrel, and they are put there for the
19 purpose of imparting a spin on the bullet as the bullet is
20 being expelled from the firearm This is done for much the
21 same reason as a quarterback puts a spin on a football, to
22 keep the football from tumbling end over end in flight It's
23 there for stability, but it's been found that by looking at
24 recovered fired bullets there is a signature that the barrel
25 places on bullets fired in that particular gun barrel, and

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FRANK DAN DeFREESE - DIRECT BY HUMPHRIES

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1 where we can obtain bullets that are sufficiently undamaged we
2 can compare these markings and from that conclude that a
3 particular bullet was fired in a particular gun barrel
4 Similarly, with cartridges cases, because the fact that a very
5 high pressure is developed inside the cartridge case to make
6 the bullet leave the gun barrel, this causes marks that may be
7 present on certain surfaces within the firearm to be
8 impressed, or to be imparted on a cartridge case For
9 instance, when the firing pin actually strikes the primer at
10 the rear of a cartridge it leaves an impression When the
11 cartridge expands within the chamber to encounter the firearm
12 itself the imperfections that may be present on the breach
13 face are transferred to the cartridge case In some cases
14 there are chamber marks that are imparted, and in the case of
15 semi-automatic firearms there are sometimes extractor and
16 ejector marks All of these can be identified, and in certain
17 cases we can conclude that a particular cartridge case was
18 fired in one, or only one firearm, or where we have no firearm
19 and several cartridges cases we can conclude whether they were
20 or were not fired by the same gun

21 Q And are these markings unique enough in order to do
22 just that, to identify a fired projectile as coming from a
23 particular weapon, or a fired cartridge casing having been in
24 a particular weapon when it was fired?

25 A They are As I say, when the bullet survives in

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1 sufficiently good condition Now sometimes bullets are not
2 recovered They are so badly damaged that you can't tell
3 And there are some guns that are so worn or improperly made
4 that you may not be able to identify even the test bullets
5 with each other, and in those cases we simply can't tell But
6 where a bullet is in sufficiently good condition, and the
7 firearm is repeatable in it's markings we can conclude that a
8 particular bullet or cartridge case was fired in a specific
9 firearm

10 Q Let me ask you, did you receive certain items of
11 evidence for just that type of testing and comparison in
12 connection with the case of the death of Henry Turner?

13 A I did

14 Q Let me show you a series of exhibits These are all in
15 evidence They are State's 37, 38, 62, and 72 and 74 Let me
16 ask you, first of all, to examine those items and tell me if
17 you can identify them

18 A Yes sir, I can

19 Q And they are?

20 A These are all items of evidence which I have received
21 and previously examined

22 Q Now, if you will, give the jury the benefit of the
23 testing and comparisons you made, and your conclusions, if
24 any

25 A All right, sir The firearm in this case, Item 62, is

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1 a Taurus 357 Magnum caliber double-action revolver It's
2 serial number is ND938108 Along with the revolver there were
3 six unfired cartridges, one Remington cartridge and five
4 Winchester cartridges

5 For the purpose of doing my tests I took this revolver
6 and fired it with ammunition so that I would have known test
7 specimens for comparison purposes We don't directly compare
8 a bullet with a gun barrel or a cartridge case, for instance,
9 with a break face or firing pin We obtain known test
10 specimens and we use them to do our microscopic side-by-side
11 comparison

12 After test-firing the firearm and collecting certain
13 information about it I compared test bullets which I knew that
14 gun had fired with the -- the two bullets, State's Exhibits 72
15 and 74, which were marked bullet number one and bullet number
16 two at autopsy, and I marked my item four and my item five
17 respectfully

18 I found the same matching individual striated markings
19 on both of these bullets, and on test bullets fired by the
20 Taurus revolver From that I was able to conclude that both
21 of these bullets were fired by that Taurus revolver

22 Q Very good

23 A Now, in the case of the two fired cartridge cases,
24 State's Exhibits 37 and 38, while I found some similarities in
25 the firing pin impressions I simply did not find enough in the

FRANK DAN DeFREESE - NO CROSS-EXAMINATION
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1 way of individual markings on either one of these cartridge
2 cases to conclude for certain that they were fired in the
3 Taurus revolver, in State's Exhibit 62 They could have been
4 fired by that revolver, but I just can't say so for certain
5 because there were just not enough markings present for me to
6 make a conclusion

7 Q So they -- all right, they could be included in a group
8 of items -- all right, they could be included in a group of
9 handguns that could have fired them, one of which would be
10 State's 62, this firearm?

11 A Yes State's Exhibit 62 could have fired these two
12 cartridge cases, but they could have been fired by another
13 firearm In some cases I was not able to match all the test
14 cartridge cases fired by State's Exhibit 62 with each other
15 It does not leave all that many markings on cartridge cases

16 Q Very good

17 MR HUMPHRIES Agent DeFreese, thank you Answer any
18 questions Defense may have

19 THE COURT Cross-examination

20 MR DIGGS Your Honor, I don't believe we have any
21 questions of this witness at this time

22 A Thank you

23 THE COURT All right Do you wish to excuse the
24 witness?

25 MR HUMPHRIES I do Thank you, Your Honor

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1 THE COURT Any objection?

2 MR DIGGS No sir

3 THE COURT All right Special Agent, you are excused,
4 released from your Subpoena You may go back to your regular
5 duties

6 A Thank you, sir

7 THE COURT Yes sir

8 Further witnesses on behalf of the State

9 MR HEMBREE No, Your Honor On behalf of the State,
10 State of South Carolina, in the guilt phase of State of South
11 Carolina versus Stephen C Stanko, State rests

12 THE COURT All right Very good

13 All right Mr Diggs, Ms Williams, you have some
14 matters of law for the Court at this point in time?

15 MR DIGGS Your Honor, we have a matter we would want
16 to take up

17 THE COURT All right Very good

18 All right, ladies and gentlemen of the jury, I'm going
19 to need to ask that you go back to your jury room while I take
20 up these matters of law

21 Thank you very much

22 Leave your notepads, please

23 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
24 JURY)

25 THE COURT All right, Mr Diggs or Ms Williams

COURT'S RULING

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1 **MR DIGGS** Your Honor, with respect to the stage of
2 the evidence we would ask for a directed verdict simply
3 because the State's evidence doesn't show sufficiently Mr
4 Stanko's involvement with the actual shooting in the case
5 There is evidence, of course, which puts him at the Turner
6 home earlier in the day He is in possession of the
7 automobile that was -- belonging to Mr Turner There is no
8 evidence though about how Mr Stanko got possession of that
9 automobile, whether it was taken without permission You
10 simply can't rule out a -- an intruder coming into that home
11 and killing Mr Turner subsequent to Mr Stanko's departure,
12 can't rule out the fact that Mr Turner might have given Mr
13 Stanko the access to the vehicle

14 There is no -- if I understood the testimony directly
15 the State's evidence can't put -- can't state that weapon is
16 the murder -- or a murder weapon that might have been used in
17 this case beyond any other category of weapons, and so we
18 would make that motion based on that -- for a directed verdict
19 based on those grounds

20 **THE COURT** All right In -- it's not necessary,
21 Solicitor

22 **MR HUMPHRIES** I don't -- yes, Your Honor

23 **THE COURT** Thank you very much

24 In accordance with the law of the State of South
25 Carolina defendant is entitled to a directed verdict when the

1 State fails to produce evidence of the offense charged My
2 duty and responsibility at this point in time is to look at
3 the existence of evidence, not with it's weight, not it's
4 credibility, believability That's ultimately the jury's job
5 My job is to see whether the evidence actually exists If
6 there is any direct evidence or substantial circumstantial
7 evidence reasonably tending to prove the guilt of the accused
8 then it would be the Court's responsibility to have the case
9 proceed on I would be authorized to grant a directed verdict
10 motion when the evidence merely raises a suspicion that the
11 accused is guilty

12 In this particular matter, looking at the existence of
13 evidence, there is more than sufficient evidence that exists,
14 that if so believed by the jury in this matter would convict
15 the Defendant beyond a reasonable doubt of the crimes charged,
16 both as to murder and armed robbery, therefore, there being
17 more than sufficient evidence being presented by the State to
18 convict the Defendant of the crimes of murder and armed
19 robbery, if that evidence is so believed by the jury, I
20 respectfully decline to grant your directed verdict motion

21 MR DIGGS Your Honor, I thank you

22 There is one additional matter ---

23 THE COURT Yes sir

24 MR DIGGS ---At this time I would like to bring to
25 the Court's attention We had asked earlier in these

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1 proceedings that the State be required, having been put on
2 notice that there would be an issue of insanity in this case,
3 we ask that the State be required to put on evidence in it's
4 case-in-chief of sanity itself, and they have not done that,
5 and so we would make a motion for a directed verdict on that
6 ground, Your Honor, that the State has not proven sanity in
7 it's case, even though it's own evidence raised the issue, I
8 would submit, based on the young man's testimony from Columbia
9 that talked about the irate state of anger that Mr Stanko
10 went into when simply one of the individuals there, Neil, I
11 think was his name, the young man's name, simply questioned
12 the veracity of one of the statements Mr Stanko had made, and
13 that raises the issue, not as fully, of course, as it could be
14 raised, but because the State didn't attempt to put any
15 evidence in it's case-in-chief on that issue, even though the
16 issue is clearly in the case State was put on notice They
17 have been given information about Mr Stanko and his mental
18 state, mental condition They chose not to address it at the
19 case-in-chief stage, and I would ask Your Honor to direct a
20 verdict at this point of not guilty by reason of insanity

21 THE COURT Solicitor, do you wish to respond?

22 MR HUMPHRIES Your Honor, there is absolutely no
23 requirement of law that the State prove sanity I take issue
24 with the Defense's characterization of the issue having been
25 raised by the witness, Ryan Coleman, but in any event, there

1 is no requirement Having been placed on notice certainly
2 doesn't put the burden on the State to prove sanity, and there
3 is nothing in this record, I would submit, that would raise
4 that issue to the point the State would be required to do
5 that, or that it would even create an issue as it relates to
6 the jury, and so we ask that you deny that motion

7 THE COURT All right There being no requirement of
8 the law that the State must prove any defendant, in any
9 criminal case, that they were saying at the time of the
10 alleged crime, that being an issue to be raised as an
11 affirmative defense by the Defense, I respectfully decline to
12 grant your motion

13 And as to the characterization by Mr Coleman as to the
14 Defendant's state or comment, that was just a characterization
15 of how the Defendant was acting at the time, just as Ms
16 Putnam's characterization when she indicated that the
17 Defendant agreed that the other individual that had committed
18 the crime against the child at the hamburger place, that that
19 was wrong and should not have happened, just a
20 characterization of where the -- what the Defendant said or
21 did at the time

22 Thank you very much

23 MR DIGGS Just for the record, too I would ask the
24 Court to incorporate the other motions that we had filed pre-
25 trial with respect to the procedural issue at this time We

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1 had argued those motions in front of Your Honor I don't know
2 if Your Honor specifically ruled on that issue at that time,
3 but ---

4 THE COURT Tell me -- okay, let's be clear here What
5 issue are you talking about?

6 MR DIGGS At that time we -- I had filed a motion,
7 pre-trial motion, having -- asking the Court to declare our
8 requirement that insanity be an affirmative defense, and the
9 requirement that Defense present evidence of insanity, and
10 then allow the State to rebut that in reply, that that be
11 declared unconstitutional I don't know if -- and we also
12 request ---

13 THE COURT All right Well, if you are asking me to
14 declare the current state of the law of the State of South
15 Carolina that it is the responsibility of the defense to raise
16 the defenses of insanity or guilty but mentally ill, and then
17 to allow the State to reply to those when those are raised, I
18 will not declare the current state of law of State of South
19 Carolina to be unconstitutional I find it to be proper, and
20 will be followed in this particular case

21 MR DIGGS Yes And Your Honor, I understand that,
22 and I just wanted to remind the Court we had filed these
23 motions pre-trial, and Your Honor did have a hearing on those
24 issues We argued them right here in the courtroom

25 THE COURT Well, I -- just so -- I've made the ruling

1 now in the record, so it's clear

2 MR DIGGS Thank you

3 THE COURT All right Very good Anything else from
4 the Defense?

5 MR DIGGS Your Honor, we don't have anything else by
6 way of motion at this time I would let the Court know that
7 our first witness will be here in just a few minutes He is
8 here in town, in Conway We have already called and asked him
9 to be here, and it's going to take him probably just a couple
10 of minutes to set up He's going to have a projection onto
11 the screen, over here, for use during the course of his
12 testimony, and so I would just let the Court know of -- where
13 we are at this point

14 THE COURT All right Was there any issue as to that
15 particular witness? And what is that witness's name again?

16 MR DIGGS Your Honor, his name is Brent Turvey

17 Mr Humphries and I have spoken earlier this morning
18 about it, and I don't believe that the State is going to have
19 any objection to any particular testimony that he's going to
20 enter

21 MR HEMBREE That's not accurate, Your Honor He --
22 well, I don't know what he's going to testify to, so I can't
23 say I've read his report I have a lot of objections to
24 what is contained in his report, but I don't -- not knowing if
25 he's going to testify what's in this report perhaps the Court

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1 would like to review it first, and then we can talk about it -

2 --

3 THE COURT Yes sir If you don't mind, please

4 MR HEMBREE ---And then we could talk about it

5 THE COURT Yes sir

6 MR HEMBREE Let me get ---

7 THE COURT Do y'all have a copy of it somewhere,
8 please?

9 MR HEMBREE And I'm not from -- there's -- he doesn't
10 have a C V attached I'm not crystal clear on what his area
11 of expertise is I think it's crime scene analysis, much like
12 a -- like one of our crime scene specialists who would be
13 qualified to testify about ---

14 THE COURT All right Is there particular parts of
15 the report that you would like to specifically point out to
16 me?

17 MR HEMBREE Yes sir Well, I could do it that way,
18 but let me sort of interpose my general concern first, and
19 then we can look at some specifics in the report

20 THE COURT All right

21 MR HEMBREE It appears -- Mr Turvey's analysis of
22 the crime scene in the sense that he -- you know, he finds
23 that there's some blood spatter so it means this, you know,
24 some -- he analyzes some physical evidence in ways that I
25 don't take issue with I think it's consistent with what our

1 witnesses have said It's consistent with additional evidence
2 we could have gotten from witnesses, so parts of that I have
3 no objection But he kind of takes it a next step and he --
4 he not only -- and he not only interprets the crime scene but
5 then he makes this leap and says, well, because the crime
6 scene is like this the Defendant is like that, the Defendant
7 is either suffering from rage or drug abuse, or some sort of
8 mental defect, and he's not qualified, but he takes that extra
9 leap that it outside the area of his expertise, number one, if
10 he's a crime scene analyst, and number two, it's not proper --
11 it's confusing to the jury and it's not within the scope of
12 proper expert testimony It exceeds the scope of proper
13 expert testimony It involves things that certainly Defense
14 counsel could argue There are inferences that could be drawn
15 from that that Defense could argue The State could argue the
16 other side of the inference but to have this expert get on the
17 stand and say, well this is my inference, is confusing to the
18 jury, and it's simply inappropriate for expert testimony

19 THE COURT All right Can you point to those issues
20 in the report that you have issue with?

21 MR HEMBREE Well, my first -- my first objection
22 would be the second paragraph, and he starts talking about the
23 criminal's modis operandi, it's comprised of learned
24 behaviors, and it goes on to say that it -- "It can become
25 less competent and less skillful over time, decompensating by

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1 virtue of a deteriorating mental state or increased use of
2 controlled substances "

3 THE COURT So the entirety of the second paragraph?

4 MR HEMBREE Entirety of the second paragraph, Your
5 Honor

6 THE COURT All right, sir

7 MR HEMBREE There are a few factual findings that we
8 would take issue with He indicates on page two -- I'll just
9 be specific

10 THE COURT Yes sir

11 MR HEMBREE Bottom of the page, page two, Friday,
12 April 8 It says, "Just after midnight there was an
13 altercation " I have -- I take issue with that because there
14 is no evidence that there was an assault It implies that
15 there was a mutual -- some sort of mutual ---

16 THE COURT Well, that -- what he's talking about
17 there, I don't assume the Defense is going to want him to talk
18 about that

19 MS WILLIAMS Your Honor, if I may, as we addressed
20 briefly before the break, when -- part of our initial -- when
21 we spoke with Mr Turvey we were analyzing both scenes and
22 comparing to them We understand in the guilt phase there is
23 nothing about the Ling murder that will come up as a part of
24 this, so the report itself is not going to come into evidence
25 It's there for them We don't intend to submit that

1 His testimony will relate to the reconstruction and his
2 analysis of the Turner scene Now, there is no doubt that
3 some of the things that he has learned from the prior incident
4 -- which, Your Honor, is in testimony I mean, there's a lot
5 of testimony about the car There was testimony that there
6 was a national B O L O out on this car, that it was wanted,
7 that when that car was located they pulled a S W A T Team in,
8 I mean, so there's a prior incident that's out there, but he
9 doesn't intend to discuss any of the details at all of the
10 ling incident And Your Honor ---

11 THE COURT Well, I mean, obviously y'all need to be
12 careful what questions you ask, and what answers he gives

13 MS WILLIAMS Absolutely

14 THE COURT All right Let's just talk about the ---

15 MS WILLIAMS Your Honor ---

16 THE COURT Is he -- does he have any educational
17 training that would go beyond forensic examination or crime
18 scene investigation?

19 MS WILLIAMS Your Honor, absolutely, and I think it
20 might benefit the Court if -- Mr Turvey should be here We -
21 - I mean, he's thinking ---

22 THE COURT All right So he is some type of medical
23 doctor or clinical psychologist of some kind?

24 MS WILLIAMS No sir He is a -- he can recount it
25 better than I can, but basically he has an M S in Forensic --

JURY OUT
BRENT E TURVEY - DIRECT BY WILLIAMS

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1 he's a Forensic Criminologist, he has a B S in Psychology
2 He's got a Master's in Forensic Psychology He's working on
3 his Ph D at this point I mean there's a -- I mean it's a
4 litany of things, and it may be ---

5 THE COURT All right Well, we'll hear from him and
6 I'll see if he's going to be able to testify about anything
7 beyond crime scene analysis as to anything about any kind of
8 mental state or any type of behavior that he might believe
9 about the Defendant in this case

10 All right, we'll hear from him when he gets here Thank
11 you very much

12 Tell me when he gets here, please

13 MS WILLIAMS Yes sir

14 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
15 THE PRESENCE OF THE JURY)

16 THE COURT Yes Ma'am, Ms Williams

17 MS WILLIAMS Your Honor, Mr Turvey is here if I
18 could call him to the stand and ---

19 THE COURT Please

20 BRENT E TURVEY, being first duly
21 sworn, testifies as follows

22 THE COURT Yes Ma'am You may proceed

23 MS WILLIAMS Thank you, Your Honor

24 DIRECT-EXAMINATION BY MS WILLIAMS

25 Q Mr Turvey, can I get you to tell me ---

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BRENT E TURVEY - DIRECT BY WILLIAMS

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1 MS WILLIAMS Your Honor, what we intend to do is
2 present him as an expert in the areas of crime reconstruction
3 and crime scene analysis

4 THE COURT Okay All right, Ma'am

5 MS WILLIAMS Thank you

6 Q Mr Turvey, can you please tell us who your clients
7 are?

8 A Well, first of all, my name is Brent Turvey That's
9 spelled T u r v e y , and I am from Sitka, Alaska, and my
10 clients tend to be attorneys and law enforcement agencies, and
11 very rarely, but once in a while, private individuals from all
12 over the world, contacting me to do case examination For
13 example, I will have defense attorneys contacting me to do an
14 examination related to a particular criminal case when there
15 is a trial pending in a criminal matter, or I may have a civil
16 attorney, either plaintiff or defendant, contact me to do an
17 examination of a -- usually a crime in the context of a civil
18 dispute, or I may have a private individual contact me
19 regarding some questioned death or some questioned event in --
20 that exists in relation to one of their relatives or some
21 loved one, and again, that's the most rarest kind of
22 involvement, but generally it is attorneys

23 And law enforcement will contact me either to give
24 training or to examine unsolved cases For example, I've
25 served on, I think, either three or four serial rape or serial

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1 homicide task forces over the last fifteen years, none of
2 those within the last seven years, so -- or I'll have an
3 agency contact me regarding maybe a false report on a rape, to
4 do an examination on something related to that

5 Q Okay Can you please give us the benefit of your
6 educational background?

7 A Certainly My former education is in the area of
8 undergraduate degree, a Bachelor's of Science in Psychology,
9 and then I have a second Bachelor's of Science in History, and
10 then I have a Master's of Science in Forensic Science

11 Q And are you currently an advance type degrees?

12 A I am

13 Q Can you please tell us about that?

14 A Certainly Since February, or January of this year I
15 have been enrolled as a Ph D candidate at Bond University in
16 their criminology program I'm studying the issue of forensic
17 fraud, which is fraud committed by those proffering evidence
18 to the court, usually in the context of them being either a
19 forensic scientist or an expert of some kind

20 Q Okay Can you please tell me if there are any courses
21 that you have developed, instructed, participated in anything
22 in that arena?

23 A Certainly That tends to be three-fold First of all,
24 I run a private company, and that company is called Forensic
25 Solutions, and we teach online courses and also give workshops

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1 in areas related to criminal investigation, criminal
2 profiling, forensic science, and that's related to the areas
3 of crime reconstruction and crime scene analysis

4 Also, through -- I serve as an adjunct Professor of
5 Justice Studies at Oklahoma City University where I teach a
6 number of online courses related to, again, Crime
7 Reconstruction, Introduction to Forensic Science, Behavioral
8 Evidence Analysis, which is essentially criminal profiling
9 related, a course on serial homicide investigation, a course
10 on miscarriages of justice, and a course on -- right now we
11 are teaching a course on criminal motivations

12 I also, since 19 -- and that's been since 2002, 2003, I
13 think, without looking at my Resume

14 Also I have taught as a adjunct lecturer, and guest
15 lecturer at Bond University since 1999 I go there for about
16 three to four weeks a year, usually in March or April, and I
17 teach at the Criminology Department For example, last year I
18 gave guest lectures in courses on criminal profiling, on
19 forensic criminology, on -- in their Forensic Science, subject
20 -- as a guest lecturer as well So -- and that relationship,
21 as I said, has been going on for about, what, ten years now
22 Geez

23 Q Are you involved in any professional associations,
24 professional activities?

25 A I have

JURY OUT
BRENT E TURVEY - DIRECT BY WILLIAMS

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1 Q Can you tell us about those, please?

2 A Certainly Since -- again, since -- for a number of
3 years now I have been serving as a -- on the Advisory Board
4 for Bond University where I advise on curriculum There's
5 about ten or fifteen of us who sit down every year and we talk
6 about the kind of curriculum they need to develop for their
7 criminology program

8 In addition to that I'm also actively involved as a
9 founding member of the Academy Behavioral Profiling We
10 started working on that organization in 1998 It was me and
11 five other -- excuse me -- four other individuals including a
12 Forensic Psychologist, a retired N Y P D Detective, and a --
13 a retired F B I agent, and -- oh, and a retired California
14 D O J Criminologist, and we -- I serve on the Board of
15 Directors I serve as the Secretary/Treasurer, and I also
16 serve as the Editor of the *Journal of Behavioral Profiling* for
17 that organization

18 Q So when we talk about the journals let's move into
19 that Have you ever published any textbooks, peer review
20 works, chapters, articles, anything of that nature, that you
21 could share with us?

22 A Yes Many times In terms of textbooks, I published
23 my first textbook in 1999, with what was then Academic Press
24 It was called *Criminal Profiling and Introduction to*
25 *Behavioral Evidence Analysis*, and that was done in the second

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BRENT E TURVEY - DIRECT BY WILLIAMS

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1 edition in 2002, and it was done in a Third Edition in 2008,
2 and the editions are -- have grown greatly It's a
3 tremendously involved work It's not just a -- the edition of
4 a chapter, the swapping out of some case materials, each
5 individual work was actually a whole new incarnation of the
6 previous, so they are very distinct and discreet works

7 In 2004, I worked with the then N Y P D sex crimes
8 Detective John Savino, and we authored the -- I authored, and
9 co-authored with him, the rape investigation handbook which
10 was published with Academic Press It was -- many other
11 contributors provided chapters but we also -- we authored the
12 majority of them, and we were served as a primary editors

13 Then in 2006 I published a book that I brought with me
14 today, just as a visual aid for the Court, called **Crime**
15 **Reconstruction**, with Jerry Chisholm He was one of the
16 founding members of the A B P He was a Senior Criminologist
17 with the California Department of Justice He was their
18 Senior Crime Reconstructionist for many years He served with
19 them for thirty-eight years, retiring in 1998, and now he
20 currently works in private practice, and he was my co-author
21 on that text He's also probably my senior since retiring --
22 since I received my Master's of Science in 1996 And that
23 book is all about Forensic Science, crime reconstruction,
24 interpreting evidence, interpreting behavior, and setting
25 limits on those interpretation That book was actually a

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1 foundational document cited in the N A S report which was
2 recently the -- Congress's sort of research on D N A S , the
3 National Academy of Science It's a Federally-funded
4 organization started by Abraham Lincoln which advises Congress
5 on how to spend our money, I guess They decide what useful
6 expenditures are in the area of scientific research, and
7 recently they did a -- essentially a survey of the state of
8 Forensic Science, and this was one of their source texts that
9 they used

10 In 2008, I co-authored a book called *Forensic*
11 *Victimology* with Wayne Petherick, which is all about examining
12 victims in violent crime context related to assessing risks,
13 examining and determining behavior based on evidence, the
14 whole area of the kind of things we are going to be getting in
15 here today

16 Then also in 2009 I published another textbook with
17 William Petherick and Clair Ferguson William Petherick, by
18 the way, is the chair of the -- well, he's head of the
19 Criminology Department at Bond University We authored a
20 textbook called *Forensic Criminology*, which is essentially a
21 textbook on how Criminology is applied to the Criminal Justice
22 System by practitioners, and that was published, again, in
23 2009, and that was, again, a collaborative work We have like
24 ten contributors but we contribute the majority of the
25 chapters and we serve as editors, and that is very much

1 related, again, to things like -- the kind of criminological
2 analyses that we are talking about today, crime scene analysis
3 and crime reconstruction

4 Q And those are the textbooks that you've done Have you
5 contributed, in any way, to other textbooks?

6 A Yes, I have

7 Q Can you tell us about any of those?

8 A Certainly Over the last ten, fifteen years I have
9 contributed many times to different textbook projects
10 Several textbook chapters I've written for a book called
11 **Digital Evidence Computer Crime** by Owen Casey on
12 reconstructing and interpreting digital evidence, and behavior
13 related to different digital evidence, modus operandi
14 behavior, again, related to the topic we will be talking about
15 today

16 And also, I've done submissions for recently a book
17 called **Crime and Deviance**, again by William Petherick, on
18 things like sexual deviance and homicidal deviance, the
19 concepts of homicide and sexuality as they apply to criminal
20 cases, and as they apply to the social construct of deviance

21 Also, I recently finished a -- it's not on my resume but
22 I recently just -- just this week, finished another
23 contribution for M I T -- a contribution for M I T Press on
24 the textbook called **Pathological Altruism**, by Dr Barbara
25 Oakley, and it's about, again, examining victims in the

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1 context of being exaggerators or false reporters

2 Also -- if I may, Your Honor, look at my resume to
3 refresh my memory

4 THE COURT Yes sir

5 A Thank you Just to make sure I haven't forgotten
6 anything vital In terms of -- just in terms of textbook
7 contributions, let's see here, I've done some stuff on -- over
8 the years, on autoerotic fatalities, and one of my articles
9 that I wrote as a grad student was put into -- recently put
10 into a textbook on -- called *Constructions of Deviants* by
11 Adler and Adler, back in 2006

12 I've also written textbook contributions on criminal
13 profiling and the media for a textbook called *Serial Crime*,
14 First and Second Edition of William Petherick's book on serial
15 crime, and that tends to be -- that's the majority of my
16 contributions that would be related to my testimony today

17 Q Well, let me ask you this, just to make sure So, are
18 there any published articles in addition?

19 A In addition, yes, article -- there are many other
20 articles that are absolutely relevant For example, in 1997 I
21 was asked by Academic Press to author four different
22 contributions for the *Encyclopedia of Forensic Science*, on
23 autoerotic fatalities, one on criminal profiling, one on modus
24 operandi, and one on, I believe, offender signature behavior
25 This is not the handwriting signature, but the behavioral

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1 signature that they leave behind at the crime scene So those
2 are directly related, obviously

3 And then there's -- there are very few textbook -- or
4 excuse me -- very few articles that I've written that aren't
5 directly related to this kind of testimony that I would give
6 For example, I've written on false reports, with John Basa, in
7 the *General Behavioral Profiling* Again, it's about examining
8 victim behavior, examining victim and offender behavior in
9 violent crime context, applying the scientific method, asking
10 questions about it, and established what, exactly, happened,
11 and what, exactly, didn't happen

12 Then also I've written extensively on the subject of
13 staged crime scenes This is one of those areas that
14 desperately has needed research over the years, and it's
15 essentially related to crime reconstruction, did the offender
16 do things at the scene to manipulate it to make it look like
17 something else happened, for example, staging any homicide to
18 look like a burglary gone awry by a stranger in a domestic
19 situation where a husband kills a wife and tries to make it
20 look like a burglar did it That would be an example of
21 staging

22 And then also I have done -- published research on mass
23 killings, sexual homicide, and in 2003 I published the -- what
24 became the foundation for my -- what's now my Ph D thesis, so
25 a study of forty-two cases of forensic fraud, and I was asked

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1 to write a -- an article on police-involved domestic violence
2 in 2003 by the Illinois Law Enforcement Executive Forum, and
3 that was published in their -- in their publication

4 Q Let me ask you this, Mr Turvey You mentioned that
5 you authored a book on Criminal Profiling

6 A Yes

7 Q Could you distinguish, just briefly, so the Court and
8 we all understand the difference between what we asked you to
9 perform in this case versus profiling?

10 A Well, there's a real problem right now with the idea of
11 -- with the way the profiling is done in practice by some, by
12 others, and then the way it's perceived by the Court

13 Criminal profiling, as you've seen on television, is
14 essentially a fiction, so if we are watching television and
15 thinking that we understand what criminal profiling is that is
16 not the case It is not psychic It is not based on psychic
17 abilities or intuitions, and criminal profiling is the last
18 step of a very long analytical process

19 There are Criminologist who practice Criminal Profiling
20 just by looking at crime stats and saying, well, this offender
21 -- twenty-five percent of all offenders drive V W bugs,
22 therefore this one possibly a V W bug That is an inductive
23 statistical inference -- that is not what I do -- or saying
24 that eighty percent or eighty-five percent of all homicides
25 are one race committing it against another race, so obviously

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1 if we have a white female victim we must have a white
2 offender That's an inductive inference I don't do that
3 What I do is examine, first, the physical evidence, looking at
4 what the evidence supports, what it doesn't support, and what
5 still needs to be done in terms of establishing the crime
6 That is essentially crime reconstruction So the first
7 quarter of this criminal profiling textbook is about things
8 like staged crime scenes, wound pattern analysis It's about
9 establishing crime scene characteristics, and then the next
10 thing you have to do is, you have to examine the victimology,
11 the history of the victim, their background, their risks,
12 where the danger was coming from in their life So again,
13 it's very much -- and what sort of things happened to the
14 victim, how were they chosen, asking those kinds of questions,
15 doing those kinds of assessments You start doing that -- you
16 start examining the physical evidence You start looking at
17 victim offender behavior You start looking at the
18 victimology, and all of a sudden, once you've done those
19 things, you are doing crime scene analysis That's the --
20 crime scene analysis is a phrase that refers to this entire
21 process of examining these things in a particular context
22 Criminal Profiling is taking all those different individual
23 analyses that we just talked about, all those different types
24 of analyses, putting them together, and seeing what you can
25 infer specifically about the offender So we say, aha, well,

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1 we put this together here, we put this together here,
2 therefore the offender must be "X", and the moment you start
3 inferring offender characteristics in a case where the suspect
4 is unknown, that's where you are dealing with a -- when you
5 are dealing with a criminal profile

6 Q So profiling is when the -- true profiling aspect is
7 basically when the offender is unknown, whereas in this case
8 the offender is known?

9 A Right You can't profile a known offender That would
10 be called a criminal assessment, essentially, and that word
11 gets thrown around a lot and misused a lot The idea of
12 profiling gets thrown around quite a bit inappropriately, or
13 actually more appropriately when a psychologist does it it's a
14 psychological assessment, and in this particular case we are
15 doing a criminologist assessment of decision making related to
16 modus operandi, and crime scene analyses, so you are talking
17 just about the M O, the M O that's evident in the crime
18 scene, just related to the crime scene behavior, not trying to
19 get inside the head of the person You are not trying to
20 specifically attribute sort of specific fantasies or specific
21 needs or wants What you are just trying to do is classify
22 and categorize the behavior that you are seeing

23 Q And I'll clarify Maybe we will go ahead and address
24 this point You mentioned modus operandi Can you explain to
25 the Court what that is to you, and how you use that in your

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1 analysis that you performed?

2 A Certainly When you are examining criminal behavior
3 the modus operandi refers to the method that the offender used
4 to commit the crime Those decisions, those actions, those
5 events took place, that the offender directed, that they --
6 the actions they took, which relate to the actual commission
7 of the crime, the things they needed to do to commit the
8 crime This is in contrast to the concept of signature
9 behavior, which refers to the things the offender did during
10 the commission of the crime that they didn't need to do,
11 things they did which were extraneous, things they spent time
12 on that more -- that speak to their psychological needs and
13 wants and desires, and so -- and this is not some new concept
14 that I just came up with This has been around since the
15 publication of Hans Gros's *Criminal Investigation* in 1894, or
16 1896, I think, so this is not a new idea This is how law
17 enforcement has been doing this for a very long time, and
18 Criminologists have been doing this for a very long time,
19 classifying offender behavior, and trying to understand what
20 that means in terms of how they commit the crime, and from
21 that you can ask -- you can ask questions like, what's the
22 skill, what's the -- what's the rationality, what's the
23 ability, what are the planning, and in this particular case --
24 well, we addressed some of those questions, and in other cases
25 we can -- we can address whether or not there's evidence of

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1 staging, things like that So essentially the M O is the way
2 that the crime has been committed, the choices the offender
3 made in order to commit the crime

4 Q Okay Now let me ask you this Have you ever been
5 called by -- in a court before as an expert?

6 A Many times

7 Q Can you tell me in what areas you have qualified as an
8 expert?

9 A I can

10 Your Honor, may I refer to my Resume?

11 **THE COURT** Yes sir

12 A Thank you

13 I have qualified as an expert in the areas of Forensic
14 Science in general, in the areas specifically of crime
15 reconstruction, interpretation of presumptive blood tests such
16 as Luminol, Phenolphthalein and O-tolidine, crime scene
17 analyses, crime scene investigation, case linkage related to
18 motive and signature analysis, criminal profiling, staged
19 crime scenes, false allegations, and victimology And this
20 has been in both criminal and civil cases, and also has
21 included one Federal case

22 Q But you have never been qualified in South Carolina, is
23 that correct?

24 A No I've only been here a couple of times It's quite
25 beautiful

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1 Q I'm sorry I don't know that I -- I think I -- do you
2 know -- can you estimate the number of times you've been
3 qualified as an expert to testify?

4 A Between twenty-seven and thirty, and I say that because
5 there are certain cases I've done that have been done twice,
6 so I wouldn't -- I wouldn't necessarily count those as a
7 second time because you've already been qualified once before,
8 so you are just testifying again in the same court on a
9 different date, under the same qualifications, so I've
10 testified more times than I have listed on my Resume, but
11 that's because we -- you do things over and over again
12 sometimes

13 MS WILLIAMS Your Honor, we intend to -- or would
14 offer Mr Turvey as an expert only in the areas of crime scene
15 reconstruction and crime scene analysis

16 THE COURT Do you wish to question the witness about
17 his credentials?

18 MR HEMBREE No, Your Honor I believe Mr Turvey is
19 qualified to testify about Crime Scene Analysis and Crime
20 Reconstruction My concern is really about the propriety of
21 the modus operandi testimony The analysis of the actual
22 facts and evidence that's there at the crime scene we don't
23 have any issue with, for his qualifications to testify

24 THE COURT All right Well, let me ask some questions
25 of you, Counsel, so that I understand -- I mean, does he have

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1 a foundational opinion that you are going to ask him?

2 MS WILLIAMS Yes sir Mr Turvey intends to testify
3 that he basically came to three ultimate conclusions It
4 would be -- it would be easier for me to -- let me -- let me
5 let you ask him and then you will hear what I intend to ---

6 THE COURT I'll be glad for you to question him

7 MS WILLIAMS Sir?

8 THE COURT I will be glad for you to question him

9 Q Well, we'll just jump to it And you performed the
10 analysis in this case, correct?

11 A I performed two analyses in this case, yes

12 Q And can you please tell us -- and did you reach a
13 conclusion, and can you tell us what those were?

14 A I reached three different conclusions The first
15 conclusion was related to a reconstruction of some of the
16 events related to the Turner homicide scene, essentially that
17 he was shot in the back first, that he turned around, and at
18 some point was struck, and at some point went to his knees,
19 and then was shot again, and the first shot was through the
20 pillow, the second shot was not through a pillow, and that is,
21 in essence, my opinion There might be some extraneous stuff
22 in there about what the different -- like, for example, the
23 pockets were found pulled out at the scene What does that
24 mean? It might be it was a search for keys, might be a search
25 for something else, but, for example, part of the M O did not

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1 include stealing credit cards or other valuables that would
2 have been in the home, so we eliminate these possibilities as
3 to what the motive might have been, and that's -- again,
4 that's related directly to modus operandi and crime scene
5 analysis, related opinions

6 Q All right You second conclusion

7 A Let me just -- if I may refer to my report, Your Honor

8 THE COURT Yes sir Go right ahead

9 A Thank you

10 The second one that has to do with, again, interpreting
11 the M O , the modus operandi behavior in this case, and it
12 speaks to the facts that these related cases there's a lack of
13 skill, a lack of foresight, and a lack of precaution, and what
14 we are talking about, essentially, is the way the crimes were
15 committed They were committed in such a way that didn't
16 actually evidence any real ability or knowledge or foresight
17 The consequences were not thought out The skill was not
18 really there to affect the crime competently in terms of
19 failing to -- in terms of providing adequate precaution And
20 a precautionary act -- this is a concept, again, that's been
21 around for decades the notion that essentially offenders
22 engage in acts to attempt to hamper law enforcement efforts to
23 identify and apprehend them A great example of a
24 precautionary act would be, say, a mask If the offender is
25 going in to rob a bank and they wear a mask they are trying to

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1 conceal their identity The mask is a precautionary act A
2 rapist wearing a condom is another example of a precautionary
3 act, to try and prevent the transfer of semen, so anything
4 that prevents that identity

5 There are, however -- and this is related to the first,
6 to the second, and third opinion -- there are an abundance of
7 what we call contradictory acts, and this was a term that my
8 colleagues and I came up with about fourteen years ago because
9 we had an abundance of criminal behavior It was really
10 around the area of Meth and mental illness that this came up
11 We had so many offenders -- we were examining cases that had
12 either drug involvement or mental health issues, and they were
13 engaging in acts that didn't actual -- that did not -- they
14 weren't precautionary They didn't prevent identification,
15 but actually they were so bizarre and so irrational they were
16 actually creating risks for the offender They were actually
17 creating the great likelihood that they would be apprehended
18 They were doing things that were going to insure that they
19 would be both identified and apprehended by law enforcement,
20 and because we have that in this case there's a great deal of
21 irrationality There is a great deal -- and that's, again, my
22 third opinion -- that the -- there's -- it's -- that the M O
23 in this case is high risk, and again, the concept of examining
24 M O for risks is -- goes back many, many years, long before
25 I, where we have this idea that we have to examine what risks

1 the offender is taking in their M O in order to acquire what
2 it is they are trying to acquire, the target, in terms of
3 whether it's -- the money is the target or a victim is the
4 target, what risks are they willing to take, and in many cases
5 if -- when the risk far outweighs the gain you are dealing
6 with a different kind of offender, and again, the rationality
7 of the M O , and so for the purposes of my opinion that's
8 where it's going to end I'm going to talk about the M O
9 I'm going to talk about the M O based on the crime scene
10 analysis, the decisions that were made during the commission
11 of the crime, and how those led to increased offender risks of
12 being both identified and apprehended, and that's where I end

13 THE COURT All right Solicitor

14 BY MR HEMBREE

15 Q As to your second finding, Mr Turvey, M O behavior in
16 these related cases lack skill, foresight and precaution

17 A Yes sir

18 Q You make a finding immediately thereafter in your
19 report that they involve rage, substance abuse or mental
20 illness Is that going to be part of your opinion?

21 A Yes Well, essentially I can't tell which is -- which
22 of the three would be the case, in any way When I see this
23 kind of behavior, when you have this kind of irrationality,
24 when you have this lack of precaution you are dealing with an
25 irrational mind, but I have no idea what the origins of that

1 irrational mind are in a given case

2 Q Could it be other things?

3 A Well, those are the three primary things Could it be
4 other things? Yes

5 Q Sure Okay So the ---

6 A Could be better answer that question if I had a
7 hypothetical, but those would be the three that I would go for
8 first

9 Q I mean, isn't it fair to say that the inference -- you
10 are drawing inferences based on your observations?

11 A Yes, I am

12 Q And those inferences could be correct or incorrect?

13 A The less accurate the information I'm using, the less
14 accurate my inferences will be

15 Q I understand And if you are given bad information or
16 you make a bad assumption then your conclusion, or the
17 inference you draw could be incorrect I appreciate that
18 But these inferences that you are drawing, I understand that
19 they are -- you know, you see this in a -- you know, a lot of
20 cases, but -- but, I mean, criminals are unpredictable, in
21 crimes a criminal is unpredictable by their nature, true?

22 A It depends on the crime and the criminal Some crime
23 and criminals are very much unpredictable, and the more you
24 have substance abuse, anger or mental illness, or some sort of
25 other emotional instability that I'm not expressing adequately

1 with these three, the more unpredictable they are, however,
2 there are -- there is a thing called the behavioral
3 consistency theory which says that offenders will be the same
4 across different crimes, and that's true in some cases, and
5 that's not true in other cases, so it's a case by case thing

6 Q But the truth of it is, these are -- these -- this M o
7 -- this M O material, or these M O opinions are merely
8 your -- you look at the -- you look at the crimes, the
9 evidence, and then you start drawing inferences from that
10 inference It's -- they are merely inferences They are not
11 things that you know They are things that you think could be
12 possibilities

13 A Well, they are -- I would not characterize it in that
14 limited fashion What I would say is, this is what we have
15 evidence of in this case We can't go with the things we
16 don't evidence of What we have evidence of is this, and that
17 equals this

18 Q Well, now -- but it doesn't always equal that

19 A Depending There are -- there are variabilities,
20 absolutely

21 Q Yes Exactly So it's an inference That's my --
22 that's what I'm trying to ---

23 A Well, it's an opinion

24 Q It's an opinion Correct

25 A Yes

1 Q It's an opinion And certainly the inferences that are
2 to be drawn from this case, or from the evidence in this case,
3 are inferences that can be argued by counsel, and can be drawn
4 by the jury Those are inferences -- ultimately they are
5 going to have to make a decision about those inferences

6 A And that's -- that's a really great way of putting it,
7 however, the danger is -- especially with the area of
8 Criminology, especially in the advent of television programs
9 which inaccurately portray Criminologists and Criminology
10 Everyone thinks they are an expert in the area of Criminology,
11 and everyone isn't The reality is, when you are doing an
12 M O analysis you are not just kind of looking at the gestalt
13 and sitting back and going, well, I've been doing this a
14 hundred years so I just know -- or twenty-five years and I
15 just can tell, no, there are very specific things you've got
16 to examine, and you have to do it in a very deliberate,
17 analytical fashion You also have to approach it from the
18 correct mind set, which is a scientific one, one of not trying
19 to prove a theory, but disprove it One of not trying to be
20 emotionally involved or attached, and having a vested interest
21 in the outcome, but one of not caring about the outcome, not
22 having -- not caring about the family, not caring about the
23 victims, just looking at the evidence and going, okay, here's
24 what it means, regardless of how I feel, regardless of
25 personal thoughts or beliefs It's a very disciplined,

1 rigorous, methodical process, and not one that everyone can
2 do, and the great danger with -- again, with Criminology, is
3 that many people believe that because they watch a lot of
4 television and they see a lot of movies that they are experts
5 in this area I assure you it is not the case

6 Q All right However, in the United States jurors decide
7 cases

8 A That's a fact, and in my job I see -- as I see it, it's
9 to educate the jury so that when they are making those
10 decisions they have the best quality, the best -- the
11 completest picture of information available, so I don't see
12 myself as the thirteenth juror, in any regard I see myself
13 as a -- an educator When I'm teaching I'm an educator When
14 I'm speaking to a jury I'm an educator, and they can take that
15 information or not, give whatever weight to it they want, and
16 incorporate that into their ultimate finding

17 MR HEMBREE I don't have anything further, Your
18 Honor

19 THE COURT Let me ask you a question, Mr Turvey, if I
20 could Ultimately your conclusion would come down to a
21 statement that you believe the Defendant acted in an
22 irrational manner because of rage, substance abuse or mental
23 illness?

24 A I think that is a -- not to be insulting, Your Honor,
25 but a simplistic reduction, because that's not really what I

1 would say I wouldn't say that with -- to the crime scene
2 evidence, evidence is a modus operandi that's being influenced
3 by one of these three things

4 THE COURT But ultimately that's what you are going to
5 be saying to the jury?

6 A Yes, but I wouldn't use the words, the offender, or I
7 wouldn't be talking specifically about the offender I'm
8 talking about what the evidence shows, because if there were
9 other evidence that would be provided to me I could look at
10 that as well, but what I'm talking about is just what we have

11 THE COURT If you are not talking about the Defendant
12 I don't see the purpose of what he's doing here

13 A There's a great caesium of difference between talking
14 about the crime scene behavior and the criminal, because you
15 take the crime scene behavior and then you use that as a
16 foundation for someone else to talk about the criminal on the
17 behavior I am not a psychologist, and I don't know how it's
18 done in your Court, Your Honor, but in many courts around the
19 United States I'm required to limit my testimony just to what
20 the crime scene says, and that's sort of my objective

21 THE COURT Well, and I appreciate that What I'm
22 concerned about is you opining some opinion that, in the
23 Court's opinion, you may not be qualified to give That's my
24 problem

25 A I'm also concerned about that Yes sir

1 **THE COURT** That's the problem I have

2 **MS WILLIAMS** Your Honor, if I may I don't -- Mr
3 Turvey, I think -- if I may -- I mean the Court is -- what I
4 hear the Court is concerned is, are you going to say that --
5 those exact words, that modus operandi has led up -- I'm going
6 to get the exact words of that, those three things that you
7 narrowed it down to, or are you just going to basically stick
8 to your actual findings, and finding three being that this was
9 an extreme irrational high risk behavior?

10 A That's essentially where I will be The idea of rage,
11 substance abuse or mental illness as co-coun -- as opposing
12 counsel have already mentioned, those are just one of many
13 possible influences on M O , and it would be -- in a case of
14 irrational M O behavior it would be almost silly not to
15 address the possible influences in the things that we look
16 for, but I can't come down and say what they are, and I won't,
17 so ---

18 **THE COURT** I would say to you counsel -- and you tell
19 me if you are wanting the witness to go beyond this I don't
20 see any problem -- let me say it and then you can comment on
21 it Okay I'm asking for a comment from you

22 That the witness would be able to testify as he talked
23 about, the reconstruction of the crime at Turner's house,
24 interpreting the M O to opine there was a lack of skill or
25 foresight, that it was not -- there was no adequate

1 precautions take, or there are contradictory acts that created
2 risks for the Defendant to be identified and/or caught, and
3 then following up that -- all that, to say that he engaged in
4 high risk behavior that far outweighed any potential gain to
5 him What I've got a problem with then is any
6 characterization of this being -- using the words irrational,
7 or using the word, rage, substance abuse, mental illness,
8 those kinds of opinions, as he -- as in number three he says
9 the -- the persistence of bizarre, contradictory and
10 irrational M O behavior is characteristic of unplanned
11 offenses that involve rage, substance abuse or mental illness
12 I would have a problem with that I don't see how, in
13 anything that he has talked about here today, that under the
14 cases of, you know, State v , counsel, Jones I and Jones II
15 he's qualified to give that opinion in any way

16 Again, in the second part of it he said, right after
17 number two, where he says that the M O behavior in these
18 related cases lacks skill, foresight or precaution Don't
19 have any problem with that, but then he follows up with, "This
20 type of M O behavior is characteristic of unplanned offenses
21 that involve rage, substance abuse or mental illness " I
22 don't see how he's qualified to give that opinion at all

23 MR DIGGS Your Honor, what if we struck that line out
24 of the report?

25 MS WILLIAMS Well, the Report is ---

1 **THE COURT** Well, it's not -- the Report is not going
2 in What I'm ---

3 **MR DIGGS** Well, from his testimony

4 **THE COURT** What I'm saying is, that's where I have a
5 question, and see where he oversteps -- for want of a better
6 word, he oversteps his credentials Okay That's -- those --
7 that's where -- when he's talking about that this is, you
8 know, characteristic of those types of things

9 Now, other than that, I really don't see a problem with
10 his testimony and what he is saying It's just when I see
11 that he takes what I perceive to be a leap that is not based
12 in any expertise that he has, based on what he has testified
13 to here today

14 A Can I respond to that, Your Honor?

15 **THE COURT** No sir You may not

16 A Okay All right Thank you

17 **THE COURT** I'm talking to counsel

18 **MS WILLIAMS** Beg the Court's indulgence

19 **THE COURT** Yes Ma'am

20 **MS WILLIAMS** Your Honor, I would first respond that
21 obviously Mr Turvey testified that he's done a tremendous
22 amount of criminal profiling, which is you -- if I understand
23 it correctly is, you analyze everything and you have an
24 unknown perpetrator, so we are trying to figure out what kind
25 of perpetrator we are looking for, what kind of

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1 characteristics, what kinds of behavior, things like that In
2 this situation he didn't have to get to that point, and he --
3 he's discussed a tremendous amount of training to -- that
4 that's part of what he does He analyzes it to look for
5 characteristics of the perpetrator, and that's what I think we
6 are trying to get to

7 But if I may, Your Honor, if I may re-question him, if I
8 could elicit more testimony that might be the Court's ---

9 THE COURT I'll be glad for you to question him I
10 don't have any problem with that

11 MS WILLIAMS Thank you, Your Honor

12 BY MS WILLIAMS CONTINUED

13 Q Mr Turvey, would you please give us, in your opinion,
14 what, in your educational experience, background, training
15 that would make you suitable to testify in that area?

16 A In terms of the effects on M O behavior, the concept
17 of examining modus operandi behavior, and at the same time
18 examining those things that influence them, I've written
19 extensively on the subject, extensively on the issue of M O ,
20 and the things that influence it; such as substance abuse,
21 such as the different motivations I've got multiple chapters
22 in many of the textbooks I've written on the issue of the
23 different types of motive that exists, from profit to rage,
24 power reassurance, power assertiveness, sadistic behavior
25 Motive is an integral part of, again, crime scene analysis

1 You are not talking about the motive of the offender, you are
2 talking about the motive that exists in the behavior For
3 example, if you go to a crime scene and the till is popped
4 open, and there is money taken out, you've got evidence of a
5 profit motive, these kinds of basic 101 level inferences that
6 we are talking about

7 And in terms of the modus operandi, if you have, again,
8 this disjointed, distorted, high risk, low gain modus
9 operandi, what are the things that influence modus operandi
10 This is something I've made a study of my entire career So
11 to suggest that you can study the subject of M O and be an
12 expert in that area, and not have knowledge of the things that
13 influence and impact M O is almost -- it doesn't make sense
14 You have to know the things that impact it You have to have
15 an understanding of not only that things are actually
16 impacting it, but how they impact it For example, I've
17 testified regarding the -- in the past regarding how drugs and
18 alcohol may influence an offender's M O and make them less
19 competent, less skillful, how they may impact a victim's
20 memory so we don't take their statements as clear-cut, and we
21 are required to compare them with physical evidence All
22 these things are part of examining and evaluating M O
23 behavior

24 And you don't come -- like I said before, I would be
25 remiss if I came to a certain opinion about the influence in

BRENT E TUREY - CROSS BY HEMBREE

1391

1 this case if I -- unless I had direct evidence I don't in
2 this particular case There are things, however, that --
3 there are influences that you have to talk about, and you can
4 talk about in general, what are the things that modus operandi
5 are influenced by They are influenced by, say reading
6 materials I've worked cases of serial rapists who collect,
7 for example, my textbooks and another book called *Men Who Rape*
8 by Nick Roth They are refining their M O I have had
9 students who have enrolled in programs who are there to learn
10 to get better, who buy books and take college university
11 courses to get better, or people watch using televisions, and
12 television, and those things affect their M O Those things
13 affect their behavior So I don't discriminate between the
14 issue of substance abuse, the issue of mental illness, or the
15 issue of motivation as it affects M O All these things
16 affect modus operandi What I don't do is, I don't get into
17 the business of diagnosing I don't get into the business of
18 talking about individual toxicology and what that might mean,
19 so I know perfectly clear where I stop and someone else
20 starts And if a Criminologist is not qualified to testify on
21 the issue of what affects modus operandi I would be very
22 interested to know the expert that is, because most
23 psychologists, for example, they don't deal with criminals on
24 a regular basis unless they are doing forensic mental health
25 evaluations all the time A Criminologist only works with

1 criminals, so the Criminologist is uniquely qualified to
2 examine M O behavior and the influences on it

3 Q Let me ask you this Is it safe to say that in this
4 case you don't intend to come in here and say, this particular
5 Defendant was suffering from rage, mental anxiety, mental
6 illness, any of those things at the scene? You are not
7 getting that specific with regard to him at that scene, is
8 that correct?

9 A No, nor would I

10 Q What I think I hear you saying is that the perpetrator
11 of the scene exhibited -- that would be consistent with those
12 characteristics

13 A What I'm saying is, the scene evidences those
14 characteristics, not the perpetrator, and there is a --
15 there's a huge difference

16 THE COURT All right What you are saying is, based
17 upon your analysis of the scene, that whoever committed the
18 crime had to be suffering from rage, substance abuse or mental
19 illness?

20 A No What I'm saying is, those are three of the
21 possible primary influences

22 THE COURT What are all the other possibilities?

23 A I couldn't possibly imagine them I would have to --
24 if someone had an idea ---

25 THE COURT So those would be the only three you intend

1 to tell the jury?

2 A Those are the three that I have seen in my education,
3 training and experience, in the many cases that I have worked
4 Those are the primary ones

5 THE COURT Again, that's where I see him overstepping
6 his credentials Okay He's making an argument where he's
7 bootstrapping his credentials by saying, I've written all
8 these articles This is not going back to the analysis that
9 the Court has to perform under, Counsel, Jones I and Jones II,
10 and to go back to that, so that we are clear about that, those
11 are publications and peer review of the technique, other
12 people that have gone through and looked at what he has done,
13 analyzed it and says they agree with it, and all that he has
14 done He is saying, I've done all these things -- and that's
15 good -- but I don't hear any reports of peer reviews of other
16 people saying, I have taken the analysis that this individual
17 has done, and agree or disagree with it I don't hear about
18 the prior application of this method to the type of evidence
19 involved in this case that we are here about today, quality
20 control procedures used to insure reliability, and the
21 consistency of the method with recognized scientific laws and
22 procedures I just don't see how -- again, I don't have any
23 problem with all of the other things that he is saying They
24 seem to be well-grounded in what is before the Court, and what
25 he has analyzed, and his ability to do, but then to take the

1 next leap and say, this type of M O behavior is
2 characteristic of unplanned offenses that involve rage,
3 substance abuse or mental illness That's where I have the
4 problem Other than that I don't have a problem with it at
5 all

6 MS WILLIAMS So as -- and let's be clear So as long
7 as he doesn't say this type of M O is involved, either rage,
8 substance abuse or mental illness ---

9 THE COURT He takes that next leap, is what I'm
10 talking about The other matters -- again, the reconstruction
11 of the crime at the Turner's house, the interpreting the M O
12 to show lack of skill, foresight, or if you want to classify
13 it as incompetence, with not adequate precautions being taken,
14 contradictory acts, creating risks for the Defendant to be
15 identified or caught, that it's high risk behavior that far
16 outweighs the possible gain Any and all of that I don't have
17 a problem with that Where I see he fails, under our State
18 law, based upon what he has testified to, is when he takes
19 that leap, and I see it's unfounded in anything I've heard
20 here today, to say this type of M O behavior is
21 characteristic of unplanned offenses that involve rage,
22 substance abuse or mental illness I find it completely
23 unfounded in anything I've heard today to say this type of
24 M O behavior is characteristic of unplanned offenses that
25 involve rage, substance abuse or mental illness I find it

1 completely unfounded in anything I've heard today

2 MS WILLIAMS Beg the Court's indulgence for one
3 moment

4 Your Honor, I think that is -- that is fine He will --
5 Mr Turvey has heard your instructions to not say that in
6 court

7 MR DIGGS Your Honor, could I add, we have the
8 record, note our objection, and I think we understand the
9 Court's ruling, and I think we are probably prepared to move
10 on

11 THE COURT All right Is there anything else the
12 State would like to add?

13 MR HEMBREE No, Your Honor I guess -- I don't know
14 if they are going to attempt to introduce the PowerPoint
15 Well here -- we've got a problem We've got a problem we need
16 to take up now And I -- I was provided with this report two
17 days ago, okay First time I heard about this fellow here was
18 two days ago That's okay I didn't complain about it, and
19 the first time I heard -- you know, got his report, two days
20 ago I'm sorry The -- haven't ever been provided a C V
21 Got Dr Sachy's updated report today He is suppose to
22 testify today Judge, you know, these are just -- I mean,
23 flagrant violations of the Scheduling Order we had, numerous
24 meetings we had with the Court, and now -- and now -- and this
25 is -- this ---

1 THE COURT Can I interrupt real quick?

2 MR HEMBREE Yes sir

3 THE COURT Mr Turvey, let me show you this Report
4 here, okay Is that a copy -- look through it and tell me if
5 that's a copy of your Report

6 A It is, indeed

7 THE COURT All right, sir When did you author that?
8 When did you reduce that to writing?

9 A November 6, 2009

10 THE COURT November 6, of 2009

11 A That's the date on the Report

12 THE COURT All right

13 Go ahead, sir

14 MR HEMBREE And we walked back into court from the
15 break and I look up and I see a PowerPoint presentation
16 getting ready to be shown to the jury Judge, I don't know
17 anything about a PowerPoint presentation I've not seen any
18 of it I have not been provided -- even a mention of it, and
19 it would be the State's request that this witness be
20 required -- he can testify I think he's going to be able to
21 testify in accordance with the Court's ruling but, you know, I
22 can't just -- I can't just be stepped on again and again and
23 again and not object to, you know, just the Defense's
24 ignorance, or just ignoring, flagrantly ignoring the discovery
25 process

1 **THE COURT** All right Mr Turvey, when did you
2 produce the materials that you were going to use to project on
3 the screen for the jury's view?

4 A Well, they are reductions from my report, so the
5 findings that are in the PowerPoint presentation are from the
6 report, and they were done last night at the request of
7 counsel, because I learned that the -- many of the things that
8 were in the report were not going to be allowed in to direct
9 testimony, specifically those things related to the Ling
10 homicide scenes And I was under the impression that I would
11 be able to talk about those things in open court, so I had no
12 need to prepare anything separate, but when I learned that it
13 was going to be -- that those things were going to be
14 restricted, last night, I took to the task of putting together
15 a PowerPoint that was a reduction of those opinions, not
16 anything new or anything different, with some photographs
17 inserted that I think are already in evidence

18 **THE COURT** All right Do you have a hard copy of it,
19 counsel?

20 **MS WILLIAMS** Your Honor, I do not have a hard copy of
21 this PowerPoint

22 **THE COURT** So, as we stand here today, other than the
23 witness we don't know what's in it?

24 **MS WILLIAMS** I have not reviewed this with him

25 **THE COURT** So -- that's what I'm saying So as we

1 stand here today the only person that knows what's in the
2 PowerPoint is the witness, correct?

3 MS WILLIAMS And that -- that's fair Yes sir

4 THE COURT All right

5 MS WILLIAMS And Your Honor ---

6 THE COURT What is the State asking me to do?

7 MR HEMBREE I am asking, Your Honor, to confine the
8 witness's testimony to whatever he offers from the -- from the
9 witness stand Certainly if there are photographs that he
10 wants to refer to that are admissible I'm sure that we can
11 work through those, just do it without the PowerPoint

12 MR DIGGS Your Honor, could I make a statement here?

13 THE COURT Yes sir

14 MR DIGGS It's my understanding that the photographs
15 that are encompassed within the PowerPoint are either
16 photographs that were provided to us by the State, or that Mr
17 Turvey took when he had access to the evidence, you know, in
18 the company of the -- Mr Humphries was there, for example,
19 and the crime scene investigator

20 THE COURT Okay And did you -- the ones that he
21 took, did you turn copies of those over to the State?

22 MR DIGGS No Your Honor, I don't know

23 MS WILLIAMS No They were there when he took them

24 MR DIGGS Yes They -- I mean, they were there ---

25 THE COURT I appreciate that

1 MR DIGGS No To my knowledge we haven't done that

2 THE COURT All right Understanding -- you know you
3 had an obligation to do so

4 MR DIGGS Well, I don't have them I mean, that's --

5 -

6 THE COURT If your expert has them you have them

7 MR DIGGS Okay

8 THE COURT Okay We are not playing that kind of
9 semantics Okay If your expert has them and took them you
10 have them, and you have a duty and responsibility, under the
11 laws of our State, to turn them over to the State, and from
12 what you are telling me is, if there are photographs that Mr
13 Turvey took that are in this PowerPoint they have not yet been
14 turned over to the State, even as we sit here right now,
15 correct?

16 MR DIGGS I believe so Yes

17 THE COURT So you have basically put me in a position
18 as to it being impossible to cure the defect

19 MR DIGGS Well, other than allowing the State to look
20 at it right quickly I don't know how long it would take to
21 go through the photographs I would imagine there are
22 probably very few in number

23 MS WILLIAMS Your Honor, I would also like to make
24 sure that that objectionable language isn't in there

25 THE COURT Why don't y'all -- how long is it going to

JURY OUT/ON RECORD
BREAK/JURY OUT/ON RECORD

1400

1 take -- how long is the PowerPoint?

2 A The PowerPoint, I believe, is thirty-three slides long,
3 and with Your Honor's new instruction, I would request,
4 obviously, that I would go through the PowerPoint and make
5 sure that the objectionable language you've got in there I
6 would have to take out I can only think of two instances in
7 there, and I believe there are a total of five pictures that I
8 took myself, two or three of the evidence viewing, and then
9 two or three of Kimberly Drive, so this is -- so there's
10 nothing new here

11 THE COURT Why don't we -- we'll just take a break
12 I'll allow the State and the Defense to -- with the witness,
13 to go over the PowerPoint

14 After you have viewed it, Solicitor, if you have some
15 objections let me know, understanding that, again, you know,
16 if you've got a PowerPoint that's in there that makes this
17 statement as you did on page eight of your Report, or let's
18 see, page nine of your Report, about this type of M O
19 behavior is characteristic of unplanned offenses that involve
20 rage, substance abuse or mental illness, or the persistence of
21 bizarre, contradictory or irrational M O behavior is
22 characteristic of unplanned offenses that involve rage,
23 substance abuse or mental illness, that would have to be taken
24 out or redacted out of the PowerPoint, so y'all go through it,
25 y'all talk about it, and then we will take a short break

JURY OUT/ON RECORD
BREAK/JURY OUT/ON RECORD

1401

1 Just so that I know, Madame Clerk, when did you plan to
2 have lunch for the jury?

3 CLERK OF COURT I'm having it delivered at 12 30

4 THE COURT All right And they need some time to set
5 it up, or that would take -- that would just take -- basically
6 it wouldn't take very long?

7 CLERK OF COURT No sir

8 THE COURT All right Y'all look through it and then
9 tell me when you are done, please, and do it as quickly as
10 possible

11 CLERK OF COURT But it's not hot food so, I mean ---

12 THE COURT Right

13 CLERK OF COURT ---It will be okay

14 (THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE
15 PRESENCE OF THE JURY)

16 THE COURT All right, Solicitor, having an opportunity
17 to view the PowerPoint, do we have any issues that we need to
18 resolve?

19 MR HEMBREE No, Your Honor We have reviewed the
20 PowerPoint We have no objection to it's introduction into
21 evidence at this point in it's redacted form

22 THE COURT All right Great All right

23 MS WILLIAMS Well, Your Honor, just for
24 clarification, I just want to make sure the Court is aware

25 THE COURT Yes Ma'am

JURY IN
BRENT E TURVEY - DIRECT BY WILLIAMS

1402

1 MS WILLIAMS What the Solicitor and I discussed is,
2 once this is over with, later today, what I will do is go back
3 to the office, actually put it on the diskette, and we can
4 introduce that into evidence, but I want a real hard -- I
5 mean, actual disk to introduce

6 THE COURT Certainly

7 MS WILLIAMS I just don't have it in my possession

8 THE COURT That's fine That's not going to be a
9 problem, is it, Solicitor?

10 MR HEMBREE No, Your Honor No We have agreed to
11 that

12 THE COURT Yes, great All right Good deal

13 All right Then is the State ready for the jury to come
14 in then?

15 MR HEMBREE Yes, Your Honor

16 THE COURT Defense

17 MR DIGGS Yes sir

18 THE COURT Very good Ask the jury to come in,
19 please

20 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
21 JURY)

22 THE COURT All right, Mr Diggs, you first witness,
23 please sir

24 MS WILLIAMS Thank you, Your Honor

25 THE COURT Oh, Ms Williams

JURY IN
BRENT E TURVEY - DIRECT BY WILLIAMS

1403

1 MS WILLIAMS The Defense would call Brent Turvey to
2 the stand

3 THE COURT All right Please come around and be
4 sworn, sir

5 BRENT E TURVEY, being first duly
6 sworn, testifies as follows

7 DIRECT-EXAMINATION BY MS WILLIAMS

8 A My name is Brent Turvey, T u r v e y , and I am from
9 Sitka, Alaska

10 Q Mr Turvey, can you tell me where you are currently
11 employed and what you currently do?

12 A I am a Forensic Criminologist and Forensic Scientist,
13 with my own private company It's named -- the company's name
14 is Forensic Solutions, and that is run out of my office in
15 Sitka, Alaska

16 Q Can you tell me primarily who your clients typically
17 are?

18 A My clients tend to be either attorneys in criminal and
19 civil trials, or law enforcement agencies investigating
20 unsolved crimes, and then very, very rarely, private
21 individuals

22 Q Can you please give us the benefit of your formal
23 education and training?

24 A Certainly I have a Bachelor's of Science in History,
25 a Bachelor's of Science in Psychology, and I also hold a

JURY IN
BRENT E TURVEY - DIRECT BY WILLIAMS

1404

1 Master's of Science in Forensic Science

2 Q Are you currently seeking any type of advanced degree?

3 A I am

4 Q Can you please tell us about that?

5 A Since, I believe, January or February is when my
6 confirmation occurred, I have been enrolled as a Ph D
7 candidate at Bond University in Gold Coast, Australia, as a
8 Ph D candidate in Criminology, studying Forensic Fraud, which
9 is essentially when experts lie in court about evidence and
10 things of that nature

11 Q Are you currently in any professional activities,
12 associations, or member of?

13 A I am

14 Q Can you please tell me about those?

15 A Certainly I am currently serving as the -- I'm
16 currently a founding member of the Academy of Behavioral
17 Profiling We founded it in 1998 or so, and held our first
18 meeting in 1999 It was myself and four other individuals
19 One is a retired D O J Criminalist from California, the other
20 one is a retired F B I agent, and the other one is a Forensic
21 Psychiatrist, and we formed an organization called The Academy
22 of Behavioral Profiling I'm a founding member, a Board
23 member, so I make decisions about different administrative
24 issues and rules and ethics complaints and that sort of thing,
25 and I also serve as the editor of the Journal of Behavioral

JURY IN
BRENT E TURVEY - DIRECT BY WILLIAMS

1405

1 Profiling But I have also -- since 1999, I've been a member
2 of the Bond Criminology Curriculum Advisory Board
3 Essentially the decisions about what kinds of courses they run
4 in their Criminology Department I sit on a Board and -- what
5 I haven't said yet is that every year I spend about three or
6 four weeks in Australia, and I give guest lectures there as
7 well, but one of the other things I do is participate in their
8 Advisory Board

9 Q Mr Turvey, can you tell me if you've participated in
10 any type of course development or instructed any type of
11 courses related to your practice?

12 A Certainly As I already mentioned, since -- boy
13 Since 1999, I've been a guest lecturer, and also I served for
14 a couple of years as an adjunct lecturer at Bond University,
15 teaching courses on things like Criminal Profiling, I think
16 Criminal -- I think I taught a Criminal Motivations class, but
17 also a Serial Homicide class as well, but more often than not
18 when I'm visiting what I'm doing is dropping in and giving
19 guest lectures in their subjects For example, they have a
20 Miscarriages of Justice class they teach, and I would go and
21 give a lecture on a case I worked where there was an
22 exoneration, for example, or last year I was there and they
23 have a Forensic Science subject they run and I gave a guest
24 lecture on the N A S report, which recently came out It's a
25 rather large development in the Forensic Science community

JURY IN
BRENT E TURVEY - DIRECT BY WILLIAMS

1406

1 So, lectures in various sub-specialty areas related to
2 Forensic Science For many years I've been doing it, since 19
3 -- like I said, since 1999

4 That's part of my Ph D , however, I will actually be
5 going over to teach for a semester, for four months, from
6 January 15th or 18th until February 20-something I will be
7 teaching, again, Behavioral Evidence Analysis And that's my
8 teaching for Bond, but I also have my private company which I
9 mentioned I do teaching for them as well, for my own company
10 as well, on-line courses in the area of Forensic Science,
11 Crime Reconstruction, areas related to Criminal Profiling,
12 Criminal Motivations, Serial Homicide Investigation, that sort
13 of thing

14 And then additionally, my company is often contacted by
15 different law enforcement agencies and different professional
16 organizations to come either give guest lectures or run work
17 shops For example, in 2005, I was invited back for the
18 second time to the People's Republic of China where I spoke at
19 -- let's see, it was in People's Police Security University,
20 which is essentially their Criminology program at their public
21 university that they have, where all law enforcement have to
22 go If they want to become an officer they have to get a
23 degree in Criminology, and so I taught -- they use my textbook
24 over there They actually translated it into Chinese And so
25 I taught at their -- in Beijing I've spoken at the Police

JURY IN
BRENT E TURVEY - DIRECT BY WILLIAMS

1407

1 Bureaus in Hunan, Gansu, Shanghai, and then this last visit I
2 spoke at Sichuan, which was their old capital a thousand years
3 ago

4 Q You've mentioned textbooks Can you give us the
5 benefit of any involvement with regard to textbooks?

6 A Certainly In 1999, I published my very first
7 textbook, called Criminal Profiling and Introduction to
8 Behavioral Evidence Analysis, which is essentially about the
9 whole process of crime investigation, crime reconstruction and
10 Forensic Science, criminal behavioral, how you derive one from
11 the other, and then how you examine that and interrupt
12 offender characteristics, to sort of de-mystify the sort of
13 T V image that's portrayed from the actual practice of the --
14 of the discipline

15 In 2002, we did a second edition of it, which was,
16 again, a very advanced -- we advanced it quite a bit, and a
17 lot of developments occurred, and then in 2008, we updated it
18 again with a third edition, and I've brought the third edition
19 with me just so you can see that it's real Anyway That was
20 published, again, by -- the first two editions were published
21 by Academic Press, the third edition was published by Elsevier
22 Science, and that's because Elsevier took over Academic in, I
23 think, 2004, 2005

24 In 2004, I published with Academic Press I co-authored
25 with John Savino who is -- at the time he was a -- the senior

1 detective with the Manhattan Special Victims Squad, their sex
2 crime squad He and I served on a task force together in the
3 late nineties, a serial rape task force, and because of that a
4 relationship developed, and he and I co-authored a textbook
5 called the Rape Investigation Handbook

6 And then in 2006, I co-authored a textbook with Jerry
7 Chisholm, the Criminologist from D O J who I mentioned
8 previously with the Academy of Behavioral Profiling

9 Q I don't mean to interrupt you ---

10 A Sure

11 Q ---But you used the acronym D O J

12 A Yes

13 Q What is that?

14 A California, like many states, is very large and has
15 what's called the Department of Justice It's their State law
16 enforcement agency, essentially, run by their Attorney
17 General, and so they have a Forensic Science arm and they have
18 an investigative arm, and Jerry Chisholm was the Senior D O J
19 Reconstructionist for the California Criminalistics Institute
20 in the Department of Justice He was there doing that work in
21 their Crime Lab System as law enforcement, then as a Crime Lab
22 Director, then as a Reconstructionist for the career that span
23 thirty-eight years when he retired in 1988 or '99, and he --
24 when I graduated in '96 that's when I moved to California, and
25 I became -- essentially he's like the greatest influence on me

JURY IN
BRENT E TURVEY - DIRECT BY WILLIAMS

1409

1 in my career He's essentially one of my most powerful
2 mentors He remains my mentor to this day, and he and I co-
3 authored a textbook right here called Crime Reconstruction,
4 which is about how you interpret evidence, not just the doing
5 of the tests or the examinations, or the -- what you collect
6 at the crime scene, but how do you interpret what it means,
7 and that's what crime reconstruction is about We can -- we
8 get into that later

9 Q Let me ask you this just briefly

10 A Uh huh (indicating positive)

11 Q They are textbooks Textbooks for whom?

12 A That's a great question There are, the professional
13 community, two kinds of textbooks There are college
14 textbooks which are written to be used by college students in
15 the instruction of university courses, and then there are
16 professional manuals which are designed to be used as applied
17 guides for people who are actually doing case work All
18 right I've written both In fact, we do now what's called a
19 hybrid text, sort of a hybrid text manual, because we are
20 serving both markets Criminal profiling is used all over the
21 world, and in fact, used in colleges and universities all over
22 the world, and that's our primary market

23 Crime Reconstruction is primarily a professional manual
24 written, not for college students, but written for people who
25 are practicing in the field, people who are actually working

JURY IN
BRENT E TURVEY - DIRECT BY WILLIAMS

1410

1 in law enforcement or working in crime labs, who are actually
2 involved in crime reconstruction, to give them a guideline of
3 how to approach their craft

4 Q Okay Let me ask you, have you done -- have you
5 authored or participated in any peer review type articles or -
6 --

7 A The vast majority of what I do is pier review For
8 example, these textbooks that you see before you, they are
9 reviewed by -- obviously Elsevier has their own standards and
10 guidelines that they have -- the proposal that you do goes
11 through it's own review, and then the pre-publication text
12 gets reviewed as well, by different professionals, and it has
13 to suffer that crucible before your ideas are allowed into the
14 community The same thing is true with journal articles that
15 I've published I serve as the Editor of the Journal of
16 Behavioral Profiling, and the number of the articles I
17 published are with that journal, but I still have to submit my
18 articles to blind review, which means somebody gets it, they
19 don't know I've written it, and they have to beat it up before
20 it comes back, and it's -- it can be a long and terrifying
21 process I was just involved in, for example, an article that
22 I wrote called Victimology and Pathological Altruism for
23 Barbara Oakley's volume with M I T Press on Pathological
24 Altruism, and it goes ---

25 Q Pathological?

JURY IN
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1411

1 A Altruism It's a condition where someone who gives so
2 much of themselves that they actually harm themselves
3 Anyway, it often comes up in criminal behavior because people
4 do things that they shouldn't do, or they hurt themselves in
5 ways that they shouldn't, and it causes some kind of criminal
6 effect At any rate, the process of peer
7 review is ongoing It will take you -- you write something
8 and it doesn't get published It takes sometimes one to two
9 years of going around and around and back and forth with edits
10 and peer review before you -- that will -- before it will be
11 accepted So almost all -- I can't think of one right now,
12 off the top of my head, other than stuff that I wrote in
13 college that it wasn't peer reviewed

14 Q Can you tell us approximately how many articles you
15 have written?

16 A It's more than -- it's more than thirty And they are
17 in the areas of Forensic Science, Crime Reconstruction, Staged
18 Crime Scenes, which is related to Crime Reconstruction,
19 Criminal Profiling, Criminal Motive, Modus Operandi, and we
20 can talk about the individual ones that relate to my testimony
21 today if you would like

22 Q Let me ask you this you -- and I -- have you actually
23 not -- you've authored your textbooks, but have you
24 participated in anyone else's textbooks?

25 A Yes, I have As I mentioned, the volume that I just

JURY IN
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1412

1 wrote for was -- with M I T Press, the Barbara Oakley's book
2 on Pathological Altruism, Victimology as it relates to that,
3 and Victimology is simply the study of victims

4 I have authored things on modus operandi, and
5 investigative reconstruction for Owen Casey's volume on
6 Digital Evidence in Computer Crime, and I've also authored an
7 article on the D C Sniper case and media involvement and
8 profiling for Wayne Petherick's First and Second Edition of
9 his Serial Crime textbook, and let's see -- and then a number
10 of the articles I've written in the past have been
11 incorporated into current textbooks I think an article I
12 wrote on Autoradic Fatality was actually incorporated into a
13 volume called Crime and Deviance for -- or Constructions of
14 Deviance by two individuals named Adler, for a course they
15 were running on Crime and Deviance

16 And then also I just completed work on a book called
17 Crime and Deviance where I wrote on Homicidal Deviance and
18 Sexual Deviance, so it's a -- fairly common for me to be asked
19 by other authors to write in their book

20 Q Let me ask you this Have you ever been qualified as
21 an expert in any State or Federal Court?

22 A I have, both

23 Q Can you tell me what areas that you have been qualified
24 as an expert in?

25 A Certainly I've been qualified in the areas of

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1 Forensic Science, Crime Reconstruction, in particular as a
2 sub-discipline of Forensic Science, and then also a specialty
3 area of interpreting presumptive blood stain tests, as well as
4 Victimology, Crime Scene Investigation, Crime Scene Analysis
5 I have actually qualified in the area of Criminal Profiling,
6 Criminal Motivations, Modus Operandi Behavior, and Offender
7 Signature Analysis

8 MS WILLIAMS Your Honor, at this time we would offer
9 Mr Turvey as an expert in Crime Scene -- Crime Reconstruction
10 and Crime Scene Analysis

11 THE COURT Do you wish to question the witness?

12 MR HUMPHRIES No, Your Honor Thank you

13 THE COURT All right I'm going to allow him to give
14 his opinion in the field of Crime Reconstruction and Crime
15 Scene Analysis

16 MS WILLIAMS Thank you, Your Honor

17 Q Mr Turvey, did you have an occasion to become involved
18 in this case?

19 A I did

20 Q Can you tell me how that came about?

21 A I was contacted, I believe by you initially, by e-mail,
22 when you let me know that you were involved in this case, it
23 involved certain behaviors, and certain aspects of the crime
24 scene where -- that you felt needed to be examined and
25 reconstructed and interpreted in the way that we do it with

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1 Crime Scene Analysis, and so you wrote me a couple of e-mails
2 and I believe we spoke at length, and then after that you
3 decided to retain my services

4 Q As a result of our conversation did you, indeed,
5 perform any analysis in this case?

6 A Yes As with any case that I get the first thing you
7 have to establish is whether or not you are going to do an
8 analysis, and then what kind of analysis you are going to
9 perform, what's appropriate, and then I produced a -- a list
10 of materials that I required to perform that analysis, and
11 that was -- in this case I needed to do some reconstruction
12 work, and I needed to do what was called a -- what's called a
13 crime scene analysis

14 Q Can you tell the jury exactly what that means?

15 A I can, and this might be a good time to go through
16 the -- to start the PowerPoint, to show exactly what it is I
17 do, and what I did in this case, the kinds of analyses I was
18 doing in this case

19 MS WILLIAMS With the Court's permission

20 THE COURT Yes Ma'am

21 A Can we turn it on over there? That's all I need to do
22 I just need to turn the L C D projector on

23 Your Honor, may I get up -- may I approach the ---

24 THE COURT Yes sir

25 A Thank you

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1 This is a PowerPoint presentation that I prepared in
2 anticipation of my testimony today, and it's based on a report
3 that I wrote dated the 6th of November, and before I can give
4 you my findings I kind of have to tell you what it is that I
5 did, so ---

6 Q Please -- please do that Can you tell us -- begin
7 with telling us what you did for us

8 A All right I present this just for me, so that I can
9 keep my thoughts organized and I won't get lost But this
10 will be -- I'll make this as brief as possible so please bear
11 with me

12 In essence, Crime Reconstruction is a sub-discipline of
13 Forensic Science Forensic Science is the application of
14 scientific principles to the Law, or to the analysis of
15 evidence in the resolution of legal conflict So, we are
16 doing crime reconstruction because there has been a crime
17 committed, we don't know what's happened, and what we are
18 trying to do is determine the actions and events surrounding
19 the commission of the crime Right We do that based on a
20 comparison of victim and suspect statements to the complete
21 record of physical evidence, but that doesn't mean that we
22 have all the evidence that exists It just means what has
23 been documented and collected So as much as we have we use
24 that to compare it against the statements that have been made
25 All right, and that's the essence of crime reconstruction

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1 The statements are the theories about what happened People
2 may lie, they may not lie The physical evidence is used as
3 the record as a buffer, to put up against and say, okay, what
4 does the physical evidence support, what doesn't it support

5 What we are talking about is the invocation of
6 analytical logic, scientific method, and Locards Exchange
7 Principle And I hope -- I'm not here to talk about logic
8 because I'm assuming everybody knows what that is, so let's
9 hope -- let's hope we don't have to cover that

10 But the scientific method is one of those things that
11 people kind of -- they think they know, and they've heard used
12 but it's a phrase that people mis-use and misunderstand a lot,
13 and when you are approaching a case like this it's important
14 to have a skeptical doubting mindset, the mindset,
15 essentially, of a scientist, someone who is questioning, using
16 critical thinking, applying the scientific method to the
17 analysis of cases They don't have an investment in the
18 outcome, they don't care what the results are, they are just
19 trying to figure out what happened, and the scientific method
20 is the best way we have found to investigate how or why
21 something works or happened You -- the steps, in general,
22 are the -- you identify a problem, and or ask a question and
23 then you observe and gather -- or gather facts related to that
24 question, related to a phenomenon, and then you develop a
25 hypothesis about what might have occurred to cause that

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1 problem, or to answer that question, and it becomes a theory
2 that you -- you have a working theory, and then you try very
3 hard not to prove it, but to disprove it, because any fool can
4 dis -- can prove a theory You can -- I can convince myself
5 of anything because I think I'm great, I think I'm right about
6 everything, but then my wife reminds me that I'm not She
7 comes along and disproves everything So that's the thing
8 You've got to have that critical mindset It's not how great
9 you think your idea is, but what are the weaknesses And if
10 your theory can survive repeated attempts at falsification
11 then it's a good theory and that's the kind of theory you can
12 present, say, in court, or -- and assign to the paper All
13 right And that's the crux of the scientific method Not
14 trying to prove your theories, because you can do that, you
15 can prove yourself anything You can convince yourself of
16 anything It's trying to disprove it and having the theory
17 survive that matters So the disprove theories have to be
18 discarded You have to be -- have no emotional investment in
19 the outcome You've got to let them go All right And if
20 you have success of failure to disprove the theories of
21 multiple times and multiple issues, multiple areas, and
22 multiple people have tried, or multiple methods have been
23 tried, then that becomes, again, the theory that you advance
24 with Sorry
25 Q So, what that means is, you set out -- you test -- if

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1 I'm hearing you right what it means is, you set out to say, if
2 this then that, and if I can't get there because of that
3 reason then I toss that away?

4 A Right One of the things that might make that not true
5 -- so here's my -- here's my theory, what evidence supports
6 it, and what evidence refutes it, and if there's evidence that
7 refutes it you've got to let it go, and we are going to see
8 some applied examples in this case, so this won't remain an
9 abstract, but that's, in general, the approach, very critical,
10 very doubting of yourself, and of your theories, and then
11 under -- you are not precious You can't be precious about
12 your theories That's essentially what it comes down to
13 Locards exchange principle This has been around for a long
14 time It was -- and this is Edmond Locards This is the
15 picture of him It comes from the textbook

16 His theory is essentially that whenever there is a --
17 whenever there is violence, or whenever violence occurs there
18 is going to be some kind of trace resulting from the contact,
19 and that's the best version I can give you of his exchange
20 principle Over the years it's come down to this, every
21 contact leaves a trace, when two objects come into contact
22 there is an exchange of material That is Locards Exchange
23 Principle, and that is the fundamental principle of Forensic
24 Science It is the cornerstone of crime reconstruction
25 without which we can't really make the assertions that we

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1 make

2 Now you can have two items have evidence -- have
3 contact, and if you can't find any evidence you don't have
4 proof of contact, so what you can say is, we don't know But
5 that doesn't mean they didn't contact, means -- it doesn't
6 mean they did contact, just means you don't have proof, but if
7 you don't have evidence of it you can't argue it, so what we
8 are looking for is evidence or the absence of evidence So in
9 this context, not only is looking for evidence important, but
10 also the absence of evidence is important Right So that's
11 the concept of Locards Exchange Principle Every contact
12 leaves a trace, every -- every time you touch something, every
13 time somebody goes somewhere and steps somewhere there is some
14 kind of trace left behind, and we are looking for proof, we
15 are looking for evidence of that to establish it

16 But your second type of analysis -- aside from crime
17 reconstruction which gives us our behavior -- that's what we
18 are trying to do With crime reconstruction that tells us
19 what happened, what behaviors are supported by the evidence,
20 what behaviors occurred, not all the behaviors, but what ones
21 we know occurred by virtue of the evidence, what can we prove
22 happened Crime Scene Analysis is a process of sitting down
23 with that behavior and establishing the victimology, the
24 history of the victim, the forensic evidence, and the
25 characteristics of the scene, and that is the decision the

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1 offender made at the crime scene, how did they get in, how did
2 they get out, what did they bring with them, what did they
3 leave behind, what kind of sexual act did they engage in, if
4 any, what kind of -- we are going to talk about --
5 specifically in this case we are going to talk about some of
6 these crime scene characteristics, and that -- in essence,
7 establishing those crime scene characteristics is an
8 offender's modus operandi, how they committed the crime, and
9 that's -- you do so -- doing this crime scene analysis
10 requires that you establish the modus operandi, how the
11 offender committed the crime It also -- you are trying to
12 ask the question of what's the offense risk or the exposure
13 The M O that the offender uses exposes them to certain risks,
14 or not, depending on their skill level, and that's another
15 important question that you are looking to answer, so it's not
16 just an analysis for the sake of categorizing all the behavior
17 and just making a pedantic list You are doing this analysis
18 to ask questions of the modus operandi, how skillful was it,
19 how much risks did they expose themselves to And risk and
20 exposure, they are different -- they are very closely the same
21 thing but they are not They are very different things One
22 is what might happen, and exposure means what's actually
23 happening at a given time, so you are asking questions of --
24 it's establishing all this information and then asking
25 questions of it to assess it's quality All right That's

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1 what Crime Scene Analysis is

2 And modus operandi We talked about that already, but
3 the -- essentially it's an offender's method of operation, the
4 choices the offender made, the acts that he committed to
5 further the accomplishment of the crime It involves learned
6 behaviors that evolve over time, and we can also -- we can say
7 that it can either increase or decrease, based on various
8 influences Okay So what we are trying to do is appreciate,
9 from the evidence that we have, whether or not the M O is
10 skillful or not, exposes them to risk or not, whether it
11 increases or decreases or not, over time And that can happen
12 within a single offense, or it can happen in many cases in
13 serial cases that I've worked

14 So what does the offender risk in exposure The general
15 amount of exposure to discovery, identification or
16 apprehension experienced by the offender And that -- we are
17 referring specifically to the issue of witnesses and law
18 enforcement What -- is what they are doing going to expose
19 them to risk of being seen doing the crime, or being seen
20 leaving the crime scene, or is it going to expose them to risk
21 of identification and then apprehension by law enforcement
22 All right And again, lots of specific examples of that in
23 this case

24 Q Well, I was going to say, does that basically mean it's
25 their risk of being caught?

1 A Right Their risk of being -- apprehension, the risk
2 of being caught, and -- first identified, and then also being
3 caught, and you can be caught without being identified, and
4 you can be identified without being caught Very often they
5 happen together Once you are identified the risk of being
6 caught goes up, so these things matter, categorizing these
7 things and classifying the matter All right

8 So, -- oh, sorry This is -- these are the findings

9 Q Well, I was going to say, did you -- based on your
10 examinations did you reach some findings in this case?

11 A I did

12 Q Can you tell us about those briefly?

13 A I can, hopefully, and I'll be as brief as possible

14 All right, there are three general findings that I had
15 in this case, and the first one is, I came up with a
16 reconstruction of some of the events, the key events in the
17 Turner crime scene, all right, so some of the actions and
18 events surrounding the commission of that crime I was able to
19 establish using the physical evidence All right And I will
20 talk about those specifically, subsequent to this

21 Q Yes We'll come to it What I want you to do -- what
22 I'm asking you to do right now is just tell me briefly what
23 you found, and then when we get to it I want you to explain to
24 me the foundation of why you reached that finding

25 A In this case what we have is a individual who was

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1 standing in front of the mirror, likely shaving their head,
2 and who was shot from behind first, through a pillow, and then
3 he turned around and, more likely than not, grabbed the
4 shooter, and then at some point fell to his knees, and at some
5 point was struck in the head, and then was shot a second time
6 in the chest, but not through a pillow this time, and then
7 subsequently died, fell down -- fell over and died ---

8 Q Okay

9 A ---And that's what the reconstruction -- and then, of
10 course, the -- someone then -- then, of course, the Defendant
11 then stole the truck and left the scene with that, and that's
12 supported as well

13 Q Okay So you've got your brief -- tell us your
14 summary You've done that?

15 A Yes

16 Q Now, can you tell me what basis that you have that you
17 reached those particular findings?

18 A I can All right Oops There you go Oh, excuse me
19 What the heck Here we go

20 Right In this particular case, with respect to the
21 reconstruction -- that's my first finding -- and as you saw I
22 previewed there -- we have three main findings I'll go over
23 them as swiftly as possible I didn't find any evidence that
24 there was an altercation prior to the shooting of Mr Turner,
25 and that's fairly important to establish, was there a fight,

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1 was there some event that occurred that precipitated the
2 shooting, or was there some other event that occurred, or some
3 decision that was made by the offender In this case we have
4 no evidence of an altercation, so remember I said before, it's
5 not just looking for what's there, but what's not there, and
6 what we don't have is evidence of an altercation

7 Q And how can you say that?

8 A I -- I came to that -- that opinion because of --
9 primarily, not limited to, but including these findings here,
10 and that is, first of all, we know that the victim, Mr
11 Turner, drove to McDonald's around eight o'clock and came back
12 around eight -- of his own volition, went there on his own,
13 came back on his own, and then subsequently had breakfast, so
14 this is not the act of somebody who is in a violent conflict
15 or someone who is deeply involved in some -- some altercation
16 just immediately prior to the shooting It was regular -- the
17 course of a regular day is occurring, is what I'm getting at,
18 and he is able to leave the scene on his own He's not being
19 held captive or something like that, is what I'm getting at

20 The second thing is, shaving The second thing is that
21 we have evidence that he was shaving, and we can see in this
22 shot here -- that's my laser pointer -- I'm pointing that at
23 the scene -- on the -- the photo on the left, this is a photo
24 taken -- these two photos were taken were taken by the crime
25 scene investigators at the scene, and you can see some hair in

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1 the sink, and you can see that as he has turned around and
2 collapsed. Actually the electric razor that he was using,
3 it's right there -- was actually found next to his body. So
4 from these events you can -- you can -- and the position that
5 he was in, was that he was shot, and then we'll get to that in
6 a second -- you can infer of the activity.

7 And also, you've got to look at the rest of the home
8 too. Is there any evidence that there was like broken
9 furniture, or knocked over items? You have a back room that's
10 very messy, and there's a bullet hole that goes from the back
11 bathroom, through the wall, into the back bedroom on the other
12 side of the trailer, but there's no evidence that that's
13 related to this crime at all. So you don't have any evidence
14 of this prior altercation. You don't have any evidence of
15 some -- of somebody who is being held captive or against their
16 will. You have the shooting that just occurs without evidence
17 of an antecedent that we can see.

18 Q Let me make clear for a point -- to make sure we
19 clarify. You actually went to the crime scene, is that
20 correct?

21 A That's correct. Part of the things that I did to
22 prepare in my analysis is I -- like I said before, I requested
23 a great deal of material and I received quite a bit of
24 discovery material, including autopsy reports, medical
25 examiner's -- medical examiner's trauma-grams of the body,

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1 crime scene reports, police crime scene reports, police
2 investigators' reports, and crime scene photos and autopsy
3 photos to evaluate in determining and in making my analysis,
4 but then on top of that I also went out to the scene recently
5 so not -- not proximate to the crime, not at the same time as
6 the crime, but just to understand the spacial relationships of
7 different -- of the different rooms, to get an understanding,
8 because when you look at a photograph -- maybe you have
9 experienced this in your own life -- but the photograph tends
10 to distort things It's a -- you take a three-dimensional
11 object and you flatten down to two dimensions and it distorts
12 things It can make very small areas look very large It can
13 make very large areas look very small So you want to
14 experience these things for yourself firsthand to get a sense
15 of the dimensions All right

16 And also, I went and viewed the evidence myself, some of
17 the evidence, and the evidence that I wasn't able to view
18 myself I had the -- one of Ms Williams' investigators go and
19 take photographs that I directed her to take, so that's part
20 of what I did to prepare in my analysis It wasn't just based
21 on the material that I receive

22 Q All right May we continue?

23 A Yes All right

24 The second point to make here is that Mr Turner was
25 first shot in the back through his shirt, so he wasn't naked

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1 when he was shot He was wearing his clothes, and he was
2 engaged in regular activity, regular day activity of shaving,
3 and we have in the Autopsy Report that gunshot wound (B),
4 which is labeled gunshot wound (B) in the Autopsy Report, has
5 a trajectory of -- of forward left and slightly downward --
6 and this is consistent with a -- a shooter that's standing and
7 aiming slightly downward This is just basic trajectory
8 analysis We are just following the path of the bullet It's
9 consistent with somebody who is standing because the -- we
10 know -- we know the -- we know the victim is standing upright
11 shaving The offender would have to be at a standing position
12 or a little higher to achieve that angle over the victim All
13 right

14 And the shot -- this is the gunshot right here We've -
15 - this is the photograph from the autopsy and a photograph
16 from the crime scene for comparison side by side This is
17 where the gunshot entered, and the bullet -- the projectile
18 was recovered from the victim's body

19 The -- in this case -- in this crime scene photo here,
20 taken at the scene, you can see that there is blood soaking
21 into the jeans, down the back There's also blood from the
22 injury, but it's soaked down the jeans, down the buttocks, and
23 dripped onto the calves and onto the back of the shoes It's
24 all over the place And there's actually -- you can't see it
25 very well in this photograph -- I apologize for the lighting

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1 but that's just the way it is -- there's blood dropped all
2 over the floor here as well So you have this And so what
3 that means is, that requires time, all right What we have
4 established here is, you have this injury, and it had --
5 there's time for the blood to drip down the back and drip down
6 the shoes and drip onto the floor So this is not the second
7 shot This is the first shot because of the time, and also
8 because of the position that he's in

9 Q And what position would that be?

10 A Upright, facing the mirror

11 Q So he was standing?

12 A He was standing upright, facing the mirror, engaged in
13 the activity of shaving

14 Q Okay

15 A And according to the Medical Examiner this was the
16 fatal wound, it wasn't immediately fatal, but it was
17 subsequently fatal, and I'm not a medical examiner so I don't
18 know how long it took I only know what events I have here
19 All right

20 Excuse me The -- gunshot wound (B), this gunshot wound
21 to the back, was inflicted through a pillow that was recovered
22 from the victim's bed at the scene We established this,
23 again, with the application of Locards' Exchange Principle
24 It's very basic, but it requires sort of a -- being careful in
25 your analysis and considering what the evidence transfer was

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1 We have an absence of soot, or a muzzle imprint or
2 stippling on the skin tears, and this is indicative of an
3 intermediate object when we have this close or contact gunshot
4 wound. If you've got a very close range, and somebody is
5 shooting at a close range, you are going to expect to see some
6 kind of stippling, the gunpowder is going to hit the body if
7 you are within a certain -- like three or four -- within like
8 two or three feet, depending on the type of firearm.
9 Depending on the type of ammunition, you are going to be able
10 to tell the range from the stippling. We had no stippling in
11 this case. We had no muzzle imprint. We had no soot, and we
12 had no skin tearing which happens when you put a gun right up
13 to the body and you fire it, the skin will actually -- the gas
14 will go in and tear the skin, and we don't have any of that so
15 that starts to suggest to us that we have an intermediate
16 object. And the pillow from the scene that was found on the
17 bed -- the bed is photographed here, and the pillow was found
18 on the bed, and it appears, just from looking at it -- and I
19 was able to examine the pillow myself in evidence, it appears
20 to have been fired through by a gun. It's quite obvious, in
21 fact. There is an exit hole that appears to have -- there's
22 also an exit hole on the other side that appears to have
23 received bloody transfer. And the projectile recovered from
24 the gunshot was covered in material consistent with the pillow
25 stuffing according to the Medical Examiner. So not only do we

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1 have the soot on one side, bloody transfer on the other, but
2 we also have the projectile itself that was recovered in
3 association with the shot, actually took pillow stuffing with
4 it and was covered with it when it was pulled out

5 And there were also white fibers found on the back of
6 the purple shirt associated with the bullet hole, and this is,
7 again, according to the Medical Examiner, consistent with
8 the -- with the pillow

9 So, these two photographs I believe that I took -- I
10 know that I took -- and this is a photograph that the Medical
11 Examiner took

12 And here we have a shot of the entrance hole, and you
13 can see you have the soot and you have evidence that the gun
14 was pushed right up against it because of the way it tore It
15 tore in a nice symmetrical pattern, as though it was being
16 sucked back up inside the bullet -- the -- excuse me -- sucked
17 up back inside the barrel of the gun as it was being fired as
18 the gas has expanded inside the flesh, and so it blew the --
19 it caused the blowback of the actual gases creating this
20 pattern It's very common on material where there is a
21 contact wound against -- material against anything

22 So, this is the other side, that bloody transfer I was
23 talking about We have the actual blood going back up inside
24 the pillow as it's contacting that wound And then this is
25 the -- if I'm not mistaken -- and I could be -- but I'm pretty

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1 sure that's a picture of the projectile still covered by the
2 material I don't know that it is I'm pretty sure that it
3 is You will have to ---

4 Q But you are pretty -- that's the material ---

5 A I know that it's the -- I know that it's the material
6 that was recovered Yes This is actually the material that
7 was recovered from that pathway, and it appears to have the
8 shape of the bullet in it, but in the Medical Examiner's
9 Report he makes it very clear that the material was covering
10 the bullet so I'm going to believe the Medical Examiner and
11 believe that the bullet is inside there, and they measured it
12 and it was like, either four inches or four centimeters long,
13 four centimeters long, or something like that I can't
14 remember -- in my report, but it's irrelevant The material
15 is consistent with having come from that pillow All right
16 So let's not labor that point too far

17 After the first shot Mr Turner turned around and walked
18 toward the shooter just inside the bedroom Again, how do we
19 know this That seems like a lot We didn't have a video
20 camera there We can't just tell these things Well, in
21 point of fact, we have low velocity impact spatter right
22 across the grate there, so we have blood, not in the area
23 where he was shot, standing in front of the mirror where he
24 was shaving and turned around, but now he's turned back around
25 and at least his body has gone from in front of the mirror to

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1 this point right in front of the grate, in the doorway And
2 he was shot facing the shooter the second time All right
3 So that also supports the inference that he's facing and that
4 he's turned around All right And -- he's turned around,
5 he's found in this position, the low velocity drops from blood
6 dripping out of his wound, strongly -- well, they indicate
7 strongly that he was actually walking this -- would be very --
8 would be next to impossible to stage this, for the offender to
9 make it look like this So it's a reasonable inference to say
10 that he turned around and was shot, and was walking -- after
11 he was walking this way

12 The low velocity impact spatter right there is actually
13 not disturbed or touched by anything so it's not like he was
14 dragged If we had a -- if we had blood and the victim was
15 moved by the offender there would be drag marks through the
16 blood, if that makes sense, and we don't have that

17 There's also a bloody transfer -- you can't see it very
18 well here but it's -- I can't see it either It's somewhere
19 on this door frame there is -- I think maybe there, if I'm
20 right, there is a -- again, low velocity spatter, impact
21 spatter from blood just dripping out of a wound -- all right -
22 - or dripping off of clothing, or coming off an object that's
23 moving slowing, not like an object that's swinging or not like
24 a high velocity gunshot wound type of blood stain pattern but
25 from just movement, from walking

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1 And the other thing is also, he was found face down
2 inside the bedroom and his feet just in the bathroom door
3 frame So you have all these things You have the blood on
4 the floor, you have the blood on the door frame, and you have
5 the fact that it's undisturbed -- it's not like he's been
6 dragged through it -- and you have the body resting in this
7 position, face forward, and you have this gunshot front
8 forward, so we know that he turned around, after he was shot
9 he walked out, and then he was subsequently going to be shot
10 again
11 Q Okay
12 A After facing the shoot -- toward the shooter Mr Turner
13 was struck in the head, fell to his knees, and may have
14 grabbed the shooter In no particular order I have no idea
15 what order this occurred in, but I do know that it happened
16 before he was -- well, I know that it probably happened before
17 he was shot
18 Q How do you know that?
19 A Well, I'll get to that
20 Q Okay
21 A Okay Let me do -- if I keep it in sequence it makes
22 it easier to -- so we have the bloody transfer dripping behind
23 the knees That's the first thing This -- we have the blood
24 that's -- remember we talked about the time and the blood
25 dripping back, down the victim's back It doesn't get -- it

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1 doesn't get into this -- behind the knees in this area at all,
2 and barely gets into the area behind -- this area at all So
3 it's going down, and it's dripping, but not dripping down the
4 pant leg all the way It's dripping onto the back of the
5 ankles That indicates that he's in a kneeling position at
6 some point when this dripping is occurring So after some
7 time passes he's on his knees and the blood is dripping onto
8 the ankles All right

9 There's gunshot residue on the -- I believe it's Mr
10 Turner's right palm, which would not be on the person who
11 fired the gun unless they were -- unless he was facing the
12 shooter, but if he turns around and grabs somebody who has
13 fired a gun he's going to get that exchange, again, Locards
14 Exchange Principle, two objects come into contact there is
15 going to be an exchange, and that's what we are talking about
16 here How does he get the gunshot residue on his hand? He's
17 not firing a gun, and he's not facing the person when he's
18 being shot How does it get there? More like than not he
19 grabbed him And this is supported by the -- what I see as
20 the injury to the -- to the head here There are two blunt
21 force abrasions to the head prior to the victim collapsing
22 And you notice it's not -- there's one here, down here, and
23 that may be from falling over, or from a strike, I can't tell,
24 but this one goes all the way around the head It's not just
25 from falling face forward This is something that it's --

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1 goes in three dimensions around the skull, or around the
2 forehead, so that's not consistent with just falling forward
3 That's being struck All right

4 And then at some point when he does fall down and he
5 does lay there the actual pressure of the floor against his
6 head where his -- where his forehead is resting, creates what
7 we call blanching effect It -- the pressure prevents blood
8 from soaking into that tissue, which is why you get this
9 whitening effect there All right So -- and that's just
10 what's called a pressure abrasion, across the blunt force
11 abrasion, and that's consistent with a blow to the shooter
12 from the head, and the -- the sequence of events that you get
13 is the -- so far is, you have the shooter shooting the victim
14 from behind through the pillow, he turns around, he walks out,
15 at some point he falls down, maybe because of his injury, or
16 maybe because he's knocked down, and then grabs the shooter
17 with his right hand, and then the shooter maybe -- maybe
18 before or after that, responds by hitting him But then we do
19 know that at that point that's when he's shot again, because
20 of that next part

21 After falling to his knees Mr Turner was shot a second
22 time and that's -- because it's -- because of the blood stain
23 patterns on the -- behind the knees -- excuse me, not behind -
24 - not being behind the knees in the time required that's why I
25 infer it's after he's down, but also because of the angle of

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1 the shot

2 The entrance of gunshot wound (A) is to the front chest,
3 so he's facing the shooter, but the trajectory is not like it
4 was before It's not like that sort of downward angle like
5 that It's like at a forty-five degree angle It's not just
6 minor, it's majorly -- it's an extreme angle, according to the
7 Medical Examiner, forty-five degrees downward and ten degrees
8 to the left The shooter could not easily achieve the
9 superior angle on his own In that room the only thing he
10 could hope to do is maybe stand on a chair or stand on the bed
11 if the victim was standing while he was shot, and those two
12 scenarios seem very unlikely to me It seems more likely that
13 the victim was on their knees

14 And there is -- like I said, we talked about the absence
15 of bloody transfer behind the knees indicates the kneeling
16 position So this extreme angle, the absence of blood behind
17 the knees, and the unlikelihood of using these other objects
18 in the room to gain that superior position to get that extreme
19 angle All right And that's the basis for those opinions so
20 far

21 Now, this is important The second shot did not go
22 through the pillow All right There is only evidence of one
23 entrance hole in the pillow, only evidence of one projectile
24 in the pillow, and only one exit hole in the pillow Okay
25 So we don't have evidence that he used it again It was used

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1 only for the first shot

2 Additionally, Mr Turner's pockets were found turned
3 inside out, consistent with maybe a search for the vehicle
4 keys or for something else that I have no idea what was taken
5 because we don't know what we -- what he doesn't have We
6 don't have any other apparent search for valuables at the
7 scene, that I'm aware of, and we know that the truck was
8 subsequently taken to the scene These credit cards and
9 identifications, and A T M cards were all found in -- on Mr
10 Turner's person I believe -- I believe they were found in
11 his back left pocket, and they were laid out and arranged like
12 this by law enforcement so they could take a picture of it on
13 the bed So this isn't how it was found at the scene It's
14 just -- excuse me -- these photographs were taken by law
15 enforcement investigators So this isn't how they were found,
16 but these were just laid out for expedience, to get a good
17 picture of them, and they were taken off the victim So the
18 offend -- and they were actually -- if you -- in the
19 photographs they were actually hanging out of his back pocket,
20 so the shooter would have seen them, so it's not -- and he was
21 searching the pockets, so it's not like he didn't come across
22 these things, so he didn't take them, so that is interesting
23 So we have no evidence of a search for valuables We have
24 valuables left behind, and I D s left behind, and we have the
25 truck taken, and the keys for the truck taken All right

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1 And that's just coming directly from the physical evidence
2 Right So the second finding Do we want to talk about
3 that?

4 MS WILLIAMS Yes And you reached a second finding?

5 A Yes, I did

6 Q Can you explain this one to us?

7 A I can This is the mo -- the examine -- the analysis
8 of the modus operandi Every single case that I work I have
9 to ask the same general questions of it if I'm doing a crime
10 scene analysis, or if I'm trying to analyze offender behavior,
11 and the purpose of doing that is to evaluate the nature of
12 that M O , to give it -- to explain sort of the skill and the
13 precaution that's involved, and we'll talk about what those
14 things mean but in this case the M O , the modus operandi
15 behavior, in these related incidents, they lacked skill, they
16 lacked foresight, and they lacked precaution All right

17 We talked about a precautionary act Precautionary act
18 is something that's done by an offender to hamper the efforts
19 of law enforcement, and we are going to talk about that more
20 Like an example would be an offender who wears a mask during a
21 robbery to keep their face from being seen That's a very
22 specific type of precautionary act And what we have in this
23 case is a lack of skill, lack of foresight, and lack of
24 precaution When we are talking about skill we are talking
25 about ability to commit the crime, not the desire to commit

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1 the crime, not their intelligence level, because skill and
2 intelligence are not related You can be very intelligent and
3 lack the skill to do something, and very skillful and lack
4 intelligence, so I'm not talking about intelligence I'm just
5 talking about the ability to effect the crime skillfully

6 Q And these are the things -- and I take it when you are
7 looking for this and do that there are certain things that you
8 evaluated about this particular case Is that correct?

9 A That's right We have to look at the same set of crime
10 scene characteristics in every case, their presence or their
11 absence, to help us understand what the M O is and what the
12 -skill and the level of precaution is

13 Q Okay

14 A In this case the first thing we -- and this is
15 generally in the order that I do it every time, because it
16 sort of goes from start to finish through the crime First of
17 all we look at the scene, the selection of the scene, what
18 scene was selected to commit the crime We have the vehicle
19 being stolen from Ms Ling Her vehicle was connected
20 directly to the Defendant It's taken from his place of
21 residence, and the vehicle -- it's a vehicle he commonly uses,
22 so it's something he would be associated with So again, this
23 goes right back to a lack of precaution He's taking
24 something that he's associated with commonly, and people are
25 know it's not his People are going to see it, they are going

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1 to recognize it There is a -- the skill there is very low
2 If you are going to steal something and not be seen you want
3 to take something you are not associated with You want to
4 take something you are not going to be recognized with, and
5 you are going to take something that's not going to lead to
6 your identified and capture

7 And also the location he took it from is -- again, he's
8 directly related to it, so we have the missing vehicle taken
9 from the scene, and it's a place that he lives, so he's
10 associated with the vehicle, and he's associated with the
11 scene And the lack of precaution there is just one thing
12 And what I want to caution -- I caution myself against this
13 all the time and my students This is a very important
14 concept to grasp We can't just look at one thing If you
15 look at just one thing, and try to take one behavior in
16 isolation you will miss everything, so you've got to look at
17 the whole picture of the evidence So just looking at this
18 just one thing doesn't give you my conclusion It's looking
19 at all these things, and considering the total of all of them,
20 so that's why we are going to go through them all So this by
21 itself wouldn't give me my conclusion, is what I'm giving you

22 So we also have the victim selection The way it's --
23 it's connected again directly to the Defendant He's got an
24 intimate relationship with the person he took the vehicle
25 from, and with that -- with that incident and that scene

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1 And then Henry Turner is connected to the Defendant
2 He's over there all the time He's a know friend They --
3 people in the neighborhood know who he is They know his car
4 It's not a stranger All right It's -- he's doing something
5 with somebody that he's associated with, so he's going to be
6 on the short suspect list All right

7 The next thing are the methods of control And we are
8 just looking at -- the methods of control just refers, in
9 general, to how the offender maintained or failed to maintain
10 control of the crime scene, and either that all evidence skill
11 or not In this case, the remain -- he kept physical custody
12 of this vehicle while it had a nationwide be-on-the-lookout
13 alert for it, this particular vehicle, so we have -- that's --
14 again, it goes right back to a lack of skill, or a lack of
15 foresight He's not thinking about the consequences of this
16 behavior

17 Again, keeping physical custody of the Mustang Then on
18 top of that, at the Turner scene, the force that's used is --
19 we are not talking about brutal levels of overkill or sadistic
20 torture We are talking about administrative force, and
21 that's just the force that's needed to accomplish the task
22 He shot him, and when he wasn't dead he shot him again, and
23 then there was maybe a stri -- there was a strike in between
24 there that was maybe, get your hands off me Okay

25 And the weapon that was used was this available weapon,

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1 and it doesn't reflect any planning or any deliberation, or
2 some prior altercation or anything like that It just seems
3 to come out of nowhere in terms of the evidence We have no
4 evidence of where this came from

5 Again, in every case it's not always relevant, and in
6 this case we have to ask the question, is there sexual
7 activity You always have to ask, and in this case we have no
8 evidence of that Right So it's not just documenting what
9 was there, but what wasn't there So there's no sexual
10 component to this crime that I'm aware of

11 Also planning and preparation And what is that? It's
12 sitting down prior to the commission of the crime of
13 deliberating about how you are going to commit it, and you
14 either bring things with you to the scene, or you make lists,
15 or you go through it and dry-run it with somebody -- these are
16 things that would evidence sort of foresight about your
17 committing the crime, or maybe you've set a surveillance and
18 you are watching -- you are watching tape of something over
19 and over again so you can plan and effect your crime more
20 skillfully There is no evidence of any of that

21 The Ling Mustang was an available vehicle, was taken
22 based on availability and expedience, not based on precaution

23 The Turner crime scene also involves methods and means
24 that are all available on the scene within reach We have no
25 evidence that there was some planning or any preparation

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1 related to the attack What we do have -- and we have no
2 evidence of planning or preparation related to leaving the
3 scene In fact, when he leaves the scene he takes the
4 victim's truck, which is another truck from another scene that
5 he is totally associated with, and again, shows a lack of
6 foresight and precaution

7 There is also an utter absence, in my view, of
8 precautionary acts and an absolute persistence of what we call
9 contradictory acts

10 Q Explain that, please

11 A And that leads into my third conclusion where I explain
12 these things All right, so M O behavior in these crimes
13 evidences a persistent lack of precaution while insuring the
14 Defendant's eventual identification and apprehension In my
15 opinion this modus operandi exposes the offender to a high
16 risk of both identification and apprehension So his M O --
17 it's not just that he's stupid, it's not just this is just
18 another dumb criminal, this is some -- a criminal whose every
19 single decision that they are making about this crime is going
20 -- is insuring that they will be both identified by witnesses,
21 identified by law enforcement, and captured by law
22 enforcement

23 And I will go through those things now and this is my
24 final opinion What's a precautionary act I want to give
25 this very -- this is the explicit -- this is the definition

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1 right from the textbook "Behaviors that an offender commits
2 before, during or after an offense that are conscientiously
3 intended to confuse, hamper, or defeat investigative and
4 forensic efforts for the purposes of concealing the offender's
5 identity connection to the crime or the crime itself "
6 Another example would be wearing gloves to prevent the
7 transfer of fingerprints We've all seen this in television
8 and movies, I assume, or we've heard in the news about serial
9 rapists who wear condoms to prevent the transfer of D N A
10 evidence during sexual contact All right Those are
11 examples of precautionary acts Another great one that we see
12 from the movies would be -- which I have seen only once in
13 real life, but I'm sure it happens elsewhere, is switching
14 license plates out so you can -- so again -- but these are
15 example of precautionary acts, things that an offender does to
16 hamper or defeat the efforts of law enforcement in their
17 identification and apprehension
18 Q So precautionary acts, in simplified terms, might be
19 the things that you do to make sure you can get away?
20 A That you don't get -- not just that you can get away,
21 but that you don't get seen while you are doing it, that you
22 don't leave any evidence behind while you are doing it, and so
23 that you can get away without being caught in the act, as it
24 were
25 Q Okay

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1 A All right

2 But, there is the flip side of that, and that is the
3 contradictory acts, and this is -- again, this is the
4 definition -- and right from the textbook -- these are
5 behaviors that increase the offender's likelihood of drawing
6 the attention of the authorities and being identified during
7 the subsequent commission of the crime, they are indicative of
8 low intelligence, criminal inexperience, or substance abuse,
9 and that's -- those are the reasons why we came up with this
10 concept, because you have so many offenders who commit crimes
11 under different mental states, or different influences, so we
12 have to -- we want to -- some sort of barometer for whether or
13 not that's going on in a crime scene, and this is the -- the
14 contradictory acts are the way of evalua -- are our way of
15 evaluating that

16 Q Let me ask you something

17 A Certainly

18 Q In the contradictory acts there -- you stated here --
19 that's what they are indicative of, but basically these acts
20 are things that -- that would likelihood draw attention ---

21 MR HUMPHRIES I'm going to object to the leading
22 nature of the question, Your Honor

23 MS WILLIAMS Sorry I'll rephrase

24 THE COURT Well, I -- anyway, you rephrase, but I'm
25 going to allow you to ask the question

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1 MS WILLIAMS Thank you

2 Q I just want to make sure that the contradictory acts,
3 if I understand it, in simplified terms, are acts that might -
4 - or that are known to draw attention to you

5 A Well, not just draw attention, but they -- but they
6 provide -- it's not just the failure to do something smart
7 That's not a contradictory act The failure to do something
8 smart, well, okay, that's just being normal, but when you are
9 doing something that either draws attention to you, as you
10 said, or leaves evidence behind, or insures that you are going
11 to be identified at some point, and associated with the crime
12 at some point, if you are doing things specifically which will
13 provide for that that's a contradictory act

14 Q Do you know that all or -- and part of what you do, if
15 there's contradictory acts, do we know that they are
16 intentional, not intentional, or that's just -- that they are
17 just there?

18 A We can't tell I mean, that's a different level of
19 analysis I can't tell the intent I mean, I think a
20 reasonable person could -- can make their own conclusions
21 about that You can have them both way, is what I'm getting
22 at

23 Q Okay So we don't know that that's intentional You
24 are just simply looking at what is there and what it's
25 indicative of?

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1 A Right There are certain acts that we are going to
2 know -- that we are going to talk about today that are
3 absolutely intentional, the offender has sat down and thought
4 about them as they are doing them, and thinking that they are
5 doing something precautionary, and it's actually their lack of
6 skill, their lack of experience, their lack of foresight is
7 doing something that's going to provide for their identified
8 and capture So we will talk -- we will be able to see some
9 very obvious, intentional ones, and I don't need to point that
10 out I think the people will be able to tell All right

11 All right So, bear with me, please I believe there
12 are twenty-four of these, all right, so just be prepared, and
13 I'll try to go through them as quickly and expeditiously as
14 possible

15 First of all, in every case you have to look at whether
16 or not there was an attempt to conceal the crime entirely, or
17 to stage it to look like something else, all right, maybe
18 stage a homicide to look like a suicide, for example Okay
19 Or may -- you have a domestic homicide and there's a body, and
20 you take the body and you dismember it and you bury it
21 somewhere so there is no evidence of the crime at all So
22 either destroying evidence that the crime occurred at all, or
23 staging it to look like something else Those are
24 precautionary acts There's no evidence of that All right
25 So, one thing the offender failed to do was conceal the fact

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1 that the crimes occurred, so the crimes are going to be found
2 out All right The car is missing, there is -- I believe
3 there has been testimony about A T M -- an A T M that was --
4 we are going to be talking about that, an A T M visit, and
5 then the homicide at the Turner residence All right These
6 crimes are not concealed or staged in any way, and they are
7 going to be found out All right And that becomes important
8 to every single other subsequent point

9 The Defendant was found -- he was picked up with a
10 suitcase that had blood on the inside of it He did not try
11 to clean this up at any point after leaving the area of where
12 these incidents occurred, and it's not just that he's got a
13 bloody suitcase, but that he didn't try to clean it up He
14 didn't try -- and anybody who saw that suitcase would see
15 blood on it, and they would go, huh, what's that, why is there
16 blood all over the suitcase, what's that from, so it raises a
17 question It draws attention, draws unwanted attention All
18 right And it's not just like a blood drop I think we would
19 all look at that and we would know it's not like somebody just
20 dripping blood, just standing there from a bloody nose or
21 something That's like some movement is involved, so we
22 have -- we would raise a question It wouldn't look like just
23 some incidental thing

24 Q Okay

25 A Yes Go ahead

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1 All right, the Defendant stole this 1994 red Mustang
2 convertible Now, I don't know what the resale value is, and
3 I don't know what the -- how commonly this kind of vehicle is
4 stolen What I do know is, stealing a Mustang convertible
5 that's red is a conspicuous vehicle by itself So we have a
6 conspicuous make in color, we have a nationwide B O L O ,
7 alert for this vehicle is out, and we also have it associated
8 directly back with his girlfriend So he's -- at one point
9 during this evening he's driving around in this car that
10 everybody is looking for, that's bright -- well, I don't know
11 if it's bright red, but it's red It's a convertible Mustang
12 It's a conspicuous make and model, and he's associated with
13 it, so if he gets stopped, pulled over with this, he's
14 associated not only with the vehicle, but everything that
15 happened prior to that, so it's a very conspicuous choice, and
16 actually provides for identification, apprehension, and, you
17 know, being associated with the crimes, as we will see

18 So, at some point after stealing this Mustang he
19 proceeds to an A T M to withdraw money from Ms Ling's bank
20 account where he would be photographed in her car committing a
21 crime I don't think there is anybody left that doesn't know
22 that you are being filmed at a bank Banks are aware, we have
23 our security, okay Maybe some schools have them, maybe they
24 don't, maybe some places of business have it, some places you
25 don't, but we know that banks do All right So this is not

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1 some bizarre possibility You are going up to the A T M , you
2 are going up to the bank, you are going to where they keep the
3 money That's where you are being filmed And he's not just
4 being filmed, he's being filmed in this very conspicuous red
5 vehicle All right

6 So, that's -- goes back to, again, exposing to high risk
7 of identification and apprehension And he also didn't leave
8 the area or get rid of the Mustang He continued to drive it
9 It wasn't like he went to some remote place where he -- where
10 that vehicle wouldn't be recognized He went to -- he stayed
11 in the area where people knew her, and I don't know if they
12 knew her vehicle or not, but that's an issue that's the be
13 considered, and then on top of that we have him not getting
14 rid of it, he keeps driving around So the conspicuous
15 vehicle, continued commission of the crime, the driving it
16 around in the area where she lives and works All right
17 That's a problem

18 So where does he drive to after this -- I believe it's
19 sometime after three o'clock in the morning he drives to Mr
20 Turner's home Mr Turner has close neighbors He lives in a
21 cul-d-sac, a trailer court cul-d-sac where the Defendant would
22 likely be seen and recognized, because not only has he been
23 seen there before he -- I believe a couple of people there
24 know his name, and they know that he drives that red Mustang,
25 and he's been there several times over the last few weeks, so

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1 it's not a place that he's a stranger to

2 Yes

3 Q Can you take your pointer and show us which one of
4 those homes in that picture is Mr Turner's home?

5 A I can This right here, this is Kimberly -- the end of
6 Kimberly -- the cul-d-sac in Kimberly Drive, I believe it is
7 That's his -- that's the back end of his trailer, the -- this
8 is the room where the gunshot hole was in the spare bedroom,
9 and Mr Turner's bedroom is in the back, at the far back

10 So you can see that it's just a couple of car's lengths
11 between here and to the -- car widths, rather, from here to
12 the next trailer And then if we go -- and this trailer here
13 is also that trailer there, so there's another one that's even
14 close -- it's just as close rather So we have a close
15 proximity And this photograph was taken -- as I turned
16 around, facing away from Mr Turner's driveway, you could see
17 out the cul-d-sac This is the cul-d-sac here You could see
18 a neighbor there with their red vehicle There's also another
19 house, I believe, in there, and then there is -- excuse me --
20 trailer, and then there's these other trailers So you are
21 not just in these -- in this neighborhood where, you know,
22 there's miles between neighbors They are right on top of
23 each other It's trailers so they are not like built really
24 well I don't know what the acoustics are, but they are not
25 built to be sound-proofed So you have, as you are going in

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1 there, not an expectation of privacy Okay There is no
2 expectation of privacy You are going to a place where the
3 Defendant has been recognized before, in a vehicle he's been
4 seen in before, and it's a conspicuous red thing on top of
5 that, so it's not like they are not going to see it if they
6 are looking

7 Q Okay

8 A So we get better than that

9 Now, he doesn't go there and kill Mr Turner, evidencing
10 some plan or some pre-thought-out motive, as far as I can
11 tell What we have is this older gentleman who is an
12 alcoholic and could have been easily overtaken by someone who
13 of -- such as the Defendant, who is younger and presumably
14 stronger than a seventy-four year old alcoholic male The
15 visit was actually prolonged He didn't do it under the cover
16 of dark He waited, and the attack didn't actually occur
17 until the morning, until people were up and moving around and
18 there was daylight So when he left it would be more easy for
19 people to see him leaving So that's -- we have -- that's
20 it's own little special problem

21 Now, what's also interesting is, according to Mr Turner
22 his girl -- according to Mr Turner's girlfriend she received
23 a call not long after Mr -- not long after the Defendant
24 arrived She received a call from Mr Turner who told -- who
25 woke her up and told her he -- this gentleman is here, and he

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1 is telling me about his dead father, he wants -- he needs to
2 be consoled, apparently, and that's the story that's being
3 told to him, so he's gone there, told him this story and sat
4 with him talking with him all night about it

5 Now this is important because it's not just that it
6 happened, but it's that now we have somebody outside the crime
7 -- the eventual crime scene knows that he's there, and that
8 it's him, and can identify him as being a person who is there
9 with -- at the scene All right So that, again, raises the
10 risk of being identified and then eventually apprehended
11 Okay

12 Now, again, we go back to -- this is a recap of -- we
13 have this -- until the early hours of the morning, left to go
14 get breakfast and then returned around -- at eight o'clock in
15 the morning, and then he went into his own private bathroom to
16 shave, and there's just no evidence that there was an
17 altercation prior to this shooting You have all this stuff
18 going on, that he was able to leave and go get breakfast
19 That's the key point to this paragraph down here He was able
20 to leave There's no telling who he could have contacted, who
21 he could have told, or if he was suspicious about something,
22 or something going on he could have brought help back Who
23 knows what stakes could have been raised by letting this
24 person leave and come back It creates all kinds of
25 unforeseen events, so that shows, again, a lack of skill and a

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1 lack of foresight If he is planning to kill him letting him
2 leave is not a good idea All right

3 Now, the act of killing Mr Turner, it change -- it ups
4 the stakes We have changed it from what was going on before
5 to now this even increased likelihood of being witnessed
6 during the commission of another crime, and the intensity of
7 law enforcement efforts and interest There is already a
8 B O L O alert, on-the-lookout for the car He has already
9 committed the crime in the car of going and stealing the money
10 from the account Now we have him killing somebody at this
11 location, so whatever interest law enforcement had before it
12 has just gotten more intensified It's gotten more directed,
13 more focused All right

14 Now, in this case the Defendant killed Mr Turner with a
15 357 Taurus handgun from the scene It's a loud and powerful
16 firearm that would not be silenced by a pillow I don't -- I
17 don't ---

18 Q I was going to interrupt for a second

19 A Yes Uh huh (indicating positive)

20 Q When you just said it was a loud and powerful firearm,
21 tell me how you can make that statement

22 A I can make that statement because, as I mentioned at
23 the beginning of my testimony, I live in Alaska I actually
24 own quite a few firearms, and one of them is a 357 Taurus

25 T I It's a cruddy titanium thing Don't ever buy one

JURY IN
BRENT E TURVEY - DIRECT BY WILLIAMS

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1 because they seize up after you put about seventy rounds
2 through them, but that's irrelevant -- but they are very loud,
3 however, you can use either 357 ammunition, which is one
4 level of expense, or you can use the 38 ammunition which is
5 cheaper, and in this case we have -- when it was recovered it
6 had 38 shells in it So don't be confused by that You can
7 have -- you can fire 38 shells through a 357, just so you
8 know But regardless of that, it's a -- it's a cylinder gun
9 It has a wheel on it where bullets rest, and when you fire
10 it -- you've probably seen in the movies where you have a
11 silencer on the end of such a gun That would never work,
12 because you cannot silence the sound coming out of the actual
13 cylinder, because that's where it's coming from That's a
14 movie thing Firing a bullet through a pillow to silence it,
15 that's a movie thing It doesn't work in real life All
16 right The person who committed this crime did not have an
17 appreciation for that, so they fired this very loud gun in an
18 enclosed space -- I can imagine their ears would have been
19 ringing, and they would have thought, oh, my goodness, this is
20 not going to work, so this movie behavior shows a lack of
21 knowledge and a lack of foresight, and suggests that whatever
22 thought they are having is not very well planned out
23 Q Can we pause for a second with that, and we are talking
24 about, and I'm going to show you what's been marked and
25 entered into evidence ---

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1 A Right

2 Q ---As State's Exhibit Number ---

3 THE COURT It's on the opposite side that you are --
4 opposite side of you Turn the box around It's on the
5 opposite side of the box

6 Q Thirty-six Got it It's in evidence I'm going to
7 put it right here

8 A I'll get this out of the way

9 Q Can you tell me about that and this -- this pillow with
10 regard to what you were talking about

11 A Your Honor, may I stand and receive the items?

12 THE COURT Yes sir Just remember you've got to keep
13 your voice up That's all

14 A Right, into the microphone

15 May I touch the garment, Your Honor?

16 THE COURT Yes sir

17 A This is the pillow that I -- this is the pillow that I
18 examine, yes, and it has, as you can see, one side where
19 there's soot, in a nice symmetric stellate pattern on one side
20 where the entrance shot is, and this is the exit hole, and you
21 can clearly see the bloody material inside, on the outside as
22 well, and you can see the opening of the pathway, of the
23 projectile pathway, so that -- this is it, and it ---

24 Q And tell me about -- if you have an opinion regarding
25 the effectiveness of this for what it was used for

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1 A Well, it's a fact -- it's just a fact -- I don't have
2 an opinion, but it's a fact, pillows don't work to silence
3 firearms It's just -- that's not how it works That's movie
4 behavior All right So even if you pick this up you should
5 be able to feel it and know that it's not going to silence a
6 firearm If you are at all familiar with firearms use at all
7 you are going to know that it's not going to work It's not
8 going to stop a bullet, and it's not going to -- and it's not
9 going to silence it I give one caveat I did work a case
10 one time where a 22 bullet was recovered from a very, very
11 dense couch pillow that had a very thick leather hide around
12 it, and that slowed it down some, but this had a material
13 cover on it All right

14 Q Okay Please continue

15 A All right

16 Q Let's move to our next area of analysis

17 A Sure The -- in this case item number (L), Defendant
18 stayed at the Turner residence until after daylight Again,
19 the vehicle would be plainly visible, he would be easily
20 identified by neighbors if he's seen leaving, and the two loud
21 gun blasts that just went off would have drawn attention to
22 the activities of the home But even at that time of day
23 that's when people are leaving and getting ready for work, so
24 if anybody has a normal, you know, nine to five type schedule,
25 this is when they are out moving around So again, lack of

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1 precaution, a lack of foresight, a lack of skill, all right,
2 doing things that absolutely puts him in the road for being
3 identified and then later apprehended So he stole -- what
4 does he take? He takes Mr Turner's vehicle, a 1996 Mazda
5 B2300 It's not a conspicuous vehicle like the -- like the
6 Mustang, like the red Mustang, but the red Mustang he leaves
7 right at that scene, right out in the open He doesn't
8 attempt to conceal the red Mustang, it being seen, or park it
9 somewhere else down the road and not have it associated with
10 it He has it -- he associates that red Mustang with that
11 event, all right, providing for his identification or, again,
12 at that location, as if he hadn't done enough already to do
13 that This would be the first thing the police would be on
14 the lookout for once they discovered this homicide All
15 right

16 The Defendant left Ms Ling's red Mustang at the scene
17 and it would be associated -- we already talked about that --
18 and this makes the vehicle change moot, so if you are going to
19 say well, he changed vehicles because he's smart and he's
20 clever, he's thinking ahead, no, by leaving the vehicle there,
21 the red Mustang, right in the opening, makes that moot, and it
22 shows, again, a lack of skill, a lack of foresight with the
23 thinking here, these persistent, again, persistent
24 contradictory acts

25 Now it is true that after the commission of this crime

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1 the offender did drive across the State, and you will have to
2 forgive me I am not familiar with the State of South
3 Carolina I've only been here a couple of time, but it's very
4 beautiful, but I had to look at a map to see how far these
5 things were from the -- where this was committed, in Conway,
6 to Columbia, and then on to Augusta, I believe it was, where
7 he ultimately was found So he went to two different places,
8 Columbia one day, and then Augusta the next, I believe So he
9 didn't leave the geographic region, and if there's a
10 nationwide B O L O alert out for that Mustang they are going
11 to find the Mustang at that house and they are going to know
12 that the truck is missing and they are going to be looking for
13 that next, so he's not really covered any tracks there

14 Now, once he gets in this vehicle he's got it for
15 several days He doesn't try to get rid of it, and he doesn't
16 try to get rid of any of the identifying information that's in
17 the vehicle that's associated with Mr Turner, so if he just
18 does what he did -- and we'll talk about that in a second --
19 starts up a regular life with other people in it, he's going
20 to have potential witnesses, you are going to see that it's
21 not his truck, and maybe start asking questions So in the
22 truck we have evidence of his prior connection to this event,
23 so he doesn't try to get rid of it, and in the context of sort
24 of engaging in regular behavior, non-precautionary behavior,
25 and having people in -- more close people in his life --

1 excuse me -- he's going to provide for his identification and
2 apprehension

3 The same thing is true with the murder weapon He kept
4 it in the truck He didn't try to get rid of it He didn't
5 go dump it in the river He didn't go bury it like I've seen
6 a lot of offenders do or just throw it along the side of the
7 road -- very common for that to happen -- he kept it All
8 right So I mean, he kept it in the stolen truck, so if
9 police found the truck they are also going to find the weapon,
10 so it's not just that he's associated himself with the scene,
11 he's associated himself with the scene and with the murder
12 All right

13 Another thing that we find in the truck is a spiral
14 notebook that had the name Laura Ling in it, so not only is
15 this vehicle going to be associated directly with this Turner
16 homicide, it's going to be associated directly back to Laura
17 Ling, and back to her vehicle Okay So everything you need
18 to connect this person to these crimes is in this truck, and
19 he's kept it all, even though there is no reason to do so

20 Now, immediately after -- well, not immediately, within
21 that day -- and I use that -- that's how I use the term
22 immediately, so it's not like there's time for an emotional
23 cooling off period -- he frequents multiple public places,
24 bars, and engages in conspicuous spending behavior following
25 these incidents, and he's easily remembered by other patrons

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1 It's not like he goes there and he's this forgettable drinking
2 himself into a stupor-type person to forget his woes, he's
3 there, he's being gregarious, telling stories and spending
4 money, and doing things that will be memorable, okay, the
5 absolute antithesis -- it's not just that he goes there to a
6 public place, but he's doing things that will get him noticed
7 and remembered

8 In the vehicle he also kept a bag that had a card case
9 in it, and this silver card case contain -- has his real name
10 on it, as well as a card inside with his real name and an
11 address on it from the -- from Murrells Inlet Again, if he's
12 just going about his regular activities and trying to lay low
13 this is going to work against that, especially if he's using
14 another name He gives another name, Christopher -- Stephen
15 Christopher Alexander That's the name he gives to Ms Putnam
16 when he meets her

17 Ms Putnam -- he meets her at a bar -- sorry about that
18 He meets her at a bar in Augusta, and he is -- when you meet
19 somebody and you start spending a lot of time with them, and
20 it's intimate time -- I'm not saying it's sexual, I'm just
21 saying it's intimate -- and you are meeting them with this
22 intimate time they are getting to know you They are getting
23 to know your face, they are getting to know your name, they
24 are getting to know your habits, they are getting to know your
25 possessions By bringing this person into his life, without

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1 getting rid of all this stuff, he's doing stuff that's putting
2 him at risk to be identified and apprehended in association
3 with all these crimes, and the name he chooses isn't even that
4 different from his own, so if there's a B O L O alert, and
5 they associate his name with this vehicle that they've found,
6 and his name gets put on the news, which it did, his name is
7 not so different that it's going to be -- that it's going to
8 cast out It's actually going to arouse suspicion, which of
9 course it did

10 So the final thing that I'll talk -- that I'll mention,
11 is sort of the -- the capstone on this entire series of
12 events, which raises it -- which, in concert with everything
13 else, raises this to the level that I'm able to give this
14 opinion, which is that the Defendant goes to church with his
15 new lady friend, which is a recorded church service, and it's
16 televised Now, that, by itself, would be cause to have
17 questions, but you would still want to look at everything
18 else, but still that, by itself, is problematic, and raises
19 his level of risk But in concern with everything else you
20 have this pervasive pattern of contradictory behaviors, not
21 just a failure to be precautionary, not just a failure to have
22 skill, but contradictory behaviors that pervade the entire
23 series of events, from start to finish, and it's not just a --
24 it's an absence of skill, absence of precaution, absence of
25 foresight, so the criminal thinking isn't there, the foresight

1 isn't there, the M O is very poor, and it's based on these --
2 I don't know how to say it correctly, I suppose these T V
3 behaviors that aren't real, T V imaginings, imaginings from
4 television, the idea that what you see on T V is real For
5 example, a reasonable person, I hope, would not believe that
6 if you fired a shotgun at somebody they would fly through the
7 air, but maybe there are people out there that believe that
8 This is that kind of thinking, that kind of belief, so it's a
9 real problem And that is the -- those are the primary
10 reasons that I have come to my final conclusion

11 Q And that final conclusion, just one last time

12 A Is that the M O behavior in these cases exposed the
13 offender to a high risk of both identification and
14 apprehension, this pervasively contradictory M O , that will
15 provide for him to be both identified and apprehended by law
16 enforcement

17 Q Okay

18 MS WILLIAMS One moment please

19 Your Honor, that's all the questions I have of this
20 witness

21 Please answer any questions the Solicitor may have

22 THE COURT Cross-examination

23 MR HUMPHRIES Thank you, Judge

24 CROSS-EXAMINATION BY MR HUMPHRIES

25 Q Good afternoon, Mr Turvey

1 A Good afternoon It's good to see you again

2 Q Good to see you

3 Victimology How important is Victimology, and how
4 helpful can that be in crime scene analysis and
5 reconstruction?

6 A I think I mentioned that it's an integral part of crime
7 scene analysis, so you really can't do one without doing the
8 other Well, you can't do crime scene analysis without
9 considering the victimology as we looked at in this case You
10 have to consider where the danger is coming from in the life
11 of the victim, what harm they might befall, what risks they
12 are in of being the victim of whatever type of violent crime
13 that we are examining, so I would say it's critical, crucial

14 Q In regard to Henry Turner ---

15 A Yes sir

16 Q ---Are you aware of the relationship that was fostered
17 by Defendant Stanko with Henry Turner?

18 A I believe so

19 Q That was a relationship that was, quite frankly, built
20 on complete fraud

21 A That is -- that is a fact

22 Q Yes

23 A Yes sir

24 Q Defendant Stanko sort of co-opted into Henry Turner,
25 this elderly gentleman, filled his head with all sorts of big

1 projects and important investigating, and had him do
2 absolutely meaningless tasks in an effort to include him in
3 this very important investigation, I think associated with a
4 local lawyer, Harry Pavilack Are you aware of that?

5 A I am not aware of that specifically I can tell you
6 what I am aware of, but I'm not aware of that specific -- and
7 I'm not sure that I would even characterize it that way, but
8 I'm sure the facts we would agree on

9 Q Okay Suffice it to say, he did foster a -- a
10 relationship with Henry Turner?

11 A He went out of his way to foster a relationship, yes,
12 indeed

13 Q And in fact, in fostering that relationship he busied
14 Henry Turner so much that it served to separate him from those
15 that he would usually or normally associate with Were you
16 aware of that?

17 A I was not aware of that, but that does not surprise me,
18 but I was not aware of that specific fact

19 Q And you are aware that Henry Turner was an elderly
20 gentleman and lived alone

21 A Yes, I am, that he did he a girlfriend that visited
22 frequently, yes

23 Q He did, but that girlfriend, of course, was in
24 Charlotte

25 A Yes

1 Q Right So that's important to your analysis

2 A I would say so, yes We want to establish those
3 relationships, and specifically the relationships that were
4 suffering I guess I could have stood to learn a little bit
5 more of that, but it wasn't relevant to the analysis that I
6 was doing, so ---

7 Q And you have already mentioned to the jury that one of
8 the things that you consider was that -- and we have phone
9 records to bear it out -- at 3 22 in the morning of the 8th
10 Defendant Stanko calls Henry Turner and tells him that his
11 father has died

12 A Right Yes That's what I -- I believe I -- I didn't
13 testify to the time, but I know the event Yes

14 Q Yes sir And Henry Turner says, come on over, I'll
15 help console you, and he does

16 A Yes, he does He seems to be a very sympathetic
17 individual

18 Q Now, were you aware, and perhaps you weren't, that just
19 earlier that Defendant Stanko had contacted Henry Turner and
20 told him that he needed to get an advance of a Thousand
21 Dollars ---

22 MS WILLIAMS Your ---

23 A I wasn't aware of an amount, but I believe I was -- I
24 know I was aware of the fact that he was looking for money

25 Q Yes sir

1 A He was look -- he was looking for money -- looking for
2 get-out-of-town money or something like that

3 Q Something like that

4 A Something like that

5 Q And that Henry Turner secured that money for him

6 A I wasn't aware of that I'm not aware of facts to that
7 nature so ---

8 MS WILLIAMS Your Honor, may we approach?

9 THE COURT Absolutely

10 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD)

11 THE COURT All right, Solicitor, move along

12 MR HUMPHRIES Thank you, Your Honor

13 Q Let's -- let's talk a little bit about some of these
14 indicators

15 A Certainly

16 Q Would you agree with me that they are -- that your
17 inferences from those indicators are subject to being not the
18 only inferences that you could derive from those indicators?

19 A I would I would love to hear what another
20 criminologist things about it I can't see any other possible
21 inferences I think you can take them a little further, but
22 within the confines of what we are doing today I think there's
23 -- there's not a lot of room for this opinion about whether or
24 not there's a pervasive pattern of contradictory acts by -- as
25 they are defined

1 Q Sure

2 A I would love to hear -- if there is another opinion I
3 would love to hear it

4 Q Well, let's talk about just a few of them We have
5 established that Defendant, Stanko, knows very well the
6 Defendant -- that the victim in this case was elderly and
7 lived alone

8 A Yes, we have

9 Q That, in and of itself, would make him a readily
10 accessible victim of opportunity

11 A For -- for -- for what?

12 Q For being taken advantage of

13 A Oh, I see -- I see where you are going Yes

14 Q There is no question that this black Mazda pick-up is a
15 less conspicuous vehicle than a Mustang convertible

16 A I don't think there is a question

17 Q You mentioned that it was important to -- it was a
18 contradictory -- I forget your term

19 A A contradictory act

20 Q Yes sir That the victim was able to leave to go get
21 breakfast

22 A Yes If there was a plan to kill the victim then that
23 would seem inappropriate, so that cuts against the plan, but
24 it also introduces an unknown element, because you don't know
25 what they are going to do when they are not in your presence,

1 and you don't know who they are going to talk to, you don't
2 know if they are going to bring somebody back, so it becomes a
3 problem

4 Q Right It did, however, provide the physical
5 opportunity for Defendant Stanko to retrieve the weapon and
6 prepare to kill Henry Turner, did it not?

7 A It would have, yes, if that were the plan, but I don't
8 know when the weapon was retrieved and under what
9 circumstances

10 Q Certainly But it would provide that physical
11 opportunity

12 A Yes In the same line that him leaving and going back
13 to the -- to shave would provide that opportunity, depending
14 on where the firearm was kept

15 Q Exactly Like if it was in his room that might have
16 made it more difficult

17 A Right Right

18 Q Now, there was a mention, of course, that the credit
19 cards were left

20 A Right I believe there was a PayPal One, and then
21 there was an A T M card, and a number of other things, and
22 also identifications that would have been useful if you were
23 going to try to, I don't know, steal someone's identity, per
24 se

25 Q Sure I mean, obviously it would have been somewhat

1 difficult for a man of Defendant Stanko's age the co-op into
2 Henry Turner's identify, I mean, phys -- in terms of
3 physicality?

4 A Right Physicality, yes

5 Q Sure And it's also true that credit cards -- because
6 we know from the movies -- credit cards can be tracked

7 A They can, but not immediately, so ---

8 Q Well, and -- and I get you there, but we are talking
9 about -- because obviously it appears many of these things
10 were learned from, or adopted from what we see on T V and
11 movies Clearly it's the ---

12 A Some of them yes, some of them no I think I have
13 identified the ones that I think so

14 Q Sure And clearly, from the movies you are picking up
15 on the credit cards right away, I mean, if you are fugitive
16 you are not going to use credit cards, you would use cash

17 A Well, I don't know if I can agree with you I can only
18 tell you based on my experience with similar types of -- with
19 people who rob other people, and they take all manner of
20 portables, any portable thing they can use and get rid of it
21 real fast In fact there's a real cottage industry right now
22 with people taking credit card information and using them just
23 within the twenty-four hour period that they can, and buying
24 as much as they can, so I don't know that I can agree with you
25 on that

BRENT E TURVEY - CROSS BY HUMPHRIES

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1 Q No question But now that wasn't really my question

2 A Oh, I'm sorry

3 Q My question was that, if we are learning from T V the
4 first part of the rule is, you stop using your credit cards
5 and you use cash

6 A Oh, I see I think the mistake we are making here is
7 we are trying to apply sort of this rational level of thought
8 It's not a -- there's only -- T V learning isn't the only
9 learning that's going on here There are just certain things
10 that have been learned from television that have been applied
11 in this crime ---

12 Q I understand, but that ---

13 A ---Not the whole thing

14 Q I understand, but that's exactly what I'm talking
15 about

16 A Oh, okay Oh, you used it as a hypothetical, okay Is
17 that what you are saying?

18 Q Somewhat

19 A Okay

20 Q Now, he -- he went to the bank, and of course everyone
21 knows -- I'm with you -- that those A T M s have cameras

22 A Not just the A T M but the building itself would have
23 it's own security system, so even -- need not even having to
24 approach the parking lot and whatever you would be wary of
25 that, just because it's a bank It's the place where the

1 security is

2 Q Right But not only do banks have cameras and security
3 systems, they've got the money?

4 A Yes, they do

5 Q Now, there's certainly no evidence that would indicate
6 that Defendant Stanko would have known that after he called
7 Henry and said I want to come over, my dad died By the way,
8 do you know if his dad is dead?

9 A I'm assuming not I didn't investigate because I just
10 assumed it was not true

11 Q There is no way -- there is nothing to prove that
12 Defendant Stanko knew that Henry Turner was going to call his
13 girlfriend in Charlotte and say, hey, darling, Henry -- I
14 mean, Stephen is over here, his daddy is dead There was no
15 way for him to fairly anticipate that based on the evidence

16 A No, there isn't, but we have the event that it
17 happened, and because it happened we know that he is --
18 knowing that he's talking on the phone, we have him knowing
19 that he's going to reach for a phone, I mean, these things --
20 if it had happened and he didn't want it to happen he could
21 have certainly stopped it, is all I'm saying, and he didn't
22 try to stop it

23 Q Well, no, he didn't try to stop the phone call He
24 didn't ultimately kill Henry Turner

25 A That's right, but we are not talking about just the

1 homicide, we are talking about the events leading up to it and
2 how contradictory that was, so to even to allow him the phone
3 call, to even allow him to leave, that it didn't participate
4 the homicidal event, again, these -- to stop it from happening
5 these would be contradictory acts to his apprehension

6 Q Sure Sure Now, no question, based on your analysis
7 of the crime scene, that there was no prior physical
8 altercation between the two

9 A Right

10 Q None

11 A Not that I'm aware of

12 Q Okay Let's -- let's talk about this pillow You have
13 conceded -- and it's -- you know, it's -- I think we are all
14 in agreement that you sure have seen it on the movies ---

15 A You sure have

16 Q ---Where a gunshot has been muffled by a pillow, and
17 I'm with you, it don't work, but we see it on the movies
18 Now, doesn't it give Defendant Stanko just a bit too much
19 credit to assume that he knew that the pillow wouldn't muffle
20 the shot?

21 A I don't think so, no

22 Q You don't?

23 A No, I don't

24 Q You know -- I mean, do you know if Defendant Stanko is
25 familiar with firearms?

1 A No, but again, it's the analogy I made about the person
2 flying through the air There are certain things that it's --
3 if you are not able to determine them just by looking at them
4 then you are at a different level of intelligence, a different
5 level of creative thinking, a different level of imagination,
6 and that level would be much lower

7 Q All right But of course you understand he's highly
8 intelligent

9 A That's what the tests say

10 Q Yes, they do But let's assume ---

11 A Which is, again, why I would give him the benefit of
12 the doubt, to think that he would not make that mistake

13 Q Sure But now let's assume that he was under the
14 assumption that the pillow would muffle the shot

15 A I don't think the word assumption is the right word
16 The word I would like to use I don't think I can use
17 Assumption, I think, is the wrong word

18 Q Let's say he thought it would muffle the shot

19 A Okay

20 Q Let's just say that

21 A Okay

22 Q All right Cause apparently you and I are going to
23 disagree on that particular point That clearly -- when that
24 shot went off it's a loud bang

25 A No question And especially in that enclosed area It

1 would have been very loud

2 Q Sure Okay Now, then why do we make so much about
3 the second shot?

4 A Why do we make so much about the second shot?

5 Q Because here's what we are talking about

6 A Oh, this -- was that a question for me or ---

7 Q Yes Yes Why are we making so much about the second
8 shot not being muffled, is my point?

9 A Because the second shot brings the attention back In
10 Alaska we have this thing about guns You know, you fire a
11 gun it's a dinner bell You are going to bring the bears
12 And you don't fire it again if you don't have to because then
13 they will find you All right That's -- this is how it is
14 The first shot draws attention, the second shot tells them
15 where it is

16 Q And of course we ain't in Alaska

17 A No, but it's -- that's the concept

18 Q Okay But after he's fired the first shot, and it was
19 loud, and according to your analysis of the crime scene Henry
20 Turner turns around

21 A Yes

22 Q And I'm with you You think that might have surprised
23 Defendant Stanko after taking that first shot, that Henry
24 Turner -- I mean, he's shooting him through the heart You
25 think that might have surprised Defendant Stanko that he would

1 be able to turn around and face him after having been shot
2 that way?

3 A Well, I don't think, first of all, that Stan -- Mr
4 Stanko would have known where he shot him, but the shot itself
5 -- to recover from the shot itself -- I mean, that he shot him
6 in the heart -- you can't know just by looking at somebody
7 whether or not you've shot them in the heart, but that he shot
8 him and that he turned around, I would concede might have been
9 a bit of a surprise, yes

10 Q Okay Well, you know where the shot entered the body

11 A I do, but Mr Stanko would not have had the forensic
12 pathologist there at the scene to perform the autopsy to show
13 him where the path went through, so he wouldn't know that he
14 hit him in the heart All he knows is he hit him in the upper
15 body, through the back

16 Q Clearly though the gun in the pillow was in close
17 contact to the victim

18 A Oh yes

19 Q So their proximity was close

20 A Yes, it was But again, we can't assume that he knows
21 what he -- what organs it passed through We -- you wouldn't
22 be able to tell Even if you thought you knew you probably
23 don't

24 Q I think it's fair to assume though that he -- he would
25 have assumed that that would have been a fatal shot

1 A I don't know

2 Q Okay

3 A I don't know what his knowledge of anatomy is, or his -
4 - but I'm not -- I'm assuming he's not doing it to make him
5 feel better, he's doing it to kill him, so yes

6 Q That's right

7 A He may be hoping it's a fatal shot, I guess is a better
8 way of putting it

9 Q Now, he kept the gun That was significant to you,
10 that he kept the gun That would be contrary

11 A Yes Absolutely a contrary act

12 Q Unless, of course, he had some future purpose for the
13 gun

14 A Yes, and no, because if he had some future purpose for
15 the gun you don't want to keep it in the vehicle that's going
16 to be looked for that's associated with the crime It's not
17 just the one thing, again, by itself It's in the context of
18 everything else, with the bloody suitcase, in the car, in with
19 the I D All these things together, they give it the more
20 meaning

21 Q Okay Well ---

22 A The greater meaning, rather

23 Q Well, let me ask you this What good would a firearm
24 do to Defendant Stanko if it was not in close proximity to
25 Defendant Stanko?

1 A Well, he wasn't always in the vehicle He was out
2 attending church He was in the residence of Ms Dana Putnam
3 I mean, there's all these different activities he was doing
4 He was at the bars So what good, indeed, what good indeed

5 Q Of course now we know that's where it was found

6 A Yes

7 Q We don't know where he had it prior to that time
8 That's fair to say?

9 A We have no evidence that he carried it in with him
10 anywhere else I would be ---

11 Q And we don't have any evidence to the contrary about
12 that, do we?

13 A That's right Right So I would be -- I wouldn't want
14 to make the assumption either way

15 MS WILLIAMS Your Honor, I'm -- may we approach?

16 THE COURT Yes Ma'am

17 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD)

18 Q Based on your viewing of the evidence, you clearly had
19 the photographs from the Georgia Crime Scene investigator
20 where the weapon was recovered?

21 A That's correct

22 Q You were clearly aware that the gun was fully loaded at
23 that time

24 A It certainly was, with the 38 ammunition, I believe,
25 as I testified previously

1 Q This may be just a touch colloquial for your analysis,
2 but couldn't it just be, honestly, that Defendant Stanko was
3 just so arrogant that he really didn't care what he left
4 behind?

5 A I wouldn't use the word arrogant I would think
6 perhaps grandiose to the point of delusional, is a better way
7 of putting it That's a better way I mean, you are saying
8 arrogant, but to me, no

9 Q Okay You are not -- you are not a psychiatrist or a
10 psychologist?

11 A No I'm not using a psychological or psychiatric term

12 Q Oh, I thought delusional was, okay

13 A No It's not a diagnosis or a -- it's a regular term

14 Q You will concede that much of his behavior, whether it
15 was smart or otherwise, was goal oriented

16 A That's a really good question Was it goal oriented
17 I think a lot of it was, yes A lot of it was goal oriented,
18 and again, lacking real foresight, and lacking real insight,
19 and lacking a lot of planning I think it was goal oriented,
20 but I also think it was reactionary It wasn't him sitting
21 down drawing up a plan, thinking hard and deliberating about
22 the consequences, and how to evade detection It was him
23 reacting to sets of circumstances as he was confronted by
24 them, and not thinking about the full spectrum of consequences
25 for the behaviors It reflects really two-dimensional flat

1 thinking about what's going on

2 Q And you ever seen that movie *Catch Me if You Can*?

3 A It's always going back to the movies, isn't it?

4 Q Isn't it

5 A Yes, I have It's the one with Leonardo DiCaprio, I
6 believe

7 Q Where he basically hides in plain sight?

8 A Yes

9 Q In this case -- and I'm not suggesting that Mr Stanko
10 patterned his evasion on that movie, but in this case it's not
11 -- there is another inference to derive from the fact that he
12 went in very highly populated areas, is there not?

13 A Such as?

14 Q Such as, he's hiding in plain sight

15 A No, I don't think so I don't believe -- he's not
16 taking on the guise of another person It's not like the --
17 in *Catch Me if You Can* I believe he wears a uniform of a
18 pilot, so it's not just that he's hiding in plain sight as
19 himself, he's got a uniform on, he's got a hat, he's got
20 people around him that they looking for that uniform, and
21 looking for that hat, and are not expecting a fraud A bar is
22 a place where everyone can gather A bar is a place where you
23 are going to see all the spectrum of different people at
24 different ages and different -- people enjoy drinking, and
25 enjoy socializing, so no, I don't think it's the same thing

1 Q Sure, but Defendant Stanko did take on the guise of
2 being a high roller

3 A In word, yes, and in action, yes, but not in uniform or
4 what-have-you, just the -- again, the grandiose stories

5 MR HUMPHRIES Thank you I have no further
6 questions

7 A Okay

8 THE COURT Re-direct

9 MS WILLIAMS Your Honor, we don't have any further
10 questions of this defendant -- I mean, this witness

11 THE COURT Yes Ma'am Do you want -- would you like
12 to excuse Mr Turvey or ---

13 MS WILLIAMS We would ask that he be released from
14 his Subpoena

15 THE COURT Any objection?

16 MR HUMPHRIES No objection, Your Honor

17 THE COURT All right Mr Turvey, you are released
18 from your Subpoena You may go back to your regular
19 activities, sir

20 A Thank you, Your Honor May I take time to collect my
21 things?

22 THE COURT Yes sir What we are going to do -- if you
23 will just hold on one second and want to just sit there

24 Ladies and gentlemen, it's a perfect time for a break
25 Why don't you go back to your jury room and we will be with

1 you shortly, please

2 Just leave your note pads and your pens there, please

3 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
4 JURY)

5 THE COURT And I want to note one thing for the
6 record, with whatever limitation the Court put on the
7 witness's testimony in this matter, he was allowed, in his
8 cross-examination, without objection, to give certain
9 characterizations that -- to the effect that you can't apply
10 rational thinking to this act, the Defendant engaged in a
11 different level of thinking, it was grandiose to the point of
12 delusional, and engaged in two-dimensional flat thinking

13 Thank you very much

14 MR HUMPHRIES Your Honor, just for scheduling
15 purposes, the next thing we are going to take up is the motion
16 in limine, I assume, regarding the -- I assume that's their
17 next -- I don't know who their next witness is, but I mean, at
18 some point we've got to take it up

19 THE COURT We will Why don't -- we will take a short
20 break and I'll cover that with you All right Great

21 MR HUMPHRIES Thank you, Your Honor

22 THE COURT Thank you, sir

23 MR HUMPHRIES Thank you, Your Honor

24 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
25 THE PRESENCE OF THE JURY)

JURY OUT/ON RECORD

1483

1 **THE COURT** All right The next witness is going to be
2 Thomas Sachy, is that correct, Dr Thomas Sachy?

3 **MR DIGGS** Your Honor, it's incamera It's not going
4 to be in front of the jury

5 **THE COURT** All right

6 **MR DIGGS** I mean, the Court indicated earlier you
7 wanted to go through this, and I mean, it's not where we plan
8 to call him with the jury

9 **THE COURT** Oh, you don't intend to call him now?

10 **MR DIGGS** No sir He is here so that if you want
11 to -- no, I mean, we can go ahead I'm happy to go ahead with
12 the jury in the room

13 **THE COURT** Okay

14 **MR DIGGS** We have that witness here It's Dr
15 Albiniak

16 **THE COURT** Okay Well, ---

17 **MR HEMBREE** Your Honor, the difficulty with that is,
18 Dr Albiniak, is going -- this is the beginning of entering
19 testimony about the Defendant's alleged insanity, and we have
20 not reached the threshold question as to whether or not they
21 will be able to offer an insanity defense that will meet the
22 legal standard in South Carolina

23 **THE COURT** Okay Well, I mean, you've got -- you've
24 got two issues, because you have the -- as I understand it
25 they are potentially presenting insanity or guilty but

1 mentally ill and they have two standards

2 MR DIGGS Right

3 THE COURT Now the -- obviously the insanity, so we
4 are all clear -- I'm sure we all are anyway -- that the -- at
5 the time of the crime the Defendant had a mental disease or
6 defect which made him unable to distinguish moral or legal
7 right from wrong, or to recognize the crime as morally or
8 legally wrong

9 And guilty but mentally ill is, a defendant was able to
10 distinguish moral or legal right from wrong, or to recognize
11 his act as being morally or legally wrong, but because of a
12 mental disease or defect the defendant lacked sufficient
13 capacity to conform his conduct to the requirements of Law, so
14 the testimony could be related to either one of those, so, you
15 know, if -- if they come forward on either standard then
16 certainly the Court is going to allow them to testify, because
17 then that would formulate a basis for the jury, if they wanted
18 to, to arrive at that type of verdict So if they -- their
19 testimony has a foundation in either standard then they can
20 testify

21 MR HEMBREE Yes sir I understand and agree

22 THE COURT All right Very good

23 MR DIGGS And Your Honor -- I'm sorry

24 THE COURT Go ahead

25 MR DIGGS We would call Bernard Albinak

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JURY OUT
THOMAS SACHY - DIRECT BY DIGGS

1486

1 MR DIGGS Okay Well, I'll ask them to leave

2 THE COURT All right Very good

3 All right, Madame Clerk, go ahead

4 THOMAS SACHY, M D , being first
5 duly sworn, testifies as follows

6 THE COURT All right, Mr Diggs

7 MR DIGGS Thank you, Your Honor

8 In the presence of the jury, Your Honor, we will go through
9 a -- an expert qualification The State has been kind enough
10 at this point to consent that he is -- well, agree that he
11 is ---

12 THE COURT For purposes of this portion I think we are
13 all in agreement we will just skip ---

14 MR DIGGS He's an expert in Psychiatry

15 THE COURT That's right Skip through that

16 DIRECT-EXAMINATION BY MR DIGGS

17 Q Now Dr Sachy, you are employed in the field of
18 Psychiatry, are you not?

19 A Yes

20 Q And tell us what you do in that regard and where?

21 A I am in private practice in Gray, Georgia, which is
22 north of Macon My practice is called Georgia Pain and
23 Behavioral Medicine I do Psychiatry, Neuropsychiatry, pain
24 management, a little bit of Neurology, little bit of Primary
25 Care now, so ---

JURY OUT
THOMAS SACHY - DIRECT BY DIGGS

1487

1 Q Okay Now in the course of your practice did you
2 become involved in the Stephen Stanko case?

3 A Yes

4 Q Can you tell us what you've done in that regard, what
5 you did in order to become involved with Mr Stanko

6 A Several years ago a performed a psychiatric ---

7 Q And pull that microphone up there, Doctor, so that --
8 yes, there you go

9 THE COURT Or just talk right into it, one of the two

10 A Several years ago a performed a psychiatric evaluation
11 on Mr Stanko I did a neurological exam on him as well I
12 also arranged for an M R I to be performed of his brain I
13 arranged for his M R I data to be analyzed by Dr Ruben Gur
14 at the University of Pennsylvania, and I arranged for a P E T
15 scan to be done of his brain, which was analyzed by Joseph Wu
16 at the University of California Irvine

17 Q Okay And did ultimately you get the results of those
18 tests?

19 A Yes

20 Q All right . And did you have them available, along with
21 other evidence, to make an opinion or diagnosis in this case?

22 A Yes

23 Q And go ahead and, if you can, explain a little more to
24 us about what you had available to you in the formation of an
25 opinion or diagnosis

JURY OUT
THOMAS SACHY - DIRECT BY DIGGS

1488

1 A I also had access back then to psychiatric and medical
2 records, medical records from his childhood, psychiatric
3 records from various incarcerations and psychiatric
4 interventions through the years, in the nineties, here in
5 South Carolina

6 I also had the Report of Dr Crawford to review I had
7 the reports of Dr Gur and Wu to review, and ---

8 Q Okay And you mentioned that you did meet and evaluate
9 Mr Stanko?

10 A Yes

11 Q Where did that take place?

12 A At the jail, I think, in the other County, or was it
13 this County? I can't remember

14 Q Okay But you did meet with him personally at wherever
15 he was confined at the time?

16 A Yes

17 Q And what do you do when you interview and do that kind
18 of evaluation?

19 A You sit down with him, you get a psychiatric history
20 You try to elicit from them any psychiatric symptoms and
21 history they may have You get a neurological history, try to
22 find out about if they had any damage or illness to their
23 brain You perform a neurological examination to see if they
24 have any outward signs of neurological disfunction, then you
25 get a general history

JURY OUT
THOMAS SACHY - DIRECT BY DIGGS

1489

1 Q Now based on the tests that you did, did you see any
2 such signs of a neurological -- you said disfunction?

3 A I did There were two signs of -- called neurological
4 soft signs They are very mild signs consistent with brain
5 dysfunction ---

6 Q Okay

7 A ---But they not as gross and, let's say, a stroke,
8 however, he had signs of mirroring, which is a sign of central
9 nervous system dysfunction, and he also had posturing, which
10 is a neurological soft sign consistent with that

11 Also in his interview it was -- he demonstrated some
12 concrete thinking, or an inability to properly abstract As
13 well he showed some of the typical signs of anti-social
14 personality disorder or psychopathy

15 Q Okay Now in the practice of medicine is an evaluation
16 of sanity -- insanity something that's ordinarily done? Is
17 that something that doctors do, or is that more a legal
18 inquiry?

19 A It's more legal We don't -- I mean, we hear the word
20 insanity, but it's not a diagnosis that we put on a piece of
21 paper

22 Q Okay So you were kind of brought into that arena by
23 the demands of the judiciary and the legal system ---

24 A Yes

25 Q ---That might make use of those concepts in it's forum

JURY OUT
THOMAS SACHY - DIRECT BY DIGGS

1490

1 A Yes

2 Q Okay Now in -- were you provided with the legal
3 definition of insanity in the State of South Carolina as it
4 has been define by our State statutes?

5 A I was

6 Q All right And let me ask you -- do you have it
7 written there before you in some -- in some format?

8 A I do, and it's on page seventeen of my Report

9 Q All right Let's go there, page seventeen All right,
10 if you would, read for us what you were given as the legal
11 definition of insanity in this State

12 A It is an affirmative defense to a prosecution for a
13 crime that, at the time of the commission of the act
14 constituting the offense, the defendant, as a result of mental
15 disease or defect, lacked the capacity to distinguish moral or
16 legal right from moral or legal wrong, or to recognize the
17 particular act charged as morally or legally wrong

18 Q Okay Now, with that definition at -- in your
19 possession, were you able to make, or apply that definition to
20 Mr Stanko's case, and render an opinion as to whether or not
21 Mr Stanko meets this definition of insanity?

22 A Yes

23 Q Okay And what is that opinion?

24 A Well, he's certain moral -- at the time of the crimes
25 he was morally insane, and you could argue that he was also

1 legally -- he didn't understand moral right from wrong, and he
2 didn't understand legal right from wrong, as that would not
3 enter -- or be processed by a psychopathy brain at the time of
4 these events

5 Q Okay And so can you just give us a general overview
6 of how it is that you reached that conclusion?

7 A Based on the interview, the review of the records, the
8 neurological evaluation, the brain-imaging evaluation, and the
9 fact that he has received diagnoses of anti-social personality
10 disorder, i e , psychopathy before he meets all the criteria
11 for it, and the -- the limitations or impairments that anti-
12 socials or psychopaths have, one of the major ones they have
13 is an appreciation for the wrongfulness, or the moral
14 wrongfulness and legal wrongfulness of their actions at the
15 time

16 Q Okay Now, I want to ask you -- well, we can probably
17 leave that

18 MR DIGGS Your Honor, I think that probably is going
19 to suit the needs for this particular time, so I will ---

20 THE COURT Solicitor

21 MR DIGGS Thank you

22 A Thank you

23 CROSS-EXAMINATION BY MR HEMBREE

24 Q Dr Sachy, I'm -- help me out on this moral insanity
25 versus legal insanity What do you -- how do you draw that

1 distinction?

2 A Well, there are two different words, moral and legal,
3 so they are distinct

4 Q I understand that, but what do they mean to you? What
5 distinction do you draw from those two phrases that you used?

6 A Moral insanity Morals is something -- something -- a
7 moral -- whether something is morally understood It's not a
8 definition It's an appreciation of moral behavior or
9 conduct It's something we appreciate It's not something we
10 sit down and think about And at the time -- in a high
11 conflict situation at the time of an alleged crime like these
12 I would submit that legal appreciation of wrongfulness is also
13 not considered by the brain at a time -- in the short period
14 of time in a high emotionally conflict situation, that it's
15 not appreciated at the time

16 Q Is it your -- essentially your testimony that he -- for
17 a variety of reasons, Stephen Stanko has poor executive
18 functions in the frontal lobes?

19 A He has poor executive functions which have not all been
20 tested, but from his history, and from the available records
21 and his previous diagnoses, one of the most important
22 executive functions that are impaired, or lacking, is, in high
23 conflict situations, his ability to appreciate the
24 wrongfulness of his acts

25 Q In high conflict situations?

1 A Correct

2 Q And that he has impulsive or aggressive behavior that
3 does not -- is not constant, it only -- it typically -- it typ
4 -- let me phrase it, then you can answer But it typically
5 manifests itself when he is challenged in a high conflict and
6 emotionally charged situation?

7 A It would always present, but it would manifest itself
8 more in those situations

9 Q In other words he has this -- the functioning is the
10 functioning, but it doesn't manifest itself, there are no
11 negative consequences from it except in these types of
12 situations?

13 A I -- it's more complicated than that That's the
14 impulsive aggression part, but the other parts of this
15 diagnosis -- diagnosis, such as conning, manipulation, lack of
16 empathy, there all the time, and they rise to a level of, you
17 know, diagnosis and disability

18 Q And would it be your testimony that anyone, anyone that
19 is a con man, dishonest, liar, that is diagnosed with an anti-
20 social personality disorder is legally insane?

21 A If enough scientific study is done on them and brain
22 imaging is done, and all the pieces fit together, yes, they
23 would be

24 Q Well, I mean, I'm asking -- I'm not asking that I'm
25 not asking about all the other stuff I'm asking about --

1 he's -- you've got a Defendant that is a con man and a liar,
2 and he has -- he is diagnosed with an anti-social personality
3 disorder -- he's got a personality disorder ---

4 A And he's diagnosed

5 Q He's diagnosed with a personality disorder ---

6 A Yes

7 Q ---Then you would say that he's legally insane ---

8 A Yes

9 Q ---Under South Carolina's definition ---

10 A Correct

11 Q ---And would not be held accountable for his actions?

12 A I guess he -- no, he wouldn't be He ---

13 Q Now, let's talk about ---

14 A Doesn't mean he's not -- you know, that society doesn't
15 need protection, but it's -- if that's the definition of what
16 happens to someone with a medical illness, a mental illness,
17 then that's what it is

18 Q And anti-social personality disorder is a condition
19 where you basically can't follow -- you don't follow the
20 rules, you don't get along with people, other people, and
21 don't follow the constructs and the rules of society

22 A You are correct, to a biological cause

23 Q Well, it wouldn't matter I mean, if the diagnosis is
24 there the diagnosis is there

25 A Correct And no one would make a medical diagnosis

1 without understanding that it has a biological cause behind
2 it

3 Q Well, diagnoses are made constantly in the field of
4 Psychiatry without a medical cause, without a -- I say medical
5 cause, maybe I'm thinking of a -- you know, a lesion on the
6 brain Oftentimes people have anti-social pers -- they are
7 diagnosed with anti-social personality disorder and they don't
8 have brain defects revealed by a P E T scan or an M R I

9 A I disagree with you

10 Q It would be your testimony that every -- in every case,
11 in every case of anti-social personality disorder a P E T
12 scan would reveal that?

13 A I believe that if everyone with anti-social personality
14 disorder met the diagnosis, was afforded the opportunity for
15 complex brain-imaging to be done, we would find these
16 abnormalities And in fact, if I might just add, in all the
17 brain-imaging studies that have ever been done a hundred
18 percent on psychopaths, a hundred percent of them have found
19 lesions in the frontal lobe in psychopaths

20 Q Dr Sachy, it's not your testimony that Stephen Stanko
21 can't control himself, is it?

22 A Yes There are times when he can't control himself
23 Yes

24 Q As a matter of fact -- as a matter of fact, he controls
25 himself, in a sense of violent acts, very well, doesn't he,

1 based on his history now, just looking at his history, which
2 you have reviewed?

3 A I don't know if I could say that I mean, I'm not
4 controlling a violent act in myself right now I don't have
5 the urge to jump up and throw my water at you I'm just not
6 even thinking about it It depends on the situation, and you
7 just can't generalize like that

8 Q Well, I mean, I'm asking you, is he -- based on your --
9 based on your review of his criminal history, his prison
10 records, his medical history, all the work -- the interviews
11 with him, he does not have a significant history of numerous,
12 numerous, many, many times over, violent offenses or acts,
13 does he?

14 A No, they are not numerous, but they are significant
15 They are murderous, they are dangerous, they are bizarre
16 They are beyond the realm of normal, like bar fights, you
17 know, it's way above that level

18 Q All right So he's not -- that's what I'm saying,
19 that's my whole point, that he's able to control his violent
20 tendencies, or his violent outbursts, or his aggressive
21 behavior all the time, except for very few occasions in his
22 life

23 A I disagree He is not controlling them right now
24 He's just sitting in the room He's not -- we have to put him
25 to the test For instance, he is not controlling how his

1 P E T scan will look when we looked at a picture of his

2 P E T scan It's not way in his control at all

3 Q He's not -- he's not jumping up throwing his water at
4 me either

5 A Why don't you provoke him, I mean, you know, get in a
6 room by yourself with him, provoke him, turn the heat up, the
7 psychological heat, put him in a position where he has to
8 choose -- hang on one second -- between him or you I suspect
9 you might be in danger if you did

10 Q And he's been in prison, right?

11 A Correct

12 Q Violent, highly emotional

13 A He's been violent

14 Q High pressure I mean, that's what prison is like,
15 wouldn't you agree?

16 A Well, it depends For some people prison is a
17 comforting place, you know, three hots and a cot, you know
18 As I mentioned to you before, years ago the studies have shown
19 that psychopaths do very well in prison They -- you know,
20 Ted Bundy didn't attack anyone, or John Wayne Gacey didn't
21 attack anyone In fact -- I forget the name of the guy in
22 Chicago -- he was attacked and killed by someone They -- in
23 a highly contained environment psychopaths are maintained
24 It's when they are, again, put in positions of high emotional
25 conflict, high stress where they have to choose personal,

1 moral dilemmas They have to, you know, compute through
2 those, that's when they are disabled

3 Q His prior criminal history, with the exception of the
4 attack -- I'm talking prior to these crimes -- with the
5 exception of the attack on Elizabeth Buckner, in review of his
6 prior criminal history he has no crimes of violence in his --
7 on his prior criminal history, does he?

8 A I don't think so

9 Q And in reviewing his school records he has absolutely
10 no history of violent acts during his school years

11 A Not by his school records that I can remember

12 Q And in his eight plus years that he was in the
13 Department of Corrections he has virtually no reports of
14 violence or violent acts while in prison, does he?

15 A Correct I believe that's correct

16 Q So my question to you, Doctor, is, he can control his
17 violent -- these violent tendencies most of the time

18 A See I -- I disagree with you I don't believe he's
19 controlling them I don't believe a person could go for years
20 controlling anything without it breaking through If I asked
21 you to stop eating chocolate today for the next four years --
22 I don't know, maybe you don't like chocolate, but if you did I
23 suspect you might violate my rule eventually That level of
24 control is just, you know, unheard of If someone -- it's
25 like weight loss Eventually people lose weight and then

1 eventually they lose control and they start eating He's not
2 having to control himself in the same way as during these
3 episodes It's not -- it's apples and oranges

4 Q And the only time we see, at least in his criminal
5 history, these violent outbursts, attack on Elizabeth Buckner,
6 attack on Laura and [REDACTED] two notable -- and of
7 course, the murder we are here for today -- let's talk about
8 those two Those are the two -- they are excessive, they are
9 notable, but for those two events he's been able to somehow
10 manage to con -- at least not manifest these violent
11 tendencies, they don't come out, thus they are controlled
12 somehow

13 A Well, or they don't manifest, is a better word That
14 is true, however, he's still a psychopath, and psychopaths
15 don't do violence twenty-four seven That's not part of the
16 diagnoses, or for anti-social It says that they have, in
17 essence, a predilection for it, they have a much lower
18 threshold for it That's exactly the science That's -- I
19 agree with that

20 Q And Doctor, you are not -- there's really no -- there's
21 not a specific diagnosis of a psychopath I mean, I
22 understand the term -- I think I understand the term you are
23 using but the D S M 4, it talks about anti-social personality
24 disorder That's sort of -- you are sort of extrapolating
25 that out ---

THOMAS SACHY - CROSS BY HEMBREE
JURY OUT/ON RECORD

1500

1 A I'm glad you asked that, because as I drove out here I
2 brought my D S M 4, which I didn't have last time, and I
3 reviewed it very closely, and in it, when it talks about anti-
4 social personality disorder it says, some clinicians may
5 choose to use the word psychopathy, as it was used before
6 And you were -- went to great pains to say how important this
7 book was -- and in some ways I agree with you -- and it says
8 that right in the book

9 Q Okay Fair enough I appreciate that

10 THE COURT Anything else, Solicitor?

11 MR HEMBREE No, Your Honor

12 THE COURT All right Very good

13 Mr Diggs

14 REDIRECT-EXAMINATION BY MR DIGGS

15 Q Just very briefly Doctor ---

16 THE COURT Honestly, I didn't mean for you ---
17 for redirect questions I just said, did you have a motion at
18 this point in time?

19 MR DIGGS No

20 Your Honor, we would ask you to conclude that there is a
21 prima-facia showing of insanity at this time, we should be
22 permitted to introduce evidence of that defense during the
23 course of the trial, and it remains a jury question as to
24 whether or not Mr Stanko was insane at the time this
25 particular act was committed

1 **THE COURT** Based upon the testimony of the witness,
2 Dr Sachy, then assuming he would carry forward with that and
3 reviewed it very closely, and in it, when it talks about anti-
4 social personality disorder it says, some clinicians may
5 choose to use the word psychopathy, as it was used before
6 And you were -- went to great pains to say how important this
7 book was -- and in some ways I agree with you -- and it says
8 that right in the book

9 Q Okay Fair enough I appreciate that

10 **THE COURT** Anything else, Solicitor?

11 **MR HEMBREE** No, Your Honor

12 **THE COURT** All right Very good

13 Mr Diggs

14 **REDIRECT-EXAMINATION BY MR DIGGS**

15 Q Just very briefly Doctor ---

16 **THE COURT** Honestly, I didn't mean for you ---
17 for redirect questions I just said, did you have a motion at
18 this point in time?

19 **MR DIGGS** No

20 Your Honor, we would ask you to conclude that there is a
21 prima-facia showing of insanity at this time, we should be
22 permitted to introduce evidence of that defense during the
23 course of the trial, and it remains a jury question as to
24 whether or not Mr Stanko was insane at the time this
25 particular act was committed

1 **THE COURT** Based upon the testimony of the witness,
2 Dr Sachy, then assuming he would carry forward with that and
3 so indicate, I would -- do not have any problem with you
4 pursuing the defense of insanity

5 **MR DIGGS** Thank you, Your Honor

6 **THE COURT** All right

7 All right, Mr Diggs, are you ready to go forward?

8 **MR DIGGS** Yes sir

9 **THE COURT** Ask the jury to come in

10 **MR HUMPHRIES** One matter, very briefly, Your Honor,
11 if you don't mind -- and I've been -- I've just been shown
12 some diagram that they intend to introduce, I assume through
13 the next witness Honestly, if there is anything else they've
14 got, which by right they ought to give us, instead of throwing
15 it at us right before -- I know what it is, you know, but just
16 give it to us That's all we are asking

17 **THE COURT** All right Mr Diggs, do you know of
18 anything else, any other demonstrative aids of any kind, any
19 reports, anything?

20 **MS WILLIAMS** I have an actual brain -- a skull ---

21 **MR DIGGS** We have a little rubber brain

22 **MS WILLIAMS** ---But it's just for demonstrative, just
23 like when they have in court that body that they pull out that
24 they sometimes use on -- I forgot what they call his name,
25 Jimmy, or JoJo, or whatever, I mean, but it's not to be

COURT'S RULING

1503

1 admitted in It's simply a visual

2 MR HUMPHRIES Well, they asked to admit that, so
3 I'm -- that's what I'm saying

4 MR DIGGS Well, I mean, I don't need to admit it
5 It's just ---

6 THE COURT All right So you are going to be using
7 that as a demonstrative aid?

8 MR DIGGS Yes

9 THE COURT All right I'll -- that sounds fine then

10 MR HUMPHRIES Well -- and let me say this, Your
11 Honor If they do, and they display it to the jury, there
12 needs to be some record of it, because it needs to be in the
13 record

14 THE COURT Well, it can be put for identification, and
15 then be part of the record

16 MR HUMPHRIES Yes My point is only if they've got
17 anything else we really would like to know it

18 THE COURT I appreciate that

19 MR DIGGS Your Honor -- and I understand what he's
20 saying, and I really do not believe there's anything else

21 THE COURT All right Very good

22 MS WILLIAMS I have my skull and my brain I mean,
23 it's in my office I was given this morning Well, it was
24 actually a funny of a thing, but it's a little -- it's little
25 I'll bring it

JURY IN
BERNARD ALBINIAK - DIRECT BY DIGGS

1504

1 MR DIGGS And you know what, Dr Albiniaak may not
2 even want to use this

3 THE COURT All right Very good
4 Ask the jury to come in, please

5 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
6 JURY)

7 THE COURT All right, Mr Diggs

8 MR DIGGS Your Honor, we would call Dr Bernard
9 Albiniaak

10 THE COURT All right Please come around to be sworn,
11 sir

12 BERNARD ALBINIAK, being first duly
13 sworn, testifies as follows

14 DIRECT-EXAMINATION BY MR DIGGS

15 MR DIGGS May it please the Court

16 THE COURT Yes sir

17 Q Dr Albiniaak, how are you this afternoon?

18 A Pretty good

19 Q Okay That's good Let me ask you -- start off by
20 asking you where you are currently employed and in what
21 capacity?

22 A I'm a Professor of Psychology at the Coastal Carolina
23 University

24 Q Okay And how long have you been so employed?

25 A I'm in my thirty-third year

JURY IN
BERNARD ALBINIAK - DIRECT BY DIGGS

1505

1 Q All right And do you have any specialties within
2 Psychology?

3 A In graduate school I specialized in Physiological and
4 Developmental Psychology

5 Q Okay And in terms -- what do we mean by Physiological
6 Psychology?

7 A Physiological Psych is a field of study within
8 Psychology in which we relate brain function and brain
9 structure to human behavior

10 Q Okay In terms of -- would that deal with things like
11 how the brain is structured and how it works?

12 A Correct

13 Q Various area ---

14 A Correct

15 Q ---Healing with other areas What do you do -- how do
16 you use that specialty in your employment, or in your
17 profession?

18 A Primarily teaching, but I do some animal research also

19 Q All right Have you ever taught any classes or
20 anything of that nature, or written articles or anything
21 relating to Physiological Psychology?

22 A I teach physiological -- I'm teaching in the Spring
23 I've taught it four or five times in the last ten years

24 Q Okay And have you ever been qualified as an expert in
25 the State of South Carolina or the ---

BERNARD ALBINIAK - CROSS BY HUMPHRIES
BERNARD ALBINIAK - DIRECT BY DIGGS CONTINUED

1506

1 A Yes sir

2 Q ---Or the Courts in that area?

3 A Yes, I have

4 MR DIGGS All right And Your Honor, we would offer
5 Dr Albiniaak as -- Albiniaak, as an expert in the field of
6 Physiological Psychology

7 THE COURT Do you wish to question the witness?

8 MR HUMPHRIES Very briefly

9 CROSS-EXAMINATION MR HUMPHRIES

10 Q Doctor, how many times, and in what course have you
11 been qualified as an expert in that particular field?

12 A I -- as I recall, at least twice, maybe three times
13 Last time was in the previous Stanko case, one time in
14 Beaufort, South Carolina

15 MR HUMPHRIES Thank you I don't have any further
16 questions

17 I don't have any objection to his being qualified

18 THE COURT Very good And the field again, Mr Diggs

19 MR DIGGS Physiological Psychology

20 THE COURT All right Very good He's qualified to
21 give his opinion

22 BY MR DIGGS CONTINUED

23 Q Now, Doctor, basically what I want to do this afternoon
24 is talk to you about general things, not specifically this
25 Defendant, but I want you to -- I want to discuss with you and

BERNARD ALBINIAK - CROSS BY HUMPHRIES
BERNARD ALBINIAK - DIRECT BY DIGGS CONTINUED

1507

1 ask you some questions about the brain and how it is
2 structured, and basically how it works, and if you have any
3 knowledge about studies or reports, things of that nature that
4 have been done -- you know, that backs up your opinions or
5 your understandings, if you could tell us about those as well

6 A Okay

7 Q Would it help you if we had a little diagram of the
8 brain ---

9 A Yes

10 Q ---To talk about these things

11 A That would be helpful

12 Q All right Let me show you what we've got for just
13 this afternoon Have you ever seen anything like this?

14 A Yes

15 Q All right Would it help if I brought that little
16 stand over here and put this on there?

17 A Yes, I think the closer to the jury the better

18 Q Okay Now, can you see that?

19 A Not well Yes

20 Q All right If you need to I'm sure His Honor would
21 allow you to come down and point ---

22 A Okay

23 Q ---Direct our attention to what it is you are talking
24 about

25 All right, now, when we talk about the brain and how it

1 works, how information is processed, tell us basically how
2 that occurs, what's going on in the brain at any given moment

3 A That's a large area of discussion

4 Q Yes

5 A To simplify it, the brain -- the portion of the brain
6 you can see if we open the person's skull, is called the
7 cortex All of that pink matter with the folds in it is
8 called the cortex That's all you can see from the surface
9 You have to open the brain up to see other parts So the
10 cortex of the brain, particularly these lobes, called the
11 frontal lobes, in front of your forehead, are the pro -- the
12 main portion of the brain that makes us a human being The
13 front part of the brain is used to make decisions, to act
14 rationally, and to inhibit impulses that would otherwise
15 occur

16 Q Can you come down and show us what you are talking
17 about in any of these drawings or ---

18 THE COURT If you are going to do that then move that
19 board all the way up to the rail then, right in front of the
20 microphone Get right close to it, and right next to that
21 box That's a microphone

22 A This is the cortex of the brain -- and again, that's
23 all you can see in the human brain unless you cut it in half
24 like this picture here This large area of the brain is
25 called the cortex There are four lobes to the cortex This

BERNARD ALBINIAK - CROSS BY HUMPHRIES
BERNARD ALBINIAK - DIRECT BY DIGGS CONTINUED

1509

1 is the occipital That's where visual information is
2 interpreted by the brain This is the temporal lobe where
3 auditory information, things you hear This is the parietal
4 lobe which interprets skin sensitivity, like itching and
5 scratching, and these are the frontal lobes These are the
6 biggest lobes in the brain From this point here, called the
7 central fizzier forward, is the frontal lobes, and half of it,
8 it's most extreme portion, is called the pre-frontal cortex
9 That's the portion we are most interested in That's the
10 portion that distinguishes us from apes and orangutans and
11 elephants and so on They don't have the capacity to control
12 their impulses such as you and I do As a matter of fact, a
13 young child has very little development in the front -- pre-
14 frontal lobes That's why children can't control their
15 impulses They can't control them
16 Q Is that why they do -- a lot of times they do what we
17 would think of as stupid things, talking about juveniles,
18 teenagers, they do stupid things
19 A Same thing
20 Q Adults tend not to be so Is that because of the
21 development of the frontal lobe?
22 A These frontal lobes are the last part of the brain to
23 develop Until you are about twenty-five years old these
24 frontal lobes are not fully developed, so a person doesn't
25 become an adult biologically, or physiologically until those

BERNARD ALBINIAK - CROSS BY HUMPHRIES
BERNARD ALBINIAK - DIRECT BY DIGGS CONTINUED

1510

1 frontal lobes are fully developed Unfortunately -- I should
2 mention this, the cells -- we call them neurons -- in the
3 brain are in the cortex, a lot of them are in the cortex
4 That's a real unfortunate design because if a person gets
5 a blow to the head, like a boxer, then you are going to damage
6 cells in the cortex, and when those cells are damaged they
7 don't repair The brain is not like your finger, when you cut
8 it it can repair The brain has very minimal capacity to
9 compare -- repair, so if you damage any of the cortical
10 neurons that's going to be a permanent -- relatively permanent
11 injury, with incapacitation in many cases So if the frontal
12 lobes become damaged that will cause this individual probably
13 not to be able to control their impulses, as well as they
14 otherwise would be able to

15 Let me explain a little bit more about that If you
16 look underneath the brain, right here -- this is the brain cut
17 in half now -- this is the limbic system, this area right
18 here the limbic system is where emotions are experienced, so
19 when you get angry, or upset, or happy, or euphoric that's the
20 limbic system function -- those are limbic system functions
21 Those are very ancient We've had these for millions of
22 years So the limbic system has to be controlled in some way,
23 and this -- that's one of the jobs of the frontal lobe When
24 a person gets angry, an adult person gets angry you feel that
25 anger, but the frontal lobes tend to inhibit that anger, not

BERNARD ALBINIAK - CROSS BY HUMPHRIES
BERNARD ALBINIAK - DIRECT BY DIGGS CONTINUED

1511

1 allow you to act it out, otherwise we would be hurting each
2 other all the time Animals don't have that capacity, or
3 limited capacity, so animals do get violent frequently when
4 they are provoked, which is normal for animals It's not
5 normal for an adult human to allow that to happen because we -
6 - when we learn social rules about not hitting other people,
7 of instance, the frontal lobe comes to adopt those principles
8 and it inhibits the activity of the limbic system

9 Q It makes me think of maybe two little children about
10 two years of age, or you know, and how one might hit the other
11 one and ---

12 A They will strike back

13 Q And I know this sounds simple and basic, but is that
14 because of the lack of ---

15 A Exactly

16 Q ---Frontal lobe development?

17 A Walk into any kindergarten call and you will see kids
18 smack each other, and that's normal behavior for a five year
19 old

20 Q Now, that child might know that it's wrong to do it in
21 some situations ---

22 A Yes

23 Q ---But in other situations the child acts out on that
24 and hits, and beats up another child

25 A Right

BERNARD ALBINIAK - CROSS BY HUMPHRIES
BERNARD ALBINIAK - DIRECT BY DIGGS CONTINUED

1512

1 Q Let me ask you this Now you mentioned earlier in your
2 testimony that this frontal lobe area might not fully develop
3 until maybe mid-twenties

4 A Mid-twenties

5 Q If someone has a problem in that frontal lobe area,
6 physiologically, would you be surprised if didn't manifest
7 itself until that time in life? You get what I'm saying?

8 A I'm not sure

9 Q When the frontal lobe should be developing ---

10 A Right

11 Q ---And should be where -- providing you with the
12 ability to engage in analytical thinking, complex thought,
13 would you be surprised that it didn't manifest -- your
14 inability to do that didn't manifest prior to that in life?
15 You see what I'm saying?

16 A I would be somewhat surprised, but it's not -- not
17 improbable completely The thing that I remember about these
18 frontal lobes is they -- you have to have a provocation to
19 activate -- the main structure in the limbic system, by the
20 way, is the amygdala That's the structure that -- if you
21 look at it on a P E T scan when a person gets angry the
22 amygdala lights up essentially That means the person is
23 experiencing anger Now those impulses go to the frontal lobe
24 from the amygdala, and the frontal lobe can either override
25 them, if it can, then there will be no aggressive behavior

BERNARD ALBINIAK - CROSS BY HUMPHRIES
BERNARD ALBINIAK - DIRECT BY DIGGS CONTINUED

1513

1 There will still be anger, but not aggressive behavior But
2 if the frontal lobes are inefficient, or have damage, then
3 they can't override the amygdala, and you get an acting out of
4 aggression, and that happens in children, it happens in
5 adolescence, and an adult with impaired function in that
6 frontal lobe, it can happen in those individuals

7 Q All right Now, are you familiar with what's alleged
8 in this case ---

9 A Yes

10 Q ---In Mr Stanko's case When we talk about a
11 shooting, a homicide, taking of a life, can you put that into
12 context with what you are talking about now in terms of brain
13 structure and function?

14 A I think to do that fairly you would have to remember --
15 or I would have to tell you about this There are two forms
16 of aggression that are recognized in Psychology One is what
17 we call premeditated predatory aggression That's planned
18 You lay out a plan, you follow it out It might take several
19 hours, or a while to set up that plan That's predatory
20 aggression That's not a function of the frontal lobes
21 That's planned, non-emotional

22 The other form of aggression is impulsive aggression
23 triggered by some stimulus immediately, and the person acts on
24 it That kind of aggression is hard to control with frontal
25 lobes that are damages, the impulsive kind of aggression

BERNARD ALBINIAK - CROSS BY HUMPHRIES
BERNARD ALBINIAK - DIRECT BY DIGGS CONTINUED

1514

1 Q Now, when you were talking about the impulse and
2 aggression, what at the types of impulses -- and you said they
3 come from the limbic system?

4 A Limbic system

5 Q What types of emotions or impulses are generated in the
6 limbic system?

7 A The limbic system generates the full gamut of the
8 emotions, good and bad, positive and negative, so extreme
9 euphoria, limbic system, extreme anger, extreme fear, any form
10 of emotion, positive or negative, starts in the limbic system,
11 flows to the frontal lobes, and the frontal lobes either
12 suppress that or fail to suppress that

13 Q All right What's the stimulus for the generating of
14 the limbic system impulse or stimulus? You understand my
15 question?

16 A Yes That will be -- and here is where it gets a
17 little complex If a person with limbic -- or excuse me --
18 frontal lobe impairment, let's say, perceives a threat -- all
19 it takes is perception, not a real threat, just the perception
20 of threat, then you trigger the limbic system quickly, within
21 hundredths of a second, is triggered first, so the limbic
22 system always triggers first, then the frontal lobes may or
23 may not be able to suppress that urge Now if they can't
24 suppress the urge then the behavior gets acted upon

25 Q All right So, again, point to the limbic system for

BERNARD ALBINIAK - CROSS BY HUMPHRIES
BERNARD ALBINIAK - DIRECT BY DIGGS CONTINUED

1515

1 the jury, please sir

2 A It's this one

3 Q All right Now, you are saying through any one of our
4 senses ---

5 A Any one of the senses

6 Q ---This area of the brain perceives a threat Now, is
7 that evaluated here in the limbic system?

8 A No The limbic system does no evaluation It's a
9 primitive center It's a very primitive center All animals
10 have limbic systems, or the vast majority do All humans have
11 limbic systems, but what the animal lacks is the ability to
12 control that limbic system to any great extent, so the limbic
13 system doesn't do any evaluation, other than to perceive a
14 threatening stimulus It's up to the frontal lobes to
15 suppress that

16 Q Okay So then what happens when this -- and we all
17 have this -- what's this called?

18 A Limbic system

19 Q I know, but in the middle

20 A Oh, the amygdala

21 Q Okay The amygdala We all have the amygdala in the
22 center of the brain

23 A Right

24 Q And it's job is to do what?

25 A Perceive threat or danger, primarily

BERNARD ALBINIAK - CROSS BY HUMPHRIES
BERNARD ALBINIAK - DIRECT BY DIGGS CONTINUED

1516

1 Q All right And it doesn't evaluate, it just like sets
2 off an alarm

3 A It sets -- it's a bell It goes off

4 Q All right And then in terms of the function of the
5 brain what happens?

6 A Then those impulses from the amygdala -- by the way,
7 there are a lot of connections between the frontal lobes and
8 the limbic system They talk to each other essentially The
9 limbic system is always triggered first Now, it's sub-
10 conscious, almost, but then you experience the anger That's
11 the cortex acknowledging that it's occurred, but now the
12 choice is either to suppress the behavior of aggression, or to
13 allow it to proceed And even in a healthy adult it can reach
14 that level If the limbic system is extremely aroused, then
15 the frontal lobes, even in the normal person, can't handle
16 that load, and you will see aggressive behavior as a result

17 Q All right, now, what happens in a situation where
18 someone has damage to this area of the brain here?

19 A All right If there's damage, particularly to the
20 orbital frontal, this area right here, that's the part of the
21 frontal lobe that really has the inhibitory mechanisms, so if
22 you damage the orbital frontal area you do not -- you
23 eliminate inhibitory capacity That means any time you
24 stimulate the amygdala significantly you will get an
25 aggressive display, under the appropriate circumstances

BERNARD ALBINIAK - CROSS BY HUMPHRIES
BERNARD ALBINIAK - DIRECT BY DIGGS CONTINUED

1517

1 There has to be a provocation of some kind, auditory, or
2 visual, or whatever, sent to the system, but then it's going
3 to all converge on the amygdala Once the amygdala is
4 stimulated you have the potential for aggressive behavior If
5 you can't inhibit it, with damage to the frontal lobes, then
6 you have aggressive behavior

7 Q Now, how often during the day would an individuals be
8 confronted with, you know, a potential alarm going off and the
9 amygdala spreading out to the limbic system?

10 A It varies from person to person, and varies a lot, but
11 some people it happens fifteen, twenty times a day, and most
12 of us suppress that urge Road rage is a perfect example of
13 circumstances where sometimes we act -- most of the time we
14 don't, we just get mad, we don't do anything physical Some
15 people go to the extent that they get out of their car and
16 they sock the other person in the face That's where the
17 limbic system has overridden the frontal lobes Even in that,
18 quote, normal person, the frontal lobes can't completely
19 suppress the limbic system

20 Q Now, what if -- what else is associated with this
21 frontal lobe area?

22 A Well, there are many other functions There's decision
23 making ---

24 Q Tell us what those -- that particular area of the brain
25 does, in addition to regulating the limbic system

1 A All right In addition to the regulations function of
2 the frontal lobes, planning, as an adult would plan, to
3 understand the consequences of your behavior, the future
4 consequence, making decisions that balance your emotions with
5 what you know is socially appropriate, etcetera, etcetera, so
6 the frontal lobes have a variety of functions, but they all
7 circulate around controlling emotional behavior, which is,
8 again, a low center in the brain

9 The brain evolved this way, by the way, bottom up This
10 is the last part of the brain to evolve That's what
11 distinguishes us from animals, this frontal lobe structure

12 Q Now, have you ever been involved -- you can return to
13 the seat

14 Have you ever been involved, or looked at any studies
15 that involved individuals with brain damage and injuries in
16 the frontal lobe are of the brain?

17 A Yes, I have

18 Q Tell us about those

19 A The studies I read most recently were done by a Doctor
20 Emil Coccaro of University of Chicago He has been doing
21 research in this area for about twenty years He's one of
22 many, and his studies have looked at impulsively aggressive
23 felons, and the functions of their frontal lobes and the
24 amygdala, and he finds in many of those cases the felons have
25 less frontal lobe activity than is normal, and that's

BERNARD ALBINIAK - CROSS BY HUMPHRIES
BERNARD ALBINIAK - DIRECT BY DIGGS CONTINUED

1519

1 partially why they act aggressively, and he's published
2 probably now around thirty articles on this issue

3 Q Now, in the -- what -- do we know where in the brain
4 the process takes place that distinguishes right from wrong?

5 A That's partially a frontal lobe function too, the
6 orbital frontal lobe function

7 Q Explain that to us How do we know that?

8 A That -- the orbital frontal lobe is, again, part of the
9 brain that distinguishes moral right from moral wrong, and we
10 learn that over time We learn that By the time you are
11 twenty-five or thirty you know clearly what's morally right,
12 morally wrong, but if you damage that frontal lobe that
13 function can be, at least diminished, or destroyed, depending
14 upon how much tissue is destroyed

15 Q All right And would that -- let me ask you this
16 Where is the empathy in the brain?

17 A I'm not sure scientist know exactly, but it's probably,
18 again, a frontal lobe function, more than likely, because
19 apathy is not an animal instinct like it is in humans

20 MR HUMPHRIES Your Honor, I'm going to have to object
21 to that That doesn't meet the basis of an expert opinion,
22 more than likely

23 THE COURT Sustained

24 MR HUMPHRIES Thank you, Your Honor

25 Q Are you aware ---

BERNARD ALBINIAK - CROSS BY HUMPHRIES
BERNARD ALBINIAK - DIRECT BY DIGGS CONTINUED

1520

1 **THE COURT** Just a second Since the Court sustained
2 that objection the jury will disregard the last statement by
3 the witness

4 You may proceed

5 Q But in the determination of right and wrong, is there
6 scientific evidence that shows that takes place in an analysis
7 occurring in the frontal lobes?

8 A There is reasonable evidence that that's where that
9 decision is made That's the decision-making part of the
10 brain, the frontal lobe

11 Q And is there scientific consensus with respect to that?

12 A Reasonably so It's not as well established as the
13 suppression of emotional behavior, but there is reasonable
14 evidence for that

15 Q All right Again, I asked you a little bit about this
16 before, but what would happen if we had an individual
17 experiences that limbic system impulse, something that
18 triggers that impulse from -- generated in the base of the
19 brain, and it goes out into the frontal lobe area for
20 analysis Is that your testimony?

21 A Yes Correct

22 Q All right Now what happens if there is an inability
23 in that area of the brain to properly analyze that emotion?

24 A Well, then you get a full-blown expression of that
25 emotion without any inhibition at all That could be

BERNARD ALBINIAK - CROSS BY HUMPHRIES
BERNARD ALBINIAK - DIRECT BY DIGGS CONTINUED

1521

1 euphoria, that could be anger, that could be happiness It
2 wouldn't matter It doesn't matter what the emotion is, the
3 brain has lost it's ability to inhibit that emotion, so you
4 get full-blown expression of that emotion

5 Q Now, in -- how do we know -- or is science able -- in
6 your field are you able to determine when an area of -- when
7 that area of the brain is functioning properly, and when it is
8 not? Are there any technologies available that would help you
9 or medical science make those determinations?

10 A The greatest tool that's been around now for about
11 twenty years are the brain-scanning techniques They are
12 wonderful techniques

13 Q Tell us about those, if you would

14 A Well, when I was in graduate school we had no brain-
15 scanning techniques We had the -- as awful as it may sound
16 we had to damage parts of a rat's brain, or an animal's brain,
17 to see what effects that would have on the animal Now
18 scientists can look inside the brain while it functions
19 without damaging the brain, with P E T scans and spec scans,
20 and F M R I scans They can look at the functioning brain
21 and determine what parts of the brain are working, what parts
22 of the brain are not working It's caused huge advances in
23 Neuroscience in the last fifteen years or so

24 Q And are you familiar with whether or not any such
25 scanning technologies have been used in Mr Stanko's case?

BERNARD ALBINIAK - CROSS BY HUMPHRIES
BERNARD ALBINIAK - DIRECT BY DIGGS CONTINUED

1522

1 A Yes

2 Q Tell us what you know about that What has -- what
3 have you had access to, if anything, regarding Mr Stanko?

4 A I've seen two, I guess, pieces of evidence regarding
5 his particular brain Dr Ruben Gur did some brain structural
6 studies using scanning techniques Structural studies just
7 look at whether there's any physical deficits in the brain,
8 like missing tissue, or damaged tissue So Dr Gur has done
9 those kind of studies

10 MR HUMPHRIES Pardon me I'm sorry I'm going to
11 have to object if Dr Albiniaak is going to testify about the
12 reading and interpretation of the M R images or P E T scans
13 That's beyond his area of expertise and I would object

14 MR DIGGS Well, Your Honor, he has -- in response,
15 Dr Albiniaak teaches classes at the University ---

16 THE COURT All right All right Let's not do this
17 Ladies and gentlemen, go to your jury room, please

18 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
19 JURY)

20 THE COURT Now, none of those studies are in evidence,
21 so for the witness to talk about them, they are not in
22 evidence If he relied upon them he might be able to say he
23 relied upon them, but for him to talk about what is contained
24 in them, or what they say, they are not in evidence

25 MR DIGGS How about if we do it this way? I'm going

BERNARD ALBINIAK - CROSS BY HUMPHRIES
BERNARD ALBINIAK - DIRECT BY DIGGS CONTINUED

1523

1 to ask him for an expert opinion as to whether or not there
2 are any anomalies in the structure of Mr Stanko's brain, and
3 he could render an opinion on that, and I can ask him what
4 does he base that opinion on

5 THE COURT Solicitor

6 MR HUMPHRIES Your Honor, my -- my objection is that
7 there are medical doctors whose job it is to take these images
8 and interpret them Dr Albiniaak, who is very qualified in
9 the area in which he's testifying, is not qualified, by
10 experience or training, to give an interpretation of those
11 images If they were we would send them to social -- to
12 physiological psychologists for reading It's beyond his area
13 of expertise, and they have witnesses who will testify to
14 these things

15 THE COURT All right How can he testify about that?
16 I'm ---

17 MR DIGGS Well, in his review of the material ---

18 THE COURT What would allow him to do so?

19 MR DIGGS Yes In material that he's reviewed in
20 this case And what we had intended to use him for is one of
21 the things he has already done, give just an overview of the
22 brain structure, and how the function applies -- I mean, how
23 that brain function occurs, that we are specifically going to
24 focus on in this case, in this defense, and then get a little
25 bit of opinion evidence from him regarding Mr Stanko's

1 particular situation, and I expected to elicit from him that
2 he was of the opinion that we had a structural anomaly in Mr
3 Stanko's brain

4 THE COURT He's not -- he's not a medical doctor

5 MR DIGGS No, but he's a Physiological Psychologist,
6 and he bases the structure -- understand what I mean by
7 structure, Your Honor, it's just, you know, in terms of, like
8 that brain -- I think that I would be able to elicit from him
9 he's familiar with studies that establish what a normal size,
10 based on a data base of brain sizes would be, and how Mr
11 Stanko's brain fits as against the normal -- the data base of
12 what ---

13 THE COURT You will have to explore that with him
14 because he hasn't talked about that yet

15 MR DIGGS Okay

16 THE COURT You will have to explore that first, before
17 you go into it I don't know what he's going to say, so we
18 will ---

19 MR DIGGS Okay

20 THE COURT ---We will see what ---

21 MR DIGGS You mean in the presence of the jury?

22 THE COURT I mean -- yes, I mean, before he could even
23 begin to give the opinion he would have to talk about that

24 MR DIGGS What I had planned to do was get the
25 opinion, and then have him explain it in that regard, but I

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1 would be happy to go through that first then ask ---

2 THE COURT I think you need to go through the
3 background first

4 MR DIGGS Okay I understand

5 MS WILLIAMS Your Honor, I'm sorry May we take two
6 minutes of a short break The Defendant needs to go in the
7 back, just for maybe three minutes

8 THE COURT All right Two minutes Thank you

9 (THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE
10 PRESENCE OF THE JURY)

11 THE COURT Ask the jury to come in, please

12 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
13 JURY)

14 THE COURT All right, Mr Diggs, you may continue,
15 sir

16 MR DIGGS Thank you, Your Honor May it please the
17 Court

18 BY MR DIGGS CONTINUED

19 Q Dr Albiniaak, are you aware of any studies that have
20 been done in the field of Psychology, or that you have used in
21 your -- performance of your responsibilities in your position
22 that deal with the structure of the brain, and -- in terms of
23 volume and mass, and that kind of thing?

24 A Yes

25 Q Tell us what -- what you know about that, and how it is

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1 that you've come to be aware of it

2 A Well, again, the most recent research, the last fifteen
3 or twenty years, has focused on scanning technology There
4 are two types of brain scans, basically Some scans looked at
5 the structure of the brain, like C A T C A T scans are
6 structural They don't show any activity at all Then there
7 are other scans that show activity of neurons, and then
8 those -- those scans colors indicate how active the neurons
9 are If the colors are red or yellow that means those neurons
10 are really active If the colors are green or blue that means
11 those neurons are much less active So in a living brain you
12 can scan the brain for twenty minutes while a person performs
13 some function and you can see how those centers change as they
14 do different -- perform different tasks, so again, there's two
15 types of scans fundamental There are structural scans, like
16 C A T and P E T , and then there are functional scans like
17 F M R I , and S P E C , and some other scans

18 Q And F M R ---

19 A F M R I is a activity scan

20 Q Okay Now, are you familiar with any studies that have
21 attempted to compile a data base in terms of how a -- what we
22 would consider to be a normal brain, how it would be
23 structured?

24 A Dr Geddd, G e d d ---

25 Q Okay

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1 A ---N I M H , has done for the last ten years, scans of
2 children's brains He's followed them for the last, I think
3 fifteen years now ---

4 Q Uh huh (**indicating positive**)

5 A ---From infancy, the child, to the adolescence He was
6 one of the first physicians to indicate that the adolescent
7 brain is not fully developed anatomically until they are about
8 twenty-five years old, so he's done repeated scans of the
9 structure of the brain to watch it evolve over a fifteen or
10 twenty year period of time

11 Q And are there -- are you aware of any studies that
12 compile information to show us what a normal brain should be -
13 - should look like in terms of it's structure?

14 A Oh, there are just hundreds of those studies There's
15 hundreds and hundreds of those studies Since the scanning
16 technology became available in the last, again, fifteen years,
17 there have just been hundreds and hundreds of studies on
18 normal brains and on pathological brains, so we know ---

19 Q Now what do you mean by pathological brains?

20 A Brains that have been damaged by blows to the head, or
21 infections, or prenatal damage, etcetera, etcetera There are
22 a lot of those studies

23 Q Could there be a pathological brain that you just
24 referred to for which we don't have any direct cause, in terms
25 of understanding why it's pathological?

1 A Oh yes I mean, if a brain appears on scanning to be
2 pathological, I mean, there's clearly damage to, let's say the
3 occipital lobes, that does not tell you how that damage
4 occurred It could have occurred due to infection, to a blow
5 to the head, excessive drug use, street drug use can cause
6 damage to the brain, so that does not indicate how that damage
7 occurred at all

8 Q All right Now, are there studies done, to your
9 knowledge, that compare a specific brain in terms of it's
10 structure to what would be considered to be a data base of
11 normal brain structure?

12 A Yes There are numerous of those studies What they
13 would generally do in that case is scan a number of, quote,
14 normal brains, or non-pathological brains That would be the
15 data base You've got thirty, or forty, or fifty, quote,
16 normal brains, intact brains

17 Q Okay

18 A Then you can use that data base to compare some other
19 prospective brain to see if it fits the general pattern of
20 that brain If it's pathological it will not It will show
21 some deficits in that brain compared to the data base

22 Q Is thirty or forty, of fifty enough in terms of
23 establishing data base of normal?

24 A Statistically, yes

25 Q Okay If someone were critical of the data base as

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1 being too small, what would your response in that situation
2 be?

3 A Well, I do teach statistics at the University, both
4 basic and intermediate, and one of the rules in Statistics is,
5 you have to have an adequate sample to perform good analyses,
6 and usually in Statistics that would -- a limit is usually
7 about thirty, you have an adequate sample, of any kind of
8 object, so if you have thirty or more, and they've been
9 randomly obtained -- that's a critical factor ---

10 Q Okay

11 A ---Then that sample is pretty adequate for analysis
12 purposes

13 Q In other words, if you wanted to look at thirty apples,
14 and you get a data base of thirty apples ---

15 A As long as they are randomly obtained

16 Q ---And then compare a specific apple as against that
17 data base

18 A Exactly

19 Q And that would be sufficient to compare it in terms of
20 nationwide, or you know, of all of the apples that might exist
21 in the Country?

22 A Yes

23 Q All right Now, was any scanning done in Mr Stanko's
24 case, to your knowledge, that ---

25 A To my knowledge, yes

1 Q Okay With respect to -- okay, and again, what were
2 those two scanning procedures?

3 A One scanning procedure was structural, to see if there
4 were any structural deficits in the brain The other scanning
5 procedure was functional, if there were any areas of the brain
6 that didn't function to a normal level

7 Q Okay And I want to focus right now on the structure,
8 and when I say structure, exactly what -- what am I talking
9 about, or what should I be intending ---

10 A Structure simply means if the brain -- for instance,
11 the brain of a long-term alcoholic will be shrunken some ten
12 to fifteen percent, the whole brain will shrink some ten to
13 fifteen percent That can easily be detected on a C A T scan
14 or a structural scan What you are looking for is either loss
15 of tissue or increased fluid in the brain, so if you have
16 increased fluid in the brain that means there is tissue
17 missing or you wouldn't have excess fluid, so you are either
18 looking for the evidence of tissue damage or fluid
19 accumulation Either of those would indicate the structure is
20 not normal

21 Q Okay, now in Mr Stanko's case was a comparative
22 analysis done that compared Mr Stanko's structural image
23 against a data base of ---

24 A Yes

25 Q ---Sufficient size to establish normalcy, in terms of

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1 structure?

2 A Dr Ruben Gur of the University of Pennsylvania School
3 of Medicine did a -- has a data base of forty-one, I think it
4 is, normal brains, which he uses for comparison purposes

5 Q All right And did you use -- did he do an evaluation
6 or a comparative analysis with respect to Mr Stanko?

7 A Yes He compared Mr Stanko's brain to that data base

8 Q All right And let me ask you this, as an expert in
9 the field of Physiological Psychology do you have an opinion
10 as to whether or not there are any aberrations in the
11 structure of Mr Stanko's brain?

12 A There were several I don't have the information right
13 in front of me There were several specific areas of the
14 brain that had either excess fluid or decreased tissue volume

15 Q All right, now did you use -- or what did you use in
16 order to reach that conclusion you just stated?

17 A I used the report that Dr Gur sent to the Defense
18 team

19 Q All right And did that include a graph?

20 A Yes, it did

21 Q All right Would it help you if you saw a picture of
22 that graph?

23 A It would help

24 Q All right Let me -- let me show you what's been
25 marked as Defense Exhibit 31 for identification, and see if

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1 you can identify it

2 A Yes That's Dr Gur's graph

3 Q All right

4 MR DIGGS Your Honor, we would like to offer this
5 into evidence

6 THE COURT Objection?

7 MR HUMPHRIES No objection, Your Honor

8 THE COURT All right So that's Defense 1?

9 MR DIGGS Yes sir

10 THE COURT All right Defense's 1 is in evidence
11 without objection

12 The Court Reporter tells me it's 31

13 MR DIGGS We do have it marked 31 If it would be
14 easier we will leave it at 31

15 THE COURT All right So it was pre-marked as
16 Defendant's 31, so it's in evidence without objection

17 (DR GUR'S M R I GRAPH ENTERED INTO EVIDENCE AS
18 DEFENDANT'S EXHIBIT NUMBER 31)

19 Q All right Let me get the little tripod again

20 MR DIGGS And Your Honor, with your permission I'm
21 going to get Mr -- or Doctor Albiniaak back down

22 THE COURT Now, I was going to say, take it right in
23 front of that box I want to -- move it over in front of the
24 box

25 MR DIGGS All right

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1 **THE COURT** No Move it that way in front of the box,
2 right there Okay And then have the Doctor stand right next
3 to the box There we go Good deal Go ahead

4 Q Now, Dr Albiniaak, we are talking about brain
5 structure

6 A Right

7 Q And what are we looking at here with a -- this graph?

8 A This line represents the forty-one normal brains, and
9 this is the expected range You would find some differences
10 brain to brain to brain No two brains are exactly alike
11 Brains differ in size, in different areas, differ slightly, so
12 this is what we would call the tolerable limit, from what we
13 call one standard deviation unit above to one standard
14 deviation unit below Anything outside of that range, from
15 minus one to plus one, up here and down here, would be
16 considered at least statistically rare For instance, this
17 point here -- this is the left frontal lobe, which is this
18 side, left of the patient -- this frontal lobe is low in
19 tissue, meaning there is some tissue missing, compared to
20 forty-one brains

21 Q Let me ask you, what we are saying there in terms of
22 the low volume of tissue?

23 A Volume of tissue

24 Q Does that mean simply the brain matter is not there?

25 A Well, some of the brain matter is missing for whatever

1 cause

2 Q All right And how much -- can we tell how much is
3 missing in that brain?

4 A You can't tell how much from this diagram, but you can
5 say this Statistically, to be two standard deviations below
6 normal, that would be about two percent of a hundred brains,
7 for instance, so it's fairly rare

8 Q All right We are talking about possibly two percent
9 of the population

10 A Would have brain tissue at that level

11 Q Now that is all the time, he's at that level all the
12 time?

13 A Yes This is structural It's not function

14 Q And it's not depending on his thought process, what
15 he's thinking about ---

16 A No

17 Q ---What he's doing ---

18 A No

19 Q I mean, that's just -- if you could open up his brain
20 that's how big it would be, or how small?

21 A Exactly

22 Q Now, what else can we see from that graph?

23 A The only other thing I notice that's of importance is
24 the medial area Medial means in the middle of the brain, not
25 out here on the edges The medial area of his brain is

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1 extremely low It's our four standard deviation units, which
2 is way below one-tenth of one percent, so that is a much
3 bigger difference than this, meaning there is tissue missing,
4 again, for whatever reason, in the mid-line of his brain

5 The only other difference is the ventricular fluid level
6 is high in the entire brain Remember, when there is tissue
7 missing in the brain fluid fills those spaces Your brain is
8 filled with cerebral spinal fluid that flows through the brain
9 all the time, and if it's that high in a portion of the brain
10 that means there's tissue That's further confirmation
11 there's tissue missing You don't have fluid in the brain, at
12 that level, unless there is tissue missing

13 Q Is there any way you can look and tell us what
14 functions would be occurring in Mr Stanko's brain in those
15 areas that are missing material?

16 A Well, the main problem, again, is again the frontal
17 lobe If the frontal lobe is missing tissue that would at
18 least suggest that there is some loss of function in the
19 frontal lobes, and primarily impulse control, decision-making,
20 those important functions, and that's not repairable You
21 can't repair damaged brain tissue It's simply lost, and
22 that's lost forever

23 Now that won't always manifest itself It's not that
24 the person always functions like this, but if there's a
25 provocation this individual is more likely to act out than you

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1 or I would be

2 Q Okay Now, you can return

3 Now, are you aware of any other scanning that was done
4 on Mr Stanko?

5 A Dr Joseph Wu did some F M R I scanning, which is
6 functional, not structural

7 Q Okay Were there any P E T scans done?

8 A Yes The P E T scan, or the F M R scan was done by
9 Dr Wu, or it was done at M U S C at his direction

10 Q All right And that was with respect to what aspect of
11 the brain?

12 A That, again, would scan how and what -- the way I
13 understand the scanning procedure is, the patient is put under
14 a task of some kind that requires frontal lobe function ---

15 Q Okay

16 A ---Some kind of a task He is performing the task as
17 his brain is scanned, and this goes on for fifteen or twenty
18 or thirty minutes, and they can watch the brain as it works
19 essentially

20 Q Now, are you familiar with how brain scans or P E T
21 scans are normally done when used for the purpose of
22 discovering tumors, or things of that nature?

23 A I have a basic knowledge

24 Q All right You are not an expert in that ---

25 A Not an expert at all

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1 Q All right How about with respect to the use of
2 software?

3 A Not an expert at all, not even close

4 Q All right Now, in the area of the P E T scan
5 information that you have -- were you -- well, let me ask you
6 this Were you provided P E T scan data analysis with
7 respect to performance ---

8 A Yes, I saw -- or I had ---

9 Q ---In Mr Stanko's situation?

10 A ---Access to a C D Right

11 Q And what -- do you have an opinion based on that
12 particular ---

13 MR HUMPHRIES I would have to object to that, Your
14 Honor

15 THE COURT You need to lay the foundation

16 Q Well, have you -- in Physiological Psychology, do you
17 undertake a study of brain function?

18 A Oh, yes, extensively

19 Q And what areas of the brain function, and at what level
20 of capacity?

21 A Well, we use a lot of still photos of P E T scans We
22 don't have C D s , but our textbook is filled with still
23 pictures of brain function, and you can read the colors, the
24 green and the red, and the blue and so on, and so when a
25 person is violently angry you can see red in the amygdala, and

1 so on

2 Q Well, are there data bases, studies, to your knowledge,
3 that have been done at a compiled data basis of brain function

4 ---

5 A Yes

6 Q ---With respect to what we would consider to be a
7 normal brain?

8 A Yes You always have to have a comparison

9 Q All right And was a comparative analysis done, to
10 your knowledge, with respect to a normal brain function data
11 base ---

12 A Yes

13 Q ---In Mr Stanko's brain function?

14 A Mr Stanko's brain was -- frontal lobe, especially,
15 less functional in terms of -- I think they used glucose
16 metabolism in that case The neurons that are really active
17 are taking up lots of glucose That's the fuel that the
18 neurons use, and when you scan the brain and you see color
19 blue, that means those neurons are not taking up glucose, they
20 don't need it cause they are not working very hard The red
21 colors means that those neurons are taking up glucose and
22 utilizing it

23 Q Did you form an opinion, based on your review of the
24 evidence, in Mr Stanko's case, that comparative analysis that
25 was done ---

BERNARD ALBINIAK - CROSS BY HUMPHRIES
BERNARD ALBINIAK - DIRECT BY DIGGS CONTINUED

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1 A Yes

2 Q ---As to whether there is any anomalous function in Mr
3 Stanko's brain?

4 A Yes

5 Q And what is that?

6 A Well, the frontal lobes were, especially the left
7 frontal lobe, was, we call it hypofunctional, meaning it's
8 utilizing a lot less glucose, or a lot less blood flow than
9 other parts of the brain

10 Q All right And what would that translate into, if
11 anything, with respect to an individual's conduct?

12 A Well, if the frontal lobes are not functioning as they
13 should then that opens the door for deficits in planning,
14 moral reasoning, particularly impulse control All those
15 functions would be somewhat deficient, maybe markedly
16 deficient in some cases

17 Q All right Are you -- can you relate that statement,
18 that last statement you just gave us, to any studies that
19 would tend to support the statement that you just made?

20 A Oh, there are numerous studies that have been done,
21 again, over the last ten years, in, for instance, convicted
22 murderers, who are in prison for murder

23 When Dr Adrian Reign, University of Southern
24 California, scanned murderers' brains he found that those
25 individuals have hypofunctionality of the frontal lobes They

1 had been convicted of killing individuals, and their brain
2 function was markedly lower than one would expect it to be

3 Q Okay Now, with respect to Mr Stanko then, in terms -
4 - and when I say function, what do I mean when I talk about
5 brain function?

6 A Well, the electrical activity of neurons in a specific
7 part of the brain

8 Q Okay Would it be fair to call it brain activity?

9 A Brain activity would be analogous

10 Q And is that what happens when you are engaged in a
11 thought process or an analytical situation?

12 A Right

13 Q And so let's assume that Mr Stanko has an impulse
14 coming out of limbic system that consists of anger or fear, or
15 something of that nature, of the kind that you have outlined
16 for us, and it's transmitted up to that area of the frontal
17 lobe, can you give us an expert opinion about how it's --
18 what's likely to occur in that situation?

19 A Well, it doesn't matter who it is, there is going to be
20 less capability of the frontal lobes to inhibit that impulse
21 There is going to be less capability, how much less may be
22 arguable, but clearly less capacity

23 Q All right now, would it be fair to say -- we said that
24 there is no complex analysis, analytical analysis that occurs
25 in the limbic system, that takes place in the frontal lobe ---

BERNARD ALBINIAK - CROSS BY HUMPHRIES
BERNARD ALBINIAK - DIRECT BY DIGGS CONTINUED

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1 A Correct

2 Q ---Of the brain Now, if there is less activity there
3 is there -- what does that mean in terms of decision-making?

4 A Well, all those functions will be impaired If the
5 frontal lobes are not functioning adequately there is going to
6 be impairment in all those functions, planning, understanding
7 the consequences of your behavior, all will be impaired to
8 some degree

9 Q All right Bear with me for just a second I lost my
10 train of thought

11 When -- all right Bear with me

12 Beg the Court's indulgence

13 THE COURT Yes sir

14 Q Just -- almost through, Dr Albiniaak If -- are you
15 familiar with any history of brain injury or anything of that
16 sort with respect to Mr Stanko? Did you have information of
17 that nature to rely upon in terms of reaching your opinions or
18 did you use anything like that in reaching your opinions?

19 A In the materials I received I have two ---

20 MR HUMPHRIES Your Honor, I'm going to have to
21 object I don't know what opinion -- I fear that the
22 information he intends to elicit is going to go to opinion
23 that he's not qualified to make

24 THE COURT Well, let's -- first, why don't we
25 identify, without describing what it is that he's looking at

BERNARD ALBINIAK - CROSS BY HUMPHRIES
BERNARD ALBINIAK - DIRECT BY DIGGS CONTINUED

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1 Q He -- the opinions that ---

2 THE COURT No, no, no What I want you to do is have
3 him identify what it is that he's looking at without
4 describing it

5 Q Without telling us what it was, what information were
6 you given? Now -- and understand, Dr Albiniaak, that we have
7 asked you for two opinions here One was with respect to any
8 aberrations in the brain structure ---

9 A Correct

10 Q ---And whether there were any aberrations in the brain
11 structure ---

12 A Correct

13 Q ---And whether there were any aberrations in his brain
14 function ---

15 A Correct

16 Q ---And you have rendered opinions that there were
17 aberrations in both of those areas ---

18 A Correct

19 Q ---Function and structure

20 A Correct

21 Q And what I'm asking you now is if you relied upon any
22 information beyond the scanning technologies that you
23 discussed?

24 A I'm not sure what I can say, but there were two
25 incidents in his life

BERNARD ALBINIAK - CROSS BY HUMPHRIES
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1 Q All right And did you take those into account in
2 reaching your opinions?

3 A Yes, I did

4 MR DIGGS And I think, Your Honor, I would ask him
5 what they were, and just ---

6 THE COURT Is there any objection?

7 MR HUMPHRIES No, Your Honor

8 THE COURT You might go ahead

9 MR DIGGS Thank you

10 Q You can answer the question

11 A Mr Stanko was born in Guantanamo Bay, Cuba, and the
12 records that I saw, at least, suggested the there was a
13 complicated pregnancy, the physicians attending at the time
14 were concerned about possible reduced oxygen supply to his
15 brain during the birthing process, and feared for his
16 survival, the way I read the record

17 The second incident occurred when he was about sixteen
18 years old He got hit in the head with a beer bottle, the
19 rear of the head, and the bad part about that is, the brain
20 floats in the skull It's not solid It floats in your skull
21 If you get hit in the rear of the head it drives the brain
22 forward, and it hits this frontal bone, and that would mean
23 the damage won't necessarily be at the rear -- the skull will
24 be -- but the damage will be on the frontal lobes of the
25 brain, when it drives forward, and he lost consciousness

1 during that episode, which is never a good thing

2 MR DIGGS All right Thank you I appreciate your
3 time, and I would ask you to answer any questions the
4 Solicitor may have

5 THE COURT Cross-examination

6 MR HUMPHRIES Thank you, Your Honor
7 Good afternoon, Dr Albiniaak

8 A Hey

9 CROSS-EXAMINATION BY MR HUMPHRIES

10 Q Let's go just -- and I have very few questions, which
11 I'm sure pleases many

12 Let's talk about birth records Without any kind of
13 specificity you would agree that medical doctors would be more
14 qualified to read those birth records more accurately than
15 you

16 A Sure

17 Q And regarding the beer bottle incident, the source of
18 that information was self-reported by the Defendant himself
19 Do you not know the source of that ---

20 A Well, I -- there was one other individual that I was
21 told would testify in this case, probably, that he was there
22 when it happened That's all I can say about that individual,
23 but it was self-reported, you are correct

24 Q Yes Now, you indicated -- and I know that you will
25 correct me if -- if I misunderstand, but you indicated that a

1 stimulus, of some sort, is required in order to have some
2 reaction in the limbic system

3 A Correct

4 Q And I think you also qualified it as a provocation in
5 order to generate an aggressive response in the limbic system
6 Is that correct?

7 A Correct Yes A threatening or aggressive type, yes

8 Q Right Sure Sure Now, what I would like you to do
9 then is to identify for me the provocation for or this
10 stimulus which would stimulate an aggressive response in the
11 limbic system, from these set of facts Okay

12 I'm going to give you the facts

13 A Okay

14 Q Okay All right Taking Defendant Stanko into one's
15 home and comforting him, going and buying him breakfast,
16 shaving in front of your sink Do find a stimulus within
17 those facts?

18 A Not within those facts, no

19 Q No In fact, that kind of stimulus -- I think what you
20 indicated was that the limbic system is not just responsible
21 for aggressive reactions, but it could bring on euphoria,
22 happiness?

23 A Sure Exactly

24 Q Actually euphoria or happiness would be the more likely
25 response from some of those stimuli, wouldn't you agree?

1 A Probably

2 Q And I understand what you've said about your -- and you
3 had the benefit of other people's interpretations, that is,
4 other Defense expert's interpretations of the M R ---

5 A Sure

6 Q ---And the C A T scan?

7 A Of course

8 Q Okay But if the M R I and the P E T scan were
9 determined to be normal, okay ---

10 A Uh huh (*indicating positive*)

11 Q Then there would have to be some other reason for the
12 aggressive action other than a brain defect, would you agree?

13 A Probably so Probably so

14 Q And finally, these studies on convicted murderers who
15 had the loss of function in the frontal lobe, they are all in
16 jail?

17 A Of course Yes

18 MR HUMPHRIES Thank you

19 THE COURT Any redirect?

20 REDIRECT-EXAMINATION BY MR DIGGS

21 Q Just very briefly Of course there could be stimuli in
22 that hypothetical that the Solicitor gave you that he omitted
23 from the hypothetical

24 A Could be

25 Q Could be

1 A Uh huh (indicating positive)

2 Q And we don't know at this point in time what they may
3 be

4 A Correct

5 Q And I believe your testimony was they could be
6 perceived threats ---

7 A Correct

8 Q ---Not necessarily real ones?

9 A Correct

10 Q And a perceived threat would be sufficient to trigger -
11 --

12 MR HUMPHRIES Your Honor, I have -- I have -- I
13 object to the leading nature of the questions

14 THE COURT Mr Diggs, please don't supply your answers
15 in the questions Thank you Rephrase your questions

16 Q Okay Perception, what role would that play in the
17 stimulus, if any?

18 A Perception is total ---

19 Q Okay

20 A ---Real threats, perceived threats The limbic system
21 makes no distinction It's the perceptual nature of the
22 threat which emanates from cortical systems in the brain

23 Q All right, now in this case with respect to Mr Turner
24 and all of the acts of kindness that he might have exhibited
25 to Mr Stanko, would they necessarily be connected with a

1 perception, or a perceived stimulus?

2 MR HUMPHRIES I object to the leading nature of the
3 question

4 THE COURT I'm going to allow it

5 MR DIGGS Thank you, Your Honor

6 A It -- all of it -- everything would depend on how Mr
7 Stanko perceived any of those actions, and none of us will
8 know that, ever

9 Q Okay Could it -- would Mr Turner necessarily be
10 involved in the stimulus, or could it have an independent
11 origin?

12 A Either way Could have been himself, or something on
13 the radio It could have been all kind of things

14 Q All right Could have been something on the radio or
15 television?

16 A Certainly

17 Q Do you know if Mr Turner had a television?

18 A I do not

19 MR DIGGS Okay That's all I have
20 Thank you very much

21 THE COURT Anything else, Solicitor?

22 MR HUMPHRIES Just very briefly on that point

23 **RECROSS-EXAMINATION BY MR HUMPHRIES**

24 Q Is it your testimony that a stimulus, other than
25 provided by Henry Turner, could have resulted in this

BRYAN WILSON - DIRECT BY WILLIAMS

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1 Defendant shooting him in the back?

2 A Unlikely, but it's possible

3 MR HUMPHRIES Thank you

4 THE COURT Do you wish the witness to be excused?

5 MR DIGGS Yes

6 THE COURT Any objection?

7 MR HUMPHRIES No Thank you, Your Honor

8 THE COURT All right, sir, you are released from your
9 Subpoena and you are excused and go back to regular duty, sir

10 A Thank you

11 THE COURT All right Your next witness, please

12 MR DIGGS Your Honor, we would call Bryan Wilson

13 THE COURT All right

14 BRYAN WILSON, being first duly
15 sworn, testifies as follows

16 DIRECT-EXAMINATION BY MS WILLIAMS

17 Q And Mr Wilson, can you tell us where you currently
18 live?

19 A Goose Creek, South Carolina

20 Q And what is it that you do for a living?

21 A I'm a retail manager for Bed, Bath and Beyond

22 Q And where did you grow up?

23 A Hannahan, Goose Creek area

24 Q And do you know the Defendant in this case, Stephen
25 Stanko?

1 A I do

2 Q Can you tell us when you first met Mr Stanko?

3 A We first met, I think, in the seventh grade at Sedfield
4 Intermediate -- or Sedfield Middle, I'm sorry

5 Q And can you tell us about -- did you have a
6 relationship with him from the seventh grade forward?

7 A We did, as far as being friends and hanging out, as far
8 as playing baseball together and things like that

9 Q Did you graduate from Goose Creek?

10 A I did, 1986

11 Q And so you and Steve were in the same class Is that -
12 --

13 A Same class

14 Q Okay And you said y'all played baseball together
15 Did you participate in any other school activities together?

16 A We played on the J V football team, I think our
17 sophomore year

18 Q Okay So I believe you -- and you characterize your
19 friendship -- your relationship as you guys were friends Is
20 that right?

21 A That's correct

22 Q All right Tell me, if you could -- would you describe
23 him in high school for me, to the best of your recollection?

24 A When I think about Steve ---

25 MR HUMPHRIES Your Honor, may we approach?

BRYAN WILSON - DIRECT BY WILLIAMS

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1 MR HEMBREE We might need to approach on this

2 THE COURT Yes Y'all come around here, please

3 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD)

4 Q Mr Wilson, let me ask you this question Let me ask
5 you if you know about any occasion where Mr Stanko was
6 injured at some point, if at all, during high school?

7 A I do, as far as a situation in our senior year in high
8 school

9 Q Can you tell me about that?

10 A Basically we went to a -- I think it was a high school
11 softball game up in Columbia, came back to meet the girls
12 after the game and so forth, in front of the gym We waited
13 for the girls to come out One of the girls was dating an
14 older guy, older than us, a couple of years old Needless to
15 say, I think she got in the car with him, ended up being as
16 far as where he was beating her, or hitting her, or something
17 like that, so we tried to get the girl out As we were doing
18 that one of our friends, Travis, grabbed the girl, the guy hit
19 him, a scuffle broke out into a fight, we grabbed Travis, or I
20 grabbed Travis into Steve, so Steve told me to take him off,
21 and what I remember is the fact the guy came out -- a guy was
22 coming out of the car, the guy who we actually got in a fight
23 with, spilling beer bottles, and hit Steve in the back of the
24 head

25 Q And he was hit in the head with what did you say? I'm

1 sorry

2 A A full beer bottle

3 Q A beer bottle And then once he was hit in the back of
4 the head what, if anything else, do you recall about that?

5 A Other than the incident We grabbed Steve, put him in
6 my car, me and two other young ladies, as far as -- and tried
7 to take him to Minirev -- I think it's a clinic right there,
8 and so forth, where we lived We couldn't go there because
9 they said they couldn't take him, or they were closed at the
10 time, I don't remember We took him to the Naval Hospital
11 because he had -- he was bleeding and everything else in the
12 back

13 Q He was bleeding at that point?

14 A He was

15 Q Do you recall if he was acting in any particular way,
16 one way or the other?

17 A Other than at first he told us to go to Minirev, I
18 think because that's where he's from, and so grew up in the
19 area, and other than talking a little bit of gibberish, I
20 don't know exactly what it was, just kind of out of it a
21 little bit sort of He wasn't like okay He was not right so
22 -- as far as that aspect

23 Q Is it fair to say you guys were concerned enough you
24 took him to the hospital?

25 A Yes, I mean, he was ---

BRYAN WILSON - CROSS BY HEMBREE

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1 Q Do you have any recollection of how -- well, tell me,
2 once you got him to the hospital do you know what -- if
3 anything, what happened?

4 A We took him to the hospital, left him there I think
5 his parents were on the way up there That's all at this
6 point -- I think it had to be a Thursday or a Friday night I
7 don't remember

8 Q Do you have any recollection at all if he stayed in the
9 hospital, and if he did, how long?

10 A I don't I sure don't

11 Q Do you think he -- do you know if he was back in school
12 on Monday?

13 A He was back at school on Monday, as far as I can
14 remember

15 MS WILLIAMS One moment, please

16 That's all the questions that I have If you would,
17 please answer any questions the Solicitor may have

18 THE COURT Cross-examination

19 MR HEMBREE Thank you Thank you, Your Honor

20 CROSS-EXAMINATION BY MR HEMBREE

21 Q You indicated that, Mr Stanko got hit with the beer
22 bottle

23 A Yes sir

24 Q Y'all put him in your car He was -- he was conscious
25 but kind of goofy?

1 A You could say that

2 Q Yes I mean, when I say goofy, just ---

3 A Yes It wasn't like me and you as in, I got hit He
4 was kind of like out of it, a little goofy, yes

5 Q Goofy

6 A Uh huh (*indicating positive*)

7 Q He was bleeding?

8 A Correct

9 Q Some blood That concerned you

10 A Correct

11 Q And now he told you where to take him?

12 A At first I mean, as far as, I guess -- we were trying
13 to get him in the car We kind of helped him into the car, or
14 picked him up, whatever it was, I don't remember It was me
15 and another young lady She held his head I remember she's
16 sitting in the back holding his head, to keep him from
17 bleeding all over my car, but ---

18 Q Yes I've got you But he told you -- I mean, he had
19 the presence of mind at least to say, take me to ---

20 A At first, yes

21 Q ---Such and such place, and then that didn't work out

22 A And we ended up going to the Naval Hospital because he
23 was a military -- I know his dad was

24 Q Right And did he start acting not so goofy pretty
25 quickly?

BRYAN WILSON - CROSS BY HEMBREE

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1 A Again, hard to remember I remember talking -- he was
2 kind of like talking in different -- just kind of off the wall
3 stuff, I guess, not what was happening, this situation at the
4 time

5 Q I've got you And you dropped him off at the hospital
6 and that was ---

7 A We took him into the emergency room We stayed there
8 for a little bit and then we left

9 Q And he was back at school on Monday?

10 A Yes

11 MR HEMBREE Fair enough Thank you, sir

12 THE COURT Do you wish the witness to be excused?

13 MR DIGGS Yes, Your Honor

14 THE COURT All right Any objection?

15 MR HEMBREE No objection, Your Honor

16 THE COURT All right, sir, you are released from your
17 Subpoena You may go back to your regular duties

18 A Thank you

19 THE COURT Next witness, please

20 MR DIGGS Your Honor, we would call Dr James
21 Thrasher

22 THE COURT All right

23 MR DIGGS Your Honor, we are going to try to use
24 this I don't know exactly how to operate it, so if you could
25 bear with me for just a few seconds until I get it set up

1 **THE COURT** Dr Thrasher, come around and be sworn,
2 sir, right up here next to the Clerk Come around Right up
3 here next to the Clerk

4 A Yes sir

5 **JAMES W THRASHER, M D , ,** being
6 first duly sworn, testifies as follows

7 **MR DIGGS** Your Honor, I wonder if we could take a
8 brief recess until we figure out how to operate this ---

9 **THE COURT** I'll give you five minutes

10 **MR DIGGS** All right

11 **THE COURT** Ladies and gentlemen, if you will go to the
12 jury room for five minutes, please Thank you

13 **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND WITHIN THE**
14 **PRESENCE OF THE JURY)**

15 **DIRECT-EXAMINATION BY MR DIGGS**

16 Q Dr Thrasher, how are you this afternoon?

17 A I'm well

18 Q Okay Let me ask you, could you give us the benefit of
19 your education and training, please sir?

20 A I went to undergraduate school at Old Dominion
21 University in Norfolk, Virginia, and I graduated in '60 -- I'm
22 sorry -- 1958, with a Bachelor of Science Degree I went from
23 there to medical school at the Medical College of Virginia in
24 Richmond, Virginia, and graduated there in '64 From there I
25 went to the Navy Hospital in Charleston, South Carolina, where

1 I completed a one-year rotating internship in 1966 From
2 there I went to the Navy Hospital in Philadelphia,
3 Pennsylvania where I completed a three-year general adult
4 Psychiatry residency training, and from there I went to the
5 University of Pennsylvania for a one-year Psychiatric
6 Fellowship training in Forensic Psychiatry, '72 to '73, and
7 then I went to the Navy JAG school in Newport, Rhode Island in
8 1973, and I attended law school -- completed law school at
9 Temple University in Philadelphia, Pennsylvania in 1975

10 Q All right And in the course -- can you tell us what
11 you do now?

12 A I'm a Senior Staff Psychiatrist at the Waccamaw Center
13 for Mental Health in Conway, South Carolina

14 Q All right And how long have you been practicing
15 Psychiatry?

16 A I've been in practice some forty-three years now

17 Q And as a psychiatrist?

18 A Well, that includes all my training since graduating
19 from medical school ---

20 Q Okay

21 A ---So no, part of that was a student -- a student as a
22 resident or intern, as well as a law student, so ---

23 Q All right And were you ever stationed down at
24 Guantanamo Bay?

25 A I served in Guantanamo Bay many years ago, prior to my

1 going to undergraduate school at William and Mary, which is --
2 it's really Old Dominion now, and I was in the Navy, and I was
3 an enlisted man, and serving aboard aircraft carriers, and in
4 the aviation arm of the Navy I was a combater crewman flying
5 off of aircraft carriers in the back seat

6 Q Okay Did you ever work at the hospital there in
7 Guantanamo?

8 A I never worked at that hospital, no

9 Q Were you -- did you do any work that was associated
10 with it at all?

11 A No, not directly

12 Q All right Let me ask you this, you are licensed in
13 the State of South Carolina as a psychiatrist?

14 A I'm licensed in the State of South Carolina as a
15 physician

16 Q As a physician?

17 A Yes

18 Q And how do you get to the point under -- is there some
19 State regulation with respect to the practice of Psychiatry?

20 A Well, yes It's expected that you would be Board
21 Certified in Psychiatry, having -- to become a psychiatrist
22 you have to complete four years of medical school, and then
23 take a proper residency training program, and then you can
24 take an examination for Board Certification under American
25 Board of Psychiatry in Neurology in order to practice as a

1 psychiatrist, which I did all that

2 Q Okay

3 MR DIGGS Your Honor, we would offer Dr Thrasher as
4 an expert in the field of Psychiatry

5 MR HEMBREE We have no objection to Dr Thrasher
6 testifying as a psychiatrist

7 THE COURT He's qualified to give his opinion as a
8 psychiatrist

9 Q Dr Thrasher, can you tell us if -- what is the Field
10 of Psychiatry, and what does a psychiatrist do?

11 A Well, we examine individuals for the presence of mental
12 illness and treat it

13 Q Do you look at the causes of mental disease or illness?

14 A Certainly, yes

15 Q And do you ever look at structure and function in terms
16 of brain?

17 A Yes

18 Q And have you looked at any medical information on
19 Stephen Stanko with respect to structure and function, and --
20 of his brain?

21 A I have

22 Q And let me ask you this, does Stephen Stanko have
23 diminished or lowered function of his brain in the frontal
24 lobe areas?

25 A Yes, he -- yes, the studies indicate that

1 Q And is it a -- is there -- could there be a causation
2 between diminished function in the frontal lobe and a mental
3 illness?

4 A Well, yes, there could be, but it's a complicated
5 question

6 Q All right

7 A Yes

8 Q But to make it simple for me it could -- that's
9 possible?

10 A That's possible

11 Q And could a -- oxygen depravation be a cause of ---

12 MR HEMBREE I'm going to have to object, Your Honor,
13 to the leading nature of the question

14 Q What could be -- what could contribute to a frontal
15 lobe functional anomaly?

16 A There could be multiple causes

17 Q Could you let us know? Could you identify some of
18 them?

19 A Well, proba -- let's -- one the causes could be genetic
20 problems

21 Q Okay

22 A Another one could be vascular problems, the circulation
23 to that area of the brain has been cut off, or diminished, or
24 compromised in some way Another could be a brain tumor,
25 another could be trauma of whatever sort, could be a blunt

1 non-penetrating injury, or it could be a penetrating injury of
2 the head, so there's a list of things that could contribute to
3 that sort of thing happening

4 Q All right, now, in considering whether there is frontal
5 lobe deficit in terms of structure with Mr Stanko, is that a
6 professional expert opinion?

7 A I would think so

8 Q Okay Did you use any medical history or medical
9 records in assisting you with that particular -- in rendering
10 that particular opinion?

11 A There were a good number of those records that were
12 presented that I went over some time ago, yes

13 Q All right Did you have a chance to review any records
14 that were generated at his birth?

15 A Yes There was a -- there was a hospital record of Mr
16 Stanko's birth that was part and parcel of that package of
17 information

18 Q All right And did you have an opportunity to review
19 those records?

20 A Yes

21 Q And would you -- based on your review of the records,
22 did he have -- was it a normal birth delivery and was he -- is
23 that a normal birth process?

24 A It appeared to be essentially normal His gestation
25 ended with a precipitous delivery His mother -- I think it

1 was his -- I'm sorry -- I think it was his mother's fourth or
2 fifth child, and the second stage of delivery was five
3 minutes That's rather fast from a delivery

4 She had -- the record showed that she had colo-cystitis,
5 so it was a -- categorizable as a complicated delivery
6 situation, a complicated pregnancy That's as far as she is
7 concerned

8 Q All right Were there any concerns noted in the
9 medical records with respect to Mr Stanko's condition at that
10 time when he was a newborn infant?

11 A Yes

12 Q What were they?

13 A He was noted to be cyanotic, which means he was
14 somewhat blue, and he was noted to be pale, and he was noted
15 to have deficient reflexes, but that's a complicated factor
16 too because one of the -- two of the reflexes were recorded in
17 the chart One was a swimmer's reflex where, if you rub the
18 musculature along the baby's spine, on one said, they will
19 curve to that side, and you do it on the other, they will
20 curve the other way, as you alternate sides And another one
21 is called the moro That's a short name for moroendemerons,
22 which is a reflex that infants have normally Now, the normal
23 swimmer's reflex is to bend to one side or the other If it's
24 absent it's not normal With the moroendemerons reflexes it's
25 normal to have it It's manifests by the child reflexly

1 grabbing for support When you hold it in your hands and
2 lower the child suddenly they will -- their arms will splay
3 out and it's like they are trying to grab on to hold on
4 That's a normal -- if they don't have it -- not having it is
5 what's abnormal

6 Q And was anything extraordinary or remarkable noted with
7 respect to Mr Stanko of as an infant in that regard, in the
8 moro ---

9 A Yes He did

10 Q ---Endemeron reflex?

11 A It was a weak or deficient -- it was weak, deficient or
12 absent, I don't recall exactly which, but it was not normal

13 Q And do you know of any medical cause that could
14 contribute to that?

15 A Well, when humans don't have those kind of reactions it
16 indicates that there is something neurological amiss at some
17 level

18 Q When we say neurologically what are we talking about?

19 A The brain -- at the central nervous system, meaning the
20 brain and the spinal cord and it's connections throughout the
21 body

22 Q All right And how, again, does this relate to Mr
23 Stanko?

24 A I'm sorry

25 Q To this Defendant How does that relate to this

1 Defendant?

2 A Well, if he didn't have the Moro response it means
3 there's something gone wrong, and if he didn't have the
4 swimmer's response something -- I'm sorry -- yes, if he didn't
5 have the Moro response something has gone wrong, and if he
6 didn't have the swimmer's response on those reflexes there's
7 something that's gone wrong in the central nervous system

8 Q And again for me -- and I might not have been paying
9 attention, but what is the swimmer's response?

10 A Well, it's done by rubbing the child's musculature
11 along the spine, alongside the spine, on either side, and the
12 child will reflexly bend in that direction, both sides, one
13 side then the other

14 Q All right Let me ask you -- all right, Dr Thrasher,
15 is this a copy of the medical record that you reviewed in
16 order to, in part, reach the opinion that you testified to
17 just a few minutes prior?

18 A I didn't go through that whole stack, but it appears to
19 be

20 Q All right It includes at least -- part of this stack
21 includes the birth records that you were just referring to?

22 A Yes

23 MR DIGGS Your Honor ---

24 A Go ahead

25 Q I'm sorry I cut you off

1 A I said yes

2 Q Okay

3 MR DIGGS Your Honor, we would introduce this as
4 Defendant's Number 22

5 THE COURT Any objection?

6 MR HEMBREE Without objection, Your Honor

7 THE COURT All right Defendant's 22, without
8 objection

9 (MEDICAL RECORDS ADMITTED INTO EVIDENCE AS DEFENDANT'S
10 EXHIBIT NUMBER 22)

11 MR DIGGS And Your Honor, we are going to display
12 this on the scene, so with your permission we are going to ask
13 that the lights be dimmed a little

14 THE COURT Why don't you display it first before we
15 dim the lights and let's see if we can't do it without doing
16 that because that causes a whole host of problems

17 MR DIGGS All right

18 Q Okay, Dr Thrasher, do you see what we are looking at
19 there?

20 A I do

21 MR DIGGS And Your Honor, could I make sure that
22 everybody can see Is the podium in the way?

23 Q All right Now Dr Thrasher, you can see the screen --
24 and I've given you a hard copy there that if you can -- if
25 it's easier for you to see that then feel free to use that

1 A Some of the -- some of the typed-in areas I can read
2 from here, but the categories, you know, on the form, are too
3 small for me to read from here

4 Q Yes Okay So you can use that hard copy that you
5 have there ---

6 A All right

7 Q ---In front of you

8 What are we looking at on this page?

9 A This is a statement about his birth, his father, his
10 category is a newborn ---

11 Q Okay

12 A ---And it is Baby Boy Stanko

13 Q All right Let's go into the next page and what do we
14 have there?

15 A This is a Diagnostic Summary on the Clinical Record
16 The top area gives the date, the date of -- the date of
17 admission, the date of discharge, the number of days
18 hospitalized, and the next major category is Clinical
19 Diagnoses, then the Operations category under that,
20 Therapeutic Procedures and Pathological Diagnoses

21 Q All right Let's go up to the Clinical Diagnoses area
22 Can you read that writing?

23 A The script?

24 Q Yes, what's been written in there ---

25 A Yes, it says --

1 Q ---The hand entry

2 A ---Term birth living child

3 Q Okay And how about number two?

4 A Hyperbilirubinemia

5 Q What does that mean?

6 A Hyperbilirubinemia

7 Q Okay And what does that mean?

8 A That means that the child has an elevated bilirubin

9 level in the bloodstream, and bilirubin is a break-down

10 product of hemoglobin, and it's usually processed out by the

11 liver, under ordinary circumstances

12 Q Okay And this next -- is that jaundice?

13 A It says -- yes, jaundice, is the result of having too

14 much bilirubin in your system that turns the skin yellow and

15 the amount of bilirubin in the system determines the intensity

16 of the yellow It can be quite dramatic, or very minimal

17 The next word is physiologic, and the next word is

18 exaggerated

19 Q Do you have any idea what is meant by that notation?

20 A It looks as if it was considered to be a physiologic,

21 which would mean a normal processing of bilirubin, the normal

22 processing system that was not quite efficient enough, and

23 then therefore the color and probably the bilirubin, the serum

24 is elevated, meaning it's -- that's in the exaggerated

25 condition

1 Q What could be a cause for that?

2 A Well, there are multiple causes One could be
3 incompatibility between the R H factor in the mother and the
4 child, which is sometimes a very major cause Part of that --
5 part of it is normal physiologic -- it just happens at birth
6 If the child bled a whole lot and -- not external to the body,
7 but out into the body and blood was absorbed by the body that
8 could cause it There are multiple causes

9 Q All right Might it have an effect on the child?

10 A Yes, indeed

11 Q What?

12 A Well, it can be so severe as to cause very serious
13 brain damage, at it's worse, and ordinarily if a child has
14 that they can be put under ultra-violet light and that,
15 itself, will clear it up, if it's just a minor case of it

16 Q Okay And when was this notation made in terms of
17 Stephen Stanko's life? How old would he have been? Can you
18 tell?

19 A Well, he was discharged after five days This being a
20 summary, I would assume that that would be the statement of
21 his condition five days after his birth

22 Q All right Well, this clinical record -- it says date
23 of admission, January 13th of 1968

24 A Yes

25 Q See that?

1 A Yes

2 Q And would this diagnosis have been entered at that time
3 or the discharge date, or somewhere in between?

4 A This form is ordinarily filled out as a summary of all
5 that's gone ahead, so I would say it was filled out on or near
6 the 18th

7 Q Okay Going down through a couple of pages, Dr
8 Thrasher, and I'm going to go to the Clinical Record where we
9 have a start date of 1/14/68, and we have the Clinical Record
10 there, and the Doctor's Orders for that day Now this would
11 have been one day after the birth Is that correct?

12 A Yes

13 Q What do we have in the Doctor's Orders at that time
14 with respect to this -- the baby boy?

15 A Number one reads, keep baby on (D) slash (W) feedings
16 until formula is specifically ordered

17 Q (D) slash, what does that mean?

18 A (D) slash (W) means Dextrose and water It's an
19 intravenous feeding

20 And number two says, keep baby near window of nursery
21 I don't know what the next one -- justification ---

22 Q Would that be partition?

23 A It could be partition, yes, nursery partition to
24 facilitate close observation, underlined

25 Q Now why would they want to have close observation?

1 A Well, the baby's got deficient reflexes, giving some
2 concern about it's survivability, and it has this icterus,
3 which hopefully would be physiologic and clear up
4 spontaneously

5 Q All right Continue on reading and ---

6 A And the next -- well, the next sentence is, "If Carmen
7 is out of nursery put bassinet next to the window so that the
8 baby can be watched " Don't remain outside for a prolonged
9 time

10 Q All right, now, why would that notation been made, or
11 that order be entered in the record?

12 A Well, that makes it pretty clear that the physician
13 wanted that child observed closely

14 Q Okay And it would certainly -- would it be fair to
15 say -- is this normal?

16 A Under the circumstances I would say it's indicated

17 Q Okay It's indicated And again, it's indicated for
18 what reason?

19 A Well, because of the concern for the welfare of the
20 child

21 Q Now, let's continue on down to order number three Can
22 you make that out, that writing?

23 A Yes It says, "Have suction bulb available in mother's
24 bedside table in case baby vomits after feedings "

25 Q Is that normal? I mean, do babies vomit after feeding

1 when they are newborns, so that you would put that in an
2 order?

3 A My babies vomited all over me

4 Q Okay

5 A The ---

6 Q Is that a standard entry?

7 A Well, not necessarily If there is some central
8 nervous system deficit in this particular child they would
9 make an entry like this to be on the cautious side, so that if
10 the child did vomit because of central nervous system problems
11 it may not be able to swallow properly, or keep it out of it's
12 lungs, so they take the precaution of having it at the bedside
13 in case the baby vomits

14 Q All right Is this order consistent with the
15 neurological confirm that you discussed -- of the type
16 discussed previously?

17 A Yes

18 Q All right How about the last entry there? Can you
19 make that out?

20 A Yes Number four says, "Call me at home if still
21 vomiting by this evening "

22 Q Okay And what's being said there?

23 A Well, the physician wants to be notified personally if
24 the baby keeps on vomiting

25 Q Okay All right What are we looking at here? Can

1 you see this on the screen?

2 A Hang on a minute Yes, I have it

3 Q All right What are we looking at here?

4 A Well, this is the clinical record of the newborn child

5 Q Okay

6 A And the mother's name is at the top, and the father's
7 name, and the -- E D C , estimated date of confinement,
8 etcetera, and gravid of five means she been pregnant five
9 times, para-four means she's delivered four babies, she has
10 had no still births, no abortions, and she has four living
11 children

12 Q All right And it confirms for us that we are looking
13 at this Defendant's birth records here?

14 A Yes It says that she has acute colo-cystitis during
15 pregnancy

16 Q All right Is there any reason that would be ---

17 A Yes, because she could have -- colo-cystitis is quite a
18 -- severe cystitis is quite a disabling situation It could
19 cause high fevers, it could cause rupture of the gallbladder,
20 which could be a deadly serious circumstance, so that puts it
21 in the category of a complicated pregnancy

22 Q Okay

23 A The complications of delivery are listed as none, the
24 anesthesia is listed a Pentothal, I think, or Pentane
25 Analgesia means the pills that she was given was Seconal as a

1 sedative, Demerol as a analgesic, a pain reliever, and
2 Phenergan is a -- it's like an antihistamine That enhances
3 the effect of the Demerol so you can use a lower dose of
4 Demerol

5 Q All right And tell me again what it was on this page
6 that you mentioned that made this appear to be a complication
7 in the pregnancy

8 A It looks like acute colo-cystitis it would be

9 Q Under the prenatal course ---

10 A Prenatal course would be the five lines down, yes

11 Q And again, what is that?

12 A That's an inflammation of the gallbladder

13 Q And would it -- could it have an effect on the baby, or
14 is that something that just pretty much pertains to the
15 mother's health?

16 A I think it pretty much pertains to the mother's health,
17 unless she was having an acute attack during this period of
18 time, but that would have been noted as well

19 Q Okay All right, let's go to the next page, or down
20 What are we looking at on this chart?

21 A That grid display is the physician's statement of the
22 physical examination of the baby

23 Q All right, now, is this something that's done in --
24 routinely with babies, or is this a form that is pretty unique
25 to the military, or to the Navy?

1 A Well, I'm not sure that it's used in this format in
2 non-military facilities

3 Q Okay

4 A It's used very far and wide in military facilities, in
5 my experience

6 Q Now you were the commanding officer in a Naval Hospital
7 in Charleston?

8 A Yes, I was

9 Q And you are familiar with the birth records ---

10 A Yes

11 Q ---I mean, having been in that capacity?

12 A Yes

13 Q All right Let's look -- and tell us what we see on
14 this chart, Dr Thrasher, and what is of significance here

15 A Starting in the upper left-hand corner the description
16 begins with "General appearance", and there's "WD" comma
17 "Term" ---

18 Q Okay

19 A That means that his general appearance is well-
20 developed, and I think that's term, right there, I think it is
21 ---

22 Q All right

23 A ---Which means that he -- it was at a -- it was not a
24 premature birth ---

25 Q Okay

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1 A ---And the face he means how the face looks It isn't
2 deformed, birth weight is not there, temperature is not there,
3 character of cry is not there, measurements are not there

4 Q All right Let me ask you this When we look at this
5 chart, or this grid, basically we see two types of entries
6 We see an end, what appears to be an end, and a zero, or an
7 (O) Can you explain to us what those injuries mean, what
8 that stands for?

9 A Well, I take that to mean (N) is normal, and (O) means
10 abnormal

11 Q All right And ---

12 A Or observed, perhaps

13 Q All right Let's look at the first one that we see
14 there, cyanosis What does that mean?

15 A That means the skin coloring of the baby, lips and
16 fingernail beds and things like that, are bluish

17 Q And what is a cause for that?

18 A Low oxygen levels in the bloodstream

19 Q Okay And do we know what could cause the oxygen
20 levels to be low?

21 A Well, hypoxia, or low oxygen levels can be caused by a
22 number of things, dysfunctional lungs, premature lungs In an
23 infant, blockage of the lungs, airway system, blockage of the
24 lungs, vascular system, not breathing properly You know, the
25 child has a normal system but is not breathing properly for

1 central nervous system reasons There's a good number of
2 things that it could indicate

3 Q All right And let's go over to paralysis Is that --
4 am I reading that right?

5 A Where are you?

6 Q Where she -- about in the middle, on the bottom line
7 We have a zero there, or an (O)

8 A Yes

9 Q You see that?

10 A Yes

11 Q What's indicated there? What are they telling us
12 there?

13 A I believe that there is a question of paralysis because
14 of the baby's lack of reflexes

15 Q All right Now, does that have -- does that relate
16 back to what you were talking about earlier with the moro
17 reflex and the swimmer's ---

18 A As I put this together, yes

19 Q Okay Paralysis results from what? Explain that to
20 me, if you will

21 A Well, central nervous system injury, or disfunction or
22 non-function of it, and it could be caused by peripheral nerve
23 injury too If you interrupt the nerve serving a part of the
24 body, the arm or a leg, it's paralyzed It won't work
25 properly But there could be central causes for that in the

1 brain as well

2 Q Okay And central causes in the brain, what are we
3 looking at there? What could be the cause for that?

4 A Well, if it is central paralysis it means that there
5 has been some brain damage in the motor strip area in the
6 brain itself

7 Q Okay now, where is that?

8 A In the temporal lobe

9 Q All right Anything -- any correlation or relation
10 between the frontal lobe anomaly that you've opined about with
11 Mr Stanko now and this entry in his birth record regarding
12 the paralysis?

13 A Well, they could all be part and parcel They could
14 all be part of a whole picture at the time

15 Q Okay Let's go back over to pallor ---

16 A Yes

17 Q ---Here

18 A Yes

19 Q And again, what are we talking about there?

20 A Pale skin

21 Q All right And next to it, on the right -- to the
22 right of that, icterus -- am I pronouncing that correctly?

23 A Icterus, i c t e r u s

24 Q Okay What do we mean by that?

25 A That's the yellow coloration associated with hyper-

1 bilirubinemia or ---

2 Q I'm sorry

3 A Hyper-bilirubinemia, it's the elevated bilirubin in the
4 bloodstream

5 Q All right And again, remind me of the possible cause
6 for that

7 A Could be ~

8 Q And what could be? What are we talking about there?
9 What would be the reason for that?

10 A Well, this form says the baby has icterus

11 Q Okay And that's indicative of?

12 A It's because of the hyper-bilirubinemia that was
13 detected

14 Q Okay And again, going back, the cause for that might
15 be what?

16 A Well, as we went over that before ---

17 Q Yes

18 A ---It could be excessive internal bleeding It could
19 be from -- head trauma from birth It could be from anoxia

20 Q Which is lack of ---

21 A Oxygen

22 Q ---Oxygen

23 A Yes

24 Q All right Now, let's go down to the abnormal findings
25 on physical examination Can you read those?

1 A It says the baby has had excessive mucous, and has been
2 vomiting intermittently

3 Q Now, excessive mucous, why does that present a problem,
4 if it does, to a newborn infant?

5 A Airway problems

6 Q All right Clogged up?

7 A Yes

8 Q And might that have a relation to the color problem,
9 the blueness that you ---

10 A Well, ordinarily saliva and mucous are swallowed, but
11 if the central nervous system isn't operating properly it
12 could be impaired, so that's what I think they are -- this
13 physician has been talking about here, or referring to

14 Q All right Continue on reading that

15 A "Forceful vomiting of clear fluid and mucous during
16 exam "

17 Q And explain to us what he's describing there

18 A Well, he's noted that the baby is vomiting rather
19 vigorously while he's examining the child

20 Q With respect to an infant of this age, what are the
21 causes for that?

22 A Well, that -- we went over those, the various things
23 that can cause that, again, difficulty swallowing, brain
24 injury

25 Q And what is the possible and potential impact on the

1 infant?

2 A Well, number one, the child could not be getting
3 adequate nutrients, except earlier it said they were using
4 intravenous fluids, and number two, it looks like the baby is
5 probably irritable, and vomiting as a result of it's
6 irritability It doesn't say that, but it wouldn't be
7 unusual, illogical -- or illogical to find that So the
8 physician has made an observation He noted forceful vomiting
9 of clear fluids while he is examining the child

10 Q With the excessive mucous?

11 A Yes

12 Q Let's see What are we looking at on the next page?

13 A Next page?

14 Q Yes

15 A Uh huh (**indicating positive**) Well, the top section is
16 the condition at discharge

17 Q Yes sir

18 A 1/17/68, clinically doing well, bilirubin 19 1
19 milligrams percent total, then one eighteen sixty-eight just
20 below that It says, bilirubin down to seventeen point eight
21 milligrams percent today, no abnormalities on physical exam
22 except for resolving jaundice, or icterus that the child had
23 And the next line says, "Will get a repeat bilirubin in the
24 outpatient clinic tomorrow "

25 Q All right Now, do you -- when you were reviewing the

1 records was there any additional entry in the record that you
2 felt was of interest to the issue that we have discussed this
3 afternoon, that being a reduction in the brain function in
4 that frontal lobe area?

5 A I don't think so

6 Q All right

7 MR DIGGS Beg the Court's indulgence here for just a
8 second

9 Q Let me go back, Dr Thrasher There was an entry
10 there I didn't have you finish reading it, but there is -- I
11 want you to finish reading this line You see where we are --
12 our cursor is located on the page, right here, "feeding tube
13 forced" I that what that says?

14 A Yes, I have it here

15 Q Yes Let me have you read that and comment on that
16 entry, please sir

17 A "Feeding tube passed into the stomach without
18 difficulty, and three C C s of fluid removed, after which
19 stomach was lavaged

20 Q All right Explain that to me

21 A Well, they put a feeding tube down the stomach to make
22 sure that it wasn't full, and obstructing disability to
23 swallow because of the fullness, because there are things down
24 the line that can do that in the -- starting in the -- beyond
25 the stomach in the small intestine at the pylorus, as a matter

1 of fact, and they are trying to ascertain, I take it, that the
2 stomach wasn't overly full They took out three c c s of
3 fluid, which isn't much, and then they washed out the stomach

4 MR DIGGS Dr Thrasher, I appreciate it I don't
5 think I have anything else to ask you at this particular time,
6 and I would ask you to answer any questions the Solicitor may
7 have

8 A Very well

9 THE COURT Cross-examination

10 MR HEMBREE Thank you, Your Honor

11 CROSS-EXAMINATION BY MR HEMBREE

12 Q Good evening, Dr Thrasher

13 It's been a long time since you've delivered any babies,
14 or done any O B G Y N work, isn't that fair to say?

15 A That's true

16 Q You've been a practicing psychiatrist for many years
17 here in Horry County

18 A Sixteen years so far

19 Q And as a matter of fact, you were called upon to do an
20 examination of the Defendant in this case, Stephen Stanko

21 A Yes

22 Q Referring to your -- to your examination of him, when
23 you examined him did he understand the charges in the case?
24 He understood what he was facing?

25 A Yes

1 Q He understood his rights and ---

2 A Yes

3 Q ---The process He understood what the lawyers did,
4 the Judge did, jury did, the whole process that he was facing?

5 A Yes

6 Q No question he was competent?

7 A I didn't question his competency

8 Q Well, I mean, those are the issues that you would look
9 for to determine competency, true?

10 A Yes

11 Q And was there any question in your mind as to his
12 competency?

13 A I didn't question his competency

14 Q I'm asking your opinion

15 A Well, I thought I was answering you I did not find
16 him incompetent

17 Q Did you talk with him about his upbringing, get a
18 social history on him?

19 A Yes

20 Q Found that he was -- his parents got on well

21 A He what?

22 Q That his parents got along well?

23 A Yes

24 Q No violence in his home?

25 A None

- 1 Q Felt loved as a child?
- 2 A Yes
- 3 Q Did well in school?
- 4 A Yes
- 5 Q Had pets but never abused them?
- 6 A Yes
- 7 Q That's kind of in -- if you -- you find people that are
- 8 psychopaths often abuse pets, don't you?
- 9 A On occasion you do
- 10 Q Not a bed-wetter?
- 11 A No
- 12 Q No attraction to fire?
- 13 A No
- 14 Q Played sports, football, volleyball, baseball, true?
- 15 A Well, yes I don't remember those in specific, but
- 16 yes
- 17 Q Normal upbringing, kind of normal high school things?
- 18 A It was a very benign history, yes
- 19 Q Dated?
- 20 A Yes
- 21 Q Got along well with the school staff?
- 22 A Yes
- 23 Q Graduated from high school in '86?
- 24 A Yes
- 25 Q When you interviewed him he presented himself as polite

1 ---
2 A Yes
3 Q ---Friendly ---
4 A Yes
5 Q ---Cooperative ---
6 A Yes
7 Q ---Spoke in a clear voice, at a normal rate ---
8 A Yes
9 Q ---Didn't use odd or peculiar speech in any way?
10 A No
11 Q Thought processes were intact?
12 A They were
13 Q His thought content did not reveal any delusional
14 thinking?
15 A No
16 Q There is no evidence of pseudo-perceptions?
17 A No
18 Q His mood was neutral?
19 A Yes
20 Q He's not suicidal?
21 A No
22 Q He's affect was full range, and in keeping with express
23 thoughts, mood and ideas?
24 A Yes
25 Q He was fully oriented?

1 A Yes

2 Q His memory was intact?

3 A Yes

4 Q Attention, focus and concentration were adequate?

5 A Yes

6 Q His abstracting ability was intact?

7 A Yes

8 Q His judgment was intact?

9 A Yes

10 Q Attitude and outlook were hopeful?

11 A Yes

12 Q And intelligence was found to be above average?

13 A Yes

14 Q You found that he had a -- you diagnosed him with an
15 anti-social personality disorder

16 A I did

17 Q And is it fair to say that an anti-social personality
18 disorder really is -- to put it in layman's terms, it's
19 someone who has difficulty getting along with others,
20 following the constricts of society, and the rules of society?

21 A Yes

22 Q Doctor, I'm going to ask you about this -- I'm going to
23 ask you about this report about Stephen Stanko's childhood
24 You've got a copy of it with you

25 A No, I don't

1 Q And where did that get off to?

2 A I don't know

3 THE COURT Are you talking about the medical report?

4 MR HEMBREE The medical report

5 THE COURT The one you were just testifying from

6 A Oh, this one, oh yeah

7 Q Yes sir

8 A Yes This is his birth record, infancy

9 Q Birth -- right Defendant's 22 I'm sorry I didn't
10 note the -- the report entered in evidence as Defendant's 22
11 You've got that in front of you

12 A Right here

13 Q Okay I want to take you to the first page, the
14 Clinical Record Diagnostic Summary It begins at the top with
15 term birth living child

16 A Yes

17 Q You have that in front of you?

18 A Yes

19 Q And this, as you indicated, would have been prepared
20 upon the baby's discharge

21 A Yes

22 Q And it indicates that -- term of birth, living child,
23 and that he had jaundice

24 A Yes

25 Q It doesn't appear to be -- it's not severe enough to

1 keep him in the hospital because he was discharged

2 A True

3 Q But he was jaundiced

4 A Yes

5 Q Would you say -- is it fair to say that jaundice is a
6 fairly common condition in newborn infants?

7 A Yes

8 Q Now let's look at -- a couple of lines down where it
9 says, "Therapeutic procedures and other factors of clinical
10 interest" What is noted there?

11 A That's a figure used to indicate nothing

12 Q Okay Oh yeah, the little symbol there it says -- it's
13 like a zero

14 A Means nothing Yes

15 Q Okay And it means nothing -- so what does that
16 indicate to you?

17 A That there were no therapeutic procedures or other
18 factors of clinical interest

19 Q All right How about Pathological Diagnoses?

20 A Again, nothing

21 Q Nothing What would be an example of a pathological
22 diagnoses?

23 A Brain hemorrhage

24 Q Okay But that was negative also

25 A There was nothing there

1 Q Right There's -- I mean, there's nothing noted there
2 so it was negative There was no -- the doctor clearly had no
3 concern about any pathological diagnoses indicated

4 A The doctor entered nothing

5 Q And he put a symbol down ---

6 A Yes

7 Q ---That means negative?

8 A Negative

9 Q Yes

10 A Correct

11 Q All right Let me take you to the Clinical Record,
12 Doctor's Orders, with the date at the upper right-hand corner
13 of 1/14/68

14 A Yes

15 Q And it indicates -- the only indication of any problem
16 in this -- in these one, two, three, four items that are
17 listed by the doctor under January 14th, the only problem
18 that's noted is that the baby has vomited, or has been
19 vomiting Is that fair to say?

20 A Well, there are other indicators Dextrose and water
21 was ordered until the formula is ordered, so that people
22 didn't get ahead of themselves with giving the baby formula,
23 and they wanted to keep it near the window so they could watch
24 it, and they wanted to have a suction bulb available at the
25 mother's bedside table in case the baby got in trouble there,

1 and the physician wanted to be called at home

2 Q If the baby continued to vomit?

3 A Yes

4 Q And my question, Doctor, is, isn't the only problem n
5 noted that the baby was vomiting?

6 A That's the only clinical statement about the baby's --
7 about -- the concern about the baby other than other things
8 that are implied

9 Q Well, it says to keep an eye on the baby, but if the
10 baby was vomiting there might be concern to want to keep an
11 eye on the baby to make sure the baby didn't choke, or have
12 any kind of a problem like that Wouldn't that be fair to
13 say?

14 A Certainly

15 Q Yes And they -- as a matter of fact they say, keep a
16 suction bulb next to the mother's bed in case, obviously so --
17 I mean, it's obviously -- seems obvious to me -- tell me if
18 you agree -- that if the baby got sick while he was with his
19 mother she could -- you know, if he choked she would be able
20 to assist him

21 A She could, or anybody could, who was helping her

22 Q Sure Right Right It would be handy, something
23 there handy

24 A Sure

25 Q All right Now, on the 15th there is no designation of

1 any problem at all, is there?

2 A No, no problem was listed

3 Q And on the 18th the baby was discharged

4 A Discharged

5 Q Let me talk to you about this Clinical Record of a
6 newborn, and at the top of this page, Doctor, it says Joan
7 Rhoda Stanko, just to give you -- just so you can orient
8 yourself to that -- and this is the one that has the grid on
9 it, the page that has the grid on it

10 A Yes

11 Q I want to take you to "Mother's health prior to
12 pregnancy" This is in the upper portion "Mother's health
13 prior to pregnancy" What does that say to you, in the
14 upper -- second line, in the middle

15 A Oh Good

16 Q Right Said the mother's health prior to pregnancy was
17 good Correct?

18 A That's what it says

19 Q Okay Abnormalities of previous pregnancies

20 A None listed

21 Q So it puts a zero for negative, correct?

22 A There's a zero there, yes

23 Q Uh huh (**indicating positive**) Has a -- underneath that
24 it has a place that says, "Past transfusion history", and it
25 says zero

1 A Yes

2 Q Vitamin K, it says zero, correct?

3 A Correct

4 Q Which means negative to you, does it not?

5 A Yes

6 Q Okay Now let's drop down to where it says, "Infant's
7 condition at birth" Do you see that?

8 A Where are you?

9 Q In the upper section, three lines from the bottom of
10 the upper section

11 A Yes

12 Q "Infant's condition at birth" What does that say,
13 Doctor?

14 A Apgar 10

15 Q Apgar 10 What does that mean to you, Doctor?

16 A It's a good score

17 Q That's a good score That's a great score, isn't it?

18 A Top

19 Q That's as good as it gets "Character of the cry"

20 A Listed as good

21 Q Good Let's drop down to the grid that has all the --
22 we saw it up here on the -- on the board, on the screen, in
23 the section that says, breathing (N), head (N), throat (N)
24 abdomen (N), spine (N), and so on, correct?

25 A Yes