

VOLUME SIX OF FOURTEEN

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Diane Schafer Goodstein, Circuit Court Judge

RECEIVED

JUN 22 2011

S.C. Supreme Court

BAYAN ALEKSEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

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**** THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:**

**APPLICANT'S EXHIBIT 16, AUDIO CASSETTE
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APPLICANT'S EXHIBIT 26-A, PHOTOGRAPH
APPLICANT'S EXHIBIT 26-B, PHOTOGRAPH
APPLICANT'S EXHIBIT 26-C, PHOTOGRAPH
APPLICANT'S EXHIBIT 26-D, PHOTOGRAPH
APPLICANT'S EXHIBIT 26-E, PHOTOGRAPH
APPLICANT'S EXHIBIT 26-F, PHOTOGRAPH
APPLICANT'S EXHIBIT 26-G, PHOTOGRAPH
APPLICANT'S EXHIBIT 77, PHOTOGRAPH
APPLICANT'S EXHIBIT 78, PHOTOGRAPH**

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1 MR.. BROWN: It's generally throughout every
2 juror questioned.

3 THE COURT: It's everyone.

4 MR. BROWN: I can't say every single one,
5 but at least 90 percent are asked that question.

6 THE COURT: It predominates?

7 MR. BROWN: Yes, ma'am.

8 THE COURT: Very well.

9 A. Mr. Brown, that is not the question, or the
10 reason we discussed whether or not we're going to ask
11 that question. Not so much his nationality, it came
12 out that way, but because of his ethnic background.

13 Q. My question is what is that?

14 A. I can't remember now. He had some Russian, he
15 had some other things, some Puerto Rican.

16 Q. Let me stop and ask you, Russian, are you aware
17 of the region of Russia called Caucasus region?

18 A. No, sir.

19 Q. So you wouldn't be aware the Caucasus region
20 produces the ethnic background of Caucasian which is,
21 in fact, white?

22 A. No, I wouldn't.

23 Q. Okay. So you don't know whether Russian would
24 be Caucasus or white?

25 A. No.

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1 Q. So in other words, you're saying that
2 Mr. Aleksey, for example, has a Russian father which
3 is where the name Aleksey comes from, so his father
4 who was deceased would be white?

5 A. I don't know anything about what you just said
6 because I can't even remember it right now.

7 Q. Okay, sure.

8 A. But I do know that because of the ethnicity of
9 what we were talking about that that was an issue
10 after Mr. Stone and I discussed it, that we felt that
11 it would be a prudent question to ask.

12 Q. Okay. And let me ask you this. Is there a time
13 when you would not ask that question?

14 A. Yeah.

15 Q. And what racial or ethnic makeup would the
16 defendant have to be where you would not ask a
17 question about being a foreign national?

18 A. There would be a lot of questions.

19 Q. What would be the ethnic makeup of the defendant
20 when you would not ask that?

21 MR. ZELENKA: Your Honor, if he would let
22 him answer the question.

23 MR. BROWN: I'm sorry. Just trying to
24 focus the proceeding, be more efficient.

25 A. Well, if he was jet black sitting over there

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1 with an afro, I wouldn't ask that question.

2 Q. Because African would not be a foreign national?

3 A. African American would not be a foreign

4 national. African, if he was from Nairobi, if he was

5 from Nigeria, if he was from the continent, if he

6 spoke with an accent like a Jamaican, I would have

7 asked that question.

8 Q. Okay. And how about a white person?

9 A. If he had the similar ethnicity I would have

10 asked the question.

11 Q. Even if he's white?

12 A. Even if he's white.

13 Q. Okay. Now, you're aware Mr. Aleksey was born in

14 the United States?

15 A. Uh-huh (affirmative response).

16 Q. Then he would be a citizen. And a foreign

17 national by definition is a person who's of

18 nationality to a foreign county?

19 A. It may have been inartfully done, but the issue

20 was one whether or not because of these issues as it

21 relates to the ethnicity we felt it was prudent to

22 ask that question.

23 Q. Do you not think that that might have put in the

24 jurors' minds that he was, in fact, a foreign

25 national?

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1 A. No.

2 Q. And did you all consider the fact that foreign
3 nationals have been accused of acts of terrorism
4 against this county?

5 A. Not at that time.

6 Q. The 1993 World Trade Center bombing did not
7 happen at that time?

8 A. I --

9 Q. Ramsey Usef?

10 THE COURT: Let him finish, please.

11 A. Thank you. That 1993 issue as it relates to the
12 World Trade Center did not enter my thought process
13 at that time.

14 Q. Okay.

15 A. It's not like the 9/11 situation.

16 Q. Which did not happen at that time of this trial?

17 THE COURT: Mr. Brown, you've got to let
18 him finish. I mean, you've got to let him
19 finish. We're going to be here a long time as
20 he struggles to try to answer the question. Ask
21 a question and let him answer it.

22 MR. BROWN: Sure.

23 THE COURT: The same line, Mr. Sims, just
24 explain your answer as you need to explain your
25 answer but keep them as brief as you can.

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1 THE WITNESS: Yes, ma'am.

2 THE COURT: Thank you.

3 BY MR.. BROWN:

4 Q. Let's return to the idea of asking jurors about
5 their view of the death penalty. You would agree
6 that there's a statute and that that statute allows
7 and actually provides a right to ask jurors about
8 their view of the death penalty?

9 A. Yeah.

10 Q. And so you, you had an absolute right to ask
11 them about their view?

12 A. I thought we did.

13 Q. Okay. And you've got the transcript. Would you
14 turn to page 177 through page 179?

15 A. (The witness complies.)

16 Q. And was it not the actual practice of the
17 defense counsel in this case to specifically not ask
18 the jurors about their feeling of the death penalty?

19 A. The 177 and 179 that you've asked me to look
20 at --

21 Q. Yes, sir.

22 A. -- was Mr. Stone in regards to his statements to
23 the Court.

24 Q. Yes, sir.

25 A. And --

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1 Q. But you -- I'm sorry.

2 A. So in terms of saying how we were going to deal
3 with that as lead counsel, Mr. Stone made that
4 representation in terms of how that was all to be
5 done. But we specifically did ask the three basic
6 questions whether you were opposed, whether you were
7 for or whether you would be able to sit and listen to
8 the evidence.

9 So if you want to get into all of that, I
10 think you're going to have to ask Mr. Stone.

11 Q. But -- okay. Let me make sure, because I think
12 you mentioned something right before I asked this
13 last question that you thought, you thought that you
14 did ask them questions about their view of the death
15 penalty? I think you said that.

16 A. I believe I did. I said we asked them the three
17 basic questions as relates to --

18 Q. But you're talking about "we" as in you
19 Mr. Stone and the Court and Mr. Bailey, Solicitor
20 Bailey, or are you talking about just you and
21 Mr. Stone when you say "we"?

22 A. Well, we're talking about me and Mr. Stone as it
23 relates to asking those questions to determine
24 whether or not a person would be always in favor of
25 the death penalty, whether a person would be always

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1 in favor of life sentence, or whether a person would
2 always be -- would be able to listen to the evidence
3 and make a determination based upon the evidence and
4 the law as given to them by the Court.

5 Q. So you believe that you and Mr. Stone, not
6 anyone else in the courtroom, but you as the
7 mouthpiece for the defense asked those questions?

8 A. I believe we did.

9 Q. Can I refer you just to elucidate this point
10 178, line 4?

11 A. (The witness complies.)

12 Q. Does it not say the defense is specifically not
13 going to ask them any questions concerning their
14 feeling of the death penalty, although we have a
15 statutory right to do so?

16 A. I believe that was Mr. Stone's statement to the
17 Court at that point.

18 Q. Okay.

19 MR. BROWN: And, Your Honor, I don't know
20 if this is appropriate, but I would point out
21 that the questions that were asked were asked by
22 the Court or Solicitor Bailey. And I can't cite
23 that because it's 700 pages, but generally the
24 voir dire of the jury panel.

25 Q. Now, when -- I've got some other questions about

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1 why y'all chose the theory about not asking them of
2 their view, but you take the position you did ask?

3 A. I think you -- when you look at the transcript
4 if the question was asked, the question was asked in
5 terms of if you're talking about --

6 Q. I'm talking about by the counsel.

7 A. Okay.

8 Q. You take the position that trial counsel did ask
9 that question or did not?

10 A. I was under the impression we did. I'd have to
11 read this to --

12 Q. Okay. Okay. So you're under the impression
13 that you did?

14 A. Yeah.

15 Q. Okay. Let me just ask you a few things about
16 that. I mean, one strategy might be that this was
17 not going to be a death case. In other words, even
18 though death notice had been filed that the case was
19 not going to get to a sentencing proceeding and that
20 may be a strategy for not asking that?

21 A. It could be.

22 Q. You didn't believe this was a case where you
23 would get a directed verdict, did you?

24 A. No.

25 Q. Because Ms. Gloryvee implicated him?

Thomas R. Sims - Direct Exam

1 A. I didn't think we were going to get a directed
2 verdict, but the question was always in the mind
3 whether or not you could get a guilty verdict.

4 Q. It's not a DV case, it's not a case, well, I
5 think we got a shot at a directed verdict?

6 A. When you take the evidence in the light most
7 favorable to the State with one person saying that he
8 was the --

9 Q. That's enough.

10 A. -- actual shooter, no.

11 Q. Okay. This was not a case -- this is a case
12 where the State was alleging there was a, quote,
13 confession?

14 A. Uh-huh (affirmative response).

15 Q. And this was a case with an eyewitness
16 allegedly?

17 A. Uh-huh (affirmative response).

18 Q. And this is also a case where the defense
19 strategy was to open the door to Mr. Aleksey's
20 character?

21 A. Yeah.

22 Q. Okay. And in light of that the record seems to
23 reveal that your strategy was to not ask them about
24 the death penalty.

25 A. Again, you know, you would just have to look at

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1 the record. I thought we did, as I said earlier.

2 Q. And so you were involved in making this
3 decision?

4 A. Yeah.

5 Q. Were you involved in making the decision about
6 not asking them this question because you thought you
7 did do it and you said Mr. Stone did that. So
8 leading up, my question is were you involved in
9 making the strategic decision that Mr. Stone
10 indicates on page 178, line 4?

11 A. We were -- we discussed the areas of the case
12 and how we were going to proceed, Duffie and I,
13 Mr. Stone and I did discuss the issues. You're
14 asking me whether I remembered the exact --

15 Q. Whether you were involved in that specific
16 strategic decision?

17 A. I was involved in the decision-making process in
18 the case.

19 Q. Can you recall being involved in that specific
20 decision?

21 A. I would assume that I was.

22 Q. But you actually don't recall making that
23 strategic decision, I believe?

24 A. No, that's not what I said. I said Mr. Stone
25 made the statement that you talked about at 177

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1 through 179.

2 Q. Right.

3 A. I said that we, I thought we had asked the
4 question or the question had been asked.

5 Q. Sure. So you thought y'all were asking
6 questions even though Mr. Stone makes the statement
7 we're not going to ask questions.

8 A. Yeah.

9 Q. So were you involved in making the decision, the
10 strategic decision to tell the Court that we're not
11 going to ask questions whether or not y'all actually
12 did, were you involved in the decision regarding the
13 statement that he made?

14 A. I can't recall all of that.

15 Q. Okay. Okay. So you can't offer any evidence to
16 the Court that you were, in fact, involved in making
17 that strategic call?

18 A. I can't recall.

19 Q. You can't offer -- well, let me ask it a
20 different way. Can you offer the Court any evidence
21 that you were involved in making that decision?

22 A. Mr. Brown, I can't recall on that. That means
23 that I can't offer, no, I can't.

24 Q. Thank you.

25 MR. BROWN: I'm sorry, Your Honor, but

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1 there was an answer I was getting to, Your
2 Honor.

3 Q. Next I would like to move to the actual use of
4 peremptory strikes. Okay. Do you recall the number
5 of strikes that you used?

6 A. From just talking in the last day or so I think
7 we used seven.

8 Q. Okay. And then seven before you had to move to
9 the alternates?

10 A. Yeah.

11 Q. And under state law you're allowed 10 peremptory
12 strikes?

13 A. Right.

14 Q. And so you could have used three more?

15 A. Uh-huh (affirmative response).

16 Q. Okay. Do you recall a juror named Gigi Hayes?

17 A. No.

18 Q. I would refer you to page, I believe it's 33,
19 Your Honor, because the transcript, this one page is
20 not typed. It's typed -- excuse me, the page number
21 is not typed, it falls between 32 and 35 which makes
22 it 33 and 34, so I guess I would refer everyone to
23 page 33. And that is the actual I guess I'd call it
24 a strike sheet used by the clerk. Do you see a juror
25 on page 33 the second line from the bottom listed as

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- 1 Gigi Hayes?
- 2 A. Uh-huh (affirmative response).
- 3 Q. And she actually was seated on this case?
- 4 A. That's what it says, yeah.
- 5 Q. And she was seated as number 10?
- 6 A. Uh-huh (affirmative response).
- 7 Q. And at that time how many peremptory strikes had
- 8 you exercised?
- 9 A. Five. Looks like -- four.
- 10 Q. So you had how many remaining when Ms. Hayes
- 11 came before the Court and attorneys?
- 12 A. Six.
- 13 Q. So you had six remaining, over half, and you had
- 14 already seated nine of the 12 jurors?
- 15 A. Uh-huh (affirmative response).
- 16 Q. Okay. So you only had 25 percent of the jurors
- 17 left to seat but you had 60 percent of your strikes
- 18 left?
- 19 A. Yeah.
- 20 Q. Okay. Now, do you recall your notes regarding
- 21 Juror Hayes?
- 22 A. No, I don't. You got a copy there if you want
- 23 to show me.
- 24 Q. I sure do. I'm going to hand you -- I would
- 25 like this back, but I'm going to hand you a copy.

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1 A. Yeah, sure.

2 Q. Would you identify that as your notes?

3 A. Yeah, that's my handwriting.

4 Q. Okay.

5 MR. BROWN: Your Honor, at this time we
6 would ask that this be marked as Defense Exhibit
7 Number 1.

8 MR. ZELENKA: No objection.

9 THE COURT: Are you going to do that?
10 Gentlemen, I guess we better do that at this
11 point. Are you going to refer to Mr. Aleksey as
12 applicant or defendant?

13 MR. BROWN: That's a good point, Your
14 Honor.

15 THE COURT: I think for these purposes he
16 should be referred to as the applicant.

17 MR. BROWN: I think you're right, as
18 petitioner.

19 THE COURT: Because records could get -- or
20 petitioner, either way, otherwise I'm concerned
21 the records could get --

22 MR. BROWN: I totally agree with you.
23 Thank you, Your Honor.

24 THE COURT: Y'all decide if you want to do
25 applicant or petitioner.

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1 MR. BROWN: We will choose applicant or
2 petitioner. Having done a majority of criminal
3 defense work I'm not used to that, Your Honor.

4 THE COURT: I know. I know. I understand,
5 Mr. Brown, but I was just concerned about the
6 record.

7 MR. BROWN: Thank you, Your Honor. I do
8 appreciate that. This would be Applicant's
9 Exhibit 1 and we'll go to the -- propose that at
10 some point we go through the introduction at a
11 later point. Thank you. We have already
12 addressed that.

13 THE COURT: I understand.

14 BY MR. BROWN:

15 Q. Let me hand this to you and about, well, it's
16 actually listed as number 8 on that sheet.

17 A. Uh-huh (affirmative response).

18 Q. It says beside number 8 Gigi S. Hayes?

19 A. Uh-huh (affirmative response).

20 Q. And you said that she falls into which group?

21 A. I said looking directly at the judge third
22 group.

23 Q. Okay. And what you're looking, what the Court
24 is looking for is jurors from group two?

25 A. Two.

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1 Q. Okay. But those are your notes?

2 A. Yeah.

3 Q. It's not the finding of the Court that she was a
4 group three juror?

5 A. Yeah.

6 Q. That's your feeling?

7 A. Uh-huh (affirmative response).

8 Q. To the left does it not say leader?

9 A. Uh-huh (affirmative response).

10 Q. Okay.

11 THE COURT: That's a yes?

12 THE WITNESS: Yes, I'm sorry.

13 THE COURT: That's okay.

14 Q. Then you mentioned using the body language of
15 the jurors?

16 A. Uh-huh (affirmative response).

17 Q. And your notes about her body language say that?

18 A. Leaning towards Walter, not any hardships.

19 Q. Not any hardships on Walter?

20 A. No. That not any hardships means in response to
21 the questions as it relates to whether or not serving
22 on this jury --

23 Q. Okay.

24 A. -- would be a hardship.

25 Q. Okay. And then to the left of her, to the lower

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1 left, it says the word "no"?

2 A. No, possibly no, talk with Charles.

3 Q. Who is Charles?

4 A. Dr. Charles Kilgore. She worked -- if I recall,
5 she worked out at the Family Health Center at that
6 time. Dr. Charles Kilgore was my children's
7 pediatrician and I did, in fact, call Dr. Charles
8 Kilgore.

9 Q. Okay.

10 A. It's my understanding I called Dr. Charles
11 Kilgore and got an assessment from him of who she was
12 and what she was all about. And if my recollection
13 serves me correct, based on my conversation with
14 Dr. Kilgore she would have been a good person.

15 Q. And let me make sure I understand this.
16 Dr. Kilgore was her boss at that time that she was
17 subject to seating on this jury?

18 A. It is my understanding that they all worked out
19 at the Family Health Center here in Orangeburg.

20 Q. At that time that you knew she was on the jury
21 panel you spoke with her boss about her views of this
22 case?

23 A. No. No, he was not her boss. They worked out
24 there.

25 Q. Oh, okay.

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1 A. They worked out there.

2 Q. She didn't work for him?

3 A. No, she did not work for him.

4 Q. Okay.

5 A. I'm not -- I'm not crazy.

6 Q. I just asked the question, I don't know Charles.

7 A. Okay.

8 Q. I have no idea who Charles was.

9 A. Okay.

10 Q. So I'm just trying to get that information.

11 MR. BROWN: And I would, Your Honor, at
12 this point just let the Court see this. I think
13 there was no objection.

14 THE COURT: Any objection?

15 MR. ZELENKA: No objection.

16 THE COURT: All right.

17 (Entered into evidence was Applicant's Exhibit 1,
18 attorney notes.)

19 Q. And just some brief follow-up. You spoke to
20 Mr. Stone about the use of your peremptory strikes?

21 A. Yeah.

22 Q. I mean, while y'all were using them you kind of
23 leaned over to Mr. Aleksey and say, kind of huddled
24 together and decide what y'all were going to do?

25 A. Yeah.

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1 Q. Okay... Were you aware that Ms. Hayes, Ms. Hayes'
2 husband was a military police officer?

3 A. I think they were divorced or separated. I'm
4 not sure.

5 Q. Were you aware that he was a military police
6 officer?

7 A. I think from the questionnaire, from the
8 questionnaire we got back it would have been on the
9 questionnaire.

10 Q. And were you aware that Mr. Stone indicated that
11 she knows the injured?

12 A. No.

13 Q. Excuse me, knows Lingard?

14 A. I think he may have written that. I don't know
15 what was in his thought process.

16 Q. But he didn't talk about that with you?

17 A. I can't recall whether he talked about it. We
18 talked about every juror.

19 Q. Okay. Were you aware that Mr. Stone, his
20 position may have been to get rid of Ms. Hayes?

21 A. I can't recall whether or not we -- I know we
22 talked about every juror and what his ultimate
23 decision was, but there were other things too when we
24 take into consideration in choosing a juror. You got
25 your definites, you got your possibles and you got

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1 your maybes and then you have a hierarchy. In my
2 mind and in Mr. Stone's mind there were other people
3 who were definite no-nos.

4 Q. And you had to make sure that you had enough
5 strikes saved up, it's kind of a little gamble there?

6 A. Yeah.

7 Q. You want to use as many as you can to get a good
8 jury, but you don't want to overuse them so you have
9 some left when the real bad ones come up?

10 A. Yeah.

11 Q. In this case you had three jurors left to seat
12 and six strikes left?

13 A. At that point, yeah.

14 Q. And in most cases you only get five strikes,
15 that's the rule with some exceptions?

16 A. Yeah.

17 Q. Okay.

18 MR. BROWN: At this point I want to move to
19 the topic of Buster Edwards.

20 Q. Okay. And you knew Mr. Edwards worked for SLED?

21 A. Yeah.

22 Q. You knew SLED was the lead investigating agency
23 for this murder case?

24 A. Yeah.

25 Q. Okay. And Mr. Edwards was employed at that

1 time, at the time -- both at the time of
2 Mr. Aleksey's arrest on January 1st of 1998, and his
3 trial that culminated on September 1st of 1998.

4 A. Yeah.

5 Q. During that period of time Mr. Edwards worked
6 for SLED?

7 A. Yeah.

8 Q. And you knew that?

9 A. Uh-huh (affirmative response).

10 Q. The Court commissioned him to guard the jury?

11 A. Yeah.

12 Q. And when a person is in charge of guarding the
13 jury, is any other person obviously besides the Court
14 or maybe their family allowed to talk to them?

15 A. No.

16 Q. And is the jury allowed to ask or make a request
17 of any other person besides the person in charge of
18 sequestration?

19 A. The other people who are also with him.

20 Q. The other jurors?

21 A. No. No, it -- Buster Edwards was not the only
22 person, he was in charge. There were other people I
23 thought who were, who were also brought in to help
24 deal with the jury.

25 Q. Can you show me in the record where another

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1 person was commissioned by the Court to guard this?
2 I'm not doubting you again, but some people might
3 have helped, obviously one person can't go get 14
4 meals and everything else, but did the Court
5 commission anybody else to be in charge of
6 sequestration?

7 A. It is my understanding, and as I said, but in
8 every case that I've ever dealt with the Court will
9 put one person in charge but there would be other
10 people who would come along at the same time to be
11 responsible for the care and safety of the jury. As
12 you said, one person could not have done that. He
13 could not have even dealt with the females who were
14 on there because of female problems and everything
15 else. So there were other people who were also
16 involved in caring for the jury.

17 Q. But that was not done with specific knowledge of
18 the Court, was it?

19 A. It would have to be.

20 Q. Was that done in a proceeding that's on the
21 record?

22 THE COURT: Hold on a second. Hold on a
23 second. You're looking for the oath?

24 MR. ZELENKA: It's on 859 to 860.

25 THE COURT: All right.

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1 MR. ZELENKA: It's in Volume II, lists
2 Carmen Platt, Connie Johnson, Margaret Vaughan,
3 Deborah Rogers, Ann Neese, DeLori Nivens, Steven
4 Rudelaw.

5 THE COURT: That's the detail? Those are
6 the individuals in the detail? Show that,
7 Mr. Zelenka, to Mr. Brown.

8 MR. BROWN: I have a copy of that, Your
9 Honor.

10 THE COURT: What's the number?

11 MR. ZELENKA: 859 to 860.

12 MR. BROWN: And the person in charge of
13 sequestration would be?

14 MR. ZELENKA: Initially said to be
15 Lieutenant Williams, corrected to be Lieutenant
16 Edwards.

17 Q. And that would be a reference to?

18 A. Buster Edwards.

19 Q. Buster Edwards. Were you aware that the murder
20 warrant in this case was served on Mr. Aleksey by
21 Buster Edwards?

22 A. After I look back, yes.

23 Q. Were you aware at that time --

24 A. Yeah.

25 Q. -- that this decision was made?

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1 A. Yes.

2 Q. ... Do you think that was a prudent decision?

3 A. I have no questions of when I look at what
4 happens in that Mr. Edwards was only charged with
5 bringing them in and bringing them out. He too was
6 charged with not saying anything to the jurors. It's
7 my understanding that he too as to as everyone else
8 who was commissioned by the Court under that charge
9 is charged with not saying anything as it relates to
10 the jury, not having any conversation with the jury,
11 not having any interaction with the jurors. The only
12 thing they do is take them to the hotel, bring them
13 back from the hotel, either take them to lunch or
14 bring them back from lunch or either go get them
15 food. But in terms of talking with them, no.

16 Q. Okay. We went through sequestration what that
17 magic word means earlier today. But it does mean you
18 talk with people because I think the Court had
19 concern about sequestration unduly limiting
20 conversations.

21 A. What do you mean?

22 Q. In other words, when somebody is sequestered
23 away, not allowed to speak to somebody, it may pose
24 problems with why some people shouldn't be
25 sequestered from contact with Mr. Zelenka or each

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1 other or other people?

2 A. You're talking about sequestration as it relates
3 to the prosecution and the witnesses involved in the
4 case, as opposed to sequestering a jury and the
5 people who are charged with care of the jury.

6 Q. And I think you said that in this case
7 Mr. Edwards, the jurors wouldn't talk to him?

8 A. I think in this case, and I don't have the
9 transcript, but I think there was a charge that they
10 would have no interaction and he would have no
11 interaction with them. So the only thing he was
12 doing was taking them to and fro, from the courtroom
13 and to the hotel.

14 Q. Who discharged Bayan from the hospital?

15 A. I don't know, I guess -- I really don't know, I
16 don't have that before me. You want to show me?

17 Q. You don't know who signed the discharge papers
18 from MUSC?

19 A. I mean, you're asking me now?

20 Q. Right.

21 A. At that time when we were going through that
22 process I believe it was Buster Edwards who did that.

23 Q. He signed the documents. And let's make clear,
24 before Mr. Aleksey made it to the Orangeburg
25 detention facility, for the first time, after being

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1 arrested, he went to the hospital?

2 A. Yeah.

3 Q. And you agree that Buster Edwards signed the
4 discharge papers taking him from the hospital to
5 Orangeburg County detention facility?

6 A. The signature was on the documents I believe,
7 but in terms of whether or not he was the actual
8 transport, I don't know.

9 Q. Okay. But you do agree that Buster Edwards
10 signed the discharge papers?

11 A. Yeah.

12 Q. So he's the one that made the decision on
13 whether Mr. Aleksey was ready to get out of the
14 hospital or not?

15 A. No. He didn't make that decision.

16 Q. He made the decision of whether he was going to
17 accept the custody of Mr. Aleksey?

18 A. When the doctor said he was okay, I guess he
19 would sign the paper saying we're releasing him into
20 your custody.

21 Q. Okay. And then if Buster Edwards was the person
22 who drove Mr. Aleksey from the Medical University in
23 Charleston to the Orangeburg detention center, he
24 would be alone or with the company only of another
25 officer in an automobile with Mr. Aleksey for an

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1 extended period of time?

2 A. True.

3 Q. And would you say it would be over an hour?

4 A. From here to Charleston, yeah.

5 Q. Hour and a half?

6 A. I don't know, it could be from an hour, it could
7 be more, depends on --

8 Q. Sure. With a blue light it might be faster,
9 right?

10 A. With a blue light it might be real fast.

11 Q. Sure. But we're still talking at least 70
12 miles?

13 A. From MUSC I believe you're probably talking
14 about 70 miles.

15 Q. And if Mr. Aleksey -- and let me go into this:
16 And so that would have been an extended period of
17 time alone with law enforcement?

18 A. Yeah.

19 Q. Okay. Prior to that time with law enforcement,
20 was Mr. Aleksey ever alone for an extended period of
21 time with law enforcement before that related to this
22 incident occurring 11:30 January -- no,
23 December 31st?

24 In other words, and I don't want to recount
25 all the events because they're in the transcript, I

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1 think some of it's undisputed, but the incident
2 occurred, there was a car chase, there was a car
3 ramming by the troopers to stop the vehicle,
4 Mr. Aleksey was knocked unconscious?

5 A. He was then taken by EMS, EMS came, he was taken
6 by EMS, he was taken down to the hospital, they then,
7 because he may have had a head trauma, they
8 transferred him to a trauma unit, somebody came in
9 and bagged his hands at that point while he was in
10 the hospital. From bagging his hands he was then
11 treated for a period of time and then he was
12 released.

13 Q. Okay. So most of that time he was in the care
14 of medical personnel?

15 A. He was in the care of medical personnel.

16 Q. Okay. But you don't have any information in the
17 transportation from MUSC to Orangeburg County there
18 was medical personnel in the car with Buster Edwards
19 and Mr. Aleksey?

20 A. No, I don't.

21 Q. Okay. So this could possibly be the first time
22 that Mr. Aleksey would say I want to see a lawyer?

23 A. True.

24 Q. To Mr. Edwards?

25 A. True.

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1 Q. And so Mr. Edwards then become an important
2 witness in your defense?

3 A. If that had happened, yes.

4 Q. Okay. And at the same time, as we later learn,
5 Mr. Edwards then is asked by the Court to be in
6 charge of sequestration of the jury?

7 A. Right.

8 Q. Despite all those facts?

9 A. Uh-huh (affirmative response).

10 Q. Did you ever make the trial court, trial judge
11 aware of those facts?

12 A. No, we did not. But Mr. Aleksey never said to
13 us anything that he was ever questioned or anything
14 as it relates to -- by Buster Edwards or anything
15 when I talked with him he never questioned, or he
16 never stated that anybody on the trip from Charleston
17 to Orangeburg, ever said to him or he ever requested
18 an attorney.

19 Q. Are you aware of any, because you've done a fair
20 amount of death penalty work from your own admission,
21 are you aware of any cases involving, and
22 sequestration seems to happen in important cases?

23 A. Yeah.

24 Q. And death penalty case it's almost the rule,
25 isn't it?

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1 A. Yeah.

2 Q. It's not an absolute rule but it becomes in fact
3 the rule?

4 A. Yeah.

5 Q. Are you aware of any cases of juror misconduct
6 involving the officers assigned to sequestration in
7 the jurors?

8 A. In none of my cases, no.

9 Q. Have you ever heard of one in this case? Have
10 you ever heard of a case where --

11 A. Quite frankly --

12 Q. -- the person assigned actually had sexual
13 intercourse with one of the jurors during the trial?

14 A. No, I have not.

15 Q. Okay. You weren't aware of any of that?

16 A. No, I'm not.

17 Q. You're still not aware of it?

18 MR. ZELENKA: I'm not aware of it either.

19 MR. BROWN: I don't think there's any
20 evidence. It's a question of mine and my
21 questions are not evidence. I am not asking any
22 more. I thought it was worth asking. It didn't
23 come into the record, if that's an objection.
24 And, Your Honor, just to form a good faith basis
25 I believe there is not in this record, there

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1. have been legal proceedings involving
2. allegations of just that from South Carolina in
3. a death penalty case.

4. MR. ZELENKA: What one?

5. MR. BROWN: I don't know the name of it,
6. but I will get that information to the Court.

7. THE COURT: Mr. Zelenka cannot stand it,
8. Mr. Brown, he has to know. He has to know.

9. MR. BROWN: And we'll get the information.
10. It wasn't a case I worked on.

11. Q. Or any other type of contact between the --
12. improper contact? You're not aware of any cases of
13. improper contact?

14. A. I personally don't know.

15. Q. Were you ever told of other cases, I mean in
16. the -- in your training as a defense lawyer? Because
17. lawyers talk about cases, even if they're their cases
18. or other people's cases they'll say you won't believe
19. what I heard about this case from Spratanburg.

20. A. Not that I have heard that a person had -- who
21. was in charge of the jury had done anything wrong.

22. Q. Okay.

23. A. I have not.

24. Q. You're not aware of any improper contacts
25. between the persons in charge of sequestration?

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1 A. It probably has, but I have not of my own
2 knowledge, no.

3 Q. Okay. You met with Mr. Tarr now to discuss this
4 case and I can't give you the exact date, but --

5 A. That's what I wanted to know, when?

6 Q. How about October 23rd, 2001?

7 A. In my office?

8 Q. Yes, sir.

9 A. It was -- how long were you there? Because I
10 really didn't remember.

11 Q. Okay. You don't remember meeting with the two
12 of us?

13 A. I really don't. I don't think -- I don't
14 remember that. Please refresh my recollection.

15 THE COURT: Mr. Brown, could I ask you just
16 so I can keep these folks straight, because you
17 all have warned me there are going to be many
18 names. Would you spell that name for me?

19 MR. BROWN: We are just talking about
20 Mr. Tarr.

21 THE COURT: Oh, I thought it was another
22 name.

23 MR. BROWN: Mr. Tarr and myself I think is
24 what I said.

25 THE COURT: Oh, it sounded like Toracelli.

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1 MR. BROWN: I understand. No, I apologize.

2 THE COURT: It really did sound like
3 Toracelli, it really did. I'm thinking, okay,
4 let me write that down. Mr. Tarr and myself.
5 Thank you so much, I'm sorry. Did you hear
6 Toracelli or Mr. Tarr and myself?

7 THE WITNESS: I heard something else and
8 then it clicked.

9 THE COURT: Okay. Mr. Tarr and myself.
10 I'm with you.

11 A. Quite frankly I don't remember the conversation.
12 You may have and there may have been other times that
13 I have talked with you, because prior to you calling
14 me this morning Mr. Tarr called me this morning, I
15 don't think I had talked to you since that time.

16 Q. But you recall meeting with us once?

17 A. I'm -- you said I did, so I'm not going to --

18 Q. Okay. Okay. And you don't recall telling us
19 that Bayan never told you about Buster Edwards being
20 involved in the case?

21 A. If I don't remember you, I sure don't remember
22 that. And I really don't, and I'm not, you know --
23 how long were you all in my office?

24 Q. I don't believe it would be proper for me to
25 testify.

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1 MR. TARR: I don't know, about an hour and
2 a half.

3 Q. I don't believe it's proper for us to testify in
4 the case.

5 A. Okay.

6 Q. Have you ever heard of a term in defending a
7 case called false confession?

8 A. No, I haven't.

9 Q. You've never heard of that?

10 A. Never.

11 Q. You've heard of confession?

12 A. Yeah.

13 Q. And confession is not necessarily the same thing
14 as a statement, is it?

15 A. No.

16 Q. A statement is just somebody says this happened?

17 A. Uh-huh (affirmative response).

18 Q. But a confession means what?

19 A. That someone has actually implicated themselves
20 in a crime.

21 Q. Okay. So a confession is a statement admitting
22 guilt?

23 A. Yeah.

24 Q. Okay. And a false confession would then mean
25 that somebody admitted guilt falsely?

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1 A. Yeah...

2 Q. Okay. Did Bayan ever tell you that his
3 statement was given after he was physically
4 assaulted?

5 A. I believe when he -- I believe when he -- when
6 we talked about that statement that was given at the
7 complex, I believe to use his words, "They were
8 beating the crap out of me." I believe that's what
9 he said.

10 Q. Okay. So you do recall Bayan telling you that,
11 he was physically assaulted before the statement made
12 at the complex, and let me make sure I understand
13 this. The statement at the complex was the one that
14 was tape recorded?

15 A. I believe so.

16 Q. And then transcribed?

17 A. It was -- let me put it this way: I remember
18 him saying something about that and I do remember him
19 saying something about that. Now, he talked about
20 the possibility of when they arrested him down in
21 Charleston, down at -- not in Charleston, in
22 Summerville he talked about something that may have
23 happened at that point and he -- I do think that in
24 my conversation with him he did say during that
25 period of time at the complex, if I can recall

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1 correctly, that they, as I said to use his words,
2 "Beat the crap out of him."

3 Q. And he did tell you that? And again that's
4 relating to the statement that was taped.

5 A. I believe so.

6 Q. And that statement was transcribed?

7 A. Uh-huh (affirmative response).

8 Q. There was some redaction, but for the most part
9 the statement which the State referred to, Walter
10 Bailey referred to as a confession that was admitted
11 to the jury as evidence in the case?

12 A. Yes.

13 Q. And used as evidence against him in the trial?

14 A. Uh-huh (affirmative response).

15 Q. Okay. In that statement, or in that tape
16 recording there are two parts. In the first part
17 Mr. Aleksey says I didn't do it, Ms. Perez,
18 Ms. Gloryvee Perez Blackwell Rivera did the shooting.
19 And then the tape is cut off for two hours and SLED
20 agents who took the statement agree it was cut off
21 for two hours. Then the tape resumes and Mr. Aleksey
22 then says that he did the shooting. And Mr. Aleksey
23 was crying at that point in time, wasn't he?

24 A. Uh-huh (affirmative response).

25 Q. And besides the words of the police officers and

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1 Mr. Aleksey, we have no recording of what happened in
2 the two-hour interval between his denial and his
3 admission while crying?

4 A. Uh-huh (affirmative response).

5 Q. Would you agree that somebody beating the crap
6 out of a man could make him cry?

7 A. Uh-huh (affirmative response).

8 Q. Okay. You're a big fellow?

9 A. You could make me cry.

10 Q. You could make me cry, right?

11 Have you ever heard of an individual named
12 Professor Saul Kassin? I'm sure I mispronouncing his
13 name. For the record it's K-a-s-s-i-n.

14 A. No, I haven't.

15 Q. Have you ever seen that curriculum vitae?

16 A. No, I don't remember seeing it.

17 Q. Okay. And so this was not faxed to your office
18 that you know of?

19 A. I can't recall it. I really don't recall that.

20 Can I see the top of it?

21 Q. Certainly. Well, it has a fax where it's from,
22 Williams College, where he works near Harvard.

23 A. Okay.

24 Q. And Mr. Aleksey wrote you letters throughout the
25 course of your representation of him?

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1 A. Uh-huh (affirmative response).

2 Q. And --

3 THE COURT: That's a yes?

4 THE WITNESS: Yes.

5 Q. I'm sorry. A lot of these letters were -- I'm
6 sorry, and a lot of these letters were addressed to
7 Mr. Thomas Sims and Mr. Duffie Stone or Thomas Ray
8 Sims and Mr. Duffie Stone or something, in other
9 words they were jointly addressed?

10 A. Yes.

11 Q. And you received copies of those as well?

12 A. I did.

13 Q. At some point in time the letters, do you know
14 whether or not Mr. Aleksey was told to no longer send
15 stuff to you, but send it just to Mr. Stone?

16 A. I can't remember. I know I never told him that.

17 Q. Okay. Okay. Can I show you a letter marked --
18 dated March 6th, 1998?

19 MR. BROWN: And, Your Honor --

20 THE COURT: Yes.

21 MR. BROWN: -- I would point out for the
22 record that Mr. Stone, who's an upcoming
23 witness, is now reviewing what we're going to
24 question this witness about, and I understand
25 he's in the hearing, he's going to hear what

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1 comes out and I just point out that, Your Honor.

2 THE COURT: Thank you. Very well.

3 MR. ZELENKA: I don't dispute any of that.

4 THE COURT: Indeed. And, in fact -- and I
5 gather that you point that out regarding your
6 exception to the fact that Mr. Stone is not
7 sequestered and you point that out as --

8 MR. BROWN: And as a finder of fact we want
9 you to realize that he has now been privy to
10 information that could even unconsciously alter
11 his testimony at a later point in time.

12 THE COURT: I understand. Very well.

13 MR. BROWN: Because we don't have a jury to
14 argue that to, it's to Your Honor.

15 THE COURT: Thank you so much.

16 Q. This letter indicates -- in this letter it
17 starts besides the two, to Thomas Ray Sims and
18 Mr. Duffie Stone, says Dear Mr. Sims, and I want you
19 to know that when SLED was questioning me and then he
20 goes into a list of events that happened.

21 A. I am sorry, I was reading the letter.

22 Q. Okay. Tell you what, at this point we would
23 have this marked as Petitioner's Exhibit 2.

24 MR. ZELENKA: Your Honor, unless he
25 identifies it and authenticates it, I would have

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1 an objection.

2 THE COURT: It's just ID at this point?

3 MR. BROWN: That's exactly right.

4 (Marked for identification was Applicant's Exhibit
5 2, March 6, 1998 letter.)

6 Q. Do you recall ever seeing that letter?

7 A. I received a number of letters. I can't
8 specifically say, you know, that I received it. I
9 received a number of letters.

10 Q. Okay. And if you would have kept your trial
11 file would you have had the letters Mr. Aleksey sent
12 you in it?

13 A. Yeah.

14 Q. Okay. But you don't because you released it
15 without keeping a copy?

16 A. True.

17 Q. In this letter Mr. Aleksey purports to tell you
18 that the first thing is that SLED told them that if
19 he said he did it he would get out of jail in five
20 years and they would help you with that.

21 THE COURT: Let me ask, let me just ask
22 Mr. Zelenka, you're going to have an objection,
23 I wanted to give you an opportunity to interpose
24 that objection.

25 MR. ZELENKA: My objection, still he hasn't

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1. authenticated that he ever had it in his file.
2. He's asserted, you know, that because he gave up
3. the file he can't, and I'll have to concede that
4. that in fact did happen, but....

5. MR. BROWN: In violation of the law.

6. MR. ZELENKA: It's not in violation of the
7. law.

8. MR. BROWN: And that's a point we would
9. obviously -- that's our position, Your Honor.

10. MR. ZELENKA: The law requires that he not
11. turn over a copy, the original of his file in
12. post-conviction relief proceedings which hadn't
13. even begun to occur to collateral counsel, to
14. maintain a copy of the file. It doesn't say
15. that when the grievance board says turn over the
16. file he's not suppose to turn over the file.

17. I mean, that's two different settings of
18. Section 17-27-130 as part of the Post-conviction
19. Relief Act, it's not part of any other material.
20. It hadn't begun yet at that particular time.

21. MR. BROWN: It doesn't speak at all with
22. how you comply with the preexisting obligation
23. that the file, and it's my understanding of the
24. law is the file belongs to the client.

25. Now, whether it's a copy or the original

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1 I think the general rule is criminal case, civil
2 case, real estate case, the file belongs to the
3 client. I'm not aware of anything that says that
4 if you hand him the copy of the file only you're
5 not in compliance with that rule, that the file
6 belongs to the client. Obviously if there's
7 something of evidentiary value that the original
8 be crucial, then that would become an issue.

9 But as far as matters of authenticating
10 what was received at a later post-conviction
11 collateral, which by the way our client has a
12 constitutional right to a valid collateral
13 proceeding and one reason I believe, I don't want
14 to misstate this, the attorney general insisted on
15 a statute including this language is there had
16 been a problem with counsel turning over their
17 file.

18 THE COURT: Stop a minute, because here's
19 where we are. Here's the way that this has been
20 interposed. The way that this has been
21 interposed is there's been a letter which has
22 been shown to the witness, there's been a
23 question can you authenticate the letter, and
24 his response has been, I don't know if I got it
25 or not. I got many letters, but I have no

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1 specific memory of this letter.

2 MR. BROWN: Yes, ma'am.

3 THE COURT: He can't then authenticate it.
4 I mean, you can't get it in under the Business
5 Exceptions Act.

6 MR. BROWN: We totally agree. Our
7 follow-up questions were if it would have been
8 sent to you and you would have kept your file.

9 THE COURT: Then you would have it, he says
10 you're right.

11 MR. BROWN: That goes to another claim not
12 related to the confession that Mr. Aleksey
13 deserves a new trial because he was denied his
14 right to a collateral proceeding by his
15 ineffective trial lawyer. In other words, the
16 trial lawyers have -- the trial lawyer tail has
17 wagged the collateral review dog by eliminating
18 their own collateral review.

19 It's like a doctor destroying doctor
20 records after a botched surgery and you can't go
21 back and see what happened during the surgery.
22 And so --

23 THE COURT: Hold on a second because that
24 is another issue. That would be like -- but
25 here's what that would be like. That would be

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1 like the person's family with the botched
2 surgery or the person if the surgical recipient
3 is still alive getting his or her own file.

4 MR. BROWN: Sure.

5 THE COURT: It's not as though the file
6 disappeared and it's a spoliation of evidence.
7 And that is an issue that I'll grapple with.

8 MR. BROWN: We don't think it's a proper
9 time to deal with it now.

10 THE COURT: Exactly.

11 MR. BROWN: Mr. Zelenka --

12 THE COURT: But Mr. Zelenka's point is, is
13 that when you say that you broke the law. But
14 Mr. Zelenka, therefore, stands up and says wait,
15 time out, you know, the problem is, Judge, that
16 the grievance folk had the ability and the
17 right. I'm not ruling that, you understand.

18 MR. BROWN: Oh, I understand.

19 THE COURT: To tell trial counsel give him
20 his file, give him his file, give him all of his
21 file, give him his file.

22 MR. BROWN: Sure.

23 THE COURT: I don't know what they told him
24 at this point. I gather some point we are going
25 to go into that.

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1 MR. BROWN: We are in argument because I
2 think the fact --

3 THE COURT: Let's come back to where we are
4 because where we're back is the authentication
5 of this document.

6 MR. BROWN: We are not asking to
7 authenticate it. I'm going to ask him questions
8 about that letter.

9 MR. ZELENKA: Okay. It's not authenticated
10 yet.

11 THE COURT: It's not authenticated yet.

12 MR. BROWN: All I want to do is say --

13 MR. ZELENKA: Mr. Aleksey says when I got
14 the file -- I mean, you're making this a little
15 bit more confusing than it needs to be. If
16 Mr. Aleksey says when I got the file, this was
17 in the file, then it's authenticated as being in
18 the file.

19 MR. BROWN: We're totally with that.

20 MR. ZELENKA: Okay. Then I think that's --

21 THE COURT: That's right, but at this
22 point --

23 MR. BROWN: We're not going to say he's
24 going to testify or whether we can authenticate
25 it through some other way.

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1 THE COURT: I'm with you. But if he can't
2 authenticate it, which means you can't ask him
3 questions about it because it's not
4 authenticated. Now what you can do is you can
5 hand it to him and say does this refresh your
6 recollection and either it will or it won't.
7 But if it doesn't --

8 MR. BROWN: Actually, Your Honor, I want to
9 ask questions also along the line of if
10 Mr. Aleksey did tell that you information would
11 you find that important, would you find that
12 something you would present.

13 THE COURT: I understand.

14 MR. BROWN: That's all I am trying to do.
15 He objected it wasn't authenticated.

16 THE COURT: I think I did that and the
17 reason that I did that is that -- in that I have
18 concern for this record and that it's non jury.

19 MR. BROWN: Sure.

20 THE COURT: At that point I had basically
21 told Mr. Zelenka down, down at this point. I
22 didn't think that was fair to him because he had
23 tried to interpose an objection. I found it to
24 be preliminary, now I don't think it's
25 preliminary because you are asking, you are

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1 publishing parts of your letter in your question
2 to the witness.

3 MR. BROWN: It's theoretical questions.

4 THE COURT: That wasn't. That was reading
5 doesn't this letter say da-da-da-da-da.

6 MR. BROWN: Right. If that would have been
7 the case would you have found that important. I
8 didn't get a chance to go to there. The letter
9 has got so much stuff in here. Your Honor, I'm
10 sorry, I got to ask him the question.

11 THE COURT: And you may object on some
12 other grounds. But at this point where we are
13 is that exhibit can't come into evidence; it can
14 be marked for identification purposes.

15 MR. BROWN: That's what we're doing.

16 THE COURT: It cannot be published because
17 obviously the best evidence rule is the letter
18 itself.

19 MR. BROWN: Unless there's no other copies,
20 sure. And, Your Honor, I don't want to argue
21 but actually it says -- the law by -- the law
22 says appellant counsel shall maintain custody of
23 their files.

24 THE COURT: You are going back there.

25 MR. BROWN: Just because he couches it in a

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1 little different terms. Shall means shall.

2 THE COURT: Time out. The issue isn't
3 going to go away. Y'all don't even want to
4 handle it later, you want to handle it now.

5 MR. BROWN: I would like to handle it
6 later.

7 THE COURT: All right. Then you've got to
8 hush about it.

9 MR. BROWN: Yes, ma'am.

10 BY MR. BROWN:

11 Q. In this exhibit, Petitioner's Exhibit 2, does it
12 not -- excuse me, there's some, some words on the
13 page. Now, if Mr. Aleksey told you the words that
14 the SLED officers questioning you said, "If I say I
15 did it that I would get out in five years and they
16 would help me," do you think that's important
17 regarding the issue of his voluntariness of his
18 statement?

19 A. It would be.

20 Q. Okay. And it would be something that you would
21 argue in a Jackson v. Denno hearing?

22 A. It would be something first of all I would go
23 over and talk to him about.

24 Q. Talk to him about?

25 A. Yeah.

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1 Q. It would be something you would also argue in
2 Jackson v. Denno hearing?

3 A. Yeah.

4 Q. It would be something you would argue to the
5 jury if the judge did not exclude the statement or
6 suppress it?

7 A. It would be something that I would talk with him
8 about based upon what my conversation face to face
9 with him would be about, then I would make a decision
10 in terms of how I would use it at trial.

11 Q. Sure. And let me ask you even without
12 Mr. Aleksey testifying you could still ask a SLED
13 agent whether that happened, couldn't you?

14 A. Yeah.

15 Q. Based on a letter from your client it says that?

16 A. My practice would have been to go and talk with
17 him about it and make a determination after I talked
18 with him about it in terms of how best it would have
19 been used or we could have used it.

20 Q. And in this case your defense was that the
21 statement that he said he did it was false. Was that
22 not your defense at trial?

23 A. We argued on the statement, yes, we tried to --

24 Q. You didn't say the statement's true, did you?

25 A. No.

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1 Q. Because he said he did the killing in the
2 statement that we're talking about.

3 A. We argued that he did not do it.

4 Q. And that in fact the statement, which there's no
5 dispute he said the words to the effect that I shot
6 the trooper. He said that at some point in time we
7 agree with that, right, he was crying, he was on tape
8 and he said he actually did the shooting?

9 A. He said it a couple of times.

10 Q. Okay. Right. Okay. And so the defense is that
11 that's not a true statement?

12 A. Yeah, it's not a true statement.

13 Q. Okay. Okay. And this is pertinent, an
14 allegation like this would be pertinent?

15 A. Yeah.

16 Q. Okay. How about any letters that said that --
17 how about if Mr. Aleksey said that he had letters
18 that he had received that said that he and his family
19 would be killed if he continued to send letters to
20 you and Mr. Stone?

21 A. Excuse me?

22 Q. Do you think it important, would it be important
23 if Mr. Aleksey wrote you a letter saying the people
24 at the Department of Corrections or in the holding
25 facility are telling me if I keep sending you letters

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1 my family and I are going to be killed?

2 A. That would be very important. We would have
3 probably tried to deal with it at that point.

4 Q. Okay. And would it be important if Mr. Aleksey
5 told you in words that "The SLED agents then beat the
6 shit out of me when I didn't agree"?

7 A. Yeah.

8 Q. Does all of that appear in that letter?

9 MR. ZELENKA: I have an objection. The
10 same objection. The letter's not authenticated.
11 He's trying to bring it in again
12 inappropriately. He can ask him if he knew what
13 he knew.

14 THE COURT: It's hearsay. The question is
15 it's not authenticated, it's an exhibit, it's
16 hearsay. It's actually double hearsay.

17 MR. BROWN: I'll withdraw the question,
18 Your Honor.

19 THE COURT: Very well.

20 Q. Can you recognize that handwriting as
21 Mr. Aleksey's?

22 A. Only thing I can say is that it appears to be
23 the kinds of letters that Bayan would write to us,
24 that Mr. Aleksey would write to us.

25 Q. The kind of letters he would write?

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1 A. The kind of handwriting.

2 Q. It looks like the type of handwriting that he
3 used?

4 A. Yeah.

5 Q. And you can't say whether or not it's the type
6 of information he was sending you?

7 A. You know, I just looked at this again. He did
8 tell us a bunch of stuff and he did write us a lot of
9 letters.

10 Q. But you admit that Mr. Aleksey told you that
11 SLED beat the crap out of him?

12 A. Yeah.

13 Q. Can you show me where you argued that at the
14 Jackson v. Denno hearing?

15 A. No, I can't.

16 Q. Did you argue it at the Jackson v. Denno
17 hearing?

18 A. I need to look at the Jackson v. Denno hearing.

19 THE COURT: Where is that in the
20 transcript?

21 MR. BROWN: It falls at the end of Volume
22 V, I believe it's the August 11th hearing or the
23 June 8th hearing.

24 THE COURT: Okay.

25 MR. BROWN: I'll give Mr. Sims his copy,

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1 I'll get my copy.

2 A. Thank you.. Where?

3 MR. BROWN: I apologize, Your Honor,
4 there's a lot of material, it just takes time to
5 transition.

6 THE COURT: Mr. Brown, you will learn that
7 I have great patience.

8 MR. BROWN: Thank you, Your Honor, we
9 certainly ask for it in this proceeding.

10 THE COURT: Well, you know what? You got
11 it.

12 MR. BROWN: And, Your Honor, one thing that
13 I don't know if I have to do this, but I would
14 ask there's some documents that are in by law in
15 the copy of the Orangeburg Clerk of Court's file
16 from the trial such as the I believe the arrest
17 warrant has to be transmitted within so many
18 days after service back to the clerk of court by
19 state law.

20 We would ask that that file related to
21 the trial indictment in this case be made a part
22 of this record, of this proceeding.

23 MR. ZELENKA: We expect this Court would be
24 able to take judicial notice of all of that.

25 MR. BROWN: Just as a precautionary

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1 measure.

2 THE COURT: Indeed. Let me share with you
3 that before the proceedings here today the clerk
4 of court made, certainly made that file
5 available and said in the event at any point in
6 time it's needed and then she said, you know, in
7 her experience most lawyers and clearly these
8 lawyers tend to have many, many copies of it,
9 but she wanted to be sure that everyone knew
10 that that file is available on a moment's notice
11 if it's needed for any reason.

12 MR. BROWN: Sure. We believe we have the
13 copies out -- of anything out of that file.

14 THE COURT: She believed that, too.

15 MR. BROWN: We're asking it be made a
16 copy -- or part of the record for here on in
17 this proceeding.

18 THE COURT: Very well. Yes.

19 MR. BROWN: Thank you, Your Honor.

20 THE COURT: Yes. Mr. Zelenka certainly
21 joins in that. All right.

22 MR. BROWN: The Jackson v. Denno hearing
23 and this is in the bound transcript where all
24 the motions that preceded the trial added to the
25 end of the trial and actually there are two

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1 motions, Your Honor, that are not and we
2 certainly need to make sure you get a copy.

3 There was the motion regarding bond that
4 occurred on January 7th I believe is right and
5 then there's another motion regarding the service
6 of the notice of the intention to seek the death
7 penalty occurred on February 2nd that's been
8 referred to you earlier. At some point we'll also
9 make sure the Court has a copy of that as well.

10 THE COURT: That year is 19...?

11 MR. BROWN: Everything occurred in 1998,
12 Your Honor, the arrest is January 1st, the
13 incident occurred 30 minutes before midnight so
14 that's the only thing that occurred --

15 THE COURT: In '97.

16 MR. BROWN: -- in '97. And there were no
17 posttrial motions, the sentencing ended on
18 September 1st, '98.

19 THE COURT: Very well.

20 Q. I'll refer you to page 2,218.

21 THE COURT: 2,218, okay.

22 Q. And there's a Jackson v. Denno hearing and it
23 runs --

24 THE COURT: Is that where it begins, on
25 2,218?

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1 MR. BROWN: Yes; ma'am. It's the caption
2 page for it.

3 THE COURT: Got it.

4 MR. BROWN: It runs, there's some motions
5 that follow it but it ends with a certificate
6 from the court reporter on 2,335.

7 Q. Now, my question is going to be a general one.
8 Can you show me where either you or Mr. Stone argued
9 the brutality issue raised by Mr. Aleksey, the
10 beating the crap out of me, can you show me where you
11 argued that to the Court in the Jackson v. Denno
12 hearing? And it's a lot of pages.

13 MR. ZELENKA: Your Honor, I'll stipulate
14 that that wasn't argued. It may speed up the
15 process here. Won't have to flip through it.

16 MR. BROWN: We'll accept that stipulation.

17 THE COURT: Okay.

18 Q. Now, the brutality in that case would have been
19 committed by -- and before I forget, did y'all -- can
20 you show me in the record, the record of the trial
21 itself after voir dire would run from it's a ball
22 park 750 to about 2,200 in the record so it's quite a
23 number of pages, I believe 1,500 pages more or less,
24 can you tell me anywhere in the record where you
25 argued the brutality issue to the jury?

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1 A. I can't recall whether I did. Probably not.
2 And I'll -- one of the things that we did, especially
3 what I did, is when I talked with him about that
4 issue, I asked him specific questions about the
5 question of beating the crap out of him. Because he
6 had said to me also beating the crap out of him when
7 they got him out of the car at the shopping center.

8 And we had a videotape on that that we had
9 both of us, Mr. Stone and I, had both looked at and
10 there was never any indication that anybody had done
11 anything to him when they took him out of the car.

12 Q. Can you tell me who showed you that videotape of
13 Mr. Aleksey being transported from the car to the
14 ambulance?

15 A. At the scene of the -- there was a videotape
16 that we have from the highway patrol that we had
17 gotten from the highway patrol, and I specifically
18 remember discussing that with him.

19 Q. You got that tape from the highway patrol?

20 A. Yeah.

21 Q. And so what you're saying is you didn't believe
22 it was true?

23 A. What I'm saying is I questioned him about it.

24 Q. Okay.

25 A. Because I told him, and specifically on that

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1 instance, Bayan, there's no indication that anybody
2 did anything to you, when they pulled out of the car
3 they put you on the ground, they waited there,
4 nobody -- because he had said to me, Man, they were
5 kicking on me, they were doing this, they were doing
6 that. And I said, It's not on the tape. It's not on
7 the tape.

8 Q. Okay. Now, in the beating the crap out of me
9 during the statement at the law enforcement center --

10 A. The beating --

11 Q. I didn't get to ask a question, I'm sorry.

12 A. Okay.

13 Q. But in that interrogation, Mr. Aleksey was
14 crying after a two-hour break?

15 A. Uh-huh (affirmative response).

16 Q. And there's no record or independent witness of
17 what happened during that two-hour time?

18 A. Mr. Aleksey cried to me a couple of times in
19 just general conversation.

20 Q. And in that incident he was crying as well?

21 A. Yeah.

22 Q. Okay. And would you say that crying can be an
23 indication of somebody beating the crap out of you?

24 I think we've been through this before.

25 A. You asked me that, I said yeah.

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1 Q. Okay. So there was some indication regarding
2 that?

3 A. There was some indication he was crying.

4 Q. And crying can mean an indication of somebody
5 beating the crap out of you.

6 A. Yeah.

7 Q. I think we've been through this a third time.

8 A. I've answered yes each time.

9 Q. Okay. So there were indications of coercion
10 regarding the statement and you admit Mr. Aleksey
11 told you that?

12 A. He told me that.

13 Q. And it was stipulated it was not argued in the
14 Jackson v. Denno?

15 A. Yeah.

16 Q. And do you agree it was not argued to the jury
17 in trial?

18 A. No.

19 Q. You think it was?

20 A. I mean, yeah. Yeah.

21 Q. You agree you all did not ever argue that to the
22 jury either?

23 A. To the best of my recollection, no, we did not.

24 Q. Okay. Have you ever heard of a case State vs.
25 Tregg Johnson, an Orangeburg case?

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1 A. State vs. Tregg Johnson, an Orangeburg County
2 case.

3 Q. Murder case, defense attorney named Charles
4 Grose?

5 A. No.

6 Q. Tried in 1998? How about a case of State vs.
7 Dennis Stevens murder case, Bamberg County, tried in
8 1998?

9 A. Unh-unh (negative response).

10 Q. And so you wouldn't be able to tell me whether
11 Agent Mears and Darnell were involved in the
12 investigation of that case?

13 A. No, I wouldn't.

14 Q. You couldn't tell me whether or not statements
15 were made by the defendants I named to those SLED
16 agents in that case? And you couldn't tell me
17 whether an expert named Professor Saw Kassin was
18 employed to assist the defense, and in fact testified
19 as an expert in one of those cases? You couldn't
20 tell me anything about those cases?

21 A. No, I'm sorry.

22 Q. And you couldn't tell me whether or not those
23 cases were argued as false confession or coerced
24 confession cases?

25 A. No, I couldn't.

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1 Q. And you couldn't tell me whether or not both of
2 those cases charges of murder resulted in acquittal
3 by the jury?

4 A. No, I couldn't, because I don't know anything
5 about those cases.

6 THE COURT: Let me get that from you again.
7 State vs. Johnson, 1998 trial, Orangeburg
8 Mr. Grose was defense counsel and then State vs.
9 Stevens which was in Bamberg.

10 MR. BROWN: Yes, ma'am. Dennis Stevens.

11 THE COURT: Okay. And the caption again.

12 Q. That's correct. And my question was whether
13 Mr. Kassin was employed, actually testified in one of
14 them as an expert but employed by the defense in both
15 cases?

16 THE COURT: You said the two SLED officers'
17 names were?

18 MR. BROWN: SLED Agent Ken Mears and George
19 Darnell. And, Your Honor, they are -- were
20 witnesses and are going to be witnesses in this
21 proceeding.

22 THE COURT: Darnell.

23 MR. BROWN: D-a-r-n-e-l-l.

24 THE COURT: Thank you. Got it.

25 MR. ZELENKA: What's Johnson's first name?

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1 MR. BROWN: Tregg. I'm not an auditory
2 person. I don't have it in writing anywhere. I
3 wrote it down in writing the way I thought it
4 was spelled, T-r-e-g-g, I may be totally wrong.
5 Of course I don't know that there's a record of
6 these cases because they resulted in acquittals.

7 Q. Now, I think this will conclude -- excuse me,
8 actually I have two more things regarding this
9 statement.

10 THE COURT: Hold on one second. Do you
11 need to take a break?

12 THE WITNESS: I'm fine.

13 THE COURT: All right. How about you?

14 THE COURT REPORTER: I could use a break.

15 THE COURT: Let's take a very short break.
16 I thought everyone might be. Let's try to keep
17 it as short as we can, maybe five minutes. That
18 would be great.

19 (Recess, from 3:36 p.m. to 3:52 p.m.)

20 THE COURT: All right, Mr. Brown.

21 Q. The last subject I want to come out about the
22 quote, confession, was that y'all alleged again as
23 your strategy that it was not a true statement. Why
24 didn't Mr. Aleksey testify?

25 A. We discussed with Mr. Aleksey the problem with

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1 his testimony and whether or not -- we gave him the
2 option actually to testify. He had given a statement
3 to WIS News, he had given a statement down at the, I
4 believe at the hospital. He had given -- the first
5 part of that statement was one thing and then the
6 last part of that statement was another thing.

7 And we pointed out to him the
8 inconsistencies of his statement, the probability
9 that Walter Bailey would also have those statements,
10 and also the issue that he had called one of his
11 girlfriends up in, up in Pennsylvania somewhere and
12 had made an admission to her.

13 So all of those admissions were there and
14 we talked to him and gave him the option. We
15 explained to him the best way I know how to as an
16 attorney what he was looking at if he takes the
17 stand.

18 Q. So y'all discouraged him to testify?

19 A. No. We gave him the -- my practice has always
20 been to give them the option to make the decision
21 themselves. I will -- if they ask my opinion I'll
22 tell them what I think.

23 Q. What was your opinion in this case?

24 A. My opinion was that he was going to be
25 cross-examined on each one of those statements, the

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1 inconsistencies in those statements, the telephone
2 conversations that he had with the girl in New
3 York --

4 Q. Didn't that come into evidence?

5 A. Yeah.

6 Q. Without him testifying?

7 A. Without him testifying, yeah.

8 Q. And so Mr. Bailey was able to argue the
9 inconsistency between him confessing to the girl in
10 New York, as you put it, and the first statement
11 where he denied the shooting, he argued that without
12 Mr. Aleksey taking the stand, didn't he?

13 MR. ZELENKA: Your Honor, I don't think the
14 witness has finished answering the question.

15 THE COURT: I don't think he has. Let him
16 finish.

17 A. You asked me those were what we talked about. I
18 gave him the option to make the decision.

19 Q. The statement by the girl -- to the girl in New
20 York was already in by the time the defense case came
21 up?

22 A. Yeah.

23 Q. Okay. And there were no other bad acts that
24 Mr. Bailey could question Mr. Aleksey about or
25 impeach him with, could he?

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1 THE COURT: Wait a minute, I'm sorry.

2 MR. BROWN: Sure.

3 THE COURT: Because what concerns me is
4 that the question here was why didn't he testify
5 and you are going into why he didn't testify.
6 Did you finish your response?

7 A. Basically, yes, we gave him the option after
8 explaining to him what we felt were the pros and cons
9 of his testimony.

10 THE COURT: All right. And then you asked
11 him what other bad acts.

12 Q. And I said there were no other bad acts that
13 Mr. Bailey could have questioned him about, was
14 there?

15 A. Not to my knowledge.

16 Q. Because every one was brought out through the
17 girls that had testified for the government?

18 A. Yeah.

19 Q. Okay. Are you aware of any other tape recorded
20 statements Mr. Aleksey made to law enforcement
21 besides the one with the two-hour gap in between the
22 two portions?

23 A. I don't recall any.

24 Q. Okay. Were you aware that -- and let me make
25 sure I understand this. You were appointed in the

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1 case and I think there's no dispute about this, maybe
2 stipulate, in January of '98?

3 A. Yeah.

4 Q. Okay. February 2nd of '98 there was notice to
5 seek the death penalty service hearing?

6 A. Yes.

7 Q. Were you aware the same day that the SLED agents
8 investigating this case served Mr. Aleksey with
9 warrants?

10 A. I don't recall, no, I don't think I was -- I
11 don't recall. I don't know.

12 Q. Okay. Served him with warrants from another,
13 another state?

14 A. Another state, no, I don't know.

15 Q. Okay. You don't know whether that's true or
16 not, okay. So you weren't aware of it. Were you
17 there?

18 A. I don't recall and I was not there.

19 Q. Okay. Thank you. All right. Now, the defense
20 of this case, and the way I would characterize it I
21 guess I will try to see if you agree with this was a
22 character defense?

23 A. The defense of this case as we decided to do it
24 was to show that Mr. Aleksey had no violence in his
25 background, even though he had a criminal history,

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1 there was nothing in his background which would have
2 shown that he had ever committed any act of violence.

3 Q. Okay. And so the idea was, is that Mr. Aleksey
4 didn't shoot a trooper because that's not his
5 character of crime?

6 A. That's not his modus operandi.

7 Q. That's not his MO, that actually was going to be
8 one of my questions, okay.

9 Did you -- why were there not any
10 objections to evidence that fell outside of that like
11 other bad evidence that did not go to MO?

12 A. What do you mean? Give me an example.

13 Q. Well, okay, let's assume that Mr. Aleksey didn't
14 pay back Theresa McCann for the credit card debt that
15 she incurred buying him cars. That was introduced by
16 Walter Bailey, wasn't it?

17 A. Uh-huh (affirmative response).

18 Q. Why didn't you object to that?

19 A. We showed it -- we wanted him to be a con
20 artist, we wanted him to be a person that he may get
21 money from women but --

22 Q. Okay.

23 A. -- I mean, if it's going to be consistent with
24 our theory, that he was getting money, that he was
25 doing things, getting money from other women that.

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1 that's not -- as far as I'm concerned that's not an
2 issue that you want to try to keep out.

3 Q. Okay... The MO was that he doesn't shoot
4 troopers, he posts bond under a fake name and jumps
5 bail?

6 A. Yeah.

7 Q. Okay. But he wasn't arrested for anything
8 regarding Theresa McCann before this crime, was he?

9 A. No.

10 Q. But that crime came into evidence, didn't it?

11 A. Was it a crime when she say that he had gotten
12 money from --

13 Q. That's a good point, I don't know whether it's a
14 crime, but you didn't object to those acts, did you?

15 A. No.

16 Q. They didn't make Mr. Aleksey look better, did
17 they?

18 A. They didn't make them look -- they made them
19 look worse, and I cross-examined those girls on you
20 did it, you allowed him to do it, you participated in
21 it, you were involved in it, so you were having a
22 good time as long as he was having a good time.

23 Q. Okay. And that's the way you -- so you had no
24 problem letting that evidence in?

25 A. No.

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1 Q. Okay. And were you aware that the government
2 filed a Lyle motion or a Rule 404(b) motion?

3 A. In regards to whether or not the prior bad acts
4 would be allowed to be in.

5 Q. So you're aware that motion was filed?

6 A. Yeah.

7 Q. Okay. And it wasn't argued, was it?

8 A. No.

9 Q. Okay. And how did Mr. Bailey know when he went
10 to present evidence that fell outside of the MO part
11 of it; in other words, the MO is that he gets
12 arrested and posts bond when there are stuff that
13 he's never been arrested for, how would Mr. Bailey
14 know that he was going to be allowed to introduce
15 that stuff since y'all never argued that motion, even
16 though he did file that motion?

17 A. When he went to introduce it we never objected,
18 so apparently he went forward.

19 Q. He filed a motion assuming that it's -- because
20 the 404(b) is the exception, the rule is it does not
21 come in. He filed a motion trying to get the Court
22 to allow him in the exception, and then he just
23 didn't argue it, went on the assumption that it was
24 okay?

25 A. Once we had made a decision in terms of how we

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1 were going to proceed, if he put in it, I don't know
2 whether we -- I can't recall whether we had a
3 conference with the judge, whether we discussed those
4 issues, I can't recall. But as for me, in regards to
5 the issue of him scamming the women, you know,
6 meeting the women and all that, that to me just
7 simply highlighted what our position was, that, you
8 know, he was getting money, he was getting cars, he
9 had a lot of women that he was dealing with, but he
10 was not a, a, a, a violent person. He was not a
11 person who would do anything of any violence.

12 Q. And let me ask you this. Was there clear and
13 convincing evidence regarding the bad acts that he
14 was never arrested for from these girls?

15 A. In talking with him he admitted to basically
16 when we were talking --

17 Q. He admitted to you?

18 A. Yeah.

19 Q. But was there clear and convincing evidence the
20 State could present to allow that evidence in under
21 404(b)?

22 A. We made a decision in terms of how we are going
23 to defend it.

24 MR. BROWN: Your Honor, I would object.

25 It's not responsive to my question. I have been

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1 criticized for cutting him off. But that is not
2 a responsive answer. My question is whether
3 there's clear and convincing evidence the State
4 could present to the Court.

5 THE COURT: That would have been a showing
6 if there had been an objection, right?

7 MR. BROWN: I'm asking -- sure. But I'm
8 asking him if they wanted to object does he
9 think there's clear and convincing evidence of
10 that.

11 THE COURT: He's saying in his mind there
12 was clear and convincing evidence because his
13 client admitted that he had done the things that
14 they were -- in other words, here's the problem
15 that you have. They didn't object, rightly or
16 wrongly they didn't object, right? So you're
17 asking was there clear and convincing evidence
18 in his mind. In his mind there was because his
19 client had admitted that he did the things when
20 the evidence was presented.

21 MR. BROWN: The question was whether there
22 is clear and convincing evidence that could have
23 been presented to the Court.

24 THE COURT: Don't know because he didn't
25 object.

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1 MR. BROWN: Right. My question is do you
2 believe there was. Because that gets into the
3 strategy of whether he believes, yes, he could
4 have objected and kept it out, or whether he
5 believes, no, an objection would have been
6 futile anyway. And so my question is do you
7 believe that the government could have presented
8 clear and convincing evidence.

9 THE COURT: Okay. If you know.

10 A. Let me think about it because --

11 Q. Like Theresa McCann saying that he took me for
12 \$40,000.

13 A. They probably would have had difficulty if
14 you're asking that question, difficulty putting it
15 in. But consistent, being consistent with our theory
16 and how we wanted to defend....

17 Q. Okay. And I use Theresa McCann as an example
18 because you asked for an example. But you would
19 agree that there were other examples that were
20 pertaining to other witnesses, stuff that Mr. Aleksey
21 was accused of doing that were not the arrest, posted
22 bond under a fake name and jumped bail?

23 A. There were other women involved if you're
24 talking about that, yeah.

25 Q. They make allegations?

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1 A. Yeah.

2 Q. The reason I asked that because Ms. McCann only
3 testified in the sentencing phase, you asked for an
4 example of something that would be uncharged.

5 THE COURT REPORTER: Wait, wait. Ms.
6 McCann only testified in the sentencing
7 phase.....

8 MR. BROWN: Sure. And I --

9 MR. ZELENKA: Your Honor, there's a lot of
10 testifying going on as opposed to asking of
11 questions.

12 MR. BROWN: Sure.

13 MR. ZELENKA: It's a little difficult to --
14 from my perspective to keep track of what's
15 occurring and I would just request that counsel
16 ask questions and then wait for the answer.

17 MR. BROWN: Sure.

18 MR. ZELENKA: Because a lot of what you --
19 appears you intend to ask like the clear and
20 convincing, with all due respect to counsel,
21 when you clarified what you wanted that was a
22 much different question than what you initially
23 asked. And I'm not trying to object, but I
24 think things could probably be a little bit
25 clearer.

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1 MR. BROWN: Thank you. I'll try, Your
2 Honor.

3 THE COURT: All right.

4 Q. Do you agree that there were instances testified
5 to -- and actually I withdraw that question.

6 Let's go to the investigation and
7 impeachment of what I guess I'll refer to as the
8 girls in this case. And the first one I would like
9 to come to is a lady named Yelena Batkilina.

10 A. Okay.

11 Q. Do you recall her name?

12 A. Yes, I do.

13 MR. BROWN: And, Your Honor, again if you
14 have any questions about which girl we refer to.

15 THE COURT: The only thing I would like to
16 know is I would like you to direct me to a part
17 in the --

18 MR. BROWN: Well, she's the first girl to
19 testify. There's a series of girls.

20 THE COURT: Okay.

21 MR. BROWN: But she is the first girl to
22 testify.

23 MR. TARR: Page 913.

24 THE COURT: That's what I need. Thank you.
25 so much. Page 913, great.

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1 Q. Okay. What investigation was done on her
2 background?

3 A. We had investigators that we had hired and we
4 had asked them to go out and do background on all of
5 the potential witnesses, those girls. And, you know,
6 they were all up in I guess in Jersey and New York
7 and Philadelphia.

8 Q. So your investigation, you didn't do it
9 personally?

10 A. No, I didn't do it personally.

11 Q. Okay. So you relied on investigators?

12 A. Yes.

13 Q. All right. Do you recall whether Mr. Stone had
14 a phone call with Yelena Batkilina?

15 A. I -- he probably did, I don't know.

16 Q. Were you told anything that she told him?

17 A. I can't remember the conversation, that's what
18 I'm saying.

19 Q. Okay. And you recall Yelena also being referred
20 to as the name Ellen or Ellena?

21 A. There were so many different names she may have
22 been, yes.

23 Q. She used those of an Americanized version of
24 Yelena, Ellena and Ellen.

25 A. Okay.

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1 Q. You would agree with that?

2 A. Yeah.

3 Q. Were you aware of a charge from which Ms. Yelena
4 was convicted in the Osceola County, Florida, court
5 proceedings?

6 A. No, I was not aware of a conviction.

7 Q. Okay. Let me make sure I understand. You
8 cross-examined Ms. Batkilina?

9 A. Yeah.

10 Q. And obviously her testimony was used to help the
11 government?

12 A. Yeah.

13 Q. And so you wanted to discredit her at least to
14 some extent?

15 A. Yeah.

16 Q. Okay. So if you could have used impeaching
17 evidence you would have used it?

18 A. Yes.

19 Q. Okay.

20 MR. BROWN: At this time, Your Honor, I
21 would ask that this --

22 THE COURT: Mr. Brown, as you are
23 collecting your exhibit.

24 MR. BROWN: Yes, ma'am.

25 THE COURT: At this point because I do not

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1 know where the difference is in the transcript,
2 but is Ms. Batkilina's testimony given in the
3 guilt phase or the sentencing phase?

4 MR. BROWN: It is in the innocent/guilt
5 phase, 913 through 926. And that's the only
6 phase she testifies in. There are some girls,
7 and I hate to use that term, but I don't mean it
8 in a derogatory sense, there were some ladies
9 that testify, and some of them are quite young,
10 not under age or anything, but they testified in
11 both phases.

12 THE COURT: Okay.

13 MR. BROWN: And I'm not trying to testify.

14 THE COURT: You answered my question.

15 Q. Have you ever seen this before?

16 A. No, I haven't.

17 Q. And if, in fact, that is a plea proceeding where
18 Ms. Batkilina is convicted of theft, would you find
19 that pertinent to her, the impeachment of her?

20 A. Yes.

21 Q. And, in fact, it was grand theft of third degree
22 and fraudulent use of a credit card, both felonies.

23 A. If this is a part of her plea and if it's in
24 here, yes. I did not see this and I have not seen
25 this until today.

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1 Q. And you would have used that to impeach her?

2 A. Yeah.

3 Q. And obviously a conviction for theft is for
4 fraud, would have been valuable impeachment material?

5 A. (Nodding.)

6 THE COURT REPORTER: Did you answer?

7 Q. That's correct, it's just an exhibit.

8 MR. ZELENKA: Your Honor, I don't have any
9 objection to the transcript coming in, it's a
10 court record. It was transcribed in
11 February 2000 after this case was tried.

12 MR. BROWN: That's correct, but the
13 proceedings itself reflect March 12, 1998 the
14 date of the proceeding.

15 MR. ZELENKA: Correct.

16 MR. BROWN: Five months prior, over five
17 and a half months prior to the testimony.

18 MR. ZELENKA: Just to clarify it didn't
19 come out of his file. The file was turned over
20 in February.

21 MR. BROWN: That's exactly right. That's
22 exactly right, which we would assert would be
23 a --

24 THE COURT: Very well. Very well.
25 Remember, gentlemen, Ms. Keil is extraordinarily

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1 talented as a court reporter. She cannot type
2 when two people are speaking at the same time.

3 MR. BROWN: I certainly understand that.

4 THE COURT: All right. So that would come
5 in as Applicant's....?

6 MR. BROWN: We're not admitting it at this
7 time because we do want to go back and make
8 copies. We didn't know what was going to be
9 admitted so we didn't want to make a copy of
10 everything.

11 THE COURT: Who's keeping a record of
12 what's going to go in and what's not going to go
13 in at this point?

14 MR. BROWN: Nothing has gone in yet, we
15 haven't admitted one thing.

16 THE COURT: But they're different, we have
17 already different, if you will, we're having
18 different kinds of exhibits that are marked for
19 identification purposes, there are a couple that
20 I know that Mr. Zelenka does not have any
21 objection to coming in and then there is one
22 which I know that he does.

23 MR. BROWN: Sure.

24 THE COURT: We're going to get confused.

25 MR. BROWN: We're not bringing up the issue

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1 of admission. Every time we talk about marking
2 something as an exhibit I think Mr. Zelenka has
3 stood up, said whether he does or does not
4 object to the introduction.

5 THE COURT: Exactly.

6 MR. BROWN: But we're not seeking to
7 introduce anything right now.

8 THE COURT: I understand that. But I think
9 probably just for our purposes later on.

10 MR. BROWN: Yes, ma'am.

11 THE COURT: Because you would tell me at
12 some point you do intend to admit some of these
13 exhibits?

14 MR. BROWN: We do.

15 THE COURT: So I think at this point we
16 need to review and determine which exhibits
17 Mr. Zelenka has no objection to coming in and
18 which ones he has objection to coming in.

19 The only one that I know that he has an
20 objection to coming in at this point is the letter
21 which you talked about was a letter from
22 Mr. Aleksey to Mr. Sims and perhaps Mr. Stone.

23 So with that exception there is no
24 objection because we've had discussion about which
25 exhibits there will be objection to, which ones

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1 there will not; is that right?

2 MR. ZELENKA: I believe that's correct,
3 Your Honor.

4 THE COURT: Great.. I just want to keep up
5 with it because otherwise I'm so afraid that
6 this record's going to be impossible at some
7 later point to determine what came, in what
8 didn't come in.

9 MR. BROWN: Certainly I understand your
10 ruling, Your Honor.

11 THE COURT: Let me see if I am clear,
12 because it is my understanding that the only
13 reason that the exhibits are not being offered
14 at this point has to do with copying
15 difficulties; isn't that right?

16 MR. BROWN: That's correct.

17 THE COURT: Okay.

18 MR. BROWN: At this point, Your Honor, we
19 would introduce it subject to -- there's no
20 objection, we'll introduce it without objection
21 and that is Applicant's Number 3.

22 THE COURT: Got you. And I want to be
23 clear that I certainly want all of you to have
24 an opportunity to copy the actual exhibits that
25 go in. I don't want you to not be able to have

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1 the copies. All right.

2 (Entered into evidence was Applicant's Exhibit 3;

3 Yelena Batkilina transcript.)

4 THE COURT: All right. So we have

5 Applicant's Exhibit 3 which is actually in

6 evidence without objection. All right.

7 Q. Let me ask you this. During the Jackson v.

8 Denno hearing, one of the things that came out is

9 Mr. Aleksey asked SLED agents whether or not they
10 could help him with his friend Yelena's problems in

11 Florida. Do you recall that? I guess that's my

12 question. If it's in the record, it's in there.

13 A. I don't recall that.

14 Q. You don't recall that?

15 A. No.

16 Q. If it is in the record, it refers to

17 Ms. Batkilina's problems in Florida, that would give

18 you all some notice on how to get the information

19 that she, in fact, had a warrant at the time of the

20 statement and then subsequently two months later pled

21 guilty?

22 A. May I -- Ms. Batkilina?

23 Q. That's a yes or no.

24 A. Yes and no.

25 Q. Okay.

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1 A. I specifically asked Mr. Aleksey about
2 Ms. Batkilina, whether he knew anything or could tell
3 me anything about her.

4 MR. BROWN: Your Honor, we object to the
5 relevance.

6 THE COURT: Mr. Brown, you've got to let
7 him answer the questions. You ask the
8 questions.

9 MR. BROWN: But that's not relevant to any
10 of our claims, our claims of whether they
11 adequately investigated and impeached the
12 witnesses. It doesn't matter whether their
13 client is a chronic liar or not, they have a
14 duty to do investigation.

15 THE COURT: But, Mr. Brown -- Mr. Brown,
16 first of all, when I speak you hush.

17 MR. BROWN: Yes, ma'am.

18 THE COURT: When I open my mouth, your
19 mouth closes.

20 MR. BROWN: Okay. Yes, ma'am.

21 THE COURT: Let's begin with that because
22 otherwise it's going to be very difficult for
23 Ms. Keil. The question posed to the witness
24 was, wasn't it an indication to you when your
25 client made reference to wanting help from SLED

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1 regarding this young lady's charges to go get
2 the charge. That's the question as I understand
3 the question.

4 MR. BROWN: I think it was would that put
5 you on notice.

6 THE COURT: Right.

7 MR. BROWN: He said yes.

8 THE COURT: Yes and no. Then he said --
9 what he was saying was I specifically asked
10 Mr. Aleksey about this lady and her charges and
11 then you interrupted him. So to me he is
12 answering what he was asked.

13 So you can continue.

14 A. I specifically asked Mr. Aleksey about Yelena
15 Batkilina and he refused to give me anything on her.
16 On one occasion that I remember very definitely when
17 we were talking about her potential testimony he said
18 she'd better not come down here and lie.

19 And I said because -- he said something to
20 the effect because I'll, I'll, I'll deal with her.
21 And I said, Bayan, if you know anything about this
22 girl you need to let me know. And he never said
23 anything to me about if he knew about this thing in
24 Florida or if he had any knowledge of it. He didn't
25 say anything to me about it.

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1 Q. But you agree at the Jackson v. Denno hearing
2 that it came out from the SLED agents that he said he
3 has a friend Ellen that's in trouble in Florida and
4 he wants their help with her?

5 A. If it's in the record.

6 Q. And that's prior to the trial?

7 A. Yeah.

8 Q. In fact, the Jackson v. Denno hearing's not just
9 like the day of the trial, more than a week prior to
10 the trial. The last hearing was August 11th, the
11 last motions hearing?

12 A. I believe so.

13 Q. Okay. You received a trace report regarding the
14 gun purchased by Ms. Batkilina?

15 A. I remember we received something. I cannot
16 specifically say that this is the report that I saw
17 or that I received. I probably did, I don't know and
18 I'm just being frank, I don't know at this point
19 whether that's the document that I reviewed.

20 Q. Would you show -- would you read the print date
21 on that report?

22 A. Where now?

23 Q. It says print date. I don't make that report,
24 it's an ATF report.

25 A. No, I was asking where. Okay. January 7, 1998.

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1 Q. And that came from which department of the
2 government?

3 A. Department of Treasury, Bureau of Alcohol,
4 Tobacco and Firearms, National Tracing Center.

5 Q. Okay. And who was it sent to?

6 A. ATF Scott Ethridge, Charleston, One Poston Road,
7 Room 325, Charleston, South Carolina.

8 Q. And the request date is?

9 A. The request date is Friday, January 2nd, 1998.

10 Q. And it involves a Bryco Arms .9 millimeter?

11 A. Yes.

12 Q. That's the pistol used in this case without a
13 doubt?

14 A. Yeah.

15 Q. That's consistent with the information provided
16 to you that Ms. Yelena Batkilina was the purchaser?

17 A. Yeah, she testified to that.

18 Q. And so that's consistent with it and y'all got a
19 trace report?

20 A. The only thing I can say is that I cannot
21 specifically say that I have seen this. We got
22 documents, without having my file I could not say
23 that, you know, and I'm just being frank.

24 Q. I'm not arguing with you.

25 A. Okay.

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1 Q. So you don't know whether you've seen that or
2 not?

3 A. I don't recall.

4 Q. But it's a government document?

5 A. Yes.

6 Q. Okay. And at the notes on the bottom right hand
7 of that document does it say something about
8 Ms. Batkilina?

9 A. Born in the Soviet Union, Batkilina involved in
10 credit card scam.

11 Q. Et cetera?

12 A. Et cetera.

13 Q. And this would have been useful to you -- if the
14 government didn't provide it, if they would have,
15 this would have been useful?

16 A. Definitely.

17 Q. Okay. But you don't know whether you were
18 provided it by the government or not?

19 A. I do not recall.

20 MR. BROWN: I would ask that this be
21 admitted as petitioner's -- marked as
22 Petitioner's Exhibit 4 and admitted into
23 evidence, or Applicant's Exhibit 4. I
24 apologize.

25 THE COURT: Let the record reflect that

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1 Mr. Brown has shown the document to Mr. Zelenka.

2 MR. BROWN: While we're waiting on that,
3 Your Honor, if I may go on for the purposes --

4 THE COURT: He's got to review it,
5 Mr. Zelenka's got to participate in the hearing
6 so I think we've got to wait for him to make a
7 determination.

8 MR. BROWN: Certainly.

9 MR. ZELENKA: Your Honor, we don't object
10 to it coming in except it has been authenticated
11 as coming out of their file.

12 MR. BROWN: Actually we never said where it
13 came from.

14 THE COURT: That's right, it has not been
15 authenticated as coming -- let me tell you where
16 it is. If it came under the Business Records
17 Exception Act then it would be authenticated,
18 but the piece of the pie that is missing is that
19 initial authentication.

20 I mean, I gather from what I've heard
21 about it that it's clearly a document which has
22 been prepared by one with an official duty to
23 prepare that document; however, it is not
24 authenticated in terms of the first part of it is
25 where did it come from. So....

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1 MR. ZELENKA: That's correct. That's my
2 objection.

3 THE COURT: So you would have to stipulate
4 that, stipulate some authenticity of it, Mr.
5 Zelenka, or else it doesn't come in.

6 MR. ZELENKA: I can't stipulate to that
7 right now.

8 MR. BROWN: We make a proffer.

9 THE COURT: Very well.

10 MR. BROWN: We proffer Number 4 at this
11 time as Applicant's 4.

12 THE COURT: You proffer as Applicant's 4.
13 It's proffered just to be sure that I am clear
14 as coming out of --

15 MR. BROWN: It's proffered as a document.

16 THE COURT: Okay.

17 MR. BROWN: That is from the Department of
18 Alcohol, Tobacco and Firearms listing the gun
19 purchased by Ms. -- it's offered for what it
20 says.

21 THE COURT: Is that, do you maintain that
22 that is a self-authenticating document?

23 MR. BROWN: Your Honor, maybe I can go
24 back. The way that we are questioning, what
25 we're questioning Mr. Sims about is failure to

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1 impeach. And so we're actually not offering it
2 for the proof of the matter asserted, we're
3 saying it is what it is. It could be a total
4 lie. We would offer it as evidence that could
5 have been used to impeach. It could be totally
6 false.

7 THE COURT: Well, the question is, is that
8 whether or not when you admit that document the
9 credibility of the declarant is relevant. If
10 the credibility of the declarant of that
11 document is relevant, then -- and it is an out
12 of state -- out-of-court statement then it
13 clearly is hearsay and --

14 MR. BROWN: We're not offering it for the
15 truth of the matter asserted. We're offering
16 that it was an investigative lead to Mr. Sims
17 and Mr. Stone provided by the government
18 because -- well, produced by the government,
19 okay? And that they could have used that to get
20 this, because the admitted Applicant's 3 is in,
21 as you read the plea, is a plea involving the
22 fraudulent use of a credit card.

23 THE COURT: Notice. In other words, some
24 sort of notice.

25 MR. BROWN: That's correct. Not that it's

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1 true, it may be false, and Mr. Zelenka can
2 produce the ATF person that says we never
3 produced that document.

4 THE COURT: Yes, sir, Mr. Zelenka.

5 MR. ZELENKA: That's why we make the
6 objection because of the information that's on
7 the sheet is precisely the information that
8 we're objecting to which is not --

9 THE COURT: Let me see it. This is one of
10 those moments where we have a little difficulty
11 and I've got to look at it to rule on it.

12 MR. ZELENKA: Not necessarily part of the
13 document.

14 MR. BROWN: We would remind the Court at
15 this time we have no out of state subpoena
16 power. My understanding is even if we did have
17 state subpoena power across the country the
18 State of South Carolina can offer no enforcement
19 power against the federal government. That
20 doesn't change the fact that Mr. Aleksey did not
21 get a fair trial.

22 THE COURT: Because I can't, I can't listen
23 to you and read at the same time. I'm not that
24 talented.

25 MR. BROWN: I apologize.

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1 THE COURT: Hang on one second.

2 (Pause in proceedings.)

3 MR. BROWN: And, Your Honor, again we're
4 willing to proffer and try to introduce it
5 through another witness later.

6 THE COURT: Well, let me tell you what I
7 was looking at just to give you a hint.

8 MR. BROWN: Yes, ma'am.

9 THE COURT: The hint was I was trying to
10 see if it was admissible under 902 as a
11 self-authenticating document, because it
12 obviously is a public document or appears or
13 purports to be a public document; however, it
14 bears not a seal nor does it bear a signature.

15 And I was taking a moment to look for
16 the signature and unfortunately the director of
17 the ATF that gives us a message on the back of it
18 didn't sign it. So we are left without a, without
19 a signature even though it's likewise -- I don't
20 see a seal on it. Proffer it at this point and
21 see if it comes in later.

22 MR. BROWN: That's exactly right.

23 THE COURT: Very well. Thank you so much.

24 MR. BROWN: Thank you.

25 Q. Now, the proffered Number 4 says that she's

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1 involved in credit card fraud. And the admitted
2 Number 3 says that she pled to credit card?

3 MR. ZELENKA: Your Honor?

4 MR. BROWN: Yes.

5 MR. ZELENKA: Your Honor, I think my
6 objection is understood it's hearsay that he's
7 going into.

8 MR. BROWN: It's not hearsay, Your Honor,
9 we're not offering it for the truth of the
10 matter asserted. It may be false.

11 THE COURT: The purpose that they're using
12 it for, if they're using it for non hearsay
13 purpose, what is being argued by counsel is that
14 they are, they are admitting it for the purpose
15 of showing notice.

16 MR. BROWN: That's correct. As proof of
17 failure to investigate and impeach. Because
18 actually investigation in and of itself is not
19 any good unless it's useful, either the
20 introduction of evidence, which we're not saying
21 this is introduced as evidence as Mr. Aleksey's
22 innocence, this is impeachment and this is
23 evidence of failure to investigate and impeach.

24 It's the notice for that. It's not to
25 say whether she is involved in credit card fraud

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1 or not, the admitted plea said she was.

2 MR. ZELENKA: My objection is not to the
3 plea question.

4 THE COURT: I know.

5 A. Mr. Brown, you gave me this.

6 Q. That's correct. And my question I think is
7 under objection.

8 THE COURT: Hold on one second, gentlemen.

9 (Pause in proceedings.)

10 MR. BROWN: And, Your Honor, we would point
11 out this document's referred to in the
12 transcript of the actual trial by Mr. Bailey.

13 MR. ZELENKA: Pardon me?

14 MR. BROWN: Mr. Bailey questions witnesses
15 about this document.

16 MR. ZELENKA: About that particular
17 document?

18 MR. BROWN: Not the actual piece of paper,
19 no, ma'am.

20 THE COURT: Okay.

21 MR. BROWN: About the -- I won't say
22 original either, but about another -- I don't
23 want to say the word copy because I don't know
24 if it's a copy of an original he was referring
25 to at trial because I wasn't there, but to this

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1 ATF trace on a Bryco Arms 9 millimeter pistol
2 serial number --

3 THE COURT: Wait, you're so fast. So what
4 you're now telling me is that it ought to be
5 admissible because it was admitted in the
6 underlying trial and certainly the party in
7 opposition to it is the same?

8 MR. BROWN: I can't tell you it was
9 admitted at the trial.

10 THE COURT: All right.

11 MR. ZELENKA: Judge, if this is the
12 document that Solicitor Bailey is referring to,
13 subject to that tying it up, I mean if they can
14 authenticate it through Solicitor Bailey through
15 the file, then obviously if this is that
16 document, I wouldn't have an objection.

17 THE COURT: Well, I'll tell you what I'm
18 going to do. I'm going to admit it subject to
19 it being tied up, gentlemen, that gives you some
20 time to go and go back to the transcript because
21 you may not have been prepared for the purposes
22 of this document.

23 MR. BROWN: Actually if Mr. Zelenka had
24 read it he would have known this was referred to
25 in the transcript.

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1 THE COURT: No, Mr. Brown.

2 MR. ZELENKA: No, not that particular
3 language on the document.

4 MR. BROWN: We agree that Mr. Bailey did
5 not bring this out nor did the trial counsel.

6 THE COURT: Say that one more time.

7 MR. BROWN: Did not bring out the credit
8 card stuff at the bottom of the document at
9 trial, we agree that's not brought out. In
10 fact, that's the purpose we're showing it for
11 here. Your Honor?

12 THE COURT: One second.

13 (Pause in proceedings.)

14 MR. BROWN: If I may refer you to page 26
15 the evidence listing S-4 is a firearms
16 transaction record.

17 THE COURT: All right. Hold on one second.
18 I'm back to the first.

19 MR. TARR: Volume II, page 918 is actually
20 the transcript portion where it's admitted into
21 evidence.

22 THE COURT: And what page?

23 MR. TARR: 918, it's about midway down.

24 THE COURT: What line on 918?

25 MR. TARR: Your Honor, apologize, this ATF

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1 trace report is not that document, it is
2 embodied within -- the transaction record is a
3 separate document that goes along with the other
4 documents concerning the purchase of the gun in
5 this case.

6 THE COURT: In other words, what you're
7 telling me is that State's Exhibit Number 3
8 which is a record of sale for a firearm is not
9 this document, but a related document?

10 MR. TARR: Yes, Your Honor. This document
11 that we were attempting to introduce is a
12 document that ATF did tracing the history of the
13 sales of this weapon and who owned it, the
14 firearm transaction record S-4 is actually the
15 document recording the transaction of the sale
16 to Ms. Batkilina with the same serial number,
17 same, you know, everything on the gun.
18 (Pause in proceedings.)

19 MR. BROWN: Your Honor, there's one other
20 thing we would point out of as authority.
21 There's a post-conviction statute that applies
22 to capital proceedings which allows the
23 introduction of affidavits and other documentary
24 evidence in lieu of direct examination of
25 witnesses at trial. We filed a motion in that

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1 regard, served it upon the State.

2 THE COURT: Regarding this document?

3 MR. BROWN: Regarding the use of -- notice
4 of intent to rely upon affidavits and other
5 documentary evidence as provided by statute for
6 post-conviction proceedings because you can't
7 make people come.

8 THE COURT: So that -- all right. Well,
9 let me -- this is where we are. Let me tell you
10 where we are.

11 MR. BROWN: I'm sorry. Okay, I'm sorry.

12 THE COURT: Mr. Brown, I'm uncomfortable
13 with the position of the applicant that this
14 document is not admitted for the truth of the
15 matter asserted because I think it is. I think
16 it goes to more than notice.

17 MR. BROWN: We don't want to admit it for
18 that purpose.

19 THE COURT: Listen to me.

20 MR. BROWN: I'm sorry.

21 THE COURT: Listen to me. I do find that
22 it is hearsay. However, what I have been
23 struggling with is really Rule 902 which is the
24 self-authentication document and where this
25 particular document is lacking are two places.

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1 Number one, it does not have a seal; and number
2 two, it does not have a signature, even a copy
3 of the signature. And I've been struggling with
4 that. I've also been struggling with because --
5 because it is the authentication which concerns
6 me not the -- what is encompassed within it,
7 because I think it is admissible under Rule
8 803(8) so that the content I think it's
9 admissible. I think the part that is concerning
10 me is the authentication as a business record.

11 However, if it had either the seal or
12 the signature then it could -- it would be a
13 self-authenticating document. Are you with me at
14 least with what my difficulties are? However --

15 MR. BROWN: Yes, Your Honor, and I would
16 point out --

17 THE COURT: Mr. Brown, hold on.

18 MR. BROWN: I'm sorry, you asked me whether
19 or not --

20 THE COURT: I think that there are two
21 items that make it admissible.

22 MR. BROWN: Yes, ma'am.

23 THE COURT: So listen to me because I think
24 the record needs to reflect them. Number one,
25 the statutory provision that you refer to.

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1 MR. BROWN: Yes, ma'am.

2 THE COURT: A. And B, the provision for
3 lack of a better -- the catch-all phrase under
4 the hearsay exception where it allows the Court
5 to admit hearsay when there is, there's a
6 substantial likelihood of trustworthiness.

7 And I think if you, if you join together
8 the fact that this appears -- it clearly is a
9 public document, it is a public record, it only
10 lacks either the seal or the signature; however,
11 it has all the indicia of a public document and it
12 lacks the ability to be self-authenticating only
13 because it lacks the seal and it lacks the
14 signature, but it is, it has a typed name of the
15 director of the Alcohol, Tobacco and Firearms
16 Unit.

17 And I think when you put together both
18 the statutory provision as well as the -- I hate
19 to use the word catch-all, but when you consider
20 the hearsay exception it does allow the Court the
21 flexibility to accept information when it does
22 have substantial indicia of trustworthiness, the
23 particular thing that was concerning me was the
24 notice provision.

25 When you tell me pursuant to the statute

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1 you made a motion then my concern regarding it --
2 just pass it up as part of the record.

3 MR. BROWN: He's been served, the service
4 is at the back.

5 THE COURT: Sure, that's fine. Then I'm
6 not as concerned about the notice.

7 MR. ZELENKA: I received the notice I
8 believe it was Thursday.

9 THE COURT: Oh, okay.

10 MR. BROWN: The date of the notice is
11 written in the certificate of notice.

12 THE COURT: Very well. Thank you,
13 gentlemen. Note your objection for the record,
14 too, Mr. Zelenka, so that will come in as
15 Applicant's Exhibit 4.

16 MR. ZELENKA: Again that doesn't specify
17 any document at all and that was the basis of --

18 THE COURT: I understand.

19 MR. BROWN: We received no objection. I'm
20 sorry.

21 THE COURT: I understand. I do understand.
22 Thank you very much.

23 (Entered into evidence was Applicant's Exhibit 4,
24 trace report.)
25

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1 BY MR. BROWN:

2 Q. Now, Ms. Yelena testified that she never saw
3 Mr. Aleksey after he bonded out, after she bonded him
4 out of the Bucks County Prison?

5 A. Yes, I believe so.

6 Q. Okay. And she gave the date of that bonding as
7 February of 1997?

8 A. I believe so. It's in the record, I believe so.

9 Q. Okay. Would you refer to the plea sheet?

10 A. Uh-huh (affirmative response).

11 Q. The plea transcript.

12 A. Okay.

13 Q. Does she not say in that plea transcript that
14 she was with Mr. Aleksey at the time of the Osceola
15 crimes that she pled guilty?

16 A. Let me...I'm reading now on page 5 beginning at
17 line 12, that sentence. They put down a cash deposit
18 and -- she and the guy with her and then extended the
19 rental actually. Is that what you're talking about?

20 Q. If I may.

21 A. (The witness complies.)

22 Q. Would you read the following paragraph where it
23 says -- and maybe I should let you read it.

24 A. Okay.

25 Q. Would you read the following paragraph? It says

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1 that she rented it with a guy?

2 A. The other fellow she is not to have any more
3 contact with, as I understand it, has pending a first
4 degree murder charge for shooting a police officer in
5 South Carolina. So I doubt if he will be out on bail
6 anytime soon.

7 Q. So in other words, she indicates she was with
8 Mr. Aleksey at the time of the credit card fraud?
9 And the credit card fraud, the date of incident was
10 in April of '97?

11 A. I guess, you know, I guess it is. I have not
12 looked.

13 Q. If you don't mind, I'm going to staple that
14 document.

15 A. Sure.

16 Q. I withdraw that question.

17 A. Okay.

18 Q. I would ask if that occurred in April of 1997
19 that would be after the February '97 bonding out of
20 the Bucks County Jail in Pennsylvania she said that
21 was the last time she saw Mr. Aleksey?

22 MR. ZELENKA: Your Honor, I would object to
23 the characterization of the question. There's
24 testimony at page 920 the last time she saw
25 Aleksey was in November 1997. Transcript 920,

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1 line 17 through 21.

2 Q. Let's go back up. And it says, "Yes, that's the
3 last day I saw him, the last time I see the gun."

4 MR. BROWN: And if you'll read up before
5 that, Your Honor, that's the day, that's the
6 time they alleged the gun was purchased,
7 November of '97.

8 And one of our allegations is that
9 Mr. Bailey created a false impression with the
10 Court, with the jury regarding the date of
11 purchase of the gun. According to this document
12 the gun was purchased on November 2nd, 1996.
13 That's on Applicant's Number 4.

14 THE COURT: Hold on now.

15 MR. BROWN: So in other words --

16 THE COURT: November 2nd of '96 the gun
17 was --

18 MR. BROWN: Purchased.

19 THE COURT: -- purchased.

20 MR. BROWN: The testimony that Mr. Zelenka
21 refers to, he's correct that Mr. Bailey
22 repeatedly asked her questions whether she was
23 with him November of '97 when the gun was
24 purchased and she said yes. But that's false
25 testimony because it was November of '96.

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1 Then he goes on and he argues in his
2 closing argument that Mr. Aleksey was with
3 Ms. Batkilina, she bought a gun, he stole the gun,
4 she already bonded him out of jail previously
5 after he stole the gun when it was purchased in
6 November of '97.

7 THE COURT: Slow down.

8 MR. BROWN: I'm sorry. To go back, she
9 bonds out of jail she says February '97 which we
10 believe is correct, that's what she testifies to
11 at the trial. She says then November -- this is
12 in the testimony, she says November of '97 after
13 questioning by the prosecutor that that's the
14 date of the purchase of the gun, and then he
15 stole it and she never saw him again. And, Your
16 Honor, that's two months before the date of the
17 killing.

18 However, the ATF trace report shows
19 that, in fact, the gun was purchased November of
20 '96 and that's part of our claims that Mr. Bailey
21 created a false impression he didn't correct.
22 That's a government document right there, the ATF
23 trace report. And I'm sorry to get into all this
24 argument.

25 THE COURT: So what you want to do is you

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1 want to refer me to some part of the transcript
2 or the plea transcript?

3 MR. BROWN: Well, the plea transcript sadly
4 does not have the date of the crime, I don't
5 know how it establishes a factual basis without
6 the date of the crime. But we're not here to
7 allege here -- we have some other documents that
8 we're not seeking to introduce yet regarding
9 that same crime.

10 However, what we're saying, and I think
11 the objection is -- I'm sorry, I don't want to
12 misstate his objection.

13 MR. ZELENKA: My objection was to your
14 statement characterizing her testimony. That
15 was all my objection was.

16 MR. BROWN: And I apologize.

17 MR. ZELENKA: Not to the truth of the
18 matter asserted, but to the statement that she
19 said because you characterized the statement.
20 That was it.

21 THE COURT: Got you. I don't remember what
22 it was, Mr. Zelenka, so it makes it very
23 difficult for me to sustain it or to overrule
24 it.

25 MR. BROWN: So Ms. Batkilina makes two

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1 statements.

2 THE COURT: Listen to me now. We'll go
3 back and try again. Ask the question.

4 MR. BROWN: Okay.

5 THE COURT: Ask the question.

6 BY MR. BROWN:

7 Q. Ms. Batkilina testified that she never saw
8 Mr. Aleksey after she bonded him out of jail on a
9 Bucks County offense, didn't she?

10 A. I believe she did.

11 Q. And she also testified she never saw him after
12 he stole the gun from her?

13 A. I think so.

14 Q. Okay.

15 MR. BROWN: Now we would ask the Court --
16 obviously the argument later could be that it's
17 in the transcript and that was argued. We would
18 at this time offer the transcript of a bond, a
19 bond proceeding from Bucks County, Pennsylvania,
20 we agree it occurred January 19th, 1999 but it
21 has sworn testimony from Ms. Batkilina.

22 THE COURT: Okay. Hold on. All right.

23 MR. BROWN: And we would ask --

24 MR. TARR: And in that testimony she
25 testifies --

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1 THE COURT: Wait a minute, one second.

2 (Pause in proceedings.)

3 THE COURT: Okay. All right. Now, I'm
4 sorry, I want to stay -- you all are dealing
5 with several different transcripts so I want to
6 be very careful that I'm keeping up with the
7 different transcripts.

8 MR. BROWN: Sure.

9 THE COURT: Now ask your question. You
10 wanted to offer a transcript from the bond
11 hearing from Bucks County.

12 MR. BROWN: Pennsylvania.

13 THE COURT: I understand.

14 MR. BROWN: It's not a bond, it's a matter
15 of return a bond, Ms. Batkilina asked the Court
16 to return \$10,000 bond she posted for
17 Mr. Aleksey's release.

18 MR. TARR: Your Honor, I hate to say this,
19 I'm just trying to clarify for the Court because
20 this is so confusing, this is probably the most
21 confusing aspect of the case. What she does in
22 that hearing even though it's after trial,
23 January 19th of '99 it's after our trial that
24 happened here in '98. She goes there to get the
25 money back from bonding him out of jail in

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1 February of '97, okay?

2 She explains the testimony that she gave
3 in the South Carolina court which clears up the
4 discrepancy in the date because she explains there
5 that what she testified to was that after she
6 bonded him out of jail in February of '97 he took
7 off with the gun and she never saw him again. The
8 gun -- so it shows she knows the gun was purchased
9 in '96, because February of '97 she couldn't have
10 possibly, he couldn't possibly have taken off with
11 the gun if it was really November of '97 when the
12 gun was purchased. So she testifies here at trial
13 that she bought the gun, she bought the gun in
14 November '97, never saw him again, okay?

15 The problem is that Tom French who sold
16 the gun and who also testified, testified that he
17 sold the gun November 2nd, '96. And Walter Bailey
18 instead of clearing up the testimony with
19 Ms. Batkilina that she had it wrong, the date
20 wrong, he tried to ask Mr. French are you sure it
21 was really '96.

22 So he's trying to correct the person who
23 has the correct date when Mr. Bailey has six
24 different documents showing that it is '96. So
25 he's creating this impression with the jury that

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1 Ms. Batkilina is correct that it was February, it
2 was November '97 when the gun was purchased and
3 not November '96.

4 MR. BROWN: Which looks like Mr. Aleksey is
5 on a crime spree up to the killing.

6 MR. TARR: We'll get to that later. But
7 what it shows is he wants to show the jury --

8 THE COURT: Hold on, because let
9 Mr. Zelenka finish looking at it.
10 (Pause in proceedings.)

11 MR. ZELENKA: The court documents, I don't
12 have any objection to, although the one that has
13 been certified as an officer of the Court, the
14 probation --

15 MR. BROWN: She didn't sign certification.

16 MR. ZELENKA: That's what I mean. But I
17 don't have any objection.

18 THE COURT: All right. In other words,
19 there's no objection to what is now being
20 offered as the Applicant's Exhibit Number 5?

21 MR. BROWN: That's correct.

22 THE COURT: Very well.

23 MR. BROWN: Which is the Bucks County
24 return of bond hearing.

25 MR. ZELENKA: Right. I just noted for the

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1 record it didn't carry the signature of the
2 court reporter, that was all.

3 THE COURT: Very well.

4 (Entered into evidence was Applicant's Exhibit 5,
5 bond hearing transcript.)

6 MR. BROWN: And then we also have already
7 shown to Mr. Zelenka a series of documents which
8 are an indictment and an accompanying documents
9 from the clerk of court which is here Osceola
10 County Clerk of Court and it has the signature
11 of the state attorney that this actually is the
12 complaint number so and so, and I put that out
13 because this is the indictment and documents
14 related to the Osceola County plea, and it shows
15 that the date -- well, we'll get into that in a
16 second.

17 THE COURT: Very well. Any objection to
18 that?

19 MR. ZELENIKA: No objection.

20 THE COURT: So that would be Applicant's
21 Exhibit 6 in evidence without objection.

22 MR. BROWN: That's correct.

23 (Entered into evidence was Applicant's Exhibit 6,
24 information.)

25 THE COURT: How many pages does that --

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1 MR. BROWN: Actually, can I staple them?
2 Right now I would staple them.

3 THE COURT: For the record how many pages
4 is it? Because there are different kinds of
5 documents in the Applicant's Exhibit 6.

6 MR. BROWN: That is correct. And it is a
7 total of one, two, three, four, five, six, it is
8 a total of eight pages.

9 THE COURT: Thank you so much. That would
10 be Applicant's Exhibit 6. Now if you'll just
11 give Ms. Keil a moment to mark those two
12 exhibits we'll be ready to go.

13 MR. BROWN: I sure will.

14 THE COURT: Ready?

15 THE COURT REPORTER: Yes..

16 MR. BROWN: Yes, ma'am.

17 THE COURT: Okay.

18 BY MR. BROWN:

19 Q. Now back to my questions, Mr. Sims.

20 A. Uh-huh (affirmative response).

21 Q. If you will refer to Applicant's 6 and
22 Applicant's 3.

23 A. Okay.

24 Q. And Applicant's 6, and I don't want to
25 mischaracterize it, is an indictment and accompanying

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1 documents from the clerk of court related to the plea
2 in Applicant's 3.

3 A. Uh-huh (affirmative response).

4 Q. And if you'll notice that the incident date was
5 in April of '97.

6 A. That's true.

7 Q. Okay. And you'll notice that the time that
8 Mr. Aleksey was bonded out of jail as listed on page
9 5 of Applicant's Number 5, you notice indicates that
10 he was bonded out of jail in February '97.

11 A. Right.

12 Q. Okay. If the plea that she swore under oath she
13 was with Mr. Aleksey at the time of the credit card
14 fraud in Florida, if that is true then her trial
15 testimony about not seeing him after he bonded out of
16 jail would be perjury; would it not?

17 A. Yes.

18 Q. And would have been useful for impeachment?

19 A. Yes.

20 Q. In other words, she's perjured herself one time.
21 She's either correct in Florida when she says she was
22 with him in April of '97 or she was correct in the
23 trial here in South Carolina that she didn't -- she
24 was not with him after February '97?

25 A. Yes.

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1 Q. Okay. So one of them she's falsely testified?

2 A. Yes.

3 Q. Okay. And she is the person who testified at
4 trial -- that's significant because she's the one who
5 testified that Mr. Aleksey stole the gun from her?

6 A. Did she say he stole it from her or her mother?

7 Q. I believe Ms. Yelena Batkilina is listed as the
8 purchaser of the gun on Applicant's 4, not Gelena but
9 Yelena.

10 A. Okay.

11 Q. And didn't Mr. Bailey, in fact, argue in his
12 closing that Mr. Aleksey stole the gun?

13 A. Yes, he did.

14 Q. Stole the gun, stole the car and took the life?

15 A. Yes.

16 Q. Something along that effect. And if this would
17 have been brought out at trial he would not have been
18 able to argue that, would he?

19 A. Depending on which one was true, right. Whether
20 the plea in Florida was true or whether what she was
21 testifying here was true, and I believe we would have
22 been able to cross-examine him on -- or cross-examine
23 her on those issues.

24 Q. In fact, in the transcript doesn't she say, and
25 I know this is contradictory, we note this is

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1 contradictory in the trial transcript of
2 Mr. Aleksey's trial, that she didn't see him after he
3 bonded out of jail, she didn't see him after the day
4 they purchased the gun. The gun was stolen from her.
5 They purchased the gun; she never saw it again. She
6 never saw him again. Now, obviously that's a
7 contradiction.

8 A. If it is in the -- yeah.

9 Q. That sounds like what she said, doesn't it?

10 A. It could have been.

11 Q. She said she bonded him out of jail February of
12 '97.

13 MR. BROWN: Your Honor, this is hard.

14 Q. She said she bonded him out of jail February of
15 '97 at trial here, okay, she said she didn't see him
16 after that.

17 THE COURT: Where does she say that? She
18 -- oh, hold on.

19 MR. BROWN: I apologize, she never said
20 what date she bonded him out.

21 Q. She said she bonded him out of jail, she never
22 saw him again.

23 A. Yes.

24 Q. Okay. Now, we have established that the bond
25 out date by her own words under oath was February

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1 '97.. Of course, I don't think that's disputed
2 because the Court you'll notice gives them back the
3 money. She tells them the same thing too, she never
4 saw him after he bonded out of jail February of '97.
5 Which is not true there either, but that was not
6 available at the time of this trial.

7 Here's my point. Again, she said she never
8 sees him after he bonded out of jail.

9 THE COURT: Wait a minute, let me look for
10 that because -- where does she say that? You're
11 talking about the trial transcript she says
12 that?

13 MR. BROWN: Yes, ma'am.

14 THE COURT: Because she also says --

15 MR. BROWN: Yes, ma'am.

16 THE COURT: Wait a minute.

17 MR. TARR: Your Honor, Page 920, midway
18 down, line 11.

19 THE COURT: Tell me -- I'm sorry, what?

20 MR. TARR: Line 11, page 920. Solicitor
21 Bailey is directing --

22 THE COURT: Just says you never saw him
23 after November of 1997.

24 MR. BROWN: That's regarding she never saw
25 him after he --

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1 MR. TARR: Right, if you look up at line 11
2 it shows that what he's referring to is the date
3 that she testified that they bought the gun.
4 She said November of '97, but what she means is
5 that that same November he took off with the gun
6 so the fact that she -- we can prove that she
7 was wrong about the date or was lying about the
8 date, shows that she really meant it was
9 November '96.

10 I mean, I think we can establish that.
11 It's very confusing. But I mean -- if we wrote it
12 down on a time line you could see that basically
13 she's either confused or lying about it being
14 November '97. Mr. Bailey allows that testimony to
15 stand without correcting it with the documents he
16 had.

17 The guy who sold the gun, he tries to
18 correct him by saying are you sure it was '97, but
19 it was really '96. So he's leaving the jury with
20 the impression that the guy who sold it is wrong
21 and not her. But we know for a fact that it was
22 '96.

23 So if she's testifying that "On
24 November 2nd, that was the day?"

25 "Yes, that was the last day I seen the

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1 gun," she means the day they bought it. But she's
2 just wrong about the year. So when she testifies
3 here in South Carolina that she never sees the gun
4 or Bayan again after November '97, she's already
5 lying -- she's lying because we know in February
6 of -- we know that February of '97 she's bonding
7 him out.

8 The problem is at trial when Mr. Sims
9 was crossing her he knew that she bonded him out
10 but didn't know the date, okay? If she had
11 known -- if he had known the date of the bonding
12 out he could have impeached her right then because
13 that would have said February of '97, got the gun
14 '96, so obviously you saw him after the gun.

15 Then she says I never saw him after
16 bonding out. But then now we've got like five
17 other things we're about to show the Court that
18 shows she saw him all throughout '97, so....

19 THE COURT: All right. Hold on one second
20 for me. Let me see those two transcript
21 exhibits, I don't need the indictment, just the
22 transcripts that you've been talking about.

23 MR. TARR: And, Your Honor, just for
24 purposes of letting you know the clearest way to
25 look at this, if you look at that January 19th,

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1 '99 transcript from Pennsylvania, she describes
2 what she testified to in South Carolina, which
3 makes clear what she intended. She explains her
4 testimony in her own words.

5 (Pause in proceedings.)

6 MR. TARR: And it's bottom of page 7, top
7 of page 8. What was the nature of your
8 testimony in South Carolina? Top of page 8 she
9 goes into it and says what she said.

10 MR. BROWN: And, Your Honor, as far as the
11 reference about her not seeing him after she
12 bonded out, with all due respect, it's not
13 exactly what she said. On redirect Solicitor
14 Bailey says when he didn't show up for trial on
15 the Bucks County charge, he's referring to,
16 where did he go? This is questioning of
17 Ms. Batkilina and she says, I don't know.

18 But she's with him two months later but
19 seven months before this trial. Or excuse me, 14
20 months before this trial.

21 Your Honor, to show you where it's
22 argued is on page 1,763 in Mr. Bailey's closing
23 argument if I may quote. "You'll recall from
24 Ms. Batkilina's testimony she had a relationship
25 with Mr. Aleksey, she knew him by a different

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1 name. She carried the gun home. The gun
2 disappears. He disappears. And she sees it again
3 in court the next time." That's not true. And
4 these are government documents that were -- show
5 it was not true.

6 THE COURT: Okay. Ask him another
7 question.

8 MR. BROWN: Sure. I believe that may be
9 the questions we have regarding the gun purchase
10 records and the bond documents.

11 THE COURT: Okay.

12 BY MR. BROWN:

13 Q. Now, obviously you could impeach Ms. Batkilina
14 with her convictions, in fact you could impeach her
15 with the convictions of 609 whether they carried more
16 than one year or not which we don't know because they
17 involved theft and fraud. And could you not have
18 impeached her under 608(b) with the facts of what she
19 did?

20 A. Yes.

21 Q. Because it goes to truthfulness?

22 A. I agree.

23 Q. So instead of just saying -- okay. And I don't
24 need to argue that.

25 Now, were you provided any of those

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1 documents by Mr. Bailey?

2 A. I have not to my recollection seen any of those
3 documents. I know the plea thing here, this is the
4 first time I've seen it. That's Applicant's Exhibit
5 Number 3. Of course I would not have seen this, this
6 is Applicant's Exhibit Number 5 which is the
7 January 19th, 1999 after the trial.

8 Q. We only mentioned that because it says that
9 she's with Mr. Aleksey under oath.

10 A. Right. And Applicant Number 6 which is I
11 guess -- which would be synonymous with an indictment
12 for us, I don't recall seeing that either.

13 Q. Okay. You were not -- okay. And Mr. Stone
14 never discussed that with you?

15 A. Not to my knowledge.

16 Q. You actually did the examination of
17 Ms. Batkilina?

18 A. Yeah.

19 Q. Okay. Can I show you these two other documents?
20 Were you provided rap sheets on Ms. Batkilina?

21 A. As a part of our discovery I thought we had
22 asked for all rap sheets.

23 Q. Sure. And do those look like the rap sheets
24 that you might have been provided on her?

25 A. It probably does look like it, yeah.

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1 Q. And do those records indicate anything about the
2 Kissimmee police report?

3 A. Nothing. I think Mr. Stone and I questioned
4 today, I mean --

5 Q. Sure.

6 A. -- while we were going through this whether we
7 received clean rap sheets on these people which would
8 have been explained why there was no questions as
9 relates to any of the things as relates to any of the
10 criminal activity.

11 MR. BROWN: And, Your Honor, we have --
12 and, Your Honor, at this time we have other
13 matters that I can already anticipate an
14 objection. However, I would like to proffer the
15 items and proffer the inquiry of Mr. Sims for
16 the matter of efficiency at the hearing and
17 obviously if we don't ever show it up later --
18 link it up later then I think it would be
19 subject to whatever objection Mr. Zelenka may
20 have.

21 THE COURT: What are we doing with these
22 documents?

23 MR. BROWN: Then I would move all of those
24 into evidence. For the record it would be
25 Applicant's -- no, no these two documents?

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1 MR. ZELENKA: I have no objection to those
2 two.

3 MR. BROWN: Then we would ask that these
4 two documents be stapled together and entered as
5 the rap sheet of Ms. Batkilina.

6 THE COURT: Very well.

7 MR. BROWN: And that would be Applicant's
8 7.

9 THE WITNESS: Seven.

10 THE COURT: Hand it to Ms. Keil, give her a
11 moment to mark it.

12 MR. BROWN: And then at the same time I'll
13 show these to Mr. Zelenka.

14 THE COURT: Okay:

15 (Entered into evidence was Applicant's Exhibit 7,
16 rap sheets for Yelena Batkilina.)

17 MR. BROWN: Then I believe Number 7 would
18 be entered into evidence. I think it's already
19 been done.

20 MR. TARR: Judge, just to let the Court
21 know we're very close to finishing with
22 questions referring to this woman and that would
23 probably be a good stopping point.

24 MR. BROWN: That's correct. It won't be
25 with this witness ending, but this woman

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1 examination by this witness.

2 THE COURT: I understand.

3 MR. ZELENKA: Subject to the way he
4 prefaced, my objection would be with tying up.

5 MR. BROWN: I don't think his objection
6 would be to authenticating these documents.

7 MR. ZELENKA: Right.

8 THE COURT: And you believe you can tie
9 them up so subject to your being able to tie up
10 authenticity.

11 MR. BROWN: We'll be honest, Your Honor,
12 they're from out of state, mostly from
13 Pennsylvania, out of state -- may involve out of
14 state depositions after this week.

15 MR. ZELENKA: It may not require that.

16 MR. BROWN: We've got a law firm in New
17 York, New Jersey, Pennsylvania offered to help
18 us. Subject to things we would have to bring up
19 with you later.

20 THE COURT: I understand. What you need to
21 do is have each one of them marked for
22 identification purposes.

23 MR. BROWN: That's what I would do next.

24 THE COURT: Okay.

25 MR. BROWN: Next, Your Honor, we would

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1 proffer the Plymouth Township Police Department
2 incident report, and let me staple it because I
3 don't staple them in my notebook because I can't
4 turn the pages with the staples and offer that
5 as Number 8, Applicant's Number 8.
6 (Marked for identification was Applicant's Exhibit
7 8, incident report.)

8 MR. BROWN: Then next we would offer the
9 Lower Moreland Pennsylvania Police Department
10 report involving Ms. Batkilina's fraudulent
11 activities in August of '97 as Applicant's
12 Number 9.

13 (Marked for identification was Applicant's Exhibit
14 9, police report.)

15 MR. BROWN: And then we offer some business
16 records from Burdumy Volvo, the victim in the
17 Lower Moreland police report that's going to be
18 Applicant's 9 as Applicant's 10.

19 (Marked for identification was Applicant's Exhibit
20 10, business records.)

21 MR. BROWN: And finally we offer
22 Ms. Batkilina's New York state driver's license
23 issued September 30th of 1997 as Applicant's 11.
24 (Marked for identification was Applicant's Exhibit
25 11, New York state driver's license.)

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1 MR. BROWN: And, Your Honor, we have
2 another document that we would also proffer
3 subject -- proffer into evidence subject to the
4 same objection of authenticity by Mr. Zelenka.

5 MR. ZELENKA: And relevance also.

6 MR. BROWN: And relevance and we would seek
7 to tie that up also, Applicant's 12. And this
8 is a police report filed by Ms. Batkilina as the
9 victim of a baseball bat battery by Mr. Shahar
10 Hadar, a white male, occurring within a week
11 prior to her purchase of the gun.

12 MR. ZELENKA: What is the date on that
13 again?

14 MR. BROWN: The report date is 10/26 the
15 occurrence is the same day of 1996, which I
16 think is exactly a week before the purchase of
17 the gun. Maybe six days.

18 (Marked for identification was Applicant's Exhibit
19 12, police report.)

20 THE COURT: Are you ready, Ms. Keil?

21 THE COURT REPORTER: Yes.

22 THE COURT: Just to review, Applicant's
23 Exhibits 8, 9, 10, and 11 are offered into
24 evidence subject to a showing of authenticity
25 later in this matter. Exhibit Applicant's 12 is

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1 admitted into evidence subject to a fulfillment
2 of the condition of relevancy and
3 authentication. Is that correct?

4 MR. ZELENKA: Yes.

5 MR. BROWN: That's correct. And we would
6 also like to be able to ask questions which we
7 assume will be subject to the same objection --
8 questions concerning these documents of this
9 counsel and we believe when we relate it up the
10 questions will be proper once --

11 THE COURT: I understand.

12 MR. BROWN: -- we relate this up.

13 THE COURT: Very well. Any objection,
14 Mr. Zelenka?

15 MR. ZELENKA: As stated.

16 THE COURT: Very well. Thank you.

17 BY MR. BROWN:

18 Q. I'm going to show you these documents. I have
19 to stand back here, I apologize. The first document
20 which is Applicant's 8 is a Plymouth Township police
21 report, and if you'll notice that involves a
22 fraudulent use of a credit card and I think they
23 actually call it theft of leased property.

24 A. Okay.

25 Q. And I ask you is that not the same police

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1 department, same crime listed on the rap sheet that
2 you admitted was provided to you, the rap sheet being
3 Applicant's 7?

4 A. Yeah, it's the same police department, it looks
5 like the same police department.

6 Q. And the same crime listed?

7 A. Yeah.

8 Q. And, of course, there's a ticket number on there
9 or an arrest number which doesn't appear on the front
10 page of this report but again this involves

11 Ms. Yelena Batkilina and the incident date is
12 5/11/97, the incident date on the police report is --
13 and I am not familiar with the report, the time of
14 the report was 6/1/97 and the incident date --

15 THE COURT: 5/11/97, isn't it?

16 MR. BROWN: I was going to find that, I
17 can't say that. IF I may read into the -- I
18 believe it was supposed to be returned on
19 5/11/97 per the report which means when it was
20 not returned that would become the incident
21 date.

22 Q. And the rap sheet indicates the charge is
23 dismissed; does it not?

24 A. The rap sheet indicates the charge was nol
25 prosed/withdrawn.

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1 Q. That's correct. Now, if the information there
2 was true, and even if not being true now that there's
3 a police report regarding this, you would have a
4 basis to cross-examine and impeach Ms. Batkilina
5 under 608?

6 A. I believe I could have asked her the question
7 about it.

8 Q. That's correct. You could have asked her about
9 it in front of the jury. And, in fact, does -- if
10 you look in the report, would you read the paragraphs
11 involving the investigator's actions. He says --

12 A. "I spoke to Ms. Yelena's sister, Christina. She
13 advised me her sister was due home from California on
14 6/12/97 at 15:00 hours. Christina said the Blazer's
15 parked at the airport. I advised to have Christina
16 phone me after I guess when she gets back. Charges
17 pending."

18 Q. And then when it goes down to the last
19 paragraph, then they call Mrs. Batkilina which is not
20 the same as Ms. Batkilina, that would be a Gelena.
21 Do you recall a Gelena Batkilina as being the mother
22 of Yelena?

23 A. I know their names was similar or sounded
24 similar.

25 Q. And that sounds correct. And the officer's

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1 report indicates that he spoke to Mrs. Batkilina?

2 A. It says "...to Mrs. Batkilina, advised her of
3 the arrest warrant for her daughter, Yelena.

4 Ms. Batkilina said she would have Yelena call me.

5 Also Mrs. Batkilina said she does not have a daughter
6 Christina."

7 Q. So what that reports indicates is the police
8 called about this car, they spoke to a lady named
9 Christina Batkilina. Christina says, oh, I'll tell
10 my sister, she's getting in from California, we'll
11 get the car back to you. They said it's locked.

12 They call back, talk to the mother, the mother says
13 I'll tell Yelena about the warrant, I don't have a
14 daughter named Christina.

15 And my point is would that also not be 608
16 evidence of untruthfulness?

17 A. If you could determine who Christina was. I
18 assume you're implying that Christina was Yelena?

19 Q. And let me ask you, you have out of state
20 subpoena power in a criminal case, don't you?

21 A. Yeah.

22 Q. So you could have gotten the police officer on
23 this, and I apologize, I'm not going to make a
24 comment, but it's a name I cannot pronounce, it's not
25 a common scotch-Irish name, but you could have

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1 probably or at least tried to do so?

2 A. Yes.

3 Q. And that wasn't done here.

4 Then next I would refer you to, and I would
5 refer you then to the next document which would be --

6 A. Wait a minute.

7 Q. Sure.

8 A. Let me correct something you said. You said it
9 wasn't tried here. I know we had investigators up in
10 that area. Now, whether they went to the appropriate
11 places, so I, I personally did not go to Philadelphia
12 or Pennsylvania.

13 Q. Okay. Y'all didn't ask for an out of state
14 subpoena related to this?

15 A. Not to my knowledge, no.

16 Q. Okay. And that's, again, Applicant's 8.

17 Now we move onto Applicant's 9. And this
18 is listed as a what type of crime?

19 A. Fraud, stolen auto.

20 Q. And the subject is?

21 A. Yelena Batkilina.

22 Q. And the date is?

23 A. 8/21/97.

24 Q. Okay. And if you would flip to the report, and
25 first -- first on the first page it says that she did

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1 present a check for \$33,000 for an automobile?

2 A. Uh-huh (affirmative response).

3 Q. And the check didn't clear and she failed to
4 return the car?

5 A. Yeah.

6 Q. Okay.

7 A. That's correct.

8 Q. This is a year before trial?

9 A. Right.

10 Q. Okay. And then if you'll read into the
11 follow-up report, does it not indicate that she was
12 at the dealership with a male named Michael?

13 A. Yeah.

14 Q. Okay. And does it also not indicate that the
15 fugitive -- let me flip it over here -- that the
16 Federal Fugitive Task Force were looking for Michael
17 and Ellen?

18 A. It says, yeah, Detective Coffey and Lasco of the
19 Philadelphia Police Department are working with the
20 Federal Fugitive Task Force and were looking for
21 Michael and Ellen.

22 Q. And then Gelena Batkilina testifies that Ellen
23 helped Michael DeAngelo bail out of jail in Bucks
24 County; does it not?

25 A. Yeah. Let me understand your question.

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1 Q: Sure.

2 A. It says Gelena, it says she helped bail Michael
3 out of Bucks County Prison in December 1996 and he is
4 the male who was with her daughter, so this is the
5 mother saying that, okay.

6 Q. They called the mother looking for the daughter
7 who stole a \$33,000 car by presenting a bad check.

8 A. Okay.

9 Q. Okay. And she could have been impeached about
10 the actual untruthful act of stealing the car and the
11 untruthful act of using a \$33,000 bad check, and does
12 it not indicate that she was with -- and let me go to
13 page 4 and it lists Michael DeAngelo as being an
14 a/k/a Bayan Aleksey?

15 A. Yeah.

16 Q. And this is also besides being untruthfulness of
17 Ellen several ways, it also shows that in August of
18 1997 she was with Bayan?

19 A. Yeah.

20 Q. Despite her previous assertions or her
21 subsequent assertions at trial?

22 A. As I said earlier, I can't remember seeing any
23 of those documents.

24 Q. Sure.

25 A. And I know that I was told by my client that he

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1 was with her during that period of time or had any
2 involvement with her.

3 Q. Or provided by any government agent or
4 prosecutor any of these documents?

5 A. No, sir. Not to my knowledge.

6 Q. You would expect these type documents to be
7 turned over?

8 A. Yes.

9 Q. I would refer you to Applicant's 10, if you
10 notice it's a customer receipt form, or excuse me,
11 it's a positive ID form to Burdumy Volvo. If you'll
12 look back in Applicant's 9, Burdumy Volvo is the
13 victim of a \$33,000 bad check?

14 A. Seems to be the same amount, \$33,551.80 stated
15 on here, which is the same thing as Applicant's
16 Number 9.

17 Q. And Applicant's 10 is the actual records of the
18 business and you would have been able to go into this
19 information under 608?

20 A. We would have been able to presumably
21 cross-examine her and impeach her on those issues.

22 Q. Does it not say -- what does it say, what is the
23 handwritten information that says Burdumy Volvo,
24 starts Burdumy Volvo?

25 A. "Void customer as a fraud, PAC Batkilina."

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1 Q. In other words, if you had that document at
2 trial there would be no doubt that at least the
3 Burdumy Volvo dealer in Pennsylvania believes that
4 Ms. Batkilina is a fraud along with all the other
5 fraudulent stuff, which would show that her testimony
6 about him stealing the gun is, in fact, not
7 believable?

8 A. True, we would have been able to go into it and
9 explore it.

10 Q. Okay. Then I would show you Applicant's 11 and
11 ask you if that's a driver's license --

12 A. Yes, it is.

13 Q. -- from the state of New York?

14 A. Yes, it is.

15 Q. And that driver's license indicate -- it was
16 issued on what day?

17 A. 9/30/97.

18 Q. And do you recognize that address?

19 A. No, I don't --

20 Q. The address is?

21 A. The address is Yelena Batkilina, 143-48 41st
22 Street, 41st Street Avenue, 1C, Flushing, New York.

23 Q. Is that not the address of Vera Aleksey, Bayan
24 Aleksey's mother?

25 A. I believe -- I have to look in the record again

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1 and look at the transcript to get the address.

2 Q. Sounds close, doesn't it?

3 A. Yes.

4 Q. And that is even two months or a month after the
5 Volvo thing. Of course that doesn't say that she's
6 with Mr. Aleksey, but she is using his mother's
7 address to get a driver's license from the state of
8 New York, quite possibly because she's on the run for
9 these other crimes because they all occurred in
10 Pennsylvania.

11 A. Are you asking me that or --

12 Q. Well, that is a question. I guess you can say
13 no or yes.

14 A. I don't know. You know, all I know is this
15 shows New York, those were in Pennsylvania.

16 Q. Okay. And at trial did Ms. Batkilina not
17 testify that she purchased the gun at the urging of
18 Mr. Aleksey?

19 A. I believe she did.

20 Q. Okay. And would you look at Applicant's 12, I
21 believe?

22 A. Yeah.

23 Q. And this is a police report dated 10/26/96 which
24 would be within a week of the purchase of the gun.
25 And if you read, and it's certainly not clear, but it

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1 says --

2 A. Arresting officer.

3 Q. That's correct. But then it says above, which
4 is Ms. Batkilina, above stated that the below, which
5 is a Shahr Hadar --

6 A. Hit her with a baseball bat.

7 Q. In the right leg.

8 A. Yeah, in the right leg.

9 Q. Would that not be evidence of a motive for her
10 to purchase the gun other than the request of
11 Mr. Aleksey?

12 A. Yes, that would have been.

13 MR. BROWN: And, Your Honor, after some
14 delay I believe that would bring us to the end
15 of our testimony with Mr. Sims regarding
16 Ms. Batkilina.

17 THE COURT: I'm with you.

18 MR. BROWN: And we would ask him -- and I
19 know you mentioned stopping at 5:30 and it's
20 5:32. I would point out to Your Honor, and we
21 mentioned this in our opening, that this is very
22 strong proof of perjury. At some point we're
23 going to ask you to order an investigation of
24 Ms. Batkilina because I believe the State of
25 South Carolina can issue a warrant for her

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1 arrest. We have information where she lives.

2 THE COURT: Very well. What we will do is
3 we will adjourn at this point and we will
4 reconvene in the morning at 9:30.

5 Of course, Mr. Sims, as you know do not
6 discuss your testimony.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: And we will proceed in the
9 morning.

10 Yes, Mr. Zelenka.

11 MR. ZELENKA: Your Honor, I have one
12 request.

13 THE COURT: Sure.

14 MR. ZELENKA: I've been advised by former
15 counsel Stone he's asked for a copy -- for his
16 file to review and they provide his request.

17 THE COURT: Yes, I am glad you brought that
18 up.

19 MR. TARR: No, Your Honor.

20 THE COURT: Just a minute. Let me hear
21 from you. I've considered that myself and so
22 let me ask this question of you. Do you all
23 have the original file?

24 MR. TARR: Your Honor, first let me respond
25 to this. Mr. Stone came up in the middle of

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1 testimony in this case about 30 minutes ago and
2 asked if he could look at the file. I'm in the
3 middle of this testimony, I'm referring to all
4 these files. That is not the appropriate time.
5 That is the first time ever he asked for it.

6 So I don't want it to look like they
7 asked sometime to look at the file; we denied it.
8 I just said if you get with me after is this
9 hearing I'll be happy to let you look at it. So I
10 just wanted to clear that up.

11 THE COURT: Sure.

12 MR. TARR: The original file as what
13 happened, Mr. Sims and Mr. Stone gave up their
14 files.

15 THE COURT: That's what I understand.

16 MR. ZELENKA: He said that? Please tell
17 the Court --

18 THE COURT: Let them finish.

19 MR. TARR: Your Honor, may I have a minute
20 with my counsel, please?

21 THE COURT: Absolutely.

22 MR. BROWN: We were not anticipating this.

23 THE COURT: I understand.

24 MR. BROWN: Actually I would like a moment
25 with him at least in -- somewhat in seclusion.

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1 THE COURT: You're talking about you need
2 to -- you need to talk to Mr. Aleksey?

3 MR. BROWN: No, Mr. Tarr.

4 THE COURT: Oh, Mr. Tarr? Oh, sure.

5 MR. BROWN: We did not anticipate this
6 because, again, we've had the file for months.

7 THE COURT: Many months.

8 MR. TARR: We've had the file for 17
9 months.

10 MR. BROWN: Right, without a request.

11 MR. TARR: Didn't ask to look for it until
12 the middle of testimony on the first day of
13 hearing.

14 THE COURT: I'm with you. Step out. Let
15 me ask you this question: Does it -- y'all do
16 your conversation, and if you need longer let me
17 know.

18 MR. BROWN: Let me say this. We have a
19 fair amount of testimony left for Mr. Sims and
20 it might be something we could argue in the
21 morning.

22 THE COURT: Okay.

23 MR. TARR: And also, Your Honor, this trial
24 file is -- I mean, we're going to be -- we were
25 up until 3:30 last night working on this case,

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1 we're going to be doing that again, and I'm not
2 prepared to hand over something that we're using
3 to do our case.

4 MR. BROWN: That's correct.

5 MR. TARR: That they had 17 months, if they
6 wanted the file they could have done it.

7 MR. BROWN: That's right. They didn't ask
8 for a copy they might be entitled to under the
9 rules.

10 THE COURT: Do you need to talk?

11 MR. BROWN: Yes, we do, but we would
12 present --

13 THE COURT: Go talk.

14 You can come down.

15 (Whereupon, the witness steps down from the
16 witness stand.)

17 (Pause in proceedings.)

18 MR. TARR: Your Honor, it would be our
19 position that the timing of this request is
20 completely unreasonable, and that this file that
21 we have is going to be in full use of Mr. Brown
22 and Mr. Aleksey and I all day long during each
23 day of this hearing as well as during the
24 evening when we're working on the case, and that
25 we do not have a problem making a copy of this

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1 file at their expense after we are done taking
2 testimony this week.

3 I mean, there's just no other time that
4 would be appropriate unless we were just to, you
5 no, take off for hours on end and make a copy of
6 the file and, you know, take away from the already
7 limited time we're going to have to conduct the
8 rest of this hearing.

9 And I think in light of the fact that
10 they waited until half way through the first day
11 of the hearing, there's been a pending action
12 for -- since -- we've been on the case since July
13 of last year, 2001, the case has been pending
14 since actually I believe May of 2001, to wait
15 until now to request that would be a great
16 hinderance to us and our presentation of the case.

17 Don't get me wrong, we have nothing to
18 hide, we're happy to give it to them, it was their
19 file, they gave it up, didn't keep a copy and
20 can't come in here in the middle of the case and
21 ask to have it and ruin our presentation.

22 MR. BROWN: I would just add that there are
23 13 bound volumes and that's a pretty rough
24 estimate, I see number 13, 13 three-ring binder
25 bound volumes which I estimate each one can

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1 carry up to 500 pages, and so we're talking
2 about nearly 6,000 pages of documents, that the
3 first 6,000 pages that we're not having access
4 to. Second, it's not something we are going to
5 take to Kinko's and make 6,000 copies tonight.

6 MR. TARR: Also we have six other binders
7 that are not even here because they actually
8 deal with the mitigation in this case which the
9 witnesses that we have for the most part in this
10 hearing are not going to be presented at this
11 time. So, I mean, those are with my mitigation
12 specialist and we're talking 19 binders as you
13 have seen the typical one.

14 THE COURT: I understand. And those -- the
15 19 binders that you are referring to all compose
16 the original file? Yes, no? No, yes?

17 MR. BROWN: Your Honor, I believe at this
18 time we would not want to answer that question
19 on the grounds of attorney/client privilege and
20 work product. In other words, the file was
21 turned over to our client, and so how it came to
22 us after that is privileged and work product,
23 although we're not saying that we won't answer
24 it, but I think the question's whether he gets
25 access to it tonight, not necessarily where it

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1 came from. I mean, it came from him to us.

2 THE COURT: Let me say to you, let me
3 rephrase my question to you. If, in fact, I
4 ordered that the original file be given to
5 counsel to review, are you telling me that you
6 don't know what that is?

7 MR. BROWN: No, ma'am.

8 THE COURT: You're telling me you do know
9 what that is?

10 MR. BROWN: We do believe we have trial
11 counsel's file.

12 THE COURT: Okay. And your response would
13 be, Mr. Zelenka?

14 MR. ZELENKA: My response would be it's --
15 when they made the request I didn't have the
16 authority to request their file as State of
17 South Carolina. The lawyer, Mr. Stone, the
18 first he knew about this case was when he got
19 subpoenaed for it.

20 MR. BROWN: That is untrue. We met with
21 him.

22 MR. TARR: We met with him. Mr. Sims
23 testified he never met with us. We met with him
24 for two hours at his office, Your Honor.

25 THE COURT: Gentlemen.

Thomas R. Sims - Direct Exam

1. MR. TARR: The day before that --

2. THE COURT: Mr. Tarr.

3. MR. TARR: I'm sorry.

4. THE COURT: Listen, guys. I got that
5. you're outraged, but listen to me. There has to
6. be decorum, there has to be order and I'm going
7. to listen to you, so relax.

8. MR. TARR: Yes, Your Honor.

9. THE COURT: Let him speak and then you get
10. to speak. And I got that you guys got lots of
11. alacrity about this matter and that's wonderful
12. but we have to have order.

13. MR. TARR: Yes, Your Honor.

14. THE COURT: Because if we don't, Ms. Keil's
15. not going to be able to take it down. And I'm
16. going to listen to you.

17. MR. TARR: I apologize.

18. THE COURT: That's okay.

19. MR. TARR: I thought when you interrupted
20. me I thought you were just telling me to be
21. quiet and speak softer and that's why I kept
22. talking. I didn't know you wanted me to stop.
23. I'm sorry.

24. THE COURT: That's fine, Mr. Tarr.

25. Yes, sir, Mr. Zelenka.

Thomas R. Sims - Direct Exam

1 MR. ZELENKA: The first thing he knew about
2 this case being heard this week is when he got
3 the subpoena last Wednesday. I received the
4 subpoenas approximately one week or so before
5 that provided to me by counsel that they
6 intended to subpoena these individuals, so I did
7 not subpoena them.

8 I received the second amended
9 application by fax I believe on Thursday of last
10 week, faxed it to both counsel at that particular
11 time. I did not discuss matters with counsel
12 until the final application is received, it's just
13 a policy that I generally have. My assumption was
14 they would have known about those because of the
15 date that I had on their subpoena request somewhat
16 sooner.

17 So why they didn't request it for 17
18 months or so that you've been on the case, I can't
19 speak to that, but as far as preparing for it I
20 think the intent of Section 17-27-130 is to allow
21 for their preparation and presentation in the
22 case, and I think it's implicit in that that they
23 have the right to review the original transcript,
24 particularly when counsel knew that they possessed
25 the original.

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1 They could have turned it over to them
2 if they knew that it should be in their hands, and
3 it strikes me that that is, in fact, what they are
4 saying, and in fact they acknowledge that they had
5 met with them previously with apparent knowledge
6 that they possessed the original documents.

7 So I think he's entitled to review those
8 matters prior to his testimony and that's all I
9 have to say. I mean, he made the request today, I
10 can't explain why he didn't make it when he --
11 they first received it, although I would like
12 Mr. Stone to say what his conversation with
13 Mr. Tarr was as to whether he would let him look
14 at it today, because that's between them, not me.

15 THE COURT: Sure. I understand. You're
16 up.

17 MR. STONE: Yes, ma'am. The only thing I
18 didn't ask for it 17 months ago, I didn't know
19 it was an issue until Thursday and that was the
20 reason that -- that was the first that I knew
21 that Mr. Aleksey having the original file was an
22 issue at post-conviction relief, so from that
23 standpoint. And I received my subpoena
24 Wednesday.

25 From the standpoint of I noticed a

Thomas R. Sims - Direct Exam

1 number of questions about did this, was this in
2 your file and various things like that. These
3 questions, I'm assuming if I see the file I'll
4 know the answer to that. I may know the answer to
5 that off the top of my head, I don't know.

6 A lot of my stuff is kept on computer so
7 I certainly would be able to review that, all of
8 that I have access to and all of that I still
9 have. But as far as asking for the trial, I
10 simply did not know that was an issue at
11 post-conviction relief until Mr. Zelenka faxed me
12 the PCR application Thursday, I'm assuming it was
13 Thursday of last week, and I did not know about
14 this particular hearing.

15 I have met with him, I met with the
16 counsel for Mr. Aleksey probably a year or so ago,
17 I don't exactly know the date, but I met with them
18 in my office. So I certainly knew that there was
19 post-conviction relief and I expected that at the
20 end of the trial. So certainly I'm not surprised
21 by post-conviction relief.

22 Knowing that the file is a part of the
23 application itself was something that was new to
24 me as of Thursday and I just tender that.

25 THE COURT: Sure. Well, this is what we're

Thomas R. Sims - Direct Exam

1 going to do. Here's what we're going to do.

2 There are several matters that I have considered
3 so let me put them on the record. And they are
4 the following: Number one, we have the beauty
5 of this being non jury, A, versus having a jury
6 that would have to make this determination
7 immediately.

8 Secondly, there's an additional beauty
9 because as I understand it the applicant
10 anticipates, and I anticipate that the applicant
11 will take the balance of this week. I do
12 understand that the applicant is calling counsel
13 and that comes to no one's surprise. However,
14 there will be another day and there will be a time
15 when the State can call these attorneys back, if
16 need be.

17 I am sensitive to the fact that counsel
18 hasn't had an opportunity to review the original
19 documents, and it's difficult, and I've watched
20 Mr. Sims, it's difficult to get a document
21 presented on the stand and you don't know if it
22 came out of your file or didn't come out of your
23 file, but that's just where we are and we're going
24 to argue about why we are where we are, but that's
25 where we are.

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1 I am at this time most concerned with
2 not disturbing the applicant's ability to present
3 his case. So I'm not going to take the file away
4 from you gentlemen and I think I'll order that you
5 sleep more, but I'm certainly not going to take
6 the file away from you and disturb your
7 preparation.

8 What I will do, however, is that just as
9 you have done, you have been showing the documents
10 to counsel and given them an opportunity to review
11 it. It very well may be that at such time as
12 counsel's had an opportunity to look at the record
13 there may be some amendment to that in their case,
14 and if it is I'll just deal with that as I sit as
15 the fact finder.

16 I understand that that is a problem, I
17 understand that trial counsel at this time is
18 dealing from their memory, I understand that, I
19 understand that there will be time at the
20 conclusion of this week for trial counsel to
21 review the file.

22 I'm going to order that it be made
23 available. And apparently you all have been very
24 careful in keeping the original file separate from
25 what you all are working with, because clearly

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1 only the original file ought to be seen. I'm
2 going to give them an opportunity to look at it.
3 However, I'm not going to interrupt what PCR
4 counsel is doing because this is your time and
5 your preparation and I'm not going to disturb what
6 you have.

7 But, again, the beauty of it is that
8 even as you examine the trial counsel after
9 they've looked at it, there needs to be some
10 amendment, we can fashion some way to communicate
11 about that so that you all are aware of that and
12 that can be presented to the Court at some later
13 time. So that's the way we're going to proceed.

14 MR. TARR: Your Honor, I appreciate that.
15 And the only question and we can deal with this
16 at a later time.

17 THE COURT: Sure.

18 MR. TARR: Is that when we finish Friday we
19 will not be finished with the hearing because as
20 you realize we have at least two other
21 witnesses, possibly three, that we will not get
22 to even if we got finished tomorrow, you know,
23 because they're not available.

24 THE COURT: Sure.

25 MR. TARR: And we've already talked about.

Thomas R. Sims - Direct Exam

1 that. And, you know, we will have to have this
2 file to work on that aspect of the case.

3 THE COURT: Sure you will. Of course you
4 will. Absolutely, Mr. Tarr, and we're going to
5 fashion something that in no way impedes your
6 ability to do the work that you need to do,
7 clearly. And likewise to provide these folks
8 with an opportunity to review it. We're going
9 to fashion something that's right and workable
10 for everyone.

11 MR. TARR: Thank you, Your Honor.

12 THE COURT: But when you all tell me that
13 you're working and you need it, I certainly -- I
14 agree with you it is very difficult for you at
15 this point. I don't say that to criticize at
16 all trial counsel, it's just where we are and
17 we'll just deal with it.

18 Anything further before we break for
19 this evening?

20 MR. TARR: Your Honor, just to help out
21 Mr. Stone and Sims, obviously Mr. Sims I guess
22 we're starting at 9:30.

23 THE COURT: 9:30.

24 MR. TARR: He obviously should be here
25 then. I'm thinking we're about halfway through

Thomas R. Sims - Direct Exam

1 with his testimony.

2 THE COURT: Sure.

3 MR. BROWN: That's correct. And we also
4 believe it will go faster by using the method of
5 documents that the admissibility is in issue
6 that we'll just proffer them and relate them up
7 later.

8 THE COURT: That will be fine. The only
9 thing I really sort of want everyone to be real
10 sharp about is that as you get tired and we
11 leave these issues this day it becomes difficult
12 to tie them up, so I've made my notes. I hope
13 you all have made your tie-up list so we can
14 address that.

15 MR. BROWN: Sure. And actually we would
16 like to be able to go through the documents
17 obviously with the court reporter.

18 THE COURT: That's certainly not going to
19 be a problem.

20 MR. TARR: As far as Mr. Stone, Your Honor,
21 I'm just trying to give him an idea of when to
22 be here.

23 THE COURT: Thanks. Why don't we say after
24 lunch for Mr. Stone.

25 MR. TARR: After lunch.

Thomas R. Sims - Direct Exam

1 THE COURT: Is that workable?

2 MR. STONE: Yes, ma'am. I appreciate it.
3 I certainly don't mean to cause the Court or the
4 petitioners any problem.

5 THE COURT: You are not at all. You are
6 not at all. Again --

7 MR. STONE: I'll come tomorrow morning as
8 quickly as I can get here. I just have some
9 business to take care of.

10 THE COURT: You'll be here when you are
11 here. If you're running a little bit late -- in
12 fact, let's give the number in chambers and if
13 you want to check in in the morning and see how
14 we're coming along that would be great, too.

15 MR. STONE: Sure. That would be great.

16 THE COURT: That would be great. Super.
17 Absolutely. Anything further?

18 Now, I understand that Mr. Aleksey is
19 going back to Lieber this evening and will return
20 in the morning at 9:30. You guys need anything so
21 y'all can be back here by 9:30 in the morning?

22 LIEUTENANT RANGE: Your Honor, we'll get
23 him here.

24 MR. BROWN: Can we ask that he be here at
25 9:00 so we can start at 9:30.

Thomas R. Sims - Direct Exam

1 THE COURT: Oh, 9:15 will work just fine.

2 MR. BROWN: Sure. I'm just saying if we
3 want to start at 9:30, he's not here until 9:30.

4 THE COURT: That's kind of like me, you
5 have to make plans at 9:15 to be here at 9:30.
6 If you anticipate any difficulty tell me what I
7 can do to intercede so that you all can have
8 that happen smoothly. I appreciate you all
9 obviously working really fast this morning to
10 have him here and I appreciate that. If there's
11 anything I can do to issue an order I'm happy to
12 do that if you all would let me know what would
13 be beneficial.

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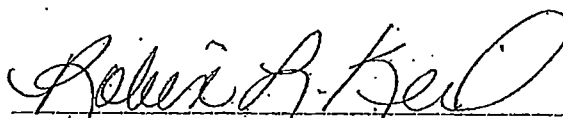
STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

I, Robin L. Keil, Registered Merit Reporter and First Judicial Circuit Court Reporter, certify that the preceding pages are a true and correct transcript of the proceedings had at the aforesaid time and place.

I certify that the same was reduced to typewritten form from my original stenograph notes by computer-aided transcription.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand this the 26th day of November 2003.


Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) CASE NO. 2001-CP-38-628

ORIGINAL

BAYAN ALEKSEY,) VOLUME II, Pages 239 - 492
Applicant,)
) TRANSCRIPT OF RECORD
-versus-)
) POST-CONVICTION RELIEF
STATE OF SOUTH CAROLINA,)
Respondent.) November 13, 2002

B E F O R E:

The Honorable Diane S. Goodstein

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

Jim Brown, Esquire

David Tarr, Esquire

For the Applicant

Donald Zelenka, Esquire

For the Respondent

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I N D E XWITNESSESTHOMAS R. SIMS

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1 (Wednesday, November 13, 2002.)

2 THE COURT: All right. Are you all ready
3 to begin?

4 MR. BROWN: I believe so.

5 THE COURT: Are you ready?

6 THE WITNESS: I'm ready.

7 THE COURT: All right. All right,
8 Mr. Sims, of course you remain under oath.

9 THE WITNESS: Yes, ma'am.

10 MR. BROWN: May it please the Court, Your
11 Honor.

12 THE COURT: Yes, sir.

13 CONTINUED DIRECT EXAMINATION

14 BY MR. BROWN:

15 Q. Yesterday we ended with our discussion of the
16 information regarding Yelena Batkilina and she was I
17 think the first witness the State called. One of the
18 next witnesses, I believe the next one was Thomas
19 French. Do you recall Mr. French testifying?

20 A. From what you talked about yesterday I recall
21 him testifying.

22 Q. And he was I think a gun store owner?

23 A. Yes..

24 Q. And, in fact, the person who sold the gun, the
25 Bryco .9 millimeter?

Thomas R. Sims - Direct Exam

1 A. Yes.

2 Q. What I would like to do, do you have a copy of
3 the transcript that you can refer to?

4 A. No, it's --

5 THE COURT: What do you need? Because I
6 certainly have it right here. Tell me what page
7 you need.

8 MR. BROWN: I was going to refer to the
9 witness.

10 THE COURT: Sure.

11 MR. BROWN: We are looking -- what I would
12 like to do is refer to Mr. French's testimony on
13 pages 930, 931 and 932.

14 THE COURT: There you go. Can I mention
15 this to you? I have two volume I's from 1 to
16 500. Is anyone missing theirs? Mr. Zelenka,
17 are you missing, because I know you gave me --
18 this is the filed copy.

19 MR. ZELENKA: I gave you two. That's from
20 the file and the other one's from the set I gave
21 you.

22 THE COURT: You know what it is, I have
23 actually two sets up here of the transcripts.

24 MR. ZELENKA: I brought the file to you
25 also.

Thomas R. Sims - Direct Exam

1 THE COURT: Great. Great.

2 MR. BROWN: Your Honor, if you don't mind,
3 may I allow the witness to have a set or put one
4 near the witness stand?

5 THE COURT: This one I'm reading. So I
6 tell you what, Mr. Sims, I hate to do that one
7 to you but pass me that since I've got my
8 markers on this one and then here is the entire
9 transcript. Can you get it?

10 THE WITNESS: Yeah, I got it.

11 THE COURT: You can leave it up there, you
12 can reach it. That doesn't help you, that's to
13 500, so you want that one. Great. All right.

14 A. 930?

15 Q. 930, 931 and 932 and I'm going to give you some
16 lines on each page.

17 A. 930.

18 Q. On page 930 if you look between lines 11 and 13,
19 this is the direct examination by Mr. Bailey and he
20 says, "Calling your attention to November the 2nd,
21 1997," and again Mr. French is talking about the
22 purchase of the gun, "did Ms. Batkiliņa return to
23 your store?"

24 And the answer is, "Yes, she did." It
25 goes on to say that she returned with Michael Pivero,

Thomas R. Sims - Direct Exam

1 who at some point is identified as being Mr. Aleksey.
2 And that is alluded to as the purchase date of the
3 gun.

4 If we refer to the next page, 931,
5 lines 13 and 14, it goes through the date recorded on
6 the documents regarding the purchase of the gun. And
7 line 13 says, "What date is on that?"

8 And his answer is "November 2nd,
9 1996."

10 A. Uh-huh (affirmative response).

11 Q. And if you'll notice the court reporter puts a
12 little notation "(sic)" indicating that that's a typo
13 or a misstate. In fact it should be, and the court
14 reporter indicates '97 she believes is what the
15 correct date is. Now, Mr. French is testifying
16 incorrectly.

17 And then if I can refer you to 932,
18 lines 17 through 19 again talking about -- and it's
19 got the firearm number which matches the number on
20 the ATF trace report that we've already introduced.
21 It says, "I think when I asked you about the dates
22 you said November 2nd, '96," it's a question from
23 Mr. Bailey. He says, "Was it '96 or '97?" And he's
24 trying to get looks like Mr. French to say '97. And
25 Mr. French does say '96.

Thomas R. Sims - Direct Exam.

1 Now, next I would like to refer you to
2 the closing which is on page 1,762 which is in the --

3 A. Volume III, I believe.

4 Q. That's correct. Volume IV, I believe, actually.

5 A. Yeah? Seventeen what now?

6 Q. Sixty-two and 63.

7 A. Okay, 1,762..

8 Q. If you'll refer on that one to lines roughly 2
9 through 9 talks about following Ms. Batkilina's
10 testimony we had Tom French who owns a gun store?

11 A. Uh-huh (affirmative response).

12 Q. He testified to them being in on two occasions
13 in October. You agree with that?

14 A. It's in the record.

15 Q. And then he goes, "And I forget the exact date
16 in October, but then again on November the 2nd when
17 they were together they purchased the gun."

18 A. Uh-huh (affirmative response)'.
19

20 Q. Then if you refer over to 1,763, lines 17
21 through 19, you recall Ms. Batkilina's testimony
22 who -- she knew about a relationship with
23 Mr. Aleksey, she knew by a different name. "She
24 carried the gun home, the gun disappears, he
25 disappears, and she sees it again here in court the
next time."

Thomas R. Sims - Direct Exam

1 Now, from her testimony as we went
2 over yesterday, doesn't it appear the implication
3 from Mr. Bailey was the gun was purchased and taken
4 by Mr. Aleksey in November of '97?

5 A. That's the import of his argument, his closing
6 argument.

7 Q. Okay. Then what I would ask you about is did
8 you impeach Mr. French's testimony or rehabilitate
9 him because actually Mr. French is trying to say '96,
10 did you try to do that with any of gun documents like
11 Applicant's Number 3?

12 A. Just looking at that it appeared I concentrated
13 more on the identification of Bayan, we concentrated,
14 we decided to concentrate on whether or not he could
15 specifically identify Bayan Aleksey as the person or
16 whether that was someone else going into his
17 recollection at that time.

18 I don't think we got into the
19 specifics on that date or whether that was a date.
20 And I just kind of glanced as I was reading the other
21 material.

22 Q. Okay. And then doesn't that contradict
23 Ms. Batkilina's testimony, however? She says '97,
24 Mr. French says '96.

25 A. Yes, it does.

.. Thomas R. Sims -- Direct Exam

1 Q. Okay. And Mr. French didn't have any bad doings
2 that anybody knows of?

3 A. Not that I know of.

4 Q. As a matter of fact, he was a law enforcement
5 officer or part-time had ties with law enforcement at
6 some time if I'm not mistaken?

7 A. I don't know whether he had part-time because I
8 can't remember all that, but I do know that he would
9 be a neutral witness, he was a gun store owner.

10 Q. And there was no question about his credibility?

11 A. Not as far as I was concerned.

12 Q. Not like there are or were about Ms. Batkilina?

13 A. No.

14 Q. He had never been running around with
15 Mr. Aleksey?

16 A. No.

17 Q. And Ms. Batkilina admitted that at least. And
18 so one argument that could have been made would have
19 been Mr. French testified correctly, look at the gun
20 documents, Ms. Batkilina testified falsely and the
21 defense could have made that argument she testified
22 falsely about the gun date, she's a person who
23 testifies falsely?

24 A. If we had known about the information that you
25 talked about on yesterday, the number of things that

Thomas R. Sims - Direct Exam

1 you gave in on yesterday, there would have been some
2 issues as relates to the possibility of impeachment
3 which we talked about yesterday.

4 Q. Okay.

5 A. However, in the middle of the trial when you're
6 concentrating on the issue of identification,
7 especially in light of the fact it had been some
8 years ago and he owned a store and the question was
9 whether or not he would be able to identify and to
10 remember this specific one.

11 Q. And that was your tactic was to question the
12 identification?

13 A. Yeah.

14 Q. Okay. Let me, and the last thing with
15 Mr. French's testimony, excuse me, would be showing
16 how the gun purchase date relates to the testimony of
17 the next witness I'm going to ask you about and her
18 name is Lisa Watson.

19 If you'll recall, and this is another
20 lady we're going to go into this, Your Honor, this is
21 the next witness, but before I finish with the gun
22 purchase date, Mr. French, Ms. Watson testifies, it's
23 in the transcript, that Mr. Aleksey held a gun to her
24 to make her purchase the Ford Mustang that was used
25 in this incident. I believe that that appears on

Thomas R. Sims - Direct Exam

1 1,962 about signing the lease papers for the Mustang.

2 Do you recall any of that testimony?

3 A. I vaguely recall.

4 MR. BROWN: And, Your Honor --

5 A. 1,962?

6 Q. 1,962, roughly 21 through 24 and of course the
7 rest of its context. But she's talking about the
8 purchase of the white Mustang that came to South
9 Carolina for lack of a better word was the crime
10 scene in this case.

11 A. Okay.

12 Q. Okay. So you do recall now that she, in fact,
13 testified that a gun was used to coerce her to
14 purchase this car?

15 A. I believe, but I also believe on the next page
16 when she was talking about one of the things he went
17 into was the fact that he was laughing she didn't
18 take him serious.

19 Q. Sure, but he had a gun on the date the car was
20 purchased.

21 A. Yeah.

22 Q. That's the --

23 A. I guess. Well, yeah.

24 Q. Okay. And the car purchase date is
25 September 30th give or take a day or two in this

Thomas R. Sims - Direct Exam

1 testimony, Lisa Watson says that?

2 A. I believe so.

3 Q. Okay.

4 A. If it's in the record.

5 Q. Sure. And this is September 30th of '97 because
6 the automobile is actually a '98 model.

7 A. Yeah.

8 Q. So obviously they come out with them a few
9 months early?

10 A. They usually come out with the new model from my
11 experience in September for the upcoming year.

12 Q. So this is the purchase of the car
13 September 30th of '97. But now if Ms. Batkilina's
14 testimony is right and Solicitor Bailey's
15 implications are correct, the gun is not purchased
16 until November of '97?

17 A. No. Oh. Yeah, I guess so.

18 Q. You mention that you believe the import of his
19 argument was that it was just a recently purchased
20 gun.

21 A. Right.

22 Q. And that would have been November '97 --

23 A. No. The import of his argument when you asked
24 me that question --

25 Q. Sure.

Thomas R. Sims - Direct Exam

1 A. -- you asked me this question as it relates to
2 his implications as to Yelena Batkilina's testimony.

3 Q. That's correct. She said the gun was purchased
4 November of '97?

5 A. Yeah.

6 Q. Okay. If that was purchased November of '97 he
7 didn't have that gun to hold on Ms. Watson
8 September 30th of '97. And so in other words,
9 Ms. Watson might have been impeached with the gun
10 altogether if Ms. Batkilina's testimony is believed.

11 A. Could have been.

12 Q. And y'all didn't impeach her testimony about the
13 date of the gun.

14 A. I think if you will read -- and obviously you
15 have read the transcript, we concentrated on her
16 relationship with Bayan, the fact that she was doing
17 things that she wanted to do, the fact that this was
18 a mutual kind of thing, he was giving her a service,
19 she was giving him a service.

20 Q. Sure.

21 A. We also talked about the fact that in regards to
22 that that there was laughing so she didn't really pay
23 this any attention, this was hyperbole something
24 Walter tried to bring out --

25 Q. You're saying it's not that harmful because he

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1 pulled the gun on her and she laughed about it.

2 A. She laughed about it. They all laughed about
3 it.

4 Q. Right. Okay. But you would agree that's a
5 contradiction?

6 A. Yeah, it's a contradiction.

7 Q. Okay. Now, the next person I want to turn to is
8 Lisa Watson.

9 A. Okay.

10 Q. Her testimony.

11 MR. BROWN: Your Honor, she testifies in
12 the guilt phase, her testimony begins --

13 THE COURT: 1,961.

14 MR. BROWN: Yes, ma'am. Actually, Your
15 Honor, that's the punishment phase. Her
16 testimony in the guilt phase begins on 1,275.

17 THE COURT: Thanks.

18 MR. BROWN: She testifies in both phases.

19 THE COURT: Thank you.

20 Q. And let me ask you this: You received a SLED
21 statement about Lisa Watson?

22 A. As I said yesterday, we may or we may not have,
23 I'd have to have my file to look and see. And if you
24 have a copy....

25 Q. Okay.

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1 MR. BROWN: This would be Applicant's 13,
2 Your Honor, is an affidavit of a Rickie Pattin,
3 the spelling's on there, it's a gentleman, and
4 that would be Applicant's 13 offered into
5 evidence as an item that was received by
6 applicant's counsel. There again, it's an
7 affidavit.

8 MR. ZELENKA: No objection.

9 THE COURT: Very well. Be Applicant's 13
10 in evidence without objection, it is an
11 affidavit.

12 (Entered into evidence was Applicant's Exhibit
13 13, affidavit.)

14 MR. BROWN: I'm going to go ahead and show
15 it to the witness if I may and then I'm going to
16 do some others real quick.

17 THE COURT: Sure.

18 MR. BROWN: Next would be Applicant's 14
19 and it's a fax with accompanying documents from
20 Mr. Pattin from Western Union to me at my law
21 office and I stapled it together, it is six
22 pages.

23 THE COURT: All right. Any objection?

24 MR. ZELENKA: Let me just be sure.

25 MR. BROWN: Sure.

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1 MR. ZELENKA: I thought you were going to
2 say something additionally.

3 MR.. BROWN: No, that was it, one.

4 MR. ZELENKA: Okay. No objection.

5 THE COURT: Very well. Applicant's 14 in
6 evidence without objection, it is a fax and it
7 is a six-page document.

8 MR. BROWN: That's correct.

9 (Entered into evidence was Applicant's Exhibit
10 14, six-page fax document.)

11 MR. BROWN: And then next, Your Honor, we
12 would have Applicant's 15 and it is a letter and
13 enclosures. The letter is to a SLED agent and
14 we received this copy at my office from
15 Mr. Pattin.

16 However, we also received not --
17 different copies of this from a SLED file that
18 we subpoenaed. However, it was not in the
19 prosecutor's file or trial counsel's file.

20 MR. ZELENKA: No objection.

21 THE COURT: All right. Will be Applicant's
22 15 in evidence without objection.

23 (Entered into evidence was Applicant's Exhibit
24 15, January 7, 1998 letter.)

25 MR. BROWN: And, Your Honor, next we would

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1 have Applicant's 16 which is a cassette tape
2 entitled "Lisa Watson Fraud" and it's dated
3 September 24th, '02 and it's got GWD as the
4 initials beside it, which refers to the person
5 that gave it to us which is SLED Agent Darnell,
6 George Darnell, and he gave this to Mr. Tarr in
7 our investigation of this matter.

8 So it was neither in the prosecutor's
9 file or in trial counsel's file. And actually I
10 don't believe it was in SLED's file, I believe
11 Mr. Darnell actually brought it from his I think
12 the quote was personal file.

13 And, Your Honor, the tape case has
14 suffered some slight damage. I'm going to tape
15 the lid to the rest of it.

16 THE COURT: Any objection?

17 MR. ZELENKA: No objection to its
18 introduction.

19 THE COURT: All right. Applicant's 16 in
20 evidence without objection. It is a cassette
21 tape.

22 (Entered into evidence was Applicant's Exhibit
23 16, audiocassette tape.)

24 BY MR. BROWN:

25 Q. Mr. Sims, what I would now ask is if you had

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1 seen any of the items introduced, there were four
2 items.

3 A. I don't recall. Of course, I didn't see the
4 Rickie Pattin, that's an affidavit that had just been
5 done.

6 Q. Yes, sir.

7 A. I believe you're saying this Western Union
8 transmission came from where, this is Applicant's 14?

9 Q. Right. The cover letter is obviously to my
10 office fairly recently. The underlying documents,
11 have you ever seen those? I mean, I only put that on
12 there to satisfy some authenticity issues.

13 A. I don't recall seeing any of this.

14 Q. Okay. And then the next item, these other
15 documents from Western Union, one of those, that top
16 letter is actually in that faxed copy set, too.

17 A. I don't recall seeing any of this. Of course,
18 you all have the file, I don't know where it came
19 from. That's why I was asking where it came from.

20 Q. Let me ask, you did the cross-examination of
21 Ms. Watson?

22 A. Yes.

23 Q. You don't recall any of the information?

24 A. No.

25 Q. Do you remember Western Union coming up?

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1 A. No.

2 Q. Never, not one issue about it.

3 A. While you were doing that I was looking at the
4 transcript --

5 Q. Sure.

6 A. -- as relates to Ms. Watson. One of the things
7 we concentrated on with Ms. Watson was her
8 culpability in the things that were going on. She
9 testified in the trial that she was in the dealership
10 for less than an hour, that all of the paperwork and
11 everything else that had been filled out had been
12 filled out by him, she simply walked in and signed
13 the documents and knew that he had the vehicle and
14 that she was going to be -- he was going to be the
15 primary driver of the vehicle, when we cross-examined
16 her on those issues that she was complying, that she
17 met him and three or four weeks later she is buying
18 him a car.

19 Q. And what she basically said in that part of her
20 testimony was that she went to the dealership for an
21 hour. Of course, she testified that Mr. Aleksey held
22 a gun to her head to get her to sign these documents,
23 she went down there for an hour and signed the paper,
24 he took the car, she never saw the car again and then
25 I think never saw him again was her testimony?

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1 A. I'm not sure. And I didn't have time to read,
2 but I'm not sure she said that in the -- at this
3 phase. She may have said that in the penalty phase
4 about the gun, but I'm not sure.

5 Q. And I think you may well be right, but that's
6 okay. But she did testify in this phase that she
7 went down there, signed the documents regarding the
8 automobile.

9 A. Yeah.

10 Q. And that she never saw him again?

11 A. Yeah.

12 Q. She left the lot -- excuse me, I think she said
13 she signed the documents, he drove the car off the
14 lot when she was still there signing them, she never
15 saw him or the car again.

16 A. She may have said she never saw him again, I
17 think that's correct, but she did talk with him
18 because he kept calling her according to the
19 transcript, he kept calling her asking her about the
20 vehicle, whether or not the vehicle had been reported
21 stolen.

22 Because I remember cross-examining her
23 on the fact that you didn't tell him that it had been
24 reported stolen, because there was some issue as it
25 relates to whether or not she had actually reported

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1 the vehicle stolen.

2 Now, that's in the transcript where

3 she said he kept calling me asking me about it. And

4 I responded to her by saying, "You never told him the

5 vehicle was stolen?"

6 Q. May I refer you to page 1,279 of the transcript?

7 A. Yeah, please do help me out.

8 Q. Sure. Lines 23, 24, and 25.

9 A. Yeah. "When is the last time you saw the
10 Mustang?"

11 "Probably the 30th right after I
12 signed the papers."

13 Q. Okay. And then the next page, "When is the last
14 time you saw Mr. Aleksey?"

15 A. Uh-huh (affirmative response).

16 Q. And her answer is?

17 A. "Probably the beginning of October, maybe
18 October 1st."

19 Q. Maybe October 1st, okay.

20 And then your cross-examination dealt
21 with impeaching her with the fact that she actually
22 signed the car for this man, she can't really
23 complain, she went down there, she's a grown adult,
24 she signed the document?

25 A. She had only known him for three or four weeks,

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1 she went down, bought him a car, was involved in
2 this, had a relationship with him.

3 Q. Okay. And then in the penalty phase Solicitor
4 Bailey comes back and says how did they make you sign
5 -- "How did he make you sign those papers?"

6 "He held a gun to my head."

7 Okay. Did you ever impeach her with
8 any fraud activity related to Western Union?

9 A. I didn't know basically of any fraud activity
10 with Western Union.

11 Q. Okay. If you will first take a look at the
12 affidavit of Mr. Rickie Pattin.

13 A. Okay. That's Applicant's Number --

14 Q. Thirteen.

15 A. -- 13.

16 Q. And that indicates that Mr. Pattin's an employee
17 of Western Union, he was employed in the collection
18 litigation department in 1997.

19 A. Uh-huh (affirmative response).

20 Q. That he investigated a fraud transaction
21 occurring, and this is important, on October 1st of
22 1997 which would have been the same October 1st that
23 Ms. Watson says may be the last time she saw him.

24 A. Yes.

25 Q. Okay. And then the next paragraph is a long

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1 paragraph detailing what he discovered in the course
2 of his investigation..

3 A. That's correct.

4 Q. And the first thing he says is that a Western
5 Union wire transfer was sent to Lisa Watson. The
6 purported sender was Andrew Watson.

7 A. Yes.

8 Q. Now, as you'll recall Andrew Watson was the
9 husband of --

10 A. Of Lisa Watson.

11 Q. Lisa Watson testifies at least in the penalty
12 phase that Mr. Aleksey took her for a lot of money
13 and took her husband for a lot of money, too?

14 A. That's correct.

15 Q. Okay. Now, the amount of the transfer that
16 Mr. Pattin indicates is \$7,500?

17 A. True.

18 Q. Okay. Next part of this paragraph in the
19 affidavit says for Ms. Watson to receive this money
20 transfer through Western Union, she had to complete
21 what's called a "To Receive" document. And it says
22 that in order to complete the "To Receive" document
23 Ms. Watson has to provide the sender's name.

24 In other words, when you came in and
25 say I'm expecting a wire transfer, they say, okay,

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1 fill out this document. And one of the questions is
2 who's sending it to you, and it's a way of
3 confirming, you know, otherwise if you just overhear
4 somebody's getting a wire transfer, you can go down
5 there say I'm Bill Gates and I'm getting a wire
6 transfer.

7 A. They have a form there, several forms at Western
8 Union, one to send and one to receive, one to send
9 money transfer.

10 Q. A "To Receive" form.

11 A. A "To Receive" form.

12 Q. Requires the recipient to put down the sender's
13 name?

14 A. That's correct.

15 Q. Again, the sender was Andrew Watson her husband?

16 A. That's correct.

17 Q. And she was estranged from her husband?

18 A. That's correct.

19 Q. Okay. And to receive the money she had to
20 provide Western Union with a driver's license?

21 A. That's correct.

22 Q. Indicating that she is Lisa Watson?

23 A. According to Mr. Pattin's affidavit, yes.

24 Q. And that's what you understand, too?

25 A. Yeah.

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1 Q. Okay. And Western Union Xeroxed the driver's
2 license which is probably fairly common. He
3 indicates that's the practice, actually was the
4 practice on this transfer.

5 And I believe Mr. Pattin's affidavit
6 also explains that no -- Western Union does not
7 release any money if the recipient cannot provide the
8 sender's name and the money transfer control number.
9 It's like a confirmation number.

10 A. I --

11 Q. Does that not appear in his affidavit?

12 A. That's in his affidavit. You know, if you're
13 asking me --

14 Q. He works for Western Union?

15 A. Yeah.

16 Q. Okay. He says she's got to come in, say I'm
17 getting money from Andrew Watson, the MTCN number,
18 which they give you as a confirmation number, is
19 this. I mean, that cuts down on fraud. In other
20 words, it is the person who the money's supposed to
21 go to.

22 A. You know, I guess that's right. That is what he
23 says here. I never received \$7,500 from Western
24 Union. I got a little money, I didn't have to go
25 through all that.

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1 Q. Sure. Sure. Then I think the next part he puts
2 in there subsequent to this transfer Mr. Pattin was
3 informed that Andrew Watson did not authorize this
4 use of his credit card.

5 A. That's true.

6 Q. And he has an audiotape recording confirming the
7 fraudulent use of the credit card. And he also
8 learned that Andrew Watson was estranged from Lisa.

9 A. Yeah.

10 Q. Okay. And his office was prepared to criminally
11 prosecute Ms. Watson for this transaction. However,
12 he received notification, and I'm just reading out of
13 the affidavit, I guess you would agree with --

14 A. Yeah, what he said --

15 Q. Okay. And it says that I received notice, he
16 was ready to criminally prosecute this. But he
17 received notice in August of 1998, and if you refer
18 to the other documents the date of the transaction,
19 the date of the conversations were August 11th.

20 A. Right.

21 Q. Which is prior to Mr. Aleksey's trial. He
22 received information then that the government, this
23 government would have either been the federal
24 government, because of the fact that a wire was used
25 or the phones were used or whatever else to be a wire

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1 fraud, or since the transfer was picked up you'll see
2 another document in New Jersey, maybe the New Jersey
3 police, or since Mr. Watson lived in Philadelphia
4 arguably the crime could have been prosecuted in
5 Pennsylvania.

6 So in other words, he says that he was
7 informed that the government wasn't going to pursue
8 prosecution of Ms. Watson. And that he believed she
9 could have been successfully prosecuted.

10 And the last thing that's important in
11 this affidavit is that Mr. Pattin said he gave all of
12 this information on January 7th, 1998, seven days
13 after the arrest of Mr. Aleksey, he gave all of this
14 information to SLED Agent Ken Mears. You agree
15 that's what's in the affidavit?

16 A. That's what's in the affidavit.

17 Q. Okay. Now, the next thing I would refer you to
18 I think is actually the Applicant's 15. And this,
19 the top document is a letter with Western Union
20 letterhead and it's dated January 7th, 1998 and it's
21 to SLED Agent Ken Mears.

22 A. That's correct.

23 Q. It says, Re: Western Union v. Lisa Watson?

24 A. Correct.

25 Q. And the letter goes through and says this is an

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1 actual recording called in, you identified the voice
2 as the suspect you have in custody, meaning the voice
3 on the tape is Mr. Aleksey. In other words, the
4 caller says I am Andrew Watson and I am sending
5 \$7,500 to Lisa Watson.

6 A. That's true.

7 Q. Okay. And so it looks like Mr. Mears has a tape
8 which we have -- which is now Applicant's 16. And so
9 it looks like that is, that he did receive a tape.
10 The letter says I'm sending it to you, there's the
11 tape.

12 A. Right.

13 Q. Okay. He said also submitted with this letter,
14 this is Mr. Pattin writing a letter to the SLED
15 agent, also submitted are the actual drafts, the
16 drafts being the money transfer checks, are the
17 actual drafts signed by Ms. Watson along with copies
18 of signed drafts cashed by Ms. Lisa Watson.

19 So, in other words, he's sending
20 Mr. Mears the actual drafts and the endorsed drafts.
21 And the endorsed drafts have Ms. Watson's signature
22 as the endorser?

23 A. Yes, that's her signature.

24 Q. The date of the drafts is October 1st and it's
25 actually at 7:30 p.m., so it's at the end of the day.

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1 And then his letter goes on and says Ms. Watson
2 cashed the checks at the Trop World Hotel and Casino
3 which I think is short for the Tropicana World Casino
4 in Iowa and Boardwalk in Atlantic City, New Jersey,
5 and it lists the telephone number of the casino. It
6 says they were cashed just like I mentioned. It says
7 October 10th, the actual checks say October 1st, I
8 think there's a typo there, at 7:30 p.m. Of course,
9 accompanying 15 are a copy of the drafts signed with
10 all that date information.

11 A. Yeah.

12 Q. He says if you have any questions please contact
13 me. This is what he tells Agent Mears. Okay. And
14 the rest, like I said, the rest of 15 are four drafts
15 front and back with Ms. Watson's signature on it.
16 And, of course, each -- the first three are 2,000,
17 one's for 1,500, because I believe that they can't
18 write a \$7,500 Western Union, 2,000 is the max, they
19 split it up.

20 A. That's true.

21 Q. Okay.

22 A. I know that they have a -- I can't say whether
23 that's it.

24 Q. Sure.

25 A. But they have a limit on the, the size of a

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1 check that they will issue and if it's over a certain
2 point they will issue a series of checks to reach the
3 amount that you were supposed to have received.

4 Q. Sure. And on the letter to Mr. Mears it said
5 the total charge was 7,813 which is more than \$7,500,
6 but the \$313 would seem to indicate like a
7 40 percent, or 4 percent, actually, I can't do the
8 math, but some type of transaction fee.

9 In other words, they're out not just
10 the \$7,500 they gave her but the \$313 that they would
11 have charged for the transfer itself. You would
12 agree that that would be a possible explanation?

13 A. That's on the thing. I don't know what that's
14 for.

15 Q. And then the last thing that's attached on
16 Applicant's 15, it says attention Rickie Pattin and
17 it's got a copy of Lisa Watson's driver's license.

18 A. That's true.

19 Q. Okay.

20 MR. BROWN: And what I want to do at this
21 time is hand the affidavit, Applicant's 13 and
22 15 to Your Honor.

23 THE COURT: Let me look at it real quick
24 and move on.

25 MR. BROWN: Sure. I want you to take a

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1 look before we get too much information.

2 THE COURT: Sure.

3 MR. BROWN: Your Honor, I also show you
4 Applicant's 16 which is the tape.

5 THE COURT: All right. Yes, sir,
6 Mr. Brown, you can continue.

7 MR. BROWN: Thank you.

8 Q. Now I would move to what's Applicant's 14. And,
9 Mr. Sims, if you would take a look at that. Again,
10 the first page of that is a faxed letter to me from
11 Mr. Pattin. I only put that down there for
12 authentication purposes.

13 The second page is a fax sheet from
14 Mr. Pattin to a Philamina Monaco, sadly it doesn't
15 describe who Ms. Monaco is, but Ms. Monaco's fax
16 number is listed as a 215 area code, which is the
17 Pennsylvania area code, or do you know that? Would
18 you know?

19 A. I have clients in Pennsylvania so the 215, I'm
20 familiar that is part of the Pennsylvania area code.

21 Q. And this letter fax cover sheet is dated
22 August 11th, 1998?

23 A. Yeah.

24 Q. And that's consistent with what Mr. Pattin says
25 that he contacted the government in an effort to have

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1 Ms. Watson prosecuted. And that's August of '98
2 which is the same time he did so. And, of course,
3 again it's -- that just has her name on there, we'll
4 attempt to tie that up later.

5 But what I would point out is then the
6 following two pages is a letter to Ms. Monaco dated
7 August 11th, 1998. It says Western Union versus this
8 time Andrew and Lisa Watson.

9 A. Uh-huh (affirmative response).

10 Q. Because what they're saying is Mr. Watson's
11 saying that this is not authorized and Ms. Watson's,
12 I guess he's also saying not to prosecute her, I'm
13 not sure. They think something's wrong because
14 nothing's happening, this is nearly a year old at
15 this point.

16 It goes through and says he gives
17 Ms. Monaco a rundown of what happened. The caller
18 wanted to send money to his wife, \$7,500. Do you see
19 that in the first paragraph?

20 A. Yeah.

21 Q. Okay. The credit card used was a National Bank
22 MasterCard, it gives a number.

23 A. Yeah.

24 Q. The money was made available to Ms. Watson.

25 A. Uh-huh (affirmative response).

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1 Q. The third paragraph in the letter says
2 Ms. Watson cashed the checks at the Trop World Hotel
3 and Casino.

4 A. That's true.

5 Q. She used her driver's license.

6 A. Yeah.

7 Q. The next paragraph, Ms. Watson was named in a
8 murder trial.

9 A. Yeah.

10 Q. In South Carolina. The contact person is?

11 A. George Darnell.

12 Q. And that's not the same person as Mr. Mears?

13 A. No.

14 Q. And so we've got Mr. Pattin sending documents --
15 we have a document sent to Mr. Mears very shortly
16 after the arrest in this case.

17 A. Right.

18 Q. But now we also have information that the
19 contact person is Mr. Darnell.

20 A. Right.

21 Q. Now, nothing I've shown you is documentation
22 from South Carolina to Mr. Pattin saying don't send
23 it to Mr. Mears, send it to SLED Agent Darnell. We
24 don't have any of that, do we?

25 A. No.

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1 Q. But obviously in this letter somehow or another
2 Mr. Pattin, who works for Western Union, and whose
3 fax number at the top is a 636 area code, somehow or
4 another he knows the name of SLED Agent Darnell?

5 A. True.

6 Q. Indicates there have been some conversations?

7 A. Apparently.

8 Q. More than just the letter that was sent from Mr.
9 Pattin to Mr. Means, SLED Agent Mears?

10 A. Apparently.

11 Q. Were you made available -- were those, any of
12 those conversations, the subject of those
13 conversations or letters made available to you?

14 A. No, not that I know of. And I can't recall. I
15 don't believe any of that's in my file.

16 Q. In your discussion or investigation of the case,
17 did you ever become aware that SLED Agent Darnell or
18 Mears was in correspondence with Western Union about
19 fraud committed by Ms. Watson?

20 A. Not to my knowledge.

21 Q. Okay.

22 A. Or not to my recollection either.

23 Q. And then in the next paragraph it says
24 Ms. Watson even assisted the suspect in buying a Ford
25 Mustang?

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1 A. Yeah.

2 Q. It says the \$7,500 is used as a down payment.

3 A. That's what it says.

4 Q. Frankly, the transaction didn't occur until
5 after the car was purchased.

6 A. Yeah.

7 Q. But somebody gave him that information. How
8 would he know about the purchase of the Mustang?

9 A. I don't know, I didn't give it to him. I don't
10 know.

11 Q. I mean, it's not something he would just pick up
12 in common knowledge?

13 A. I guess not, he would have had to have talked
14 with someone who was involved in the matter here in
15 South Carolina. He characterized wrong as her being
16 named in the murder case. She was named as a witness
17 in the murder case so he characterized that part
18 wrong.

19 Q. He knows information that he wouldn't know
20 without communications with somebody in the
21 investigation?

22 A. True.

23 Q. And this is the important part. He is sending
24 to Ms. Monaco some documents. And he said included
25 are drafts, copies of the drafts signed by

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1 Ms. Watson. The affidavit completed by card holder

2 Andrew Watson. Do you see that on the next page?

3 A. I saw that.

4 Q. Let me stop at that, the affidavit, are you
5 familiar with what's called an affidavit of forgery?

6 A. What do you mean? An affidavit that someone has
7 forged another person's signature, you take an
8 affidavit from someone?

9 Q. That's correct. If someone's a victim of a
10 crime they might --

11 A. They might sign an affidavit indicating that the
12 signature on the document or the authorization for
13 the transaction was not authorized by them or that
14 that signature was not theirs.

15 Q. And is that consistent with what Ms. Monaco puts
16 in here?

17 A. She puts an affidavit -- yeah, she puts that
18 in --

19 Q. I'm sorry, with what Mr. Pattin puts in the
20 letter to Ms. Monaco he says clearly the draft signed
21 by Ms. Watson, the affidavit completed by the card
22 holder, Andrew Watson. I mean, that is an
23 implication, it could be that, would you agree?

24 A. Yeah.

25 Q. Okay. And prior documentation sent to the State

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1 Law Enforcement Division.

2 A. Yeah, that's what the letter says.

3 Q. Let's go back to that letter to SLED Agent

4 Mears. Now, SLED Agent Mears is sent some documents,

5 and if you'll look and see the first paragraph, last

6 sentence, the documents sent to him according to that

7 letter are what?

8 A. Actual recording called into Western Union on

9 10/1/97 at approximately 15:29.30.

10 Q. And then what documents?

11 A. You were submitted the actual signed -- actual

12 draft signed by Ms. Lisa Watson along with a copy of

13 signed drafts cashed by Mrs. Lisa Watson.

14 Q. So what we have sent to them in the form of

15 paper documents are drafts?

16 A. Right.

17 Q. Okay. Now, in this paragraph Mr. Pattin's

18 telling Ms. Monaco included are drafts, copies of

19 drafts signed by Ms. Watson which is arguably the

20 items that were mentioned in the letters to Mears, an

21 affidavit completed by Andrew Watson. That doesn't

22 appear in that letter, does it?

23 A. Which letter now?

24 Q. The letter to Mr. Mears does not reference an

25 affidavit from Andrew Watson?

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1 A. No.

2 Q. And it lists prior documentation sent to SLED?

3 A. Now you're talking about the letter from this
4 guy --

5 Q. To Ms. Monaco that says I'm also sending you
6 prior documentation I sent to SLED.

7 A. Yeah.

8 Q. Now, since we've already got a mention of the
9 drafts, it looks like there may be other documents
10 that have been sent to SLED?

11 A. I don't know and I can't say. The only thing I
12 know is that you've shown me a letter that Kenny
13 Mears was sent some documents and you've shown me the
14 letter that this man was sending this to Ms. Monaco
15 and explaining, talking about documents. Which
16 documents, I don't know.

17 Q. Right. In the Mears letter the only documents
18 that are mentioned are drafts?

19 A. Yeah.

20 Q. And in the Monaco letter it says I'm sending you
21 drafts and other documents we sent to SLED?

22 A. Yeah.

23 Q. And would another document that he might send be
24 a "To Receive" document?

25 A. I don't know. I mean, it could be. I don't

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1 know.

2 Q. And that would make sense, since it's regarding
3 this transaction?

4 A. It depends upon the -- the -- whatever Western
5 Union in their investigation had in their file. I
6 don't know what Western Union had in their file.

7 Q. And we don't know what SLED received because
8 SLED's never said we got this from Rickie Pattin, did
9 they?

10 A. Not to my knowledge..

11 Q. Okay.. The "To Receive" document we already know
12 from an affidavit is filled out by the recipient?

13 A. That's correct.

14 Q. So it would be in their handwriting?

15 A. That's true.

16 Q. And so if we had that we could even show that
17 Ms. Watson actually signed the "To Receive" document?

18 A. If you had that and if it was available. I
19 don't know.

20 Q. That's right. And if SLED got that and made it
21 available to you, you could have then shown the "To
22 Receive" document was filled out by Ms. Watson?

23 A. We could have shown that there had been more
24 than what she was putting out on the record of what
25 her involvement was, we could have shown that she

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1 had -- she was involved in getting money from her
2 husband and her culpability in complicity with him as
3 it relates to what she was doing, it would have made
4 our cross-examination about her involvement with him
5 and how involved she was with him stronger.

6 Q. And I appreciate that. In fact, it could have
7 been used to, one, show that her claim that
8 Mr. Aleksey took her husband for a lot of money is
9 not the whole truth?

10 A. Yeah.

11 Q. The whole truth was Mr. Aleksey and I took my
12 husband for money. And then the other thing could
13 have been that, in fact, Ms. Watson, you're a fraud,
14 and under 608 you could actually go into the
15 fraudulent activity?

16 A. That she had committed. We have the
17 documentation, and I have to say that again as I said
18 on a number of occasions when talking with
19 Mr. Aleksey and asking him about information on these
20 women, we had no idea that these kinds of things were
21 going on because we weren't told.

22 Q. And let me refer to the last page that's in
23 Applicant's 14, if you would.

24 A. Last page, okay.

25 Q. If you'll look on the last page. And again this

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1 is a fax sent to me by Rickie Pattin and it's got a
2 lot of log-in times and things of that nature. Does
3 that kind of look like somebody's call in-sheet to a
4 call center?

5 A. I have no way of knowing what that is. And I.
6 can't say that.

7 Q. And at the end it's got a handwritten note dated
8 January 7th, 1998?

9 A. Yeah.

10 Q. And that says, "Spoke with card holder." Does
11 it say that?

12 A. Yeah.

13 Q. And the card holder is Andrew Watson, right?

14 A. Right.

15 Q. And it says, "Advised signature matched from
16 driver's license"?

17 A. True.

18 Q. Which would mean that Ms. Watson actually signed
19 this?

20 MR. ZELENKA: I object. That calls for
21 speculation.

22 THE COURT: Sustained.

23 Q. The driver's license that is included in the
24 correspondence to SLED is Ms. Watson's driver's
25 license?

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1 A. True, I guess.

2 Q. The signatures, the only signatures we have is
3 Ms. Watson's signature?

4 A. I can't say and I still can't say --

5 Q. Let me rephrase that. The only signature is a
6 signature purporting to be Ms. Watson's signature?

7 A. That's what the letter says, yeah, that they had
8 this in her signature draft. That's what the letter
9 said. Now, if you're asking me of my own personal
10 knowledge, I can only go with what you're saying.

11 Q. Doesn't this document say, "The person who wrote
12 these notes was advised signature matched from the
13 driver's license"?

14 A. It says that, yeah.

15 Q. And it says, "Claims he will speak with wife,"
16 again assuming this is the card holder, "and call
17 back"?

18 A. That's what this handwritten notation says, yes.

19 Q. And isn't this notation dated the same day as
20 the letter to SLED Agent Mears?

21 A. There's a date on here that says 1 -- right
22 before when you began it says 1/7/98, the letter was
23 written 1/7/98.

24 Q. Okay. Okay. The next thing I would like to
25 move to is some information regarding the purchase of

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1 the Mustang.

2 A. Okay.

3 Q. Okay.

4 MR. BROWN: And that, Your Honor, and
5 Mr. Sims appears generally on pages 1,277 to
6 1,280 in the innocent/guilt phase.

7 A. True.

8 Q. And she says that she leased the vehicle for
9 Mr. -- for Bayan Aleksey and that he was supposed to
10 pay it off immediately. That's on page 1,278, 24 to
11 25.

12 A. Right. That's true.

13 MR. BROWN: Beg the Court's indulgence.
14 (Pause in proceedings.)

15 MR. BROWN: Your Honor, at this time we
16 would introduce Applicant's 17.

17 THE COURT: All right.

18 MR. BROWN: Actually, if I could have it
19 marked as ID first I would like to ask the
20 witness a question about it before I actually
21 seek to have it introduced.

22 THE COURT: Okay.

23 MR. BROWN: I'm going to hand Your Honor
24 these other previously-introduced items.

25 THE COURT: Yes.

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1 Q. I'll show you what's been marked for ID as
2 Applicant's 17. Have you ever seen that document
3 before?

4 A. I can't recall.

5 Q. Okay. And it's a three-page document?

6 A. Uh-huh (affirmative response).

7 Q. Or it's three pages of documents?

8 A. Yeah.

9 Q. And is the first page listed as an incident
10 report?

11 A. Yeah. Yes.

12 Q. And it's from the Philadelphia Police
13 Department?

14 A. That's correct.

15 Q. The complainant is listed as a Lisa Watson?

16 A. Lisa Watson, yeah.

17 Q. And the date of the call-in is what day?

18 A. 11/13/97.

19 Q. Okay. So she reported on 11/13/97 what's in the
20 little complaint here?

21 A. Yeah.

22 Q. And it says, if you would read that portion.

23 A. "Complainant states she lent the below
24 vehicle --" I can't read that.

25 Q. "To below"?

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1 A. "Male who has failed to return same as of this
2 date."

3 Q. Okay. And below it's got the offender
4 information listed as a?

5 A. Joey Barorey or Barorey (pronunciation).

6 Q. And 28 year old --

7 A. Yeah, male.

8 Q. And it's got an ethnicity listed as an L?

9 A. Yeah.

10 Q. Maybe like Latino?

11 A. Latin or Latino.

12 Q. And do you recall whether Ms. Watson ever knew
13 Mr. Bayan Aleksey by the name of Joey?

14 A. Not to my knowledge I don't know, and
15 specifically I remember cross-examining her on the
16 incident report. I asked her specifically about an
17 incident report and she had indicated that they
18 called it in and they never gave you, they would not
19 give you an incident report. I specifically asked
20 her about that in the transcript.

21 Q. And I believe that's exactly right, we'll come
22 back to that.

23 A. Okay.

24 Q. But, in fact, did she not say that Mr. Aleksey
25 said his name was Joey Barclay?

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1 A. I can't remember that. Yeah, I'm looking. As a
2 matter of fact, I just put my hand on it, it said she
3 was -- that was as a result of Mr. Bailey
4 cross-examining -- I mean, direct examination on
5 1,278 at line 12 and 13.

6 Q. Yes, sir.

7 A. "Ms. Watson, did you know Mr. Aleksey by any
8 other names beside Joey Barclay?"

9 Q. She actually gives another name, and the first
10 name's Joey?

11 A. Yeah, Joey Gambino.

12 Q. Right. And now this one she said she knew him
13 as Joey Barclay. This name, could it be Joey
14 Barclay?

15 A. Yeah. It could be, yeah.

16 Q. I mean....

17 A. It's similar.

18 Q. Similar to Joey Barclay?

19 A. Yeah.

20 Q. The age at that time, 28 would be the right age
21 to Mr. Aleksey, a Latino male would be maybe not an
22 accurate description, but at least a reasonably given
23 description?

24 A. True.

25 Q. It would be reasonable.

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1 And would you look at the third page,
2 the last page of that. Can you tell me what that
3 document is?

4 A. An Application for a Search and/or Extract of
5 Police Incident or Office Report.

6 Q. And so it looks like that's a request for this
7 police report?

8 A. Uh-huh (affirmative response).

9 Q. Would you tell me who requested that report?

10 A. Bayan Aleksey.

11 Q. And where was it requested from? Where was he
12 when he made the request?

13 A. He was in Lieber, he was in Ridgeville.

14 Q. Okay. When was the request made?

15 A. January 5th, 2000.

16 Q. Which was after his trial?

17 A. Yeah.

18 Q. Okay. And if that was his source of the report,
19 you wouldn't have seen it unless it was given to you
20 by the solicitor?

21 A. Yeah.

22 Q. Do you recall being given that by the solicitor?

23 A. No. Specifically I did ask those questions --

24 Q. Ms. Watson --

25 A. -- about where was the incident report, I

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1 specifically asked those questions.

2 Q. Okay.

3 MR. BROWN: Your Honor, at this time we
4 would move Applicant's 17 into evidence.

5 MR. ZELENKA: No objection.

6 MR. BROWN: As an item not received from
7 the solicitor or from trial counsel, but
8 obtained independently by applicant and his
9 counsel.

10 THE COURT: Seventeen. Applicant's Exhibit
11 17 is in evidence without objection, it is a
12 three-page document.
13 (Entered into evidence was Applicant's Exhibit
14 17, three-page document.)

15 MR. BROWN: Thank you, Your Honor. I would
16 hand it up to Your Honor.

17 THE COURT: All right.

18 Q. Now, one thing that's important in trial, she
19 said that she leased this for Mr. Aleksey and he was
20 to pay it off immediately?

21 A. That's correct.

22 Q. Okay. But in this report it says complainant
23 lent him the vehicle and he didn't return it?

24 A. That's correct.

25 Q. That's not quite the same thing, is it?

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1 A. It's not the same thing.

2 Q. Okay. And that would have been useful to
3 impeach Ms. Watson?

4 A. True.

5 Q. Okay. Now, in the testimony in trial she lists
6 September 30th as the date of the lease?

7 A. I believe she did.

8 Q. And I'll try to find a page.

9 A. Page 1,281, "This car was purchased on
10 September 30th."

11 Q. Oh, okay. And you, you actually -- this is a
12 quote I wanted to bring out, she made a quote about
13 how she got the car, it appears on 1,285, lines 4
14 through 6.

15 A. Uh-huh (affirmative response).

16 Q. And she says I was in a dealership for an
17 hour -- half an hour, signed the paper and out the
18 door.

19 A. Yeah.

20 Q. So she indicates that later on when she
21 indicates that he held a gun to her head to make her
22 do this, she goes down there for half an hour on the
23 date of purchase, signs the paper, and she's out the
24 door?

25 A. True.

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1 Q. Okay.

2 MR. BROWN: Now, beg the Court's
3 indulgence.

4 THE COURT: Okay.

5 MR. BROWN: Your Honor, at this time we
6 would mark, we would actually move to introduce
7 this as Applicant's 18, and it's a series of
8 documents regarding the purchase of the
9 automobile, the white Mustang.

10 THE COURT: All right. Any objection?

11 MR. ZELENKA: No objection.

12 THE COURT: Very well. Applicant's 18 in
13 evidence without objection, it is a multi-page
14 document.

15 MR. BROWN: That's correct. And, Your
16 Honor, that document was received from the trial
17 counsel file and it was given to trial counsel
18 by the prosecutor.

19 (Entered into evidence was Applicant's Exhibit
20 18, Multi-page document.)

21 Q. And, Mr. Sims, I would hand you Applicant's 18,
22 and ask you have you seen those documents before?

23 A. Like I said, they may -- it could have been in
24 our file. I haven't seen my file, so....

25 Q. And you remember there being some documents

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1 regarding the purchase of the car?

2 A. I believe so, like I said.

3 Q. What I would like to do is to show you the
4 documents, and I can't give you a perfect name for
5 those documents, but I think one of the first
6 documents would be an application statement. I
7 believe that's the first page of that.

8 A. Okay.

9 Q. It says at the top "Application Statement."

10 A. Yeah.

11 Q. Okay. And the applicant's name is listed as?

12 A. Lisa Watson.

13 Q. Okay. And this document has which date on the
14 top right-hand side?

15 A. 9/27, I believe.

16 Q. Okay. And her signature, or is Lisa Watson's
17 name signed towards the lower bottom of that page?

18 A. Yeah.

19 Q. Okay. And that would indicate that that
20 document was possibly signed on the 27th?

21 A. Yeah.

22 Q. And then I would ask you to turn to, I believe
23 it's the third page of Applicant's 18.

24 A. (The witness complies.)

25 Q. And I apologize, yours is different than my

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1 copy. Excuse me, the second page of Applicant's 18,
2 and ask you if you'll look midway down.

3 A. It shows a Lisa Watson.

4 Q. Signature?

5 A. Yeah.

6 Q. And the day on that, beside that signature is
7 what date?

8 A. Looks like it's 9/29.

9 Q. So we have 9/27, 9/29. Actually she says again
10 in the trial testimony that the car was bought on the
11 30th and she went down there for half an hour?

12 A. Yeah.

13 Q. Okay.

14 MR. BROWN: Beg the Court's indulgence for
15 one more moment.

16 THE COURT: All right.

17 (Pause in proceedings.)

18 Q. I would ask you to look at the ninth page of
19 Applicant's 18.

20 A. Uh-huh (affirmative response).

21 Q. And ask you if it doesn't have a signature in
22 the bottom right-hand side.

23 A. It does.

24 Q. And the name?

25 A. It appears to be Lisa Watson.

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1 Q. Okay. And the date on that is?

2 A. 9/27/97.

3 Q. Okay. And again this is dealing with the Chris
4 Koch's Ford dealership?

5 A. Yeah.

6 Q. Let me also refer you to the fourth page of
7 Applicant's 18, and ask you if you can identify that
8 document?

9 A. It appears to be a Pennsylvania driver's license
10 with the name Lisa Watson on it.

11 Q. And does that driver's license look like the
12 driver's license that was submitted to Western Union?

13 A. It says "Pennsylvania Driver's License" and it
14 has a picture that I cannot identify on there. It
15 has a picture on it.

16 Q. Okay. And I ask you to take a look at
17 Applicant's 15.

18 A. Uh-huh (affirmative response).

19 Q. And I believe the driver's license is on the
20 last page?

21 A. Yeah.

22 Q. Does that look like the same driver's license?

23 A. It says "Pennsylvania Driver's License," it has
24 the same number across the top, I believe, and again
25 the pictures I can't --

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1 Q. The picture, but how about the name?

2 A. Yeah, Lisa Watson.

3 Q. Okay. So it looks like a Pennsylvania driver's
4 license, Lisa Watson?

5 A. Yeah.

6 Q. So we got some documents filled out September,
7 one on October 1st regarding the Western Union?

8 A. Yeah.

9 Q. Okay.

10 MR. BROWN: Your Honor, at this time we
11 would move into evidence Applicant's 19 which is
12 another --

13 THE COURT: Any objection?

14 MR. ZELENKA: No objection.

15 THE COURT: All right. Applicant's Exhibit
16 19 in evidence without an objection. It is
17 a...?

18 MR. BROWN: Another document regarding
19 Chris Koch Ford transaction for the white
20 Mustang, it was in trial counsel's file and
21 given to them by the prosecutor.

22 (Entered into evidence was Applicant's Exhibit
23 19; Chris Koch Ford document.)

24 Q. And I would ask you, Mr. Sims, to take a look at
25 that and see if that document doesn't have a

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1 signature on it.

2 A. Yeah, it does.

3 Q. And the date beside that signature is?

4 A. Lisa Watson.

5 Q. And the date is?

6 A. 9/30/97.

7 Q. Okay. So we have documents that show three
8 different dates there, don't we?

9 A. Uh-huh (affirmative response).

10 Q. And those three dates would be September 27th,
11 September 28th -- excuse me, September 29th and then
12 September 30th?

13 A. Uh-huh (affirmative response).

14 Q. Of 1997. Now, would you agree that that is not
15 consistent with in the dealership for half an hour,
16 signed the paper and out the door?

17 A. No, it's not.

18 Q. All right. Now, would you agree that that
19 information's not consistent with somebody holding a
20 gun to somebody to make them go down and sign a lease
21 agreement?

22 A. No, it's not.

23 Q. Because you don't go down there three times,
24 three different times, assuming if Mr. Aleksey had a
25 gun on her at the dealership, somebody would have

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1 seen it?

2 A. Well, that was a question -- that came up later.
3 That did not come up in the initial stages, that came
4 up later in terms of that. And as I indicated
5 before, she even indicated she was laughing, she
6 actually did not take him serious.

7 Q. Sure. And let me ask you this: In the
8 Applicant's 17 where she complains that she lent the
9 vehicle and it wasn't returned, did she mention
10 somebody holding a gun to her head to get her to
11 purchase the vehicle?

12 A. No.

13 Q. But she called the police on that day?

14 A. Yeah.

15 Q. In fact, in that report she's reporting that he
16 didn't bring it back. I bought the vehicle, he
17 didn't bring it back?

18 A. True.

19 Q. Which is not the same as stealing a car or
20 forcing somebody to purchase a car for them?

21 A. No.

22 MR. BROWN: Now, at this time we would
23 offer into evidence a two-page SLED statement
24 completed by Lisa Watson as Applicant's 20.

25 THE COURT: Any objection?

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1 MR. ZELENKA: No objection.

2 THE COURT: All right. Two-page statement
3 in evidence as Applicant's Exhibit 20 without
4 objection.

5 MR. BROWN: And Your Honor, we believe this
6 was in trial counsel's file given to trial
7 counsel by the prosecutor.
8 (Entered into evidence was Applicant's Exhibit
9 20, two-page statement.)

10 MR. BROWN: And, Your Honor, we would also
11 introduce a series of call-in documents as
12 Applicant's 21. These are the call-in logs from
13 Ford Motor Credit regarding the Mustang of
14 Ms. Watson. Again, it is Applicant's 21, we're
15 introducing it as an item that was in trial
16 counsel's file given to them by the prosecutor,
17 actually used by Mr. Sims during the trial.

18 THE COURT: All right. Any objection to
19 Exhibit 21?

20 MR. ZELENKA: No objection.

21 THE COURT: All right. Applicant's exhibit
22 21 in evidence without objection.

23 (Entered into evidence was Applicant's Exhibit
24 21, multi-page document.)

25 THE COURT: It is a multi-page document.

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1 MR. BROWN: Yes, ma'am, stapled together.

2 Q. And I would hand this Applicant's 21 to you,
3 Mr. Sims. Do you recognize that as a document you
4 used in trial?

5 A. I believe so.

6 Q. Okay. Now, Ms. Watson testifies at trial
7 September 30 is the last day she saw the vehicle.
8 And went through that earlier, where she signed the
9 papers, he drove out of the lot, she never saw the
10 car again.

11 Would you look at the 11/19 call to
12 Ford Motor Credit. And they're in reverse
13 chronological order.

14 A. Yeah, I see.

15 Q. I want to go where she reported it stolen. If
16 you'll turn to page 1,282 of the transcript, line 2.

17 A. Okay.

18 Q. And in there she says that she reported this
19 automobile stolen on October 5th.

20 A. Yeah.

21 Q. The question was you reported the car stolen
22 when? October, October 5th maybe.

23 A. Uh-huh (affirmative response).

24 Q. And we have the police report for the
25 Philadelphia police report -- department, excuse me,

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1 indicated she had called in on November 13th, I
2 believe?

3 A. November. It was November.

4 Q. And that's not October 5th?

5 A. Right.

6 Q. That's a good while later, five or six -- five
7 weeks later, at least.

8 And when -- in 1,280 line 8 through 9,
9 she says, when you crossed her, you said, "When was
10 the car reported stolen?"

11 And she says, "Right after probably
12 October, the first week of October." So she said she
13 reported it stolen October 5th, she says the first
14 week in October, but the police report actually
15 indicates November 13th?

16 A. November 13th or the 11th, something like that.

17 Q. And let's refer back, because I want to make
18 sure we get this date right.

19 A. Okay.

20 Q. And if you would I believe it's Applicant's --

21 A. It's Applicant's 17.

22 Q. And it has a date of?

23 A. Report date is 11/13/97.

24 Q. Okay. Which is neither the first week of
25 October or October 5th?

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1 A. No.

2 Q. And I'll refer you to page 5 of the Ford Motor
3 Credit call-in notes which is Applicant's 21, and ask
4 you to look again on page 5 of 6 to the 11/19
5 call-in.

6 A. Uh-huh (affirmative response).

7 Q. And it says that caller said temporary tag,
8 caller said she filed a police report and it says on
9 11/13/97.

10 A. Yes.

11 Q. And so that could have been used to impeach her
12 on the date that she called in this as stolen?

13 A. We had that and apparently that was just
14 something that we did not ask.

15 Q. Okay. But you did ask her about whether she had
16 a copy of the report, questioning whether she had, in
17 fact, reported it stolen?

18 A. Yeah, I questioned her whether she actually had
19 reported it. I questioned her, as a matter of fact I
20 did question her on this document that she had been
21 calling in telling them she was going to get the car,
22 that he was related to her or something like that.
23 So I did question her about that.

24 Q. Okay. And now talking about the police report,
25 you indicated on page 1,282 lines 1 through 15 --

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1 A. 1,283.

2 Q. Two.

3 A. Two, okay.

4 Q. One through 15 you asked her, "Do you have a
5 copy of the report?"

6 A. Yeah.

7 Q. And she says, no, she didn't. And I think the
8 long story short, she called it in?

9 A. Right.

10 Q. Okay. Now refer you back to the Ford Motor
11 Credit notes which is Applicant's 21, ask you to take
12 a look at the notes for 11/20 -- excuse me,
13 November 20th, the 11/04 notes because there are a
14 series of phone calls on that day. And it says that
15 they telephoned buyer, do you see that?

16 A. 11/04, okay.

17 Q. It says telephoned buyer, advised no insurance,
18 advised no answer at numbers for the police. In
19 other words, they're advising her that. And then
20 said has police report.

21 So in other words, she's saying to
22 them we called the people you told us you reported
23 this to and the response was from Ms. Watson, the
24 buyer, was I have the report. And they said advised
25 to fax copy of the police report. Is that correct,

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1 Mr. Sims?

2 A. I think this said has police report, right,
3 advised to copy -- to fax a copy of the police
4 report. And they advised her that she was
5 responsible for the unit. Advised, no answer -- they
6 said advised, no answer. I guess this is the numbers
7 that she had given for the police.

8 Q. Right. And in other words, it's saying at trial
9 she said she never had a copy of the report because
10 she called it in, because you asked her if she had --

11 A. Yeah, I know she said --

12 Q. And here she says she does?

13 A. Yeah.

14 Q. Okay.

15 A. Well, let's see, let me be sure. Said has
16 police report.

17 Q. Okay. And that could have been used to impeach
18 her?

19 A. The document, I thought when I used the document
20 to cross-examine her consistent with the way we were
21 going with the case to bring out that they had been
22 making contact with her, that they had been trying to
23 contact her and find the car. And I believe I did
24 what I thought an okay job of indicating that she had
25 not told the truth to Ford Motor Credit Company about

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1 the whole ordeal.

2 Q. And this would have been further evidence it
3 says, you tell me you don't have a police report but
4 you told them you did have one?

5 A. Well, you can pick out anything that you want
6 to, but if you're going to -- when you're in the
7 middle of cross-examination and you're asking
8 specific questions, and in this case showing Lisa
9 Watson's complicity in the whole matter, you decide,
10 you choose, and you go in terms of and ask questions
11 or cross-examine on areas that are consistent with
12 the way you were going.

13 And our whole theory in terms of
14 things were that these women, all of them were
15 involved with Bayan, all of them had been, had had
16 complicity with what he was doing, were buying things
17 and purchasing things for him.

18 Q. And Mr. Bailey actually argued that this car was
19 stolen on 1,752 in the closing arguments in the
20 innocent/guilt phase, Mr. Bailey's closing argument
21 on lines 23 and following are so you've got a stolen
22 car.

23 A.. Yeah.

24 Q. And if the police report indicates that she lent
25 the car to him, and the other documents indicate she

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1 the credit applications?

2 A. Like I said, I got a copy of the transcript on
3 Monday and I tried to read as much as I could. I
4 have not read the full transcript, and then I did not
5 have it yesterday, so if you're saying -- you refer
6 me to the page and I'll read it.

7 Q. 1,284 bottom, it spills over to 1,285.

8 A. "So you signed for a car that you allegedly said
9 you didn't fill out the application, but you went
10 down knowing that you had no job, knowing that you
11 had no source of income and went down and signed for
12 a Mustang, a 1998 or a '97 Mustang?"

13 Q. And her response to your question, that was your
14 question, her response is what?

15 A. "At the time I didn't know what he told them."

16 Q. Okay. Now let me refer you to the notes in the
17 Ford Motor Credit document, Applicant's 21, the notes
18 for November 20th at 11:04 -- I mean, excuse me,
19 yeah, 11:04 the same one that we looked at where she
20 said she has a copy of the police report. Do you see
21 about midway of that paragraph it says B said, as in
22 buyer said?

23 A. Uh-huh (affirmative response).

24 Q. And it said, does it not, buyer said that all
25 info on the credit application is false?

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1 A. Uh-huh (affirmative response).

2 Q. She has no job, never worked at Super Fresh?

3 A. Yeah.

4 Q. Okay.

5 A. And which is what I just said to her, you had no
6 job, you had no income, you had nothing, but you went
7 down and signed for a 1997 or '98 Mustang.

8 Q. And then on 11/14 -- excuse me, 11/20 call, a
9 November 20th phone call at 11:14, 10 minutes later.

10 A. Okay.

11 Q. It indicates that they had a telephone to Fred
12 at Chris Koch?

13 A. Uh-huh (affirmative response).

14 Q. This is Ford Motor Credit's calling them. And
15 they said, the notes say asked if they remembered a
16 Lisa Watson. And the response was she was present
17 when unit was purchased. And the next one is that
18 she signed and filled out the application.

19 A. Uh-huh (affirmative response).

20 Q. Would you agree with that?

21 A. That's what it says.

22 Q. Okay. And you had this at trial?

23 A. Yeah.

24 Q. And so she said she at trial she said I didn't
25 know what he told them because you asked her about

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1 all this stuff on the application. She said I don't
2 know what he told them.

3 A. And then I went to "Now that they're going to
4 garnish your wages, didn't they, Ford, when they kept
5 talking to you about the replevin action that they
6 were going to come out there and they were going to
7 try to garnish your wages?

8 "I don't remember that, no.

9 "And you told them that you did not
10 have a job so it didn't matter.

11 "I don't remember that.

12 "You never talked to them, you never
13 told them, they kept asking you about it and you kept
14 telling them that you were going to contact them and
15 you were going to talk with him and you never did,
16 did you?"

17 That's in response when I went to her
18 in terms of the information that was contained and
19 she said she didn't know. And I kept asking her as
20 it relates to what her responsibilities were as
21 related to the information on the application. You
22 knew you didn't have a job, you went down there and
23 you signed this thing in effect.

24 Q. Correct, that she signed it. But she said I
25 don't know what was on the application. Doesn't she

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1 say that at trial?

2 A. Yeah.

3 Q. And, in fact, the Ford Motor Credit report
4 indicates that she, the people at Ford said she
5 filled out the application?

6 A. The people at Ford said she filled out the
7 application, yeah.

8 Q. And that did not come out at trial?

9 A. I didn't ask her that.

10 Q. That's exactly my point. And in a criminal case
11 you could have gotten a subpoena for Fred at the car
12 dealership?

13 A. I would assume, yeah.

14 Q. He's the man who said in these notes that she
15 filled out the application.

16 Okay. And let me refer you back to
17 the application --

18 A. Here it is up here.

19 Q. And the application is Applicant's 18. And ask
20 you if you'll take a look, and above the signature it
21 says I certify the above information is true and
22 complete to the best of my knowledge?

23 A. Yes.

24 Q. Okay. And I wanted to go down, I already asked
25 you about her testimony at trial was that he coerced

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1 her to co-sign by presenting a gun. And you pointed
2 out that she said they were all laughing?

3 A. Uh-huh (affirmative response).

4 Q. Let me refer you to the SLED statement she made,
5 which is Applicant's 20.

6 A. (The witness complies.)

7 Q. And about midway through there's a sentence that
8 says on September 25th I believe 1997 it says he got
9 out a gun, or put a gun, excuse me, to my head.

10 A. Yeah.

11 Q. Because -- and it's a very illegible statement,
12 I assume Ms. Watson's not a very literate person, but
13 held a gun to my head because say I was not going to
14 co-sign. And it says he cried and said he was sorry.

15 Now, holding a gun to her head and
16 saying crying is not the same as holding a gun to her
17 head and they're all laughing about it.

18 A. I mean, I don't understand the import of your
19 question, because if we get out into
20 cross-examination that you're talking about a
21 situation where everybody's laughing, as an attorney
22 if I'm going to -- if I got to the point where she's
23 laughing and everybody's having a good time about
24 this thing, to me that's going to be sufficient to
25 show that this is not a serious matter, that is not a

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1 matter that you would say that he took her down to
2 the car dealership with a gun to her head, stood
3 outside the door, waited out there until she came
4 back out. That's not the same thing.

5 Q. That strategy's saying that what happened was
6 not really bad for Ms. Watson?

7 A. That strategy is saying that everybody was
8 playing.

9 Q. Okay. But impeaching her would be the strategy
10 that Ms. Watson's a liar?

11 A. And impeaching her also would be to show that
12 she was involved with this, she knew what was going
13 on, that she was involved and she had complicity in
14 it, that she, as a matter of fact, was a willing
15 participant in all of this, which is what we did.

16 Q. But it also would show that she was a liar,
17 wouldn't it?

18 A. It would also show, as I said, you have your
19 interpretation of how you would have cross-examined
20 her, this is how I cross-examined her, this is what I
21 based my cross-examination on.

22 Q. I'm going to ask you one more time, but this
23 would have shown she was a liar?

24 A. That's your interpretation. My interpretation
25 is that I chose based upon our strategy to go after

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1 THE COURT: All right, Mr. Brown, you may
2 continue.

3 MR. BROWN: Okay.

4 THE WITNESS: Your Honor?

5 THE COURT: Yeah, I'm sorry, we needed to
6 talk about your file. I think this is where we
7 are. I think that at this point, Mr. Sims, if
8 there is a portion of your file that you feel
9 like you should have in order to be able to
10 testify appropriately, I'm going to let you look
11 at that. I think that given where we are I
12 would rather not stop the proceedings to allow a
13 full view of the file.

14 However, if there is a portion that
15 you need to look at in order to be able to
16 comfortably testify, I'm certainly going to
17 afford you that opportunity. If that doesn't
18 work we'll revisit it, okay?

19 MR. BROWN: Yes.

20 THE COURT: Yes. Let me hear from Mr. Sims
21 first, I addressed him.

22 Yes, sir, Mr. Sims.

23 THE WITNESS: Your Honor, I think this is
24 an issue I have to take up. On the one hand
25 I've been accused of giving up a file in

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1 violation of a statute, and then the counsel
2 recognized first of all that the file is still
3 mine.

4 And if the file is still mine, then
5 they have my belongings and so I'm asking the
6 Court to give them back now. They've got them,
7 they've acknowledged that they're mine and I'm
8 asking the Court to give them back.

9 THE COURT: I don't think there's any
10 question that the file belongs to Mr. Aleksey,
11 first of all, and secondly the position where we
12 are, certainly we discussed it early on and we
13 may have to revisit, we may need to revisit at
14 some point in the future in this matter, the
15 problem at this point is that counsel is using
16 it, they have, he has it, they're using it and
17 I've got to come up with some way to share it,
18 and I certainly want to do that.

19 I would say to you at this point it
20 doesn't appear to me, Mr. Sims, that -- and only
21 you would truly know whether or not your
22 testimony has been impeded, and I certainly
23 don't want to do that to you, but we sort of are
24 we are in this matter.

25 As we proceed on if you find yourself

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1 where you need to look at it before you're able.
2 to testify, I want you to have that opportunity.
3 But rather than stopping and allowing a complete
4 review of the whole file, I what I would rather
5 do at this point is to stop if you need to and
6 review whatever portions.

7 And I've already intimated yesterday
8 afternoon that once we've concluded this
9 proceeding, and you certainly have the
10 opportunity to go completely through the file,
11 the beauty of this being non jury is that if you
12 need to come back and counsel needs to clarify
13 some matters because you've had an opportunity
14 to now look at it fully, I'm going to have an
15 opportunity to do that, I'm going to do that.

16 THE WITNESS: Okay.

17 THE COURT: Okay.

18 MR. BROWN: Your Honor?

19 THE COURT: Yes.

20 MR. BROWN: I certainly have no problem
21 proceeding right now as you ordered. However,
22 after reflection last night about the issue of
23 revealing the file and everything and we talked
24 about it at some length.

25 THE COURT: Yeah.

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1 MR. BROWN: Obviously I don't think it's
2 going to pose a problem as we continue at this
3 point; however, if there comes a point in time
4 where the Court asks me to reveal the
5 information that we have, I would like the
6 opportunity to consult with an attorney
7 regarding my obligations.

8 THE COURT: Let me say this to you. To
9 consult -- I'm not at all -- listen to me.

10 MR. BROWN: Yes, ma'am.

11 THE COURT: I'm not at all saying that
12 Mr. Sims is entitled to review any of your
13 information.

14 MR. BROWN: Yes, ma'am.

15 THE COURT: But as I understood yesterday
16 there is the ability to locate the file itself.
17 And if there are some trial notes that would
18 help Mr. Sims testify regarding what his tactic
19 was or what his tactic wasn't, I'm going to
20 allow him to review them. And that's where,
21 that's where I am at this point.

22 I would just again just reiterate for
23 the record that it seems to me at this point.

24 MR. BROWN: Yes, ma'am.

25 THE COURT: That hasn't presented a

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1 problem. If it does present a problem.

2 MR. BROWN: Yes, ma'am.

3 THE COURT: As we go forward I'll handle
4 it.

5 MR. BROWN: Yes, ma'am.

6 THE COURT: But it just doesn't seem to be
7 a problem at this point.

8 MR. BROWN: The main reason I would tell
9 the Court why I would like to do that if that
10 becomes an issue, is that I have concerns about
11 my own obligations as an attorney to comply with
12 things like attorney/client privilege and work
13 product.

14 Because even though we did tell you,
15 the Court that, we can demonstrate what part of
16 the file is trial counsel's file, what is not,
17 there's still the issue of whether trial
18 counsel's file is now our file and we would be
19 revealing any privileged or work product
20 material at that point by revealing the file
21 that we now have to Mr. Sims.

22 And I don't want to get in the point
23 of being liable for malpractice, and so I would
24 like to be able to consult an attorney to advise
25 me.

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1 THE COURT: I understand. And you may, as
2 we go forward from this point, you certainly --
3 let me say to you.

4 MR. BROWN: Yes, ma'am.

5 THE COURT: If you are concerned about
6 that.

7 MR. BROWN: Yes, ma'am.

8 THE COURT: You're on notice that I'm going
9 to allow these folks to take a look at that file
10 at some point, so you need to go on and do that.

11 MR. BROWN: I didn't think it was going to
12 come up. I thought last night it was going to
13 come up after we presented our case and now it
14 looks like there's a chance it could come up on
15 a part-by-part basis during this proceeding --

16 THE COURT: That's right.

17 MR. BROWN: -- and certainly when I get a
18 break I'll certainly take the action I need to
19 take --

20 THE COURT: Sure.

21 MR. BROWN: -- to do that.

22 THE COURT: Yes.

23 MR. TARR: Can I just say one thing? I
24 just wanted to put on the record that as far as
25 attorney notes we gave them yesterday to both

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1 counsel they have all their notes that we have.
2 As an officer of the Court I can tell you,
3 that's why I was telling Mr. Zelenka during the
4 break that I didn't think that we had anything
5 in our file that we weren't showing him on the
6 stand that could help him other than his notes,
7 and he has those.

8 So it's to that extent --

9 THE COURT: Copies of the notes or the
10 original notes?

11 MR. TARR: Copies of the notes, photocopies
12 that we made yesterday downstairs in the clerk's
13 office.

14 THE COURT: Great...

15 MR. TARR: And I have no problem letting --
16 him seeing the originals because those are his,
17 I mean....

18 MR. ZELENKA: Just to clarify something on
19 the attorney/client privilege, as I understand
20 the statute it allows the privilege to be waived
21 to the extent necessary to address the
22 allegations.

23 My general reading of that is that
24 that means, I, as the respondent in this matter,
25 do not have automatic access to the entire file,

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1 it's only to the extent necessary that he needs,
2 or Mr. Duffie Stone needs to review the
3 information.

4 I'm not going to look at whatever is
5 revealed unless Mr. Sims tells me, or Mr. Stone
6 tells me that that is necessary for them to
7 address the allegations. So I don't know if
8 that helps some of the attorney/client privilege
9 problems, because I recognize that concern.

10 THE COURT: Sure.

11 MR. BROWN: Just briefly the concern I've
12 got is not the privilege between Mr. Sims and
13 Stone and Mr. Aleksey, it's now that these
14 documents may be privileged between Mr. Aleksey
15 and myself. And that's the privilege I'm
16 concerned about. And I don't believe the
17 statute allows that privilege to be broken.
18 Again, we're not here at this because we're
19 going to proceed --

20 THE COURT: I would be fairly satisfied
21 that it would not. Yeah, your privilege with
22 Mr. Aleksey is your privilege, but that would be
23 like in any civil action because there are
24 documents that are important to a piece of
25 litigation that are critical and material to a

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1 piece of litigation, can't discover them because
2 they hadn't been in a lawyer's file, it doesn't
3 extend that far, and you certainly are aware of
4 that.

5 Insofar as this trial is concerned, I
6 find it very difficult to imagine that insofar
7 as these lawyers are concerned that the
8 information would not be discoverable for this
9 reason: The only part of it that may not be
10 discoverable would be their notes, the rest of
11 it came from either their investigation or from
12 the solicitor's office, that clearly isn't any
13 sort of privilege or work product.

14 The work product information would be
15 their notes and they already have -- you tell me
16 they already have their notes. So I'm less
17 concerned about that. However, let me say to
18 you --

19 MR. BROWN: Yes, ma'am.

20 THE COURT: -- that be very clear that it
21 would be my position that your attorney/client
22 privilege with your client is not at all
23 anything that I intend to invade in any regard.

24 MR. BROWN: All I wanted was just -- I'm
25 sorry, all I wanted was just local advice if

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1 that time comes up, because that's a thin road I
2 have to walk and I don't want to do the wrong
3 thing.

4 THE COURT: Absolutely. I'm certainly
5 cognizant of that, too, Mr. Brown, if I may say
6 that.

7 MR. BROWN: May it please the Court.

8 THE COURT: We'll proceed on at this time,
9 Mr. Brown, yes.

10 BY MR. BROWN:

11 Q. . . I believe we had ended with the discussion about
12 the crying or laughing was a difference worth
13 impeaching about, I only put that up there not for an
14 answer but only where we're going to put it back in
15 context.

16 A. Okay.

17 Q. If you'll turn to the transcript 1,964, lines 5
18 through 6 which is Ms. Watson's penalty phase
19 testimony, again 1,964, lines 5 through 6. Talking
20 about the automobile and her efforts to return or get
21 the automobile back and comply with her obligations,
22 I believe she testifies that she called every day to
23 see if a payment had been made, calling Ford Motor
24 Credit because that's who it's owed to. Do you agree
25 that's what she says, Mr. Sims?

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1 A. What line? You said 1,964?

2 Q. Five through 6.

3 A. Yeah.

4 Q. So she said I called every day to check on that.

5 Would you look at the Ford Motor Credit notes which

6 is Applicant's 21? Would you disagree with the

7 statement that Lisa Watson only called Ford Motor

8 Credit one time?

9 A. Which page you want me to look at?

10 Q. Well, I'm asking you whether you disagree with

11 that statement that she only called one time. And,

12 in fact, the phone call was on the 15th of October.

13 It's the first phone call recorded. And she called

14 and says repossess this unit and they said we can't

15 do it, you hadn't missed a payment yet, it's only

16 been 15 days since the car was bought.

17 A. Okay. That's what she said.

18 Q. Okay. Would you disagree with the statement

19 that that's the only time she called Ford Motor

20 Credit?

21 A. That appears to be the only one, yeah.

22 Q. Okay. So, in fact, the testimony that she

23 called every day to see if a payment had been made

24 would not be a true statement?

25 A. No.

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1 Q. And there's just a few other things as far as
2 Ford Motor Credit again, the first contact by Lisa
3 Watson was on the 15th and in that she says that she
4 was only a co-signer and wants the unit repossessed.
5 You agree with that?

6 A. That's what it says.

7 Q. And she was told, no, the loan's not in default?

8 A. Yeah.

9 Q. Okay. And then 11/13 at 10:52 Ford Motor Credit
10 called the buyer, if you'll look at Applicant's 21.
11 And this just goes to all of her testimony about the
12 automobile. And that appears on page 6 of 6, by the
13 way.

14 A. Okay.

15 Q. And it indicates that Ford Motor Credit
16 telephoned buyer and it said a lot of different -- it
17 says telephoned to buyer, says a lot of different
18 things, seems at times to be making it up as went
19 along. Is that what it indicates?

20 A. That's what it indicates.

21 Q. Okay. And then after that she said the car had
22 been stolen. And, of course, it goes in that she
23 reported it stolen. And this is the 13th?

24 A. Yeah.

25 Q. Okay. And now what I also want to point out is

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1 that she's telling Ford Motor Credit at 10:52 on
2 November 13th that she had reported the car stolen.
3 I want to refer you to the police report called in on
4 11/13 and ask you to look at the time the call was
5 made.

6 A. 2:30 p.m.

7 Q. Which would be after this call?

8 A. Yeah.

9 Q. So she lied to Ford Motor Credit?

10 A. Yeah.

11 Q. She indicated that because they said she seems
12 to be making this up?

13 A. Yes, they did.

14 Q. It looks like, in fact, the police report
15 indicates she was making that part up.

16 And then on 11/19 --

17 MR. BROWN: I beg the Court's indulgence.

18 THE COURT: Sure.

19 (Pause in proceedings.)

20 MR. BROWN: And, Your Honor, I ask to
21 strike that last reference to the Ford Motor
22 Credit.

23 Q. Next I want to move to the topic of Lisa Watson
24 and the money she lost to Mr. Aleksey. If you'll
25 turn to transcript 1,965 again in the penalty phase

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1 testimony, Mr. Sims, I believe she testified that she
2 lost \$42,000, the car, my credit cards, and my
3 husband's credit cards?

4 A. Uh-huh (affirmative response).

5 Q. Now, if you'll look at the Applicant's 20 which
6 is Ms. Watson's SLED statement.

7 A. I've seen it, yeah.

8 Q. She says that she lost \$75,000.

9 A. Uh-huh (affirmative response).

10 Q. Then she says she lost \$9,500. And then she
11 says it was \$7,500 that she lost off of her husband's
12 credit card.

13 A. Yeah.

14 Q. And so you would agree that all of those
15 statements are in this SLED report?

16 A. They're in there.

17 Q. Okay. But now we know this: The Western Union
18 transaction indicates that the \$7,500 she told SLED
19 was lost off of her husband's credit card at the
20 hands of Mr. Aleksey was not the whole truth in this
21 SLED statement, because she actually was involved in
22 taking the \$7,500?

23 A. Yeah.

24 Q. And if you'll refer to the Ford Motor Credit
25 notes, again Applicant's 21, at 11:04 on

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1 November 13th which is just -- excuse me, excuse me,
2 not 11:04, 10:52, this is the one where they said she
3 called in, appears to be making it up, we know she
4 already lied in this phone call about making the
5 police report, she lists some dollar amount that she
6 lost at the hands of Mr. Aleksey. She says Barclay
7 stole her and her husband's credit cards. Do you see
8 that in those notes?

9 A. Yeah.

10 Q. And it says first that it was \$11,000 charged on
11 there. And then \$12,000. And that's not the same as
12 what she testified to at trial?

13 A. No.

14 Q. And it's not the same as what's in her SLED
15 report?

16 A. No.

17 Q. And then again in the Philadelphia police
18 report, is there any mention of credit card theft?

19 A. No.

20 Q. And that credit card theft allegedly occurred
21 prior to the 11/13 report filing?

22 A. According to her testimony.

23 Q. According to her testimony.

24 MR. BROWN: And, Your Honor, just for
25 informational purposes that concludes the

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1 portion of the testimony related to Lisa Watson.

2 THE COURT: Okay.

3 MR. BROWN: And continuing the order of the
4 testimony at trial that brings us to Mr. Sims'
5 actions regarding State's witness Gloryvee
6 Perez, Gloryvee Rivera, Gloryvee Blackwell or a
7 combination of those names.

8 THE COURT: All right.

9 BY MR. BROWN:

10 Q. You would agree the investigation of her
11 background was important?

12 A. Yes.

13 Q. She was the main person, she was the eyewitness
14 to the crime?

15 A. Yeah.

16 Q. And there was no other eyewitness saying they
17 saw Mr. Aleksey' do the shooting?

18 A. No.

19 Q. And, in fact, I believe you had a paralegal
20 named Danetta?

21 A. Yeah.

22 Q. And her notes would indicate that, the
23 importance of investigating Gloryvee's background?

24 A. Where are those? I had a paralegal named
25 Danetta.

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1 Q. And I believe there's only a one-page note. Do
2 you recognize that document?

3 A. No, I don't.

4 Q. Does it have the name Danetta at the top?

5 A. Yes, it does.

6 Q. Is that the spelling and the name of your
7 paralegal at the time?

8 A. Yeah.

9 Q. And is that consistent with her handwriting?

10 A. And I guess it is, it's her name.

11 Q. Okay. She --

12 A. I can't say. She's no longer with me and hasn't
13 been with me for a while.

14 Q. Okay. But she was with you, she was with you at
15 the time -- at least the time that's listed on that
16 call?

17 A. Yeah.

18 Q. Okay. And she was authorized to deal with
19 Mr. Aleksey, or you -- or deal with your files I
20 assume?

21 A. Yeah, she was authorized to deal with my files.

22 Q. That was one of them?

23 A. Filing stuff and do anything, but I don't recall
24 assigning her a specific duty. I don't recall.

25 Q. And the heading at the top of that is -- what

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1 does that indicate it says it is?

2 A. Bayan Aleksey, what's this?

3 Q. Maybe conference call.

4 A. Conference call with Danetta. He talked to
5 Danetta.

6 Q. I'm asking you if that's what this document says
7 at the top?

8 A. That's what it says at the top, conference call
9 with Danetta. That wasn't me.

10 Q. Okay. Sure.

11 MR. BROWN: Your Honor, at this time we
12 would ask to introduce this into evidence as
13 Applicant's 22.

14 THE COURT: All right. Show it to Mr.
15 Zelenka.

16 MR. ZELENKA: That is part of the file, I
17 believe, I have no objection.

18 MR. BROWN: Again, we turned over all the
19 attorney notes and as an officer of the Court
20 that is the only note from Danetta.

21 THE COURT: Very well. You want to
22 substitute a copy rather than putting in the
23 original document?

24 MR. BROWN: We would put in the original.

25 THE COURT: Just so the record reflects

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1 what you're doing.

2 MR. BROWN: We would switch that now, offer
3 the original as Applicant's 22.

4 THE COURT: Very well. Applicant's 22 in
5 evidence without objection, it is a one-page
6 document.

7 (Entered into evidence was Applicant's Exhibit
8 22, Danetta's notes:)

9 Q. Now, the notes she took are divided by little
10 markings to indicate it's a different thought or a
11 different idea. Would you agree with that?

12 A. I guess so. And let me just explain. Danetta
13 was -- because I have a solo practice, Danetta was
14 functioning basically more of a secretary as opposed
15 to a paralegal. And I don't remember Danetta telling
16 me that she had talked or had a conference call with
17 Bayan.

18 Q. Okay. But you would agree with as an attorney
19 and her employer you are responsible for her actions?

20 A. Yeah.

21 Q. And would you agree that the first time of these
22 notes say when Gloria and him were together, she took
23 the checks from her job and opened an account at
24 Summit Bank in Pennsylvania, northeast Philadelphia,
25 \$26,000, total of the two checks?

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1 A. Yeah.

2 Q. Okay.

3 A. That's what it says here.

4 Q. Sure. And then the next thing it says is call

5 Al Penske Truck Rental Company in Manhattan, New

6 York.

7 A. Uh-huh (affirmative response).

8 Q. It says manager, it gives 26th Street and 11th

9 Avenue and it says call Telecheck to find out about

10 Gloria's bad checks. You agree with that?

11 A. Yeah. That's what it's saying, yeah.

12 Q. Okay. And it gives a driver's license number, a

13 Pennsylvania driver's license number?

14 A. Yeah.

15 Q. Under the call Telecheck to find out about

16 Gloria's bad checks?

17 A. Yeah.

18 Q. For the records she had taken an uh-huh earlier,

19 I want to make sure we get the correct interpretation

20 of these.

21 A. Okay.

22 Q. And then under that Summerfield Suites, Maple

23 Shade, New Jersey, and it says talked to and I

24 believe it says Paul. And it says below that also

25 she (Gloria) has an account in Beaufort, South

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1 Carolina, checking account.

2 A. Uh-huh (affirmative response).

3 Q. Next, Gloria cashed check at Trump Casino in
4 Atlantic City, New Jersey, under that National
5 Processing Center. Then it says Bayan sent letters
6 to Mr. Stone and diagrams and wants us to get a copy.
7 from him, meaning he wants you to get copies from
8 Duffie?

9 A. Apparently, yeah.

10 Q. That's the extent of those notes on March 30th
11 approximately five months before trial?

12 A. Uh-huh (affirmative response).

13 Q. Okay.

14 A. And let me say that Bayan was here in Orangeburg
15 and I went out there on a number of occasions to see
16 him. He never said those things to me that I can
17 recall. And, of course, it's here.

18 Q. Mr. Sims, I'd like to show you --

19 A. Sure.

20 Q. -- and this is a letter that's headed "By Mom,"
21 tell the lawyers, and the next one is a three-page
22 letter, one's a double-sided page, and the next is a
23 letter that's entitled Mr. Sims -- "Mr. Stone,
24 Mr. Sims," excuse me, March 29th, 1998. And I would
25 ask if you have seen those letters?

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1 A. As I said before, you know, there were some
2 letters. Whether I've seen these letters, I cannot
3 say specifically without having my file.

4 MR. BROWN: And at this time, Your Honor,
5 we would offer to introduce these as Applicant's
6 23 together as coming from trial counsel's file.

7 THE COURT: Yes, sir.

8 MR. ZELENKA: Your Honor, counsel have
9 advised me as officers of the Court that these
10 came from the trial counsel's file. I have no
11 objection then.

12 THE COURT: Very well. Applicant's Exhibit
13 23 in evidence without objection, they are
14 letters, two letters or three letters.

15 THE WITNESS: I think three.

16 MR. BROWN: Three letters, that's correct.
17 And it's actually four pages of documents and
18 one is a double side page. And because there's
19 so much writing on them I'm not going to try to
20 staple them, I'm going to try to paper clip them
21 or I'll ask Your Honor or the court reporter.

22 THE COURT: Probably need to staple them.
23 It may not be in the usual, normal and customary
24 spot, but....

25 MR. ZELENKA: Your Honor, since they have

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1 different dates maybe we should do them as
2 separate exhibits.

3 THE COURT: Suits me fine.

4 MR. BROWN: Can we do them as sub-exhibits?

5 THE COURT: Suits me.

6 MR. BROWN: Twenty-three-A. At that point
7 we would offer the letter of 3/14/98 as 23-A.

8 THE COURT: Okay.

9 MR. ZELENKA: Your Honor, just for one
10 correction or clarification, I've been advised
11 by counsel that these documents came out of the
12 Duffie Stone file.

13 THE COURT: Oh, all right. Certainly.

14 MR. TARR: As far as we can tell. I told
15 Mr. Zelenka earlier that our trial counsel file
16 because of the way it was received through our
17 client, when he received it he took Mr. Sims'
18 file, wrote "Sims" at the top of each page he
19 got out of there and then took Mr. Stone's file
20 and then put it all together. So we just used
21 it all as one file, we don't have two separate
22 files.

23 I think when we actually go back and
24 try to reconstruct, or they, it will be fairly
25 easy to tell, it will say "Sims" at the top.

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1 These do not say "Sims" at the top. I assume,
2 therefore, they came from Mr. Stone's file.

3 But all the letters are addressed to
4 both attorneys and I think testimony will come
5 out later that at some point in their
6 representation Mr. Stone's office told
7 Mr. Aleksey to just start mailing them all to
8 Duffie's office. So that's where their central
9 file was. So that's just for the record, Your
10 Honor.

11 THE COURT: Thank you.

12 (Entered into evidence was Applicant's Exhibit
13 23-A, B, C, letters.)

14 THE COURT: Counsel, you all have taken a
15 break and that's Mr. Stone on the telephone.

16 MR. BROWN: Yes, ma'am.

17 THE COURT: We're going to take our little
18 break around one o'clock, we told him we would
19 give him an update. How much longer,
20 approximately, do you anticipate being with
21 Mr. Sims?

22 MR. BROWN: Your Honor, this is the most
23 important witness at the trial, and so there's a
24 fair amount of information we have.

25 THE COURT: Sure.

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1 MR. BROWN: Regarding her.

2 THE COURT: Yes.

3 MR. BROWN: And then, quite honestly,
4 there's still another four witnesses that
5 testified, five witnesses that testified at
6 trial following that.

7 MR. TARR: They will be much shorter than
8 this witness.

9 MR. BROWN: That's correct.

10 MR. TARR: So I would, what, two hours
11 total probably? That's a rough guess.

12 MR. BROWN: I would think that's possible,
13 yes, ma'am.

14 THE COURT: All right. And there's going
15 to be some examination from Mr. Zelenka, so I
16 think it's safe to tell Mr. Stone that we look
17 forward to seeing him perhaps sometime tomorrow.

18 MR. TARR: And we do have a short witness
19 that we're going to have come over in case we
20 finish and he'll probably be able to fill out
21 the afternoon if we get finished with Mr. Sims.

22 THE COURT: Sure.

23 MR. TARR: And actually would ask a little
24 bit of latitude from the Court, this witness
25 came from Philadelphia on a \$1,000 plane ticket.

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1 and he has to leave tomorrow, and because we're
2 so far behind with what we thought, anticipated
3 time wise and we need to put up Mr. Stone
4 tomorrow and several other witnesses, including
5 Mr. Bailey and the three SLED agents and then a
6 number of experts Friday, that we would like to
7 get him in even if we had to go to 6:00 or 5:30.
8 But I think we can probably get it in by 5:30.

9 MR. BROWN: I believe his testimony would
10 be short, thirty minutes.

11 MR. TARR: Thirty to 45 minutes.

12 THE WITNESS: Your Honor, can you tell
13 family court where I am? Because I had a two
14 o'clock for this afternoon.

15 THE COURT: I certainly may. I certainly
16 would be happy to do that. What family court
17 judge is here?

18 THE WITNESS: Judge Gay, Ann Gay.

19 THE COURT: Sure, I'll tell her. I'll have
20 my law clerk do that. Was it a final hearing,
21 Mr. Sims, temporary hearing?

22 THE WITNESS: It's a rule, and I represent
23 a man on a rule.

24 THE COURT: Who is on the other side?

25 THE WITNESS: Maybe DSS.

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1 THE COURT: I'll tell them not today, but
2 soon. I'll send my law clerk over there.

3 MR. BROWN: May I proceed?

4 THE COURT: Yes.

5 BY MR. BROWN:

6 Q. I'll show you those letters again, ask you to
7 review them. I did paper clip the three exhibits
8 together.

9 A. Okay.

10 MR. BROWN: The pages that go together,
11 Your Honor, have been stapled.

12 THE COURT: I understand. Hold on one
13 second so I can....
14 (Pause in proceedings.)

15 THE COURT: Now you may proceed.

16 MR. BROWN: Thank you, Your Honor.

17 Q. If you'll look at 23-A.

18 A. Yes, sir..

19 Q. And it's numbered and divided into subjects.

20 A. Right.

21 Q. And if you'll look at the subject number eight
22 it says also they have the checks that Glory stole
23 from her job, about 30 checks, doctor's checks,
24 Trenton, New Jersey.

25 A. It says "Mom, tell the lawyers what the police

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1 have.". Was this letter written to us or to his
2 mother?

3 Q. Well, it came again from trial counsel's file,
4 so I think what it indicates is that it was written
5 to his mother but ended up in trial counsel's file.

6 A. After he got his file he had the opportunity to,
7 to write his mom or do whatever. He had his file for
8 a period of time, so I question whether or not I
9 would have a file, have this letter or have even seen
10 this.

11 MR. BROWN: And, Your Honor, I don't know
12 if I'm supposed to respond to the question from
13 the witness.

14 A. I'm simply questioning whether or not --

15 THE COURT: You're not. The response is,
16 as I understand it, that Mr. Sims, as I
17 understand it, doesn't have any memory. You
18 can't represent to the Court or to Mr. Sims that
19 that letter was in anybody's file because all
20 you know is that you got it from Mr. -- from
21 your client and your client has informed you
22 that it was in the file, and that's where you
23 are.

24 MR. BROWN: Well, actually I think we've
25 admitted it, Your Honor, not to argue with Your

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1 Honor, but respectfully I believe it's admitted
2 as being from the file.

3 MR. ZELENKA: That's because, as I said, as
4 an officer of the Court that's what I was told
5 that it came out of defense counsel Stone's
6 file.

7 THE COURT: Right.

8 MR. ZELENKA: If that's incorrect, I mean
9 that made it admissible if it came out of the
10 file. I don't know that I have an objection.

11 THE COURT: That's all you said is based on
12 the representations of Mr. Brown that came out
13 of the file, that you have no objection to it.

14 And you're representing to the Court
15 that as far as you know that it came out of the
16 file, the file was with your client, was in his
17 possession, it was not in possession of counsel
18 and that's just where this is. And Mr. Sims
19 doesn't remember the letter. And I gather the
20 question was of the nature of a rhetorical one.
21 You know to answer the question?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: All right.

24 Q. Then if I can refer you to the exhibit marked,
25 or the document entered in evidence as 23-B.

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- 1 A. Uh-huh (affirmative response).
- 2 Q. It's a letter March the 29th, 1998.
- 3 A. Yes, that's what it is.
- 4 Q. That's a day before the telephone notes from
- 5 Danetta.
- 6 A. Yeah.
- 7 Q. Which is 22.
- 8 A. Yeah.
- 9 Q. And that document is addressed Mr. Stone and
- 10 Mr. Sims?
- 11 A. Right.
- 12 Q. And it goes through and shows -- it goes through
- 13 and gives some information. Glory Blackwell has a
- 14 checking account in Beaufort. The bank is MCAB or
- 15 something that has those letters. It talks about
- 16 Summerfield Suites Hotel in Maple Shade, New Jersey?
- 17 A. Yeah.
- 18 Q. And it talks about a check she wrote for \$700 at
- 19 the Atlantic City, New Jersey Casino in Trump Taj
- 20 Mahal?
- 21 A. Yeah.
- 22 Q. He then tells you to find out about this because
- 23 the check was processed through the Telecheck
- 24 machine?
- 25 A. Yes.

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1 Q. It gives an elaborate diagram of how you operate
2 a Telecheck machine?

3 A. Yes, it does. Is this a letter that he -- or
4 the next day called, supposedly called my office and
5 told me to get a copy of?

6 MR. BROWN: Again, Your Honor, I would....

7 THE WITNESS: I'm asking, I don't know and
8 I'm trying to be clear.

9 THE COURT: If you don't know, you don't
10 know.

11 A. I don't know then.

12 Q. Right. And my question again was 23-B
13 demonstrates an elaborate drawing of a Telecheck
14 machine?

15 A. It does.

16 Q. Then I refer you to 23-C, and it says, "Dear
17 Mr. Stone and Mr. Sims."

18 A. Yes, it does.

19 Q. It's dated April 19th, 1998?

20 A. Yes.

21 Q. And it is a three-page letter?

22 A. Uh-huh (affirmative response).

23 Q. And it goes through, gives some information
24 about if you'll refer to page two it says she worked
25 in Trenton at a medical center, that's the second

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1 sentence.

2 A. Okay.

3 Q. It says it was on Oslee Avenue (not sure) it was
4 on Fuld Street.

5 A. Yeah, I mean that's what the letter said.

6 Q. And it says Dr. Band, B-a-n-d or Bang, B-a-n-g?

7 A. Yeah.

8 Q. The number is on the hotel bills?

9 A. Yeah.

10 Q. Two sentences down, she went to a dealership in
11 New Jersey, Burlington Lincoln, Mercury, Ford. She
12 had a certified check for \$20,000 to get a Mark VIII,
13 we went to some car dealers?

14 A. Yeah.

15 Q. She tried to get a loan from Commerce Bank?

16 A. Yeah.

17 Q. Now that we've got those out there, what I want
18 to do is to go to different topics of Gloryvee.

19 A. Okay.

20 Q. The first I want to talk about is her alias ID's
21 and false background information.

22 A. Uh-huh (affirmative response).

23 Q. Now, there was a point at trial where there was
24 an introduction into evidence by yourself of a number
25 of identifications, I believe it's actually a Xerox

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1 of some identifications that Ms. Perez had on her at
2 the time that she was arrested.

3 A. That's correct.

4 Q. I'll say taken into custody.

5 A. I believe so.

6 Q. Okay. And those were introduced into evidence?

7 A. Yes.

8 Q. By you?

9 A. Yes.

10 Q. And Solicitor Bailey voiced an objection as you
11 began to introduce those documents?

12 A. Yes.

13 Q. And his objection was to a document that did not
14 have her name on it?

15 A. I believe so.

16 Q. Okay. And that document was an ID of a Dominga
17 Perez?

18 A. I believe so, I don't remember.

19 Q. And I'll turn everyone's attention to page
20 1,313, testimony of Gloryvee Blackwell in front of
21 the jury, because there's some in-camera testimony.
22 This is in front of the jury and this is during the
23 innocent/guilt phase.

24 THE WITNESS: 1,313?

25 THE COURT: That's what he said.

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1 A. Okay.

2 Q. Okay. And we see there that there is an
3 objection, and that objection by Mr. Bailey was to
4 the ID that did not have her name on it.

5 A. Uh-huh (affirmative response).

6 MR. BROWN: And, Your Honor, now we would
7 first show this document to Mr. Sims.

8 Q. Does that document look familiar to you?

9 A. Yes, it does look familiar to me.

10 Q. And it's similar to the document introduced on
11 the page I referred to earlier. It's similar to the
12 document you introduced during trial reflected on
13 1,313 of the following page. You said, "We move to
14 introduce this into evidence." It says, "Are these
15 your ID's?" She says, "Yes."

16 A. Okay.

17 Q. Okay. They look similar to that?

18 A. Yeah.

19 MR. BROWN: Your Honor, at this time we
20 would introduce this as Applicant's 24 as a
21 document from trial counsel's file provided by
22 the prosecution.

23 THE COURT: Any objection to Applicant's
24 Exhibit Number 24?

25 MR. ZELENKA: No objection.

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1 THE COURT: Very well. Applicant's Exhibit
2 24 is in evidence without objection, it is a
3 one-page document. Give Ms. Keil a moment to
4 mark it.

5 (Entered into evidence was Applicant's Exhibit
6 24, Gloryvee Perez I.D.'s.)

7 Q. And, Mr. Sims, you would agree that this is what
8 was introduced with one exception?

9 A. Without seeing the actual thing I could only go
10 with, you know, what you're saying without actually
11 seeing the actual document that was introduced
12 because that's been a while ago. So to the best of
13 my recollection I would say that this is it.

14 Q. And, in fact, on 1,313 you said, "We move to
15 introduce this into evidence."

16 Solicitor Bailey says, "I have no
17 objection with the stipulation that the one that is
18 not hers be removed."

19 A. That's what the record said, yes.

20 Q. The only one on that page that does not have
21 Ms. Gloryvee's name on it, or Glory, would be the one
22 that has the name of Dominga Perez?

23 A. Yeah.

24 Q. Do you know whether Ms. Dominga Perez was Glory
25 Perez's sister?

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1 A. I don't recall.

2 Q. You don't recall. But you agreed to have that
3 removed?

4 A. I believe we did, yeah.

5 Q. Okay.

6 MR. BROWN: Your Honor, at this time we
7 would seek to introduce an affidavit of Marcus
8 Blackwell as Applicant's 25.

9 THE COURT: Any objection?

10 MR. ZELENKA: No objection.

11 THE COURT: All right. Applicant's Exhibit
12 25 is in evidence without objection, it is an
13 affidavit from Mr. Blackwell.

14 (Entered into evidence was Applicant's Exhibit
15 25, affidavit of Marcus Blackwell.)

16 Q. Do you know who Marcus Blackwell is?

17 A. Yes.

18 Q. That would be Gloryvee's estranged husband?

19 A. Estranged husband, yeah.

20 Q. Estranged at the time of the incident and
21 subsequently divorced, and I can't be sure of the
22 date, the divorce proceedings ran concurrent with the
23 proceedings against Mr. Bayan Aleksey?

24 A. Probably, I don't know.

25 Q. Okay. Generally concurrent.

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1 Okay. Would you look in Applicant's
2 25 and read the last sentence in the third portion,
3 third paragraph?

4 A. "During our marriage Gloryvee claimed that she
5 had -- that she and her sister, Dominga, looked so
6 much alike they could pass for twins."

7 Q. Do you doubt the Dominga Perez identification
8 was found on Ms. Gloryvee Perez when she was taken
9 into custody on January 1st, 1998?

10 A. No.

11 THE COURT REPORTER: On January 1st?

12 Q. And that identification of Dominga Perez was
13 never shown to the jury?

14 A. No, it wasn't.

15 Q. And there was never any argument made to the
16 jury that Ms. Gloryvee Perez would attempt, or might
17 have attempted to use a fake ID of her sister,
18 Dominga Perez?

19 A. No, it wasn't.

20 Q. And one of the things Mr. Bailey argued is that
21 Mr. Bayan Aleksey used fake aliases because he was on
22 the run from the law?

23 A. True.

24 Q. And that he was on the run from the law was the
25 number one reason why Mr. Bailey argued in closing

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1 that Mr. Aleksey was guilty of this crime?

2 A: It was a reason.

3 Q. Did he not list that in his closing as reason
4 number one?

5 A. I haven't read his closing. And if that's in
6 the record, that's in the record.

7 Q. You don't dispute that, though?

8 A. It's in the record. If it's in the record, it's
9 in the record.

10 Q. And could it not have been argued that

11 Ms. Gloryvee Perez was on the run and that's why she
12 had a fake ID?

13 A. Could have been. Anything could have been
14 argued.

15 Q. Okay. And you could have presented Marcus
16 Blackwell at trial, couldn't you?

17 A. We chose not to. We met with Mr. Blackwell and
18 we chose not to.

19 Q. But he was in Orangeburg at the time of the
20 trial?

21 A. He came in. At what time I can't remember, what
22 date he came in, but we did go and talk with him in
23 Orangeburg.

24 Q. And he was stationed in Beaufort?

25 A. Yeah.

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1 Q. And he came here with his mother?

2 A. Yeah.

3 Q. Okay. And he indicated the information in his
4 affidavit, he indicates that he spoke with y'all in
5 his hotel room. He also indicates he met with
6 Mr. Aleksey's investigator in June of 1998. Do you
7 agree with that?

8 A. I don't know whether he met with the
9 investigator in June of '98. I do know that he
10 talked with me and Mr. Stone and the nature -- the
11 third paragraph that you had me to read, I don't
12 believe that information came out at that point.

13 The issue that we brought him to
14 Orangeburg on was the issue of her violent nature,
15 her violent temper. And if you recall in the -- in
16 the end of my arguments to the Court over a period of
17 time as relates to getting into that area, Judge
18 Cottingham specifically prohibited me from getting
19 into it.

20 I thought we had made, we both after
21 going through that, thought that we had made a
22 sufficient enough record as it relates to his denial
23 of that, that on appeal that would be an issue that
24 could be looked at.

25 So we felt at that time since he was

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1 not going to allow us to get in, he was not going to
2 allow us to bring out the information as to her
3 violent nature and things of that nature, we decided
4 that we weren't going to use it.

5 Q. And at the time that you sought to question
6 Ms. Perez, that was on your cross-examination of her?

7 A. That's right.

8 Q. Now, you never proffered the testimony of Marcus
9 Blackwell, did you?

10 A. No.

11 Q. Okay. And Judge Cottingham never denied you the
12 opportunity to present Marcus Blackwell's testimony,
13 did he?

14 A. He never offered me the opportunity to -- he
15 never prohibited me from bringing up Marcus
16 Blackwell, but he did say specifically that he was
17 not going to allow information in regarding the
18 traumatic nature of the domestic affairs. Because if
19 you recall in the transcript, there was one issue
20 whereby kicking out the window and his comments in
21 regards to that.

22 Q. And I believe his comments may appear on 1,326
23 and the pages before and after that.

24 A. Uh-huh (affirmative response).

25 Q. And I believe one of the judge's responses was

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1 we don't know why the window was kicked out. And I
2 believe the judge indicates that he knew of plenty of
3 times when windows had been kicked out and there was
4 no temper involved.

5 A. Yeah.

6 Q. And y'all offered -- you did not offer any
7 evidence in this case the window was kicked out
8 because temper was involved?

9 A. We, we had been going through that. And if the
10 judge said he's not going to let it in, he said he's
11 not going to let it in.

12 Q. I believe in his ruling he -- let me ask you.
13 He was not going to let you ask questions about that?

14 A. Yeah.

15 Q. Did he ever prohibit you from introducing the
16 direct evidence of Mr. Marcus Blackwell?

17 A. No. I just told you, we made a decision after
18 talking with him and reviewing what we had already
19 put into the record as it relates to the domestic
20 issue that -- and the rules specifically say that you
21 make a proffer if it is not evident from the record
22 as to the nature of the denial.

23 So after going through that with the
24 judge and going through that whole scenario, we felt
25 that the record was clear in terms of what his

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1 prohibition was.

2 Q. He wasn't going to let you ask Ms. Gloryvee
3 Perez Blackwell Rivera questions about the cracked
4 window?

5 A. About the domestic issues.

6 Q. Right. He wasn't going to let you ask her
7 questions of it?

8 A. Yeah, that's not contested.

9 Q. And he never prohibited y'all from presenting
10 Marcus Blackwell's testimony, did he?

11 A. We made a decision. And whether that decision
12 on 20/20 hindsight is one that you disagree with, we
13 made the decision.

14 Q. But the domestic issues between them and the
15 cracked window don't have anything to do with the
16 testimony that Ms. Perez claimed that she could use a
17 fake ID of her sister. It's actually not a fake ID,
18 a valid ID of her sister as a fake ID of her?

19 A. And that issue was not raised by Mr. Blackwell
20 to my knowledge on the day that we talked to him in
21 regards to that. He indicates by that affidavit that
22 he came to talk with us, in which he did.

23 Now, I do not recall a conversation
24 where Mr. Blackwell admitted to us or stated to us
25 that Ms. Dominga, who was Mrs. Blackwell's sister,

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1 that they could go for twins. I don't remember that.

2 Now, in -- you know, when you have
3 gotten this affidavit which is dated 11/7/02, a few
4 days ago, you've gotten this affidavit from him,
5 sure, if you asked him about that and he said that to
6 you that, yeah, she told me that they could go for
7 twins.. That may have been what you asked him based
8 upon what you had seen in the records. What we asked
9 him and what he was here for on that day was in
10 regards to the domestic matters.

11 Q. Did you ask him whether Ms. Perez would ever use
12 a fake ID?

13 A. I don't recall.

14 Q. Did you ask him what the significance of Dominga
15 Perez might be?

16 A. I don't recall.

17 Q. But he puts in paragraph 5 that he discussed
18 everything in the affidavit with the investigator for
19 Mr. Aleksey.

20 A. I, me personally, do not recall, okay.

21 Q. But that is what the affidavit says, isn't it?

22 A. That's what the affidavit says.

23 Q. Okay. Now, do you recall one thing that
24 Solicitor Bailey argued was that the only person that
25 had motive or was on the run was Mr. Aleksey?

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1 A. You've indicated that several times, counsel.

2 Q. Okay. And so you're aware of that.

3 I would turn -- ask you to turn to the
4 transcript 1,753, lines 15 through 18.

5 A. (The witness complies.) 17 what now?

6 Q. 1,753.

7 A. Okay, I got it.

8 Q. And let me first get you to glance at the bottom
9 of 1,751. Again, Solicitor Bailey's closing argument
10 in the innocence/guilt phase. And he says, "What I
11 will do is point out eight facts that y'all have
12 heard under oath and the inferences and evidence that
13 support these facts."

14 He goes on, "Taken together, maybe not
15 individually, but when you take the eight together
16 they prove that Bayan Aleksey and only Bayan Aleksey
17 murdered Frankie Lingard. And the first fact is
18 Gloryvee Blackwell had no motive to kill Frankie
19 Lingard, no motive whatsoever."

20 Then I wanted to skip forward to
21 1,753, line 15. "The thing, the important thing is
22 that other than a couple of speeding tickets she has
23 not got anybody looking for her."

24 A. Yeah, that's what it says.

25 Q. Okay.

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1 MR. BROWN: Your Honor, at this time we
2 would offer several pictures in as Applicant's
3 26 and they're going to be subparts of it.

4 THE COURT: All right.

5 MR. BROWN: There are seven photos so I
6 believe it would be 26-A through 26-G.

7 THE WITNESS: G.

8 THE COURT: Any objection?

9 MR. ZELENKA: No objection.

10 THE COURT: Very well. Applicant's 26,
11 Exhibit 26 which are photographs and there are
12 seven of them, are in evidence without
13 objection, they will be listed from A through G.

14 MR. BROWN: And, Your Honor, it's it says
15 SLED stamped in the photographs, actually
16 punched through.

17 THE COURT: Very well. I think you're
18 going to have to give Ms. Keil a moment to get
19 those marked.

20 MR. BROWN: Sure.

21 (Entered into evidence were Applicant's Exhibits
22 26-A through 26-G, photographs.)

23 MR. BROWN: Can I just put on the record
24 that I'm handing a copy of the photos to -- I
25 guess that doesn't make any difference. I was

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1 going to give a color copy of these photos to
2 opposing counsel.

3 THE COURT: Sure. Let me ask you this.
4 Can everybody get their lunch and be ready to be
5 back at 2:15?

6 MR. TARR: Yes, Your Honor.

7 THE COURT: Great. We'll take a break
8 until 2:15 and we'll start back up.
9 (Lunch recess taken from 1:17 p.m. to 2:15 p.m.)

10 MR. BROWN: May it please the Court, Your
11 Honor?

12 THE COURT: Yes. Thanks, Mr. Brown.

13 MR. BROWN: Your Honor, at this time I
14 would also like to introduce what would be
15 Applicant's 27 and it's an affidavit of an
16 Elizabeth Blackwell.

17 THE COURT: All right. Any objection?

18 MR. ZELENKA: No objection.

19 THE COURT: All right. Applicant's 27 in
20 evidence without objection, it is an affidavit
21 of Ms. Blackwell.

22 (Entered into evidence was Applicant's Exhibit
23 27, affidavit of Elizabeth Blackwell.)

24 Q. This is Elizabeth Blackwell to distinguish that
25 from Gloryvee or Marcus.

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1 A. Marcus.

2 Q. Now, I ask you to take a look at Applicant's
3 photos 26-E and 26-F.

4 A. (The witness complies.) Okay.

5 Q. And do you see in the floor mat or under the
6 floor mat of the automobile, the picture, that photo
7 is a manila folder?

8 A. Uh-huh (affirmative response).

9 Q. And do you see that that folder is under the
10 floor mat below the steering wheel of the automobile?

11 A. Yeah.

12 Q. Okay. Have you ever seen that folder before?

13 A. I can't say that I did.

14 Q. Okay. And do you know whether or not this file
15 was given to you as a return of property of Bayan
16 Aleksey's?

17 A. I can't say specifically. I can say that when
18 Mrs. Aleksey called me and asked me about Bayan's
19 personal items I contacted SLED, this was after the
20 trial I contacted SLED; got all of the stuff that
21 they had, they still had in their possession, boxed
22 it up and sent it to his mother.

23 Q. And I think there were some items like a watch?

24 A. Mr. Brown, I can't tell you exactly what was in
25 there.

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1 Q. Okay.

2 A. But I do know there were some physical items,
3 there were clothes and I just put them in a box, I
4 got them back, put them in a box and just shipped
5 them on off.

6 Q. Okay. And this folder -- well, let me stop and
7 say the items that were returned were not returned
8 until after trial?

9 A. Way after trial.

10 Q. Okay.

11 A. Because there was a question of I believe some
12 money, if I recall correctly, that he was concerned
13 that they had some money of his or something like
14 that and some other items. I'm not sure, I can't
15 remember all of that.

16 But I do know that there was a request
17 made that his stuff be returned, his personal items
18 be returned. We got those. As a matter of fact,
19 there were two things because he had some clothes
20 here at the courthouse from when he was at trial, he
21 had some clothes here at the courthouse when he was
22 in trial, and SLED had some things that belonged to
23 him. So I just boxed up everything and put it in a
24 box and sent it to him, sent it to his mother,
25 rather.

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1 Q. And let me ask you, this will be a property
2 receipt?

3 A. Yeah. Okay.

4 MR. BROWN: And, Your Honor, at this time
5 we would move this into evidence --

6 A. Let me see it.

7 MR. BROWN: As a SLED property, return of
8 property receipt:

9 THE COURT: Show it to Mr. Zelenka, please.

10 MR. BROWN: He has.

11 MR. ZELENKA: What's the date on that?

12 THE WITNESS: 6/23/99.

13 MR. BROWN: That's right. June 23rd, 1998
14 is the date. The signature of Mr. Sims is
15 affixed to this accepting receipt of these
16 items.

17 MR. ZELENKA: No objection.

18 MR. BROWN: This will be, I believe,
19 Applicant's 28.

20 THE COURT: Applicant's 28 in evidence
21 without objection, it's a one-page document.
22 (Entered into evidence was Applicant's Exhibit
23 28, property receipt.)

24 Q. Let me ask you if you'll take a look at the
25 item, there are five item numbers marked and then

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- 1 it's the sixth item there's no number beside it.
- 2 A. Yeah.
- 3 Q. And it says a return of...?
- 4 A. You want me to read it, or...?
- 5 Q. Yes, sir. Please.
- 6 A. Hotel, motel, telephone receipts, that's the one
- 7 that is not --
- 8 Q. Numbered?
- 9 A. -- numbered.
- 10 Q. Yes, sir. Okay. And let me show you -- would
- 11 you take a look at those items, and they're numerous.
- 12 But generally do you recognize those items?
- 13 A. No, I don't.
- 14 Q. Okay. Would you agree that they are hotel,
- 15 motel, and telephone records?
- 16 A. Yes.
- 17 Q. And hotel, motel receipts?
- 18 A. Yeah. I've just right quickly fanned through
- 19 them, yeah.
- 20 Q. Sure. And the date of printing on these
- 21 receipts are...?
- 22 A. This one is, let's see, 12/14/97, that's
- 23 12/21/97, 12/17/97, 12/14, okay, 12/17, another one
- 24 for 12/17; another one for -- wait a minute.. Now,
- 25 let be me sure. You want the arrival date or the

1 date of the invoice? Because the arrival date on one
2 says 12/14/97 and the date is 12/14/97. The other
3 one it says the date is 12/17/97 and the arrival date
4 is 12/14/97. The other one is the same thing, date
5 is 12/17, the arrival date is 12/14 and that is also
6 for the next one.

7 Q. Okay.

8 A. And it says arrival and then departure date was
9 3/1/98. On all of them that I read that talked about
10 the 12/17/97 and the arrival date as 12/14/97 the
11 departure date shows 3/1/98.

12 Q. The departure from the hotel?

13 A. Yeah, that's what it says here.

14 Q. And the departure date would be for...?

15 A. What do you mean?

16 Q. For which guest?

17 A. Oh, Gloria Perez it shows that. Now, the one
18 that's dated 12/14 on both dates, the date and
19 arrival, the departure date on that one was 12/21/97.
20 The ones that are saying 12/17/97 arrival 12/14/97,
21 departure 3/1/98 all for room number looks like 27.

22 The one that shows the arrival date --
23 departure date of 12/21/97 was also for room 27. And
24 the other one was a date of 12/20, an arrival time of
25 12/14/97, departure 3/1/98, the room was again room

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1 27. Then you have a date of 12/21, arrival of 12/14,
2 departure 3/1/98, room number 27.

3 12/21/97 is the date, the arrival
4 12/14/97, the departure date 3/1/98, room 27. All of
5 these appear like here the same thing on the one,
6 another one dated 12/21, an arrival of 12/14 and the
7 room number is 27, the departure time is 3/1/98 and
8 all of these are for Gloryvee Perez or Gloria Perez.

9 Q. I don't mean to cut you off.

10 A. Yeah.

11 Q. Needless to say, there's a plethora of
12 Summerfield Suite documents?

13 A. Yeah.

14 Q. Okay. And then behind that there is a check-out
15 receipt?

16 A. There's a receipt, yeah, let me see where it's
17 from. It just says check-out time 11:48.

18 Q. Then there's a Residence Inn receipt?

19 A. Yeah.

20 Q. Then there's a Westin Suites receipt?

21 A. Uh-huh (affirmative response).

22 Q. An invoice for a '98 Monte Carlo LS?

23 A. Yeah.

24 Q. Okay. Then there's a yellow page piece of,
25 somebody's yellow pages, an IRS form revised?

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1 A. Yeah.

2 Q. Okay. And then there are some employee earnings
3 records?

4 A. Yeah, for Burger King, and this one says
5 Byung-Kee Bang, M.D.

6 Q. Dr. Bang?

7 A. Yeah. Sorry.

8 Q. Sure. And just more time sheets?

9 A. Yeah.

10 Q. CliniForms from a doctor's office?

11 A. Yeah.

12 Q. Some documents, a certified check, a document
13 says MCAB Beaufort Federal Credit Union, a certified
14 check, another employee time sheet?

15 A. Yeah.

16 Q. Okay.

17 MR. BROWN: Your Honor, we would ask that
18 these be marked at this time as Applicant's 29
19 collectively. And I believe I may have an
20 alligator clip which I believe would secure
21 those.

22 THE COURT: Okay. Have you shown those to
23 Mr. Zelenka? Show those to Mr. Zelenka if you
24 will.

25 MR. BROWN: Sure, okay.

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1 THE COURT: Might be easier for him to flip
2 through them if you don't have the alligator
3 clip on.

4 MR. BROWN: Sure. I am going to hand it to
5 him and let him go through them.

6 (Marked for identification was Applicant's
7 Exhibit 29, hotel, motel, telephone receipts.)

8 (Pause in proceedings.)

9 Q. To ask you again, Mr. Sims, you said the items
10 you got from SLED were sent to --

11 A. I was under the impression that I had boxed up
12 everything and sent them to his mother. Now, I'm not
13 sure and now that I think about it there were -- I
14 know the clothes were sent to his mom.

15 Q. Okay.

16 A. And I don't know whether or not these were sent
17 to him or whether or not they were sent down to
18 Lieber Correctional with everything else.

19 Q. Sure. And any document related to the case that
20 you had was sent to Mr. Aleksey?

21 A. Yeah.

22 Q. Your file documents?

23 A. Yeah.

24 Q. Okay. But he can't have things like clothes at
25 Lieber?

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1 A. No. That was after -- I don't know when -- the
2 dates when I sent everything down.

3 Q. Sure.

4 A. But I don't know whether that was after the date
5 that I had sent the file down, whether there was
6 additional -- and I just can't say whether I sent it
7 to him or his mother.

8 Q. Okay.

9 A. I know I know that when I got the information I
10 boxed it up sent it somewhere, I don't know where.

11 Q. Sure. Again, Applicant's 28 is the receipt,
12 this is all again after trial, it does list hotel,
13 motel, and telephone receipts?

14 A. Yes, it does.

15 Q. Okay. Do you have any way of disputing whether
16 these are the items returned to Mr. Aleksey in this
17 property receipt listed as Applicant's 28?

18 A. No, I don't have any way of disputing nor do I
19 have any way of verifying. All I know is I got
20 everything.

21 Q. Would you take a look at this folder?

22 A. Uh-huh (affirmative response).

23 Q. And if you'll look at the back of the folder and
24 look at Applicant's 26-F and 26-E, would you agree
25 that that folder is the same folder listed in those

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1 pictures?

2 A. It has the same markings as in the picture, yes,
3 it does.

4 MR. BROWN: Your Honor, we would ask that
5 that be moved into evidence as 30.

6 THE COURT: Any objection?

7 MR. ZELENKA: No objection to that
8 document.

9 THE COURT: Very well. The folder is in
10 evidence as the Applicant's Exhibit 30 without
11 objection.

12 (Entered into evidence was Applicant's Exhibit
13 30, folder of documents.)

14 Q. You would agree there are items in this folder
15 as it appears in Applicant's 26-E and 26-F?

16 A. There are items in there.

17 Q. Sure. And you can see on the edge of the folder
18 some lines of some documents sticking out? And I
19 would ask you if you would look at the time sheets
20 for Ms. Gloryvee B. Perez and ask you if that's
21 consistent with the lines?

22 A. I can't say that. The only thing I can see is
23 up here is there's some writing here and then there's
24 some writing down the side here on one of the
25 documents.

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1 What that is, if you had that document
2 you may have been able to blow it up, but I don't --
3 I can't say. All I can say is that there are
4 documents in the folder. What those documents are I
5 cannot say.

6 Q. Sure. Let me ask you this: Do you recall
7 reviewing that folder and its contents?

8 A. No. No.

9 Q. Do you recall Solicitor Bailey ever showing you
10 that folder and its contents?

11 A. I didn't see that. As a matter of fact, I
12 didn't see it until you just brought it out.

13 Q. Sure, okay. You agree the folder is the one
14 that's in the SLED photos?

15 A. Yeah.

16 Q. Okay. Do you recall Counsel Stone asking you
17 about that document, asking about that, or telling
18 you about that folder with the receipts?

19 A. I can't recall.

20 Q. Okay. And then I'd refer you to 26-A and 26-B.

21 A. Uh-huh (affirmative response).

22 Q. All right. And that is generally a receipt, or
23 a reservation form, excuse me, rental reservation.

24 A. Okay.

25 Q. Now, I would ask you if you would take a look

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1 at --

2 MR. BROWN: And, Your Honor, I'm going to

3 have to use the original on this.

4 Q. Of 26-G, and ask you if 26-G is not, does not
5 have the same heading on it as what is listed in 26-A
6 and B?

7 A. SLED L980011.

8 Q. No, no, that's the SLED punching into the
9 photograph.

10 A. I mean, that's the way I can verify that you're
11 talking about the same thing because this thing in
12 the picture has SLED L980011, this picture is 980011.

13 Q. They all have that, that's the case number.

14 A. I don't know.

15 Q. Sure. What I'm asking you at the top of 26-A
16 and 26-B which is a photo of a piece of paper, at the
17 top of the piece of paper itself.

18 MR. BROWN: And, Your Honor, I believe you
19 have these two photos, the originals.

20 Q. That says a rental reservation?

21 A. Yes, it does.

22 Q. It's on a green and white computer printout with
23 the computed dotted tracker paper on the side?

24 A. Yeah.

25 Q. Okay. Would you look in 26-G?

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1 A. Okay.

2 MR. BROWN: And, Your Honor, I'm going to
3 hand up the copy, I need the witness to look at
4 the original.

5 THE COURT: Sure.

6 Q. And that is the door of a car?

7 A. Yeah.

8 Q. Okay. And that picture would depict --

9 A. Something in the door.

10 Q. Okay. And actually the door would be the
11 driver's door?

12 A. Yeah.

13 Q. Okay. And the something that's in the door is a
14 green and white piece of computer printout?

15 A. What I see are two things in the door. One is
16 more of a white color and one is a folded back side
17 of what could be, and I don't know whether it is or
18 not.

19 Q. Sure. Sure.

20 A. It could be the same thing that you're talking
21 about here. That's the back side of whatever,
22 because it has the writing on the back.

23 Q. Sure.

24 A. That's a white piece of paper that looks like a
25 pill bottle and glasses.

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1 Q. Okay. And let me ask you to look, there's a
2 white heading on this one piece and would you look
3 below that say that it's green, similar to the green
4 and white computer paper?

5 And then I would actually ask you, I
6 don't have a magnifying glass but I would ask you to
7 look at this and see if that doesn't say rental
8 reservation exactly like what's on 26-A and B in
9 Applicant's 26-G?

10 A. Maybe your glasses are stronger than mine, but I
11 would need a magnifying glass to be able to look at
12 that to make that determination, I really would.

13 Q. Let me first ask you this. Does it not have a
14 hole that is consistent with the printer page?

15 A. Yeah, it does.

16 Q. Okay. And you would agree or not that it's
17 green and white like the paper on that other paper?

18 A. Yeah.

19 Q. So at least that much is consistent that it's --
20 that it is green and white like the 26-A and B
21 document is green and white?

22 A. Yeah.

23 Q. And it's got the -- and I don't know how to
24 refer to it, but the printer --

25 A. The tear off part of the computer paper.

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1 Q. Where the printer pulls the paper through?

2 A. Yeah.

3 Q. Is consistent with 26-A and B and consistent
4 with the document in the driver's side door on 26-G?

5 A. Yeah.

6 Q. Okay. And I would submit --

7 A. It's more consistent when the -- you see the box
8 there.. You didn't talk about the box, but I'll show
9 it to you. The box right above the glasses here.

10 Q. Sure. Tell me, you tell me.

11 A. That box right there.

12 Q. And you find that consistent with...?

13 A. That box right there.

14 Q. Okay. And so it looks, it appears that the
15 document in 26-A and B, which are SLED photographs,
16 seems to indicate that that piece of paper was in the
17 driver's side door pocket?

18 A. It seems to be a piece of paper bearing those
19 indications was in the driver's side door.

20 Q. In fact, they're consistent with 26-A and B?

21 A. I'll go that far.

22 Q. If you don't mind I'm going to hand 26-G back to
23 Her Honor so you can look, also what I pointed out as
24 far as the words rental reservation and the green
25 that I had asked you about.

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1 A. Yeah.

2 Q. And I'm going to hand you back a copy.

3 A. Okay.

4 Q. And obviously there's a little difference. Now,
5 I believe if you'll look at 26-A and B that SLED did
6 a good job of taking that photograph, there are --
7 actually 26-A and 26-B are photographs of the same
8 document. And one's got a little bit more shade to
9 it and one's a little lighter.

10 A. Okay.

11 Q. Would you agree generally that the document can
12 be read from the photographs?

13 A. Yeah.

14 Q. And it was taken, you know, I assume that it
15 took it this way with the intention of being able to
16 read the document?

17 A. Uh-huh (affirmative response).

18 Q. Okay. Would you read -- do you agree it says at
19 the top rental reservation?

20 A. Yes, it does.

21 Q. To the left it says Penske?

22 A. Yeah.

23 Q. Truck Leasing?

24 A. Yeah.

25 Q. Okay.

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1 MR. BROWN: And I apologize, Your Honor,
2 we're just going to have to go through and list,
3 I don't want to read the entire thing but just
4 the significant parts.

5 Q. At the bottom left-hand corner do you see it
6 says taken 12/30/97 by Sal?

7 A. Yeah, 12/30/97. Yeah.

8 Q. And so in other words, then beside that it says
9 reservation confirmation number?

10 A. Yeah.

11 Q. So in other words, Sal took a reservation on
12 December 30th, 1997?

13 A. Yeah.

14 Q. Okay. And in the upper right-hand corner below
15 the same rental reservation number it's got a box
16 says one-way household?

17 A. Yeah.

18 Q. Okay. And the location of the Penske Truck
19 Center was 536 West 26th Street in New York?

20 A. Wait a minute, let me find that.

21 Q. That is on the top left.

22 A. Yeah, 536. Yeah.

23 Q. West 26th Street in New York.

24 A. Yeah.

25 Q. Would you refer back to Applicant's 22 which is

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1 the notes of Danetta, and I'm sorry I think they may
2 have moved over here. I'm going to put them all on
3 this table right here.

4 A. Okay.

5 Q. And I'm going to get them in order with --

6 A. There it is, the sheet, the yellow sheet.

7 Q. Oh, you're right. And if I can ask you to look
8 at the second one it says call Al, not Sal, but Al at
9 Penske?

10 A. Uh-huh (affirmative response).

11 Q. It says truck rental company in Manhattan, New
12 York?

13 A. Yeah.

14 Q. Twenty-sixth Street?

15 A. Yeah, that's what it says.

16 Q. And that's consistent with the reservation that
17 we've got here?

18 A. Yeah. With the exception you're talking of Al
19 and Sal.

20 Q. That's correct, but obviously that's pretty
21 common. The difference may be explained by just an
22 accident in hearing someone's name, I mean it's not
23 like it's Bill and Sal.

24 A. Yeah.

25 Q. Or a difference like that. Okay. Right. With.

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1 that difference it's a Penske truck rental is
2 referred to, this is a Penske truck rental, it's on
3 the 26th Street in Manhattan. Okay..

4 Now, if you look again at 26-A and B
5 do you see that the customer information goes below
6 the Penske --

7 A. Yeah.

8 Q. -- truck address and all. Who's the customer on
9 this document?

10 A. It says Gloryvee Perez.

11 Q. And her address?

12 A. It shows, what is that, a 3333 Comely Road.

13 Q. I believe that's correct. And below that it's
14 got a vehicle information which is I think the
15 vehicle that they're renting?

16 A. Uh-huh (affirmative response).

17 Q. And it says a class 6015, 15-foot truck?

18 A. Uh-huh (affirmative response).

19 Q. It's got some other information in there, TIW,
20 that doesn't mean anything to me.. Then it has a car
21 carrier required.

22 A. Yeah.

23 Q. Would you tell the Court what type of car
24 they're looking to carry on the back of this truck?

25 A. A 1998 Ford Mustang.

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1 Q. And would you look two boxes down where it says
2 what type of rental this is, whether it's a two-way
3 or one-way?

4 A. It says one-way destination.

5 Q. Okay. And would you look below that and read
6 the Court the destination of this truck?

7 A. West Palm Beach, Florida.

8 Q. Okay. That's not Orlando, Florida?

9 A. No.

10 Q. Okay. And would you read, and it's somewhat
11 punched through, but can you see over to the
12 right-hand side at estimated charges for this?

13 A. It looks like over \$1,000. Wait a minute, on
14 the other one it looks like 1,707.97.

15 Q. So 1,700 plus dollars?

16 A. Yeah.

17 Q. Now, one other time would you look up at the
18 time that this truck is supposed to be picked up?

19 A. Where is that?

20 Q. If you'll look up in the top right-hand -- I'm
21 sorry, in the fourth box from the top of the
22 right-hand side.

23 A. Date out, 12/31/97 at 9 o'clock in the morning.

24 Q. Okay. So in other words, that's when the truck
25 is to be picked up?

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1 A. Uh-huh (affirmative response).

2 Q. Okay. Now, you agree that this is not the type
3 of receipt -- or excuse me, this green printer paper
4 is not, this isn't fax paper?

5 A. No.

6 Q. Okay. And so it seems to indicate that this
7 document was picked up from the reservation center?

8 A. Yeah.

9 Q. Okay. And again it's in the car?

10 A. Yeah.

11 Q. And it's in a white '98 Mustang?

12 A. Well, it's in what appears to be the same thing.
13 It appeared to be in the car in the door. And that
14 Mustang, that's the car that Mr. Aleksey was
15 subsequently caught in.

16 Q. And Ms. Perez?

17 A. And Ms. Perez, yeah.

18 Q. So it would be consistent with this document
19 being picked up from Penske and placed in that white
20 '98 Mustang?

21 A. Yeah.

22 Q. Okay. Now, at this point I would want to refer
23 you to some testimony of Ms. Perez, specifically --

24 MR.. BROWN: And, Your Honor, transcript
25 1,301, line 8 to 14.

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1 Q. And while we are looking that up again, and the
2 record shows this, you cross-examined Ms. Perez?

3 A. Yeah. 1,301 line what?

4 Q. 1,301, line 8 through 14.

5 A. Uh-huh (affirmative response).

6 Q. Okay. And this is during the innocent/guilt
7 phase and it's the examination of Ms. Gloryvee
8 Blackwell by Solicitor Bailey.

9 A. Uh-huh (affirmative response).

10 Q. And on line 8 -- well, excuse me, line 6 he
11 says, "When did you all leave?" And I believe from
12 context he's talking about when did you leave
13 Pennsylvania to come to South Carolina on the day the
14 trial involved.

15 And I think her response is, we left
16 Pennsylvania 1:00 or 2 o'clock in the afternoon.

17 A. That's true.

18 Q. And I think her quote, "We actually woke up at
19 11:00 and had breakfast." You agree with that? "And
20 by the time we left Pennsylvania, it must have been
21 1:00 or 2 o'clock in the afternoon."

22 A. Yeah.

23 Q. "This was New Year's Eve?"

24 And her response was, "December 31st,
25 1997."

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1 "And where were y'all heading?"

2 And the answer was, "Disney World."

3 "And how long were you planning on
4 being in Orlando?"

5 And she says, "About a week."

6 A. Uh-huh (affirmative response).

7 Q. Okay. Now I would refer you to the closing
8 argument, 1,758, lines 4 through 8. Okay. Before we
9 go into that, let me ask you this: Before lunch we
10 introduced these photographs that appear as
11 Applicant's 26-A through G. Have you ever seen the
12 photographs involving that Penske rental truck
13 before?

14 A. I do not recall ever seeing those.

15 Q. Okay. And have you ever seen the photograph
16 that shows, appears to show a document with the
17 similar coloring, print tracks on the side and the
18 box that says rental agreement in the door, have you
19 ever seen that photo, 26-A?

20 A. I do not recall now.

21 Q. You don't recall that you've seen that?

22 A. No.

23 Q. Excuse me, I've got this confused, 26-G.

24 A. Twenty-six-G, okay.

25 Q. You don't recall whether you saw that one with

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1 it in the door panel, okay.

2 Now, if I can get you again to look at
3 1,758, 4 through 8, Solicitor Bailey's closing
4 argument in the innocent/guilt phase says -- and let
5 me say, put this in context -- I apologize. Before
6 we do that, I do guess I need to go to Ms. Gloryvee's
7 testimony which is 1,308 and 1,309 if you can keep
8 your finger on 1,758 because we'll come back to that.

9 A. (The witness complies.)

10 Q. Solicitor Bailey's asking Gloryvee about some
11 pictures of the items in the car. And she says
12 that's been testified as the passenger side of the
13 car. "Do you see anything there that belongs to
14 you?" She says, "A purse. That's a leopard looking
15 thing."

16 He goes through, asks about the
17 glasses, something that might be a diaper. And she
18 says that all that stuff's her stuff. She says those
19 are my glasses and the baby's bottle. The question
20 is again, "On the passenger side?"

21 She said, "Yes, it is."

22 Refer you back to 1,758 in the closing
23 argument, line 4 through 8 on 1,748 -- excuse me,
24 1,758 in the closing argument again this is where he
25 goes through his reasons that Mr. Aleksey and

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1 Mr. Aleksey alone was the perpetrator of the murder.

2 A. Uh-huh (affirmative response).

3 Q. Line 4, 1,758. The next thing we've got before
4 we get into that, we showed you these pictures of the
5 personal property. You would agree with that?

6 A. Yeah.

7 Q. And the argument was "All of Mrs. Blackwell's
8 stuff is sitting on the passenger side of that car
9 not the driver's side."

10 A. That's what the record says.

11 Q. Okay. And assuming the item in 26-G is the
12 folded up location of the item photographed as 26-A
13 and B, that closing argument statement would be
14 false?

15 A. Yeah.

16 Q. Because it's a receipt from Penske to Gloryvee
17 Perez and it's on the driver's side door?

18 A. That's true.

19 Q. And it's on the same day that they supposedly
20 drove to South Carolina?

21 MR. BROWN: Just for the record, I think
22 that was a positive, affirmative response.

23 A. Yeah.

24 Q. And one of the arguments the solicitor also made
25 was that the only driver of this car from

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1 Philadelphia to South Carolina was Mr. Bayan Aleksey
2 and not Gloryvee?

3 A. Right.

4 Q. However, this is evidence that she may well have
5 been the driver?

6 A. This is evidence that some of her personal items
7 were on the left side of the car.

8 Q. And the placement of the personal items was the
9 evidence, part of the evidence used to show that
10 Mr. Aleksey was the driver?

11 A. Yeah.

12 Q. And so showing that -- and let me stop. Was
13 there any item of personal evidence that was shown at
14 trial to be Ms. Gloryvee's and on the driver's side?

15 A. We raised the question of a brush. Now, I've
16 seen the brush in that picture, but I don't know if
17 that was the picture where the brush -- there was
18 several pictures apparently of it, and I don't know
19 whether that was the same picture that was used to
20 show those things.

21 There was a picture of a brush, we
22 cross-examined and in my closing argument I raised
23 the question to the jury that SLED never did an
24 analysis of the brush to determine whose hair was in
25 the brush, whose the brush was, it was a pink brush,

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1 it was a woman's brush, it looked like a woman's
2 brush and I raised that in my closing argument to the
3 jury that SLED had not made a determination to
4 determine whose brush that was.

5 Q. Okay. Your argument was the State didn't prove
6 their evidence of what, of some of the items on the
7 side of the car?

8 A. Yeah.

9 Q. Did the defense or the prosecutor ever show any
10 evidence of property of Ms. Gloryvee's on the
11 driver's side?

12 A. No.

13 Q. Okay. But if this is, in fact -- 26-A and B is,
14 in fact, the rental reservation that appears in 26-G
15 in the driver's door, then that would be a piece of
16 personal property of Gloryvee Perez's on the driver's
17 side?

18 A. It would be personal property of hers, yeah.

19 Q. It's not old property?

20 A. No, that would have been done supposedly for
21 that day, New Year's Eve.

22 Q. And let me ask you this. New York is north of
23 Philadelphia?

24 A. I guess, yes.

25 Q. So when you drive from Philadelphia to South

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1 Carolina it's not a direct trip to go via New York,
2 is it?

3 A. No. You would not have to go, and I'm not an
4 expert on this, I don't know how close they are, so
5 close that you drive right across the line and you
6 can be in New Jersey and in New York, and so I would
7 not, no, I'm not the person to know. I would assume,
8 and this is an assumption, that New York is above
9 that part of Pennsylvania.

10 MR. BROWN: Your Honor, we ask the Court to
11 take judicial notice of that.

12 THE COURT: I will take judicial notice of
13 Pennsylvania and where it's located.

14 MR. BROWN: No, of the location of New York
15 being north of Philadelphia.

16 THE COURT: That's what I'm saying, yes, I
17 will. I gather you don't object to the Court
18 taking judicial notice of the location of New
19 York.

20 MR. ZELENKA: I have no objection to that
21 at all.

22 THE COURT: I gather New York City and
23 Pennsylvania.

24 MR. BROWN: New York City, yes, ma'am.

25 Q. The reason why I asked, the reservation says

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1 26th Street, Manhattan. Let me ask you this. Do you
2 recall -- the record obviously shows what it does --
3 do you recall Mr. Bailey ever asking Ms. Perez
4 himself --

5 A. No.

6 Q. -- about this rental reservation receipt?

7 A. No.

8 Q. Okay. In her testimony again Ms. Perez said
9 they woke up at 11 o'clock, had breakfast in
10 Philadelphia, woke up at 11 o'clock in Philadelphia,
11 had breakfast in Philadelphia and left for South
12 Carolina between 1:00 and 2:00?

13 A. Yeah.

14 Q. But this receipt says 9 o'clock in the morning?

15 A. No. The receipt said that they were to pick up
16 the vehicle at 9 o'clock in the morning.

17 Q. That's correct. That's correct. That's what I
18 meant, I'm sorry.

19 A. Okay.

20 Q. But the receipt says the vehicle is to be picked
21 up at 9 o'clock?

22 A. Yeah.

23 Q. And we also know that the, that the receipt was
24 picked up?

25 A. I'm not so sure -- I can't say that, because you

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1 can make a reservation in one place and they will
2 print out a printer sheet to you but you pick the
3 vehicle up at another place.

*4 Q. Sure. But if the reservation was made by Sal,
5 Sal or Al as referred to in this is the manager as
6 Mr. Aleksey tells Danetta of the Manhattan branch of
7 Penske and that's where the receipt, that's where the
8 reservation was made, then that would seem to
9 indicate that's --

10 A. Not necessarily.

11 Q. You're saying they picked up a receipt at
12 another branch?

13 A. You can pick up a receipt at one branch.

14 Q. Okay.

15 A. And you can be talking to the person -- because
16 I've gone to places to rent a car or rent something
17 and they won't have one there, get on the phone, we
18 call somebody else and that person will give his name
19 and everything else, but I can get a printout so when
20 I got there I got that printout in my hand and
21 saying, you know, this is the reservation that I
22 made.

23 Q. Did you all contact Al?

24 A. I did not contact Al.

25 Q. Okay. Did you all contact Sal or ask about --

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1 anybody at Penske about these reservations?

2 A. Not Sal or Al.

3 Q. And if Sal or Al said that Gloryvee came to
4 Manhattan and picked this receipt up on the 31st,
5 would that be significant?

6 A. That she came to pick it up?

7 Q. Well, would it be significant in the case if you
8 found out Gloryvee had picked up the receipt
9 identified as 26-A and B or in the photograph?

10 A. It would show that she had intentions of going
11 not to Orlando, to go to another place.

12 Q. And the testimony that she woke up at 11:00 if-
13 she picked this up at 9 o'clock would not be true
14 also?

15 A. No.

16 Q. The testimony that they drove from Philadelphia
17 to South Carolina would not be the whole truth
18 either, would it?

19 A. No, that would have meant that she -- well, let
20 me put it this way: Depends on how the question was
21 asked. If you asked did you go directly from
22 Pennsylvania --

23 Q. Sure.

24 A. -- to South Carolina or whether you went, you
25 know, by way of somewhere else to pick up something.

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1 Q. Sure.

2 A. So I don't know, so you're asking me --

3 Q. Okay. At 1,301 is her testimony and it says --
4 it says, "We actually woke up about 11 o'clock and
5 had breakfast. By the time we left Pennsylvania it
6 must have been 1:00 or 2 o'clock."

7 A. Yeah.

8 Q. And "Where were you heading?" I skipped a
9 couple of lines. "Where were you heading?"

10 "Disney World."

11 And so my question again is if, in
12 fact, they went to New York, which is not in the
13 direction of going from Philadelphia to South
14 Carolina, then that would not be the whole truth?

15 A. No, it wouldn't.

16 Q. Okay.

17 A. It would simply show, it would have simply shown
18 that -- I don't know whether it was true or not. She
19 would have just simply shown that she went somewhere
20 else other than where she said she was going.

21 Q. And she testified falsely about the -- and it
22 would show that she testified falsely about the
23 events of December 31st?

24 A. It would show that there were other intentions.
25 Now, we would have had to prove that she had gone to

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1 New York and that she had -- or that she had done all
2 those things.

3 Q. Like if Sal came and testified to that?

4 A. Yeah.

5 Q. Okay. And if Sal -- would you find it important
6 if Sal said that the \$1,700 check written on the
7 Marine Corps Air Station Beaufort closed bank account
8 of Ms. Perez was not a good check, would that be
9 important?

10 A. Yeah.

11 Q. And if Sal testified that TeleCheck said keep
12 them there for the police, but instead he went and
13 told them the police are on their way you need to get
14 out of here, that would be important, wouldn't it?

15 A. Yeah. I also raised some questions about Sal,
16 too.

17 Q. And let's get to that. So in other words, sal
18 didn't keep -- if Sal's the manager of Penske he's
19 not law enforcement, is he?

20 A. No.

21 Q. So he didn't actually have an obligation to
22 arrest anybody?

23 A. No. But if he's there as a representative of
24 Penske and he's there and going to alert her that the
25 police are coming, y'all need to leave, I have some

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1 questions about his truth and voracity also.

2 Q. We're not talking -- sure, I understand what
3 you're saying, but my question again was that would
4 be important?

5 A. Yeah. And are you saying that, you know, if
6 Sal's going to come down and admit that he told two
7 people who had written a bad check and the police are
8 coming after them, if he's going to come in a
9 courtroom and admit that he told them to get away?

10 Q. I don't know if it's a question or not. I don't
11 respond.

12 A. That's not a question, that's simply an
13 observation when you asked me whether or not Sal's
14 would be important, it would be and I'm not going to
15 sit here and lie and say it wouldn't.

16 Q. Sure.

17 A. But I would have to weigh that with the fact
18 that whether or not he's going to come in and say
19 that, look, I knew the police were coming to pick
20 these people up so what I did was I told them to get
21 away.

22 Q. And if you had information Ms. Perez passed
23 other bad checks on that account, even if Sal didn't
24 tell them, that it would be important, wouldn't it?

25 A. If she passed bad checks it would be an issue in

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1 terms of her being a paper hanger.

2 Q. How about motive for avoiding the law? In other
3 words, she's passing bad checks, does that not show
4 some motive?

5 A. It shows that she's a paper hanger. Depends on
6 what she was doing, you know, who was after her,
7 where.

8 Q. Let's turn to page 1,753 again, we went over
9 this earlier in the closing argument. If she had
10 written bad checks and not been arrested for it,
11 would Mr. Bailey be able to make the statement on
12 1,753 in his closing argument that there's no
13 evidence that she is wanted by anybody?

14 A. I can't say why -- I can say that he would
15 have -- the import of his statement would have been
16 that she had no, no record. I can't say, you know,
17 in terms of what you just asked me I can't say. That
18 was his position.

19 Q. His position was the only one with motive in the
20 car was Mr. Bayan Aleksey?

21 A. Yeah. Yeah.

22 Q. And if, in fact, Ms. Gloryvee had written bad
23 checks and not been held accountable for them yet,
24 then she well could have been wanted. Excuse me, and
25 the statement was there's no evidence she's wanted.

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1 So Solicitor Bailey doesn't say she's not wanted, he
2 just says as the lawyers do in trial, there's no
3 evidence here of that.

4 But if you had that evidence would you
5 have been able -- this is my question again, would he
6 have been able to make that argument?

7 A. If I had that evidence we probably would have
8 used it in regards to that; he would not have been
9 able to make that. I don't recall us having that, I
10 don't -- you know, I can't say. As I said, I do not
11 have my file before me, but I do not recall seeing
12 that until you showed me a few moments ago.

13 Q. Yes, sir. And that is exactly my point. You
14 haven't seen this, y'all didn't have available to
15 follow it up and y'all didn't have that -- you had
16 never seen the pictures, you couldn't follow up from
17 this receipt?

18 A. I do not recall.

19 Q. Sure.

20 A. And I'll put it that way.

21 Q. Sure.

22 A. I do not recall without having all those
23 pictures that we had in the file, you know, if we had
24 them. I don't know, maybe Mr. Stone may have known
25 whether or not we had those pictures, I do not

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1 recall.

2 Q. Now, do you recall Ms. Blackwell indicating in
3 her discussions that she was with Mr. Aleksey because
4 he was paying for her things?

5 A. Yeah, she -- I do recall her saying that he was
6 paying for everything and he was making
7 representations that he was going to take the kids
8 down to Florida for -- you know, down to I guess
9 Orlando or somewhere.

10 Q. Okay. And what was your understanding of
11 Ms. Gloryvee's --

12 MR. BROWN: I'm sorry, before I go into
13 this I would refer the Court, and I don't want
14 to -- I would refer the Court to the motion
15 hearing held on August 11th of 1998 which is
16 roughly pages 2,250. Excuse me. Excuse me,
17 Your Honor.

18 THE COURT: Okay.

19 MR. BROWN: And it's actually, excuse me,
20 at 2,360 -- 2,371.

21 THE WITNESS: That must be in this one.

22 MR. BROWN: Almost at the very end of the
23 transcript.

24 Q. Y'all had a motion hearing on August 11th, you
25 had some other hearings too, but you had one on

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1 August 11th.

2 A. What's that number?

3 Q. 2,371. One of the motions -- and this was in
4 the Blair hearing but after it concluded, and one of
5 the motions dealt with redaction of a statement that
6 was sought to be introduced, it was the taped
7 statement of Mr. Bayan Aleksey.

8 A. Okay.

9 Q. And there were some issues of redacting
10 references to Mr. Aleksey's actions that might be
11 considered to be bad acts under 404(b) and some of
12 these had to do with him having -- he made a
13 statement "I panicked because I had problems in New
14 York and Philadelphia."

15 And the judge said, "What's your
16 objection to that, Mr. Stone?"

17 And it goes on about and it shows that
18 he has other problems that aren't relevant to the
19 shooting of the highway patrol trooper. On 2,371 the
20 Court asks for the State's response. And at line 12
21 Mr. Solicitor Bailey gives a response. And he
22 argues, it's actually at line 15, "I have to
23 establish motive in this case. State's testimony in
24 regard to motive is going to be that the car Aleksey
25 had was a reported stolen," which again we know is

1 not accurate according to the Philadelphia police
2 report. It was actually lent to Mr. Aleksey, not
3 returned. "In addition, he had numerous warrants.
4 And as Your Honor knows he claimed that Ms. Gloryvee,
5 the young woman with him, was the one that did the
6 shooting."

7 So in other words, y'all know early on
8 that the brunt of the proof of identity of the
9 shooter is going to be that one guy's got motive and
10 the other gal doesn't have motive.

11 THE COURT: Let me ask you this question,
12 because I'm concerned about a statement that you
13 made.

14 MR. BROWN: Yes, ma'am.

15 THE COURT: You said that we know that
16 that's -- that there was not a report made that
17 the car was stolen.

18 MR. BROWN: Yes, ma'am.

19 THE COURT: We know that that didn't
20 happen, that the car was loaned. That's not
21 accurate, because we do know, in fact, based on
22 what you spent a considerable amount of time
23 doing, whether it was appropriate or
24 inappropriate, clearly there was a report made
25 that this car was stolen.

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1 MR. BROWN: Well, actually in South
2 Carolina I think it would be considered a breach
3 of trust and not a theft.

4 THE COURT: No, sir. The question was
5 whether or not it was reported that the car was
6 stolen and that's true.

7 MR. BROWN: Actually, Your Honor, I would
8 refer to the police report.

9 THE COURT: She says the car was stolen.

10 THE WITNESS: She told Ford Motor --

11 MR. BROWN: It will just take me a moment.

12 THE COURT: Sure. I think that's important
13 because I thought you spent a lot of time. I
14 understand that you have a different position
15 that it was some sort of breach of trust, but
16 the question is whether or not it was reported
17 as stolen.

18 MR. BROWN: And Applicant's 17 is that
19 report, Your Honor.

20 THE COURT: All right. And how about the
21 Ford report where she's telling Ford repeatedly
22 that the car was stolen?

23 MR. BROWN: I would take less credence on
24 that because this says --

25 THE COURT: Doesn't this say -- it says

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1 previously reported stolen in the eighth
2 district, computer number --

3 MR. TARR: Your Honor, that's the piece of
4 paper that shows where the car was found in
5 South Carolina. It's previously reported
6 November 13th. That's the document you have
7 before that.

8 THE COURT: Right. It says previously
9 reported stolen in the eighth district, the date
10 it was reported stolen is it says 11/13/97 at
11 14:30.

12 MR. TARR: I mean, you have got the
13 document there --

14 MR. BROWN: The best evidence would be --

15 MR. TARR: -- that document said she lent
16 it to him, he didn't bring it back. Doesn't say
17 he stole it. That is somebody else
18 characterizing it as stolen, even though the
19 document says lent. And, Your Honor --

20 THE COURT: I'm just looking at what this
21 said. It says recover stolen auto message,
22 recovered at Dorchester County, previously
23 reported stolen.

24 MR. TARR: Right.

25 THE COURT: It's all over there.

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1 MR. BROWN: The reported reference is
2 regarding the stolen.--

3 MR. TARR: It doesn't say anything about
4 stolen auto. And, Your Honor, the point is all
5 of the testimony that has been brought out about
6 all of the different lies that that woman told,
7 including that, and then her conflicting
8 statements of it being stolen to Ford Motor
9 Credit it shows that it's not credible.

10 THE COURT: That's a different issue.

11 MR. TARR: Yes, Your Honor.

12 THE COURT: What I'm raising is that --

13 MR. BROWN: Sure.

14 THE COURT: That was a statement made by
15 Mr. Brown that when Mr. Bailey said that the car
16 had been reported stolen in his closing, that
17 that was -- I think the comment was we all know
18 that wasn't correct, that it was loaned.

19 My only objection to his comment on
20 the record to the Court was that is the position
21 taken I understand by Mr. Aleksey, but there
22 is -- it's replete in this record that you all
23 have shown me that the car was reported stolen.
24 Whether or not that's true or not is a whole
25 different matter. You see what I'm saying?

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1 MR. TARR: I see exactly what you're
2 saying. Let's say that this is a report for
3 manslaughter and you have the report in front of
4 you and it says the defendant was arrested for
5 committing manslaughter on victim A.

6 And then the next page coming from two
7 months later says the defendant murdered victim
8 A. That doesn't all of a sudden change the
9 incident report that said it was manslaughter.

10 This says I lent the vehicle to the
11 below subject and he has failed to return it to
12 me. I lent it to him.

13 THE COURT: Didn't she testify, doesn't she
14 testify in the record that she reported the car
15 stolen?

16 MR. BROWN: No, ma'am. She testifies in
17 the record that she was coerced into leasing it
18 and he never made the payments.

19 MR. TARR: Then she reported it stolen
20 October 5th. And we have the documents --

21 MR. BROWN: And that's not true.

22 MR. TARR: But I understand what you're
23 saying. She's characterizing as reporting it
24 stolen, the person who recovers the car on
25 January '98 is characterizing it as reported

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1 stolen, but the document itself does not say it
2 was stolen.

3 THE COURT: But that's a whole different
4 issue.

5 MR. BROWN: Actually I don't mind you
6 striking that comment.

7 THE COURT: I don't want to strike the
8 comment. I don't care to strike the comment in
9 the least.

10 MR. BROWN: Okay.

11 THE COURT: When you said that, it struck
12 me that somehow Mr. Bailey's argument on this
13 point was an inappropriate argument. And it
14 certainly is relevant to other issues.

15 Your issue is, you know, shouldn't you
16 have impeached her differently or better, et
17 cetera, regarding this issue, but my -- I
18 stopped you because I wanted to be clear that I
19 understood that this record certainly was
20 replete with evidence, you disagree with it or
21 not disagree with it, I would think and hope you
22 disagree with it, but it is in the record this
23 woman reported that the car was stolen and it
24 is. Because what you said --

25 MR. BROWN: There is a document, it's not

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1 her statement, there is a document attached as a
2 second page of 17, we would agree that a person
3 says that the car was previously reported
4 stolen, not Ms. Watson. We don't have anybody
5 saying Ms. Watson says it's stolen, not there.

6 THE COURT: Other than Ms. Watson.

7 MR. BROWN: At trial she gave directly.
8 contradictory testimony, and her -- in fact,
9 Ford Motor Credit said she's making this stuff
10 up, she's making it up as we keep talking to
11 her.

12 MR. TARR: Your Honor, the incident report
13 that you referred to, Applicant's 17, the
14 incident type is not stolen auto, it's try and
15 locate.

16 THE COURT: Y'all are missing the point.
17 Thank you. Move on, Mr. Brown. Move on.

18 MR. BROWN: Sure, thank you.

19 BY MR. BROWN:

20 Q. Actually my point is if Solicitor Bailey is
21 going to argue that Mr. Aleksey has numerous warrants
22 and so Ms. Gloryvee has, as he says, has not got
23 anybody looking for her, or there's no evidence that
24 she has got anybody looking for her, he can't make
25 that argument if, in fact, she has been writing bad

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1 checks. I mean, I'm just asking if you agree with
2 that. I mean, that's a crime, right?

3 A. Writing a bad check is a crime.

4 Q. Okay.

5 A. Whether someone is looking for you is a separate
6 matter. You can write the bad check if nobody's
7 actually on the road looking for you.

8 Q. Sure.

9 A. So, no, I can't, you know.

10 Q. Sure. Sure, certainly you're a lawyer so you
11 understand that. I guess that was just a question to
12 you. I actually when I asked you -- have you ever
13 heard of an individual named Pat Cubberly?

14 A. I don't remember that name.

15 Q. Okay. Did you ever investigate who Gloryvee
16 worked for before she was arrested in South Carolina?

17 A. I think when we sent up our investigators up to
18 Pennsylvania in that area they were to bring us up
19 that information and go back and investigate in terms
20 of her background and everything. I do not recall,
21 as I said, I simply do not recall what, if anything,
22 we had. I know we had some things, I don't know what
23 all of them were, okay.

24 Q. Okay, sure. So you don't recall a Pat Cubberly?

25 A. I don't recall the name.

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1 Q. She didn't testify at trial? She didn't testify
2 at trial, did she?

3 A. No.

4 Q. Okay. You ever heard of a Dr. Byung-Kee Bang?

5 A. Not until I just saw the things that were
6 supposed to be in that envelope.

7 Q. Sure. That's the first time you have ever seen
8 his name, the one called Burger King at one point?

9 A. Yeah, I called him Burger King.

10 MR. TARR: That's pretty close.

11 Q. I don't mean anything by that one way or the
12 other, that's the same doctor we're talking about?

13 A. We knew she had been employed somewhere. What
14 we knew on that off the top of my head I cannot,
15 remember and I'm not going to sit here and say that I
16 can when I can't.

17 Q. Okay.

18 MR. BROWN: Your Honor, at this time we
19 would offer the affidavit of Pat Cubberly as
20 Applicant's 31.

21 THE COURT: Any objection?

22 MR. ZELENKA: No objection.

23 THE COURT: Very well. Applicant's 31 in
24 evidence without objection, it is an affidavit
25 of Pat Cubberly.

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1 (Entered into evidence was Applicant's Exhibit
2 31, affidavit of Pat Cubberly.)

3 Q. And I would hand you the affidavit of Pat
4 Cubberly.

5 A. Okay.

6 Q. And if you would take a look at it.. Does it
7 indicate that currently Pat Cubberly works for
8 Dr. Scott in Hamilton Township, New Jersey?

9 A. Yes.

10 Q. Below that it says 1997, that year she was
11 employed as an office manager/nurse for Dr. Byung-Kee
12 Bang in Trenton, New Jersey. And she says in the
13 next sentence that during her employment with Dr.
14 Bang she was the supervisor of Gloryvee Perez. And
15 then she gives her detailed information regarding the
16 events of December 24th, 1997.

17 And she says in the course of my
18 employment with Dr. Bang I learned the following
19 information: She breaks it down into two
20 subparagraphs. On December 23rd, 1997 Gloryvee Perez
21 opened a personal checking account using two checks
22 from Dr. Bang's business account. Check number 7385
23 in the amount of \$24,000, check number 7361 in the
24 amount of \$4,532, both made out to Gloryvee Perez.
25 Those checks were deposited into the bank account

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1 that she had opened on December 23rd, 1997..

2 A. Yeah, I mean that's what it says.

3 Q. And the next thing says Ms. Perez opened this
4 account at Summit Bank in Philadelphia, Pennsylvania.

5 A. Uh-huh (affirmative response).

6 Q. An employee of Summit Bank named Chris Sontag
7 became suspicious of the transaction and he called
8 Kathy Bayer, as in Bayer aspirin, who was employed
9 with CoreState Bank, C-o-r-e. CoreState was the bank
10 Dr. Bang had his business checking account with. He
11 spoke with Mr. Sontag.

12 MR. BROWN: I think, Ms. Court Reporter,
13 these are affirmative responses.

14 A. I can't say anything but uh-huh, this is what
15 the evidence says...

16 Q. Right, I just want to make sure.

17 THE COURT: If you just want to publish the
18 affidavit you can, Mr. Brown.

19 MR. BROWN: Okay. I would love to. May I
20 just publish it? I want to go through it for
21 the Court's edification, too.

22 THE COURT: I'd read it. I'd love to read
23 it.

24 MR. BROWN: Do you mind if I read it to the
25 witness? I don't mind handing him this one, I

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1 can read it to him, so then I can ask him
2 questions about it.

3 THE COURT: If you want to publish it, you
4 know.

5 MR. BROWN: I would like to publish it.

6 THE COURT: I do know how to read. I think
7 he knows how to read.

8 MR. BROWN: Sure, I'll read it.

9 Q. Again CoreState was the bank where Dr. Bang had
10 his business account. I also spoke with Mr. Sontag,
11 he described the woman who identified herself as
12 Gloryvee Perez in such a way that in my mind she
13 could not have been anybody else.

14 Mr. Sontag also informed me that they
15 had set -- a trap set up for Gloryvee. The bank
16 notified her that the money was ready for pick up.
17 Mr. Sontag had the police waiting at the bank to
18 arrest her; however, she never showed up.

19 After determining that the checks were
20 stolen from Dr. Bang on December 24th, 1997 I relayed
21 what I had learned to the Trenton Police Department.
22 An incident report was taken and the police responded
23 to Dr. Bang's office.

24 Gloryvee was questioned and denied
25 involvement. She did, however, state that her

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1 boyfriend, Michael Toscani, had been in the office on
2 December 23rd, 1997 and that he must have taken the
3 checks.

4 From my knowledge of the location
5 where Dr. Bang kept his business checks at that time
6 it would have been impossible for anyone to have
7 taken the checks without Gloryvee's knowledge. The
8 checks were kept in a desk in Dr. Bang's office.

9 Only Dr. Bang, Gloryvee and I knew where the checks
10 were located.

11 Furthermore, Gloryvee was aware that
12 not only should her boyfriend be in the office at all
13 that absolutely he would not be allowed outside the
14 lobby and under no circumstances would he be allowed
15 access to Dr. Bang's private office.

16 Also on December 27th, 1997 I received
17 a call from Keith Randall with Burlington Lincoln,
18 Mercury in Burlington, New Jersey, who advised me
19 that Gloryvee Perez had tried to use Dr. Bang's check
20 to purchase a 1998 Lincoln Continental. But they
21 became suspicious and the transaction was never
22 completed.

23 Furthermore, I also received a bill.
24 from Giant Food World in New Hope, Pennsylvania, for
25 a number of Dr. Bang's checks that had been cashed

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1 there by Gloryvee Perez and were later returned by
2 the bank.

3 I make this two-page statement of my
4 own freewill absent any coercion or duress, signed
5 Pat Cubberly. The date was 11/9/2002.

6 A. Yeah, 11/9/2002.

7 Q. And Ms. Cubberly indicates she worked for Dr.
8 Bang during 1997. And actually this is my copy, I
9 apologize. If I hand it to you then I'm in trouble.

10 A. Okay.

11 Q. Let me show you this, I believe it's three
12 pages. Have you ever seen any of the documents
13 depicted in those Xerox copies?

14 A. I can't recall whether I did or not without
15 looking at my file.

16 Q. Okay. Do you recognize the handwriting at the
17 top of that?

18 A. Up here?

19 Q. Yes, sir.

20 A. No, I don't.

21 Q. And you can't say whether or not that's Duffie
22 Stone's handwriting?

23 A. No, I can't.

24 Q. Would you read what that handwritten part says?

25 A. File with Bayan, I believe a hole was punched,

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1 but I would assume that's the word, "with."

2 MR. BROWN: Your Honor, we would seek to
3 introduce this as Applicant's 32. And it is a
4 photocopy of two individual checks and then a
5 photocopy of a series -- excuse me, it's four
6 pages, a photocopy of -- two photocopy pages of
7 a series of checks, I don't know how else to
8 describe it, but they're laid out like they
9 would appear in a check ledger.

10 THE COURT: Have you showed them to
11 Mr. Zelenka?

12 MR. BROWN: I have, Your Honor, and these
13 would be --

14 MR. ZELENKA: Showed them to me and I was
15 advised that they came out of Mr. Stone's file,
16 that he had previously verified to them that
17 this handwriting up at the top appeared to be
18 Mr. Stone's handwriting.

19 MR. TARR: He had verified that the
20 handwriting that looked just like that was on
21 another document that was his. I'm assuming.
22 It looks just like it, I mean it's --

23 MR. ZELENKA: Then subject to it being tied
24 up with Mr. Stone.

25 MR. TARR: I don't think there will be any

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1 question.

2 MR. BROWN: We've got on retainer a
3 handwriting expert.

4 MR. ZELENKA: I don't think you need to go
5 there on that.

6 THE COURT: In other words, it's admitted
7 subject to you tying it up when you call
8 Mr. Stone.

9 MR. BROWN: I believe at this point there
10 is one we have to tie up. There's one for
11 relevance, but the rest of them have come in, I
12 believe.

13 THE COURT: Don't know that. That has not
14 occurred.

15 MR. BROWN: We have talked to the AG -- I'm
16 sorry, I withdraw that statement.

17 THE COURT: If you all have that agreement
18 let's go ahead and do it because I have like
19 this extra list that I'm absolutely concerned
20 we're going to forget about that.

21 MR. BROWN: Actually, Your Honor, we
22 actually have another affidavit. We ought to
23 introduce an affidavit of Keith Randall is 33,
24 Applicant's 33, it's an affidavit that's been
25 provided and certainly that is a good time to do

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1 all of this, so if I can pull out these items,
2 the ones that were subject to being linked back
3 up.

4 MR. ZELENKA: Not --

5 THE COURT: Yes.

6 MR. ZELENKA: You haven't tried to
7 introduce those yet and those need to be linked
8 back up.

9 MR. BROWN: Sure. Sure. Let's do one at a
10 time.

11 THE WITNESS: May I take a break while
12 they're going through all this?

13 THE COURT: Indeed.

14 MR. BROWN: That one has not even been
15 offered into evidence yet.

16 (Marked for identification was Applicant's
17 Exhibit 32, photocopies of checks.)

18 MR. TARR: One thing Mr. Zelenka and I had
19 talked about regarding our handwriting expert is
20 once all these documents we're planning to
21 introduce may come in, which may be by the end
22 of the day, may be early tomorrow, he's going to
23 get with us if he doesn't have any problem with
24 any of the signatures then that will forego the
25 need for that testimony which will help us get

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1 finished quicker then, so....

2 THE COURT: Okay, sure.

3 (Marked for identification was Applicant's
4 Exhibit 33, Affidavit of Keith A. Randall.)

5 MR. BROWN: Your Honor, at this time we
6 would move Applicant's Number 2 in as a letter
7 to Mr. Sims and Mr. Stone from Mr. Aleksey from
8 the trial counsel's file.

9 MR. ZELENKA: From Trial Counsel Stone's
10 file.

11 MR. BROWN: I believe that's correct.

12 MR. TARR: Well, I -- you know, it may be
13 for those issues we might have to wait until
14 Mr. Stone's here to be absolutely sure. But
15 everything else we'd be able to do I think right
16 now.

17 THE COURT: Two will simply remain for
18 identification purposes at this time. Okay.
19 Move on to what's next.

20 MR. BROWN: Next would be Number 8,
21 Plymouth Township police report, and we would
22 offer that as a police report obtained by
23 Bayan's collateral counsel, PCR counsel.

24 MR. ZELENKA: No objection.

25 (Entered into evidence was Applicant's Exhibit

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1 8, Plymouth Township Incident Report.)

2 MR. BROWN: Number 9 is a Lower Moreland
3 police report and follow-up reports and we offer
4 that as another police report obtained by
5 Mr. Aleksey's current counsel.

6 THE COURT: And that's Number 9?

7 MR. BROWN: Yes, ma'am.

8 THE COURT: Eight and 9 then are in.
9 Mr. Zelenka?

10 MR. ZELENKA: No objection.
11 (Entered into evidence was Applicant's Exhibit
12 9, Lower Moreland police report.)

13 MR. BROWN: Number 10 would be the Burdmy
14 Volvo sales documents. We offer that again as
15 items obtained by Mr. Aleksey's PCR counsel.

16 MR. ZELENKA: No objection.

17 THE COURT: Very well, 10 is in.
18 (Entered into evidence was Applicant's Exhibit
19 10, Burdmy Volvo sales documents.)

20 MR. BROWN: Number 11 we offer as a New
21 York State driver's license of Yelena Batkilina
22 and we offer that as what it is obtained by
23 Mr. Aleksey's PCR counsel.

24 MR. ZELENKA: No objection.

25 THE COURT: Eleven is in without objection.

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1 (Entered into evidence was Applicant's Exhibit
2 11, New York driver's license of Yelena
3 Batlikina.)

4 MR. BROWN: We would offer Number 12 into
5 evidence as a police report where Yelena
6 Batkilina is the complainant of a battery and we
7 would offer this as another item that we have
8 obtained independently, we as PCR counsel,
9 excuse me, obtained independently. We do
10 believe that there's a relevance objection.

11 MR. ZELENKA: There is a relevance
12 objection.

13 THE COURT: And it will just continue to be
14 where it is.

15 MR. BROWN: But I think the authentication
16 objection is gone on that.

17 MR. ZELENKA: That's correct.

18 THE COURT: Okay, great.

19 MR. BROWN: And then we would also now
20 offer Applicant's 32, Your Honor, as the
21 Byung-Kee Bang checks and they're four pages,
22 they're stapled together and offer that as items
23 from trial counsel's file and I won't -- you
24 know, as far as the writing at the top I'm not
25 offering that, a statement about where that is,

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1 I mean I think that's something we would be able
2 to tie up later. But we're offering this as
3 items found in trial counsel's file.

4 MR. ZELENKA: Subject to trial counsel
5 verifying it, I think that's what we already
6 said.

7 MR. BROWN: And we'll take it subject to
8 that.

9 THE COURT: All right.

10 MR. BROWN: And then Applicant's 33 is an
11 affidavit of Keith Randall.

12 MR. ZELENKA: No objection.

13 THE COURT: All right. At the end of the
14 day I have that Exhibit 11 and Exhibit -- 11 is
15 not in for relevancy grounds, Exhibit 2 again
16 must be authenticated by Mr. Stone, and 32 must
17 again be authenticated by Mr. Stone.

18 MR. ZELENKA: That's wrong. Eleven is in.

19 THE COURT: Okay.

20 MR. ZELENKA: Without objection that's the
21 New York state driver's license, 12 is the one
22 that has the relevance objection.

23 THE COURT: All right. So it's 12, 2, 32.

24 THE COURT REPORTER: And 29.

25 MR. ZELENKA: And 29 hasn't been offered

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1 yet.

2 MR. BROWN: That's correct.

3 THE COURT: Yeah. Twelve, 2, 29, and 32.

4 You agree with that, Ms. Keil?

5 THE COURT REPORTER: Yes.

6 MR. BROWN: Counsel for Mr. Aleksey also
7 agrees for the record.

8 THE COURT: All right. Thank you.

9 (Recess, from 3:39 p.m. to 4:11 p.m.)

10 MR. BROWN: May it please Court, Your
11 Honor?

12 THE COURT: Yes.

13 BY MR. BROWN:

14 Q. Were you aware of any of that? I think I've
15 just published an affidavit of Pat Cubberly.

16 A. Yeah, you did.

17 Q. Were you aware of who Pat Cubberly was?

18 A. No.

19 Q. Were you aware of any of the information in
20 there?

21 A. That you've just indicated, no, I do not -- I
22 better rephrase that. I do not recall, I have not
23 seen any of that.

24 Q. Do you think that would have been important
25 information to present to the jury?

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1 A.. Were they convictions? Do you have convictions?
2 It's my understanding that to impeach you impeach on
3 convictions and not things that have happened. So I
4 don't know whether you have any convictions for any
5 of that.

6 Q.. All right. Let me ask you, this is evidence, if
7 true, this would be evidence of a fraud?

8 A.. It would be evidence of a fraud, yes. If you're
9 talking about getting it in as an exception under the
10 fraud as opposed to impeachment, again that would be
11 an issue that would have had to have been raised to
12 the Court. And if I had that information probably
13 would have done just that and let him rule.

14 Now, take into consideration that
15 Judge Cottingham earlier had prevented me from
16 bringing in eight counts of a nine-count indictment.

17 Q.. And let me ask you now those are drug charges, I
18 believe that Mr. Aleksey's direct appeal is a
19 published opinion where it indicates that they're not
20 admissible under 608(b) because drugs charges aren't
21 evidence of truthfulness or untruthfulness?

22 A.. Right.

23 Q.. But presenting \$28,532 to a bank would have been
24 admissible under 608(b) for impeachable character
25 evidence, excuse me.

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1 A. Character evidence.

2 Q. And would it not also be evidence of motive of
3 Gloryvee? Because he argued that the motive for
4 Bayan to shoot the trooper was his being on the run.

5 A. It would have, it could have been used for that
6 purpose also.

7 Q. Okay. And again with subpoena power in a
8 criminal case Pat Cubberly could have been
9 subpoenaed, Dr. Bang could have been subpoenaed,
10 CoreState Bank could have been subpoenaed, Chris
11 Sontag could have been subpoenaed, Kathy Bayer again
12 with Corestate Bank, all of those people could have
13 been subpoenaed and forced to come here and testify?

14 A. Well, probably, yeah.

15 Q. Okay. And then I'm going to refer you to the
16 other affidavit I entered, which is the affidavit of
17 Keith Randall, and that is Applicant's 33. And it
18 was the latest one, the last one.

19 A. I don't think you ever gave that one to me, it's
20 not up here.

21 Q. I understand that was entered right at the
22 break.

23 MR. BROWN: I beg the Court's indulgence.

24 THE COURT: Sure.

25 (Pause in proceedings.)

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1 MR. BROWN: All right. And I apologize,
2 Your Honor, but I think the delay, I think the
3 best thing to do would be to try to publish this
4 affidavit.

5 THE COURT: That's fine. I can read it but
6 if you want to publish it in the record that's
7 perfectly fine.

8 MR. BROWN: I do because I want to ask
9 Mr. Sims questions about it.

10 THE COURT: Why don't you just publish it
11 instead of asking -- what was concerning me the
12 last time is you would read a sentence, isn't
13 that right isn't, that right, isn't that right.

14 MR. BROWN: And I would just like to
15 publish this by reading it.

16 THE COURT: Sure.

17 MR. BROWN: This is the affidavit of Keith
18 A. Randall. The caption is in the caption of
19 this post-conviction case.

20 THE COURT: Sure.

21 MR. BROWN: Starts I, Keith A. Randall,
22 being duly sworn do state: I am currently a
23 sales and leasing representative for Burlington
24 Lincoln, Mercury, Suzuki in Burlington, New
25 Jersey.

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1 During the year 1997 I was also
2 employed in the same position with this same
3 auto dealership. During December of 1997 I met
4 with Ms. Gloryvee Perez and a gentleman who
5 matches the description of Mr. Bayan Aleksey.

6 They indicated they desired to
7 purchase a new 1998 Lincoln Mark VIII LSC. They
8 indicated the down payment would be \$20,000.

9 My dealership would only agree to
10 accept this down payment in the form of certified
11 funds or cash. And he says (see attached
12 promissory note).

13 During the course of processing this
14 transaction, Ms. Perez signed the following
15 documents: And A, loaner car policy. B, New
16 Jersey simple interest vehicle retail
17 installment contract. C, schedule of insurance
18 for Union Security Life Insurance Company. D,
19 motor vehicle retail order. E, Pennsylvania
20 application for certificate of title. F, motor
21 vehicle dealer sales and use tax exemption
22 report. G, lemon law rights notification. H,
23 promissory note. I, Ford Motor Credit
24 application statement. J, rebate assignment.
25 K, Rebate checks. L, vehicle preparation

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1 authorization.

2 Prior to the processing of the above
3 documents, Ms. Perez presented a Pennsylvania
4 driver's license. During the transaction a
5 dealership -- the dealership received a Summit
6 Bank customer receipt. This was provided in an
7 effort to have the dealership release the
8 vehicle..

9 I received a work number for
10 Ms. Perez. I called this number numerous times.
11 During one of these calls I was informed that
12 Mrs. Perez -- Ms. Perez's job had been
13 terminated and there were warrants for her
14 arrest for the theft of checks. The telephone
15 number I was given was that of Dr. Bang, her
16 former employer.

17 I make this statement of my own
18 freewill absent any coercion or duress, signed
19 Keith Randall 10/28/2002.

20 Q. Mr. Sims, I would now ask you if you recognize
21 this?

22 A. I do not recall seeing this.

23 Q. Okay.

24 MR. BROWN: Your Honor, at this time I
25 would ask that this be marked into evidence as

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1 Applicant's 34, a document obtained by Bayan
2 Aleksey's post-conviction counsel independent of
3 any other source.

4 MR. ZELENKA: I don't have any objection.
5 You may want to identify what the document is.

6 MR. BROWN: I'm sorry, it is a Trenton
7 police report entitled "Theft of Checks" and the
8 incident -- well, the report date is
9 December 23rd, 1997.

10 THE COURT: All right. Applicant's 34,
11 Exhibit 34, rather, is in evidence without
12 objection. It is a Trenton police report dated
13 12/23/97. All right.

14 (Entered into evidence was Applicant's Exhibit
15 34, Trenton Police Investigation Report.)

16 Q. Mr. Sims, now having heard the affidavit or
17 heard the information in the affidavit of Mr. Randall
18 and the affidavit of Pat Cubberly, does that report
19 take on significance?

20 A. It takes on significance in that we would have
21 been able to use this or attempt to use this in
22 regards to questioning or cross-examining Gloryvee.

23 Q. And it would show that she had a motive to avoid
24 the law?

25 A. It would have, yeah. Well, if you want to state

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1 it that way, it would have shown that she had a
2 reason not to want to be caught or a reason that
3 somebody was looking for her.

4 Q. So she would have been on the run, right.
5 Somebody would have been looking for her I think were
6 your words and that would have refuted the closing
7 argument of Solicitor Bailey that there's no evidence
8 that she has got anybody looking for her?

9 A. Yeah.

10 Q. And --

11 A. May I see that again, please?

12 Q. Certainly. And it's obviously in the record,
13 but the report indicates that they spoke to a lady
14 named Pat Cubberly, doesn't it?

15 A. Uh-huh (affirmative response).

16 Q. And it's involving the theft of the checks from
17 Dr. Bang's office.

18 Now, I want to refer you back to
19 Applicant's 22, and that is the notes that are listed
20 as conference call with Danetta from Bayan Aleksey.

21 A. Right here, there they are.

22 Q. And if you would, would you agree that the
23 number one on the first item on there is when Gloria
24 and him were together she took the checks from her
25 job and opened an account at Summit Bank in

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1 Pennsylvania, northeast Philadelphia?

2 A. Yeah.

3 Q. \$26,000 total of the two checks.

4 A. Yeah.

5 Q. Does that seem consistent with the information
6 in Ms. Cubberly's affidavit, Applicant's 31 and
7 Mr. Randall's affidavit which is....

8 MR. BROWN: I apologize, Your Honor.

9 THE COURT: All right.

10 Q. Which is Applicant's 33?

11 A. Yeah, in terms of what she said that he wrote or
12 gave her over the phone.

13 Q. It's also consistent with Applicant's 34 which
14 is Keith Randall's affidavit about the Lincoln
15 dealership?

16 A. I guess so.

17 Q. Because he mentioned he called because they had
18 tried to get the car off the lot?

19 A. They mentioned that he called, he called the
20 office and was told that she was terminated.

21 Q. And it also says that they presented him with a
22 deposit slip indicating they had deposited money in
23 an effort to get them to release the car; is that
24 correct?

25 A. I guess, you read it in the record.

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1 Q. I ask you if you would take a look at this
2 series of documents and tell me whether you recognize
3 any of those documents?

4 A. Mr. Brown, I don't recognize any of these of my
5 own personal recollection.

6 Q. Sure. And you don't recognize those as being in
7 your file?

8 A. I don't recognize them; I can't recall.

9 Q. Or being provided these by the prosecutors?

10 A. I don't think I was, but again I state that I,
11 you know, not having the benefit of having my file I
12 would not be able to emphatically state, but I don't
13 recall seeing that.

14 MR. BROWN: And, Your Honor, at this time
15 we would offer this package of items as
16 Applicant's 36 -- excuse me, Applicant's 35 in
17 evidence as documents from the Burlington
18 Lincoln dealership and these are items that
19 Bayan's post-conviction counsel obtained
20 independently.

21 THE COURT: All right. If you would show
22 those, please, to Mr. Zelenka.

23 MR. BROWN: He reviewed them, yes, ma'am.

24 THE COURT: Any objection?

25 MR. ZELENKA: No objection with that

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1 understanding.

2 THE COURT: All right. No objection and,
3 therefore, the documents from Burlington Lincoln
4 car dealership are in evidence as Applicant's
5 35.

6 (Entered into evidence was Applicant's Exhibit
7 35, Burlington Lincoln, Mercury documents.)

8 Q. And if you would go through these documents with
9 me. Before we do that I want to show you again Keith
10 Randall's affidavit. He lists there were some
11 documents processed during the transaction to
12 purchase the automobile.

13 A. Right.

14 Q. And he lists that Ms. -- his affidavit indicates
15 under oath that Ms. Perez signed the following
16 documents.

17 A. Uh-huh (affirmative response).

18 Q. The first document's a loaner car policy. Do
19 you see a document --

20 A. Yeah.

21 Q. Sure.

22 A. The loaner car policy, it has the name Gloryvee
23 Perez, the New Jersey simple interest vehicle retail
24 installment contract has her signature.

25 Q. Let me stop you before you go past that. Do you

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1 see the total value of this automobile that they
2 attempted to purchase?

3 A. \$49,809.40.

4 Q. That's quite an automobile?

5 A. Better than mine.

6 Q. Better than mine, too, yes, sir.

7 A. And the New Jersey Union Security Life Insurance
8 Company, that's signed by Glory Perez, the
9 Burlington, I guess this is their company contract
10 with Burlington Lincoln, Mercury, they show a deposit
11 of \$20,000, they said there was going to be a deposit
12 of \$20,000. I don't see a signature on here on this
13 one.

14 Q. That document has not been signed. And, in
15 fact, Mr. Randall indicated that they wanted to make
16 a deposit of \$20,000, they, the dealership, I believe
17 told them we'll take it in cash or certified funds.

18 A. Then I have I guess it's application for
19 certificate of title, Gloryvee Perez signed that.
20 You have the Department of Treasury Division of
21 Taxation, Motor Vehicle Dealer Sales and Used Tax
22 Exemption Report. It appears it's kind of gone
23 through, but it appears her signature is on that.
24 You have the Lemon Law Notification and
25 acknowledgement for New Jersey, that shows Gloryvee

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1 Perez, again you have a promissory note --

2 Q. And let me stop you with that.

3 A. Okay.

4 Q. The promissory note, is that signed?

5 A. Gloryvee as buyer, Gloryvee Perez.

6 Q. Okay. And let me ask you this: The promissory
7 note is for \$20,000, it says certified funds or cash?

8 A. That's correct.

9 Q. And does it have a statement right above the
10 signature? It says, I fully understand this note, if
11 this note is not fully paid by the agreed date I'll
12 be in violation of NJS, and it gives a statute number
13 and could be subject to arrest for the theft of
14 goods?

15 A. Yes, it does.

16 Q. And she signed it below that?

17 A. Yes.

18 Q. Which would indicate she was aware if she did
19 not comply with that deposit of \$20,000 she would be
20 subject to arrest for theft?

21 A. Yeah.

22 Q. And again the dates on that document were --

23 A. The 22nd I believe, let me check again for you.
24 I believe it says -- where's the date? 12/23/97.

25 Q. And that was eight days before the incident in

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1 South Carolina?

2 A. Right.

3 Q. Okay. And then if you'll just --

4 A. The application for Ford Motor Credit, that's
5 also signed by her.

6 Q. And let me stop and ask you this. Does it have
7 a place in here where it gives her occupation?

8 A. It says nurse.. I believe that's nurse, yeah.

9 Q. And it's got her employer as...?

10 A. Dr. Bang..

11 Q. And does it have a gross salary?

12 A. Gross salary of \$62,000..

13 Q. And does it also show other income?

14 A. Yeah, other income of \$2,000 monthly.

15 Q. And that would be \$24,000?

16 A. Yes.

17 Q. That would mean that she's making \$86,000 a year
18 as a nurse?

19 A. That's -- yeah.

20 Q. Do you believe from your information about
21 Ms. Gloryvee Perez that she made \$86,000 a year and
22 lived in a hotel with Mr. Aleksey?

23 A. No.

24 Q. The next item would be the --

25 A. The rebate assignment of \$4,000 to Gloryvee.

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1 Q. Signed by Gloryvee, so she's assigning the
2 rebate to the dealership?

3 A. Yeah. And these are I guess 1997 Ford, Lincoln,
4 Mercury division customer cash assistance, that would
5 be the -- and there are two of these, which would
6 indicate -- be consistent with the front page that a
7 \$4,000 rebate would be used as part of the down
8 payment. And they're both signed on the back by
9 Gloryvee Perez.

10 Then you have the Burlington Lincoln,
11 Mercury, I guess this is vehicle preparation
12 authorization form and that's signed by her also.

13 Q. Basically indicates she got all the bells and
14 whistles added onto that car?

15 A. Super car.

16 Q. I mean, undercoating and all the extra stuff?

17 A. She got everything.

18 Q. Make sure it didn't rust.

19 A. And then you also have a Pennsylvania driver's
20 license.

21 Q. And let me stop you, because we already have
22 another document with some driver's licenses on it?

23 A. Yeah.

24 Q. And I want to ask you if those look comparable?

25 MR. BROWN: I beg the Court's indulgence.

Thomas R. Sims - Direct Exam

1 Q. I believe it's Applicant's 24.

2 A. I can probably say no. Because I'm looking at
3 the number here on the driver's license, am I right,
4 or -- yeah, 96306968 and the address is 3131 Knight's
5 Road, Apartment 4-17, Bensalem, Pennsylvania.

6 Q. And so the driver's license that the Burlington
7 dealer had with this transaction is the same driver's
8 license that Ms. Perez had in her possession when she
9 was arrested on January 1st, 1998?

10 A. That's correct.

11 Q. And there's a few other documents regarding the
12 car?

13 A. Yeah.

14 Q. And then what is this other document that's
15 attached?

16 A. It says Summit Bank checking deposit, \$28,500 --
17 \$28,500.32 and that's a checking deposit, that's
18 supposed to be the customer receipt.

19 Q. And the date of the deposit is listed as...?

20 A. 12/23/97.

21 Q. And the available balance?

22 A. The available balance is \$50 and the current
23 balance is \$50.

24 Q. So she deposited \$28,000 but she only has \$50
25 available in the account?

Thomas R. Sims - Direct Exam

1 A. Yeah.

2 Q. And let me ask you, is that consistent with the
3 affidavit of Mr. Randall that she, in fact, brought
4 in a receipt to try to get them to release the car?

5 A. Right.

6 Q. They said, We want \$20,000. She comes back, I
7 deposited \$20,000, let us go ahead and take the car?

8 A. Right.

9 Q. And then the next thing would be a credit bureau
10 application.

11 A. I don't know whether it's an application, but it
12 says Credit Bureau Communications.

13 Q. Communications, okay. And does it indicate on
14 there who it is run on?

15 A. Gloryvee Perez and it gives the address as 3131
16 Knight's Road, Bensalem, Pennsylvania.

17 Q. And then the application goes on to the next few
18 pages?

19 A. Yeah.

20 Q. And at some point does it indicate how many
21 times she attempted to obtain, or there were
22 inquiries made about her credit during the time
23 period between December 18th, 1997 and December 12th,
24 1997?

25 A. Yeah.

Thomas R. Sims - Direct Exam

1 Q. How many times did Ms. Gloryvee have her credit
2 run?

3 A. It appears it's seven.

4 Q. Okay. Would you read --

5 A. I'll state this.

6 Q. Sure.

7 A. I'll state this, too, sometimes if you go into
8 a -- I've had clients we've had to clear this up on,
9 you go into a place, they will automatically run a
10 credit check if you don't stop them, so I just want
11 to point that out.

12 Q. Sure. Well, you read the places that she was
13 going into and have here credit -- I hate to stand
14 behind you, but you've got the document, that's the
15 only reason I'm doing it.

16 A. Summit Bank, Lexus of Cherry Hill, CBA Real
17 Estate Service, CBCS Credco looks like, Commerce
18 Bank, NA, Wilson Automotive, Inc., Rice & Holman
19 Ford, that's the last.

20 Q. So in other words, she went to Rice & Holman
21 Ford, which looks like it could be a car dealership
22 on the 12th of December; on the 13th of December,
23 Wilson Automotive; on the 16th of December Commerce
24 Bank ran her credit, we have Credco, we have Real
25 Estate Services on the 18th of December, also on the

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1 18th we have a Lexus dealership, and then on the 18th
2 Summit Bank runs her credit?

3 A. Yeah.

4 Q. And Summit Bank again is where the \$28,000 plus
5 was of checks from Dr. Bang her boss were deposited.

6 A. Okay. And then you have the luxury tax
7 computation sheet from Burlington, looks like there
8 are two of those, and I guess this is just sticker
9 stuff on the car.

10 Q. And then that's some notes with my business card
11 on it?

12 A. Yeah.

13 Q. Do you think that information would have been
14 helpful in your impeachment of Ms. Gloryvee Perez?

15 A. I would have liked to have had it.

16 Q. And it would have helped to show the jury that
17 she had a lot of motive to avoid the law at all cost?

18 A. It would have shown that she definitely had some
19 problems, or that she was out about doing all kinds
20 of things also.

21 Q. Do you believe she could have been prosecuted
22 successfully for attempting fraud on a \$50,000 car?

23 A. If you're asking me about Pennsylvania, I can't
24 answer you. I know that in South --

25 Q. Let's -- I'm sorry.

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1 A. I know that in South Carolina if she had gone in
2 probably would have been breach of trust trying to
3 obtain property under false pretenses, which she
4 could have possibly been prosecuted under.

5 Q. If the phones were used or the mail was used by
6 even not Ms. Perez but even the dealership or bank in
7 the attempt to commit fraud, would that not
8 constitute attempted wire fraud or mail fraud?

9 A. Mail fraud. When you're using the wires you're
10 talking about possibility of wire fraud and it would
11 have been a question of whether or not the US
12 attorney's office would have wanted to go after her
13 for a single incident involving a car.

14 Q. But if they did --

15 A. They would have had the opportunity, they would
16 have had the authority under as I understand the wire
17 fraud statute.

18 Q. And under the sentencing guidelines the value of
19 the criminal act is a sentencing aggravator?

20 A. And as a matter of fact, I'm involved in that,
21 that's why I need to get out of here, I've got a
22 sentencing in federal court coming up involving wire
23 fraud and under the wire fraud statute the way the --
24 the way it's written it would be they will probably
25 double that amount to make it \$100,000 then they

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1 would give her the guidelines in terms of whether or
2 not she accepted responsibility or did not accept
3 responsibility.

4 There would be a whole involvement
5 that they would have to deal with, the whole
6 pre-sentencing guidelines would go down, it depends
7 on where she would fall under the sentencing
8 guidelines.

9 Q. She had a prior drug conviction?

10 A. That prior conviction would place her in a
11 different level because of that prior conviction.
12 They have ABC levels, or level one, two, three,
13 depending upon which one. If she came under the new
14 book which we have now or one of the other books, it
15 would depend upon where she would fall, but her prior
16 criminal history would have been -- would be taken
17 into place -- taken into consideration, rather.

18 Q. And even the dismissed indictments could be
19 relevant conduct?

20 A. The dismissed indictment in terms of her plea
21 and what she actually was found to be involved in
22 could have been taken into consideration by the
23 probation and pardons division and their
24 pre-sentencing investigation.

25 Q. And so I guess, and I don't mean to belabor

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1 this, but the answer is quite possibly?

2 A. Yeah.

3 Q. In other words, they can say we don't care if
4 you haven't been convicted of all 11 indictments that
5 you were indicted for previously, you were only
6 convicted of one, you're a bad girl and we're going
7 to bump your time up for this bad act?

8 A. They could have done -- federal court is a whole
9 different ball game and they do a lot of things up
10 there that I'm not, you know, I don't really
11 understand how they -- well, the law allows them to
12 do it.

13 Q. And so I guess the answer would be, yes, it
14 would make her a lot worse?

15 A. They could.

16 Q. Would not be the same as somebody with one drug
17 conviction, ten other indictments for drugs?

18 A. Well, basically you have to distinguish whether
19 you're talking about an 841 enhancement for a prior
20 drug conviction. When you have a -- when you're
21 charged with a drug conviction and there is a whole
22 different area, you're talking about basically wire
23 fraud and the issue would be whether or not -- where
24 would she come up under the guidelines because of a
25 prior criminal history.

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1 Q. I would ask you if you can recognize these
2 documents?

3 A. Again, with the caveat I don't have my file I
4 cannot remember these and I don't have the
5 opportunity to look to see if it was part of my file.

6 Q. But they don't stick out to you?

7 A. They don't stick out.

8 Q. You did prepare for the cross-examination of the
9 star witness for the State?

10 A. Yeah, I did.

11 MR. BROWN: We would now offer these as
12 Applicant's 36, it's a one-page document with
13 three items Xeroxed on the one page. And I
14 don't know how to refer to it. The middle item
15 is a Distasio Chevrolet receipt.

16 THE COURT: All right. Any objection,
17 Mr. Zelenka? First of all, have you seen the
18 document?

19 MR. ZELENKA: I've seen the document.
20 They've advised me that it came out of the SLED
21 file as items recovered from the automobile. So
22 I have no objection.

23 THE COURT: Very well. Applicant's Exhibit
24 36 is in evidence without objection, it's a
25 one-page document that shows three different

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1 items on the document.

2 (Entered into evidence was Applicant's Exhibit
3 36, one-page document.)

4 MR. BROWN: That's an item that was -- that
5 counsel, PCR counsel for Mr. Aleksey retrieved
6 from...?

7 THE COURT: The SLED file.

8 MR. BROWN: SLED file independent, not from
9 the solicitor's file or from trial counsel file.

10 THE COURT: Great.

11 BY MR. BROWN:

12 Q. Now, those transactions with the Burlington
13 dealership occurred on the 24th of December?

14 A. Twenty-third, 24th.

15 Q. Some of them were signed the 23rd?

16 A. Yeah.

17 Q. I think from the affidavit of Mr. Randall you
18 would agree that Ms. Perez had been in the dealership
19 more than one day because she came in, filled out the
20 stuff, they said we need more than \$20,000. She came
21 back with a receipt that says I don't have \$20,000
22 yet but give me the car, I have \$28,000, I just
23 deposited today?

24 A. I mean, that's what it appears to have shown.

25 Q. Sure.

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1 A. That there was a series of her -- series of
2 times in which she visited the dealership.

3 Q. Now, would you look at the middle document on
4 Applicant's 36.

5 A. Uh-huh (affirmative response).

6 Q. Can you tell me the name of the agency or entity
7 that wrote that receipt?

8 A. It looks like Distasio if I'm pronouncing that
9 right, Chevrolet, I think.

10 Q. How much is the receipt for?

11 A. \$8,756.57.

12 Q. Who the receipt to?

13 A. Gloryvee Blackwell.

14 Q. Okay. And if we can go back just briefly, the
15 documents that were signed on the 23rd and 24th from
16 the Burlington dealership, those are signed what
17 name?

18 A. Gloryvee Perez.

19 Q. Not Gloryvee Blackwell?

20 A. Right.

21 Q. Now, we know that she uses all those names. In
22 fact, at the time she's not divorced so Perez is her
23 maiden name she uses at the Lincoln dealership, but
24 Distasio is writing a receipt to Gloryvee Blackwell?

25 A. Yes.

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1 Q. Okay. Coming from -- and let me ask you this.

2 How does it indicate the Chevrolet dealership was
3 paid the 8,000 some odd dollars?

4 A. By check.

5 Q. So she in addition to having the \$28,000.

6 deposited to the Summit Bank, she's writing an \$8,700
7 check to Distasio it looks like?

8 A. Yeah.

9 Q. The Chevrolet dealership doesn't seem to have
10 anything to do with the Lincoln dealership?

11 A. No, it doesn't.

12 Q. And again despite what's on the application to
13 the Lincoln dealership did you have any indication
14 that Ms. Perez had that kind of money at this time in
15 her life?

16 A. No. As a matter of fact, she testified, if I
17 recall correctly, that she didn't have any money or
18 that she was basically riding with him because she
19 was destitute and he decided he was going to travel
20 to Florida.

21 Q. In fact, she was with him in part because he
22 offered to pay for the hotel and she had a place to
23 stay?

24 A. Yeah, and pay all the thing. That's my
25 recollection of her testimony.

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1 Q. Sure. And her SLED statement indicates, I think
2 she said in her taped statement to SLED that she had
3 no place to stay?

4 A. Right.

5 Q. Okay. Does it seem strange that a person who
6 has no place to stay has \$8,700 to write to a Chevy
7 dealership?

8 A. Yeah, it is strange. It's not only strange, I
9 just have to say it's a lie.

10 Q. And a \$50,000 car is going to be purchased, too.
11 And then they're going to go to Disney World?

12 A. Yeah. Well, now she said the Disney World he
13 was going to pay for that.

14 Q. Okay.

15 A. He was going to pay for all that.

16 Q. And \$1,700 to Penske rental car?

17 A. That's true. I mean....

18 Q. So she's spending a lot of money?

19 A. Yes, she was.

20 Q. Okay.

21 A. Or she was writing checks for a lot of money.

22 Q. Attempting to spend a lot of money?

23 A. Yeah.

24 Q. Okay. Would you look at the bottom document on
25 Applicant's 36.

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1 A. That appears to be the same as I've seen
2 earlier, that receipt or deposit receipt to Summit
3 Bank for \$28,500.32.

4 Q. Okay. And again all of this shows motive to
5 commit a crime -- I mean, motive to commit or to
6 avoid the law -- excuse me, avoid arrest, it provides
7 a motive?

8 A. Well, I guess if you're saying that this is --
9 that she was being prosecuted for this or that
10 someone had brought an action from Distasio or one of
11 those places.

12 Q. Was she on notice that she could be arrested?

13 A. I don't know about this now. The other things
14 when you talk about where you said that from the -- I
15 guess the checks from the job that they had actually
16 done something, but in terms of that I don't know.

17 Q. Okay. And how about the Lincoln dealership
18 where she signed that promissory note that says you
19 don't make good on this?

20 A. The promissory note is simply in any
21 transaction, especially in transactions involving
22 banks and stuff, that if you are lying then you are
23 subject to prosecution.

24 Q. And, in fact, not just for perjury or lying in
25 her statement, in New Jersey it gives a statute,

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1 which I don't purport to know anything about New
2 Jersey law; but if I'm not mistaken --

3 A. It does give a statutory code.

4 Q. It says she could be?

5 A. Subject to arrest for theft of goods.

6 Q. For theft as well, okay.

7 THE COURT: Gentlemen, while there's a
8 break in the action I just want to mention
9 something to you.

10 MR. BROWN: Off the record?

11 THE COURT: Because you all have a
12 scheduling concern.

13 (Whereupon, a bench conference was held off the
14 record.)

15 MR. BROWN: And, Your Honor, I believe it's
16 Applicant's 37 we would offer into evidence as a
17 transcript of a guilty plea of Gloryvee Rivera
18 and also accompanying it are some other
19 documents related to it, mainly 11 indictments
20 and a motion for dismissal regarding some
21 indictments.

22 And the plea colloquy is -- has a
23 certificate signed by the court reporter and
24 also included in it is a letter to Mr. Bayan
25 Aleksey at Lieber Correctional Institute dated

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1 July the 21st, 1999 indicating that he requested
2 the documents.

3 THE COURT: Any objection?

4 MR. ZELENKA: No objection.

5 MR. BROWN: And I believe they were
6 obtained by Mr. Aleksey. Obviously the letter
7 says so through his request post-trial.

8 THE COURT: All right. Very well.

9 Applicant's 37 in evidence without objection, it
10 is a transcript of a plea.

11 (Entered into evidence was Applicant's Exhibit
12 37, guilty plea transcript of Gloryvee Rivera.)

13 Q. And I'll show you the plea transcript marked as
14 Applicant's 37. Do you remember attempting to -- you
15 actually impeached Ms. Gloryvee at trial on a drug
16 conviction?

17 A. Right.

18 Q. And you proffered testimony related to ten other
19 indictments, I believe, or at least nine other
20 indictments?

21 A. Nine of them, I believe.

22 Q. That were not proffered?

23 A. Uh-huh (affirmative response).

24 Q. And to not belabor it, but I think the Supreme
25 Court upheld the exclusion of that proffer and I

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1 believe the trial judge indicated that, because you
2 had asked to impeach her with the fact that she knows
3 how to cut a deal?

4 A. Uh-huh (affirmative response).

5 Q. Because she had, in fact -- there's indication
6 that she had a deal with the prosecution in the trial
7 of Mr. Aleksey because her charges were dismissed and
8 she offered testimony for the State against
9 Mr. Aleksey.

10 Now, obviously I don't think there was
11 any deal that was explicitly revealed, but obviously
12 the -- you were allowed to make the argument she cut
13 a deal in this case?

14 A. We wanted to go -- and specifically it is my
15 recollection that the reason -- one of the reasons we
16 wanted to bring that in about her making a deal, I
17 think one of the people that she ratted out was her
18 mother.

19 And we wanted to be able to show the
20 jury the extent that she would go to or go through in
21 order to be able to cut a deal. And we felt that it
22 was very -- I felt it was very important that the
23 jury know that the two people whom she was caught
24 with I believe was her mother and her husband, the
25 Perez guy, I believe, if that was his name, and that

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1 rather than be caught up with them in the amount of
2 drugs and stuff that they were involved in, she was
3 the first one to get a bite of the apple and say I'll
4 turn on my mom, I'll turn on this guy also.

5 Q. So the argument was she'll turn on Mr. Aleksey
6 and cut a deal to save her own hide because, Lord,
7 she did it in 1991, cut a deal against her mom?

8 A. Yeah.

9 Q. And the judge said, if I'm not mistaken, and
10 obviously the transcript is a part of this record,
11 but he said you don't have any evidence why those
12 charges were dismissed?

13 A. He may have said that.

14 Q. Okay.

15 A. I don't know if he did or did not. But, no, I
16 thought he had said that the -- number one, the one
17 that he allowed in was a conviction.

18 Q. That's correct.

19 A. The other two were -- the other eight were not
20 convictions, they were dismissed.

21 Q. That's right. He said it doesn't come in under
22 609 because they're not convictions?

23 A. Yeah.

24 Q. And then y'all said, I believe -- attempting to
25 get this in, I believe, is we want to show it as she

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1 knows how to work the system, I'm paraphrasing it.

2 A. Yeah.

3 Q. Just like what you just said.

4 A. Yeah.

5 Q. If I'm not mistaken.

6 MR. BROWN: And I beg the Court's
7 indulgence.

8 Q. There is an in camera, y'all did an in camera
9 examination of her regarding --

10 A. Yeah.

11 Q. -- this and there was a proffer made.

12 A. Yeah.

13 MR. BROWN: Okay. And I would ask the
14 Court to turn to 1,316.

15 Q. And it appears in there more than one time, but
16 this is to refresh your memory. And it's actually
17 there's another part on 1,317.

18 A. (The witness complies.)

19 Q. Okay. At 1,316 at the top you make a point, the
20 point is, Your Honor, and she was indicted for ten
21 charges, she pled to one, she made a bargain and pled
22 and that's relevant information --

23 A. Right.

24 Q. -- to this situation. And the Court says you
25 can't say she made a bargain, they may not have had

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1 sufficient proof.

2 And then on 1,317, because you're
3 still going through the same argument and the Court
4 explains, "But let me make my ruling abundantly
5 clear. You're allowed to impeach her with regard to
6 the things she's been convicted of. And I'm not
7 going to let you in to non matters by which that you
8 say she was indicted. She was never tried or pled
9 guilty. I don't know why the solicitor up there
10 dropped the charges. It may well -- it well may be
11 he didn't have sufficient evidence, but you may ask
12 her outside the presence of the jury."

13 And then when y'all asked her about
14 those other charges she said, I don't recall, I don't
15 recall, I don't recall to every indictment except the
16 one she was convicted of?

17 A. Yeah.

18 Q. Now, I would refer to you in the plea colloquy
19 which is Applicant's 37 to a plea, the caption is the
20 State v. Gloryvee Rivera, and again Rivera was her
21 first married name.

22 A. Right.

23 Q. The date was December 9th, 1991.

24 A. Right.

25 Q. And these are -- the date sounds like the date

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1 that you had, the one charge that you had questioned
2 her about and the other charges that she --

3 A. Yeah.

4 Q. That you attempted to get in.

5 A. Yeah.

6 Q. And if I may refer you to page 4 of the plea
7 colloquy. The Court says -- and this goes through
8 some questioning of the defendant by the Court and
9 there are the lawyers there and a prosecutor, and I
10 believe the Court indicates --

11 MR. BROWN: And if I may just publish this,

12 Your Honor, I think it's easier this way.

13 THE COURT: Sure.

14 Q. The Court indicates: "Okay. I show you a
15 document. There's a copy in front of you and it's
16 entitled 'Plea Form.' And the first and second pages
17 have your initials G. R., third page has a signature
18 Gloryvee Rivera, fourth page also has that signature.
19 Are those your initials and your signatures?"

20 And she, her indication is "Yes, sir."

21 And I bring that out because on the
22 previous page, page 3, the Court says, "I understand
23 that you and your attorney, the prosecutor, arrived
24 into an agreement. Under the terms of the Court's
25 agreements counts six, seven, eight, nine, 10, 11,

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1 are being dismissed at the time of sentencing, also
2 the prosecutor's recommending a non-custodial
3 sentence conditioned upon you, your making a truthful
4 statement implicating Gloria Perez." And Gloria
5 Perez --

6 A. Was the mom.

7 Q. -- was the mom. And, in fact, this plea
8 colloquy they go in and ask her on page 6, and if I
9 may publish this, the Court says and things -- they
10 mention that there was a search warrant served. He
11 asks, "Did you have some visitors on March 29th,
12 1991?"

13 "Yes, I did."

14 "And things got rather exciting?"

15 "Yes, sir."

16 "And they found some things in the
17 house that weren't supposed to be there?"

18 "Yes."

19 "What was it they found?"

20 "They found a metal box, a metal red
21 box containing cocaine, marijuana and money belonging
22 to Gloria Perez on the first floor."

23 And somebody, Mr. Main, who is one of
24 the assistant prosecutors says, "Judge, for the part
25 she's talking about for the co-defendants could we

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1 have her sworn in?"

2 So in other words, at that plea
3 hearing she actually makes a statement under oath
4 implicating her mother as possessing the cocaine that
5 she was in fact charged with?

6 A. Apparently, yes.

7 Q. And that's exactly the information that you
8 thought would make the impeachment through the
9 bargaining process admissible?

10 A. I thought it would be beneficial to know that
11 she had, in fact, made that deal and we relied upon
12 what we thought would have been the law at that time
13 to be able to bring in all of the nine, or the nine
14 or 11 indictments that she had against her to be able
15 to say that she had 11 against her, she pled to one,
16 made a deal, and got herself, you know, a neat thing.

17 Q. She knew how to cut a deal?

18 A. Yeah.

19 Q. And this was not presented to the trial court?

20 A. Right, it was not presented to the trial judge.

21 Q. So again one of things when he says he makes
22 abundantly clear his ruling, is that he doesn't know
23 why these things are dismissed, so he's not going to
24 let you go into them?

25 A. It doesn't say in here why they were dismissed

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1 other than it was a deal which we had already put on
2 the record with him that she had gotten a deal.

3 Q. But in that case the judge said I don't know
4 that she made a deal. I apologize, I'm going to come
5 back to that information in the transcript.

6 A. Just went to that, was on 13 --

7 THE COURT: Yeah, that's page 1,316.

8 A. 1,316 and 1,317.

9 Q. Okay. And you said on 1,316 "The point is, Your
10 Honor, she was indicted for ten counts, she pled to
11 one. She made a bargain, pled to one of those
12 counts. I think that information's totally
13 relevant."

14 And the Court's response is, "You
15 can't say she made a bargain." But this says she
16 did?

17 A. Yeah.

18 Q. And the Court was not aware of that at the time
19 of the ruling?

20 A. Apparently.

21 Q. So that was never a basis for -- those facts
22 were never a basis for the argument that went up on
23 direct appeal to our state Supreme Court and the
24 Court ruled the judge properly excluded it on the
25 record before them and the US Supreme Court denied

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1 cert on that issue?

2 A. I don't know because I have not looked at the
3 appellate record, so I cannot tell you.

4 MR. BROWN: At some point, Your Honor, we
5 would like to make those records a part of this
6 record.

7 THE COURT: What is "those records"?

8 MR. BROWN: The opinion from the State v.
9 Aleksey in the South Carolina Supreme Court.
10 And actually I believe the briefs we would like
11 to confer about that.

12 THE COURT: They're already part of the
13 record.

14 MR. BROWN: Okay. And we would like to
15 refer Your Honor to that at the appropriate time
16 that you go to consider this.

17 THE COURT: I already have. I've already
18 had an opportunity to read them as well as the
19 decision. Thank you so much. And review those.

20 MR. BROWN: Okay. Yes, ma'am.

21 Q. Now, I want to show you --

22 THE COURT: If I may, Mr. Brown --

23 MR. BROWN: Yes, ma'am.

24 THE COURT: -- before we leave that, what
25 was the date of the plea?

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1 THE WITNESS: '91.

2 MR. BROWN: That's right, December.

3 THE WITNESS: December 9th, 1991.

4 THE COURT: Thanks.

5 MR. BROWN: And, Your Honor, we now wish to
6 move into evidence Applicant's 38 which is a
7 receipt to Gloryvee Perez for personal items
8 from SLED.

9 THE COURT: Any objection?

10 MR. ZELENKA: No objection with the
11 representation to me that it came from trial
12 counsel's file.

13 MR. BROWN: We agree with that, we
14 stipulate it.

15 THE COURT: Very well. Appellant's Exhibit
16 38 is in evidence without objection, subject to,
17 of course, the understanding that this document
18 came from trial counsel's file. Great.
19 (Entered into evidence was Applicant's Exhibit
20 38, property receipt of Gloryvee Blackwell.)

21 THE COURT: Is it a one-page document?

22 MR. BROWN: Yes, ma'am.

23 THE COURT: Thanks.

24 Q. And, Mr. Sims, I would ask you if you've seen
25 that document?

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1 A. I can't recall if I did, but probably talking.
2 with Mr. Stone and going through things we probably
3 did go through this if it was in the file. I'm -- I
4 can't say from my own personal knowledge whether I
5 recall this or not.

6 THE COURT: What's the date on that?

7 MR. BROWN: 3/3/98.

8 THE WITNESS: My birthday.

9 Q. Now, I would ask you that receipt indicates that
10 George Darnell of SLED returned items to Ms. Perez?

11 A. That's correct.

12 Q. Okay. Now, some of those items included checks?

13 A. That's true.

14 Q. Do we know anything about whose checks those
15 were? And did SLED ever or the prosecutor ever offer
16 you the opportunity to view those items prior to
17 returning them to Ms. Perez?

18 A. No, not to my knowledge. We were never given
19 the opportunity to see what she had gotten back.

20 Q. And let me ask you this: Do you know of any
21 checks that Ms. Perez had that were valid given her
22 state of income at the time of her arrest?

23 A. No.

24 Q. Okay. But they did return those nonetheless?

25 A. Yeah.

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1 Q. That's what it indicates.

2 I want to refer you also, at this time
3 I'm trying to conclude my issues regarding Gloryvee
4 Perez, there's trial transcript at page 1,329, lines
5 9 through 12 deal with the questions, questioning of
6 Gloryvee about holding a gun, because that was one of
7 the things that was objected to, but I believe the
8 trial court let you ask Ms. Perez whether she had
9 ever held a gun or fired a gun.

10 On 1,329 lines 9 through 12, and this
11 is her cross-examination by you in front of the jury,
12 your statement says "Does it look like this one?"
13 talking about a gun, talking about whether
14 Mr. Aleksey owns a gun. Or, excuse me, whether
15 Mr. Blackwell owned a gun. You had asked her whether
16 her husband ever owned a gun, she said you did.

17 You said in your question, "I believe
18 it's semiautomatic?"

19 She said, "I'm not familiar with guns.
20 Yes, he owns one."

21 Then your question on line 8, "Does it
22 look like this one?" And her response is "It
23 probably does. I mean, I have never held it or
24 anything."

25 And your question was "So you've never

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1 shot that weapon?"

2 And her response was, "No, I never
3 shot that weapon."

4 And I would refer you to the affidavit
5 of Marcus Blackwell.

6 A. Uh-huh (affirmative response).

7 Q. Which is Applicant's 25, and ask you to look at
8 the first and second sentence of paragraph 4.

9 A. He said "During the course of knowing Ms. Perez
10 I found her to have a violent temper and untruthful
11 character. Specifically one night during our
12 marriage Gloryvee was shooting a pistol in our
13 residential neighborhood."

14 Q. And they lived in Beaufort, South Carolina?

15 A. Yeah.

16 Q. Okay. And that would tend to impeach --

17 A. That would have definitely impeached her. I'm
18 not going to sit here and lie about that, yes, that
19 would have impeached her.

20 Q. Okay. The other thing I point out about the
21 Blackwell affidavit, Applicant's 27, which is
22 Elizabeth Blackwell's affidavit is that she gives an
23 opinion in paragraph 7 of the character for
24 truthfulness of Ms. Gloryvee. And what does that
25 indicate it was?

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1 A. "Over the course of time I knew Ms. Gloryvee
2 Perez I found her to be an untruthful person. I
3 would have testified during Mr. Aleksey's trial in
4 1998 if I would have been called to testify."

5 Q. So both her husband, Marcus Blackwell, and her
6 mother-in-law, Elizabeth Blackwell, found her to be
7 an untruthful person?

8 A. Her husband talked about her violent temper;
9 that one talked about her being an untruthful person.

10 Q. I hate to have you read Mr. Marcus Blackwell's
11 affidavit.

12 A. Oh, I'm sorry, and untruthful. That's the first
13 sentence. It says violent temper and untruthful
14 person.

15 Q. And, in fact, in Elizabeth Blackwell's affidavit
16 I think it came out during the trial it indicates for
17 a period of time Gloryvee lived with Ms. Blackwell?

18 A. Yes.

19 Q. I think it was a period of time after they were
20 separated she stayed, not with her husband, they were
21 separated, she went and stayed with her
22 mother-in-law?

23 A. Yeah.

24 Q. So she had an opportunity to know her a little
25 bit.

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1 A. I'm losing my voice.

2 THE COURT: You need some water?

3 MR. BROWN: I'm sorry.

4 THE WITNESS: Get my cup. Thank you. I've
5 been here all day.

6 THE COURT: You've been here two days.

7 THE WITNESS: Two days talking.

8 Q. Let me show you a document that's entitled
9 "Defender Corporation of Orangeburg County." In that
10 letter -- first that letter's addressed to you?

11 A. Yeah.

12 MR. ZELENKA: Are you going to introduce it
13 or for refreshing his recollection?

14 Q. Have you ever seen this letter before?

15 A. I do recall talking with Mike about the
16 clothing.

17 Q. And do you recall whether he wrote you a letter
18 back?

19 A. Yeah.

20 Q. And briefly the letter says -- Michael Culler
21 represented Ms. Gloryvee?

22 A. Yeah, he was the initially appointed one of the
23 first people who were appointed -- who was appointed
24 to represent her, yeah.

25 Q. And you wished to examine her clothing?

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1 A. Well, Duffie and I, Mr. Stone and I wanted to
2 talk, Michael wrote the letter back to me and wanted
3 to review her clothing.

4 Q. And the response was?

5 A. Wasn't.

6 Q. Wasn't going to let y'all do that?

7 A. Yeah. And the reason we wanted to do that was
8 because the whole issue as relating to whether or not
9 there was any evidence of I guess gunpowder residue
10 or anything like that. I believe that was part of
11 our thinking at that time.

12 Q. Okay. And the other thing I would ask you is
13 does this letter also mention having a hearing
14 regarding the examination of her clothing?

15 A. It does indicate. "Please let me know what your
16 position is, or will, be regarding a hearing." If
17 I'm not mistaken, by the time we got this back
18 Gloryvee was already gone.

19 Q. Okay. And there never was a hearing?

20 A. And there was never an opportunity. And I may
21 be -- I think a couple of days -- she was in there
22 one day and then she was out of there the next day
23 and she was gone.

24 Q. Okay. And let me ask you this: The -- and the
25 date on that letter is what day?

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1 A. February 27th of '98.

2 Q. And that's prior to the receipt returning the
3 items to Ms. Perez on the 3rd of March?

4 A. Yeah, prior to the receipt of returning the
5 items, but that other thing -- the receipt that you
6 talked about on March 3rd indicated black shoulder
7 purse, black wallet with pictures, ID, driver's
8 license and other important papers pertaining to my
9 children and my vehicle, checkbook, box of extra
10 checks, orange folder with resumes and other
11 paperwork.

12 So it wasn't actual -- it was not her
13 clothing that was returned to her on March the 3rd.
14 Her clothing, the clothes that she had on that night
15 she -- was my understanding based upon my
16 recollection at this time, they were already gone,
17 the stuff that she was wearing, that's what we were
18 concerned with.

19 Q. And nonetheless the receipt seems to indicate
20 that Ms. Perez was available at least to SLED several
21 days after that letter was post marked?

22 A. Yeah.

23 Q. Okay. In the interest of time we my come back
24 to another issue with Gloryvee Perez, but right now I
25 want to move to a short witness which was Glory Mai

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1 Rivera or Gloria Maria Rivera?

2 A. Yeah.

3 Q. I think her full name is listed as Gloria Maria
4 Rivera, that's the daughter of Gloryvee Perez and you
5 did the cross-examination of her?

6 A. Yeah.

7 MR. BROWN: And I would just first ask the
8 Court to turn to transcript 1,375, lines 3
9 through 8, which was the cross-examination by
10 Mr. Sims. And lines 3.-- excuse me, excuse me,
11 this is the end of the direct examination by
12 Walter Bailey. And his question, I publish this
13 to the Court. "Has anybody told what you to say
14 here today?"

15 Response, "No."

16 "Have I told you?"

17 "No."

18 "Has your mom told what you to say?"

19 "No."

20 Q. Now, I would refer you at this point to the
21 affidavit of Elizabeth Blackwell and ask you to read
22 paragraph 6 into the record.

23 A. (As read) "When I spoke with Miss Gloria Mai
24 Rivera, 'Did you see who was driving the car when he
25 was shot?' she responded, 'I woke up when I heard

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1 shooting. Mommy told me Michael was driving.' I
2 repeatedly asked her if she saw who was driving and
3 she never said anything other than, 'Mommy told me
4 Michael was driving.'"

5 Q. So in other words, in that statement I believe
6 Ms. Elizabeth Blackwell indicates she questioned
7 Gloria Maria, the child, about who was driving and
8 the response was "Mommy told me Michael was driving"?

9 A. She said she woke up and Mommy told her Michael
10 was driving, yeah.

11 Q. And Michael refers to Bayan Aleksey?

12 A. Yeah.

13 Q. And the other thing I would point out is that
14 again she has those notes documenting this
15 conversation, it says she took notes documenting
16 conversations with her granddaughter -- excuse me,
17 it's not her granddaughter, her step-granddaughter?

18 A. Her step-granddaughter.

19 Q. Ms. Blackwell again said, "I took notes
20 documenting this conversation and I still have those
21 notes today"?

22 A. Yeah, that's what it says.

23 Q. Okay. And do you remember if this young lady
24 actually went to live in the custody of Ms. Elizabeth
25 Blackwell during a point in time between the arrest

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1 of Ms. Gloryvee Perez and the trial of Mr. Aleksey?

2 A. I think there may have been a time right after
3 when DSS got involved and took the children because
4 of the initial arrest of Gloryvee. And she may or
5 may not have lived with them at that time.

6 Q. And if I can just to elucidate that a little
7 bit, if you'll look at paragraph 5.

8 A. Yeah, it says "Because of Mrs. Perez's
9 incarceration I was given physical custody of Gloria
10 Mai Rivera, Ms. Perez's daughter from a previous
11 marriage, and Mercedes Blackwell, Ms. Perez's
12 daughter and my granddaughter by the Family Court in
13 Orangeburg, South Carolina. Both girls lived with me
14 in South Carolina prior to the trial."

15 Q. Okay. And actually I think it's says North
16 Carolina where she lives?

17 A. Yeah.

18 Q. Okay. And one other thing I don't believe I
19 brought out about Ms. Gloryvee Perez, would you read
20 paragraph 4?

21 A. I thought you published it?

22 Q. And I'm not sure because I just don't remember
23 this coming out. Would you read paragraph 4 of the
24 statement of Elizabeth Blackwell? And this refers
25 back to Gloryvee Perez.

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1 A. "Ms. Perez contacted me on January 1 of 1998.
2 She informed me she was in jail in Orangeburg, South
3 Carolina. When I expressed concern for her legal
4 situation Ms. Perez said, 'They cannot charge two
5 people for the shooting.' I have notes I have
6 recorded dated January 1, 1998 documenting this
7 statement."

8 Q. Okay. So basically she, Gloryvee, called
9 Ms. Blackwell and said I'm in jail and she says,
10 expressed concern about her being in jail, it's her
11 daughter-in-law, and Gloryvee responds, Well, they
12 can't charge two people with the shooting. And then
13 Ms. Blackwell indicates she has notes of that
14 telephone conversation. She took them and has them
15 today?

16 A. Which was wrong, they could have charged two
17 people.

18 Q. That is wrong, but that's Ms. Gloryvee's mind
19 set conveyed to Ms. Blackwell the day of the arrest.
20 They can't charge two people. And that's the same
21 day that she makes her statement that Mr. Aleksey did
22 it. And again, we already know that she knows how to
23 cut a deal.

24 MR. BROWN: I would like to at this time
25 move to a witness Theresa McCann, Your Honor.

1 And Ms. McCann is a witness in the punishment
2 phase.

3 THE WITNESS: Can I take a break? Because
4 I'm really tired now. I am getting tired now.

5 MR. BROWN: I can certainly understand.

6 THE COURT: Do you want to finish up in the
7 morning?

8 THE WITNESS: I would rather finish up
9 today. I do have --

10 THE COURT: We're not going to go much
11 beyond 5:30 for the court personnel. If you are
12 ready to stop now, it's a good stopping point.

13 THE WITNESS: Yeah.

14 THE COURT: Y'all come here and let's
15 confer a minute.

16 MR. BROWN: Sure, yes, ma'am.

17 THE WITNESS: You're going to have to make
18 another call tomorrow.

19 THE COURT: I got you covered.
20 (Whereupon, a bench conference was held off the
21 record.)

22 THE COURT: Here's what we're going to do.
23 We are going to send Mr. Sims home for the
24 evening. He will not, of course, talk about his
25 testimony. He's going to be back in the morning

1 at 9:30.

2 And obviously he will try to contact
3 Bamberg on your matter that you have over there.
4 If you have any difficulty, I'll be delighted to
5 call on your behalf.

6 THE WITNESS: Okay.

7 THE COURT: Or assist in any way that I can
8 in letting the Court know where you are. We're
9 going to stand you down and take another
10 witness.

11 We're going to begin by the submission
12 of an affidavit. Some corroboration, I gather
13 of that affidavit, some cross-examination of
14 that, get that gentleman hopefully out and on
15 his way as soon as we can. It seems -- if it
16 seems to be going a little longer then we'll
17 just begin with him in the morning.

18 MR. TARR: Your Honor, if it helps at all,
19 I think with what we have left for Mr. Sims, if
20 we start at 9:30 and it may be a situation where
21 we can break at lunch, be done, break at 12:00,
22 maybe Mr. Stone can be here at 1:00, that would
23 give us the whole afternoon, we could probably
24 finish. I'm presupposing how long your
25 cross-exam's going to be.

1 THE COURT: Don't you hate -- that will
2 always mess up your schedule, yeah. And I do
3 think he probably needs to arrive somewhere
4 around 2 o'clock, just be sure we're able to
5 move things along. And I told him 10:30. So
6 has anybody got a number for Mr. Stone?

7 MR. TARR: I do, Your Honor.

8 THE COURT: I don't mind asking Mr. Zelenka
9 to give him a call.

10 MR. ZELENKA: I want to make sure that
11 Mr. Sims is protected from the other court in
12 the morning.

13 THE WITNESS: Yeah, I'll call in the
14 morning if I do have a problem. They're
15 bringing up a kid that I have on a criminal
16 matter, it's supposed to be a magistrate thing,
17 but he could go to jail for burglary.

18 THE COURT: I understand. Is he out on
19 bond?

20 THE WITNESS: He's out on bond.

21 THE COURT: Oh, he is out on bond. So it's
22 going to magistrate or family court?

23 THE WITNESS: It's going to go to general
24 sessions. I call him a kid, he's 17. I call
25 him a kid, he's 17.

1 THE COURT: I understand. What judicial
2 officer is handling this matter for you?

3 THE WITNESS: It's Danny Singleton, the
4 magistrate over there.

5 THE COURT: Oh, it's the magistrate?

6 THE WITNESS: Yeah.

7 THE COURT: If you have any difficulty, let
8 me know.

9 THE WITNESS: Okay.
10 (Whereupon, the witness steps down from the
11 witness stand.)

12 MR. BROWN: Your Honor, at this time we
13 would offer an affidavit of Chris Sontag into
14 evidence as Applicant's 39.

15 THE COURT: Okay. Any objection?

16 MR. ZELENKA: No objection.

17 THE COURT: Very well. Affidavit of
18 Mr. Sontag in evidence without objection. I
19 understand he is here. Is he here? Come on.
20 (Entered into evidence was Applicant's Exhibit
21 39, affidavit of Christopher Sontag.)

22 MR. BROWN: And I would now call
23 Christopher Sontag as our next witness, Your
24 Honor.

25 (Christopher Sontag, called as a witness, having

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1 first been duly sworn, is examined and testifies
2 as follows:)

3 THE COURT: If you would come on, be seated
4 right up here and state your full name for our
5 record and spell your last name.

6 THE WITNESS: Christopher J. Sontag,
7 S-o-n-t-a-g.

8 THE COURT: Your witness.

9 MR. BROWN: Thank you, Your Honor. May it
10 please the Court.

11 DIRECT EXAMINATION

12 BY MR. BROWN:

13 Q. Christopher, this is the first time we've met?

14 A. Yes.

15 Q. But we did talk earlier this year?

16 A. Yes, we did.

17 Q. And some background information. Currently you
18 work at a bank?

19 A. Correct.

20 Q. And you're welcome to elaborate a little bit but
21 you work at a bank, Fleet Bank, in Plymouth Meeting
22 Pennsylvania?

23 A. Correct.

24 Q. And that's a suburb of...?

25 A. Philadelphia.

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1 Q. Philadelphia. And I don't want to sound like
2 I'm cross-examining you, so if you want to take the
3 ball and run with it you're welcome to as far as I'm
4 concerned. You worked at a bank by a different name
5 in 1997?

6 A. I worked at Summit Bank at Bussleton and Grant
7 Avenue.

8 Q. Can you tell me what happened with Summit Bank?

9 A. Summit Bank was acquired by Fleet Bank in June
10 of 2001.

11 Q. So you still work for the same --

12 A. Yes, I do.

13 Q. -- bank generally. But it's a different branch?

14 A. Different branch, correct.

15 Q. Your position again was a branch manager?

16 A. Correct.

17 Q. Have you ever heard of a lady named Gloryvee
18 Perez?

19 A. Yes, I do. I encountered Gloryvee Perez on
20 Christmas Eve 1997.

21 Q. And how did you encounter her?

22 A. Gloryvee Perez and the defendant came into my
23 office at Bussleton and Grant trying to withdraw a
24 large sum of money. Off the top of my head I do not
25 recall the exact amount, but I believe it was in

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1 excess of \$20,000.

2 Q. If I show you your affidavit which has been
3 marked as Applicant's 39 and which has your signature
4 on it, does that help you?

5 A. Yes. I believe they were trying to withdraw
6 greater than \$25,000.

7 Q. And if I show you a receipt that is one item at
8 the bottom of Applicant's 36, can you identify that
9 receipt, not that exact one?

10 A. Yes. That receipt was issued by Summit Bank on
11 December 23rd for a \$50 deposit.

12 Q. Okay. And actually the \$50 is the deposit
13 amount?

14 A. I'm sorry, deposit amount was \$28,500.32. The
15 available balance at the time was \$50.

16 Q. Okay. And so that deposit was made on the 23rd?

17 A. Correct.

18 Q. But you didn't meet Ms. Perez until Christmas
19 Eve?

20 A. Correct.

21 Q. Okay. And just so we get this straight, I'm
22 going to hand you Applicant's 24 which is a list of
23 driver's licenses. Do you recognize the person in
24 those ID's?

25 A. Yes, I do. That is Gloryvee Perez.

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1 Q. Is that the lady you encountered on Christmas
2 Eve?

3 A. Yes, it is.

4 Q. Okay. Can you tell me how you came in contact
5 with her after she made a \$28,000 deposit?

6 A. Approximately 9:30 December 24th, Gloryvee Perez
7 and the defendant came into the bank trying to
8 withdraw, as I said, a large sum of cash in excess of
9 \$25,000.

10 She walked over to the teller station,
11 the money was not available, my head teller came to
12 me, presented it to me, I don't remember the
13 circumstances, but Gloryvee said it is an emergency
14 she had to have the money today.

15 I informed her that if I could verify
16 the funds were available, that the check was good,
17 that I would indeed release the funds to her. At
18 that point to appease her I believe I released the
19 sum of \$1,000 to her at that point.

20 At which point I called our central
21 retrieval department, received a photocopy of the
22 check she deposited, I called First Union Bank, First
23 Union Bank informed me that check was not good.
24 Actually they informed me the check was good, it was
25 her employer, and that the signature was not good.

1 At which point I asked First Union
2 Bank not to do anything else, that I would have the
3 Philadelphia Police Department there, I would have
4 Ms. Perez come in and try and collect the money at
5 which point we would arrest Ms. Perez.

6 When I called Ms. Perez to let her
7 know that the funds were available and we were going
8 to release the funds, I was informed by the office
9 manager that the Trenton police were there and that
10 Ms. Perez was no longer there.

11 I got a little upset with the office
12 manager because I did have my little sting operation
13 set up to arrest Ms. Perez. I left at least three or
14 four messages on Ms. Perez's home answering machine
15 telling her the money was there.

16 Ms. Perez never did show up.
17 Philadelphia police did wait in my office for
18 approximately an hour and a half, at which point she
19 didn't show up, they concluded she wasn't coming and
20 they left.

21 Q. Now, why didn't the bank continue to prosecute
22 the fraudulent activity that led to Mrs. Perez
23 profiting \$950, the \$1,000 minus the 50 she
24 deposited?

25 A. Comes down to dollars and cents. For \$1,000

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1 we're not going to prosecute because it would cost us
2 3 or \$4,000 to prosecute.

3 Q. Was that decision not to prosecute conveyed to
4 Mrs. Perez?

5 A. Absolutely not.

6 Q. As far as she knew she took you for at least
7 \$950 and attempted to take you for a very large sum
8 of money?

9 A. Correct.

10 Q. Do you recall whether the person you spoke to at
11 the doctor's office was an individual named Pat
12 Cubberly?

13 A. I believe that was her name, yes.

14 Q. Okay. Now, do you have any of the documents
15 such as the actual checks deposited?

16 A. No, I don't. I did keep copies of everything
17 for approximately two or three years. I did follow
18 the case in the newspaper and once Mr. Aleksey was
19 convicted, I guess a year or two later I just got rid
20 of everything.

21 Q. And at the trial of Mr. Aleksey in August of
22 1998, eight or nine months after this incident at
23 your bank, did you still have those documents?

24 A. I did have those items in my possession, yes.

25 Q. And those items were signed by -- do you know

1 who signed those items?

2 A. The withdrawal slip?

3 Q. That's correct.

4 A. Yes. It was Gloryvee Perez.

5 Q. So that item would have been available to

6 Mr. Aleksey's trial counsel --

7 A. And actually it was not a withdrawal, slip it
8 was a checking account. I believe we used either a
9 temporary check or a counter check.

10 Q. So the attempted forgery or fraud in the amount
11 of 20 some odd thousand dollars would have been an
12 actual writing example of Ms. Perez that would have
13 been available to Mr. Aleksey's trial counsel on
14 August --

15 A. Well, no, we didn't have the actual check
16 because we didn't give her the money for that amount.
17 We would have had the \$1,000 check, we would have
18 also had a photocopy of the check from First Union
19 that was deposited into her account. But, no, as I
20 said she did not fill out a slip for 28,000.

21 Q. But she did write --

22 A. She attempted to get it.

23 Q. Okay. And let me ask you this. Did the bank
24 have video footage?

25 A. Yes, we did.

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1 Q. And do you still have the video footage?

2 A. No.. We reuse those tapes after about six
3 months.

4 Q. But within the six months from December of '97
5 until, let's say, May of '98 those would have been
6 available?

7 A. Absolutely.

8 Q. Okay. I've got two things I want to ask you
9 about.

10 A. Sure.

11 Q. One of the things I want to ask you about is, is
12 if you would have been contacted after March or
13 during March of 1998, would all of the information,
14 and this has come out a little bit, would all of that
15 information have been available to Mr. Aleksey's
16 trial counsel?

17 A. Yes, it would have been.

18 Q. Okay. So if Mr. Aleksey's trial counsel were
19 notified to contact Summit Bank.

20 MR. BROWN: And I apologize and beg the
21 Court's indulgence.

22 THE COURT: All right.

23 Q. Summit Bank, Pennsylvania, northeast
24 Philadelphia, involving Gloryvee Perez, would they
25 have been able to reach you and ultimately get the

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1 evidence that we talked about that was available at
2 that time?

3 A. Yes, they would have. Also if they had
4 contacted our security department they were aware of
5 it as well.

6 Q. Okay. And you would describe Ms. Gloryvée Perez
7 as wanted?

8 A. Yes.

9 Q. And not just wanted by the bank, but wanted by
10 the police?

11 A. Yes. She would have been, yes.

12 Q. And y'all considered a fraudulent scheme in that
13 amount significant?

14 A. Yes.

15 Q. And the reason why y'all didn't pursue it
16 further, again, is because she didn't profit but
17 \$950?

18 A. Correct. According to Philadelphia police
19 because she was attempting to withdraw the 25,000 at
20 that time they would have arrested her, but they said
21 it was not a crime until after I guess the \$1,000
22 they didn't take into effect.

23 Q. Okay. They told you that but they didn't convey
24 that to Ms. Perez, did they?

25 A. Absolutely not.

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1 Q. Do you actually believe whether an attempted
2 fraud would be a crime?

3 A. Yes.

4 THE COURT: Counsel, it was my
5 understanding y'all were sort of ready to go
6 with this witness.

7 MR. BROWN: It's one document, Your Honor.
8 I apologize, and I think this may be the end of
9 our examination and we would offer this as
10 Applicant's, I believe 40, Your Honor.

11 THE COURT: All right. Any objection?

12 MR. ZELENKA: I just ask that this witness
13 identify the document.

14 THE COURT: Sure.

15 MR. BROWN: Sure. I apologize.

16 Q. I'll hand you this, Mr. Sontag, and ask you if
17 you can identify -- and there's a little note at the
18 bottom. And -- not that portion of it -- can you
19 identify what the document in the envelope? That's a
20 Xerox, too, of a letter in an envelope.

21 A. Yes. It's a notice from Summit Bank. It's a
22 Notice of Hold, where there was a hold placed on the
23 account for \$24,000. We had reasonable cause to
24 doubt the collectability of the check deposited
25 because we received notice from a paying bank that

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1 the check listed is being returned unpaid. We placed
2 a hold on the account for the check amount, when the
3 check is returned we will debit the account.

4 THE COURT: Any objection?

5 MR. ZELENKA: Okay. If I can just voir
6 dire him briefly.

7 THE COURT: Indeed.

8 VOIR DIRE EXAMINATION

9 BY MR. ZELENKA:

10 Q. Is that a document that would have come out of
11 your bank that you would have had in your possession
12 prior to the --

13 A. No, I would not have had that in possession.
14 That would have come out of our returned items
15 department which is a separate department.

16 Q. Okay..

17 MR. ZELENKA: It's my -- where was that
18 document located?

19 MR. BROWN: This document -- I'm sorry.

20 MR. TARR: Your Honor, this document was
21 the last document in a sequence of documents
22 that were sent to SLED from a Detective Jed
23 Letchberg with the Mt. Laurel Municipal Center,
24 Mt. Laurel, New Jersey. They were apparently
25 contacted by SLED because they had -- SLED had

Christopher Sontag - Direct Exam

1 found the Summerfield Suites motel receipts in
2 the Mustang, they contacted --

3 MR. ZELENKA: I just want to find out where
4 it came from.

5 MR. TARR: This came from the SLED file.
6 This was not a --

7 MR. ZELENKA: No objection.

8 THE COURT: No objection, very well.
9 Applicant's Exhibit 40 in evidence without
10 objection, it is a one-page document. Very
11 well.

12 (Entered into evidence was Applicant's Exhibit
13 40, Summit Bank Notice of Hold.)

14 MR. BROWN: Your Honor, for the record the
15 note at the bottom we will show you later is the
16 same handwriting, it will be obviously a
17 layperson, from the detective.

18 THE COURT: I think that's okay.

19 MR. BROWN: We just like to explain that
20 note is not from Summit, the handwritten note is
21 not from the bank, it is from the police
22 department in Mt. Laurel, New Jersey.

23 THE COURT: Very well. What is the date of
24 the notice?

25 MR. BROWN: And I will get into that. The

Christopher Sontag - Direct Exam

1 date of the letter is dated December 29th, 1997.

2 BY MR. BROWN:

3 Q. I would show you again Applicant's 40, I believe
4 you already looked at that. Would you indicate for
5 the record just the date that the letter was
6 published? Generated, excuse me.

7 A. December 29th, 1997.

8 Q. That's not the date that Ms. Perez would have
9 received that letter, is it?

10 A. Correct.

11 Q. Okay. I mean, in other words, if it was
12 generated there's no way she would have received it
13 that day unless it was hand delivered to her?

14 A. Correct. And it would not have been hand
15 delivered to her.

16 Q. I'm sorry.

17 A. I believe the postmark is January 3rd, but it's
18 kind of tough to see.

19 Q. Okay. And would that be consistent because
20 again that's before the New Year's?

21 A. Very possible, yes.

22 Q. That it just didn't make it off the desk printed
23 on the 29th, didn't make it in the mail until the
24 next business day?

25 A. Probably be two business days but, yes, I'd say

Christopher Sontag - Direct Exam

1 you're correct.

2 Q. Sure, okay. And the banks were closed on New
3 Year's Day?

4 A. Yes, we are.

5 Q. Okay. And can you tell me just where that was
6 addressed?

7 A. Yes. It was addressed to Gloryvee Perez at 3000
8 Crawford Road, Summerfield Suites, 27, Mt. Laurel,
9 New Jersey, 08054.

10 Q. Summerfield Suites, are you familiar with that
11 chain?

12 A. Yes, I am.

13 Q. And that's a hotel chain?

14 A. Yes, it is.

15 Q. Okay. Is that the same address that's on
16 Mrs. Perez's Pennsylvania driver's license?

17 A. No, it's not.

18 Q. And that address is a different one?

19 A. Yes, it is.

20 Q. Okay. And that driver's license, again, appears
21 on Applicant's 24.

22 And when she had opened the account
23 you had mentioned there were starter checks?

24 A. Yes.

25 Q. What else happens when somebody opens an

Christopher Sontag - Direct Exam

1 account? I mean, in other words, they open a
2 checking account. Do you all send them checks?

3 A. Yes, we order checks for them at that time.

4 Q. Okay.

5 A. We give a set of starter checks which is about
6 seven to eight checks and then we order checks at
7 that time which take roughly five to seven business
8 days.

9 Q. And that would be consistent with that?

10 A. Yes.

11 Q. Okay. And then the checks would have been sent
12 to the same address?

13 A. Yes, they would have been the address on file.

14 Q. Okay. Okay.

15 MR. BROWN: We have no further questions of
16 Mr. Sontag at this time. Chris, if you would
17 answer any questions the attorney general has.

18 THE COURT: Mr. Zelenka.

19 CROSS-EXAMINATION

20 BY MR. ZELENKA:

1 Q. A couple things. Mr. Sontag, on direct
2 examination you mentioned that on Christmas Eve,
3 December 24th, 1997 that Gloryvee Perez and the
4 applicant, Bayan Aleksey, came to the bank and you
5 had a discussion with them; is that correct?

Christopher Sontag - Cross-Exam

1 A. Yes, I did.

2 Q. What discussion, if any, do you recall having
3 with Mr. Aleksey at that time?

4 A. I believe it was directly to Ms. Perez.
5 Mr. Aleksey was there, but I conducted the
6 conversation with Ms. Perez because the account was
7 just in his [sic] name.

8 Q. Okay. Did he make any comments to you, any
9 suggestions to her as to answers if you can recall?

10 A. All I know is that we closed at either I believe
11 1:00 or 2:00 p.m. that day, because it was Christmas
12 Eve, I believe Ms. Perez said that there was a
13 problem getting in, but I don't recall what else may
14 have transpired.

15 Q. Okay. Why did you recall Mr. Aleksey?

16 A. Well, because I knew she was there with
17 Mr. Aleksey. At the time I didn't know his name, but
18 I do visually.

19 Q. Okay. How did you know that?

20 A. That he was there?

21 Q. Yes.

22 A. I visually observed him.

23 Q. Okay. When you did your affidavit on
24 October 31st, 2002, you didn't include that
25 Mr. Aleksey came in the bank, did you?

Christopher Sontag - Cross-Exam

1 A. No, I didn't.

2 Q. Why didn't you include that in your affidavit?

3 A. No reason.

4 Q. Okay. You said that you followed Mr. Aleksey's
5 case and after you learned about the results of his
6 case you destroyed the records; is that correct?

7 A. Probably a year or two later, yes.

8 Q. Okay. Why did you follow Mr. Aleksey's case at
9 that time?

10 A. Because I was very distraught over it, the fact
11 that I had a situation where I could have possibly
12 saved the life of a South Carolina state trooper.

13 Q. In what manner did you have that feeling?

14 A. Well, I feel that if Ms. Perez had come into
15 First Union Bank, contacted Dr. Bang's office and
16 Dr. Bong's office manager never addressed Gloryvee,
17 Gloryvee would have come in to get the money, we
18 would have arrested her and this would have never
19 happened.

0 Q. Okay. Again the postmark on the letter which is
1 Applicant's Number 40 was January 3rd?

2 A. I honestly can't make it out, but I was guessing
3 at it.

4 Q. Okay. But you don't have any indication that
5 she had ever received that letter before she was

Christopher Sontag - Cross-Exam

1 arrested in South Carolina, do you?

2 A. No, I don't.

3 Q. That's all I believe I have.

4 MR. BROWN: No redirect.

5 BY MR. ZELENKA:

6 Q. How did you identify -- if I can go back into
7 one thing -- how did you identify Mr. Aleksey as
8 knowing that he was the one that was in your bank on
9 that day that caused you to follow that case?

10 A. Actually Gloryvee Perez's name was mentioned in
11 the newspaper article and it mentioned that
12 Mr. Aleksey was arrested with her.

13 Q. So did you assume that was Mr. Aleksey until you
14 saw him today, or did you see photographs?

15 A. I believe there was a photograph in the paper,
16 if my recollection's correct.

17 Q. Okay. Contemporaneous with his arrest?

18 A. Yes.

19 Q. Okay. Thank you.

20 MR. BROWN: No further questions. We would
21 ask that Mr. Sontag be excused.

22 MR. ZELENKA: No objection.

23 THE COURT: Just so I'm clear, there was no
24 communication that you are aware of that went
25 from the bank to Ms. Perez that the bank was

Christopher Sontag - Cross-Exam

1 onto her, if you will?

2 THE WITNESS: Not from my standpoint, no.

3 THE COURT: Does that prompt -- that's all
4 I have. Does that prompt any questions from
5 either of you?

6 MR. BROWN: Just briefly.

7 THE COURT: All right.

8 REDIRECT EXAMINATION

9 BY MR. BROWN:

10 Q. You had a sting set up and one of the reasons
11 that you were upset, eventually about the killing,
12 but was that Ms. Perez when you called her boss
13 instead of helping you with the sting, what happened
14 there?

15 A. Well, she had already confronted Ms. Perez. I
16 think as stated earlier I contacted First Union Bank,
17 asked First Union not to do anything, that we had it
18 taken care of. First Union in turn contacted Dr.
19 Bang's office manager who in turn confronted
20 Ms. Perez. So Ms. Perez was sure that something was
21 up at that point.

2 Q. May I show you Applicant's 34 which is the
3 Trenton police report. And it indicates a theft of
4 checks?

5 A. Correct.

Christopher Sontag - Redirect Exam

1 Q. And the date of the report is the 23rd of
2 December?

3 A. That is the date of the report.

4 Q. Okay. The person reported the crime at what
5 time?

6 A. 11:03 a.m. on December 24th, 1997.

7 Q. And that is Ms. Cubberly that called the police
8 and says we've had checks stolen yesterday?

9 A. Correct.

10 Q. This is after they had already come to your
11 bank, deposited the checks, then come back and tried
12 to get the funds?

13 A. Correct.

14 Q. Okay. Would you turn to the second page of that
15 report?

16 A. Sure.

17 Q. Would you read the paragraph that starts with "I
18 then spoke with Perez..."?

19 A. "I then spoke with Perez who is Dr. Bang's
20 receptionist who denied taking any check and
21 depositing them in her account. However, Perez
22 stated a guy she has been seeing for approximately
23 two weeks was at the office on 12/23/97, that he must
24 have stolen the checks without her knowing it."

25 Q. And it's signed by the police officer?

1 A. Yes, it is.

2 Q. Okay. So basically that letter indicates the
3 police from Trenton, New Jersey, actually spoke with
4 Ms. Perez at 11:00, roughly 11 o'clock in the morning
5 on the 24th?

6 A. Yes, correct.

7 Q. And that is before the time when you called and
8 said, hey, the money's ready and you had the sting
9 set up?

10 A. I'm going to be honest with you. I believe so.
11 Yes, it was, because when I called the office Pat
12 Cubberly told me the Trenton police had already been
13 there, yes.

14 Q. And they didn't come in to get the money until
15 9:30?

16 A. They attempted to get the money at 9:30, yes.

17 Q. You told them to come back; you set the sting
18 up?

19 A. I said I would call them.

20 Q. Again, this is 11:03 so an hour and a half later
21 and this is in New Jersey?

22 A. Yes.

23 Q. So an hour and a half later they've left
24 downtown Philadelphia or Bußselton Avenue, I don't
25 know if it is downtown, but in Philadelphia --

Christopher Sontag - Redirect Exam

1 A. From my office at that time to Trenton it was
2 maybe only 20, 25 minutes, it's not that far.

3 Q. She's in your bank at 9:30, she has a
4 20-some-minute drive to her employment and within an
5 hour of that she's contacted by the police and then
6 you call to say, hey, Ms. Perez come get your money
7 to bait the trap?

8 A. Correct.

9 Q. And she's already gone?

10 A. Yes.

11 MR. BROWN: No further questions, Your
12 Honor.

13 THE COURT: All right. Thank you for being
14 here and good-bye.

15 THE WITNESS: Thank you.

16 THE COURT: You are free to go and thank
17 you.

18 (Whereupon, the witness steps down from the
19 witness stand.)

20 THE COURT: All right. That will conclude
21 the work that we'll do today and we will
22 reconvene in the morning at 9:30. 9:30.

23 - - - oOo - - -
24
25

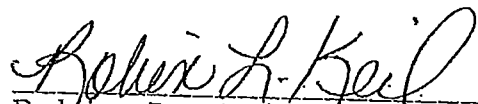
STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

I, Robin L. Keil, Registered Merit Reporter
and First Judicial Circuit Court Reporter, certify
that the preceding pages are a true and correct
transcript of the proceedings had at the aforesaid
time and place.

I certify that the same was reduced to
typewritten form from my original stenograph notes
by computer-aided transcription.

I further certify that I am not of counsel or
kin to any of the parties to this cause of action,
nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand
this the 28th day of January 2004.



Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) CASE NO. 2001-CP-38-628

ORIGINAL

BAYAN ALEKSEY,) VOLUME FILE Pages 493 - 714
Applicant,)
-versus-) TRANSCRIPT OF RECORD
STATE OF SOUTH CAROLINA,) POST-CONVICTION RELIEF
Respondent.) November 14, 2002

B E F O R E:

The Honorable Diane S. Goodstein

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

Jim Brown, Esquire

David Tarr, Esquire

For the Applicant

Donald Zelenka, Esquire

For the Respondent

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I N D E XWITNESSES

THOMAS R. SIMS

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1 (Thursday, November 14, 2002.)

2 THE COURT: All right. Are you all ready
3 to continue? Mr. Aleksey is in the courtroom.
4 Good morning.

5 MR. BROWN: May it please the Court?

6 THE COURT: Yes, sir.

7 MR. BROWN: When we concluded yesterday, I
8 thought we were at the end of the questioning
9 for the, the innocent/guilt phase. However,
10 Your Honor, there is one other thing I would
11 like to introduce and ask Mr. Sims about,
12 include that.

13 THE COURT: It's amazing what happens when
14 you stop and take a breather.

15 MR. BROWN: Yes, ma'am. Your Honor, I'm
16 going to present this to the witness just
17 briefly.

18 CONTINUED DIRECT EXAMINATION

19 BY MR. BROWN:

20 Q. Mr. Sims, can you tell me if you've ever seen
21 those documents before?

22 A. I know I've seen the booking report here, this
23 first sheet on the booking report, there's no
24 question about that.

25 Q. Okay.

1 A. And, of course, this booking report would have
2 been provided.

3 Q. Okay.

4 A. The other things, as again I said without the
5 benefit of having my file, I would not know whether
6 they were in there or had been identified.

7 Q. Besides the two booking photos of Ms. Gloryvee
8 and Bayan, you don't specifically recall the other
9 documents?

10 A. I do not.

11 MR. BROWN: Your Honor, at this time we
12 would move to introduce Applicant's 41 as
13 material from the Mt. Laurel Police Department.
14 This is the material obtained by Bayan's
15 post-conviction counsel through a subpoena
16 served upon SLED that was received through no
17 other source and we have found no copies in any
18 other course.

19 MR. ZELENKA: As long as it came from the
20 SLED file we don't have any objection, Your
21 Honor.

22 THE COURT: Very well. Subject to, of
23 course, the representation that these materials
24 came from the SLED file in evidence without
25 objection.

Thomas R. Sims - Direct Exam

1 (Entered into evidence was Applicant's Exhibit
2 41, checks of Gloryvee Blackwell.)

3 Q. Now, showing to you Applicant's 41 one again.
4 The first page has a series of checks?

5 A. That's correct.

6 Q. And if you'll take a look at those checks, does
7 it have a name of the person who's writing the check
8 or name of the account holder?

9 A. The account holder is Gloryvee Blackwell.

10 Q. Address is...?

11 A. This is a 133-B Old Jericho Road in Beaufort,
12 South Carolina.

13 Q. And is written on which bank? I think it's
14 below.

15 A. MGAS, Beaufort Federal Credit Union.

16 Q. Maybe MCAS, Marine Corps Air Station?

17 A. MCAS. All I see is MCAS, Beaufort Federal
18 Credit Union.

19 Q. Okay. And who are the -- who is the payee of
20 the checks?

21 A. Looks like Summerfield Inns or Summerfield
22 Suites.

23 Q. Have you ever heard the name of that business?

24 A. Not until yesterday when you were --

25 Q. Okay. Okay. And does it give a reason why

Thomas R. Sims - Direct Exam

1 these checks, or does it give a disposition of the
2 check on its face?

3 A. On all three of them it says account closed.

4 Q. Okay. Indicating that these checks were not
5 honored because the account was closed?

6 A. Yeah.

7 Q. Okay. Kind of like a return stamp on there.

8 And the date of writing on these checks, those three,
9 the date?

10 A. December 14th, December 14th, and this one's
11 kind of blacked out by the picture, but it says '97
12 also that second one.

13 Q. Sure. The picture you're referring to has a
14 puppy dog on the checks?

15 A. A puppy dog, yeah.

16 Q. Okay. And there's a note, it's the third page,
17 and it's got a business card, the business card is
18 the business card of the Mt. Laurel police officer?

19 A. Yeah.

20 Q. And he put a little note before it, it says if
21 you need any help let me know more or less? That's
22 kind of paraphrasing.

23 A. Now, this looks like something that would have
24 been written from one law enforcement officer to
25 another. Because it says "Any other help needed,

Thomas R. Sims - Direct Exam

1 please call and we will assist. Good luck."

2 Q. And I agree with that characterization.

3 And does that look like the same hand
4 that is on the note with the business card? And I
5 know you're not a handwriting expert.

6 A. It would appear, and I can't say for sure, but
7 it would appear so.

8 Q. What does the next one say?

9 A. From these photos both appear to have been
10 staying together at Summerfield Suites.

11 Q. The following items are...?

12 A. The photos of Gloryvee and Bayan Aleksey.

13 Q. Those were the photos that were taken at booking
14 in South Carolina?

15 A. That's correct.

16 Q. Okay. So obviously if those are the photos he's
17 referring to, he had to get those from somebody at
18 least after they were booked?

19 A. Apparently, yes.

20 Q. And at least indirectly from somebody in South
21 Carolina?

22 A. And it says, because the name here is not Bayan
23 Aleksey, the photo is for Michael DeAngelo, that's
24 the name on the photo in the booking report which my
25 understanding is the first name he was booked under.

Thomas R. Sims - Direct Exam

1 Q. It's actually says Orangeburg County/Calhoun
2 Regional Detention Center?

3 A. Yeah.

4 Q. Okay. And out of curiosity just to go back,
5 what is the address listed for Mr. Michael DeAngelo
6 as his home address?

7 A. It says place of birth, let's see. 143-48, 41st
8 Avenue, Flushing, Queens, New York.

9 Q. Sounds similar to the address that was on
10 Ms. Batkilina's driver's license?

11 A. Uh-huh (affirmative response).

12 Q. Which sounds similar to the address where
13 Mr. Aleksey's mother lived in New York?

14 A. As I said, I can't give you a yea or nay on that
15 because I don't remember where she lived.

16 Q. You remember she lived in New York City?

17 A. She lived in New York City, but the address I
18 could not tell you.

19 Q. Okay. Then next there's a little note at the
20 bottom of some information?

21 A. Yeah.

22 Q. And would you read that note?

23 A. "Here are the records of their stay at
24 Summerfield Suites along with all calls made from
25 their room."

Thomas R. Sims - Direct Exam

1 Q. Okay. And then above it and following it are
2 Summerfield suite receipts more or less?

3 A. I believe, yeah, they all say Summerfield
4 Suites.

5 Q. Okay.

6 A. That's correct.

7 Q. Okay. And would you tell me the name of the
8 guest that's on the receipts?

9 A. Gloryvee Perez.

10 Q. Okay. And can you tell me the departure date on
11 the receipts?

12 A. 12/12/97.

13 Q. And isn't that the same day that the Trenton
14 police contacted Ms. Gloryvee at her work concerning
15 the theft of those -- the theft of the checks and the
16 same day that Mr. Sontag's affidavit from Summit
17 Bank -- and I'm not sure that you were privy to
18 that -- but isn't it the same day, excuse me, that
19 this Trenton police report indicates they came by to
20 see Ms. Perez?

21 A. Yeah, this is 12/24/97 at 11:03.

22 Q. And it appears they checked out the same day?

23 A. That's correct.

24 Q. Okay. And that's also -- do you remember
25 Ms. Cubberly's affidavit?

Thomas R. Sims - Direct Exam

1 A. That's the day that she made the report about
2 the checks being stolen.

3 Q. And said that she no longer worked there?

4 A. Yeah.

5 Q. That was when she was terminated and the police
6 came looking for her.

7 And I'm going to show you Applicant's
8 39 which is the affidavit of Christopher Sontag,
9 Mr. Sontag testified after you left and I don't
10 believe the affidavit was entered until you left
11 either, so if you would just take an opportunity to
12 look at this.

13 A. (The witness complies.)

14 Q. And if I can point out paragraph 5, if you'll
15 tell me briefly what day Mr. Sontag says Ms. Perez
16 came in, tried to withdraw over \$25,000 in Summit
17 Bank.

18 A. That was the 24th.

19 Q. Which was the same day they checked out of the
20 hotel?

21 A. That's correct.

22 Q. Again, the hotel was under Gloria Perez?

23 A. That's correct.

24 Q. Okay. Now, if you look at Applicant's 36 it
25 retains a receipt from Distasio Chevrolet.

2921

Thomas R. Sims - Direct Exam

1 A. Yeah.

2 Q. The date on that receipt is?

3 A. Twelve/26/97.

4 Q. What name is Ms. Gloryvee using then?

5 A. Blackwell.

6 Q. So she used a different name then?

7 A. Yes.

8 Q. After the police had contacted her, she's tried
9 to take out 20 some thousand dollars from her boss's
10 account and written checks to a hotel that are now
11 dishonored we know that now on an account that was
12 closed. So it's not a case where she might have
13 thought the money was there?

14 A. Right.

15 Q. And let me ask you, when did she live in
16 Beaufort, South Carolina, roughly? I mean, at what
17 point in her life did she live in Beaufort, what
18 brought her to Beaufort?

19 A. When she was married to Marcus.

20 Q. In October of '97, two months before she's checks
21 were written she had left Beaufort was estranged from
22 Marcus; is that correct?

23 A. I believe that's correct.

24 Q. That's in the affidavits of both Marcus
25 Blackwell and Elizabeth Blackwell. That would seem

1 to provide her, I mean if those accounts were closed
2 because they separated that would give her some type
3 of notice you would think?

4 A. Yeah, I was just looking --

5 Q. Sure, oh, no.

6 A. -- at the information that you gave me because
7 on the back, and I was just trying -- that's why I
8 had the frown on my face on the back it had 12/18/97
9 a as a negotiation date I don't understand that.

10 Q. The checks were dated on the front on 12/14. In
11 other words, they were dishonored by the checked out?

12 A. On the 17th?

13 Q. Right. That was dishonored in Beaufort on the
14 17th and their at Summerfield Suites in Mt. laurel,
15 New Jersey and this is at Christmas time and I guess
16 the information didn't get back up there in time to
17 have her arrested for writing a bad check because she
18 wasn't arrested for that we know that much?

19 A. No, she wasn't..

20 Q. But we can assume writing a bad check, knowingly
21 writing a bad check would be a crime?

22 A. Knowingly writing a bad check on a closed
23 account is different from writing a bad check for
24 insufficient funds, because if the account is already
25 closed you know that there's no money there. When

1 you write a check for insufficient funds you may have
2 an idea that there is money there, you just have
3 spent more than you had in there.

4 Q. Right. We you write a check there's just not
5 enough money in there they give you like 30 days in
6 South Carolina to kind of make good on it?

7 A. Well, under the statute they send you the --

8 Q. That's what I'm referring to. Let me ask you
9 another name for the bad check law in South Carolina
10 is fraudulent check, isn't it?

11 A. That's true.

12 Q. Which is in fraud.

13 A. Of course you might want to know in that
14 situation who closed the account. Did Marcus close
15 it or did she close it.

16 Q. Sure. But she's not living with Marcus in
17 Beaufort anymore it's a Marine Corps federal credit
18 union he's the one in the marines not her?

19 A. Yeah.

20 Q. Okay.

21 A. And as I said I don't know if he closed the
22 account without her knowledge.

23 Q. Sure. One thing I think came out Ms. Gloryvee
24 was pretty honest about her monetary situation I
25 think?

1 A. Yeah, there's no question.

2 Q. She didn't have any money?

3 A. She didn't have any.

4 Q. Okay.

5 MR. BROWN: I beg the Court's indulgence.

6 THE COURT: Sure.

7 (PAUSE IN PROCEEDINGS.)

8 Q.. I'm going to kind of conclude this, I think I've
9 already asked you this question, when Ms. Perez was
10 questioned by SLED acts after her arrest, there was a
11 tape recording of at least one of her statements?

12 A. I believe so.

13 Q. Okay. Do you recall her saying that she had no
14 place to stay? And we had talked about this --

15 A. I recall on the stand she was saying she had no
16 place to stay I believe. I can't remember exactly
17 where..

18 Q. But that sounds accurate?

19 A. Sounds accurate she had no place to stay she was
20 following him because he had the money.

21 Q. That's right. But what we have here is looks
22 like she's writing the checks from the 14th through
23 the 24th from what the evidence seems to show.

24 MR. BROWN: Your Honor, at this time we
25 would introduce, not publish but introduce a

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1 SLED statement of Gloryvee Perez Blackwell's as
2 Applicant's 42 into evidence and I believe this
3 tape -- this came from, we believe this came --
4 we're introducing this as evidence from
5 Mr. Stone's trial counsel's file. However, I
6 believe Mr. Sims indicated he was aware of the
7 statement as well and I just point that out.

8 THE COURT: All right. And that is
9 Applicant's 42?

10 MR. BROWN: Yes, ma'am.

11 THE COURT: Any objection?

12 MR. ZELENKA: No objection.

13 THE COURT: Applicant's 42 in evidence
14 without objection, it is a cassette tape.
15 (Entered into evidence was Applicant's Exhibit
16 42-A, audiocassette tape.)

17 MR. BROWN: And I beg the Court's
18 indulgence to tie in that statement.

19 THE COURT: Sure.

20 MR. BROWN: I've got to find one other
21 thing. Now, there's also a transcript of this
22 statement. So, Your Honor, I don't want to make
23 it confusing but there are two SLED statements
24 and we would offer at this time, and maybe it
25 would be proper to put the transcript in with

1 Applicant's 42 as part of it.

2 THE COURT: Yes.

3 MR. BROWN: Which is the transcript of
4 that.

5 MR. ZELENKA: No objection.

6 THE COURT: Very well. We'll call the
7 cassette tape 42-A and the transcript of that
8 tape 42-B. If you'll just give Ms. Keil a
9 moment to do that.

10 MR. BROWN: Yes, ma'am.

11 (Entered into evidence was Applicant's Exhibit
12 42-B, transcript.)

13 MR. BROWN: And, Your Honor, we would also
14 like to introduce, and we're trying to get
15 another copy, we would like to introduce the
16 written, two-page written statement of Gloryvee
17 Perez made to SLED as Applicant's 42 {sic}, and
18 my only hesitation is that the copy that I have
19 in front of me has three small notations made
20 that are not supposed to be on there. And we're
21 looking for a clean copy.

22 THE COURT: Okay.

23 THE WITNESS: Didn't you already introduce
24 that?

25 THE COURT: I don't recall that.

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1 MR. BROWN: They almost all made a SLED
2 statement, so.... There is a SLED statement of
3 Lisa Watson, I think that's in here.

4 THE WITNESS: Okay. There were so many.

5 THE COURT: Any objection?

6 MR. ZELENKA: No objection.

7 THE COURT: Very well. Applicant's 43 in
8 evidence without objection, it is a statement.
9 How many pages is the --

10 MR. BROWN: Two pages.

11 THE COURT: Thank you.

12 MR. BROWN: January 1st statement made at
13 3:35 a.m.

14 (Entered into evidence was Applicant's Exhibit
15 43, SLED statement.)

16 Q. Okay. And what I'm trying to point out here is
17 that she in her SLED taped statement which is 42-A
18 and about -- they asked her about where she was
19 staying and bear with me one moment. I'm going to
20 hand you this copy.

21 A. Okay.

22 Q. If you'll look about midway down, I apologize
23 because this is not a line numbered statement, if
24 you'll look at page 1 of the statement.

25 A. Okay.

1 Q. They said G. Darnell, SLED Agent Darnell said.
2 give me your boyfriend's full name to start off with,
3 please, ma'am. She said Michael, it's written as
4 Coscani, it's probably Toscani, and then a couple of
5 sentences down she says that she moved in with him
6 and we were staying at hotels and suites because --

7 A. I had nowhere to stay.

8 Q. Okay. Now, so in that one she indicates she had
9 nowhere to stay and then in the third page of that
10 statement, that same one, I believe it indicates, and
11 I don't want to say it until I find it in here, if
12 you'll look right here they asked her if you would,
13 Glory, give us your full name, your age at the
14 present, date of birth, address, and Social Security
15 please if you will, ma'am. She says...?

16 A. "My name is Gloryvee Perez, my Social Security
17 number is 158-60-6706, my date of birth is 9/20/72,
18 present address I have none, I don't have a present
19 address, the address on my driver's license is 31
20 Ninth Road in Pennsylvania."

21 Q. Okay. So first page she says that she stayed in
22 hotels with Michael because she has no place to stay,
23 in this one she says two pages later I have no
24 present address. And again this is on the 1st. And
25 if you would look at her trial testimony on page

1 1,299, lines 4 through 5.

2 A. (The witness complies.)

3 MR. ZELENKA: Which page?

4 MR. BROWN: 1,299.

5 A. Okay.

6 Q. In that one she indicates...?

7 A. "I was living with a best friend and the
8 circumstances weren't good. She was married and she
9 was having marital problems. Michael came along and
10 offered me to move in with him."

11 Q. Okay. One thing that you had read back on page
12 3 of Applicant's 42-B again it says that I have no
13 present address.

14 A. Uh-huh (affirmative response).

15 Q. And it says "The address on my driver's license
16 is 31 Ninth Road, Pennsylvania."

17 A. Uh-huh (affirmative response).

18 Q. Okay. Now, let me go back to the SLED statement
19 which is Applicant's 43. And it -- the beginning of
20 that statement they have some blanks that she fills
21 in, says how old she was, where she lives and, of
22 course, this is on January 1st, she's arrested at
23 this time. What does she give as her address there?

24 A. 3900 I guess Beer Street or Beer Road, Bensalem,
25 Pennsylvania.

1 Q. Could it say 2900 Street Road?

2 A. Yeah, Street Road. Kind of looked like a B on
3 here, probably changed it.

4 Q. Okay. But Street Road at least sounds like an
5 odd name for a road to be a Street Road, possibly may
6 have been a made up road?

7 A. I don't know.

8 Q. And at least not the road that she tells the
9 SLED people in her other statement made that same
10 morning that she lives or that was her last address.
11 And it's not the address that's listed on her checks
12 because that's a Beaufort address, and then if you
13 look at the guest information on a Summerfield
14 Suites, does it have 3333 Comly Road?

15 A. Yeah.

16 Q. And that's not either of the other addresses she
17 gives him? So just like she uses alternate names of
18 Gloria Rivera, Gloryvee Perez, Gloryvee Blackwell,
19 she also appears to be using multiple addresses?

20 A. Different addresses, yes.

21 Q. Of course this is in December of '97, two months
22 earlier she was living in Beaufort so it's not like
23 these are addresses she has accumulated of living for
24 years in Philadelphia, although I think she did live
25 for there years, but at this point in time they're

1 asking her about she's only been there for two
2 months?

3 A. I guess, yeah.

4 Q. Okay. So, in fact, if she's actually living in
5 that many different locations she's really on the
6 move?

7 A. She's moving around.

8 Q. She's moving around, it looks like she may have
9 been passing some bad checks at different times under
10 different names, stayed at different places.

11 MR. BROWN: And, Your Honor, that concludes
12 our testimony regarding Ms. Gloryvee Perez, I
13 know we concluded it yesterday, but just
14 conceptually those were a few things we needed
15 to tie back up.

16 We now move to a witness Theresa
17 McCann. And Ms. McCann was a witness in the
18 punishment phase of this trial offered by the
19 State. I beg the Court's indulgence while I
20 change notebooks here.

21 (Pause in proceedings.)

22 MR. BROWN: Your Honor, her testimony
23 appears at 1,864 in the transcript.

24 Q. Now, Mr. Sims, just trying to put all this in
25 context, Ms. McCann testified that Mr. Aleksey left

1 her in financial straits, there is the purchase of
2 some automobiles more or less. She also testified I
3 think to some evidence that she had tried to get a
4 copy of her credit card statement off the car floor
5 and that he had scratched her with a key in the neck
6 or in the arms or something to that effect.

7 A. If it's in there, yeah.

8 Q. And I'm trying to provide context, I'm not
9 trying to testify, but instead of sitting here
10 reading through all of it.

11 A. Right.

12 Q. But more or less that was her testimony. And
13 then, and if I'm not mistaken, and you may not
14 recall, did during the testimony of Ms. McCann she
15 became a little irritated?

16 A. I believe so. One of them did I know.

17 Q. In fact, the judge had to ask her to kind of
18 compose herself. And I don't mean like she was
19 crying because at one point --

20 A. She was angry.

21 Q. At one point did she not, at one point did she
22 not hold her middle finger up at Mr. Aleksey during
23 his capital trial?

24 A. I can't remember that.

25 Q. Okay. Now, there were Court TV tapes taping the

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1 proceedings?

2 A. Yeah.

3 Q. Okay. But you can't recall that happening?

4 A. I can't remember it.

5 Q. Do you remember there was some testimony
6 regarding, and it was spontaneous testimony from
7 Ms. McCann, I don't believe it was directly in
8 response to a question that you gave about her
9 enjoying her time with him or being with him and she
10 responded something about that he liked to wear
11 her --

12 A. Is this the one that said he was a funny little
13 man because he used to wear her panties?

14 Q. That's exactly right, that during sex he wore
15 her panties and bra?

16 A. Yeah.

17 Q. That was during the same point that the judge
18 had to call her down because that was an improper
19 outburst more or less. And I'm sorry, I'm going to
20 try to find that page for her.

21 A. I remember that part of her saying that.
22 Whether she put her finger up, I can't remember that,
23 but I would think that that would be -- if she did
24 that, it shows what our theory, part of our theory,
25 hell hath no fury like a woman scorned.

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1 Q. Certainly I point that out because I want to get
2 the context of Ms. McCann's hostile attitude towards
3 Mr. Aleksey.

4 MR. BROWN: And I think, Your Honor, just
5 for context of 1,891 at the bottom of the page
6 is where that comes, the testimony I mentioned
7 comes up.

8 THE COURT: Hold on one second, let me get
9 there.

10 MR. BROWN: Excuse me, actually it's 1,890
11 at the bottom of the page. It's Mr. Sims' cross
12 and he says "You were involved with a man who
13 was offering you an opportunity to have a good
14 time and you took it, didn't you?"

15 And she said, "I was involved with a
16 man who liked to put my bra and panties on and
17 dance on my bed, a sicko." Then Mr. Sims
18 actually objects. She says he pissed me off and
19 then the Court calms her down, instructs her to
20 have no side comments. And I just point that
21 out for the attitude of the testimony of
22 Ms. McCann.

23 Your Honor, at this time Applicant's
24 43 -- no, excuse me Applicant's 44. And it is
25 a, I'm going to say, purchase agreement from the

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1 House of Power regarding a Honda motorcycle.

2 And this is a document obtained, and it's

3 actually got the -- a fax heading at the top but

4 it was obtained by Bayan's post-conviction

5 counsel independent.

6 MR. ZELENKA: What's the date of the
7 purchase?

8 MR. BROWN: The date, well, the signature

9 is not dated. 3/9/96. It's a retail

10 installment contract and security agreement.

11 And it actually has some interest information on

12 there, too. In the bottom corner it indicates

13 the Honda dealership is assigning its contract

14 to Green Tree Credit Corporation, for the

15 Court's record, has merged with Consaco Credit.

16 THE COURT: All right. What number is
17 that?

18 MR. BROWN: Forty-four, Your Honor,
19 Applicant's 44.

20 THE COURT: Any objection?

21 MR. ZELENKA: No objection.

22 MR. BROWN: It's a two-page document
23 stapled together, the back page has no
24 information on it, it's boilerplate language and
25 a lot of it.

THE COURT: Applicant's Exhibit 44 in evidence without objection. (Entered into evidence was Applicant's Exhibit 44, Rental Installment Contract and Security Agreement.)

Q. In the direct examination by Solicitor Bailey, it would be 1,873, and she has testified up to this point that there were several automobiles purchased and that Mr. Aleksey didn't pay for these automobiles. And line 5 her answer is the van, Sea-Doo, the motorcycle. It says, "He bought me a Cadillac, five vehicles, Honda CVR."

MR. BROWN: Which, Your Honor, I would submit that there is no Honda CVR motorcycle made at that time, actually there is now but on this contract it's actually Honda CB as in bravo, R.

"And whose idea was it to buy these five vehicles?"

"It was his."

And if you don't mind, Your Honor, to give some context. "He told me he was putting down cash. When I finally recovered my credit card bills he paid it with my money, he put the down payments down."

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1 "Did you have that kind of money?"

2 And then she goes on to talk about the
3 disposition of the motorcycle. And back on
4 1,870 -- excuse me, Your Honor, I was on the
5 wrong page myself, 1,875. I'm sorry, the Xerox
6 on the page numbers.

7 Q. 1,873 starts off with the motorcycle line 11 --
8 well, line 9 the starts the question: "Did you
9 purchase or lease a motorcycle in your name...?"

10 Her response, "That happened...while I
11 was at work. He wanted a motorcycle and he said we
12 were going to have a good summer, we would travel.
13 So he purchased a motorcycle...I think I faxed my
14 driver's license to the place."

15 And do you remember that testimony,
16 Mr. Sims?

17 A. I remember part of it.

18 Q. Okay. And if you would take a look at this
19 document. And that document is a document regarding
20 the purchase of a motorcycle?

21 A. That's correct.

22 Q. Okay. And it was a Honda CBR?

23 A. Uh-huh (affirmative response).

24 Q. And she has said that this -- because the yes
25 after what I just read from Walter, what kind of

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1 motorcycle, a Honda CVR 600, that one is a Honda CBR
2 600?

3 A. Honda CBR.

4 Q. And whose signature is in the bottom right-hand
5 corner?

6 A. Shows the signature of Theresa McCann.

7 Q. And that document would have been useful to
8 impeach her testimony that he purchased the
9 motorcycle and all she did was fax her driver's
10 license down there?

11 A. It would have been -- we could have used it.
12 But then she admitted on cross-examination that
13 everything that he wanted she basically bought for
14 him. She admitted that she bought the Ford Explorer,
15 she admitted she bought the other cars. And I
16 specifically asked her, and I was just reading
17 through that a few moments ago in regards to the fact
18 that all he had to do was ask you for things and you
19 gave it to him.

20 Q. But you would admit that the testimony -- and
21 let me ask you this. In the cross-examination did
22 she ever specifically say that she purchased that
23 motorcycle and not him?

24 A. That was not the focus of my cross-examination.
25 My cross-examination specifically dealt with her

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1 complicity in terms of what she was talking about,
2 the things that she bought him, the cars that she
3 bought him, that she was a willing participant even
4 in that area where we got into the discord about the
5 sex thing. And I basically went on with it and said,
6 okay, you allowed him to come into your house, you
7 allowed him to have sex with you, you allowed him to
8 wear your bra and panties, it's something that you
9 liked.

10 Q. But to make clear she never testifies about who
11 purchased the motorcycle anywhere else in her
12 testimony except for the --

13 A. I didn't ask her.

14 Q. Sure. Okay. The only testimony about
15 purchasing the motorcycle was that she purchased it?

16 A. Yeah.

17 Q. That's a statement she made under oath and she
18 says, to further specify, I think I faxed my driver's
19 license to the place. And she doesn't say I went
20 down there and signed the contract?

21 A. No, she doesn't.

22 Q. Okay. And then the rest of that page she goes
23 in and talks about a jet-ski, which she corrects
24 Solicitor Bailey, says it's a Sea-Doo. I'm not that
25 familiar with it, but I think they're water craft,

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1 I'll put it that way. And Solicitor Bailey asked how
2 much money she's making, she says \$25,000. What
3 about the jet-ski? She said the jet ski was forged.
4 And on the next page, lines 3, 5, 7 answers to her
5 questions they read together, taking out the
6 questions, quote, "There was also a jet-ski a
7 Sea-Doo. I did not sign for that, my name was
8 signed." You would agree that was her testimony on
9 that?

10 A. It's on the record.

11 Q. And the implication is that she wasn't involved
12 with that purchase, that was done in some type of
13 fraudulent manner?

14 A. That's what was her implication, but on
15 cross-examination she didn't deny that she knew about
16 it and participated and used it and was involved in
17 it. She was involved in everything.

18 (Mr. Zelenka reviewing document.)

19 MR. BROWN: Your Honor, while he's
20 reviewing it just to let you know, once we ask a
21 few short questions regarding this we'll be
22 through with Ms. McCann, so.... Actually, Your
23 Honor, there is a question that I can ask him
24 earlier, refer back to Ms. Perez.

25 THE COURT: The problem is Mr. Zelenka is

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1 very, very talented but he needs to be able to
2 focus on one thing at a time so just hold on.

3 MR. BROWN: Sure.

4 MR. ZELENKA: Almost done, Judge.

5 THE COURT: That's okay, Mr. Zelenka, take
6 your time.

7 MR. ZELENKA: No objection, Judge.

8 THE COURT: Very well.

9 MR. BROWN: And, Your Honor, this would be
10 Applicant's 45 and it is a New Rochelle Police
11 Department report and actually let me just ask
12 real briefly.

13 Q. Have you ever seen that report?

14 A. Not that I recall.

15 Q. Okay.

16 MR. BROWN: We obtained that from
17 Mr. Stone's file, Your Honor, and it's got a lot
18 of attachments to it but they're all police
19 items related to the complaint Ms. McCann filed.

20 THE COURT: Okay.

21 (Entered into evidence was Applicant's Exhibit
22 45, New Rochelle Police Department report.)

23 A. As I said, without having my file here I can't
24 say whether I did or did not.

25 Q. I understand. I understand. And in the back

1 actually is a letter that is written to Investigator
2 Darnell/Investigator Mears and, it's on the City of
3 New Rochelle's letterhead signed by Detective McLeer,
4 General Investigations Unit, they're actually asking
5 them to lodge a warrant against Mr. Aleksey for I
6 think this matter.

7 MR. ZELENKA: Judge, there are a number of
8 other documents in that other than a police
9 report and that letter. It's about 28 pages
10 long or so.

11 MR. BROWN: And we don't disagree with that
12 and all I'm saying is that these were documents.

13 THE COURT: Okay. Hold on. Ms. Keil's got
14 to mark it.

15 THE WITNESS: She did already.

16 THE COURT: She's got it marked? It's
17 marked. It's a 28-page document what you all
18 are telling me.

19 MR. ZELENKA: I guess 28 pages.

20 THE COURT: Approximately.

21 MR. BROWN: It has things and there's more
22 than one incident report number.

23 THE COURT: All right.

24 MR. BROWN: But they're all from New
25 Rochelle, if I'm not mistaken. They're all

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1 Detective Mark Gado. I believe the complainant
2 is always Theresa McCann and that's why I think
3 they came together. There is some type of
4 owner's deposition where I think she makes a
5 claim regarding something and she gives a
6 statement in here that we're going to get to in
7 a minute. But we agree.

8 THE COURT: Okay.

9 MR. BROWN: I think there's some warrants.

10 THE COURT: Very well.

11 MR. ZELENKA: I just want to make sure it's
12 identified correctly in the record because
13 there's --

14 THE COURT: I understand, Mr. Zelenka.
15 Very well. Thank you.

16 Q. If I can just hand you this and briefly go back
17 again. She says, she talks about jet-ski, the
18 motorcycle, the motorcycle. She says he purchased
19 it. I faxed my driver's license at trial, the
20 jet-ski or Sea-Doo, she said there was a jet-ski or
21 Sea-Doo. I did not sign for that, my name was
22 signed. She even said it's forged, I have it, it's
23 forged.

24 To go to the motorcycle if I can refer
25 you to a two-page statement made to the New Rochelle

1 police and it's dated 5/13/96.

2 A. Yeah, okay.

3 Q. And it has her signature at the bottom?

4 A. Yeah.

5 Q. And that signature looks like the one on the
6 House of Power motorcycle purchase; does it not?

7 A. Yeah.

8 Q. Okay. And instead of saying that he purchased
9 the motorcycle she faxed her driver's license down
10 there, in the middle of that statement -- excuse me,
11 middle of the second page of her statement doesn't it
12 say she threw Michael out in April?

13 A. Uh-huh (affirmative response).

14 Q. And then it's got a comma, it says I went to
15 check on my van and a motorcycle I had bought?

16 A. Yes, she does.

17 Q. Okay. And the middle of April of '96, because
18 there was a May '96 statement, the middle of April
19 '96 reasonably refers to the motorcycle purchased in
20 March of '96 since we don't have any other mention of
21 a motorcycle?

22 A. If that's your characterization, yeah.

23 Q. I mean it would at least fit, there's nothing
24 inconsistent about that.

25 And if you'll look at the incident

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1 report it's -- the number is 2022 and it's assigned
2 Detective Gado. Does that not also say that the,
3 quote, "Complainant appeared to GIU..." which I guess
4 would be General Investigative Unit?

5 A. I don't know now.

6 Q. It's a law enforcement, but a law enforcement
7 wrote that statement. It said, "Complainant appeared
8 to GIU to report her motorcycle listed above stolen
9 by the above suspect." And this is in May. And this
10 concludes my point about the motorcycle, but at trial
11 she says he purchased the motorcycle, I faxed my
12 driver's license to the place.

13 But she at two different times in her
14 statements to New Rochelle says I went to check on my
15 motorcycle I had bought and then the suspect stole
16 her motorcycle is what it's listed, and on the House
17 of Power purchase agreement it appears to have her
18 signature that we'll get into the actual signer of
19 that document later, but it looks like she actually
20 purchased it on the actual purchase document?

21 A. Yeah.

22 Q. So she -- that would be a matter that would be
23 able to impeach her credibility under the rules of
24 evidence?

25 A. If you were going that way and if your theory

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1 was developed that way based on the -- all the
2 information you had at the time, it would have -- you
3 may have decided to change your theory. But if you
4 didn't have certain documents, they weren't privy,
5 weren't given certain things then you would go a
6 different way.

7 Q. Sure. I would certainly agree with that.

8 The last thing I want to point out in
9 this, 2022, the same page just below the line I read,
10 jet-ski, Sea-Doo, I not did not sign my name for
11 that. She goes on to say it was forged, she has the
12 forged lease agreement. In the front page of that
13 New Rochelle Police Department report, and it's right
14 below the part about --

15 A. Yeah, I see where you're saying..

16 Q. Would you read -- does it not say that Aleksey
17 stole a van and a jet-ski from the complainant?

18 A. Yes, it does.

19 Q. And the complainant's Theresa McCann?

20 A. Yeah.

21 Q. So he stole the jet-ski from Ms. McCann is not
22 the same as her testimony in the trial that all of
23 that was forged, she had nothing -- that there was a
24 jet-ski, Sea-Doo, I did not sign my name for that,
25 the rest of the testimony that that document was

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1 forged, I have that lease agreement?

2 A. I guess, you know.

3 Q. Let me say this. Forged means that you sign
4 somebody's name without their permission, right?

5 A. Technically, yes, that's what it means.

6 Q. Because if I ask my paralegal to sign my name to
7 a document, she's not committing any type of forgery,
8 of course, she indicates that she signed it. So in
9 other words, she says at trial the jet-ski was forged
10 on lines 24 and 25 on 1,873, that sounds like that he
11 did not have permission to sign her name?

12 A. It sounds that way.

13 Q. Okay. But in here she says that he stole the
14 jet-ski from her which is different. In other words,
15 she's saying it's my jet-ski. She goes to the
16 police, said he stole my jet-ski?

17 A. Yeah.

18 Q. She didn't go to the police, I never purchased
19 this jet-ski, there's been a forgery. And I don't
20 think it's reported as a forgery either, which would
21 be different. In other words, somebody's forging or
22 stealing my identity?

23 A. It depends on whatever they do there in New
24 Rochelle, I don't know. I don't know how they
25 characterize it. I know what it says on here which-

1 is what you said.

2 Q. It says larceny. The detective writes in there
3 complainant said he stole her jet-ski.

4 A. There's no question about that, it's on the
5 documents.

6 Q. Okay.

7 MR. BROWN: And, Your Honor, conceptually
8 this ends our testimony regarding Theresa
9 McCann.

10 THE COURT: Okay.

11 MR. BROWN: We now move to an individual
12 named Jaime Farrell. Just for your notes Jaime
13 is spelled J-a-i-m-e.

14 Q. Do you recall the testimony of Ms. Farrell?

15 A. No, I do not.

16 Q. Okay. Basically Ms. Farrell testified about
17 going to Atlantic City with Mr. Aleksey, and she says
18 that Mr. Aleksey said we need some money when we're
19 in Atlantic City and I've got some money, this is
20 what her testimony is, I've got some money coming to
21 me but, honey, I'm in bankruptcy so would you open us
22 a bank account in New Jersey so I can put my money in
23 your bank account.

24 A. I vaguely remember now that you raise that,
25 yeah.

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1 Q. And Mr. Prosecutor brought out and actually
2 introduced I believe State's 84 and 85 at trial and
3 they were checks and they were checks deposited into
4 the account that was opened?

5 A. I believe they were her checks that was
6 deposited into the account.

7 Q. Ms. McCann's checks; were they not?

8 A. I don't know whose. I don't remember who, but I
9 know that some checks --

10 Q. Ms. Farrell opened the account and it came to be
11 that the checks deposited in Ms. Farrell's accounts
12 were actually Ms. McCann's checks.

13 A. Okay.

14 Q. And, of course, this is done in May of '96.

15 A. Right.

16 Q. Which is a month --

17 A. After.

18 Q. The same month. If you'll notice on the date
19 the checks were deposited it's the day following the
20 last deposit of Ms. McCann's checks that Ms. McCann
21 files a report to the police regarding the theft of
22 her jet-ski. In other words, somebody deposits her
23 checks the day before and four days before in New
24 Jersey, and then all of a sudden now is the first
25 time she's come in to complain about her jet-ski

1 being stolen was that following day.

2 A. Are you asking or are you just --

3 Q. Well, I believe the trial transcript reflects
4 that. Trial transcript coupled with Applicant's 45
5 reflects that series because, again, those checks
6 were entered as State's 84 and 85 at trial.

7 A. Okay.

8 Q. You don't disagree with that?

9 A. It's in the record.

10 Q. I'm trying to get some context, not put any
11 words in your mouth, just get to where I'm going with
12 this. She basically said, and I want to get to her
13 testimony at trial, it was on 1,898, line 15. Line
14 15 it says -- and let me go back up because I want to
15 read through. "I'm going to show you checks 84 and
16 85. Do you recognize those?"

17 "Yes."

18 And then the question is, "Look on the
19 back and tell me whether or not those checks were
20 deposited into the account that you opened in New
21 Jersey."

22 She says, "Yes. It says Commerce
23 Bank."

24 Question: "Ms. Farrell, those checks
25 total almost \$10,000. Did you have any knowledge

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1 they were deposited into your bank that you opened
2 with the \$20 in it?"

3 Answer: "No."

4 And this is the crucial point. "And
5 were you with Mr. Aleksey on May 10th, 1996 in New
6 Jersey when those checks were deposited?"

7 And her answer is "No."

8 It goes down and says "Did you and
9 Mr. Aleksey have any discussion about money coming
10 into your account?"

11 "Yes."

12 Question: "But did you know those
13 checks had been deposited into your account?"

14 "No."

15 MR. BROWN: At this time, Your Honor, I'd
16 like to show Mr. Attorney General This here.

17 MR. ZELENKA: No objection.

18 MR. BROWN: And, Your Honor, we would
19 introduce this as Applicant's 46, it's a
20 two-page affidavit of a Vincent Caruso signed
21 September 4th, 2002. And accompanying it when
22 it was returned is a letter signed by Vincent
23 Caruso dated May 31st, 1996.

24 THE COURT: Very well. Any objection?
25 Have you shown it to Mr. Zelenka?

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1 MR. BROWN: I have.

2 MR. ZELENKA: Let me just check one thing,
3 just to -- no objection.

4 THE COURT: Very well. Applicant's 46 in
5 evidence without objection, it is a letter and
6 an affidavit of Vincent Caruso.

7 MR. BROWN: Two pages each, Your Honor,
8 four pages total.

9 THE COURT: Thank you.

10 (Entered into evidence was Applicant's Exhibit
11 46, affidavit and letter of Vincent Caruso.)

12 Q. Mr. Sims, I'm going to show you this affidavit.

13 A. Sure.

14 Q. And while you're reviewing that....

15 MR. BROWN: Your Honor, if you don't mind,
16 I would like to publish the affidavit.

17 THE COURT: All right.

18 MR. BROWN: And it's captioned Bayan
19 Aleksey v. State. It says (as read), "I,
20 Vincent Caruso, being duly sworn, do state: I'm
21 currently an investigator employed by Citizens
22 Bank to handle security matters. I work in
23 Philadelphia, Pennsylvania.

24 "During the year 1996 I was employed
25 as a senior investigator in the security

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1 department with Commerce Bank. During my
2 employment with Commerce Bank I was employed
3 as -- excuse me -- I was assigned to investigate
4 a matter occurring in part at the Absecon, New
5 Jersey, branch of Commerce Bank.

6 "In the course of investigating this
7 matter I discovered the following information:
8 On May 5, 1996 Jaime C. Farrell opened a
9 checking account with Commerce Bank in Summers
10 Point, New Jersey, she was assigned an account
11 number 64-1741-4. On May 10th Ms. Farrell
12 deposited a check, number 1826 dated May 10th,
13 1996 in the amount of \$4,892 into her account at
14 the Absecon branch. The check was drawn on the
15 Bank of New York, customer Theresa M. McCann on
16 account number 67-0054461-1 and payable to
17 Ms. Farrell.

18 "On May 11th Ms. Farrell withdrew
19 \$4,800 from her account at the Absecon branch.
20 On May 13th check number 1846 dated May 10th,
21 1996 in the amount of \$5,000 payable to
22 Ms. Farrell and drawn on Ms. McCann's account
23 was deposited into Ms. Farrell's account. On
24 May 14th Ms. Farrell withdrew \$5,050 from the
25 account. On May 17th both checks were returned

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1 from the Bank of New York for reason, quote,
2 'Refer to Maker.' This caused a loss to
3 Commerce Bank in the amount of \$9,850.

4 Next paragraph. "I relayed this
5 information via letter dated May 31st, 1996 to
6 Detective Faisst with the Absecon, New Jersey,
7 Police Department. Ms. Farrell was charged,
8 arrested, prosecuted and convicted of crimes
9 related to the above listed transactions.

10 And the last paragraph. "I make this
11 statement of my own freewill absent any coercion
12 or duress."

13 THE COURT: When was she convicted?

14 MR. BROWN: This does not indicate that.

15 THE COURT: Okay.

16 MR. BROWN: But again I know that he was --
17 again, he was fraud investigator and that's the
18 affidavit I published.

19 THE COURT: What is the date of affidavit?

20 MR. BROWN: September 4th of 2000. Now, in
21 that he references relaying this information to
22 Detective Faisst on May 31st, 1996 and I'll
23 refer you to the two-page letter, the second
24 part of Applicant's 46 which is a letter on
25 Commerce Bank letterhead dated May 31st, 1996 to

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1 Absecon Police Department attention Detective
2 Faisst, second page concludes by signing it
3 yours truly Vincent Caruso, senior investigator
4 security department.

5 The body of the letter is almost
6 identical to the part, I don't want to say
7 almost identical, it is verbatim, the portion I
8 read starting on May 5th from the affidavit.
9 And that's how that affidavit came to be
10 compiled.

11 MR. ZELENKA: Except for the prosecution
12 and conviction language on the affidavit.

13 MR. BROWN: That's correct. And let me
14 make sure, and if I can show you this. The
15 letter incorporates -- and that's exactly
16 right -- the letter incorporates, the letter is
17 incorporated in the affidavit in paragraph 4 of
18 the affidavit. After paragraph 4 the rest of it
19 is not contained in that letter. And there is
20 some information that's in the letter that is
21 not contained in the affidavit as well. But
22 that's why he sent it back to me with the
23 affidavit. When he signed it and sent it back
24 he sent the two-page letter and that's why I
25 think it all needs to be in fairness put

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1 together. So we do agree with Mr. Zelenka's
2 comments.

3 THE COURT: Coming in that way.

4 Q. Okay. Now, having that information, Mr. Sims,
5 would you agree that when Ms. Farrell's questioned
6 were you with Aleksey on May 10th, 1996 when those
7 checks were deposited and she says no.

8 A. Uh-huh (affirmative response).

9 Q. That that would be a direct contradiction to
10 Mr. Caruso's -- both his letter from 1996 and, of
11 course, his affidavit he wrote 2002?

12 A. Of course. I -- let me put it this way: In
13 regards to, to whether or not she was with him or
14 whether or not, I have no way of knowing. The other
15 question that I would ask is whether or not we had
16 information that this woman had even been arrested.

17 Q. I understand. I understand.

18 A. And I would have to look in my file to see if we
19 had any arrest information on her, because that then
20 would have triggered further involvement in terms of
21 investigating of her background, what she had been
22 arrested for.

23 And I don't know without looking in my
24 file to know whether or not we had information that
25 she had been arrested. I was under the impression

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1 that I could not recall and I tried to think about it
2 while you were publishing that.

3 Q. But it looks like in May of '96 that law
4 enforcement does have the information that she could
5 have been impeached with?

6 A. In May of '96, I don't know. They look like
7 they have a letter from this other lawyer, the
8 criminal investigation person from the Commerce Bank.
9 Now, whether or not they proceeded at that point to
10 bring an action or to file actual charges with her, I
11 can't say.

12 Q. And now let me ask you this: Since this
13 involves a fraudulent scheme regardless of the
14 disposition of any charges or actual charging, she
15 could have been impeached?

16 A. If you're talking about under 608(b) the
17 question about whether or not it would be a fraud and
18 a scheme that could be brought in under that
19 exception would have to have been determined by a
20 court at that time.

21 Q. And let me ask you, didn't the prosecution
22 present Ms. Farrell's testimony as being a fraudulent
23 scheme committed by Mr. Aleksey?

24 A. Yeah.

25 Q. And so it's not like they were saying it wasn't

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1 fraud?

2 A. No. We were -- no. And as I said, because of
3 the way we had been -- we had decided to prosecute
4 the case, those issues as it related to what was
5 going on and cashing and moving around and dealing
6 with women because of the information that we had and
7 stuff that we had at that time, we had made a
8 decision to try it a certain way.

9 Q. Right. I understand that. And what I'm trying
10 to just ask you is that if the prosecution's saying
11 that the scheme regarding Ms. McCann's checks is a
12 fraud and Ms. Farrell said I wasn't involved; in
13 other words, I opened the account, I put \$20 in
14 because Mr. Aleksey said I need you to open an
15 account, I'm in bankruptcy, but I wasn't involved in
16 the deposit of that, I didn't know where the money
17 was coming from, the prosecution's saying it's a
18 fraud, she's saying I wasn't involved in the fraud?

19 A. Yeah, she's saying she wasn't involved. I agree
20 with you.

21 Q. Mr. Caruso's letter to the Absecon law
22 enforcement in '96 indicates that she was involved?

23 A. The letter speaks for itself.

24 Q. Sure. And let me say this. She admits that she
25 withdrew the money and she says that Mr. Aleksey said

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1 he was putting money in. But she denies knowing that
2 the checks were deposited or being with Mr. Aleksey
3 when the checks were deposited at the trial?

4 A. I think the record will speak for itself in
5 terms of what she actually said.

6 Q. Sure. So I'll go back again, it's 1,898; line
7 15. The question was "Were you with Aleksey on
8 May 10th, '96 when those checks were deposited?"

9 And her answer was "No."

10 But Mr. Caruso's affidavit says on
11 May 10th, which is the same day Ms. Farrell deposited
12 Theresa McCann's check. And let me say this. She
13 testifies, by the way at trial, that -- she testifies
14 at trial that she did not know Theresa McCann in May
15 of '96.

16 THE COURT: Yes, sir, Mr. Zelenka.

17 MR. ZELENKA: The affidavit speaks for
18 itself.

19 MR. BROWN: Sure.

20 MR. ZELENKA: It doesn't say she was there,
21 it just said it was deposited.

22 THE COURT: I think the affidavit does say
23 that she deposited. What it doesn't do is it
24 doesn't say how he knows that.

25 MR. ZELENKA: Right.

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1 THE COURT: But it clearly says that
2 Ms. Farrell deposited the checks. And that's
3 the problem, that the affidavit is not subject
4 to cross-examination, quite frankly, because it
5 isn't tested. I don't know if he makes that
6 assumption, I don't know why he says that. He
7 may have looked on the camera, seen her, seen
8 her deposit the check, we don't know at this
9 point. Maybe we will, but at this point it is
10 what it is.

11 Q. All right. Now, to continue with this scheme,
12 if you'll turn to transcript 1,899, line 1.

13 A. Uh-huh (affirmative response).

14 MR. BROWN: And, Your Honor, just in brief
15 response I would point out the victim here was
16 Commerce Bank because they gave out \$9,800.
17 Ms. McCann's Bank of New York did not honor it
18 so they didn't lose any money. And that's why
19 the report was filed to the Absecon, New Jersey,
20 Police Department. And so the victim is
21 Commerce Bank and their representative, at least
22 it looks like the complainant from the bank is
23 Vincent Caruso this senior fraud investigator.

24 And I just point that out because of
25 all that -- people that would know, he would be

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1 the one who would know that, he would be the one
2 that would know that information, at least the
3 time the letter was written in response. We say
4 we don't know how he knows that, I would agree
5 we don't know exactly how he knows that.

6 MR. ZELENKA: Right. I mean, the person
7 that knows is the person behind the counter that
8 took the check. I mean, that's the person.

9 MR. BROWN: Six years later, six and a half
10 years later, that's....

11 THE COURT: Well, the point is the
12 affidavit speaks for itself. It is an
13 affidavit, it is not subject to
14 cross-examination, it is a conclusory statement.

15 MR. BROWN: Yes, ma'am.

16 THE COURT: But it says what it says and
17 it's in evidence.

18 MR. TARR: Yes, Your Honor. And if it gets
19 to a situation where the affidavits are going to
20 be questioned, it's obvious that this is going
21 to continue well past this week. If Mr. Zelenka
22 would like to go up there and do depositions,
23 we're ready, willing and able.

24 MR. BROWN: More than that, Your Honor,
25 because depositions cannot be compelled by our

1 process in New Jersey, we have been in contact
2 with a New Jersey law firm that has gratefully
3 helped us already. And New Jersey, I don't know
4 if they are unique, but they allowed to go to
5 court and ask for New Jersey subpoena power for
6 a matter in South Carolina if the court in New
7 Jersey believes that it's necessary and proper
8 for them to exercise that power.

9 So we could -- actually there's
10 likelihood we could compel Mr. Caruso, not, that
11 it's necessary, because I've spoken to him
12 freely on the telephone, but we could even
13 compel his attendance to a deposition in New
14 Jersey if the New Jersey Court thought it was
15 necessary if we presented sufficient reasons.

16 So if that becomes a question about
17 whether he had reason to know, and I would point
18 out the other deposit he does not indicate
19 Ms. Farrell did, he said a check was deposited.
20 And those weren't my words, those were the words
21 out of his letter.

22 THE COURT: Indeed. Indeed. You've been
23 very clear about that. And the bottom line on
24 all of that is that we may talk about it.

25 MR. BROWN: Yes.

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1. THE COURT: Terrific.

2 MR. BROWN: I refer to 1,899, and this is
3 kind of concluding this portion and almost this
4 witness. There's a response from Ms. Farrell on
5 direct, the question's on the 1,898 at the
6 bottom. It says, "What did Mr. Aleksey tell you
7 about the status of your account?"

8 And she says, "He said he was getting
9 a wire transfer." First she said she wasn't,
10 didn't know about those checks being deposited,
11 then she goes on and says he says we're getting
12 a wire transfer.

13 Again, the crucial language in the
14 affidavit is the May 10th Ms. Farrell deposited
15 this check. And then on 1,900 lines 3 through 4
16 Solicitor Bailey says, "Was the money withdrawn
17 from your account?"

18 "Yes."

19 And in lines 3, "Who withdrew it?"

20 Four, line 4 says, answer:

21 "Mr. Aleksey."

22 And again if you'll refer to the
23 affidavit of Mr. Caruso and the letter it says
24 on May 14th that Ms. Farrell withdrew \$5,500
25 from the account, on May 11th Ms. Farrell

1 withdrew \$4,800 from her account.

2 THE COURT: All right. Let me just ask
3 this question: You're not sure, I gather,
4 regarding her arrest date on her conviction
5 date?

6 MR. BROWN: And I'm glad you brought that
7 up, Your Honor, that is one thing I'd like to
8 get to.

9 THE COURT: Okay.

10 MR. TARR: And, Your Honor, in the
11 transcript she does testify she was arrested by
12 the State of New Jersey.

13 THE COURT: I remember that, but yes.

14 MR. TARR: But disposition is in question.

15 THE COURT: It is, but they may have
16 learned that on that occasion, you see what I'm
17 saying? I was actually looking for that because
18 I remember reading that she had said what did
19 you get out of the relationship, I got to get
20 arrested by the State of New Jersey, I remember
21 that comment.

22 MR. BROWN: And I want to introduce this
23 next document, and then I want to respond to
24 that in context of this.

25 THE COURT: Okay.

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1 (Mr. Zelenka reviewing document.)

2 MR. BROWN: And, Your Honor, at this time
3 we would introduce a two-page rap sheet on
4 Ms. Farrell as Applicant's 47.

5 THE COURT: All right. Any objection?

6 MR. ZELENKA: No objection and --

7 THE COURT: Where did it come from?

8 MR. ZELENKA: The date of the rap sheet was
9 June 11th, 1998 run by Kris Bell who is or was
10 an employee.

11 THE COURT: An investigator for the
12 solicitor's office.

13 MR. BROWN: Rap sheet run by Kris Bell on
14 the same day. Also point out on June 8th there
15 was a hearing, pretrial motions hearing in
16 Mr. Aleksey's matter of 1998, June 11th, 1998,
17 or June 8th of 1998 and the rap sheets were
18 mentioned and I would assume that three days
19 later somebody ran the rap sheets after that
20 hearing just to put it in context. You'll see
21 it in the record. Certainly this was in trial
22 counsel's file.

23 THE COURT: That's what I needed to know,
24 in trial counsel's file.

25 MR. ZELENKA: No objection.

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1 THE COURT: Rap sheet of Ms. Farrell dated
2 6/11/98 in evidence as Applicant's 47 without
3 objection, it is a -- looks like a two-page
4 document. Give Ms. Keil a moment to mark that.
5 (Entered into evidence was Applicant's Exhibit
6 47, rap sheet of Farrell.)

7 BY MR. BROWN:

8 Q. Okay. And you'll notice on that rap sheet it
9 does, it indicates that she has been arrested and it
10 has a number of things she was arrested for?

11 A. Uh-huh (affirmative response).

12 Q. Okay. And I don't have it in front of me, but I
13 do have some notes, I believe she was arrested for
14 theft of movable property, theft by deception,
15 forgery, forged writing, conspiracy, and another
16 theft by deception?

17 A. Yeah.

18 Q. So there were six arrests?

19 A. Uh-huh (affirmative response).

20 Q. And you would agree that those type activities,
21 regardless of conviction, subject to having a good
22 faith basis could have been asked of her under 608?

23 A. I will agree there is a provision in our
24 evidence rules under 608(b). Now, whether or not
25 they could have been gone into is a different issue.

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1 Again, without having any record to determine whether
2 or not I had it in my file, I don't know.

3 Q. Sure.

4 A. But in looking at it if you're talking about a
5 608(b) argument to the judge, whether or not he would
6 have allowed it in, that's at issue.

7 Q. But there's at least a basis in the argument for
8 asking her to be questioned about it. And below it,
9 it says when admitting disposition is required --
10 it's on the rap sheet -- do not contact the State
11 Bureau of Identification, you must contact the agency
12 that furnished the pending data to the SBI, which is
13 the State Bureau of Investigation. And above the
14 arrest it has Absecon Police Department listed as the
15 arresting agency.

16 So in other words, this is a rap
17 sheet, it shows arrest, it says if you want the
18 disposition call the local folks yourself. And
19 nobody from your office ever contacted Absecon Police
20 Department?

21 A. Not that I -- no, I can't recall.

22 Q. And you never contacted them?

23 A. I remember calling a police number, didn't get
24 an address. Now, whether it was this one -- or
25 didn't get an answer so I don't know, I can't say

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1 whether it was this agency or that agency. I think
2 when Mr. Stone and I was going through something we
3 were talking and I can't remember the exact context.
4 But I don't -- I will say that I don't remember
5 talking to anybody there.

6 THE COURT: We're going to take a break
7 while they do that, short break, five minutes or
8 so.

9 THE WITNESS: Your Honor, since it's
10 obvious I'm not going to be able to be in
11 Columbia at three o'clock....

12 THE COURT: At 3:00? Oh, be hopeful.

13 MR. BROWN: Actually, Your Honor, this will
14 conclude Ms. McCann's testimony -- I mean,
15 Ms. Farrell's testimony and that leaves us with
16 one witness to ask him about. So we moved
17 through two already this morning.

18 THE COURT: We keep forgetting about you.

19 MR. BROWN: I'm sorry.

20 THE COURT: Why don't we do a preliminary.
21 Come on, let's do a preliminary you may not be
22 there, don't count on you, you'll be there if
23 you can. Come on, let's do that.

24 (Recess, from 11:29 a.m. to 11:49 a.m.)

25 THE COURT: All right. Please be seated

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1 everyone.

2 MR. BROWN: And, Your Honor, at this time
3 we would offer a stapled collection of bank
4 photographs. And I'm going to qualify that
5 they're Xeroxes and they were obtained through
6 the exercise of a subpoena in the state of New
7 Jersey or the Absecon Police Department file.

8 THE COURT: And that's Applicant's 48?

9 MR. BROWN: Yes, ma'am.

10 THE COURT: And what is the position of the
11 State?

12 MR. ZELENKA: With the understanding
13 they're obtained by subpoena from law
14 enforcement, that they came out of law
15 enforcement files, I think that's -- these are
16 documents which came from the law enforcement
17 files.

18 THE COURT: Very well.

19 MR. BROWN: Through us this year. I'm
20 sorry.

21 MR. ZELENKA: I understand that.

22 THE COURT: Very well. Let's identify it
23 by page number or something.

24 MR. BROWN: This has seven pages, Your
25 Honor. Now, let me also as an officer of the

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1 Court let you know when we traveled to Absecon,
2 New Jersey, we met with the police department in
3 Absecon. We were not allowed to review their
4 file looking over the shoulder, not improper,
5 but as the officer reviewed the file these
6 photos were in there, we got a Xerox copy of
7 them later. They have the color photo in there.

8 The reason why I tell you that, we'll
9 be able to show what we want to show through
10 these photos, but there are other details that
11 could be helpful to the Court, and if the Court
12 wishes we would be able we believe to further
13 pursue this and get a color copy. In other
14 words, a subpoena went to that police
15 department. In response we did get a copy of
16 the photos, it's just a black and white copy.
17 Excuse me. I say color, they actually made them
18 in black and white photos, but they are the real
19 bank developed issues on the photos. If this
20 does become an issue.

21 THE COURT: I understand. Applicant's
22 Exhibit 48 in evidence without objection, it is
23 a seven-page document.
24 (Entered into evidence was Applicant's Exhibit
25 48, seven pages of photographs.)

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1 Q. And, Mr. Sims, I'll show you these photos. And
2 if you'll notice they are generally photos either
3 from a driveup teller window or from the inside
4 teller photo?

5 A. Uh-huh (affirmative response).

6 Q. Okay. And if you'll recall from Mr. Caruso's
7 affidavit there is -- there's several activities.
8 May 5th Ms. Farrell opens the checking account which
9 she admits so in her testimony. May 10th there's a
10 check deposited, May 11th there's a check withdrawn,
11 there's a withdrawal, May 13th there's a deposit,
12 May 14th there's a withdrawal.

13 A. Uh-huh (affirmative response).

14 Q. And that's kind of the order because basically
15 there were two checks deposited and two checks
16 withdrawn, and none of it, the activity occurred on
17 the same day. We have May 10th, May 11th, May 13th
18 and May 14th.

19 A. Okay.

20 Q. Okay.

21 MR. BROWN: And for the Court's
22 information, you can take judicial notice of it
23 May 10th was a Friday, May 13th was a Monday.
24 The 11th was a Saturday to give some context to
25 the dates.

1 photograph.

2 A. Okay. No, there's no May 10th photograph.

3 Well, I don't see a May 10th photograph. But what I
4 do see, these first two pages of this document I
5 can't make out the figure on those documents.

6 Q. Sure.

7 A. Then when you get to the third page it says
8 drive, I guess this is DU means driveup lane, lane 1
9 and 11, that looks like Bayan. I see another one --

10 Q. If you don't mind, but May 13th was the
11 deposited check that we don't -- the affidavit does
12 not give the actor who did the deposit.

13 A. Okay.

14 Q. You're saying it looks like Mr. Aleksey is
15 actually making that deposit?

16 A. Yeah. There are three pictures here and I'll
17 point them out. The one in the lower left that
18 clearly looks to me to be Bayan. The one on the top
19 left looks to be Bayan also. And this one it's kind
20 of, you know, the coded date comes across, but it
21 does look like again some of his features.

22 And then you go to -- I don't know
23 whether this is in the bank here, this says 5/11/96,
24 that looks like Mr. Aleksey in the bank right here,
25 that picture there. Then you go over to 5/11/96

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1 in a T-top car, a man and a woman?

2 A. Uh-huh (affirmative response).

3 Q. And then we also have some walk-in?

4 A. We have some walk-ins also.

5 Q. If you notice the times I think are all the
6 same. Not exactly the same, but I mean it's all the
7 same trip. Like somebody drove up to have a
8 transaction and they may -- I will speculate, but
9 consistent with somebody driving up to the teller,
10 the drive-up window, they say you need to come around
11 and come inside.

12 MR. ZELENKA: Your Honor, that calls for
13 some serious speculation.

14 THE COURT: Yeah. I would sustain the
15 objection.

16 Q. Photos show what they show.

17 On May 11th the Caruso affidavit said
18 Ms. Farrell withdrew \$4,800. To refer you again to
19 the May 11th photos from the drive-up window, on the
20 last page there's a T-top car and the closest one,
21 the driver appears to be Mr. Aleksey?

22 A. Uh-huh (affirmative response).

23 Q. And then the passenger appears to be a female?

24 A. A female, that's all I can say.

25 Q. Okay. Does she not have a pen in her hand?

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1 A. Now, you're -- it -- I would have to again say
2 that she appears to be writing something.

3 Q. Okay. Okay. And just to go back, the question
4 with the withdrawal --

5 A. Excuse me, let me just finish up on that since
6 asked about the time.

7 Q. Yes.

8 A. Your last page shows the drive-up window and the
9 drive-up window says with the two people in the car
10 9:21 a.m., 9:21 and 10 seconds a.m. And then you
11 have inside the bank at 9:31, 19 seconds on the 5/11,
12 Mr. Aleksey.

13 Q. Okay. The difference between those times to be?

14 A. Between 9:21 and 9:31, so it's about 10 minutes
15 he was in the bank.

16 Q. So we know this two people pull up in a car at
17 9:21, and then 10 minutes later one person walks
18 inside?

19 A. Well, I don't know whether it's the same
20 transaction, I don't know what happened. But you
21 just asked me about the time and I was just --

22 Q. It's 10 minutes' difference and it's the same
23 day?

24 A. Yeah, because I have two pictures, one at 9:21,
25 one at 9:31 and both of those, as I said, appear to

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1 be Mr. Aleksey in the bank.

2 Q. Sure. And again I've made a comment that has
3 been objected to about what those series of photos
4 may show, but it does show that those photos were
5 taken within 10 minutes of each other according to
6 the photos, your testimony?

7 A. What's on the photos.

8 Q. That's correct. Okay. And but you would agree
9 in that photo there's a woman in the car?

10 A. In the photos, yes, there is a woman in the car.

11 Q. And in both the photo that is a single shot and
12 the four plex photo the woman appears to have a pen
13 in her hand?

14 A. She has something in her hand. It appears as
15 though she's looking down to write something, that's
16 all I can say.

17 Q. The object would be consistent with a pen?

18 A. It's skinny like a pen.

19 Q. Okay.

20 MR. BROWN: Applicant's 49 is a two-page
21 Xerox of the front and back of two checks.
22 These checks were obtained pursuant to the New
23 Jersey subpoenas that were executed on behalf of
24 post-conviction counsel.

25 MR. ZELENKA: No objection.

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1 THE COURT: Very well. Applicant's 49 in
2 evidence without objection, and it is a Xeroxed
3 copy of the front and back of two checks. Very
4 well.

5 (Entered into evidence was Applicant's Exhibit
6 49, copy of two checks.)

7 MR. ZELENKA: They were subpoenaed from law
8 enforcement in New Jersey, correct?

9 THE COURT: Or from the bank, one or the
10 other.

11 MR. BROWN: Two subpoenas. Subpoena to the
12 police department and to the prosecutor.

13 MR. TARR: They were both.

14 MR. BROWN: I just wanted to check with
15 co-counsel. We obtained this exact, these
16 actual copies, I cannot tell you, but they're in
17 both, they were given to us by both in response
18 to the subpoenas to both agencies.

19 MR. ZELENKA: That's fine.

20 THE COURT: Very well. Thank you.

21 Q. And will you take a look at the checks in
22 question in Applicant's 49?

23 A. Uh-huh (affirmative response). Yes.

24 Q. Okay. And those checks are for what amounts?

25 A. One is for \$5,050 and the other one appears to

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1 be for \$9,800.

2 Q. Could it be \$4,800?

3 A. It could be, the 4 is real close.

4 Q. Does it have the spelling?

5 A. Real bad.

6 Q. Okay. And the reason why I ask is Mr. Caruso's
7 affidavit indicates there was a withdrawal of \$4,800,
8 a withdrawal of \$5,050 from the accounts.

9 A. And it could be. Now that I look at it that
10 does look like \$4,800.

11 Q. And \$5,050?

12 A. Yeah.

13 Q. Which would be consistent with the affidavit?

14 A. The affidavit speaks for itself.

15 Q. Okay.

16 MR. BROWN: Your Honor, at this time we
17 would offer Applicant's 50 which is a three-page
18 statement of Jaime Farrell taken by SLED on the
19 22nd of January of 1998.

20 THE COURT: All right. Any objection?

21 MR. ZELENKA: No objection.

22 THE COURT: Applicant's 50 in evidence
23 without objection.

24 MR. BROWN: It's from trial counsel's file.

25 THE COURT: It's a statement of

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1 Ms. Farrell.

2 (Entered into evidence was Applicant's Exhibit
3 50, statement of Jaime Farrell.)

4 Q. I ask you to take a look at that statement and
5 tell me if it has a signature at the bottom?

6 A. Uh-huh (affirmative response).

7 Q. And the signature is of...?

8 A. It says Jaime Farrell.

9 Q. Okay. And ask you to take a look at the checks
10 signed in Applicant's 49.

11 A. Okay.

12 Q. Okay. Can you give an opinion about the
13 similarities of those two signatures?

14 A. They don't look alike.

15 MR. ZELENKA: I object. It's beyond the
16 scope of his expertise.

17 MR. BROWN: Not expert opinion is, I think,
18 allowed by the rules on handwriting. And I'll
19 get my rule book. However, I think his
20 testimony that they don't look alike, but there
21 was an objection.

22 THE COURT: Well, he answered while the
23 objection was interposed, so....

24 THE WITNESS: I'm sorry. I should know
25 better.

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1 THE COURT: That's okay. That's okay. Let
2 me take a quick look.

3 MR. BROWN: And I think you're waiting for
4 me to look up? And I believe it's under
5 901(b)(2), it is an illustration and then expert
6 testimony is under Rule 701.

7 THE COURT: It says non expert opinion as
8 to the genuineness of handwriting based on
9 familiarity.

10 MR. BROWN: Yes, ma'am.

11 THE COURT: Not acquired for purposes of
12 litigation.

13 MR. BROWN: Yes, ma'am. All I'm trying to
14 say is that was a SLED statement in trial
15 counsel's file and we don't -- Your Honor, we
16 have already had --

17 THE COURT: Sustained.

18 MR. BROWN: That's fine. He's not
19 familiar. You don't know these photographs
20 outside this litigation?

21 THE WITNESS: No, ma'am.

22 THE COURT: Maybe not outside your inquiry.

23 MR. BROWN: We'll come back to the issue of
24 the similarities or matching of the signatures
25 at a later point in the trial.

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1 THE COURT: Sure. Sure.

2 Q. But for purposes of reviewing trial counsel's
3 actions in Mr. Aleksey's proceedings, if this
4 signature on the checks in 49 were authenticated or
5 were shown to be her signature, could that not be
6 used to contradict her testimony that says that the
7 question was who withdrew it? And the response to
8 the solicitor's question at trial, Mr. Aleksey.
9 Wouldn't you agree that she could have been impeached
10 with that?

11 A. Assuming that the -- that it was there, yes, I
12 would agree that she could have, it would have been
13 an issue that could have been raised.

14 Q. Okay. Okay. Now, if you will take a look in
15 the SLED statement that she wrote.

16 A. (The witness complies.)

17 MR. BROWN: I beg the Court's indulgence.

18 THE COURT: All right.

19 (Pause in proceedings.)

20 Q. And if I can refer you to page 2 of the SLED
21 statement of Ms. Farrell taken by SLED in January of
22 '98, she -- if you'll read starting here, the
23 sentence that starts "He told..."

24 A. (As read) "He told me that he got a wire
25 transfer so, therefore, I withdrew the money. He

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1 told my mother that he would sell her car for her in
2 Jersey, so my mother said yes. She gave him the
3 title, unsigned, as proof that she was really -- or
4 she really owned the car." Okay.

5 Q. And actually what I wanted you to read is just
6 the first sentence, it's a three-page statement, it's
7 in evidence.

8 A. Okay.

9 Q. The statement again was he told me -- the
10 statement; I believe again, was "He told me he got a
11 wire transfer so, therefore, I withdrew the money."
12 And she says that in the SLED statement?

13 A. Uh-huh (affirmative response).

14 Q. And just to go back, the trial transcript line
15 [sic] 1,900, lines 3 through 4 the question from
16 Solicitor Bailey was "Who withdrew it?"

17 And the answer was "Mr. Aleksey."

18 A. Okay.

19 Q. Okay. And you would agree that she could have
20 been impeached with her answer to that plus
21 demonstrating her --

22 A. And she also could have hurt us with this
23 statement, too. When she's talking about 20
24 different warrants from all over the other place,
25 she's talking about in this statement here, and I've

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1 just refreshed my recollection here on this statement
2 and looking at it, there were some things in there
3 that you probably did not want to come out if you
4 were going to deal with that issue. So it was a
5 two-edge sword. That is a two-edged sword there.
6 Let me finish now.

7 Q. Sure.

8 A. You asked me the question and I'm going to
9 answer it.. I've been trying to do that.

10 Q. Please do.

11 A. The issue when we looked at her statement, the
12 question is whether or not, especially as I stated
13 all the time, when you decide in terms of how you're
14 going to try the case and what you're going to try
15 the case on you deal with it that way. And also when
16 you look at the statement you also make some
17 decisions in terms of whether or not there's
18 information in that statement that's going to hurt
19 you. You try to weigh it to determine whether or not
20 what may be an I or a he or a him as opposed to the
21 substance of the other matter in there, whether it's
22 going to be either way. So, you know.....
23 Q. So you might have made a strategic decision to
24 not impeach her with her SLED statement because it
25 could let in possibly other bad acts?

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1 A. We've been using bad acts all the time. It
2 could have been -- there were things going on, there
3 were things we were talking about. And as I said not
4 having had the opportunity to even talk with
5 co-counsel in terms of why we did certain things, you
6 know, being presented with it here today there's no
7 way I can tell you what the thought process was at
8 that time.

9 Q. Okay. And I just want to point out that her
10 testimony's in the penalty phase so all bad acts and
11 character evidence of Mr. Aleksey is admissible by
12 the prosecution?

13 A. Yeah.

14 Q. In other words, there is no prohibition because
15 the issue is what punishment fits the actions of this
16 defendant.

17 A. And again, as I just stated a few moments ago,
18 having to see it right now, try to speed read looking
19 at it.

20 Q. Sure.

21 A. The thought process you go through in terms of
22 determining how you're going to defend on the penalty
23 phase of it, all of those are issues and I just can't
24 answer that right now.

25 Q. Right. And further even in the innocent/guilt

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1 phase where bad acts are generally prohibited, your

2 strategy was that this is a character defense,

3 Mr. Aleksey's not a murderer, he's a con artist?

4 A. And we've said that all along.

5 Q. I guess what I'm trying to say, the bad acts of.

6 Mr. Aleksey, that door at least for practical

7 purposes was kicked open in Mr. Stone's opening

8 statement?

9 A. Yeah.

10 Q. Okay. And so --

11 A. But, again, I would --

12 Q. And -- I'm sorry.

13 A. But, again, I would still say that without me

14 having opportunity to sit back and try to determine

15 why or why we chose to do a certain thing, I can't

16 answer that this morning right here at this time.

17 Q. And I think we got into this line of

18 conversation when I just said that Ms. Farrell could

19 have been impeached at trial with her answer that

20 she -- that the withdrawal was made by Mr. Aleksey

21 with her SLED statement, it said that she withdrew

22 it?

23 A. Yeah. And I agreed with you on that.

24 Q. Okay.

25 A. But then I also stated to you that in looking at

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1 that there were things in there that we may or may
2 not at that time have wanted to -- brought in, there
3 were decisions that were made, being made at the time
4 that we were in the middle of the trial and without
5 having the benefit of having the opportunity to talk
6 with my co-counsel it was an issue that, you know, I
7 really can't say now.

8 Q. And you would also agree that if the handwriting
9 on these checks withdrawing the money is
10 Ms. Farrell's, that that would also be used to
11 impeach her?

12 A. We talked about that a few moments ago. You
13 asked me about that; I told you.

14 Q. Sure. I'm just trying to show there are two
15 things, one of which I don't believe y'all claimed to
16 have had, and one that was provided?

17 A. Yeah.

18 Q. Okay. The statement to SLED and the trial
19 testimony are both under oath; are they not?

20 A. You mean this statement to SLED whether it's
21 under oath? I don't know whether they swore her in.
22 They put it down, I think there's a Notary seal or
23 Notary statement on there. They said she swore to
24 them.

25 Q. And isn't it, in fact, a crime to make a false

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1 statement to law enforcement in South Carolina?

2 A. (Laughing.)

3 Q. I mean, false information to the police?

4 A. They do it all the time.

5 Q. Sure.

6 MR. BROWN: And, Your Honor, conceptually
7 this concludes our questioning regarding
8 Ms. Farrell.

9 THE COURT: Okay.

10 MR. BROWN: And that brings us to the
11 information regarding the testimony of Sara
12 Pivero. And Ms. Pivero's testimony appears
13 beginning on 1,606 of the transcript and it also
14 continues into 19 -- it also continues and
15 begins again in -- and I apologize, I believe
16 it's 1,904. So she actually testifies in both
17 the guilt phase and the punishment phase.

18 THE COURT: Okay.

19 Q. Do you recall the testimony of Ms. Sara Pivero?

20 A. Somewhat.

21 Q. Okay. And I believe she testified more or less
22 that she lived in Philadelphia or in Bucks County,
23 Pennsylvania, and I think Sensational Scissors she
24 cut hair, I believe Ms. Pivero spoke of a Lexus
25 vehicle?

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1 A. I believe she did.

2 Q. And she also spoke of her relationship, I think
3 she had some investments --

4 A. Is this the one -- I think she had an accident
5 and had gotten some money from an accident and she
6 had done some investment or was trying to do some
7 investments with her money?

8 Q. I believe you may be right, she had some
9 investments I think with Putnam Investments.

10 A. I don't know where they were.

11 Q. She had invested some money. I don't think her
12 testimony goes -- that a person close to her had
13 died.

14 A. Somehow she had gotten some money.

15 Q. She had been involved in a serious wreck, I
16 believe that appears on 1,905. Actually in 1,905 it
17 says "You testified before you were involved in a
18 serious wreck."

19 A. I believe something like that, yeah.

20 Q. She got some proceeds, approximately \$75,000 in
21 proceeds?

22 A. Uh-huh (affirmative response).

23 Q. Okay. The first thing I want to talk about is
24 Ms. Pivero's occupation. I'll turn you to trial
25 transcript 1,606, line 24, and 1,707, line 6.

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1 MR. BROWN: And, Your Honor, just for
2 context in 1,606, line 24 it says, "Are you
3 employed in Pennsylvania?"

4 Her answer is "Yes."

5 And then on the next page it says,
6 "What type of work do you do?"

7 "I'm a hair dresser."

8 "What is the name of the place you
9 work at?"

10 And the answer is "Sensational
11 Scissors."

12 "How long have you been a hair
13 dresser?"

14 "A little over four years."

15 Q. Now, Ms. Pivero I think mentioned in her
16 testimony that she, in fact, had been involved in
17 some matter regarding a Lexus?

18 A. I think so.

19 Q. And again she's a hair dresser?

20 A. Yeah.

21 Q. Okay.

22 (Mr. Zelenka reviewing document.)

23 MR. ZELENKA: No objection.

24 THE COURT: Very well. This is Applicant's

25 51?

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1 MR. BROWN: Yes, ma'am. And it's a plea
2 transcript of the Commonwealth of Pennsylvania
3 v. Sara Pivero and it's in Bucks County,
4 Pennsylvania.

5 THE COURT: All right.

6 MR. BROWN: Do you want the date?

7 THE COURT: That would be great.

8 MR. BROWN: July 28th, 1997.

9 THE COURT: All right. In evidence without
10 objection.

11 (Entered into evidence was Applicant's Exhibit
12 51, plea transcript of Sara Pivero.)

13 Q. And, again, at 1,606 in the testimony I believe
14 Ms. Pivero testifies where are you employed -- "Are
15 you employed?"

16 She says, "Yes. I'm employed as a
17 hair dresser."

18 "What's the name of the place you work
19 at?"

20 And this is in the trial in August of
21 '98 and she says, "Sensational Scissors."

22 Now, if I can refer you to the plea
23 transcript page 4, lines 19 through 25. And I guess
24 I need to go to 18. The Court asks "Are you working
25 now?"

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1 And 19 she relies "Yes. Not where I
2 used to because I lost my job because of him."

3 Follow-up question: "Well, where are
4 you working?"

5 Answer: "Up in New Hope at a grocery
6 store."

7 A. Uh-huh (affirmative response).

8 Q. And so she testified at trial she was a hair
9 dresser for four years, she worked at Sensational
10 Scissors, but here she's saying that she has lost her
11 job, and this is roughly a year before trial, she's
12 lost her job where she was before and -- because of
13 Mr. Aleksey and she is now working at a grocery
14 store?

15 A. Yeah.

16 Q. Okay. And now --

17 MR. BROWN: And I apologize, Your Honor,
18 there's a lot of documents, not concerning a lot
19 of matters, but just a large number of
20 documents.

21 (Pause in proceedings.)

22 MR. ZELENKA: No objection.

23 THE COURT: Very well. It would be
24 Applicant's Exhibit Number 51 in evidence
25 without objection, it is a two-page document.

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1 MR. BROWN: Your Honor, I believe it's
2 Applicant's 52. It is a rap sheet from trial
3 counsel's file run by Kris Bell on June 11th,
4 '98.

5 THE COURT: What is 51? I've missed 51.

6 MR. BROWN: Fifty-one is the plea
7 transcript.

8 THE COURT: I know it. I had that as 50.
9 Got it. Okay.

10 (Entered into evidence was Applicant's Exhibit
11 52, rap sheet of Sara Pivero.)

12 MR. BROWN: And, Your Honor, at this time
13 we would offer Applicant's 53 which is a
14 four-page document that is -- the first page
15 is -- and actually it looks like an affidavit
16 for indigency, second page is where the actual
17 application is filled out by Ms. Pivero, the
18 third page is a verification, and the fourth
19 page is the commonwealth request for pretrial
20 discovery made by the district attorney in Bucks
21 County, Pennsylvania.

22 THE COURT: Very well. Any objection?

23 MR. ZELENKA: No objection.

24 THE COURT: Very well.

25 MR. BROWN: It was obtained, Your Honor, by

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1 petitioner not -- posttrial, not through trial
2 counsel or, SLED or the prosecutor.

3 THE COURT: Very well. Applicant's 53 in
4 evidence without objection, it is a four-page
5 compilation of documents apparently out of the
6 file involving Ms. Pivero a criminal matter in
7 Pennsylvania.

8 (Entered into evidence was Applicant's Exhibit
9 53, four-page compilation of documents.)

10 Q. Mr. Sims, refer you to page 3, ask if that does
11 not say in there consistent with her plea that she
12 now works at Giant Food World, it's her first week?

13 A. Yeah.

14 Q. Is at the plea. And in her affidavit of
15 indigency she said I work at the grocery store, and
16 in trial it appears that she said she's worked at
17 Sensational Scissors for four years as a hair dresser
18 for four years?

19 A. Uh-huh (affirmative response).

20 Q. Next we'll move to the Lexus. Now, she
21 testified at trial that there was a Lexus purchased,
22 and I believe the solicitor asked her about her
23 income as a hair dresser or points out that she's a
24 hair dresser. And he even goes in -- there's some
25 testimony on 1,907 and says, "He traded in the

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1 4-Runner for a Lexus LX 450."

2 A. 1,900 what?

3 Q. 1,907.

4 A. Okay.

5 Q. And it starts mostly at the beginning.

6 A. Okay.

7 Q. And he calls her attention to September of '96.

8 "Did you lease a Lexus?"

9 And she says, "Yes." She goes on to
10 testify that she did that because Mr. Aleksey, Bayan
11 Aleksey wanted that.

12 And the solicitor points out "But you
13 are just a hair stylist at a salon. How much money
14 did you make?"

15 She replies "\$15,000."

16 The solicitor asked "How much did this
17 Lexus cost?"

18 And she says, "Sixty grand or more."

19 And there's some more testimony about
20 the Lexus, and then, of course, it goes in in the
21 cross-examination, when you cross-examine there's
22 some information that she actually is the one who
23 purchased the Lexus.

24 Okay. Now I would refer you to the
25 rap sheet of Ms. Pivero which is Applicant's 52. And

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1 I would ask you if that document does not have --
2 lists five convictions?

3 A. It does.

4 Q. And three of the convictions are theft by
5 deception?

6 A. It is four. One, two, three, four unless you're
7 talking about something else. Oh, two counts.

8 Q. I understand. There are four lines of
9 conviction and one of them says two counts. The rap
10 sheet indicates there are three convictions for theft
11 by deception?

12 A. Yeah.

13 Q. And there are actually different subsections of
14 the law? Actually I don't believe that's indicated,
15 I'll have to pull out her conviction affirmation.
16 Below that it lists there were two convictions for
17 what's listed as bad checks?

18 A. Yeah.

19 Q. Okay. Now, at trial she was never impeached
20 with those convictions, was she?

21 A. No, she was not.

22 Q. And those -- and that activity besides being
23 subject -- besides Ms. Farrell -- I mean, Ms. Pivero
24 being subject to impeachment with the convictions
25 under 609 she would also be subject to impeachment

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1 under 608(b) for the underlying activity?

2 A. I would think the convictions would have been
3 more so than the arrests. And, quite frankly, as I
4 said to you, when I look at my file that may have
5 been one that I missed at that time concentrating on
6 the areas that we thought we could get the most bang
7 out of the buck. So I'll admit that for those, those
8 thefts they were convictions and they could have been
9 used.

10 Q. Okay.

11 MR. TARR: Excuse me. Your Honor, may I
12 see -- he keeps -- the witness keeps making
13 reference to if I had my file or I had my notes
14 and I might be able to know more about each of
15 these.. We gave him, as we told Your Honor on
16 the record previously on Tuesday, a copy of all
17 of his notes that we believe that were in the
18 trial counsel's file. I've reviewed them
19 throughout this morning and for each one of
20 these witnesses there's at least one to two,
21 three, pages of notes that he could have read
22 between then and now or could be referring to
23 now to refresh his memory.

24 So I just want to point that out, it's
25 not that he doesn't have that. And I made the

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1 assertion at the time that I think that is the
2 part of the file that would be most helpful to
3 his recollections is his own notes. I just want
4 the record to be clear that he has those.

5 THE WITNESS: I don't have my file. And
6 again, since this is going to come up again --

7 THE COURT: Gentlemen, I'm not going to go
8 there. I've already dealt with the issue of the
9 file and lack of the file. Proceed.

10 MR. BROWN: I think Mr. Tarr just wanted to
11 point that out for the record.

12 And, Your Honor, I've handed a
13 document to Mr. Zelenka for his review.

14 (Mr. Zelenka reviewing document.)

15 MR. BROWN: Your Honor, we would offer into
16 evidence a three-page document as Applicant's 54
17 and it's -- this is defined by itself as an
18 information and I use that in the legal context.
19 In lieu of an indictment this is an information.

20 THE COURT: Very well. Any objection?

21 MR. ZELENKA: No objection.

22 THE COURT: Very well. Applicant's 54,
23 Exhibit 54 is in evidence without objection, it
24 is a three-page information.

25 (Entered into evidence was Applicant's Exhibit

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1 54, three-page information.)

2 Q. And, Mr. Sims, if you'll notice that
3 information, which again is like an indictment, it
4 lists the five crimes that show up as her
5 convictions?

6 A. Uh-huh (affirmative response).

7 Q. And the three different theft by deceptions,
8 does that not indicate that they are different
9 subsections of the law?

10 A. Yeah. Well, it says A1, A2, A3.

11 Q. And a different one beside each different
12 charge?

13 A. Yeah.

14 Q. Okay. Which would appear to indicate that she
15 was being charged under a different subsection?

16 A. Yeah.

17 Q. The other thing I would point out, it has an F3,
18 F3, F3 beside each of the theft by deceptions?

19 A. Right.

20 Q. Then it has by the two bad checks charges, an M2
21 and an M2?

22 A. Right.

23 Q. It seems consistent with indicating theft by
24 deception is a felony?

25 A. I don't know that.

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1 MR. ZELENKA: Calls for speculation.

2 A. All I can say is that's what it says.

3 Q. And we have a classification scale of crimes in
4 South Carolina and a misdemeanor 2 in South Carolina
5 carries two years?

6 THE COURT: Sustained.

7 MR. ZELENKA: Thank you, Judge.

8 Q. And just to conclude on that, again 609 and 608
9 would be possible avenues of offering this at trial?

10 A. Yeah, I agree.

11 Q. Okay. Next I want to move from the Lexus issue
12 with Ms. Pivero to her testimony where she minimizes
13 the role that she has in her monetary losses and
14 places the blame for these losses on Bayan.

15 A. Right.

16 Q. Okay. This is on pages 1,615 through 1,621 of
17 the transcript.

18 A. Sixteen what now?

19 Q. 1,615 to 1,621.

20 A. Okay.

21 Q. And it's actually your cross-examination of her.

22 A. All right.

23 Q. And I think you tried to get at the fact that
24 she spent this money with Bayan.

25 A. I cross-examined her specifically on the issue

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1 that she had a good time, as I did all of those
2 women.

3 Q. Yes.

4 A. That they had a good time with Bayan, they spent
5 the money, they enjoyed everything and when he left
6 them and went somewhere else they got upset.

7 Q. And I would point out that the question with --
8 that you pose on line 6 is "During that course of
9 time he spent a lot of money, you spent a lot of
10 money?"

11 A. Yeah.

12 Q. Then her response, though she doesn't agree with
13 you, she says, "He more or less spent most of the
14 money I would say."

15 A. Yeah.

16 Q. Okay.

17 MR. BROWN: I beg the Court's indulgence.

18 (Pause in proceedings.)

19 Q. Now, also on 1,607 in her testimony in the trial
20 she says that her relationship with Mr. Aleksey is
21 that of boyfriend/girlfriend?

22 A. Uh-huh (affirmative response).

23 Q. That's 1,607, line 25 to 1,608, line 3.

24 A. I agree.

25 Q. And at 1,615 -- and we went over part of this --

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1 line 8 through 1,616, line 5, she details how
2 Mr. Aleksey, and this is my paraphrasing, drained her
3 investments which is --

4 A. Yes.

5 Q. Because you said she spent the money and she
6 responded by saying he spent the money?

7 A. Yeah.

8 Q. Okay. And then during the purchase of the Lexus
9 she had presented two checks to the Lexus dealership,
10 one represented the payoff on a trade-in car?

11 A. For the employer. I believe I read that a few
12 minutes ago.

13 Q. May have been an employer traded in a 4-Runner
14 on a Lexus?

15 A. 4-Runner, yeah.

16 Q. And as happens when a car is not very old, what
17 she owed on the 4-Runner was more than what they gave
18 her on it. I think she owed them \$6,000 on that.

19 A. Right.

20 Q. And that's a ball park figure. Again, it's at
21 1,911, lines 6 through 13. And then there was a
22 second check also, that was a 2,000 some odd dollars
23 check.

24 A. Uh-huh (affirmative response).

25 Q. And this is brought out in the direct.

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1 examination by Solicitor Bailey. And he asks whether
2 they were good and she says, no, they wound up
3 bouncing.. The question is "Did you know at the time
4 you wrote those checks they wouldn't clear?" trying
5 to find out about her culpability in writing a check
6 that bounced.

7 And her response is "No."

8 And Solicitor Bailey asked "Why did
9 you think they would clear?"

10 The answer is "Like I said, he was
11 depositing checks into that account. It turned out
12 the checks were bad that he was depositing."

13 Okay. And then while I'm bringing up
14 all of her trial testimony I would like to point out
15 on page 1,909, line 21, we're going to go into her
16 testimony about her salary. And I think we've
17 already read this point, but basically she says that
18 her salary -- again on 1,909, line 21 "You testified
19 you made around \$15,000?". And we had talked about
20 that earlier cutting hair.

21 A. Yeah.

22 Q. Okay. And then when she talks about how she
23 qualified to purchase a 60-plus thousand dollar Lexus
24 on a \$15,000 salary, I'll refer to lines --
25 transcript 1,910, lines 1 through 9. And she is