**VOLUME SEVEN 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,

RESPONDENT

---

# APPENDIX

---

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

**VOLUME SEVEN**
**PAGES 3002-3501**

# INDEX

INDEX ..... i

TRIAL TRANSCRIPT ..... 1

COURT REPORTER'S INDEX ..... 2

COLLOQUY/JURORS EXCUSED ..... 35

INTRODUCTION OF CASE ..... 119

HARRY MIMS
Voir Dire Examination by the Court ..... 183
Direct Examination by the Solicitor ..... 185
Cross-Examination by the Defense ..... 187

REBECCA BREWINGTON
Voir Dire Examination by the Court ..... 198
Direct Examination by the Solicitor ..... 200
Cross-Examination by the Defense ..... 205

DENNIS BONNETTE
Voir Dire Examination by the Court ..... 211
Direct Examination by the Solicitor ..... 213
Cross-Examination by the Defense ..... 216

TAMMY MORRIS
Voir Dire Examination by the Court ..... 220

MATTIE JOHNSON
Voir Dire Examination by the Court ..... 224
Direct Examination by the Solicitor ..... 227
Cross-Examination by the Defense ..... 228

NARONE FRANKLIN
Voir Dire Examination by the Court ..... 230
Direct Examination by the Solicitor ..... 234
Cross-Examination by the Defense ..... 236

JASON COTE
Voir Dire Examination by the Court ..... 240

Direct Examination by the Solicitor ..... 243
Cross-Examination by the Defense ..... 245

REGINALD BUTLER
Voir Dire Examination by the Court ..... 248
Direct Examination by the Solicitor ..... 253, 258
Cross-Examination by the Defense ..... 256

JULIETTE RYANT
Voir Dire Examination by the Court ..... 262, 267, 273
Direct Examination by the Solicitor ..... 265, 270
Cross-Examination by the Defense ..... 21

SANDRA McWATERS
Voir Dire Examination by the Court ..... 276, 285
Direct Examination by the Solicitor ..... 279
Cross-Examination by the Defense ..... 282

WILLIE BLANDING
Voir Dire Examination by the Court ..... 288

SABRINA ROBINSON
Voir Dire Examination by the Court ..... 295
Direct Examination by the Solicitor ..... 300
Cross-Examination by the Defense ..... 301

DUANE GREEN
Voir Dire Examination by the Court ..... 314, 32
Direct Examination by the Solicitor ..... 318
Cross-Examination by the Defense ..... 321

CHRIS CRABB
Voir Dire Examination by the Court ..... 323
Direct Examination by the Solicitor ..... 327
Cross-Examination by the Defense ..... 329

HOMER THRAILKILL
Voir Dire Examination by the Court ..... 335
Direct Examination by the Solicitor ..... 338
Cross-Examination by the Defense ..... 339

TYRONE GILLARD
Voir Dire Examination by the Court ..... 346
Direct Examination by the Solicitor ..... 349
Cross-Examination by the Defense ..... 351

ELAINE WHETSTONE
Voir Dire Examination by the Court ..... 354
Direct Examination by the Solicitor ..... 356
Cross-Examination by the Defense ..... 358

MELVIN RANSOM
Voir Dire Examination by the Court ..... 360
Direct Examination by the Solicitor ..... 364

VON JONES
Voir Dire Examination by the Court ..... 367

ALVIN RICKENBAKER
Voir Dire Examination by the Court ..... 368
Direct Examination by the Defense ..... 372

WILLIE JOHNSON, JR.
Voir Dire Examination by the Court ..... 374
Direct Examination by the Solicitor ..... 378
Cross-Examination by the Defense ..... 381

MICHAEL ANTHONY
Voir Dire Examination by the Court ..... 385
Direct Examination by the Solicitor ..... 389

CARL RAWLEIGH
Voir Dire Examination by the Court ..... 391
Direct Examination by the Solicitor ..... 393
Cross-Examination by the Defense ..... 395

ANDREW RICE
Voir Dire Examination by the Court ..... 396
Direct Examination by the Solicitor ..... 399

NORRIS GIBSON
Voir Dire Examination by the Court ..... 401
Direct Examination by the Solicitor ..... 404
Cross-Examination by the Defense ..... 406

VINCENT BOWMAN
Voir Dire Examination by the Court ..... 408
Direct Examination by the Solicitor ..... 412

JEREMIAH GATES
Voir Dire Examination by the Court ..... 414

DEBRA SANFORD
Voir Dire Examination by the Court ..... 422
Direct Examination by the Solicitor ..... 424
Cross-Examination by the Defense ..... 426

BONNIE ZEIGLER
Voir Dire Examination by the Court ..... 429
Direct Examination by the Solicitor ..... 432
Cross-Examination by the Defense ..... 434

JAMES SCHRIMPF
Voir Dire Examination by the Court ..... 436
Direct Examination by the Solicitor ..... 440

ROBERT GOODWIN
Voir Dire Examination by the Court ..... 442
Direct Examination by the Solicitor ..... 447
Cross-Examination by the Defense ..... 449

GIGI HAYES
Voir Dire Examination by the Court ..... 451
Direct Examination by the Solicitor ..... 454
Cross-Examination by the Defense ..... 456

WILLIAM AYERS
Voir Dire Examination by the Court ..... 460

SILAS ADAMS
Voir Dire Examination by the Court ..... 463
Direct Examination by the Solicitor ..... 469

FLOSTINE GREEN
Voir Dire Examination by the Court ..... 471

KENNETH LEWIS
Voir Dire Examination by the Court ..... 478

KAYE BONNETTE
Voir Dire Examination by the Court ..... 483
Direct Examination by the Solicitor ..... 487
Cross-Examination by the Defense ..... 488

KEDRAIN PELZER
Voir Dire Examination by the Court ..... 491
Direct Examination by the Solicitor ..... 495
Cross-Examination by the Defense ..... 498

PHYLLIS BRICKLE
Voir Dire Examination by the Court ..... 501
Direct Examination by the Solicitor ..... 503
Cross-Examination by the Defense ..... 506

ERNEST MYERS
Voir Dire Examination by the Court ..... 508
Direct Examination by the Solicitor ..... 512
Cross-Examination by the Defense ..... 515

LAKISHA DOWLING
Voir Dire Examination by the Court ..... 517

LUTHER ALLEN
Voir Dire Examination by the Court ..... 524
Direct Examination by the Defense ..... 529

BARBARA HANTON
Voir Dire Examination by the Court ..... 549
Direct Examination by the Solicitor ..... 553
Cross-Examination by the Defense ..... 556

MALCOLM SIMPSON
Voir Dire Examination by the Court ..... 558
Direct Examination by the Solicitor ..... 561
Cross-Examination by the Defense ..... 563

SHARON GOODWIN
Voir Dire Examination by the Court ..... 565

PATSY WILDER
Voir Dire Examination by the Court ..... 569
Direct Examination by the Solicitor ..... 575

ANGELA TOBIN
Voir Dire Examination by the Court ..... 580

COLE HAYWOOD
Voir Dire Examination by the Court ..... 584, 590
Direct Examination by the Solicitor ..... 586, 591
Cross-Examination by the Defense ..... 592

LAWRENCE LIVINGSTON
Voir Dire Examination by the Court ..... 594

HAROLD HAILEY
Voir Dire Examination by the Court ..... 598
Direct Examination by the Solicitor ..... 600

JOANNE GLOVER
Voir Dire Examination by the Court ..... 602
Direct Examination by the Solicitor ..... 606, 612
Cross-Examination by the Defense ..... 610

MACK STILLINGER
Voir Dire Examination by the Court ..... 614

EMILY PINDAK
Voir Dire Examination by the Court ..... 616
Direct Examination by the Solicitor ..... 619, 623
Cross-Examination by the Defense ..... 621, 624

MARY GRAMBLING
Voir Dire Examination by the Court ..... 625
Direct Examination by the Solicitor ..... 630
Cross-Examination by the Defense ..... 632

BONNIE ANTLEY
Voir Dire Examination by the Court ..... 641
Direct Examination by the Solicitor ..... 648
Cross-Examination by the Defense ..... 650

LATOYA WHITE
Voir Dire Examination by the Court ..... 655

JUDY BRANTLEY
Voir Dire Examination by the Court ..... 661
Direct Examination by the Solicitor ..... 666
Cross-Examination by the Defense ..... 669

HARRIETTE SEABROOKS
Voir Dire Examination by the Court ..... 673, 681
Direct Examination by the Solicitor ..... 676
Cross-Examination by the Defense ..... 679

CHAS ENGLISH
Voir Dire Examination by the Court ..... 683

STEPHEN FOGLE
Voir Dire Examination by the Court ..... 689

CAROLINE FORD
Voir Dire Examination by the Court ..... 692
Direct Examination by the Solicitor ..... 697
Cross-Examination by the Defense ..... 699

GEORGE STACK
Voir Dire Examination by the Court ..... 702

MARY JAMISON
Voir Dire Examination by the Court ..... 707, 715
Direct Examination by the Solicitor ..... 712, 716
Cross-Examination by the Defense ..... 716

MARY MOORE
Voir Dire Examination by the Court ..... 720

MICHELLE JENKINS
Voir Dire Examination by the Court ..... 724
Direct Examination by the Solicitor ..... 727
Cross-Examination by the Defense ..... 730

FRANK JOHNSON
Voir Dire Examination by the Court ..... 735

FANNIE JOHNSON
Voir Dire Examination by the Court ..... 739
Direct Examination by the Solicitor ..... 746
Cross-Examination by the Defense ..... 750

JEROME ASBERRY
Voir Dire Examination by the Court ..... 754
Direct Examination by the Solicitor ..... 757
Cross-Examination by the Defense ..... 758

ROBERTA SEEGARS
Voir Dire Examination by the Court ..... 761

PAUL DREW
Voir Dire Examination by the Court ..... 765

LEVON TYLER
Voir Dire Examination by the Court ..... 769
Direct Examination by the Solicitor ..... 773
Cross-Examination by the Defense ..... 773

WILLIE JOHNSON, JR. (IN CHAMBERS)
Voir Dire Examination by the Court ..... 798, 802
Direct Examination by the Solicitor ..... 800
Cross-Examination by the Defense ..... 801

JURY IMPANELED ..... 858

WITNESSES FOR THE STATE

THOMAS J. FRENCH (IN CAMERA)
Direct Examination by the Solicitor ..... 833
Cross-Examination by the Defense ..... 840
Redirect Examination by the Solicitor ..... 847

JURY SWORN ..... 852

OPENING STATEMENTS
By the Solicitor ..... 858
By the Defense ..... 877

WITNESSES FOR THE STATE

YELENA BATKILINA
Direct Examination by the Solicitor ..... 882
Cross-Examination by the Defense ..... 890
ReDirect Examination by the Solicitor ..... 894
ReCross-Examination by the Defense ..... 894

THOMAS J. FRENCH
Direct Examination by the Solicitor ..... 895
Cross-Examination by the Defense ..... 902
ReDirect Examination by the Solicitor ..... 904

RONALD VINCENT MOSELY
Direct Examination by the Solicitor ..... 907
Cross-Examination by the Defense ..... 912
ReDirect Examination by the Solicitor ..... 920

LIN SHIRER
Direct Examination by the Solicitor ..... 923
Cross-Examination by the Defense ..... 941

WILLIAM WATFORD
Direct Examination by the Solicitor ..... 948
Cross-Examination by the Defense ..... 962

ANDREW D. MYERS, JR. (IN CAMERA)
Direct Examination by the Solicitor ..... 969
Cross-Examination by the Defense ..... 975

ANDREW D. MYERS, JR.
Direct Examination by the Solicitor ..... 978
Cross-Examination by the Defense ..... 990
ReDirect Examination by the Solicitor ..... 995

DR. JOEL S. SEXTON
Direct Examination by the Solicitor ..... 996

TIMOTHY MICHAEL LLOYD
Direct Examination by the Solicitor ..... 1021
Cross-Examination by the Defense ..... 1034

JAMES A. WOODS
Direct Examination by the Solicitor ..... 1038
Cross-Examination by the Defense ..... 1054

ROBERT STEVEN CECIL
Direct Examination by the Solicitor ..... 1054
Cross-Examination by the Defense ..... 1062

CHARLES THOMAS FREDERICK, III
Direct Examination by the Solicitor ..... 1064

KATHERINE CASE GALLUP
Direct Examination by the Solicitor ..... 1072
Cross-Examination by the Defense ..... 1080

ROBERT BERES
Direct Examination by the Solicitor ..... 1083
Cross-Examination by the Defense ..... 1097
Redirect Examination by the Solicitor ..... 1102

TARA HOPE CLARK
Direct Examination by the Solicitor ..... 1104
Cross-Examination by the Defense ..... 1113

PAUL JOSEPH BROUTHERS
Direct Examination by the Solicitor ..... 1119

DONALD BRETT BAKER
Direct Examination by the Solicitor ..... 1131, 1135
Cross-Examination by the Defense ..... 1135
Re-Cross-Examination by the Defense ..... 1192

KERRI GOODWIN
Direct Examination by the Solicitor ..... 1207

ANGELA CROWL
Direct Examination by the Solicitor ..... 1211

LISA A. WATSON
Direct Examination by the Solicitor ..... 1214
Cross-Examination by thee Defense ..... 1219

GLORYVEE PEREZ BLACKWELL
Direct Examination by the Solicitor ..... 1234
Cross-Examination by the Defense ..... 1249

GLORYVEE PEREZ BLACKWELL (IN CAMERA)
Cross Examination by the Defense ..... 1257, 1264

GLORYVEE PEREZ BLACKWELL
Cross-Examination by the Defense ..... 1267
ReDirect Examination by the Solicitor ..... 1282, 1289

GLORIA MARIA RIVERIA (IN CAMERA)
Direct Examination by the Solicitor ..... 1298
Cross-Examination by the Defense ..... 1301

GLORIA MARIA RIVERIA
Direct Examination by the Solicitor ..... 1304
Cross-Examination by the Defense ..... 1313

L. C. KNIGHT
Direct Examination by the Solicitor ..... 1321
Cross-Examination by the Defense ..... 1324

DR. JOHN CLETUS CHANDLER
Direct Examination by the Solicitor ..... 1327
Cross-Examination by the Defense ..... 1337

KENNETH M. MEARS
Direct Examination by the Solicitor ..... 1340
Cross-Examination by the Defense ..... 1348
ReDirect Examination by the Solicitor ..... 1356
ReCross-Examination by the Defense ..... 1363

JAMES WEINER
Direct Examination by the Solicitor ..... 1365
Cross-Examination by the Defense ..... 1368

KYLE V. WELCH
Direct Examination by the Solicitor ..... 1372
Cross-Examination by the Defense ..... 1378

BILLIE ALTHOUSE
Direct Examination by the Solicitor ..... 1380

GEORGE DARNELL
Direct Examination by the Solicitor ..... 1386
Cross-Examination by the Defense ..... 1390

SUZIE WILSON
Direct Examination by the Solicitor ..... 1392
Cross-Examination by the Defense ..... 1395

CONNIE McKAY
Direct Examination by the Solicitor ..... 1397

DONALD BRETT BAKER
Direct Examination by the Solicitor ..... 1398

HUBERT RICKENBAKER
Direct Examination by the Solicitor ..... 1401
Cross-Examination by the Defense ..... 1406

VERNETIA DOZIER
Direct Examination by the Solicitor ..... 1407

DOROTHY FULLER
Direct Examination by the Solicitor ..... 1416
Cross-Examination by the Defense ..... 1418
ReCross-Examination by the Defense ..... 1474

JOSEPH DWAYNE POWELL
Direct Examination by the Solicitor ..... 1474
Cross-Examination by the Defense ..... 1491

GEORGE DARNELL
Direct Examination by the Solicitor....1502
Cross-Examination by the Defense....1525

KENNETH M. MEARS
Direct Examination by the Solicitor....1534
Cross-Examination by the Defense....1538
ReDirect Examination by the Solicitor....1544

SARAH PIVERO
Direct Examination by the Solicitor....1545
Cross-Examination by the Defense....1551
ReDirect Examination by the Solicitor....1560
ReCross-Examination by the Defense....1562

IRA PARNELL, JR.
Direct Examination by the Solicitor....1564
Cross-Examination by the Defense....1572

DONALD BRETT BAKER
Direct Examination by the Solicitor....1573
Cross-Examination by the Defense....1589

STATE RESTS....1601

WITNESSES FOR THE DEFENDANT

DR. DAVID BACHMAN
Direct Examination by the Defense....1601
Cross-Examination by the Solicitor....1614

JEFFREY MORRIS HOLLIFIELD
Direct Examination by the Defense....1626
Cross-Examination by the Solicitor....1650
Redirect Examination by the Defense....1659
ReCross-Examination by the Solicitor....1660
Redirect Examination by the Defense....1661

DEFENSE RESTS....1662

CLOSING ARGUMENTS
By the Solicitor....1683
By the Defense....1713

CHARGE OF THE COURT....1730

VERDICT OF THE JURY ..... 1743

PENALTY STAGE

OPENING STATEMENTS
By the Solicitor ..... 1764
By the Defense ..... 1768

THERESA McCANN
Direct Examination by the Solicitor ..... 1772

THERESA McCANN (IN CAMERA)
Direct Examination by the Solicitor ..... 1789
Cross-Examination by the Defense ..... 1793

JAIME FARRELL
Direct Examination by the Solicitor ..... 1802
Cross-Examination by the Defense ..... 1810

SARA PIVERO
Direct Examination by the Solicitor ..... 1812
Cross-Examination by the Defense ..... 1826

LUIS CRUZ (IN CAMERA)
Direct Examination by the Solicitor ..... 1832
Cross-Examination by the Defense ..... 1839

LUIS CRUZ
Direct Examination by the Solicitor ..... 1848
Cross-Examination by the Defense ..... 1858

MARIE MORAN
Direct Examination by the Solicitor ..... 1861
Cross-Examination by the Defense ..... 1868

LISA WATSON
Direct Examination by the Solicitor ..... 1869
Cross-Examination by the Defense ..... 1873

MAURICE KEITT
Direct Examination by the Solicitor ..... 1976
Cross-Examination by the Defense ..... 1881

VERNETIA DOZIER
Direct Examination by the Solicitor ..... 1885
Cross-Examination by the Defense ..... 1886

Redirect Examination by the Solicitor ..... 1888
ReCross-Examination by the Defense ..... 1889

DR. JOEL SEXTON (IN CAMERA)
Direct Examination by the Solicitor ..... 1890

DONALD BRETT BAKER
Direct Examination by the Solicitor ..... 1891

KENNETH M. MEARS
Direct Examination by the Solicitor ..... 1907

LEON ROBINSON
Direct Examination by the Solicitor ..... 1912

DAVID DEERING
Direct Examination by the Solicitor ..... 1922

DORA LINGARD
Direct Examination by the Solicitor ..... 1937

KEVA NICHOLE RILEY
Direct Examination by the Solicitor ..... 1948

FRANK LINGARD
Direct Examination by the Solicitor ..... 1952

LEATHA RAYSOR
Direct Examination by the Solicitor ..... 1963

STATE RESTS ..... 1972

WITNESSES FOR THE DEFENDANT

VERA ALEKSEY
Direct Examination by the Defense ..... 1977

DEFENSE RESTS ..... 2002

CLOSING ARGUMENTS
By the Solicitor ..... 2006
By the Defense ..... 2036
By the Defendant Aleksey ..... 2038
By the Defense ..... 2040

CHARGE OF THE COURT ..... 2052

VERDICT OF THE JURY ..... 2078

TRANSCRIPT DATED MAY 20, 1998 ..... 2092

MOTIONS ..... 2092

JACKSON V. DENNO HEARING TRANSCRIPT DATED JUNE 8, 1998 ..... 2125

MOTIONS ..... 2128

KYLE V. WELCH
Direct Examination by Mr. Bailey ..... 2130
Cross Examination by Mr. Sims ..... 2137

KENNETH M. MEARS
Direct Examination by Mr. Bailey ..... 2147
Cross Examination by Mr. Sims ..... 2153

BILLIE JOANNE ALTHOUSE
Direct Examination by Mr. Bailey ..... 2157
Cross Examination by Mr. Sims ..... 2162

HUBERT RICKENBAKER
Direct Examination by Mr. Bailey ..... 2168
Cross Examination by Mr. Stone ..... 2171

VERNETIA DOZIER
Direct Examination by Mr. Bailey ..... 2176
Cross Examination by Mr. Sims ..... 2177

WANDA DUKES
Direct Examination by Mr. Bailey ..... 2179
Cross Examination by Mr. Stone ..... 2180

GEORGE DARNELL
Direct Examination by Mr. Bailey ..... 2183
Cross Examination by Mr. Stone ..... 2199

KENNETH M. MEARS
Direct Examination by Mr. Bailey ..... 2215
Cross Examination by Mr. Sims ..... 2223

MOTIONS ..... 2230

TRANSCRIPT DATED AUGUST 11, 1998 ..... 2243

MOTIONS ..... 2246

RICHARD L. FRIERSON, M.D.
Direct Examination by Mr. Bailey ..... 2247
Cross Examination by Mr. Stone ..... 2259

MOTIONS ..... 2273

RICHARD L. FRIERSON, M.D.
Cross Examination by Mr. Stone ..... 2280

MOTIONS ..... 2281

RICHARD L. FRIERSON, M.D.
Cross Examination by Mr. Stone ..... 2283

MOTIONS ..... 2285

COURT'S EXHIBIT NUMBER 2, INDICTMENT AND CONVICTION (GLORYVEE RIVERA) 2308

TAPED INTERVIEW/STATEMENT OF BAYAN R. ALEKSEY ..... 2320

MOTION TO DISCLOSE ..... 2341

ORDER FOR COMPETENCY EVALUATION AND CRIMINAL RESPONSIBILITY ..... 2344

MOTION TO PRODUCE REPORTS OF EXAMINATION AND TESTS ..... 2347

INDICTMENT ..... 2350

APPLICATION FOR POST-CONVICTION RELIEF ..... 2454

ORDER ON CONDITIONAL APPOINTMENT OF POST-CONVICTION RELIEF COUNSEL AND SCHEDULING ORDER ..... 2389

AFFIDAVIT OF PETITIONER ..... 2398

AFFIDAVIT OF COUNSEL ..... 2399

SECOND AMENDED APPLICATION FOR POST-CONVICTION RELIEF ..... 2401

NOTICE OF INTENT TO RELY UPON AFFIDAVITS AND OTHER DOCUMENTARY EVIDENCE ..... 2416

POST-CONVICTION RELIEF TRANSCRIPT DATED NOVEMBER 12, 2002 ..... 2420

POST-CONVICTION RELIEF TRANSCRIPT DATED NOVEMBER 13, 2002 .....2658

POST-CONVICTION RELIEF TRANSCRIPT DATED NOVEMBER 14, 2002 .....2911

OPENING STATEMENT BY MR. TARR .....2444

OPENING STATEMENT BY MR. ZELENKA.....2463

OPENING STATEMENT BY MR. BROWN .....2469

THOMAS R. SIMS
Direct Examination by Mr. Brown.....2476
Cross Examination by Mr. Zelenka.....3025
Redirect Examination by Mr. Brown .....3082
Recross Examination by Mr. Zelenka .....3121
Redirect Examination by Mr. Brown .....3126

POST-CONVICTION RELIEF TRANSCRIPT DATED NOVEMBER 15, 2002 ..... 3131

ISAAC McDUFFIE STONE, III
Direct Examination by Mr. Tarr.....3133
COLLOQUY .....3375

POST-CONVICTION RELIEF TRANSCRIPT DATED JULY 7, 2003 .....3387

ISAAC McDUFFIE STONE, III
Direct Examination by Mr. Tarr.....3391

POST-CONVICTION RELIEF TRANSCRIPT DATED JULY 8, 2003 .....3487

MOTIONS .....3488

ISAAC McDUFFIE STONE, III
Direct Examination by Mr. Tarr.....3495
Cross Examination by Mr. Zelenka.....3540
Redirect Examination by Mr. Tarr .....3640
WALTER BAILEY
Direct Examination by Mr. Brown.....3667

COLLOQUY .....3747

WALTER BAILEY
Direct Examination by Mr. Brown.....3756
Cross Examination by Mr. Zelenka.....3825
Redirect Examinaton by Mr. Brown .....3847

COLLOQUY ..... 3855

JOHN P. FREEMAN
Direct Examination by Mr. Tarr ..... 3858
Cross Examination by Mr. Zelenka ..... 3870
Redirect Examination by Mr. Tarr ..... 3884

JAMES E. AIKEN
Direct Examination by Mr. Tarr ..... 3887
Cross Examination by Mr. Zelenka ..... 3907
Redirect Examination by Mr. Mr. Tarr ..... 3920

KENNETH M. MEARS
Direct Examination by Mr. Brown ..... 3927
Cross Examination by Mr. Zelenka ..... 4006
Redirect Examination by Mr. Brown ..... 4025

GEORGE DARNELL
Direct Examination by Mr. Tarr ..... 4032
Cross Examination by Mr. Zelenka ..... 4082
Redirect Examination by Mr. Tarr ..... 4094

COLLOQUY ..... 4096

WALTER BAILEY
Direct Examination by Mr. Zelenka ..... 4106
Cross Examination by Mr. Brown ..... 4115

THIRD AMENDED APPLICATION FOR POST-CONVICTION RELIEF ..... 4123

APPLICANT'S BRIEF SUPPORTING THIRD AMENDED APPLICATION FOR POST-CONVICTION RELIEF ..... 4136

APPLICANT'S EXHIBIT 87, AFFIDAVIT ..... 4266

APPLICANT'S EXHIBIT 88, LETTER DATED DECEMBER 14, 2004 ..... 4267

APPLICANT'S EXHIBIT 89, ARREST WARRANTS ..... 4269

APPLICANT'S EXHIBIT 90, GENERAL SESSIONS DOCKET REPORT FOR ORANGEBURG COUNTY ..... 4271

APPLICANT'S EXHIBIT 91, TORT CLAIM FORM ..... 4272
APPLICANT'S EXHIBIT 92, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS INMATE GRIEVANCE FORM ..... 4275
DEPOSITION OF JANET VOGELSANG, DATED JANUARY 30, 2004 ..... 4276

DEFENDANT'S EXHIBIT 1, TONI BOVEE'S REPORT ..... 4360

DEFENDANT'S EXHIBIT 2, TIME LINE ..... 4369

DEFENDANT'S EXHIBIT 3, K. FISHERMAN'S SOCIAL HISTORY ..... 4380

MOTION FOR PRODUCTION OF MATERIAL UNDER BRADY AND S.C. CRIMINAL RULE 5 ..... 4405

STATE'S MEMORANDUM IN RE: INTRODUCTION OF LYLE TESTIMONY ..... 4410

APPLICANT'S EXHIBIT 96, VOLUNTARY STATEMENT OF ANTHONY LYNN STACK 4414

RESPONDENT'S POST-HEARING MEMORANDUM IN OPPOSITION TO APPLICATION FOR POST-CONVICTION RELIEF ..... 4416

APPLICANT'S REPLY SUPPORTING THIRD AMENDED APPLICATION FOR POST-CONVICTION RELIEF ..... 4804

APPLICANT'S OBJECTIONS TO THE COURT'S INTENTION TO ADOPT THE STATE'S PROPOSED ORDER ..... 4834

MOTION TO CLARIFY THE STATE'S POSITION REGARDING A PROSECUTOR'S ELIGIBILITY FOR APPOINTMENT IN LIGHT OF CONFLICTS OF INTEREST ..... 4856

MEMORANDUM DATED JANUARY 15, 2008 ..... 4863

LETTER TO BAR MEMBERS DATED JANUARY 17, 2008 ..... 4865

NEWSPAPER ARTICLES ..... 4867

TRANSCRIPT DATED JANUARY 29, 2009 (EX PARTE HEARING) ..... 4875

LETTER DATED APRIL 1, 2009 ..... 4936

EMAILS ..... 4938

SUPPLEMENT TO MOTION TO CLARIFY THE STATE'S POSITION REGARDING A PROSECUTOR'S ELIGIBILITY FOR APPOINTMENT IN LIGHT OF CONFLICTS OF INTEREST ..... 4940

MOTION TO CLARIFY THE STATE'S POSITION REGARDING A PROSECUTOR'S ELIBIBILITY FOR APPOINTMENT IN LIGHT OF CONFLICTS OF INTEREST ..... 4943

ATTACHMENT ONE, MEMORANDUM DATED JANUARY 15, 2008 ..... 4952
ATTACHMENT TWO, BAR MEMBER LETTER, DATED JANUARY 17, 2008 ..... 4955

ATTACHMENT THREE, NEWSPAPER ARTICLES ..... 4957

ORDER DENYING APPLICATION FOR POST-CONVICTION RELIEF ..... 4964

APPLICANT'S MOTION TO ALTER AND AMEND JUDGMENT PURSUANT TO SCRCP RULE 59 ..... 5223

TRANSCRIPT DATED MAY 4, 2010 (59(e) HEARING) ..... 5251

SUPPLEMENT TO MOTION TO CLARIFY THE STATE'S POSITION REGARDING A PROSECUTOR'S ELIGIBILITY FOR APPOINTMENT IN LIGHT OF CONFLICT OF INTEREST ..... 5312

AFFIDAVIT OF JAMES C. WILLIAMS, JR. ..... 5315

OBJECTION TO PROPOSED ORDER REGARDING APPLICANT'S MOTION TO ALTER AND AMEND JUDGMENT PURSUANT TO SCRCP RULE 59 ..... 5319

ORDER ON APPLICANT'S MOTION TO ALTER AND AMEND JUDGMENT PURSUANT TO RULE 59 ..... 5322

APPLICANT'S EXHIBIT 1, ATTORNEY NOTES ..... 5338

APPLICANT'S EXHIBIT 2, LETTER DATED MARCH 6, 1998 ..... 5339

APPLCIANT'S EXHIBIT 3, YELENA BATKILINA PLEA/SENTENCING TRANSCRIPT ..5340

APPLICANT'S EXHIBIT 4, TRACE REPORT ..... 5348

APPLICANT'S EXHIBIT 5, BOND HEARING TRANSCRIPT ..... 5124

APPLICANT'S EXHIBIT 6, INFORMATION ..... 5365

APPLICANT'S EXHIBIT 7, RAP SHEET ..... 5373

APPLICANT'S EXHIBIT 8, PLYMOUTH TOWNSHIP INCIDENT REPORT ..... 5375

APPLICANT'S EXHIBIT 9, LOWER MORELAND POLICE REPORT ..... 5377

APPLICANT'S EXHIBIT 10, BURDUMY MOTORS DOCUMENTS ..... 5383

APPLICANT'S EXHIBIT 11, YELENA KATKILINA NEW YORK DRIVER'S LICENSE....5389

APPLICANT'S EXHIBIT 12, PHILADELPHIA PD INCIENT REPORT .....5391

APPLICANT'S EXHIBIT 13, AFFIDAVIT OF RICKIE PATTIN .....5392

APPLICANT'S EXHIBIT 14, FAX DOCUMENT .....5394

APPLICANT'S EXHIBIT 15, LETTER DATED JANUARY 7, 1998 .....5400

APPLICANT'S EXHIBIT 17, THREE PAGES OF DOCUMENTS.....5406

APPLICANT'S EXHIBIT 18, MULTI-PAGE DOCUMENT .....5409

APPLICANT'S EXHIBIT 19, PENNSYLVANIA .....5440

APPLICANT'S EXHIBIT 20, TWO PAGE STATEMENT .....5441

APPLICANT'S EXHIBIT 21, MULTI-PAGE DOCUMENT .....5443

APPLICANT'S EXHIBIT 22, DANETTA'S NOTES .....5449

APPLICANT'S EXHIBIT 23-A, LETTER.....5450

APPLICANT'S EXHIBIT 23-B, LETTER .....5451

APPLICANT'S EXHIBIT 23-C, LETTER .....5452

APPLICANT'S EXHIBIT 24, GLORYVEE PEREZ.....5454

APPLICANT'S EXHIBIT 25, AFFIDAVIT OF MARCUS BLACKWELL.....5455

APPLICANT'S EXHIBIT 27, AFFIDAVIT OF ELIZABETH BLACKWELL.....5457

APPLICANT'S EXHIBIT 28, PROPERTY RECIEPT .....5461

APPLICANT'S EXHIBIT 29, HOTEL, MOTEL, TELEPHONE RECEIPTS.....5462

APPLICANT'S EXHIBIT 30, FOLDER.....5597

APPLICANT'S EXHIBIT 31, AFFIDAVIT OF PAT CUBBERLY.....5599

APPLICANT'S EXHIBIT 32, COPY OF TWO CHECKS.....5601

APPLICANT'S EXHIBIT 33, AFFIDAVIT OF KEITH A. RANDALL .....5605

APPLICANT'S EXHIBIT 34, TRENTON POLICE DIVISION INVESTIGATION REPORT .5607

APPLICANT'S EXHIBIT 35, BURLINGTON LINCOLN MERCURY DOCUMENTS.....5609

APPLICANT'S EXHIBIT 36, SUMMIT BANK DOCUMENTS .....5632

APPLICANT'S EXHIBIT 37, GLORYVEE RIVERIA GUILTY PLEA TRANSCRIPT, TRENTON NEW JERSEY.....5633

APPLICANT'S EXHIBIT 38, PROPERTY RECEIPT OF GLORYVEE BLACKWELL.....5662

APPLICANT'S EXHIBIT 39, AFFIDAVIT OF CHRISTOPHER SONGTAG .....5663

APPLICANT'S EXHIBIT 40, SUMMIT BANK NOTICE OF HOLD .....5665

APPLICANT'S EXHIBIT 41, GLORYVEE BLACKWELL CHECKS .....5666

APPLICANT'S EXHIBIT 42-B, TAPED INTERVIEW/STATEMENT OF GLORYVEE PEREZ BLACKWELL .....5678

APPLICANT'S EXHBIT 43, SLED STATEMENT .....5682

APPLICANT'S EXHIBIT 44, RENTAL INSTALLMENT CONTRACT AND SECURITY AGREEMENT .....5684

APPLICANT'S EXHIBIT 45, NEW ROCHELLE POLICE REPORT/THERESA MCCANN .5686

APPLICANT'S EXHIBIT 46, AFFIDAVIT OF VINCENT CARUSO .....5711

APPLICANT'S EXHIBIT 47, RAP SHEET.....5715

APPLICANT'S EXHIBIT 48, SEVEN PAGES OF PHOTOS .....5717

APPLICANT'S EXHIBIT 49, TWO CHECKS.....5724

APPLICANT'S EXHIBIT 50, FARRELL STATEMENT .....5726

APPLICANT'S EXHIBIT 51, GUILTY PLEA TRANSCRIPT PIVERO.....5730

APPLICANT'S EXHIBIT 52, RAP SHEET.....5736

APPLICANT'S EXHIBIT 53, FOUR PAGE PIVERO DOCUMENT.....5738

APPLICANT'S EXHIBIT 54, THREE PAGE INFORMATION .....5742

APPLICANT'S EXHIBIT 55, FORTY FIVE PAGES OF DOCUMENTS .....5745

APPLICANT'S EXHIBIT 56, LOVE LETTERS .....5790

APPLICANT'S EXHIBIT 57, LETTER DATED OCTOBER 17, 2001 ..... 5799

APPLICANT'S EXHIBIT 58, LAWSUIT SUMMIT ..... 5800

APPLICANT'S EXHIBIT 59, LETTER DATED FEBRUARY 19, 1999 ..... 5838

APPLICANT'S EXHIBIT 60, LETTER DATED MARCH 7, 1998 ..... 5839

APPLICANT'S EXHIBIT 61, MR. STONE'S NOTES ..... 5840

APPLICANT'S EXHIBIT 62, LETTER DATED JANUARY 31, 1997 ..... 5871

APPLICANT'S EXHIBIT 63, TINA LAWINGS NOTES ..... 5863

APPLICANT'S EXHIBIT 64, MEMO FROM TINA TO DUFFIE AND SIMS ..... 5876

APPLICANT'S EXHIBIT 65, STONE'S TYPED NOTES ..... 5877

APPLICANT'S EXHIBIT 66, TINA'S TIME SHEET ..... 5880

APPLICANT'S EXHIBIT 67, LETTER DATED FEBRUARY 19, 1999 ..... 5897

APPLICANT'S EXHIBIT 68, BILL FROM QUANTICO ..... 5898

APPLICANT'S EXHIBIT 69, CV SAUL KASSIN ..... 5902

APPLICANT'S EXHIBIT 70, FEBRUARY 2, 1998 TRANSCRIPT ..... 5906

APPLICANT'S EXHIBIT 71, LETTER DATED FEBRUARY 22, 1999 ..... 5926

APPLICANT'S EXHIBIT 72, NOTEBOOK OF NEWS PAPER ARTICLES ..... 5928

APPLICANT'S EXHIBIT 73, REPORT OF HANS GIDION ..... 6082

APPLICANT'S EXHIBIT 74, PHONE RECORD ..... 6096

APPLICANT'S EXHIBIT 75, FOUR CHECKS ..... 6103

APPLICANT'S EXHIBIT 76, MONEY ORDER ..... 6107

APPLICANT'S EXHIBIT 79, NOTICE OF WARRANT ..... 5883

APPLICANT'S EXHIBIT 80, LETTER ..... 6111

APPLICANT'S EXHIBIT 81, LETTER DATED AUGUST 13, 1998 ..... 6112

APPLICANT'S EXHIBIT 82, LETTER .....6113

APPLICANT'S EXHIBIT 83, SUMMARY CASE AND FILE.....6118

APPLICANT'S EXHIBIT 84-A, AGENT MEARS NOTES .....6517

NOTICE OF EVIDENCE IN AGGRAVATION OF THE PUNISHMENT .....6554

TRANSFER ORDER.....6557

LETTER DATED FEBRUARY 2, 1998.....6558

LETTER DATED JANUARY 29, 1998 .....6559

AFFIDAVIT .....6560

NOTICE TO DETAINEE'S ATTORNEY.....6565

SENTENCE.....6566

MOTION TO ADD QUESTIONS TO DEATH PENALTY JURY QUESTIONNAIRE .....6567

FORENSIC SERVICES LABORATORY REPORT .....6575

ORDER OF APPOINTMENT OF LEGAL COUNSEL FOR INDIGENT DEFENDANT.....6582

JURY'S VERDICT ON PROOF OF AGGRAVATING CIRCUMSTANCES, PART I.....6584

JURY'S VERDICT ON PROOF OF AGGRAVATING CIRCUMSTANCES, PART II .....6585

SENTENCE.....6586

INDICTMENT .....6587

MOTION FOR PRODUCTION OF MATERIAL UNDER BRADY AND S.C. CRIMINAL RULE 5.....6588

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

APPLICANT'S EXHIBIT 16, AUDIO CASSETTE
APPLICANT'S EXHIBIT 42-A, AUDIO CASSETTE
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

shown by Solicitor Bailey a W-2. And this is following her testimony she made $15,000. And he asked her to identify it and she says it's a W-2 form that was faxed to the Lexus dealership. And the following question is "What does that indicate your income is, as being?"

And the answer is "A little in excess of $78,000."

And the follow-up question "And how did that come about?"

And Ms. Pivero's response to Solicitor Bailey's question is "I don't know. It was faxed to the dealership, I wasn't there."

Okay. Now, having brought out that kind of testimony....

(Mr. Zelenka reviewing documents.)

MR. BROWN: Your Honor, at this time we would introduce -- it's 45 pages of documents from the Doylestown Township Police Department regarding the crime of bad checks to Thompson Lexus and it's basically what the police department had. And we introduce this as information turned over to trial counsel by the prosecution.

THE COURT: All right. This is Applicant's

55?

MR. BROWN: Yes, ma'am.

THE COURT: In evidence...?

MR. ZELENKA: Without objection.

THE COURT: Without objection. It is a 45-page compilation of documents. Very well. You may proceed.

(Entered into evidence was Applicant's Exhibit 55, 45-page compilation of documents.)

Q. I hand that to you. Now, we already brought out some testimony that she said in her trial transcript that the relationship she had with Bayan was that of boyfriend/girlfriend?

A. Uh-huh (affirmative response).

Q. Okay. Would you look at the Dean Logan, who was the police officer, Dean Logan's police report dated 10/11/96, page 1. And I think at the bottom of the pages it has the date of the police report.

A. Okay.

Q. And you found that?

A. The first page?

Q. That's right. That's correct. Page 1 of the October 11th, '96 police report.

A. Okay.

Q. If you'll look at the fourth paragraph, it

starts out "Cousart..."
A. Uh-huh (affirmative response).
Q. And since this is in evidence just for your edification, Jim Cousart is the sales person at the Lexus dealership. And does it not say, "Cousart further advised that on September 24th, 1996 Sarah Pivero and her brother, Michael, came to the dealership"?
A. Let me -- one, two, three, four. It says, "Cousart advised the lease for the Lexus LS 450 was subsequently approved." Am I reading the same thing?
Q. I've got that as the fifth paragraph. But you're on the right page.
A. Okay. "Cousart further advised on September..." yes.
Q. So there Mr. Cousart's saying Sara Pivero and her brother came in?
A. Uh-huh (affirmative response).
Q. Okay. At trial she said we were boyfriend/girlfriend?
A. Yeah.
Q. Okay. And would you turn to the report of Dean Logan dated October 17th, 1996.
A. Okay.
Q. And I apologize, it will take me a minute to get

to it in my file. And ask you to look at page 1, and I believe that is just a one-page report.

A. Yeah.

Q. Paragraph three. And this paragraph begins that -- Detective Dean Logan writes that "While I was at Thompson Lexus, Cousart made phone contact with Sara Pivero."

A. That's true.

Q. And then there's another sentence, and I want you to look at the third sentence, and it says, "She advised that she lives with her brother."

A. Yeah.

Q. Okay. And then would you look at the address that she says that she and her brother live at?

A. Thirty-three, 33 Comly Road.

Q. Does that road sound familiar?

A. It sounds familiar.

Q. Is that not the road on the hotel receipts from Summerfield Suites for Ms. Glory Perez?

A. I think so. I would have to look in the record, whatever it was.

Q. But that does sound familiar?

A. It sounds familiar, yeah.

Q. Then I would ask you to turn to the November 15th, 1996 Dean Logan police report and this

is the second page.
A. Uh-huh (affirmative response).
Q. And I would ask you to look at the first paragraph. And Dean Logan is talking about speaking with Sara. Because as we've seen first reference Dean Logan spoke with Jim Cousart, Cousart said Sara and her brother came in, Dean Logan is at the dealership, calls Pivero, Pivero says she lives with her brother. We've actually got Dean Logan, this has progressed over six weeks, Dean Logan is talking to Sara Pivero finally directly.
A. Right.
Q. Page 2 of the November 15th report begins --
A. I asked Michael -- "I asked Sara who Michael was. She advised that Michael Pivero is her half brother."
Q. Okay.
A. And, Mr. Brown, let me, let me make a statement here.
Q. Sure.
A. To be honest.
Q. Sure.
A. When I see these brackets that looks like something that I read because I used brackets and I put brackets on some of the things. Sometimes I do

that, so I just want to be honest.

Q. Sure, okay. I appreciate that. Then the last thing dealing with the topic of her, of Ms. Pivero's relationship with Bayan Aleksey, again she testified in trial that we're boyfriend and girlfriend, I would ask you to look at the November 20th Dean Logan Doylestown police report page 1.

A. Okay.

Q. And I don't know how else to describe it, but it's the last full paragraph on the page.

A. "Pivero advised that Michael Pivero is not a relative of hers and that he was actually her boyfriend whom she had been seeing for several months. Sara met Michael at a club where he had been working."

Q. Okay. And then my question to you in light of her testimony at trial and her statements to the police, is that could have been used to impeach Ms. Pivero's truthfulness first because she gives inconsistent statements at trial and to police, and second because the report itself shows that she is willing to give false information to law enforcement?

A. That's true.

Q. Okay. The next topic, and we already talked about what she said at trial, would be the draining

of her investments. And I'd referenced that earlier, again it's trial transcript 1,615 to 1,616.

A. Uh-huh (affirmative response).

MR. BROWN: And, Your Honor, I beg the Court's indulgence. What I want to do is point out again the topic we're going to deal with just briefly is the draining of the investments she testified to at trial, 1,615.

(Mr. Zelenka reviewing documents.)

THE COURT: That's Exhibit...?

MR. BROWN: Fifty-six, Your Honor.

THE COURT: All right. Fifty-six. What is it?

MR. BROWN: I would describe it as three love letters, came out of trial counsel's file written by Ms. Pivero to Mr. Aleksey.

THE COURT: Any objection?

MR. ZELENKA: Allegedly written by Ms. Pivero.

MR. BROWN: And we will link that up with our handwriting expert, we will propose to do so.

THE COURT: All right. Subject to the linking up it will be admitted into evidence.

(Marked for identification was Applicant's

Exhibit 56, Love Letters.)

Q. If I may present these to you, Mr. Sims. Have you ever seen those before?

A. I don't recall.

Q. Okay. And once again, the testimony we're dealing with is where she testifies that Mr. Aleksey drained her investments. And on November 20th of 1996 in her statement to Dean Logan on page 4, which is already in evidence.

A. Uh-huh (affirmative response).

Q. In the last full paragraph of that page --

A. Which one now?

Q. Page 4 of the five-page report of Dean Logan dated November 20th, 1996.

MR. ZELENKA: What exhibit is that?

THE WITNESS: It's 55, I believe.

MR. BROWN: I believe that's correct.

MR. ZELENKA: Okay.

A. Dated November 20th?

Q. That's correct.

A. Okay. Page 5?

Q. Page 4.

A. Page 4.

Q. And it's the last full paragraph -- well, I take that back, it's the second to last full paragraph,

it's the larger paragraph. It starts out "I asked Sara..." But then the third sentence says "In speaking with her further it was learned that Michael may be responsible for draining her money out of her investments. She was advised that to date the money is gone from her account." So she has no idea where the money is?

A. True.

Q. Okay. So she says that to the police on November 20th. She also testifies to the same thing at trial almost two years later.

Now I would refer you to the portion of Applicant's 56, the love letters, one there's a letter dated November 26th, '96.

A. Uh-huh (affirmative response).

Q. And it starts out "Dear Michael:"

A. Yeah.

Q. Okay. And it says on the -- about four lines down, "Michael, I am so sorry about this. I feel like somehow this is all my fault. I want you to know, no matter what happens, I'll always be by your side, you can count on me for anything." And then even though that letter is typed she signs it, or purported to be signed by, other handwriting?

A. Yeah, PS.

Q. That's six days after she tells the police that she's draining him dry?

MR. ZELENKA: He's draining.

Q. That he's draining her investments. I apologize.

And the other thing I would point out about the accompanying letters, the other two letters that are in there, is that they are not -- the other two letters are not dated; however, in -- and I want to make sure it's on the same page.

A. Yeah.

Q. On the last page of what is stapled as Applicant's 56 it says -- by the way, I got this one because -- "Friday (11/22) we will have been together for six months. It seems like longer."

A. Yes, it does say that.

Q. Which seems to indicate this letter was written prior to November 22nd? And I just point that out because at the time she's telling the police that all this is going on.

A. Yeah.

Q. Now, again we talked about where she said she did not know the checks were bad, thought they would clear regarding the checks to the Lexus dealership, he was depositing checks, they were bad, that's in

the trial transcript 1,911, we already went through that.

And in contradiction of that I would ask you to look at the November 15th police report by Dean Logan, page 1, paragraph three.

A. (The witness complies.) Okay. You want me to read it?

Q. Well, yes, if you'll read just the -- sure, the beginning of that.

A. "Pivero advised basically the following: She advised that she was aware that the two checks she had written had been returned to Thompson Lexus due to the account having non sufficient funds."

Q. And at some point she talks about how she was hoping, and let me find this before I read it, I've got the quote in my notes. Says, "Pivero advised..." Do you see that about midway through the paragraph?

A. "Pivero advised that she was hoping to receive a check from a friend which she intended to use to cover the checks. She advised the check did not come through and did not know at this point if she would be getting the check."

Q. Okay. Now, her testimony at trial was that -- "Did you know at the time that you wrote those checks they wouldn't clear?"

And she says, "No." But in this report she says, well, I wrote these checks hoping to receive a check to deposit into the account.

A. I think she said that after she had received a certified letter from the Lexus dealer she hoped she was -- she thought she was going to receive a check from a friend to be able to cover that, not that the initial checks which were written were bad. I believe this is referring to the fact that after she received the certified letter from the Lexus dealer that she thought that she was going to get a check from a friend to cover the cost. That's the way I read that.

Q. Okay. But could it not be read that she wrote these checks, she was hoping to receive a check from a friend which she intended to use to cover the checks?

A. I don't read it that way.

Q. I understand, but I'm again -- well, I don't want to argue.

MR. ZELENKA: He's answered the question.

THE COURT: Thank you. Sustained.

Q. Again, for the record, the exhibit, the police report indicates that she's advised that she was hoping to receive a check from a friend that she

intended to use to cover the checks. Okay.

Now, we already talked about her salary of the witness and how the W-2 go to the dealership. She testified at trial 1,909, line 21 she made $15,000 a year at the hair salon and that there was a W-2 that indicated she made --

THE COURT: Seventy-eight, almost $79,000.

Q. That was faxed to the dealership and she had no idea about it?

THE COURT: Right. Been there. Move on.

MR. BROWN: Yes, ma'am.

Q. And I would point out in this information --

MR. BROWN: And by the way, Your Honor, these are our last questions.

THE COURT: Okay.

MR. BROWN: Of Mr. Sims totally.

THE COURT: Okay.

MR. BROWN: We would now turn to the application filled out for the Lexus. And if you'll bear with me I know there are 45 pages of the documents. And by the way, the W-2 is included in that 45 pages of documents. As soon as I find the application in mine, I'll refer you to the page.

THE COURT: You're looking for the

application is that what you're looking for?

MR. BROWN: Yes, ma'am.

THE COURT: Mr. Sims, if you can go ahead and start looking for it --

THE WITNESS: I am.

THE COURT: -- that would be great.

MR. BROWN: And actually right after the W-2 form appears a document says Toyota Motor Credit Company.

THE WITNESS: It's not that way on this one. It's after the picture here, Toyota credit document.

Q. Again Lexus is a Toyota company?

A. I don't know.

Q. Okay. Nonetheless, does it not give an amount of her gross monthly income on this application?

A. It says $7,000 or something like that.

Q. $7,500.

A. Okay.

Q. Per month?

A. Yeah.

Q. Which is $90,000 a year?

A. Yeah.

Q. And that contradicts, that there contradicts her testimony that she made $15,000. And also the police

report contradicts it. As far as the W-2 being faxed to the dealership, I would ask you to look at the November 20th police report by Dean Logan, page 3.

A. (The witness complies.) November 20th?

Q. That's correct.

A. Okay.

Q. Okay. And the second sentence of the last paragraph begins, "She advised the Lexus was from Michael..."

A. However, it again was in her name.

Q. "Initially Sara advised me that she did not fill out any of the credit applications nor was she aware of any of the income on the W-2 forms faxed to Lexus." That's what she testified to at trial here as well.

The officer goes on, "I showed her a copy of the Toyota Motor Credit application which had been filled out and signed with her name. She advised that she must have filled out that information because it was her handwriting and her signature. I asked her if she was aware that the W-2 indicated she made in excess of $75,000 in 1995. She advised that she was not aware that it listed that much money. She advised that she only made about $20,000 due to being in school." The officer says,

"I again showed her the Toyota Motor Credit application which had a monthly income of $7,500 listed which was written in her handwriting. Sara advised that she must have wrote that because Michael told her to do so."

And, again, this is during the same period of time that those three love letters cover, although two are undated, two are before November 22nd and one is dated November 26th.

A. Uh-huh (affirmative response).

Q. Okay.

THE WITNESS: I'm sorry, I keep saying uh-huh. That's yes.

Q. And just to clear up the issue about the checks itself, if you'll look to page -- November 20th police report, page 4 of 5.

A. Uh-huh (affirmative response). Page which now?

Q. Page 4 of 5, first full paragraph, page 4 of the November 20th police report.

A. The first full paragraph?

Q. That's correct.

A. "I asked Sara if she had any intentions...", is that what you're talking about?

Q. That's correct, yes, sir.

A. "I asked Sara if she had any intentions in

making good on any of the checks which she personally issued. Sara advised at this point she had no ability to do so. I asked her at the time the checks were issued was there sufficient funds to cover the checks. Sara advised that she was expecting two checks from Michael to cover the cost. She advised that Michael was expecting to receive money from lighting work he had done at the club. However, he never received the money."

Q. And so to clear up the ambiguity that you mentioned or the way you interpreted her statement that I referenced earlier, here he said I asked her at the time the checks were issued whether sufficient funds. Her response was I was expecting two checks from Michael, which indicates that she didn't have the money, because expecting means she doesn't have them.

A. I agree with you on that one.

Q. That one combined with the other one puts a different reading on it?

A. No, not to me. The other one still says to me that after she had received notification from the Lexus dealer she thought that she was going to get a check from a friend. And supposedly she would have said I thought I was going to get a check from

Michael if you read it the way you're saying calling him Michael all along. In this instance she said I thought I was going to get a check from the friend to cover the cost of the checks. So she did not specifically mention Michael this time in the first one that you talked about.

Q. Right. And page 4 of this report which is five days after the -- the one we just read said she's expecting two checks from Michael to cover it, five days earlier she had said, quote, "...hoping to receive checks from a friend to cover the Lexus."

A. Yeah.

MR. BROWN: And there's one last thing, Your Honor, and we are through with our examination of -- actually I have --

THE WITNESS: I knew you had one.

MR. BROWN: -- two questions that will be brief. I don't have a document.

Q. One question we had talked about the Office of Disciplinary Counsel telling you all to turn a file over to Mr. Aleksey.

A. Yeah.

Q. I don't mean this question to be too pointed, I just want to ask whether you believe the Office of Disciplinary Counsel can override the statute that

requires, that says trial counsel shall maintain a file?

A. I did not even consider the statute when I got the call.

Q. Okay. And then my last question is were you aware of any prior relationship between Judge Cottingham and Trooper Lingard?

A. No.

Q. Do you know whether or not Judge Cottingham had ever made comments about Trooper Lingard's performance as a witness in a case that he presided over?

A. I do not recall.

Q. Okay.

MR. BROWN: Your Honor, that concludes our direct examination of Mr. Sims.

THE COURT: Very well. We are going to take a lunch break. Let me tell you -- well, I guess I'll ask of you whether or not you have exhibits that you intend to admit? And if you do --

MR. ZELENKA: Right now I don't. I may have some things to refresh his recollection.

THE COURT: That will be fine. In other words, you don't have -- if I had known we were

dealing with 50 I certainly would have had you all look at them beforehand, but that's fine. But if you have got to do that.

MR. ZELENKA: Your Honor, we had made a request, they basically said they wanted to try the case and put in the evidence as it came in.

THE COURT: I'm with you. We're not going to do that anymore. Let me make myself real clear about that, gentlemen. If you have any other documents that you intend to offer into evidence, I'm going to tell you that you must show them to counsel. We took testimony with Mr. Sims about 60 percent of the time, 40 percent of the time for the last three days I kind of sat here waiting on you with documents. I'm happy, want to be patient, but we're not going to do that anymore, particularly once it was clear the State wasn't going to object to those exhibits.

So if you have any more exhibits in this proceeding that you intend to admit into evidence, you are going to show them to counsel, see if there is an agreement that we can premark them, okay?

MR. TARR: Your Honor, as we anticipate now

it is Thursday at 1:20 that we're probably barely going to get finished with half of our anticipated --

THE COURT: Sure.

MR. TARR: Still have some work to do on the witnesses we think will go this week.

THE COURT: Sure.

MR. TARR: Can we limit the evidence that we show him --

THE COURT: Sure.

MR. TARR: -- to what we think's going to go in this week?

THE COURT: Absolutely.

MR. TARR: Thank you.

THE COURT: So long as you all do that before you reconvene. Even if you do it the morning of we can delay it 30 minutes or so, so that you can show counsel those documents that you intend to do. But I don't want to do it again. It's just not efficient, a waste of everybody's time.

MR. TARR: We apologize for the delay.

THE COURT: It's fine, you were there, I didn't insist or anything differently so don't you worry about that, but I do think it's

appropriate that we do it going forward. And everybody have a wonderful lunch and we're going to start back at 2:30. 2:30.

Let me mention this to everyone. Listen to me just a second. Mr. Duffie called, I told Mr. Duffie to call back at 2 o'clock. And if we have his number -- do we have the number? I don't mind -- with your permission I don't mind calling him and telling him to be here in the morning. Because I know you all have got some experts that you need to -- that you need to call this afternoon.

MR. TARR: I've already told them we weren't going to get to them today, got their tickets refunded, we would call them whenever we know we're going to do so. We do have witnesses, so long as we got through with Mr. Stone and have time for more then we can always do Walter Bailey or the SLED agents or whatever.

THE COURT: Sure. Sure. I'm not tying you to this.

MR. ZELENKA: I understand.

THE COURT: Just in terms of planning do you have an idea about how long we're talking

about for cross? I don't even know if that's fair to ask you at this point, how about that?

MR. ZELENKA: Well, I would have earlier anticipated my cross-examination would have been about two hours, but in all honesty I haven't mentally contemplated based upon the application the number of documents and things we might be discussing.

THE COURT: Sure.

MR. ZELENKA: So --

THE COURT: In other words, it's safe to tell Mr. Duffie in the morning?

MR. ZELENKA: I think it's fair, yes.

THE COURT: Very well. Very well. We'll do that in the morning.

MR. TARR: Any additional documents we intend to introduce for Mr. Stone will be provided no later than 8:30 or 9 o'clock in the morning, you can go over them.

MR. ZELENKA: That's fine.

THE COURT: Yeah, that will be fine. Thanks. Great. Y'all have a good lunch.

MR. TARR: Thank you, Your Honor.

MR. BROWN: You, too.

(Lunch recess taken from 1:20 p.m. to 2:45 p.m.)

THE COURT: All right. Are you ready? Cross-examination.

MR. ZELENKA: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. ZELENKA:

Q. Mr. Sims, how long have you been practicing law?

A. Now up to this point?

Q. Yes.

A. About 24 hours.

Q. And how long had you practiced at the time of this trial in 1998, if you recall?

A. About 20 years, I believe.

Q. Okay. And what portion of your practice had been involved in criminal law work?

A. The majority of my practice had been involved in criminal law work. For about ten years I was in the solicitor's office as a prosecutor and since '93 I had been doing criminal defense.

Q. Okay. And in 1992 you ran for solicitor; is that correct?

A. Yes, I did.

Q. And you were the acting solicitor at the time prior to you running; is that not also correct?

A. That's correct.

Q. Once you were appointed in this case there was

some testimony that you met with Mr. Aleksey, a review of your notes I believe, and let me pass this information up to you if you need to refer to it which is a copy of materials which defense counsel provided earlier in this proceeding.

A. Uh-huh (affirmative response).

Q. At the time of your meetings with him he initially asserted, isn't it true, that Gloryvee was the actual shooter in the case?

A. That's correct.

Q. At any time during your meetings with him prior to the time of trial or during the time of trial, did he vary from who was the triggerman in this case?

A. No.

Q. Okay. So your theory of the case was always that Gloryvee was actually the triggerman?

A. Yes.

Q. Is that correct?

A. Uh-huh (affirmative response).

Q. In your discussions with co-counsel Duffie Stone, did you become aware, or were you aware at that time that he was a part-time solicitor in the 14th Judicial Circuit?

A. Yes, I was.

Q. Did you have discussions at all with Mr. Stone

about whether that impacted on his ability to represent Mr. Aleksey?

A. Yeah.

Q. What were those discussions, if you recall?

A. We talked about it because we were concerned of in terms of -- that's why we put it on the record and wanted to be sure that we had put that on the record. And at no time was I ever under the opinion or under the influence that he would not do what was required.

Q. Okay. At any time did counsel Stone suggest to you that he had conflicting loyalties at all in this case?

A. No.

Q. At any time did he suggest to you that -- not to do something which may impact upon other clients he may have through the Insurance Reserve Fund?

A. No.

Q. Anything that he suggested to you should not be done based upon the fact that other public agencies were involved, Orangeburg police, the detention center, any of those factors?

A. No.

Q. When you -- at any time during your representation of Mr. Aleksey after the first discussion on the record in, I believe it was,

February 1998 before Judge Brown, did Mr. Aleksey ever request of you to see if Mr. Stone could be removed from the case for any reason?

A. Not to my knowledge.

Q. Okay. You indicated on direct examination that you had apprised Mr. Aleksey of the fact that you were a former solicitor, assistant solicitor in this state; is that correct?

A. Yeah.

Q. You also informed the judge of that inquiry on the record in February of 1998. What was your purpose in doing that at that time?

A. Because I wanted to be sure that he understood my prior relationship with prosecutors and as a prosecutor, and I wanted to be sure he understood what I had done. And as I stated on direct examination, I also at one time explained to him what the prosecutor was, what the solicitor and the district attorney were. And maybe in New York or where he was from they called them the district attorney or the DA, but here in South Carolina the person who performs that function was, in fact, the solicitor.

Q. Okay. Did Mr. Stone ever suggest to you that the fact that he was an assistant solicitor,

part-time assistant solicitor could act in their favor in some way, act in your favor in some way in this case?

A. What do you mean?

Q. Did he suggest that his other role as an assistant solicitor could be beneficial to his client in any manner to you?

A. Well, we both talked about our experience as prosecutors which would have enabled us to have some idea in terms of what a prosecutor would be looking for and how they might go about it. In that context, yeah.

Q. Okay. Now, in your preparation for the trial you met with the defendant; is that correct?

A. That's correct.

Q. And did you discuss with him the facts and circumstances surrounding the various statements he made to law enforcement officers, Mr. Mears, Mr. Darnell?

A. Yes, we did.

Q. Did you have the opportunity also to discuss that information or what occurred at the time of the statements with Mr. Mears and Mr. Darnell?

A. What occurred at that time?

Q. Yes.

A. Yeah.
Q. Did you do that independent of your client, out of his presence?
A. What do you mean? No, we talked to him about it, if that's what you're talking about, we talked with him about what had happened and about how those statements arose.
Q. And in your discussions with him, if you can recall, what did he essentially tell you during the course of your representation?
A. Initially we would just -- we talked about it, but as time went on he did make that statement that I said on direct examination "They beat the crap out of me."
Q. Now, that statement, "They beat the crap out of me," did you make inquiry of the law enforcement officers whether such a situation had occurred?
A. Of course, we investigated all the facets that were brought to us. We investigated the facets of the two-hour gap, that was one of the things that both Duffie and I were very concerned with and we did go into it in terms of investigating.
Q. Okay. Did you get any independent investigation to suggest to you that there was other evidence which would support any either physical assault or threats

against your client during that time period?
A. No, we didn't.
Q. Okay. Did you inquire of either Mr. Mears, Mr. Darnell, or anyone else in that area as to whether they could have seen or saw such activity?
A. During that course we did, I believe we did talk with both of them during the course of our investigation and getting involved in, as specifically questions were asked about that two, two and a half hour gap.
Q. Did they suggest to you that they had information that would support that they had beaten the crap out of him?
A. No.
Q. Or words that he might have interpreted that that was something which was occurring or could have occurred?
A. No.
Q. During the *Jackson v. Denno* hearing you did not make inquiry of any of the law enforcement officers concerning whether, in fact, such a physical assault or threat occurred at that time; isn't that correct?
A. That's correct.
Q. Why didn't you do that when your client had suggested to you that there had been some sense of a

physical threat at that time?
A. If I recall, I believe that we had made the determination that there was no factual basis, we couldn't prove it or anything of that nature. There was no physical evidence that I know of that I can recall. And I think that was based upon a conversation or a collaboration between me and Mr. Stone.
Q. Okay. Isn't it true, however, that you could have outside of the jury's presence in the *Jackson v. Denno* hearing have your client testify about his fears, his concerns at the time of the statement?
A. Yes.
Q. Why did you not do that or suggest that, or did you even tell your client about it?
A. I don't recall if we ever told him about that or we may have, I don't know. You know, I'm going to have to defer some of that. At that time as being second chair and talking with Mr. Stone as lead counsel, we collaborated on a number of things.
Q. Okay. But at this time you don't specifically recur, occur, remember why you did that?
A. No.
Q. All right. Going back to a comment you just made, at the time of your appointment in this case

with Mr. Stone did you develop certain roles to play in the representation of your client? You suggested that Mr. Stone was lead counsel. How did that play out in the manner that you prepared your representation in this case?

A. Well, a lot of it was done together where we would collectively get together and talk about how we thought we should proceed and how we thought it would be best based upon the information that we had at the time.

Q. Was this your first death penalty trial?

A. This was my first defense death penalty trial.

Q. Okay. Were you aware whether it was Mr. Stone's first death penalty trial at that time?

A. I'm not -- I don't think it was.

Q. Okay. In making that determination, were things split up guilt phase, penalty phase, laywitness, expert witnesses?

A. I think at some point it evolved that way, but there was no initial you just handle this and I handle that. Initially in gathering the information and working together we began to pull things, you know, together.

Q. Okay. Did it affect your representation that you were located in Orangeburg and Mr. Stone was not,

that he was out of the circuit?
A. No, we talked on the phone a great deal.
Q. With respect to the file, who maintained basically the case file among the two of you?
A. Well, there were some things that I had in my file that I think Duffie had kind of what we called I guess the central file, he put stuff on his computer and I got material also.
Q. Okay. But if there was a central file, wouldn't that be Mr. Stone's file? Was it supposed to have all the items in it or were you totally separate?
A. Well, I would think that his would have, would have had everything in it.
Q. Okay. Now, prior to trial with respect to the investigation, did you also make a determination as to whether you would seek a change of venue in this case?
A. We discussed change of venue, we did.
Q. And on direct examination you suggested that you did not make the decision to seek a change of venue in favor of a change because you were of the opinion that Orangeburg was the best place to try this case on your client's behalf; isn't that correct?
A. That's correct.
Q. And your recollection is that Mr. Stone agreed

in that opinion?
A. Yes.
Q. And, again, what was your reason for believing in your mind that Orangeburg was the best case with respect to Mr. Aleksey's case to try?
A. Well, we did talk about what we thought, what I mentioned was ethnicity. I can't ever say that word right. But we talked about ethnicity, but we also drew upon our experiences and I drew upon my experience here in Orangeburg County, having seen Orangeburg County juries in the face of overwhelming evidence, prosecutorial evidence just let people -- you know, would find the person not guilty.
Q. Okay.
A. Also the racial makeup of Orangeburg County.
Q. Okay. And although it's not been stated in the record, you are an African American; isn't that correct?
A. Yes, I am.
Q. And the victim in this case was African American?
A. Yes.
Q. Yet Mr. Aleksey is not African American; isn't that correct?
A. That's correct.

Q. Why were you of the opinion that the racial makeup of Orangeburg County would have impacted in his favor in this circumstance?
A. Well, as I just indicated, because of my experience and the experience that we had with juries in Orangeburg County, and I guess in the back of my mind I knew I had some credibility here in Orangeburg County being here all these years and knowing a great number of people that, too, would have come into consideration. I mean, all of those factors are taken into consideration.
Q. Okay. Now, following up on that there was a decision during the voir dire to ask questions about the foreign national, do you believe foreign nationals should have the same rights as non foreign nationals. Do you recall some of those questions on direct?
A. Yes.
Q. Isn't that true?
A. Uh-huh (affirmative response).
Q. At the time of the trial Solicitor Bailey objected to you asking those questions and the judge overruled those objections; isn't that correct?
A. That's correct.
Q. And isn't it true that the reason that you asked

that question was to seek to ferret out some non apparent bias some of these potential jurors may have had; isn't that correct?

A. That's correct.

Q. That it was not intended to create a bias towards your particular client, but was to unearth other biases which may impact upon those decisions; is that correct?

A. That is correct.

Q. And that decision was made essentially based upon some information that Mr. Stone had provided to you about some federal questionnaires; isn't that correct?

A. That's correct.

Q. But you agreed with that strategy also; is that not also correct?

A. Yes.

Q. Also there was a decision again which may have been made by Mr. Stone not to specifically ask the questions about what position you would be in with respect to your beliefs on the death penalty; is that also not true?

A. That's true.

Q. And the Court was advised of that in the beginning, is that not also true, on the record?

A. That's correct.
Q. And the Court asked each juror which three positions of a juror they would fit in: Whether they was always in favor of the death penalty, always in favor of life, or would consider all the evidence before they would make that decision; isn't that correct?
A. Yes.
Q. And I believe on direct examination you indicated that you thought that you may have also asked those three questions; isn't that correct?
A. Yes.
Q. But the record would speak for itself on that also; is that not correct?
A. Yes.
Q. And you may have been wrong in that; isn't that also true?
A. That's quite possibly true.
Q. With respect to rehabilitating jurors, do you know of a conscious decision you ever made with any particular juror that you thought that they could not be rehabilitated that you didn't seek to choose to rehabilitate them?
A. There were -- I believe there were maybe -- there were some, I can't remember the names of which

one, but there were some because of the way they were adamant in their position we felt that it would be useless to try to rehabilitate.

Q. Okay. But there may have been some jurors that, in fact, as you recall you did seek to rehabilitate; isn't that correct?

A. That is correct.

Q. Again, as was developed on direct examination, you used seven of your ten preemptory challenges; isn't that correct?

A. That's correct.

Q. And you had some challenges still available for you at the end; isn't that correct?

A. That's correct.

Q. And you stated that some of those reasons were based upon the fact you were saving those challenges up for people that you were more concerned about as far as your client's case and their potential to sentence him to death rather than life in prison; isn't that also correct?

A. That's correct.

Q. Now, at the conclusion of that no motion was made for a change of venue, and you accepted the jury as it is; is that not also correct?

A. That's correct.

Q. Isn't it true that you had stated to me previously words to the effect that you were very satisfied with the jury that you ended up with at the time that that selection was completed?
A. That's correct.
Q. You were satisfied that this would be a fair jury for your client; is that not also correct?
A. That's correct.
Q. Do you know SLED agent Buster Edwards?
A. Yes.
Q. Had you known him before this trial?
A. Yes.
Q. How had you known him?
A. He was a SLED agent, I was a prosecutor during those periods of time. And I knew him also as I left the solicitor's office and had been on defense cases.
Q. Okay. Were you aware at the time of the trial that Mr. Edwards had had some contact with your client, Mr. Aleksey, with respect to serving the warrant and transporting him from the hospital?
A. I believe I did.
Q. In discussions with your client, did your client ever indicate to you that he had ever invoked or made a request to have counsel during that trip from the hospital to the law enforcement center?

A. No.
Q. Did you ask him about what occurred during those trips or any contact he may have had with law enforcement?
A. I can't recall that I specifically asked him what occurred during that period of time.
Q. Okay. Did your client ever indicate to you that he had invoked his right to counsel after he had been in the hospital at any time during the statements he eventually made?
A. I don't remember him ever saying he did.
Q. Okay. Is there anything you knew about -- let me ask this: Did Agent Edwards ever act as a bailiff, if you can recall, in any other case you were involved in?
A. Yes.
Q. Did you have any reason based upon that to be concerned about the ability of Agent Edwards to follow the oath that he was given and not seek to suggest, or act inappropriately toward any jurors in this matter?
A. None whatsoever.
Q. Did he have confidence that based upon your working relationship with him that that was something you would not need to look into or be concerned

about?
A. Yes.
Q. Was there any indication that Mr. Edwards was, in fact, a fact witness on any of the issues sought to present in this case?
A. No.
Q. Now, at the time Mr. Aleksey did suffer some injuries at the time of the accident; is that not also correct?
A. Yes.
Q. Was there any suggestion from Mr. Aleksey to you that any of those injuries occurred at any time other than that accident itself?
A. That was the only time.
Q. Did he suggest any injuries subsequent to that time that he could point out to you or did point out to you that occurred through any law enforcement activity other than the wrecking of the vehicle?
A. None.
Q. And, again, following up on that he never suggested at any time that Mr. Edwards had any special knowledge about any injuries he had received; is that correct?
A. That's correct.
Q. Now, prior to the beginning of the case in

meeting with Mr. Aleksey, developing the information that you had received from the State and your discussions with Mr. Stone, what, at the outset of the trial, was your theory in the case?

A. The theory that we prosed was that Mr. Aleksey may have been a bad person, had done some bad things, but there was never any violence in his background.

Q. Okay. Was there concern about the statements that he made to the police?

A. Yes.

Q. And that they were inconsistent; isn't that correct?

A. Yes.

Q. Did you consider seeking to attack the truthfulness of those statements that he had given the police that suggested that he was the shooter?

A. Yes. We always -- you know, when you go into your investigation you always think about that issue.

Q. Okay. And how were you going to approach that issue as to suggesting that that statement that he gave which implicated himself as the shooter was, in fact, an erroneous statement?

A. We -- you know, we went through the normal -- I guess let me try to go back and restructure in my mind.

We did, I believe, in the Jackson hearing raise some issues in terms of whether or not the statement was a truthful and accurate statement based upon what we had at the time.

Q. Okay. Prior to the time of the trial in your defense based upon the inconsistency in the statements that he gave, at the outset of the case did you have an opinion or a theory as to whether Mr. Aleksey would testify that the statements he gave were false or coerced in front of the jury?

A. We -- I think we deferred that statement until during the process of the trial. I don't think we made a, an off-the-cuff statement, I think we waited until the development of the trial in terms of discussing that with him and talking to him about it. We always talked to him about his statement, but the issue of, of whether he was going to testify if that's what you're asking me.

Q. Yes.

A. Was done at a later time, to the best of my recollection.

Q. Okay. And what was the determination that was made as to whether he would testify or not?

A. Well, my practice has always been, in any case, is to lay out the pros and cons and then let the

person make the decision.
Q. Okay. At the time that he was approached on making the decision, was he then aware that the information about his representation to you about beating the crap out of him or the alleged five-year deal if he gave his statement that that would not be able to come in and presented to the jury other than through his mouth?
A. I think we did talk with him about that.
Q. Okay. Was there -- had you developed any other information that would suggest that that could come in through any other source other than Mr. Aleksey?
A. Not that I know of at this point. I don't recall.
Q. Okay. Now, prior to trial you had hired Dr. Donna Schwartz-Watts?
A. That's true.
Q. A forensic psychiatrist?
A. Right.
Q. What was the purpose of hiring her in this matter?
A. To meet with Mr. Aleksey and to give us any information. Let me put it -- Mr. Stone, having had prior relationships with most of the experts initially decided on whom, you know, and I deferred

to his judgment in terms of whom we were going to hire. So he was responsible for hiring everybody and we just worked together with him. And, of course, working with Dr. Watts in terms of determining whether or not there were things we may be able to develop based on her examination of Mr. Aleksey.

Q. Okay. And she did not testify either in the guilt phase or the penalty phase of this trial in your defense; isn't that correct?

A. That's correct.

Q. Yet she was retained by you and assisted in the defense in developing some information for you; isn't that correct?

A. Yes, that's correct.

Q. You also hired a neurologist out of the Medical University of Charleston, Dr. David Bachmann?

A. Yes.

Q. And Dr. Bachmann testified about some health problems that he may have had which suggested that there may have been some impact on the statement he gave; isn't that correct?

A. That's correct.

Q. And was that one theory that you were seeking to develop as to why that statement may not be true?

A. Yeah. And now that you mention it, as I said,

that was -- a lot of things I did not remember and don't remember having not had the benefit of that, but I do remember in talking with Mr. Stone one of the issues that we questioned was whether or not the statements could have been impacted by the blow that he received when the car was actually stopped down in Summerville, whether or not that would have had an impact on his ability to recall and/or whether or not that would have an impact upon what he would have said or would not have said.

Q. Okay. And that was part of your theory to remove from the evidence that erroneous statement; isn't that true?

A. Yeah.

Q. Not as a matter of law, but a matter of the jury's mind; is that not correct?

A. Right.

Q. You had also hired Jeffrey Hollifield, a former SLED agent --

A. Right.

Q. -- to assist you in part of the forensic evidence --

A. That's correct.

Q. -- is that also not correct? You utilized him concerning the gunshot residue and other matters; is

that correct, also not correct?
A. That's correct. Because I believe the record will reflect that there were questions about the bagging of the hands and when that occurred and whether or not the fact that if he had fired a weapon gunshot residue would still be on the hands. And we tried to show that the hands were bagged and that there was absolutely no gunshot residue on his hands.
Q. Okay. And, in fact, there was evidence presented through the SLED agents in their examination that, in fact, many of them were trained by Mr. Hollifield; isn't that not also correct?
A. I believe that's correct.
Q. Now, you testified on direct and earlier about opening the door on some of his bad acts as part of your strategy. And how did that strategy with his bad acts then add in to your strategy with respect to the series of women that he had had contact with previously and during the criminal event itself?
A. We felt that it was consistent, because all during the scenario with the various women it was shown that he would use a name, he would, you know, get the money, he would have a good time with them then he would move on. Never was there an indication that he had done anything of any violent nature in

regards to those women.
Q. Okay.
A. So it was consistent with our theory.
Q. Now, during this particular proceeding you have been challenged about a failure to develop or present certain additional impeachment matters with each of these women; isn't that correct?
A. Yes.
Q. Yet is it not also correct that in virtually each of these events, Mr. Aleksey, as you have seen from these materials, was either a participant or a beneficiary of each of those facts that they were charged with?
A. That's correct.
Q. As a matter of strategy, how would that, or how could that information have impacted upon whether you would have further presented that information which was not presented at the time of the original trial? And we can start with Yelena Batkilina about her guilty plea in Florida where she acknowledged that she was with Aleksey at the time of the Osceola crimes.
A. I specifically asked Mr. Aleksey about Batkilina because I knew that they had had a relationship and he never told me anything about their things in

Florida or anything like that. And I think that when you start talking about his involvement in that he was going to open even more doors than we chose to open as it relates to his activities, we wanted to show him as a gigolo, we wanted to show him as a man who had a way with whom who could, you know, con women, talk to them, get them to give him their money and get them to buy cars and expensive toys and have a good time in Atlantic City and all these other places and then, you know, leave.

Q. Okay. Was it your understanding from your discussions with Mr. Aleksey that he was basically the driving force in these relationships --

A. Yeah.

Q. -- with these women, not the pawn of the women in their activity?

A. Yeah. It's his thing to meet them, get what he could get and move on.

Q. Okay.

MR. ZELENKA: The Court's indulgence one moment.

(Pause in proceedings.)

Q. Prior to the time of trial or during the time of trial, did you have any discussions directly with Ms. Batkilina?

A. Me directly?
Q. Yes.
A. I don't remember having any with her directly.
Q. So your first inquiries of her is when she testified on the stand; is that correct?
A. That's correct.
Q. Did Mr. Stone, to your knowledge, ever have any direct discussions with Ms. Batkilina?
A. I don't know.
Q. Okay. Did you attempt to do that at all?
A. I did not. I did not.
Q. Okay. Now, with respect to when that particular incident occurred as to whether it was in 1996 or '97, did you have information that reflected to you that the gun was actually purchased in November 1996?
A. I don't know if I did. As I said, that may have been a document that was in -- maybe alleged in the file or not, I don't know. I can't recall without having that file.
Q. Okay. At the time of trial did it impact on you at all that there was a difference between the 1996 date and the 1997 date?
A. No, it did not.
Q. Did you have any reason to believe when Thomas French testified that he sold the gun in

November 1996, that that was a false statement or a true statement?

A. No.

Q. Now, with respect to Lisa Watson, again how did you approach her, or to begin with, did you ever discuss Lisa Watson with Mr. Aleksey?

A. Yes.

Q. What was your discussion with him about?

A. To give me anything he knew on her.

Q. Okay. Were you aware of the Western Union transaction and the purchase of the Mustang?

A. No.

Q. You don't recall any discussions about that?

A. I don't recall any.

Q. As to how he became involved in the Mustang itself?

A. I can't recall.

Q. Okay. Based upon the information that you received with the recording, let me pull Exhibit 21. A portion of that had been read on direct examination. Isn't it true that on the document that you had previously seen, Applicant's Exhibit Number 21, that the reference to 11/20/97 at 11:04 also related that "Fred was present when Barclay told B that she was CB"?

A. 11:04?
Q. Excuse me, 11:04, if I may point to that area.
A. Okay. "Fred was present when Barclay told B she was CB," whatever that is, "said could not make payments on the vehicle. Claims she did not call back with claim number. Person in background was telling B what to say, said dealer knows Barclay better than her."
Q. Okay. And Barclay was identified by her at some time as being Bayan Aleksey; isn't that correct?
A. I guess so, yes.
Q. So, in fact, that document suggests that she had revealed and that there was, in fact -- in fact, that Bayan Aleksey was telling the witness, Lisa Watson, in the case what to say and what to put on; isn't that correct?
A. That's what that says, yeah.
Q. Is that the type of information you would have wanted to bring out on cross-examination?
A. Yes.
Q. Why is that?
A. Well, in terms of if you're asking me if that's the kind that I would have wanted to bring out or whether or not we were talking about it in the context of where we were going with our trial, we

chose to go with the fact of her complicity and culpability in all of these things.

Q. Okay. And, again, it reflected that Aleksey was with her at the time of these transactions; isn't that correct?

A. That's correct.

Q. And that is essentially what she testified at trial, too; isn't that also correct?

A. Yeah, that he had knowledge and she knew what was going on.

Q. Okay. Was it important to your defense at that time to suggest that she had made inconsistent statements about the amount of money she had lost at the hands of Mr. Aleksey?

A. No.

Q. Why would that not have been important for you to bring out at that time?

A. Well, because as I said, we wanted to share her knowledge, she was having a good time and that she was involved with this and she was coming in now because she was scorned. I think I used that phrase hell has no furry greater than a woman scorned, that's what we wanted to show as a woman.

Q. As a defense theory do you sometimes have -- make decisions that although there may be

inconsistent statements you're not going to use each inconsistent individual statement to impeach or impugn a particular witness?

A. Yeah.

Q. It's evident that Lisa Watson made a number of inconsistent statements involving these transactions; is that not also correct?

A. That's correct.

Q. Developing that inconsistency, was that important to your defense?

A. No.

Q. With respect to Gloryvee Perez, she was a focus of a lot of your investigation; is that not correct?

A. That's correct.

Q. You sent investigators up north to seek to develop some background information upon her?

A. That's correct.

Q. What, if anything that you recall, did you learn about Gloryvee Perez as a result of that information?

A. I think the -- think that we did learn, and it may have come from Mr. Stone, was about that -- the drug conviction and the indictment.

Q. Okay. And that would be the 1991 drug conviction which was previously introduced?

A. Yeah.

Q. In discussions with your client and your own investigation, did you have a potential theory of defense about what, in fact, was going on at the time of the crime -- excuse me, at the time of the death of Patrolman Lingard?
A. We, of our own, may have had a theory, but we were never actually given, if I can recall, a statement of what was going on other than the fact that he shot her [sic].
Q. That he shot him, or under his position that Gloryvee shot him?
A. Yeah.
Q. Did he ever assert that Gloryvee shot him because she was on the run from law enforcement?
A. I can't recall. There was some discussion about why would you do something like that, why would she do that, and that issue probably came up in regards to that and we used that conviction as a basis to cross-examine her and bring that out.
Q. Okay. Did you have a concern that some of Gloryvee's property was not searched as far as you knew?
A. Yeah.
Q. Why was that?
A. Well, if I'm recalling correctly, there was a

question I believe of whether or not the bag or something that she had, was a bag or something, whether or not it was searched. And as stated, by the time we began wanting to look at those, they were already gone.

Q. A bag being a diaper bag as best you recall?

A. I believe, something like that.

Q. Why did that give you some concern in your investigation?

A. I'm trying to think what we were going to in terms of whether or not there was any contraband in that bag which would have prompted her to act the way she did and we could have used to show that she had a reason for, you know, firing the fatal shots.

Q. Okay. Were you aware at the time of her 1991 conviction that she had turned to some extent State's evidence on her mother?

A. That was a part of my questioning and going into it with Judge Cottingham, why we wanted to bring that out about her deals.

Q. Okay. So you were aware of that?

A. That she had, yeah.

Q. Okay. And did that impact on how you approached impugning her?

A. Well, we wanted to -- we attempted to try to get

in all of the indictment -- all of the indictments that she had, we wanted to bring up that issue as it relates to that, you know, if she would turn on her mom she'd turn on anybody.

Q. Okay. Now, you had also had discussions with her husband or her estranged husband, Marcus Blackwell; is that also not correct?

A. That's correct.

Q. And you testified on direct examination as to what the purpose of Mr. Blackwell was. And what was that?

A. The purpose was to show her violent nature as opposed to what we had tried to develop with his, that she was the one who, in fact, had the violent nature, was most -- and we could have developed it in terms of saying she would be the one who was most prone to violence than him.

Q. And were you aware at the time based upon your investigation that she had used a number of identification cards under different names?

A. I think we had that. You know, we had that, those different cards.

Q. Okay. When you introduced those at the time of the trial, what was your purpose or your strategy in having those cards introduced?

A. To show, too, that she was also doing basically the same things, moving around and that she had different ID's.

Q. Okay. Did Mr. Aleksey, in any conversations you had with him, suggest to you that Gloryvee looked like her sister or that Gloryvee had ever used, to his knowledge, any identification of her sister?

A. Not that I can recall, no.

Q. Okay. Now, subsequent to the trial your client asked you to acquire some material from law enforcement; isn't that correct?

A. Yeah, I believe that's correct.

Q. And --

A. I don't know whether he asked me. I know I got a call from somebody that said they wanted to either return those, return some personal items or he had asked me, somehow I got the items back.

Q. Okay.

A. And I signed for them.

MR. ZELENKA: I apologize, Judge.

THE COURT: Okay.

MR. ZELENKA: I know this is contrary to what we had said we were going to do before.

THE COURT: You probably don't have very many.

MR. ZELENKA: I don't.

THE WITNESS: I hope not.

MR. ZELENKA: And I'm just going to use this to refresh his recollection.

Q. Okay. Let me show you a document and ask you if that refreshes your recollection.

A. Okay, yeah. This is --

Q. Does that refresh your recollection --

A. Yeah.

Q. -- as to what your client was asking you for?

A. Yeah.

Q. What, in fact, was he asking you for?

A. He indicated there were phone bills, hotel receipt, $234 in cash, a box of pictures, an envelope, a black case with negatives, a lie detector test from Gloryvee.

Q. Okay. So in May 1999 Mr. Aleksey was asking you for items that he said belonged to him, correct?

A. Uh-huh (affirmative response).

Q. Which were including various motel receipts and the like that were found in the vehicle?

A. Yeah.

Q. Okay. And as a result of that request, you obtained a number of items and you noted some hotel receipts previously?

A. That's correct.
Q. And those were -- the receipts, as best you recall, were recovered and turned over to you as being Mr. Aleksey's items after Mr. Aleksey declared that they were his; isn't that correct?
A. As I said, yes. As I said, the same thing as I was asked on direct examination, I got the material, put them in a box, put them in a box and sent them off.
Q. At least after May of 1999 after he was convicted he was declaring to you that he had -- the motel hotel receipts in the car were his?
A. Yeah.
Q. And those would be from the Summerfield Suites?
A. Those were the only ones that I had been shown.
Q. Okay. And on direct examination you had heard that he was staying in the Summerfield Suites with various females; is that also not correct?
A. Yes.
Q. At various times from 1996 through 1997, correct?
A. That's correct.
Q. Yet each of those times those suites were placed in the females' names; is that not also correct?
A. That's correct.

Q. Concerning Gloryvee Perez, did you become aware that she had been passing bad checks or fired from her job with the doctor in -- up north?
A. I don't recall if I did or did not, I really don't.
Q. Okay.
A. I know I didn't -- I don't think I had any knowledge before we began talking about it at the beginning of this process.
Q. Okay. You did the cross-examination of the daughter of Ms. Perez, Gloria Mai Rivera, do you recall that?
A. Yes.
Q. Do you have any other information other than her testimony that she was asleep and woke up, that Gloria Mai was totally unaware of anything that occurred during that incident, she was a passenger in the car?
A. She was asleep, she woke up, she heard a bang or something like that I believe. That's what she said, everyone -- I mean, that's what she said. I don't have any information any different from that.
Q. Okay. Did you eat with Elizabeth Blackwell?
A. Yes, I did.
Q. Did she ever indicate to you the information

which she placed in her affidavit that Gloria Mai basically said Mamma told me that he was driving?

A. I can't say for a certainty that she did not. I do not recall, to the best of my knowledge. I know we talked to her and her son that day and I think it was during a break in the trial so we were concentrating on a number of things.

Q. Okay.

A. And she may have said it. I'm not going to sit here and lie and say she didn't.

Q. Did you ever talk to Gloria Mai Rivera yourself?

A. The only time I talked to her -- because she wasn't here. She wasn't here. The only time I talked to her was after she had learned what she was talking about and kind of had some idea where she was going, and that's on cross-examination.

Q. As an experienced trial prosecutor as well as a defense lawyer, you wouldn't dispute that a gunshot in a vehicle would wake somebody up, would you?

A. No.

Q. That at that time a gun shot, a person would become aware of their surroundings generally; is that correct?

A. That's correct. And I might say in my experience you're not going to beat up on an eight

year old, or seven, I forgot her age, but you're not going to beat up on a child in front of a jury.
Q. Okay. And you had no indication that there was a dispute other than your client's testimony that someone else was driving at that point?
A. That's correct.
Q. Isn't that correct?
A. That's correct.
Q. Did your client ever indicate to you that he was not driving or was driving the car throughout that time period?
A. He indicated that he had been driving, but I think, if I recall correctly, he said that at some point he had gotten tired and she started to drive.
Q. Okay. Was it always his position that the driver in the car was the triggerman?
A. No.
Q. He never indicated that she was shooting from the passenger seat?
A. Not to my knowledge.
Q. Okay. Did you discuss Mr. Aleksey -- with Mr. Aleksey his relationship with Gloryvee?
A. Yeah. I discussed with him about every last one of those women.
Q. Okay. What did he say his relationship with her

was, if you can recall?
A. To me it was just like the rest of them, he was, you know, basically going to have this good time and use them and move on.
Q. Okay. What did he tell you they were doing on that day? Where were they going? Were they going to Palm Beach, were they going to Disney World, what did he tell you?
A. They were going to Florida. Where he said, I do not recall. At this time I do not recall.
Q. Now, at the time they were not driving a rental truck car carrier, were they?
A. No.
Q. Did your client ever indicate to you why, or any reasoning why, they may have wanted to have a rental truck on that day?
A. No.
Q. Did he ever indicate to you that they went to New York and tried to acquire a rental truck on that day that they left?
A. If you -- the letter that came or the notes, the handwritten note that came from Danetta who was in my office, he indicated on that letter in terms of he had written Mr. Stone and for me to contact Mr. Stone and I believe that's what the letter or the

handwritten thing from Miss Danetta, when he had written he contacted Mr. Stone and wanted me to contact Mr. Stone.

Q. Did he ever indicate to you there was any reason for that on that day that you cannot --

A. Not that I recall.

Q. Did he ever indicate to you that he did not leave from Philadelphia and then come directly south on that day?

A. I don't recall very much about it. All I know is they left from up there, and as I said --

Q. Okay. And the matter that you were referring to previously was Applicant's 22; is that correct?

A. That's correct.

Q. All right. When the testimony came out at trial where Gloryvee was saying that he went -- woke up that morning then directly left to go to Disney World, did your client ever tell you that was incorrect, that's not the way it happened?

A. Not during the trial.

Q. Would that be something you expect a client would normally advise you if he was in disagreement with some of those facts?

A. In the middle of the trial if something comes up, my experience is a client will lean over and say

that's not what happened.
Q. And he did not tell you that during this trial?
A. Not that I can recall.
Q. At the time of the trial you you were aware that Gloryvee had multiple addresses; isn't that correct?
A. Yeah.
Q. That one of those addresses was the address of the motel suite where Mr. Aleksey had consistently stayed for a period of time without a woman; is that correct?
A. That's correct.
Q. Did Mr. Aleksey ever give you any indication that he was ever involved with any of these check schemes that these women were involved with?
A. No.
Q. Going to Theresa McCann who was one of the witnesses in the penalty phase that you cross-examined, and you referred to her previously as the one that talked about the funny little man situation, were you -- did Mr. Aleksey ever suggest to you whose motorcycle it was that was purchased or who had access to the motorcycle?
A. To the best of my recollection he said it was his. She got it for him, I believe.
Q. That's what Mr. Aleksey told you?

A. Yeah, to the best of my recollection she got it for him.
Q. Was there any discussion about the jet-ski, who actually was intended in his mind to be the owner of the jet-ski although he hadn't paid for it?
A. I can't say for certain in terms of what the conversation was about that.
Q. Okay. With respect to Jaime Farrell which involved the Commerce Bank information and her arrest, was there any discussion to you that Mr. Aleksey was not involved or had knowledge or gained proceeds and benefits from those transactions at the bank that you noted that he was photographed with at that time?
A. No.
Q. Did you discuss that -- with Mr. Aleksey when that information was coming out at the time of the trial, or did he indicate to you that there was any erroneous statements made by her with respect to those?
A. His comments to me in regards to that, that she wanted to do it, she wanted to go, she was the one who wanted to go to I guess wherever they were going to gamble and have a good time and she provided the money.

Q. With respect so Sara Pivero, she testified twice at the time of the trial. Did you have any discussion, or do you have any knowledge now that in -- during 1998 she was not a -- cutting hair at --

A. Scissors, some scissors.

THE COURT: Sensational Scissors.

Q. -- Sensational Scissors?

A. No.

Q. Do you have any reason to disbelieve that information, the way she presented it at the time of the trial?

A. No, I did not.

Q. Did you ever discuss the purchase of the Lexus with your client?

A. We may have, because as indicated, that bracket on one of these sheets, and I'll say it again, that bracket was probably mine because I do that sometimes and that's a pattern I use every now and then on certain documents. And we probably did discuss some of that. And how much and what was the nature, I can't recall.

Q. On the rap sheet that you received --

MR. ZELENKA: Court's indulgence.

Q. Applicant's 42 --

THE WITNESS: I'm going to stand up, Your

Honor, my knees are....

THE COURT: That's fine, Mr. Sims.

Q. Applicant's 52, it did not note a disposition on there, does it?

A. No, it didn't.

Q. If you had reason to believe the person may have been in a PTI program, would be dismissed, would that cause you to impeach Ms. Pivero at that time?

A. No. If she had been in a PTI program or dismissed it would have been an issue we talked about under 608, you know, it wouldn't have been conviction and whether or not you could have gotten into it as a --

Q. I'm sorry, I meant the Jamie Farrell one. We'll go back and assume Jaime Farrell's which is the one it reflected no disposition on.

A. Right.

Q. Was, in fact -- and that's what I have in my hand here, I should have read it to you, I apologize.

MR. BROWN: Just at this point to kind of clear that up for the record. It asks whether the rap sheet showed a disposition on the charges. Just for the record I know Applicant's 52 is in there. It was a statement, it was a mixup if it does show convictions on that.

Q. I pulled Pivero instead of Farrell, Farrell is the same one I meant to pull on that. Same question.
A. Same answer.
Q. Okay. And Ms. Farrell was Applicant's Number 47, which is the one I meant to pull. I apologize.
A. Okay.
Q. Ms. Pivero also had indicated that she had resided with your client at Summerfield Suites.
A. Right.
Q. Isn't that true?
A. I believe that's correct.
Q. And there was information about the W-2 form that she was saying she did not know how it got done, that she did not know how those salaries occurred on there; isn't that correct?
A. That's correct.
Q. Why didn't you further impeach her on the fact that -- of her limited vocational skills, those salaries, and her ability to acquire a Lexus under those circumstances?
A. That was not an issue as far as we were concerned. As I stated all along, we made a decision in terms of how we were going to proceed and how we were going to deal with the women, and in terms of being a part of and enjoying the ride and being

involved in all of the schemes.
Q. With respect to a false confession expert, are you aware as to what a false confession expert is?
A. As I said the other day, no.
Q. As a prosecutor in your years of prosecution, were you ever confronted with that?
A. No.
Q. Yet as a defense lawyer and as a prosecutor you would concede that someone may actually falsely confess to a crime they did not do; isn't that correct?
A. That's correct.
Q. In Orangeburg County had you ever seen a psychologist testify about whether there were certain environmental factors that may lead to an individual falsely confessing?
A. I have not.
Q. Okay. Now, at the time of the trial you had hired a mitigation expert, Toni Bouvee?
A. That's correct.
Q. What was that person's role in your defense?
A. To develop the mitigating evidence that we would need. And I think she dealt mostly with Mr. Stone to a great degree.
Q. Okay. And by developing mitigation evidence

what are you talking about? Are you talking about background information about the defendant, background information about Gloryvee, or --

A. The defendant at that time because this was in the penalty phase and tried to develop background information that would be useful or to his benefit in their deliberations.

Q. Okay. You also hired an FBI agent Tommy Davis, do you recall him?

A. Now that you mention his name I recall him.

Q. Was he a participant in the defense?

A. Yeah, he was used and we did meet with him if I recall correctly.

Q. Okay. Was he one of the individuals you sent up to the northeast to try to get some background information about Gloryvee as well as your client?

A. I believe that's correct. Mr. Stone had more knowledge of Mr. Davis and the people who were hired than I did at that time.

Q. Now, did you also hire Robert Taylor? Does that name ring a bell?

A. No, you got to tell me who this is.

Q. Okay. Is Robert Taylor an engineer, did you utilize his services to measure some of the distances at the time of the crime scene, does that ring a

bell?
A. We may have. As I said --
Q. Did you hire John Collins, a fingerprint expert, to look at the prints on murder weapons?
A. I think we did.
Q. Did you also have some communication with one of the defendant's former psychologists in New York concerning your client's background?
A. I think we did. He did come down, I think there was a man that did come down.
Q. But you ended up not calling him for mitigation in this case; isn't that correct?
A. Right.
Q. Could that man's name possibly have been Dr. David Rosenguard?
A. It could have been, I don't know.
Q. Okay. Are you aware of prison adaptability experts?
A. Now I am, yes.
Q. At the time of trial were you aware that there are individuals who would sometimes testify on death penalty cases whether your client would be adaptable to prison or not?
A. Yes.
Q. Prior to the time of the trial, was there

anything your client had done in the jail setting which may have caused some concern, at least by the prosecution, about an individual's adaptability to prison?

A. There was an incident where they alleged that he had tried to escape.

Q. Okay. And isn't it correct that, in fact, he was alleged to have ripped out a chair, a secure chair in the jail itself?

A. Yeah. I think there was something about a chair that he had -- that had been taken loose and something about a broken window or something like that.

Q. All right. Did you have any other information, if you can recall, about his adaptability to prison as you understood it at that time?

A. I can't recall.

Q. Did you ever consider hiring an adaptability expert at the time of the trial to suggest or determine whether they could testify that your client would be adaptable to prison?

A. As I said, at that time Mr. Stone was basically dealing with the experts. And I'm quite sure that it came up in our deliberations in terms of, you know, what we could do in terms of mitigation.

Q. And certainly at that time you knew that such evidence would be admissible in the trial since *Skipper v. South Carolina*; isn't that correct?
A. Yes.
Q. And you're aware that Skipper was not unknown by the prosecutors and the defense lawyers in this state; isn't that correct?
A. Oh, yes. I was involved in a trial where that issue was raised prior to South Carolina had adopted it, but the Supreme Court had adopted it, raised an issue up on the prosecution side.
Q. So this is an issue you had, you're aware of its ability to come in, your failure to do so wasn't based on neglect of the law; isn't that correct?
A. No.
Q. Now, subsequent to this trial you turned over your file to the best of your information to your client; isn't that correct?
A. Yeah.
Q. And you indicated that was done after a grievance or a complaint was filed with the disciplinary board?
A. That's correct.
Q. And that grievance, and let me -- since I do not specifically know, was that grievance limited to

receiving a copy of his original file?
A. Yeah.
Q. And is it correct that based upon that and information you had received from the grievance board that you were of the opinion that you had no other option other than turning the original file over to him?
A. That's correct.
Q. Is it not also correct that at that time there were no post-conviction relief proceedings pending as far as you knew?
A. Not at that time.
Q. And this was in February of 1999?
A. Based upon -- yeah.
Q. And did you have discussions with Mr. Stone independent of turning the file over as to whether the file should be turned over?
A. We had talked about that prior to getting that call, because I think the first person who was contacted may have been Mr. Stone and then I received a subsequent request. And when it wasn't forthcoming I know I probably called Mr. Stone and he probably called me and we talked about it. But then when I got the call, to me that was indication to do it.
Q. Okay. You were never requested by trial

counsel, I mean PCR counsel or appellate counsel at that time to turn the file over to them; isn't that correct?

A. No.

Q. It was only your client directly was asking for that information?

A. Yeah.

MR. ZELENKA: Court's indulgence one moment.

THE COURT: All right.

MR. ZELENKA: I think I'm about done.

(Pause in proceedings.)

Q. In the trial of the case you were aware of the inconsistent statements that the State was going to assert your client made to WOIS-TV; isn't that correct?

A. Correct.

Q. The two calls he made to one of his former girlfriends, first asserting that he had shot and the second one stating, oop,s I made a mistake the day before; isn't that correct?

A. Yes.

Q. Did that impact upon your decision as to whether to place him on the witness stand either in the Jackson v. Denno hearing or in front of the jury?

A. As I've said repeatedly, it's been my practice to go through those things with a defendant whenever I represented a client. And it's my practice to say, you know, these are -- this is what you're looking at, these are possibilities. The decision, you know, is ultimately yours.

Q. Okay. And ultimately your client did not testify in the Jackson v. Denno in the guilt phase of the trial or in the penalty phase; isn't that correct?

A. In all fairness to Mr. Aleksey, I don't know if we went through that with him at the Jackson v. Denno hearing, and just in all fairness I don't recall if we did.

Q. Okay. At some point you decided, or advised him of his right to make a closing statement?

A. Uh-huh (affirmative response).

Q. Isn't that correct?

A. Yes.

Q. Did the closing statement he make confirm your opinion that it was correct strategy not to have him testify in the guilt phase or penalty phase?

A. I believe it did. When we went through that with him and talked to him about it and gave him that, because he was sitting here in the chair when

he did that.

MR. BROWN: Your Honor, just for clarification I would ask the attorney -- you to ask the attorney general to clarify the closing statement in which closing it was made. Because he said that confirms the decision made, Mr. Aleksey. I'm not trying to put the words into Mr. Zelenka's mouth, I don't know exactly what his question was.

MR. ZELENKA: I thought I said did his closing statement in the penalty phase confirm the decision, the opinion he had with respect to having him not testify in the guilt phase or the penalty phase.

MR. BROWN: I didn't hear penalty phase; I heard closing statement.

MR. ZELENKA: He just made one.

MR. BROWN: I agree with that. I just want to make it clear.

THE COURT: Sure.

Q. Did the jury favorably receive his closing statement from the non verbal impression?

MR. BROWN: Calls for speculation.

Q. From the non verbal impression that you got as an expert?

MR. BROWN: Your Honor, I have the same objection. He asked what the jury's impression of the closing statement was.

THE COURT: I think he asked him what he saw the jury do, what was his perception of them. In other words, he can't testify what the jurors thought, but he can testify what he saw if he saw anything.

MR. ZELENKA: Let he rephrase the question.

THE COURT: Sure.

MR. ZELENKA: I think I can be a little bit clearer.

A. Okay.

Q. After he made his closing statement to the jury, did that confirm your opinion that it was in his best interest to have not testified in the guilt phase and the penalty phase?

A. Yes. And again, my opinion in terms of him testifying was left up to him as I always stated.

Q. Correct.

A. My practice. And, you know, if he asked us a question we would probably say based upon what we do, you know, this is what's going to happen.

Q. Okay.

A. That's my practice.

Q. Did you have an opinion that he would make a favorable impression with the jury based upon your communication with him over the series of months that you represented him?
A. I didn't think he would.
Q. Okay. Was it your opinion that he made a good impression or bad impression at the time he made his closing statement to benefit his case?
A. I thought he made a bad impression.
Q. Okay. Was that consistent with your opinion of the way he would testify?
A. Yes.
Q. No further questions at this time.

THE COURT: Very well. Redirect.

MR. BROWN: If it please, Your Honor.

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. BROWN:

Q. One thing we talked about was the impact -- well, one thing that was mentioned was Mr. Aleksey's closing statement and what you believed the impression or how his impression, what kind of impression that made with the jury I think or something of that --

THE COURT: Did it have a favorable impact?

MR. BROWN: That's correct.

Q. And since we're talking about that, I'm going to go ahead and take it, take that from there.

A. Okay.

Q. Do you recall a juror sleeping during the closing in the penalty phase?

A. I didn't see a juror sleeping. I don't recall, let me put it that way.

Q. Okay. And you don't recall asking Mr. Stone what you should do about the sleeping juror?

A. No, I don't.

Q. And you don't recall whether Ms. Hayes, Gigi Hayes, a juror that was mentioned earlier could have been a sleeping juror?

A. No, I don't.

Q. Or could have been asleep, I guess, since you don't recall a sleeping juror?

A. I really don't.

Q. Okay. I'm going to kind of go back through --

A. Okay.

Q. -- and bring up a few things. Mr. Zelenka had asked you about the Jackson v. Denno hearing and why the -- and I'm going to put it this way, brutality claim, and I use that as a paraphrase, I think you said for the beating the crap out of me, he asked if

there was ever any other evidence about the brutality claim other than what Mr. Aleksey said.

A. Yeah.

Q. And I think you said that there was never any other evidence?

A. I said I didn't -- not to my knowledge there was any.

Q. And that y'all had spoken about the SLED officers and you mentioned that you had spoken with Officer Mears and Officer Darnell about this?

A. I said we had investigated it.

Q. Okay. And I apologize, okay. So Mr. Aleksey did tell you about that issue?

A. Yeah, he did there's no question.

Q. Okay. Now, can you tell me the other witnesses that were spoken to besides obviously Mr. Aleksey being a witness to what he claimed was brutality and obviously Agent Mears and Darnell were the other people there during the questioning, can you tell me the name of any other witness you spoke to?

A. No, I can't.

Q. Can you tell me if any investigation was done of any other witnesses?

A. There would have -- there were only three people in that room. There was him, Mears, and Darnell.

And the only other way is if you -- if there was any indication from the jail records that he complained of bruising or beating or anything like that, because Orangeburg County jail when you do -- or you have an injury, they won't even take you. If you come back with an injury they immediately take you over to the complex or they take you to the hospital.

Q. Now, the statement that he mentioned he had the crap beat out of him, that was the statement that had one portion taped where Mr. Aleksey says Gloryvee shot Trooper Lingard, then it has another portion where he's on crying saying that he did the shooting?

A. That could have been.

Q. And then there's a two-hour-and-15-minute gap in between?

A. Right.

Q. And so the interrogation that went on during the obtaining of those two statements took at least more than two hours and 15 minutes because there's that long of a gap. In other words, the actual removal of Mr. Aleksey from his holding cell and placement in there, because I believe they didn't testify that they took him back to the cell during the two hours and 15 minutes?

A. No, they did not.

Q. So he was in this room for three hours?
A. I can't recall right now, but it was during the two-hour -- during the first part of the testimony, there was the break, there was a two-and-a-half-hour break and then the second part of the testimony you're right on that.
Q. So at least maybe three hours?
A. Could have been, yeah.
Q. Okay. And that took place at the jail?
A. No. That took place at the complex, is my understanding.
Q. Okay. Captain Williams, does this name sound familiar?
A. Larry Williams, he's now sheriff of Orangeburg County.
Q. Did the interrogation take place in Captain Williams' office?
A. Yeah.
Q. Where it was at that time?
A. That's in the complex.
Q. Okay.
A. That's not in the jail. The jail sits behind the complex where you're actually incarcerated.
Q. Okay. And I stand corrected on that. Let me ask you this: Captain Williams' office, is that

isolated?
A. No. It's where all of the officers are around in that area.
Q. Did y'all speak to any of the people that had an office in that area?
A. I don't recall if I did.
Q. Okay. And did you speak to anybody who may have been guarding Mr. Aleksey?
A. When they took him over there it was my understanding that the people who came to get him was Darnell and Mears. I don't know whether or not anybody -- and I can't recall, as I said, whether anybody from the jail followed him over to Larry Williams' office.
Q. Okay. I'm going to move on to the issue of venue.
A. Uh-huh (affirmative response).
Q. And we went through and this is kind of a -- I'm not going to rehash what came out on cross then came out on direct. You mentioned one of the things in your experience in Orangeburg County death penalty cases, do you know what percentage of death penalty cases in Orangeburg result in death verdicts?
A. I didn't say in death penalty cases. I said my experience in Orangeburg County with juries in

Orangeburg County.
Q. Okay. Right. My question is, do you know what percentage of death penalty cases in Orangeburg County result in death verdicts?
A. No, I don't.
Q. Okay. And you mentioned that one thing that you thought was favorable about Orangeburg County venue was that you had credibility here?
A. Yep.
Q. And I certainly understand that. Let me ask you this: Do you believe Solicitor Bailey has credibility in Orangeburg County?
A. He was new almost at the time, he was relatively new.
Q. And he came into office through an election against who?
A. Me.
Q. And so based on the election results, and I don't mean this in an offending way, but he was received more favorably by the voters?
A. Not in Orangeburg County.
Q. In the circuit?
A. In Orangeburg County, this county, this circuit is based on three counties.
Q. Okay.

A. Orangeburg, Dorchester, and Calhoun County. I was -- I won by majority of the votes, a strong majority of the votes in Orangeburg County. We were closer in Calhoun County and he won by an extremely strong majority in Dorchester count.

Q. When they changed venue they changed to a like size county, right?

A. Yeah.

Q. The other counties you mentioned are not like size to Orangeburg?

A. Dorchester County? Yes, it is.

Q. So you're saying it would have been changed there as a possibility?

A. As a possibility. But Dorchester County, the demographics of Dorchester County is extremely conservative.

Q. And let me ask you this: One of the issues about venue change is about the publicity. And the publicity about this case in Orangeburg County, what was the difference between the publicity here and the publicity in Dorchester County?

A. I don't think there was much of a difference, because the transfer, it -- well, let me put it this way: The chase and everything, as a matter of fact, he was apprehended right down from the -- well, from

the family court in Dorchester County right there on I think that's Maine and 78. So it was right there in Dorchester County where he was actually apprehended in that shopping center.

Q. Okay. And so if your argument for venue change is that it's too much publicity in Orangeburg County, you're not going to go to Calhoun County because it's not like size and you would make the same argument we shouldn't go to Dorchester County because it's got the same publicity problem?

A. Then you got Lexington.

Q. And --

A. And my --

Q. -- does Solicitor Bailey have any experience as an elected official or public official in Lexington County?

A. You got two things going for you in Lexington County. You got Dr. Death which is Donny Myers. And both trial lawyers will tell you when you go to Lexington County in a criminal case, you're guilty and you're damn guilty. Excuse my expression. But that's what we in this area know about Lexington County.

Q. You mentioned yesterday the other counties that you had considered and one of them was Richland

County?
A. Richland County is not a like county. Richland County is much, much bigger than Orangeburg.
Q. I only brought that -- I'm sorry.
A. I'm explaining to you. You said like counties; Richland County is much bigger.
Q. I only bring that up because I believe you mentioned it on your direct, when we talked about venue change, that you considered what could have been the like counties and I believed record will reflect I believe you mentioned Richland County.
A. Yeah.
Q. Which I was a little shocked, too, because I don't believe it's a like county, but you mentioned it.
A. Yeah, I mentioned it. You asked me for some examples.
Q. That would have been a favorable county to have transferred to?
A. I don't know. I don't think so.
Q. Do you know what the percentage of death verdicts are in Richland County?
A. No. And you can correct me, I thought the law says that if you cannot get a jury, if you cannot get a jury you could make the appropriate motion. At

that time during the process if it had arisen that we could not have gotten a jury, we could have made the motion and had the evidence right there that we could not have gotten a jury in Orangeburg County.

At that time a motion for a change of venue would have -- we would have had the evidence here that we could not have gotten the jury and it would have been utilized at that time.

Q. Now, didn't -- and now that you bring this up this is not a question I had, but didn't Judge Cottingham invite you all to pretrial hearing to make your venue and change motion well before trial because the trial date was set, if he had to deal with that issue he wanted to deal with it before the trial week came up?

A. I believe he did. And as I told you before and as I've stated all the time, we made the decision, we can't change that we made the decision.

Q. Okay. Now I want to ask you about asking the jurors about their view of the death penalty. I just want to make sure, did you not say on direct that you thought that you had asked jurors about the view of the death penalty?

A. I think I did say that.

Q. Of course, again, I think Mr. Zelenka said the

record reflects --

A. Yeah, the record reflects that.

Q. Sure. Sure. As far as rehabilitation of the jurors, I think you indicated to Mr. Zelenka that some was not worth rehabilitating?

A. Yeah.

Q. I certainly understand what you're saying. I've just got a question to you. Can you explain a little bit to the Court about how you rehabilitate a life juror?

A. How you rehabilitate a life juror when you're in a situation where this person says I'm always for life, I never, ever vote, then you go back into it. And I can go through the -- you know, I go through it with you in terms of, look, you know, the judge has told you that the judge is the law, the judge gives the law, you listen to the facts, are there circumstances and situations that you would utilize or that you could listen to and you might change your opinion in terms of always for life, that you would -- there are situations that you would vote for the death penalty, any situation if you had aggravating circumstances which you felt that you listened to based upon the testimony or the evidence that you had given, would that change your opinion

about always being.

There are a number -- a number of questions in terms of -- you go through when you think that it's worthy to relabbitate somebody.

Q. And was any juror rehabilitated here?

A. I don't believe it was.

Q. But you obviously demonstrated you knew how to do so?

A. I think --

Q. I mean, you just -- I mean, I just point that out, okay.

To go to the theory of the case, it was Bayan Aleksey is a bad person but not a violent person.

Now, let me ask you this, and I brought this up yesterday, basically that's a character defense?

A. You characterize it the way you choose to, but we made the decision that's how we were going to try it, that's what we hung our hat on. Now, 20/20 you're looking at it in a different perspective, you made that decision.

Q. Sure. All I'm trying to say is when you say he's a bad person, you bring up character. And when you say he's not a violent person that also deals

with character?

A. Yeah.

Q. Now, if the bad, other bad act evidence would not have come in in this case, could you have not in closing argument still argued there was no evidence that Bayan Aleksey is a violent person?

A. Probably could have.

Q. Okay. Without the bad evidence coming in, the non violent bad evidence coming in?

A. Probably could have.

Q. Okay. And let me ask you this: You heard a lot of stuff about Gloryvee Perez and her activity. And I don't think there's much question that she had some criminal activity before -- in the week before this occurred. In other words, the Summit Bank presentation of 20 some odd thousand dollars, checks, deposit of checks from her boss, so she steals her boss's checks, deposits those checks at Summit Bank, turns around and tries to purchase an automobile, a $50,000 Lincoln from the dealership, also goes to the bank and has a receipt for a check for $8,700. In other words, that is evidence of some bad activity by Ms. Perez?

A. Yeah.

Q. Now, knowing that information that you had about

her, and let me make sure you weren't aware of that information at the time of trial.

A. As I said, I don't recall. And I would have to go back and look and probably talk with Mr. Stone in terms of what we came up with or what we had at that time.

Q. Sure. Let me ask you -- let me offer you the opportunity to refer to all of the notes that have been -- the notes have been returned to you, reflect all your notes. Is there anything in there that indicates you knew about that other activity?

A. I don't know. And as I said, I've looked through them, I've scanned through them. It may be, it may not be, I don't know. But what I would like to do is to go through the file to see what I had in the file.

Q. And we'll come back to that. Okay. So you don't know whether you knew about that stuff or not?

A. I can't recall at this point.

Q. You didn't bring it out at the trial?

A. No, I didn't.

Q. Okay. If you knew that information could have come in at trial, do you think your strategy might have been different?

A. It could have been and it could not have been.

Again, when you're focusing on, when you set your goal in terms of how you want to portray those women, that is an issue that you know, you ride that horse. I'm sorry to put it that way. You ride that horse, you go that way. Whether or not she was a bad person, whether or not she was -- that may have been an issue, but the question is was she compliant, did she like Bayan, was she doing what she was doing, was she -- you know, all of those are things that we've talked about. We've been in here for three days now talking about that same stuff.

Q. Wait a minute, I don't understand. I understand you're saying when these other girls, not Gloryvee, but the other girls come up here and say that Bayan did bad things like taking cars or buying cars.

A. Yeah.

Q. And your approach --

A. I stand corrected. My mind at this point --

Q. Sure.

A. You were talking about Gloryvee.

Q. That's correct.

A. And I went beyond Gloryvee. I apologize.

Q. That's not the approach you took with Gloryvee. She said Bayan Aleksey was involved, and your approach was you were involved in the shooting also?

A. That's not what we did with Gloryvee. We weren't after her criminal record, I stand corrected.
Q. That information about her other activity could have been helpful?
A. It probably could have been, as I indicated on direct examination.
Q. Okay. Dr. Brothman was a neurologist who testified about the trauma Bayan Aleksey may have suffered during the collision to stop his car?
MR. ZELENKA: Bachmann.
MR. BROWN: I stand corrected.
Q. Do you recall whether there were any tests performed on Bayan by Dr. Bachmann?
A. I don't recall.
Q. Or any examination of Mr. Aleksey, I mean?
A. I would assume that he had done something, I don't know. I can't recall right now.
Q. Okay. And do you know whether you dealt with him or whether Mr. Stone did?
A. I think Mr. Stone did. I think the record shows that he was the one who, who did the examination of Dr. Bachmann.
Q. Now, Vera Aleksey testified in mitigation. Can you tell me what the intellectual functioning was of Mr. Aleksey?

A. Not without going back and looking at some documents that I may have had or may not have had, I can't tell you that.

Q. Okay. Can you tell me whether the jury was exposed to any limited intellectual functioning Mr. Aleksey has?

A. I think his mama testified about everything.

Q. Did she testify about his IQ?

A. I don't know, but I think she testified a great deal and she was a very effective person.

Q. Do you recall how long she was on the stand?

A. No, I don't.

Q. Do you recall whether any corroborating evidence was put up?

A. I think we used her and we made a decision at that point that her testimony and her pleas and her relationship would be the one we would use. I don't know, I don't recall at this point whoever -- if anyone else -- I can't even talk right, now I'm losing it -- but whoever else.

Q. Okay. Let me ask you this: One thing you mentioned, your theory was that Mr. Aleksey is a bad person but he's not a violent person?

THE COURT: Yes, sir. We've been through that. I understand that that was the theory.

Q. Okay. Now, what about the testimony of Lisa Watson brought out in the innocent/guilt phase that Mr. Aleksey pulled a gun on her?

A. And the record is very clear on that that she ended up I believe --

THE COURT: Mr. Brown, we've been through that in his direct examination many, many times that he on cross-examination had her admit that she laughed about it, she didn't take it seriously, she wasn't afraid of him. Let's move on to new things, Mr. Brown.

MR. BROWN: Well, this is relevant, Your Honor.

Q. Did you know she said he was laughing before she testified at trial?

THE COURT: Say what?

Q. Did you know that she -- how did you know that she would testify when he put the gun that she laughed and he laughed about it prior to her testimony in trial? How did you know she was going to say that she was laughing when he pulled the gun on her? Because you testified there's no evidence of violence, and I don't want to rehash this, but she testified about pulling a gun which I consider to be violent. And you said, well, she said they were

laughing about it. How did you know to use that theory in the opening when Lisa Watson didn't testify about it being a laughing matter until well after the opening?

A. I'm not so sure Bayan didn't lean over and say she knew we weren't doing anything but kidding. I don't know.

Q. Okay. Didn't she give a SLED statement where she said he pulled a gun and was crying?

A. She probably did, we've been through that.

Q. Sure. I just wanted to know if there was another reason you knew she was going to say it was a laughing matter instead of a violent matter. I mean, I don't know. I didn't know of anything else, I'm asking you if you were aware of anything else.

A. There's a rule hopefully you try to follow. You don't ask a question that you don't know an answer to. I would think I got that information from somewhere, Bayan leaned over, or I picked it up from somewhere it was a big joke.

Q. You did have a SLED statement saying he pulled a gun on her?

A. Yeah.

Q. That violent act was out there?

A. That violent act, but if you couple it with the

fact, oh, we're just laughing, he was laughing carrying on having knowledge she was going to say that you ask a question.

Q. That was my question, what knowledge was that?

THE COURT: Mr. Brown, he's answered it. Let me tell you what I heard so you understand where we are.

MR. BROWN: Yes, ma'am.

THE COURT: What he said was it is not my practice to ask a question on cross-examination that I don't know the answer to. I don't have my file, but it is my belief that I had that information from somewhere. Yes, I have the SLED report, I don't know if Bayan leaned over and told me we were just kidding or what the source was, but I had that information from somewhere.

MR. BROWN: Okay.

THE COURT: All right.

Q. Now, Gloryvee Perez you said was a focus of a lot of investigation and I believe Mr. Zelenka said in his investigation up north?

A. Yeah.

Q. Okay. Do you remember the date that your investigator went up north to investigate Gloryvee

Perez?

A. No, I don't.

Q. Would you disagree that he did not leave until August 11th, two weeks before trial?

A. I wouldn't disagree with that.

Q. Okay. And can you say whether he produced the documents from the Burlington dealership?

A. Not that I know of. I don't think so, I really don't.

Q. Or the checks from the boss?

A. I don't think so.

Q. Or the office manager that said she was fired because she stole checks and the police department was investigating that?

A. I don't think so.

Q. Or the other automobiles?

A. I don't think so. I really, you know, like I said, I don't know.

Q. So that looks like the investigator didn't really dig enough when he went two weeks before trial and did the investigation?

A. I can't say that. All I could say is that the documents that you've talked about I do not know whether or not he produced them or we got them. That's what I can say about that.

Q. Okay. And the dates again were the investigator left for Philadelphia on August 11th, he returned four days later and he met with you on August 18th?
A. Met with me or met with us?
Q. And actually I was going to say and with Mr. Stone.
A. Yeah.
Q. Okay. So he met with both y'all one week later?
A. I believe so.
Q. And that was six days before trial?
A. I guess so.
Q. Okay. And you said that one of the things, because I think the question was what did you learn from the investigation that went up north, I think your response was we learned about her drug conviction?
A. I believe so.
Q. Isn't her drug conviction on the rap sheet?
A. I don't know right now, I have to go back and pull it, I'll look at it. If it's there, I'll say it's there, if it's not I'll say it's not.
Q. The rap sheet on Ms. Perez was run in June when the other rap sheets were run?
A. I guess so.
Q. Which was two months prior to the investigator

going up there.

Now, one thing that came out was a request for these items to be returned which I believe Mr. Zelenka used to indicate that the items belonged to not Gloryvee whose name is on the receipts, but to Mr. Aleksey.

A. Yeah.

Q. Does that letter also not request that he be provided Gloryvee's lie detector charts?

A. Yeah, it does.

Q. Okay. And those aren't his items?

A. No.

Q. And Mr. Aleksey didn't write the letter, did he?

A. That's what he asked me, to, to, to ask them.

Q. I understand that. But he didn't write the letter, did he?

A. I wrote the letter based upon what he asked, what he told me. He would still call me collect, I would take collect calls from him.

Q. Sure. Can you tell me the items that were returned pursuant to that letter?

A. Nope.

Q. Okay. And can you tell me when you reviewed those items pretrial?

A. I didn't review those items pretrial. Those are

things that, that I don't recall ever seeing. And as I said on direct, I did not receive those and I said when they came back I did not go through them, I simply boxed them up and sent them off.

Q. Okay. And your request was made to who?

A. I would have to see my letter again.

Q. And I don't have it.

MR. ZELENKA: Court's indulgence.

THE COURT: All right.

MR. ZELENKA: I did not introduce it. Might as well introduce it now. Trying not to do that, Your Honor.

MR. BROWN: That's without objection. I believe that might be respondent's.

THE WITNESS: One.

MR. BROWN: I'm not seeking to introduce it. I have no objection to him introducing it at this time, it is pertinent.

THE COURT: Okay. It would then be in, State's Exhibit Number I want to say 2. It may be 1.

MR. ZELENKA: I think it would be one.

THE COURT: That's right. You had a document, didn't make it an exhibit, that would be Number 1.

THE WITNESS: That's the one there.

THE COURT: Yeah.

(Entered into evidence was State's Exhibit 1, letter.)

A. Now, you asked me about the letter, let me get the letter here. The letter was sent to the solicitor. You asked who it was sent to, the letter was sent to the solicitor.

Q. Okay. And you asked for it, you never saw the items pretrial, but the items were returned after the request was made of the solicitor?

A. Right.

Q. Okay. Now, you mentioned about Elizabeth, it came up, the topic of Elizabeth Blackwell and I believe your response to the questions were you were unsure what Elizabeth Blackwell said about the mommy telling the girl what happened?

A. And I said I don't recall all that we talked about. I said that happened during the trial thing and I don't remember.

Q. Okay. Sure. And can I hand you this document?

(Mr. Zelenka reviewing document.)

Q. I'm going to ask you if you recognize the handwriting?

A. Yeah, that's my handwriting, no question about

that.
Q. About midway way down it says Ms. Blackwell?
A. Yeah.
Q. And there's a couple of things, but the middle sentence says --
THE COURT: Let's have it marked if you're going to publish it.
MR. BROWN: Actually I don't know that we're introducing --
THE COURT: Well, you can't publish it if you're not going to put it in evidence.
MR. BROWN: Sure. And let me ask him a question off of it.
Q. Would you disagree that your notes said when --
THE COURT: Mr. Brown?
MR. BROWN: Yes, ma'am.
THE COURT: Let me try that again. I don't want you to publish the document if the document isn't it evidence. He's identified it.
MR. ZELENKA: I don't have any objection to it coming in evidence.
THE COURT: What I don't want you to do is I don't want you to publish a document if it's not in evidence.
MR. BROWN: I understand, Your Honor. He

asked questions of what's now Respondent's 1 without putting it in evidence. And all I was trying to do is --.

MR. ZELENKA: No.

MR. BROWN: -- I won't say impeach, but I guess it is impeach.

THE COURT: Excuse me. I'm not aware of an objection called I think he was allowed to violate the rule; therefore, I can violate the rule. I'm not aware of that.

MR. BROWN: Your Honor, I'll withdraw my attempt to publish it.

THE COURT: All right.

Q. Would you deny that your notes, handwritten notes regarding your interview with Ms. Blackwell say the same thing regarding the testimony of the -- what the little girl saw that's what's in Ms. Blackwell's affidavit?

A. What it,-- what that -- when you refresh my recollection.

Q. Would you like to refresh your recollection with your notes?

A. When you refresh my recollection -- when you refresh my recollection it says, part of it says the little girl knows very little and then the other part

says --

Q. Does it not say something consistent with what Elizabeth Blackwell put in her affidavit?

THE COURT: Gentlemen, here's what you use a document to refresh someone's recollection. What do you is you refresh the recollection but the recollection, alas, is refreshed and it is a recollection. It isn't the reading of a document. And I am convinced having watched Mr. Sims, because he's reading the document, I don't know that you're refreshing his recollection. Reality is if he's going to read from the document, or if you're going to read from the document, it has to be in evidence.

MR. BROWN: I understand that, okay.

THE COURT: Because you are both trying very hard to publish the document.

MR. BROWN: And I withdraw my attempt.

THE COURT: All right.

Q. Has your recollection been refreshed?

A. To part of it.

Q. Okay. And would you look at Applicant's 27 which is the affidavit of Elizabeth Blackwell? Specifically look at paragraph 6.

A. I'm looking at 6.

Q. And paragraph 6, it's in evidence, but it says -- paragraph 6 of the affidavit says that when Ms. Blackwell asked the girl, Glory Mai, who was driving she said, "Mommy said Michael was driving"?

A. Yeah, that's what --

Q. And my question is, is that consistent with what your notes had at that time?

A. Let me see my notes again.

MR. BROWN: To refresh his memory.

MR. ZELENKA: I have no objection.

THE COURT: No, because you don't refresh your memory as to your notes to keep it from going into evidence. You refresh your memory with the notes and you testify from your memory.

Q. Okay. Well, let me refresh your recollection and then you can testify from your memory if it refreshes it.

THE COURT: And Mr. Brown is exactly correct, if it refreshes your recollection. If it doesn't, it doesn't. If it does, it does. You understand it has to refresh your memory.

Q. I guess my first question is does that refresh your memory?

THE COURT: There you go.

A. In all honesty, I think it does.

Q. And now do you recall learning the same information that is in Ms. Blackwell's affidavit when you spoke with her pretrial?
A. What that -- now that I think about it and based upon my recollection of the event, it was not as specific as what was said on here. You -- and I can't -- but my recollection was my handwriting, my cryptic notes, and I can't say it was as specific.
THE COURT: As?
THE WITNESS: As on here, as on --
THE COURT: The affidavit?
THE WITNESS: -- the affidavit, Number 27 Applicant's.
Q. Is the gist of the testimony the same?
A. Yeah, I'll go along with that.
Q. Okay. And I think one issue we've been through before is that the mommy may have told her what to say?
A. I think we did, there was some question about that. I don't know. I can't recall. We've been through so much the last --
Q. Sure, okay. But that's the gist of what's similar from his recollection and from the affidavit?
MR. BROWN: It's right there, Don, on top.
MR. ZELENKA: That's a mischaracterization

of the affidavit. "Mommy told me Michael was driving" is not that Mommy told me what to say. That was --

Q. Is the part that she never -- let me put it differently. Is your recollection of your conversation with Ms. Blackwell consistent with paragraph 6 of Elizabeth Blackwell's affidavit?

A. The part where "I woke up when I heard the shooting," that's consistent with what I recall.

Q. Okay.

A. As a matter of fact, I believe when I cross-examined her I cross-examined her on the issue of waking up and I also cross-examined her on the issue as relates to when she had time to talk with her mom about what had happened and who had told her and whether she had conversations with her mother.

Q. And how about the part where the affidavit says "I asked her who was driving and she never said anything other than 'Mommy told me Michael was driving.'" Is that consistent with your recollection? Would you like to refresh your memory with the notes?

A. No, I -- I may as well read it if I'm going to do that, that's not refreshing. But I think it's somewhat consistent with what the affidavit says.

Q. Okay. Thank you. And let me ask you this: Y'all met with Marcus Blackwell as well?
A. Yes, we did.
MR. BROWN: I beg the Court's indulgence, I'm having difficulties locating a page. And while we're locating that page -- I apologize, I now have it.
Q. Have you ever seen that?
A. I don't recall seeing this.
Q. Okay. Okay.
MR. BROWN: And I'm sorry, Don.
MR. ZELENKA: That's okay.
Q. And you did the cross-examination of Ms. Gloryvee Perez?
A. Yeah.
Q. Do you know who Jim Wegmann is?
A. I don't recall that name.
Q. Okay. The gun purchase date came up and I think one question that was asked about Yelena's impeachment was that -- by Mr. Zelenka was whether or not you had any information with the correct date on it.
A. I don't think he asked me whether I had information with the correct date on it. He asked me whether or not the issue as it relates to the correct

date would have made a difference in light of the way we were trying the case. That's what he asked me.

Q. And just in case, because obviously I can't go back to the transcript, there's no doubt that the transaction record for Department of Treasury was State's 4 at trial?

THE COURT: That's right.

A. That's right.

Q. Okay. And does that look like the one? This is obviously not the one in evidence.

A. I guess so, yeah.

Q. And it does have the date of purchase on it?

A. Yeah.

Q. Okay. Now, I believe the question about the rental truck was whether you had any reason to question Ms. Batkilina -- I mean, Ms. Gloryvee about the Penske rental?

A. I think that was somewhat similar to what he asked me.

Q. And you -- well, your office had notes from a telephone conference call between Mr. Aleksey and Danetta?

A. Yeah. And I mentioned that he had called the office and had said that he had sent that information to Mr. Stone. And as I said --

Q. Okay.
A. -- that's what that says. I can't get around that, I'm not trying to get around it.
Q. Right. And your duty was to prepare for the cross-examination of Ms. Gloryvee. Did you speak to Mr. Stone about that?
A. We spoke about a whole lot of things and we probably did or probably did not, I can't say for sure. More than likely we did because when -- you know, when he asked me about things I would ask him and we would go through things and we would go through testimony, potential testimony, how we were going to go.
Q. And do you recall ever seeing the Penske rental reservation that's depicted in the SLED photos introduced in evidence?
A. I've said before, I don't recall.
Q. Sure.
A. And I don't remember.
Q. Now, one thing that Mr. Zelenka asked is whether Mr. Aleksey ever mentioned when Gloryvee testified that they went from Philadelphia to South Carolina during the trial, did Mr. Aleksey ever tell you we went to New York, hey, we went to New York. And I believe you said that he never told you that during

the trial?
A. Yeah.
Q. Now, if he would have told you that during the trial, what could you have done?
A. I could have asked him questions about it the same way as I told you a few moments ago when you asked me about that, about the laughing, if he leaned over and said to me that, hey, we were laughing, she knew we were laughing. I raised that issue, if he stated to me and give me the basis I can do the same thing then.
Q. And if you would have researched the Penske information based on Danetta's phone call you could have also used it, couldn't you?
A. If we had tried -- as I stated before, if that would have been an issue for us as relates to how we decided to try the case then it would --
Q. If the Penske was an issue -- I'm sorry.
MR. ZELENKA: Let him answer.
A. And I believe I clarified that at that time and I clarified it again now. I used the phrase "we rode the horse."
Q. Sure. So if the Penske would have produced something favorable then that could have been used?
A. Could have been, yeah.

Q. Okay. Do you remember what investigation was done on Sara Pivero?
A. No, I don't.
Q. And you did have the Lexus police reports?
A. Part of it, yes, because as I indicated there have a bracket thing.
Q. That's right, okay. Was there any investigation that followed up your review of those?
A. There was a number that I could recall when I tried to call those police stations up there, and nobody ever answered and that was strange for me, nobody answer a police telephone number.
Q. Okay. And let me ask you, in a case where you're defending somebody that's accused of shooting a police officer, do you find it difficult to deal with the police when you tell them why you're asking for this information?
A. I can't say in this case because I never had the opportunity to talk with the policemen up there.
Q. Okay. And how about the Lexus dealership?
A. I don't recall if we talked to them or whether we sent our investigator when he went up there to deal with those issues, I don't know.
Q. And you were provided a rap sheet that did have those convictions on it?

A. Yeah.

Q. Okay. And, now, can you tell me what *Skipper v. South Carolina* stands for?

A. Rehabilitation, the ability, the adaptability of a person to live a life in prison after having committed a crime such as this or committed a crime where there's an issue in terms of whether or not a person is going to receive the death penalty. And the question becomes whether or not this person, if he is housed in a prison whether he would be able to adapt to prison life.

There have been several issues as it relates to whether or not the person in regards to this issue would be a predator in prison, would be able to continue criminal activity. Those are the issues that you are concerned with when you begin to talk about adaptability, as to whether or not if that person -- if the jury in their deliberations decide that a person can adapt to prison life and not become a predator or be a predator in prison, but could be a prisoner without the necessity of having to deal with other and additional criminal activity adapting to the prison.

Q. Okay. And in this case didn't the escape come in not as an escape charge, but didn't that issue

come in to the jury's deliberations, wasn't that presented to the jury?

A. I believe so. The record speaks for itself.

Q. Okay. And you had argued as your theory that Mr. Aleksey is not a violent person?

A. Right.

Q. And so if that's true, then an adeptability expert would have been able to present that same, or evidence of that to support that. In other words, an independent person would be able to say besides just counsel for Mr. Aleksey saying it, an adaptability if it's true that he was not violent could then come up and say it's my opinion he's not violent?

A. Could have.

Q. And again, it did come up in trial, the solicitor did bring up that issue, okay?

A. I believe so. The record, as I said it's in the record.

Q. Sure. Okay. And then the last thing is that y'all knew about that escape incident well before trial?

A. Yes, we did.

Q. Because he was actually moved to Lee County?

A. Yeah.

Q. Okay. That's all the questions we have.

THE COURT: All right. Recross.

RECROSS-EXAMINATION

BY MR. ZELENKA:

Q. With respect to the statements of the various witnesses, Gloryvee, Sara Pivero, the others that you received from the prosecution, did you go over those statements with Aleksey before the trial?

A. We went over -- when we would have our conferences and we would talk about those and we would deal with those issues, I'm probably quite sure that we did, Mr. Zelenka.

Q. Okay. So it's possible that information was relayed to you pretrial when you went over that information with Mr. Aleksey about whether there was something else, the smiling that may have occurred and things like that --

A. Yeah, it could have been.

Q. -- isn't that correct?

With respect to the question about rehabilitation of a juror, let me refer you to volume I, Robert Goodwin, record page 449 through 451, where Mr. Stone was asking questions on --

A. Volume I?

Q. Yeah.

A. What page?

Q. 449 through 451 where Mr. Stone was asking questions of that particular potential juror.
A. 449 to 451?
Q. Yes, sir.
A. (Nodding.)
Q. Isn't that rehabilitation of a juror who was given an impression of a life sentence? An attempt to rehabilitate such a juror?
A. I would consider that.
Q. Isn't it true that that reflects that the defense team was seeking to rehabilitate a juror who had expressed an opinion that they were inalterably opposed to the death penalty would only sentence to life; isn't that correct?
A. Yeah.
Q. Okay.
A. And this man says "I'm not listening to anything. I'm never going to give anybody death, period."
Q. Right.
A. But there was an attempt by Mr. Stone in regards to rehabilitating him.
Q. Okay. Let me refer you to Volume V, Vera Aleksey's testimony, transcript page 2,078.
A. 2078.

Q. Lines 16 through 18, and 2,079, line 11 --
A. On 2,078 what?
Q. 2,078 lines 16 through 18.
A. Uh-huh (affirmative response).
Q. 2,079 lines 11 through 20.
A. Uh-huh (affirmative response).
Q. You developed information from his mother that, in fact, he may have a learning disability and was placed in special ed classes at that time; isn't that correct?
A. Yeah. Yes.
Q. I believe I have one more question.

MR. ZELENKA: Court's indulgence one moment.

THE COURT: Oh, indeed. Indeed.

(Mr. Brown reviewing document.)

MR. ZELENKA: Let me have this marked as State's Exhibit Number 2, a June 3rd, 1998 letter from Walter Bailey to Thomas Sims and Duffie Stone.

THE COURT: Any objection?

MR. BROWN: No objection.

THE COURT: Very well. State's Exhibit 2 in evidence without objection, a one-page document and it is a letter.

(Entered into evidence was State's Exhibit 2, letter.)

Q. Mr. Sims, let me ask you to read that letter to yourself, not out loud, please.

A. Okay. Dear --

Q. To yourself, not out loud, please.

A. Oh, I'm sorry. (Reading letter.)

Q. Okay. Isn't it true that State's Exhibit Number 2 indicates that they're enclosing to you copies of checks from 12/26/97 and 12/18/97 which were found in the Mustang, four pages?

A. It does say that.

Q. Doesn't it also indicate that Solicitor Bailey advised you on June 3rd, 1998 that he had in access of 100 crime scene photographs in the case?

A. Yeah.

Q. And due to the large volume he wasn't reproducing them, but was making them available for your inspection and review and would be happy to have copies made of any particular photographs which you may have desire to have?

A. Yes.

Q. Copies of any photographs which you may want?

A. Yes. I mean, I'm sorry.

Q. Do you recall ever yourself going to view those

photographs that the State had in its possession after they made them available to you by that letter?

A. I think Duffie and I went to SLED or somewhere to look at some photos.

Q. Did you keep copies of all the photographs, or did you get copies of all the photographs you saw at SLED?

A. I believe I had some and I sent them in the packet of information. I can't tell you which ones I had and which ones I did not have.

Q. Okay. But from that letter it appears that all the photographs were made available to you for your viewing; isn't that correct?

A. The opportunity, I guess, according to that letter.

Q. Okay. No further questions.

THE COURT: Very well.

MR. BROWN: Two brief.

THE COURT: No, I don't allow re-redirects.

MR. BROWN: Well, this is new material. This is new material he went in to.

THE COURT: You're talking about the photographs?

MR. BROWN: And the other material, there's one other item in the letter I want to ask him.

THE COURT: I'll allow you under these circumstances and remind you, Mr. Brown, it's very limited examination.

MR. BROWN: Limited re-redirect.

RE-REDIRECT EXAMINATION

BY MR. BROWN:

Q. The checks that were returned to you were not used to impeach Gloryvee about the scam with her with Dr. Bang?

A. I don't see which checks we're talking about.

Q. I don't think the one's listed on this letter.

A. It just says checks. I would have to see which checks we're talking about.

Q. There's no doubt she wasn't impeached with that?

A. No.

Q. Then the victim impact statement for Ms. Lingard?

A. Barbara Lingard.

Q. She has indicated at some point that she is opposed to the death penalty?

A. I don't know. She may -- if she did, but how are we going to get that into evidence without calling her?

Q. Y'all were sent the victim impact statement?

A. Yeah, okay.

MR. BROWN: No further questions, Your Honor.

THE COURT: You better run while you can.

THE WITNESS: I am.

THE COURT: Thank you, Mr. Sims.

(Whereupon, the witness steps down from the witness stand.)

THE COURT: All right, counsel, it's five o'clock and we've been going later. I am happy to hear, I'm happy for you to begin another witness.

MR. TARR: Your Honor, Mr. Stone's our next witness.

THE COURT: Mr. Stone is going to be your next witness?

MR. TARR: Yes, Your Honor, and I believe you had said he would be here first thing in the morning.

THE COURT: I told him to call at five o'clock. I'm glad I didn't have him come down today to start right at five o'clock. I'll tell you what I'd like to do then is make good use of this, of this time by if y'all will come back and let's talk just about scheduling.

MR. BROWN: Yes, ma'am.

THE COURT: And we'll do it on the record if you want, Mr. Zelenka, to go through calendars with us, but I did want to get some input with regards to how much longer as I begin to fill in the time. We have tomorrow, but we're not going to finish this tomorrow I don't believe.

MR. TARR: We'll be happy to meet with you in chambers and then if we have an issue and we need to bring him out and do it on the record that will be -- but I doubt we will, so....

THE COURT: Great. And I know that we certainly had the victim's family present also and if you all want to find out, you know, if they've got holidays or trainings or some absence planned I certainly want to hear that, too, I certainly want to factor that in as well.

MR. ZELENKA: The victim's wife and sister are back here.

THE COURT: They've been here throughout the week, they certainly have, so that's why I ask, I certainly want to have that. And I know that Mr. Aleksey's -- I think maybe he's had some family members that are here, I'm happy to have them.

MR. BROWN: Friends of the family have been here, yes, ma'am.

THE COURT: Very well. I'm happy for them to tell me likewise if they want to be back, if they want to tell me when they'll be absent, the period they think they'll be absent, I'm happy to hear that. But y'all got to find that out now.

MR. TARR: Department of Corrections, whenever they can go they're ready.

THE COURT: They are always ready.

MR. BROWN: What we're offering is to meet with you, we're offering to meet in chambers to discuss the scheduling. If there's an issue we could put it on the record tomorrow when Mr. Aleksey returns.

THE COURT: Absolutely. I think Mr. Aleksey, unless he has some sort of medical procedure planned, I think he must be here Monday through Friday; isn't that right?

MR. BROWN: We agree with that.

THE COURT: That way y'all can get on the road.

- - - o0o - - -

STATE OF SOUTH CAROLINA )
: C E R T I F I C A T E
COUNTY OF DORCHESTER )

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 18th day of February 2004.

Robin L. Keil

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, )
Applicant, )
) VOLUME IV, Pages 715 - 971
-versus- )
) TRANSCRIPT OF RECORD
)
) POST-CONVICTION RELIEF
STATE OF SOUTH CAROLINA, )
Respondent. ) November 15, 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

Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit
Post Office Box 3335
Summerville, SC 29484-3335

# I N D E X


| WITNESSES | Page | Line |
|---|---|---|
| ISAAC M. STONE, III | | |
| Direct Exam By Mr. Tarr | 717 | 22 |


# E X H I B I T S


| NO. | DESCRIPTION | ID. | EV. |
|---|---|---|---|
| A-02 | Letter | | 880 |
| A-29 | Hotel, Motel, Telephone Receipts | | 952 |
| A-57 | Letter | | 754 |
| A-58 | Lawsuit Summaries | | 763 |
| A-59 | Letter | | 733 |
| A-60 | Letter | | 880 |
| A-61 | Mr. Stone's Notes | | 868 |
| A-62 | Letter | 717 | |
| A-63 | Tina Lawing's Notes | | 922 |
| A-64 | Memo Tina to Duffie | 717 | |
| A-65 | Mr. Stone's Typed Notes | | 919 |
| A-66 | Tina Lawing's Time Sheet | | 929 |
| A-67 | Letter | 717 | |
| A-68 | Quantico Bill | | 926 |
| A-69 | CV of Saul Kassin | | 883 |
| A-70 | Transcript | | 733 |
| A-71 | Letter | | 827 |
| A-72 | Notebook of Newspaper Articles | | 836 |

(Friday, November 15, 2002.)

(Marked for identification were Applicant's Exhibits 57 through 72.)

MR. TARR: Judge, I think we're finally ready.

THE COURT: Great.

MR. TARR: Whenever you are.

THE COURT: All right. If you would call your next witness.

MR. TARR: Call Duffie Stone.

THE COURT: Yes, sir. If you would raise your right hand.

(Isaac McDuffie Stone, III, called as a witness, having first been duly sworn, is examined and testifies as follows:)

THE COURT: You come on and be seated and state your full name for the record.

THE WITNESS: Isaac McDuffie Stone, III.

THE COURT: Your witness.

MR. TARR: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. TARR:

Q. Good morning, Mr. Stone.

A. Good morning.

Q. Mr. Stone, you were the lead counsel for Bayan

A. That's correct.
Q. And was that in the Fourteenth Circuit?
A. Yes.
Q. And that's Beaufort and Hampton?
A. Beaufort, Hampton, Jasper, Allendale, and Colleton, although my work has been since I started working there exclusively in Beaufort County, but we have jurisdiction over all those counties.
Q. You also would have jurisdiction in other counties if you were asked to go there by the attorney general for, say, if there was a conflict with an Orangeburg solicitor, they needed a solicitor from out of that circuit you could also prosecute cases here under agreement with the county, correct?
A. Actually I would have to be appointed in the same way that any lawyer in South Carolina could be. I mean, I'm not mincing words with you on that.

Could I be appointed as a special prosecutor, yes, but I was in fact in private practice and appointed as special prosecutor in Lexington once as well, yes. So I could be appointed anywhere in South Carolina just like any other lawyer can.

Q. Okay.
A. But that doesn't come out of my job as an

assistant solicitor.

Q. That's just the fact that you're a lawyer?

A. That's right.

Q. And when you say part-time solicitor, we've heard that a lot over the course of these first few days of this hearing, what do your actual duties consist of, of a part-time solicitor?

A. Pretty much the same duties as the rest of the solicitors in the solicitor's office. I am part-time which allows me to have a private practice, a private law practice.

I think I probably carry about the same case load as the other assistant solicitors, but I am not in the office, I'm not in the solicitor's office on a regular basis.

In fact, I do not have an office there nor do I frequent the building. And if you've ever seen the building you'd know why. All of my stuff is actually out of my law office, I run everything out of there.

Q. All right. So do you as far as discovery matters and things like that, does the solicitor's office take care of that or does it go through your office?

A. We have a -- we have a fairly unique situation

in Beaufort I believe because I spent some time in Columbia as a prosecutor as well. It was different. We don't have any files, the sheriff's department keeps all the criminal files in Beaufort County.

So the discovery, while it goes to me and I'm ultimately responsible, is generally just a phone call back to the defense attorney that tells them all the file is at the sheriff's department. So it really doesn't run through either one to answer your question.

Q. All right. And if -- as far as getting ready, I assume I think I know of my personal knowledge you do a lot of trial work for the solicitor's office?

A. Yes.

Q. When you're preparing for a trial obviously you have to meet with witnesses?

A. Yes.

Q. As a solicitor most of the time, a large majority of your witnesses are law enforcement officers?

A. Yes.

Q. Where would you typically meet with them to prepare for a trial, solicitor's office or your office?

A. My office, usually in my law office. I think

it's changed a good bit now from what it was when I first started because I had a much smaller office in '97 and '98, I didn't have any room to meet anybody so I would meet them at the sheriff's department or anywhere else I could meet them, at the courthouse sometimes is what I had to do.

But now my office is bigger, I have a conference room so I can actually meet them actually in my office. So that sort of changed over the time I started with the solicitor's office July of '97. I did not have a conference room in my law office. In fact, I don't think I had a conference room in my law office until mid '98 I guess.

So to answer your question back then it was probably much more so at the sheriff's department and at the courthouse, now it would probably be more in my office.

Q. I believe, although I've never seen it, that there is actually like a box, a mailbox type thing at the sheriff's office in Beaufort with your name on it?

A. Yes. That's a separate issue, but, yes, that's right.

Q. Okay. And as we're talking about law enforcement officers as witnesses as in your role as

solicitor, they would include highway patrolmen?
A. Yes.
Q. How many different highway patrolmen would you say you dealt with in your role as solicitor over the years?
A. Over the years including my time in Columbia as well?
Q. Yes.
A. I was a solicitor in Columbia for about three and a half years as well and a law clerk.
Q. That was full-time?
A. That was full-time and I was a law clerk in that office for a couple years so I dealt with the patrol then as well. And I have absolutely no idea. As many as you could imagine. I mean, it certainly wasn't ten or 15 or 20. But I couldn't tell you an exact number. It was a lot.
Q. But you never had any dealings with Trooper Lingard?
A. No.
Q. So you said -- would you say a couple, two years as a law clerk in the solicitor's office?
A. I started as a law clerk in the solicitor's office in Columbia in '85 and I stayed there until '89, I went to work for a circuit court judge and --

I'm sorry, '88, in August of '88 then I started back with the solicitor's office in Columbia January the 1st of '89.

Q. And you --

A. It was a short time before the judge. I was there until I was director of the Sentencing Guidelines Commission. I took that over in I believe mid '92 or '93, I can't exactly remember. I know I spent one year with sentencing guidelines before I went into private practice.

Q. After you went into private practice in '92 or '93, at what time did you start up your role as part-time solicitor in the Fourteenth Circuit?

A. That was not until I moved down to Beaufort, and that was July the 1st of 1997.

Q. Okay. And between '92 and '93 when you went with the sentencing guidelines and then '97 when you started your part-time work at the solicitor's office in Beaufort, were there any other solicitor jobs that you held?

A. No. But during that time I was appointed as special prosecutor on one case in Lexington and I think that was in -- in fact, that was the only time I believe, yes. And that was probably in '93 or '94.

Q. And so '97 to 2002 as we stand here today you've

been a part-time solicitor?
A. Yes.
Q. In the Fourteenth Circuit?
A. Yes.
Q. And you mentioned that when you became a part-time solicitor when you moved down to Beaufort you also have a private practice?
A. That's right.
Q. The part-time nature of it enables you to have a private practice?
A. Right.
Q. And in that private practice you, you correct me if I'm wrong, but a large bulk of your duties or work is for the Insurance Reserve Fund?
A. That's right. That's correct.
Q. And I believe you've been involved in a number of different law firms, people leaving and stuff like that since I guess '90 -- whenever you left sentencing guidelines?
A. I went into private practice if this helps you, and I'm not trying to rephrase your question.
Q. Let me ask you this, you can tell me, it's easier. What law firms have you worked for?
A. That's what I was going to say. I started out by myself, I stayed in that capacity for about two

months before I spoke with Paul Reeves and Robert Lewis about joining them.

At that time the firm became Lewis, Reeves & Stone, that was in Columbia, that was the first time I started doing Insurance Reserve Fund work.

Q. I'm not trying to interrupt you. If you could just give us when you say each of these the rough date -- I mean, just general what year?

A. It would have been in 1994 I believe. The classification act was passed in '93 and I was with the Sentencing Guidelines Commission when that happened and that's my date.

Q. Okay.

A. That's kind of how I'm putting this together. So I believe I went to work with Mr. Reeves and Mr. Lewis in '94. I do not remember the exact date of that, though, it was not -- I was in private practice by myself only a few months, probably three or four months at the most.

Q. Okay. When you joined Lewis, Reeves & Stone in Columbia of 1994, that's when you began work with the Insurance Reserve Fund?

A. That's right.

Q. And that relationship continues to the present

time?

A. That's right.

Q. And could you continue with your evolution of --

A. There were no other law firms. I was with Mr. Reeves and Mr. Lewis as Lewis, Reeves & Stone in Columbia until July of '97 after I had gotten married and moved out, needed to move to Beaufort County.

We for a very short amount of time, probably a month or so, tried to keep it as Lewis Reeves & Stone, I would operate the Beaufort office, they would stay with the Columbia office. But that was very difficult to do and it didn't really make any sense.

So at that point I just became a sole practitioner. So I started that in July of 1997 and I would expect by November of that year, '97, it would have been just the law office of Duffie Stone and it has been that way since.

Q. All right. And could you explain for the record what the Insurance Reserve Fund is and what you do for the Insurance Reserve Fund?

A. The Insurance Reserve Fund is the insurance company for the State of South Carolina. The South Carolina Budget and Control Board is the financial mechanism, if you will, the Insurance Reserve Fund

handles all the insurance policies and insures State agencies.

They are required, when I say they, the Insurance Reserve Fund is required to insure all state agencies. County, and I believe, I'm not sure about this, but I believe they have to insure any governmental entity that wants to be insured by them.

But the county and the municipalities have a choice, they do not have to be insured, so in some counties you have the sheriff's department or the various other entities of the government insured by the Insurance Reserve Fund and some counties you do not. But, anyway, that is the general basis of the Insurance Reserve Fund.

They also have a branch that handles automobile policies as well. The automobile policies are farmed out to the J. C. Green Company and American Southern and exactly what that breakdown is I'm not sure, but everything else is pretty much under the Insurance Reserve Fund.

Q. Okay. You said it insures State agencies. Would that also include State employees acting in their official capacity?

A. As long as they're acting in their official capacity, yes.

Q. State employees, that obviously includes police officers?
A. Yes.
Q. Highway patrolmen?
A. Yes.
Q. And I believe within the Insurance Reserve Fund the South Carolina Department of Corrections is another State agency?
A. That's correct.
Q. And you do work representing them from time to time?
A. Yes.
Q. Can you tell me getting more, now we've got the background what we're talking about here, getting to this case with Mr. Aleksey and your meetings with him beginning when you were first appointed all the way up through trial, could you tell me when, and I'm not asking for exact dates, I know that would be four years ago, almost five years ago, can you tell me the number of times roughly that you spoke with Mr. Aleksey regarding your work with the Fourteenth Circuit Solicitor's Office or the Insurance Reserve Fund, and exactly what you told him about that in order for him to make a decision whether he wanted you to continue with representation?

A. The first time I have record of actually speaking to him about this, and this is -- this would have been February the 2nd, 1998. I met with Mr. Aleksey in Orangeburg, it -- there was a hearing in front of Judge Luke Brown that we had and I think the -- I think the purpose of the hearing was, was originally -- was just to give Mr. Aleksey the charges, I'm not real sure about that. And I think also the solicitor had to give him the notice of the death penalty.

At that time I met with him prior to coming out into the courtroom and I spoke and tried to explain that to him. I do not know if I spoke to him previous to February the 2nd, 1998.

I do know that I told him about my work with the solicitor's office, I also know that I told him what a solicitor means, because as you probably know in most states they're not called solicitors, they're called state's attorneys or district attorneys or whatever. So I explained it as I'm a part-time assistant solicitor and that means I'm a prosecutor.

The -- I also at that time explained to him the Insurance Reserve Fund and what I did for them. I explained to him that I represented State

agencies which include the highway patrol, it includes Orangeburg County, or at least it did at that time, it doesn't now.

The -- I explained to him that the -- I had never represented Trooper Lingard nor to my knowledge had ever met him and I knew nothing about him, but that I had represented highway patrolmen before. That was February the 2nd.

We had the hearing in front of Judge Brown at that time, and in fact I asked Judge Brown and I know you have the transcript so I won't get too much into that, but I asked Judge Brown to go over that as well because --

Q. We'll go over each of the --

A. I'm sorry, excuse me.

Q. I said we'll go over each of the waivers.

A. Sure.

Q. So that will be in the record.

A. I don't know if I spoke to him about that again. I do know that at one point Mr. Aleksey sued or brought a number of lawsuits, or was going to bring a number of lawsuits.

Anyway, at some point it precipitated me sending him a letter that said I just want you to know, like I told you before, I cannot represent you

because I can't help you with this case, these lawsuits, because I work with the Insurance Reserve Fund. And I have that letter. You may have that as well.

Q. Yes, I do.

MR. TARR: Your Honor, may I approach the witness, ask him if he can identify a couple of documents that have already been greed upon?

MR. ZELENKA: No objection.

THE COURT: Let's put them in. Tell me what they are.

MR. TARR: Your Honor, this is a transcript of a February 2nd, 1998 hearing which was the notice of intent to seek the death penalty in this case, which did not make it into the bound volumes that are already in the record.

Also along with this I believe we were putting in another hearing from January 8 under the same designation as Applicant's Exhibit Number 70 and that was the appointment of counsel hearing, I believe.

THE COURT: All right. Very well.

MR. ZELENKA: So February 2, 1998 and what's the date of the other one?

MR. TARR: January 8th, 1998.

MR. ZELENKA: Are both going in?

MR. TARR: They're both going in as Applicant's 70.

THE COURT: Very well. In without objection.

MR. TARR: Either one of them were in the bound volumes which is already in the record.

Also Applicant's Number 59 which Mr. Zelenka has already agreed to put in, this is a letter from Duffie Stone to Bayan Aleksey and I'm going to have to ask him about the date and I'll get into that.

THE COURT: Sure. What is that exhibit number?

MR. TARR: That is Applicant's 59.

THE COURT: Is there any objection to that?

MR. ZELENKA: No objection.

THE COURT: Very well. As to 59 and 70 there's no objection.

(Entered into evidence was Applicant's Exhibit 59, letter.)

(Entered into evidence was Applicant's Exhibit 70, transcript.)

Q. You said you have a copy of the letter, it's Applicant's 59.

A. I haven't seen what you're talking about. I know that I've got a letter that I sent him at some point.

Q. I would also ask you after you review that, I believe you've told me on earlier occasions that your printer, your computer when it prints out letters that are in the computer, prints out the date of the printing as opposed to the date of writing the letter so I'm going to be asking you if you remember what date you wrote that.

A. It's a bit unusual, some of them do and some of them don't, and I'm not sure which ones do. What I can do is I can check through my notes here which are the -- which is everything that I did on the case and see if I can match it up with that letter.

I had assumed that February the 19th, '99 was correct, but it couldn't have been because the -- I believe he filed those lawsuits either in the middle of trial or very close to trial, but previous to it, I believe. I'm not sure about that. But if you could give me that date I could tell you when I sent the letter, I hope.

Q. And let me just ask you if these dates would seem consistent with your recollection of filing. May 18th, July 24th -- these are all 1998 -- they're

basically May and then I believe the rest are July?
A. I'm sorry, these are when they're filed?
Q. Yes.
A. I'm -- I don't have any idea when they were filed. And I would not have paid much attention to that particular date.
Q. Okay. So it would have basically been when we discussed with you the filing?
A. That's correct.
Q. Potential filing of lawsuits?
A. That's correct.
Q. Okay. But you had stated earlier that you thought it might have been near trial or real close and these would --
A. Yes.
Q. Filing dates would be pretty close?
A. That's right.
Q. August 24th was the trial of the case?
A. What were the filing dates again? I apologize.
Q. One was in May, I think the rest were in July of '98.
A. Sure, that certainly sounds reasonable.
Q. And let me say this.
A. Sure.
Q. I'm not asking for a specific date.

A. Okay.
Q. Just if you remember, if you don't remember just --
A. I don't remember. And I could, like I said I could go through all of these. There are, unfortunately, 23 pages of entries but I would be glad to do it and tie it up. But, no, that certainly sounds reasonable, I recall it was either prior to trial or very close to trial when all of that happened.
Q. Okay. And that would have been when he discussed with you that he was about to file these lawsuits, that would have been the point in time where you sent the letter telling him that you wouldn't be able to help him with it?
A. That's right. That's correct.
Q. It wouldn't have been --
A. It wouldn't have been February 19th, 1999, no.
Q. When you talked to him the one time you sat down with him when they were doing the notice of intent to seek the death penalty, you went over all the conflicts, told him you were solicitor, told him what that meant and that you did work with the Insurance Reserve Fund, you did not tell him if he in the future filed lawsuits against any of the entities you

represented that you wouldn't be able to help him with it?

A. I don't believe that ever came up, no.

Q. Okay. And do you have -- you've got the transcript up there, Mr. Stone?

A. Yes. Well, I think so. This is left up here from Mr. Sims, I believe.

Q. Okay. Could you check and see if you have -- I've got a copy for you here.

A. Sure.

Q. This is Applicant's Number 70, transcript of the February 2nd, 1998 hearing. I'll hand that up to you and I've got it flipped to page 5. And I'm going to publish this, the relevant portions.

And I believe, and you can tell me if I'm wrong, this is the first time that there was an attempt by Mr. Bailey in the court and defense counsel to secure a waiver of any potential conflicts in the case?

A. This was the first hearing concerning my work as assistant solicitor, yes.

Q. Okay. And on page 5, line 7, after the Court says "Anything further?"

Solicitor Bailey says "Yes, sir, Your Honor, one other matter with regard to Mr. Stone's

representation. I've discussed with him shortly before this matter came up. It's my understanding that Mr. Stone is a part-time solicitor in the Fourteenth Judicial Circuit. I think there could be some argument made that there may be a conflict of interest, I just wanted to bring that to the Court's attention, get a waiver from the defendant in regard to the potential conflict."

And the Court said, "Well, what's your position? Have you had a chance to talk with him?"

Mr. Stone: "Yes, sir. I explained to him earlier when Judge Hughston appointed me on this case that I did part-time solicitor's work."

And I'll stop there with the reading of that. That would have been the February -- the January 7th I believe?

A. Right.

Q. Or 8th hearing where you were appointed, Judge Hughston?

A. Would have been January the 8th when I traveled to Orangeburg and we had the actual bond hearing.

Q. Okay. And that's what --

A. I met with Mr. Aleksey at that point as well.

Q. Okay. "I explained to him, in fact, a solicitor in South Carolina is a prosecutor, I believe he

understands that, but I don't have any problem, in fact, with asking you to go back over with, also explained to him that I did Insurance Reserve Fund work, which means that I represented State agencies before, which would include police agencies and the highway patrol. I explained that to him as well.

"Judge Hughston had just left Beaufort and knew that as well when he appointed me. But I've explained that to him, he understands that, he told me he wishes for me to continue. However, I would rather leave that to you to ask him."

And the Court says "All right, sir." Flip it over to page 7. This is the actual colloquy with Mr. Aleksey.

And I don't think I really need to read it, it's in the record now. But basically the Court asked Mr. Aleksey whether he wants you to continue as his lawyer even though that you have been a State prosecutor, which are called solicitors, and he's also defended and he doesn't really say anything else about what you defended, and Mr. Aleksey says he wants you to continue. He said that's a good choice. That's basically the gist of it?

A. Yes, sir.

Q. Okay. And that's all, after that is where

Mr. Sims points out that he at one time was a solicitor as well?

A. That's right.

Q. Okay. Now, on May 28th, 1998, this would be page 2,192 of the transcript, I guess that's Volume V, I think all these pretrial hearings were in Volume V. Do you have Volume V of the transcript, page 2,192?

A. Volume V?

Q. Page 2,192.

A. Page 21...?

MR. ZELENKA: Your Honor, may I approach?

THE COURT: Sure. Do you have Volume I?

THE WITNESS: Yes, ma'am. Do I have Volume I? No, wait a minute, I sure do not.

THE COURT: Doesn't make sense that you don't. Do you need it? Do you need it now?

MR. TARR: No, Your Honor.

THE COURT: When you get to pages 1 through 500 where you need to talk about that, you can have it.

THE WITNESS: Yes, ma'am.

Q. 2,192. Have you had a chance to get to that page?

A. Yes. 2,192, Volume V?

Q. Yes.
A. Yes.
Q. This is an excerpt from a May 28th, '98 pretrial motions hearing in this case in Sumter County. Excuse me, I'm sorry, the actual transcript states May 28th but it's May 20th, it's a typo, May 20th, '98. Do you recall going to Sumter for a motions hearing on Mr. Aleksey's case?
A. Just a moment, to make sure that I'm on the same motions hearing.
Q. Okay.
A. You have May 20.
Q. May 20th.
A. May 20th.
Q. It does say May 28th in some places.
A. I have motion hearing and that was travel to Sumter, yes.

MR. TARR: For the record, Your Honor, it's the index of the trial transcript that says May 28th, actually the transcript itself on the front says May 20th which is the correct date.

A. I have May 20th as well.
Q. Now on this page, 2,192 line 18 once again Mr. Bailey brings up, and this time it's before the judge who has been assigned to the case, Judge

Cottingham, the potential conflicts involved in your representation. He says, yes, sir, Your Honor -- actually the Court says "Anything else from the State?" on line 17.

Mr. Bailey: "Yes, sir, Your Honor. This was put on the record at a prior hearing and not before Your Honor and you'll be handling the case. Mr. Stone is presently a part -- as I understand a part-time assistant solicitor, Fourteenth Circuit, defendant has been made aware of that previously, he's waived any conflict, but I just bring that to Your Honor's attention, ask him to put that on the record again so there's no misunderstanding."

And you say "That's best, Your Honor. Your Honor, again I'm doing part-time work in the Fourteenth Circuit. Of course, I don't have any jurisdiction outside of that, unless as a lawyer."

A. As a lawyer, yes.

Q. "You could be appointed just like any lawyer. We spoke to Mr. Aleksey about that earlier on the record, but if you would, sir, just ask Mr. Aleksey if he would like me to continue on as his counsel knowing that."

The Court says "Mr. Aleksey, please stand." And he says "Duffie Stone is employed as a

part-time solicitor in another circuit, not in any way connected with Orangeburg circuit. Do you waive, or are you comfortable with the fact that he is representing you as a defense attorney now?"

"Yes, sir."

"You consent to him continuing?"

"Yes, sir."

"Knowing that he's a part-time solicitor?"

"Yes, sir." And that's the extent of the colloquy.

A. That's correct.

Q. And there is no mention of the Insurance Reserve Fund potential conflict --

A. There is not.

Q. -- in that waiver?

A. There is not.

Q. Okay. And let me ask you if you could --

MR. TARR: Now he does need Volume I, Your Honor, and I actually have a copy he can use.

THE COURT: That's all right. Here you go.

THE WITNESS: Thank you.

THE COURT: That way that set can stay together.

Q. If you could flip to page 180 of the transcript.

A. I'm there.

Q. Okay. And you can tell me if I'm wrong, I believe this is the third and final attempt to secure a waiver of these potential conflicts that's actually on the record in a court proceeding in this case?

A. It may very well be. This would have been actually previous to the last one that we discussed.

Q. Actually this is -- the last one was --

A. What date is this?

Q. This is August, this is actually pre voir dire, August 24th, 25th, I believe.

A. Okay.

Q. When actually you already arrived in Orangeburg, you're starting the trial of the case.

A. Okay.

Q. Let's see, all right, this is line 17. And Solicitor Bailey -- once again, let me say in each of these three instances it's actually Solicitor Bailey that brings up the attempt to procure a waiver of the conflicts.

A. He does with the exception of the very first time that we -- that Solicitor Bailey brought up the assistant solicitor part we had discussed it previous to that.

I don't recall if that was his idea or

mine. It was probably his, but I brought up the Insurance Reserve Fund so that he knew that and that was out there as well. That was the first one.

Q. Okay. Now, I'll just call your attention to line 17. And once again this is Judge Cottingham who was assigned to be the trial judge in this case.

Solicitor Bailey says "Your Honor, the other point, this was put on the record at a prior motion hearing, I believe both motion hearings."

The Court says again "Make the sure the record is clear Mr. Stone is a part-time assistant solicitor in a different judicial circuit, Mr. Aleksey has been made of that," I assume he means made aware of that, "and has waived any potential conflict. I would just like that on the record again at this point."

The Court says "Stand up, Mr. Aleksey. You understand that one of your counsel is with the solicitor, has a contract with the solicitor?"

Mr. Stone: "Basically, Your Honor, yes, sir, that's correct, part-time with the Fourteenth Circuit."

The Court: "Part-time solicitor's office in another circuit. It has nothing to do with this circuit here in Orangeburg. Do you understand

that?"

And Mr. Aleksey says "yes, Your Honor."

The Court says "You fully understand his position as part-time with the solicitor's office in Beaufort County?"

"Yes, Your Honor."

"You have waived any possible conflict, and are agreeing that he shall be your counsel in this case?"

"Yes, Your Honor."

"Is that correct?" And Mr. Aleksey nods his head.

And then right at the bottom of the page after the Court says "You may be seated," you say "One other thing, Your Honor, and we covered this in a prior hearing as well. I also do work with the Insurance Reserve Fund which insures State agencies which obviously includes the Department of Public Safety. I think we have gone through that on the record."

And the Court said, "I think the record is abundantly clear on that."

And you say "Yes, sir." And that's the end of that.

A. That's correct.
Q. Now, would you agree that as to that hearing there was no waiver as to the Insurance Reserve Fund conflict, he doesn't ask --
A. There's nothing in the record that indicates that Mr. Aleksey made any comment one way or the other about that, about the insurance reserve fund part, yes.
Q. Previous to this hearing there were only two other attempted conflict waivers that were done on the record?
A. That's right.
Q. And the second one is the only other one that was done before Judge Cottingham?
A. That's right.
Q. Okay. And we had just gone over that, and in that -- I just published that, there's no reference to the Insurance Reserve Fund conflict in there?
A. Not in the one we just discussed, no.
Q. All right. So the last two there's no questions asked of Mr. Aleksey by Judge Cottingham, those are the only two that Judge Cottingham was presiding on?
A. I believe that's correct.
Q. Okay.
A. I haven't reviewed all of this transcript, but I

believe that's correct.
Q. Okay. And so when he says that he believes the record is abundantly clear and after you said I believe we put this on at a prior hearing.
A. Right.
Q. It actually -- he has never asked the defendant one question about whether he waived that conflict?
A. That's true.
Q. And would have to have read the transcript of the hearing that he did not preside at to know if there had ever been asked of Mr. Aleksey regarding the Insurance Reserve Fund?
A. I'm sure there's a number of ways the judge could have found out about it, but I don't know what those were, if he knew about the previous hearing in front of Judge Brown or not, I don't know.
Q. Okay. But when he said he thinks the record is abundantly clear, it had just been said to him that you thought that had been put on the record during a prior motions hearing and it had not, it was actually put on the record of the February 2nd, '98 hearing that was just a notice of intent to seek the death penalty --
A. Which was -- yes, I would have considered that a motions hearing as well.

Q. Okay. All right.

MR. TARR: I would like to introduce Applicant's Number 57 which has already been agreed to by Mr. Zelenka.

THE COURT: Okay.

MR. TARR: This is a letter from the South Carolina State Budget and Control Board, Office of General Services under that Insurance Reserve Fund to Mr. Brown, my co-counsel, and it basically outlines compensation paid to Mr. Stone during the calendar years '98, '99 and 2000 with his work with the Insurance Reserve Fund for the record.

THE COURT: Okay. Tell me what the relevance of that is.

MR. TARR: Because he has -- when you're considering whether an attorney may have a potential conflict in a given situation, how much money he makes at a certain job that he may have a conflict with is important to the determination. Because an attorney's own personal interest that, you know, if he does something in Mr. Aleksey's case that, you know, that calls into question -- is in any way deemed to be negative of law enforcement and this is

the killing of a State trooper, that could impact his employment representing State troopers and State agencies and it's just the amount of money he makes doing that, if he were to lose that, it's pretty substantial.

THE COURT: Doesn't a lawyer have a conflict if they have -- I mean, isn't it the rules of conflict if he didn't receive a dime, it is a conflict, right?

MR. TARR: Yes, Your Honor, but this --

THE COURT: I mean, in other words, you don't have to make $100,000 from a particular client to have a conflict. You have a conflict if you received no money.

In other words, if he just happened to like the Insurance Reserve Fund, was willing to do their work for free, and liked Mr. Aleksey, was going to do that work for free, he would still have a conflict.

MR. TARR: Yes, Your Honor.

THE COURT: So what you're saying is that he's got more of a conflict if he makes money or less of a conflict?

MR. TARR: No, Your Honor, I'm saying they're different types of conflicts. And the

courts around the country are very clear, you have multiple representation, you've got former representation, you've got conflicts with an attorney's own personal interest.

So what I'm alleging is he has a conflict with the multiple representation as well as his own personal --

THE COURT: What you're doing is you're setting a foundation because it's your position that although Mr. Aleksey was informed and apparently waived the conflict both on and off the record vis-a-vis the insurance fund for some reason was an unwaivable conflict; is that your position?

MR. TARR: That's one of our claims.

THE COURT: Okay.

MR. TARR: I would say that one of the cases we cite as that proposition is the Second Circuit case which is U.S. v. Schwarz.

THE COURT: Right.

MR. TARR: The facts are almost identical to this, instead of the Insurance Reserve Fund in that case the attorney did work for the Police Benevolence Fund, actually had a contract with them, made a lot of money.

And the Court said it was because he called into question whether law enforcement officers were living or did anything to make them look bad that he could lose that job and that's a lot of money and that's something that has to be considered. And that's the only reason I'm bringing this in.

THE COURT: That's why his income is important. And for what years are you --

MR. TARR: This is for -- the trial of this case was August of '98. This is for the years 1998, 1999, and 2000. The reason I did the two years after is because it shows the money he could have lost had this happened. And I'm not saying that it would have, I'm just saying it's something to be considered.

THE COURT: But you have to, don't you? I mean, don't you have to say that? Doesn't that have to be your position?

MR. TARR: Yes, Your Honor.

THE COURT: In other words, your position is Mr. Duffie in this instance was -- because he makes money from the Insurance Reserve Fund that he had a conflict because he was going to lose that money, and that's your position.

MR. TARR: The potential was there and that's why we believe that the defendant should have been made aware of every possible ramification of the representation of Mr. Stone. And I'll get into that more in a minute and maybe that will clear up some of the Court's concerns.

THE COURT: Okay. Just wanted to know what the relevance is. Thank you.

MR. TARR: Thank you.

THE COURT: Interestingly enough, how much did the fellow in Second Circuit make?

MR. BROWN: It was a law firm. They were of counsel to I believe it was $10 million.

MR. TARR: That was over five years.

THE COURT: How much did Mr. Duffie make?

MR. TARR: I'm going to get into -- because we don't have the years that he worked with Lewis, Reeves & Stone, I'm going to ask him to give his guesstimate of that, but 1998 was 67,000, 1999 was 193,000, and 2000 was 133,000.

THE COURT: Thanks.

MR. TARR: Thank you.

THE COURT: That's for the Insurance Reserve Fund, not for the police specifically?

That's for the Insurance Reserve Fund?

MR. TARR: That's Insurance Reserve Fund, right. That's just his job representing any State agency, any State employee.

THE COURT: I'm with you, not police specifically.

MR. TARR: Right. We're not alleging that, Your Honor.

THE COURT: Thanks. Okay.

(Entered into evidence was Applicant's Exhibit 57, letter.)

BY MR. TARR:

Q. And let me hand you a copy of this.

A. Sure.

Q. And you've heard me talk to the Court regarding what that is. Do you have any reason to think that that -- those are inaccurate figures?

A. No, I don't. I don't know that these are accurate or not, but I know who John Trussle is, John -- Mr. Trussle would have the information. If this is what he gave you, then I have no problem with it.

Q. Okay. And I believe we made several Freedom of Information Act requests in this case and I believe he had contacted you at least once regarding those

requests?

A. He did. He contacted me twice because he was -- do you care about the conversation? I'll be glad to tell you.

Q. No.

THE COURT: I do.

A. He called me twice and asked if Jim Brown had something against me and I told him that he did not, that he is representing somebody on a death penalty case that I had handled before, that I certainly did not have any objection to him giving him anything he wanted to give him.

I said the only concern -- I did have a discussion with him at the very end of the second conversation that the notes themselves, my billing program, and I have to explain this or this doesn't make any sense, but I work with a computer program that converts everything I do into the billing program, so the bills themselves that I send to the Insurance Reserve Fund actually describes what it is that I did for them.

I told them the only thing, the only concern I had was that the details of those bills may be attorney/client privilege and he certainly needed to discuss that with some of his people if that was

an issue. But as far as the numbers, I had no problem, give him everything he had.

Q. Okay. And as stated earlier, I was going to ask you, you did work with Lewis, Reeves & Stone?

A. That's right.

Q. Prior to going solo, and I believe you had told me you went to work with them in 1994?

A. It would have been sometime in '94, I believe.

Q. And I think you said maybe November because you said you only did a couple months by yourself?

A. That's right.

Q. Something like that. '94 you began work. So could you tell the Court, and if you don't know you can tell the Court that as well, between 1994 when you were with Lewis, Reeves & Stone up until the records as we have here for 1998, do you have a rough ball park of your compensation you received due to your work with the Insurance Reserve Fund?

A. I don't, but I'll be glad to see if I can clarify some of those issues for you. I was on salary with Lewis, Reeves & Stone. I was a named partner, I was not a financial partner.

My salary, at least the -- while I was there would give me bonuses if I brought in a certain amount of money. So from that standpoint I was

financially interested obviously in bringing as much into the firm as possible, but I was not privy to the numbers themselves.

I'll tell you I did probably the majority of the work in the firm. At one time we had one other lawyer, Amy Lore, Amy Lore Gaffney who also did Insurance Reserve Fund work so we pretty much focused our efforts in that particular field.

Mr. Reeves and Mr. Lewis did very little of that, they were focused primarily in personal injury work, but they did some every once in a while and we worked together.

And I really cannot give you a guess as far as how much it was that we made. At that time I was -- I was at the top level for the Insurance Reserve Fund as far as payment and that was $80 an hour, so, you know, and I know that changed maybe in '99 or maybe 2000, I'm not real sure about when that finally moved up.

Q. What did that go up to?

A. One hundred dollars an hour for me, because I've had ten years' experience. It's all based on the number of years you had as experience, or at least it is now.

Q. Ten years of being a lawyer?

A. Yes, that's right.
Q. Okay. And although you were on salary, you did mention you got bonuses?
A. Right.
Q. And you would agree that other than even putting bonuses aside --
A. Yes.
Q. -- your value to the firm and your future with the firm would -- can depend greatly on what you bring in?
A. Oh, at that time, yes, absolutely. Absolutely.
Q. If you were making $10,000 a year at the Insurance Reserve Fund as opposed to $200,000 a year you wouldn't be nearly as valuable to that firm for that work you were doing, Insurance Reserve Fund work?
A. I would agree with you that obviously bringing in $10,000 to the firm is not as valuable as bringing in $200,000.

But the other work I did was criminal defense work. So if I was bringing in $200,000 I don't think they would care where it was coming from. Neither would I. There was an incentive for me to bring in as much money as I possibly could, absolutely.

Q. Okay. And at the time you were at Lewis, Reeves & Stone, did you know what your plans were for the future, whether you were going to try to stay there, make it up to partner, whether you were only going to stay a few years and then leave?

A. Looking back on it honestly I can tell you I had no clue what I would be doing. I enjoyed working there, I liked the work, I liked the Insurance Reserve Fund work and I liked criminal work and that allowed me to do both.

THE COURT: Let me ask you this question, and I'm confused and I want to be sure my dates are correct so excuse me so much, both of you.

But I have at the point in time when the representation of Mr. Aleksey began that Mr. Stone was in Beaufort and not working for this law firm.

MR. TARR: I'm just establishing, I'm just establishing the -- how much money he made over time with the Insurance Reserve Fund. I mean, what he made before and after I think is relevant to whether --

MR. BROWN: And I think there may be a way to tie it in if I may speak with my co-counsel logistically, Your Honor, if you'll give us one

moment.

MR. TARR: Your Honor, I think one reason, what happened prior to him going to Beaufort, why that would be relevant is that some of these cases that he worked on started before he went there and continued on after and he may have well taken with him, I don't know.

THE COURT: Just ask him that. In other words, my concern, the reason that I was concerned about that --

MR. TARR: Yes, Your Honor.

THE COURT: -- is that you are asking him about bonuses, that he had an interest in making more money for that law firm because he, part of his remuneration was bonuses.

MR. TARR: I agree.

THE COURT: That would be relevant except for the fact that, you know, I guess along that line it's even a bigger deal because it isn't he waiting to get bonuses from some other partners where he's on salary, it's all his law firm. You see what I'm saying? So I was concerned that we are talking about bonuses.

Now, this is a whole different issue, did you start some cases and take them with you.

Ask him that.

MR. TARR: I agree.

THE COURT: What I was worried about is I went up and checked my dates because we are handling many dates. The only reason I asked the question is to make sure my dates were right, that's all.

MR. TARR: Yes, Your Honor. Obviously he couldn't be effected by a conflict when the case wasn't going on, I'll agree with the Court.

THE COURT: So we'll go on to ask that question about it.

MR. TARR: Okay. Thank you.

THE COURT: Sure.

Q. Of the cases that you started with Lewis, Reeves & Stone with the Insurance Reserve Fund, that occurred, most of which occurred in '96, but then didn't up ending until after you left there, did you leave those cases when you left or did you take them or was it some of both?

A. I don't understand the date question exactly, but if you're asking me if I --

Q. Say a case was filed in '96 and you started working on it at Lewis, Reeves & Stone and then you left in '97 and came to Beaufort, would you have

taken those with you or would you have left them there or maybe some of both?

A. I didn't do it by date. I took probably seven or eight cases with me and that was obviously with the consent of my partners as well as the Insurance Reserve Fund.

I do not remember which seven those were and I don't know that it had anything to do with the date. I think it probably had more to do with the fact that I was the main focus on the case, I was the lawyer that had been representing this particular entity.

And I don't know exactly, remember which one those were. But there was probably seven, eight cases that I took with me when I started in '97.

Q. You say seven or eight cases, you're talking about just Insurance Reserve Fund cases or are you talking about all?

A. Yes. I would not be surprised just seven or eight Insurance Reserve Fund cases. I may have taken other cases, I just don't recall.

Q. Okay.

MR. TARR: Your Honor, at this time I would like to introduce Applicant's Number 58.

THE COURT: Okay.

MR. TARR: And it's summaries off of United States District court web pacer system of lawsuits filed by Mr. Aleksey. I'll tell you how many.

(Entered into evidence was Applicant's Exhibit 58, lawsuit summaries.)

Q. Mr. Stone, with regard to Applicant's Number 58 which I just indicated.

A. Okay.

Q. I'll show you what it is, it's basically just a couple pages per lawsuit that were filed by Mr. Aleksey and I don't believe you've ever seen that.

A. I have not.

Q. I just wanted to ask you some questions --

A. Sure.

Q. -- about them and I don't have another copy so when you get done --

A. Here, I'm sorry, absolutely. I haven't seen them so you can --

Q. Thanks. And basically just ask you about some of the defendants that were involved in Mr. Aleksey's suit. The first one's filed May 18th, '98, Aleksey v. Moore, et al, the defendants named were Michael

Moore, director of SCDC Department of Corrections. You have represented them?

A. I have.

Q. You did at the time during 1998?

A. What time?

Q. 1998 during the representation of Mr. Aleksey.

A. I don't know if I had any prison cases at that time or not, but I do now for the Department of Corrections and I did I know previous to that. As far as whether or not there were actually pending at the time that I represented Mr. Aleksey, I don't know.

Q. Okay. But we do have in the transcript that you had told the Court that you did represent Department of Corrections?

A. Certainly did, yes. I still do.

Q. We're just not sure whether it was at that time?

A. That's correct.

Q. And SLED is another defendant. Do you ever remember representing --

A. Yes, I have represented SLED before. That was a while ago, but I have represented SLED.

Q. And they were the chief investigative agency on this case?

A. That's right.

Q. And Department of Corrections would be involved in this case because Mr. Aleksey eventually ended up there, but also because he was there pretrial in Lee County, correct?
A. That's correct. He was there pretrial.
Q. Orangeburg County?
A. Yes.
Q. You've represented them before?
A. I have.
Q. And Orangeburg jail?
A. I don't doubt that. I don't -- I don't recall a specific case in which I represented the jail, but I don't doubt that I have.
Q. Okay. I believe I'll try and refer you to a specific case, and let me know if it refreshes your memory at all.

MR. TARR: Beg the Court's indulgence one moment, please.

THE COURT: All right. Sure.

Q. Okay. And the title of this prior case that I'm going to ask you about and whether you recall working on, it says name of client John Doe, warden of Orangeburg County.
A. Okay.
Q. I don't know why it references John Doe, I don't

believe John Doe has ever been the warden.
A. It doesn't really ring a bell with me. Who was the plaintiff?
Q. Orangeburg County, Charles Tyler, it was a civil rights violation case, the dates of the claim were 8/15/96 through March 4th, '98. And we have the name of the lawyers, I. M. Stone, Lewis, Reeves & Stone.
A. If that's something you got from Mr. Trussle I'm certainly not saying it's not accurate. I don't remember --
Q. It's obviously several years ago.
A. If you could tell me what the claim was about I probably could remember it.

THE COURT: Mr. Brown is raising his hand.

THE WITNESS: I'm trying to be helpful, I promise.

A. Other than a section 1983 claim, is there anything in there telling me what it's about?
Q. We're going to pull that. We will get that. I apologize for not having that.

MR. BROWN: I apologize. Your Honor, I'll say this: What we received from the reserve fund may not be every document that exists, it's just what was returned to our request of them.

THE COURT: Let me tell you what -- let me

tell you where I am at this moment.

MR. BROWN: Sure.

THE COURT: Again, just to be sure that my notes are complete and I know that when I'm looking at this at my office I'm going -- I know I'm going to wish that I had been clear with you about this so I'm just going to get this clear now.

The entities that Mr. Aleksey sued during the pendency of this matter prior to trial, or during trial?

MR. TARR: Correct, Your Honor.

THE COURT: During the period that Mr. Stone was representing him as I have it at this moment are the South Carolina Department of Corrections and I have Michael Moore, but Michael Moore in his capacity as working for South Carolina Department of Corrections, so I gather that would be South Carolina Department of Corrections?

MR. TARR: Correct.

THE COURT: SLED.

MR. TARR: Yes, Your Honor.

THE COURT: Orangeburg County.

MR. TARR: Yes, Your Honor.

THE COURT: And the detention facility which would be the Orangeburg County Detention Center.

MR. TARR: Calhoun.

THE COURT: That I understand is a joint facility, not just Orangeburg, Orangeburg Calhoun Detention Center.

MR. TARR: I believe that is correct, Your Honor.

THE COURT: So it would be that entity, those four suits. Are there others?

MR. TARR: Yes, Your Honor, that is just the first lawsuit. I'm going to go through all the other relevant ones.

THE COURT: This is just the first lawsuit?

MR. TARR: May 18th, '98 filing.

THE COURT: Oh, I'm so glad I asked, I just got confused, okay. This is just one suit?

MR. TARR: Yes, Your Honor.

THE COURT: All right. Great. Is there a plaintiff's counsel?

MR. TARR: Excuse me?

THE COURT: In this action is there plaintiff's counsel or pro se?

MR. TARR: All of these are pro se, Your

Honor.

BY MR. TARR:

Q. And I'll go ahead and ask you this.

MR. TARR: Your Honor, I apologize, there's a letter that I marked for ID with the court reporter and it seems to have wandered off somewhere.

(Pause in proceedings.)

MR. TARR: Your Honor?

THE COURT: I'm listening.

MR. TARR: I request Court's permission at this time, I'm looking for the letter, I've got a copy of it, it's Number 61, Applicant's 61.

THE COURT: Just want to substitute that?

MR. TARR: Yes, Your Honor, until we find it. The other one's already mark for ID and I may have handed it to somebody to look at.

THE WITNESS: What are you looking for?

MR. TARR: The letter that you sent -- I'll go ahead, enter it into evidence.

THE COURT: It's up here, Mr. Duffie has that letter.

MR. TARR: Okay. Great, I guess we already put that in, Number 59.

THE COURT: It's already in evidence and

they have it. Great.

MR. TARR: Okay.

Q. Let me get back to where we were. The Court had just asked whether these are pro se, and they were pro se. This letter that you had sent him that you think was roughly about the time near to the filings after he had told you about that he was going to file the lawsuits, it just basically says that you won't be able to -- I'll just go ahead and read it.

A. Sure.

Q. "I've received and reviewed all the letters, maps and other materials you sent me. I appreciate you keeping me informed of what is going on in prison. Unfortunately, I will not be able to help you with any lawsuit against the prison because of my involvement with the Insurance Reserve Fund. I know I explained this to you before, but I wanted to make sure you understood this. I would have a conflict of interest bringing a civil lawsuit against an agency I represent." And that's basically the extent of what you told him there?

A. That's right.

Q. Okay.

THE COURT: What was the date again? I'm sorry.

MR. TARR: Your Honor, this is a problem and Mr. Stone has indicated that his printer prints out the printing date on the letter as opposed to the date the letter was done. The letter is dated February 19th, 1999 which is clearly inaccurate, that's when it was printed and send to Mr. Aleksey when the file was sent, so I believe the witness has testified that the letter was sent when -- soon after Mr. Aleksey telling him he was going to file lawsuits and we believe it's somewhere between May and July of 1998.

THE COURT: I got it.

Q. The Charles Tyler case that I was asking about which was the Orangeburg County John Doe warden, whatever.

A. Right.

Q. Basically the facts of it were a guy was in jail in Kentucky, had a detainer from Orangeburg.

A. Illegal detainer case, yes.

Q. He wanted to come back, they wouldn't bring him back.

A. Yes. I do recall that case, yes, what you're talking about, yes.

Q. Do you recall who the head of that detention

facility might have been at the time, who would have been the subject of this?

And I believe if the guy's in prison or jail in Kentucky that may be why he didn't know the name of the --

A. Of the warden, so to speak.

Q. Of the warden, yeah.

A. It might have been Willie Bamberg, I don't know. It --

Q. Let me tell you.

A. Sure.

Q. I'm sorry to cut you off, but I do have a caption here, it says Bing Jones, Sheriff of Calhoun County, South Carolina. It's Charles Tyler v. Bing Jones, Sheriff of Calhoun County, South Carolina; Dennis Benningfield, Detective, Kentucky State Police; Mitch Bailey, Detective, Kentucky State Police; John Doe, Warden, or (any person in charge of Orangeburg County Detention Center, Orangeburg, South Carolina).

A. That would have either been the director of the detention center or the sheriff depending on breakdown from Orangeburg County, and I don't know that off the top of my head. But it would have been one or the other of those people. And I represented,

I would have clearly represented both of them.
Q. Do you think it was possible it could have been Willie Bamberg?
A. It could have been, yes.
Q. And he, actually, I believe made a statement and an affidavit to law enforcement in this case?
A. I know he was -- (reading complaint). I know I spoke to Mr. Bamberg several times concerning the size of the cell window because I know Mr. Aleksey was charged in the detention center with escape.
And I actually was able to call him and get him to go measure the window for me. And then we confirmed that again with one of our investigators. But I don't know how much involvement he had actually with this case.
Q. Okay. So if he had done an affidavit or something like that, it basically would have been about that alleged escape?
A. I don't know. I honestly don't know. It wouldn't surprise me, but I don't know off the top of my head.
Q. But he did not testify?
A. Not to my memory, no.
Q. So I don't forget this later on, could you tell the Court what your opinion was regarding your

client's escape charge?

A. It was -- and I say ridiculous, there's no possible way he could have gotten anywhere. I went down, looked at the window myself, it was a very narrow window, it was tall but narrow, and if he would have gotten out he would have still been behind bars so it wouldn't -- it would have been escape to nowhere. But I did not think much of the escape charge.

Q. Okay. But the size of the window, could you tell the Court whether it would have even been possible for a child to climb through?

A. I don't think anybody could have climbed through that window, no.

MR. TARR: I would ask the Court to take judicial notice that Mr. Aleksey was not a very small person. Thanks, I didn't want to forget that. That was something I might have forgotten.

Q. Moving on to filing date of the second lawsuit here, June 26, 1998, this is Bayan Aleksey, Plaintiff, v. Lee County Correctional Institute and you represented -- that's Department of Corrections?

A. Yes.

Q. Okay. July 9th, 1998 Bayan Aleksey v. South

Carolina Department of Corrections and Michael Moore, Director?

A. Yes.

Q. July 9th, '98 -- well, that's not really relevant, that's versus Gloryvee Blackwell Perez. Bayan Aleksey -- July 14th, 1998, Bayan Aleksey v. Medical Department of Lee Correctional Institution, Department of Corrections.

A. Maybe.

Q. Maybe?

A. Yes. The Department of Corrections has a contract with Coastal Correctional Healthcare. I do not represent them and in fact a law firm in Columbia, the Ellis Law Firm, I believe represents them. So I doubt very seriously. The only way is if there's some tie-in between the medical facility and the prison itself on the action itself, otherwise, no, I would not.

Q. So just hypothetically if a guard had denied access to the medical treatment you might represent the guard but not the medical facility?

A. I would not represent the medical facility, I would not represent the nurse, that's right. And I say that, I want to make sure we're clear, I don't believe so.

Now, I don't know when they started -- the Department of Corrections started contracting with them so previous to that, you know, I would have been in that same position, but I don't know.

Q. Okay. July 24th, 1998's the next one, Bayan Aleksey v. Benjamin Montgomery, Warden, Lee County Department of Corrections.

A. That would have been under Department of Corrections.

Q. July 24th, '98 Bayan Aleksey v. Lee Correctional Institution again and specifically Officer Martin, shield number 5117.

A. Don't know if I ever represented Officer Martin before, but it would be under the Insurance Reserve Fund for the Department of Corrections.

Q. Just say for sake of argument's sake he files this lawsuit if the Insurance Reserve Fund, calls you up and appoints you, you could have been appointed to represent Martin.

I mean, obviously you would have declined it, I assume due to your conflict, but they could have tried to appoint you?

A. Actually I think the answer to that is no, because what they've got now is, and what they had even back then was a regional, you had certain

adjusters working various regions and what you are, you are on a list for various counties.

When I moved to Beaufort I was taken off of counties including Orangeburg and Richland County and Lee County and Sumter County and those are the counties I was on when I was in Columbia.

The counties I'm on now include pretty much just the Fourteenth Circuit and Berkeley and Charleston I believe as well. So really actually, no, because they regionalized everything and they don't go outside of that.

Q. But you could have had cases that had continued after you left Lewis, Reeves & Stone where you would have been involved with those counties?

A. Sure, absolutely. And there are prisons in the Fourteenth Circuit for the Department of Corrections that I've been appointed to represent as well.

Q. All right. And I don't want to be repetitive, these are just different lawsuits. July 29th, 1998 another Bayan Aleksey v. South Carolina Department of Corrections.

A. Yes.

Q. July 29th, '98 Lee County Correctional Institution Food Department and Services.

A. Probably, I don't know if they contract that out

or not, but....

Q. Okay. July 29th, 1998 Lee Correctional Institution I believe, this is W. Snowden, I don't know if that is his first name or initial of a warden.

A. I think he's the warden.

Q. Actually it says captain here, I don't know. Benjamin Montgomery is listed as warden and then Major Hughes, there are three employees of --

A. I believe I've actually represented Snowden before, I don't know in what capacity with the Department of Corrections, but Snowden's name is very familiar to me.

Q. Okay. And I'll just ask you this, I cannot tell whether these individuals -- RN is listed after each of these individuals' names that are defendants in a July 29th lawsuit. I assume since he was in jail, probably nurses at the jail, and you may know. Let me give you their names. Bayan Aleksey v. Don Stoner, RN, Ms. Johnson, RN and Ms. Montgomery, RN.

A. I don't have any idea.

Q. Okay. And I believe that's it for the lawsuits.

THE COURT: So just to be sure that I'm correct, the parties involved in these lawsuits, all of the entities would be the South Carolina

Department of Corrections, SLED, the County of Orangeburg, the detention facility in Orangeburg, which I think is the Calhoun Orangeburg County Detention Center, and the remainder of the ones would be against the South Carolina Department of Corrections, right?

MR. BROWN: There was one against his co-defendant which is not really relevant.

THE COURT: He didn't ask about that one because he stopped and said that wouldn't be involved.

MR. BROWN: Sure.

THE COURT: As I understand Mr. Tarr didn't ask him about that.

MR. TARR: For the record I did leave out two other ones that had nothing to do with any potential representation by Mr. Stone.

THE COURT: All right. And let me ask you this question, because you were talking about a case involving Mr. Bamberg.

MR. TARR: Yes.

THE COURT: And I know that -- I know that you all discussing dates up here were given to you by the -- I don't know if their file was open and I was interested in having those dates

again.

MR. BROWN: For that John Doe lawsuit.

THE COURT: As I recall it started in '96, ended in...?

MR. BROWN: The Kentucky prisoner lawsuit.

THE COURT: Was the name Tyler?

MR. BROWN: That's right. Tyler v. Orangeburg County, that's on one of the captions. You got to remember these are pro se filings. I don't have responses, I only have some filings. In fact --

THE COURT: Okay.

MR. BROWN: What I would propose to do is let Mr. Zelenka look at what I did get, Your Honor, by way of an FOIA request and then propose that if you had -- I'll hand it up to you for questions, I don't know that we want to introduce all of this stuff.

But the dates I was able to glean, and again that's not perfectly clear, because it's not a complete file, was April the 9th, '96 through April 6th of '98. Excuse me, I was on the wrong page. August 15th of '96 through March 4th of '98.

THE COURT: Wait a minute now. August...?

MR. BROWN: Fifteenth, '96.

THE COURT: Fifteenth of 1996 through April.

MR. BROWN: I said April previously, it's actually March 4th of '98.

THE COURT: March 4th, all right, of 1998. And this is a case that the Insurance Reserve Fund has Mr. Stone's name appearing on a case that was in effect against some of these individuals at the time that Mr. Stone was representing Mr. Aleksey?

MR. TARR: Yes, Your Honor.

MR. BROWN: Yes, ma'am. And there is in this letter to Mr. Stone in August of '96 saying from the Insurance Reserve Fund.

THE COURT: But he wasn't representing Mr. Aleksey in August of '96; is that right?

MR. BROWN: That's correct. But he was in March of '98.

THE COURT: Was in March of '98, but he was -- in '96 -- in '96 -- I need to go to my notes, because here's the question that I have. During this period he's left the law firm, but I don't know if this is one of the seven cases he took with him.

MR. BROWN: I only have the filings so I don't know exactly what the conclusion is. And I'll tell you this: There are so many documents I was sent and they're not very complete.

THE COURT: Sure. Why don't you all ask him, I'll ask him that. You want do ask him?

MR. TARR: He had told me previously that he was -- because we had subpoenaed some information, he thought it would take a while for him to get it.

We just told him the case is obviously now going to go on for a little while and that he was going to try and find anything we might need as a result of his testimony.

I think this would be something that if he could pull it, if you have any records of the cases you took with you, that way we would know which ones you took and would have had during your representation of Mr. Aleksey. And I would ask the Court to --

THE COURT: Do you know whether or not you were representing Willie Bamberg while you were representing Mr. Aleksey?

THE WITNESS: I do not believe I was, but I --

THE COURT: But that would be one of the documents I'm sure Mr. Tarr will ask you about.

MR. TARR: Yes, Your Honor. I'm going to go through a list of the relevant --

THE COURT: Okay.

MR. TARR: Or a list of claims that Mr. Stone handled with the Insurance Reserve Fund that have some relevance to Orangeburg County or any of the other people involved. And we may end up making a list of things for him to try and find, so I'll go through those now.

THE COURT: Great. Are you making that list?

THE WITNESS: I can do that. March the 4th, 1998 is the date of the letter that is dated February the 19th, 1999. I told you I would look that up.

MR. BROWN: Oh, okay. Actually the same date of that lawsuit.

THE WITNESS: Well, it might be, I don't know.

MR. BROWN: Coincidentally it may be, I don't know.

MR. TARR: March 4th.

THE WITNESS: I have a letter to Aleksey on

prison suit and update and that sounds exactly like what that letter is, that was March the 19th -- I'm sorry, let me make sure that's -- yes, March the 19th, 1998.

MR. ZELENKA: Is that Applicant's 59?

THE WITNESS: Fifty-nine. And it is dated February the 19th, 1999 because that's what the computer did when it printed it off.

THE COURT: All right.

Q. When you finish writing, let me -- when you're ready.

A. I'm ready.

Q. Okay. Like I said, some of the other documentation we received from the Insurance Reserve Fund, a number of cases you worked on during the time of representation of Mr. Aleksey and we culled from those ones that may have some bearing on individuals involved in this case and I'm going to ask you about those now.

A. Sure.

Q. Do you recall representing a G. Means, first initial G., first name, first initial G. Means, Department of Public Safety, Orangeburg -- actually state trooper type of claim, personal injury, this was with Catherine Patrick was the plaintiff and she

sued this trooper, basically was pulled over and the trooper felt like she had had drugs in her system and took her to the hospital and had her stomach pumped and there were no drugs. Do you recall this? Let me give you the dates.

A. Sure.

Q. June 5th, '96, so while you're with Lewis, Reeves & Stone ending May 13th, '98. So this would be another case that we would like to know if you had taken with you.

A. I'll be glad to check on that. I'll be honest, I do not recall Ms. Patrick's name or the trooper's name. I do vaguely remember representing or in some capacity involving a stomach pump case, that very well -- and if there's an assignment letter to me particularly then it is no question it's mine, but I don't take any issue with that.

Q. Okay.

A. But I'll be glad to check and see if that was one of the cases I took with me when I went to Beaufort.

Q. All right. In the next case your client would have been E. E. Johnson, Department of Public Safety, state trooper, type of claim is brutality, and the date of the claim is, started October 28th, 1996,

went through July 29th, '97.

A. Through, I'm sorry, what?

Q. July 29th, 1997.

A. July 29th, 1997?

Q. Yeah.

A. That was the ending date?

Q. Yeah, that's not one you would have taken with you because it would have been done before you left.

A. Exactly. I started, opened my practice July 1st, 1997 so I imagine we would have settled that case prior to that.

MR. TARR: And, Your Honor, the relevance we would submit of that is that it is a state trooper that he represented within months of being appointed to represent someone who's alleged to have killed a state trooper in South Carolina.

So just that's the relevance we see in that case, Your Honor, even though it ended before he actually was appointed.

Q. The next case is once again here's another John Doe, it's a trooper, Department of Public Safety, personal injury, false arrest, and the case caption is Maureen Avila.

A. I'm sorry.

Q. Maureen Avila, A-v-i-l-a v. Department of Public Safety in Kershaw County and it started April 9th, '96 ended April 6th, '98.

A. April '96 through...?

Q. April '98.

A. The end dates that you have are from the Insurance Reserve Fund as far as a closing date, or do you have an order of dismissal date?

THE COURT: That's their ending date, isn't it?

THE WITNESS: Probably Insurance Reserve Fund.

MR. BROWN: If I may respond. Some of the claims that we requested information we received a claim data sheet and on that sheet it has a date reported, a date of loss which would be the actual incident date, but a date reported and a date closed and those are the dates that we have generally been using.

THE COURT: So the date closed might be the last date that they paid.

MR. BROWN: It might well be. And again --

THE COURT: You don't know?

MR. BROWN: No. We requested all the information; they sent us all they felt like we

were entitled to through an FOIA.

MR. TARR: Therefore, Your Honor, we would ask Mr. Stone as far as this list goes of things that we would like under our subpoena, if we can find any, just any and all records involving any of these cases we mentioned.

THE WITNESS: Sure.

MR. TARR: Whether you took it from Lewis Reeves & Stone or whether it started while you were in private practice.

THE WITNESS: I would be glad to check on that.

MR. TARR: Thank you.

THE WITNESS: Avila, by the way, I remember. I don't remember what the facts of it were, but I remember representing them.

MR. TARR: Okay. Didn't know if we had enough information for you to identify it.

THE WITNESS: Do you know what the claim was about?

MR. TARR: Entitled personal injury/false arrest.

MR. BROWN: I know you're not supposed to have two lawyers doing the witness, but if I could give some information, we do know from

reading this she was at a rest stop somewhere and the trooper believed she was disoriented. I believe he called a Kershaw County sheriff, they took her to William S. Hall. I think at some point she got released and filed suit. And that's....

THE WITNESS: All my cases will be listed under the plaintiff's name so I should be able to find that one way or the other. I don't know if I took that with me or not.

Q. The next one would be the plaintiff would be Herman Brightman v. Orangeburg County, name of client Marion Boyd, client's agency, Orangeburg County, type of claim, personal injury/false arrest.

Dates of the claim 2/24/97 to 12/10/97, which would have been right at three weeks prior to your appointment or to the incident in this case, and about four weeks prior to your appointment in this case.

A. Okay.

Q. The next case is --

A. And I represented -- excuse me, I'm sorry to interrupt. I represented Orangeburg County in that case?

Q. Yes.

A. I recall the Brightman case being mine so that --

Q. All right. If I start asking something, you're still writing, just let me know and I'll give you a chance.

A. That's fine.

Q. The next case is John Merrick, M-e-r-r-i-c-k v. City of Orangeburg and County of Orangeburg and it says et al so there may even be more people involved. Name of client, Wendall Davis and Becky Whitman. I believe Wendall Davis was the chief of police, and the facts are airing false information on television, I guess in like a most wanted situation that may not have been accurate, at least that was the claim.

A. What were the dates? I'm sorry.

Q. Dates March 21st, '97 through June 23rd, '99. Claims included defamation/libel, false imprisonment, invasion of privacy.

The next case, this would involve L. F. Brown v. Sheldon, it's Trooper Sheldon.

A. Yes.

Q. And I think you may be aware of him.

A. Yes.

Q. I think from what we've read he's fairly notorious.

A. I represented Trooper Sheldon twice myself, I know other insurance fund lawyers who represented him as well. And on that case I believe the -- was a federal court case and the plaintiff who won that because they did not file it within the Statute of Limitations, I believe that's the right case in front of Judge Matthew Perry.

Q. All right. And that was a case --

A. And I represented that from the very beginning to the very end.

Q. So you're familiar with that case?

A. Absolutely.

Q. And that was a claim of false imprisonment and brutality by Trooper Sheldon?

A. That's correct.

Q. And the date of the claim was February 14th, '96 and runs through August 19th of '98 which is about five days prior to the trial of Mr. Aleksey's case.

A. I'm sorry, that runs...?

Q. February 14th, '96.

A. Right.

Q. To August 19th, '98. And I believe actual -- your fee was paid to you in the check dated August 17th which is exactly one week prior to picking the jury.

A. Okay. In 1998?
Q. Yes, in Mr. Aleksey's case.
And I wanted to ask you about there was a note in the file of that case dated May 9th, '96 and basically referenced Duffie Stone getting confidences from another trooper to defend in Columbia in reference to Trooper Sheldon?
A. I apologize, what? I'm sorry.
Q. Basically it references you speaking to another trooper about this incident with Trooper Sheldon, another trooper from Columbia that you had represented.
A. That's right.
Q. Do you recall what I'm talking about, or do you just --
A. Yes.
Q. Okay. And do you remember who that trooper was?
A. That was -- yes, Trooper Lin Stack.
Q. And he testified in this case?
A. I don't recall if he testified or not. If he did, if it's in the transcript then he did.
Q. I just remember that name, maybe he didn't testify.
A. But, yes, I knew Trooper Stack.
Q. We'll come back to that in a minute, I don't

want to hold up looking for that information.
A. Sure.
Q. The next case we have information that you worked on would be U. Beard, B-e-a-r-d, et al v. Trusdale, et al and the name of the client is --
A. I remember that case, I represented that from the beginning.
Q. That would be Sheldon, he would be a co-defendant?
A. Sheldon was involved in that, he was not -- I did not represent him. And, in fact, I was antagonistic to him in the concept of the trooper that I represented basically testified against him.
Q. Oh, okay.
A. And so we split that case. I believe Dee Lyde out of Lexington now, was out of Columbia, represented Trooper Sheldon on that case.
Q. All right. So but that would mean that you had a client who was a trooper in a case that ended February '98 that you basically pinned bad acts on another client that you were representing at the same time and cross-examined Trooper Sheldon?
A. We didn't -- well, the trooper that I represented didn't do anything wrong. His testimony was consistent with that of the plaintiffs and that

of the other officers that were at the scene.

And Trooper Sheldon had basically come into a take-down scene in the middle of a number of people and the allegation, it was essentially a Section 1983 case and from that standpoint we never cross-examined, never did anything from that standpoint, but everybody was pretty much in agreement with what happened, including Trooper Sheldon.

But he had some exposure individually I believe, and it's been a long time, but I think that Trooper Sheldon had some exposure individually. And that happens every once in a while that somebody will do something that would put them out separately than everybody else and the Insurance Reserve Fund has to cover them all.

Q. Even if a conflict arises?

A. Yes. They have to provide coverage for them, yes.

Q. Could they appoint outside counsel or independent counsel?

A. There's a list made up by the attorney general's office of the lawyers at that time. And I don't recall which of those cases actually came first or what period.

Q. I don't want to mischaracterize your testimony, but I believe you said that in the case involving Trooper Trusdale that was dated 9/9/96, ended February 10th, '98 that you were antagonistic versus Trooper Sheldon?

A. His testimony would have been antagonistic, yes, in the context -- actually I'm not sure Trusdale -- I don't remember what the statement was from Sheldon, but it was inconsistent with -- well, it was actually consistent with everybody's, I think. Everybody agreed Sheldon did wrong, and I think even Sheldon agreed to that.

Q. He was more culpable?

A. Absolutely. Everybody else unfortunately was sort of caught in the witness position versus Sheldon who was the actual one the case was focused on.

Q. But you were placed --

MR. ZELENKA: Your Honor, I appreciate the defense trying to try its case that particular way, but I'm not sure I understand the relevance of the particular facts of the claim.

I understand there is relevance with who the parties are and the timing of the claims, but to recapitulate what happened at the trial unless those parties were directly

involved in this case, I would submit is not relevant.

And I'm doing that somewhat in anticipation that we may be here a long time going through Mr. Stone's memory as to what happened in the case.

MR. TARR: Your Honor, there are not many cases.

MR. BROWN: There's 15 total.

MR. TARR: And I've gone through six of them, seven of them already so we're halfway through with these and --

THE COURT: Let me ask you this question, because I'm actually interested in the answer to that question and what is the position of Mr. Aleksey, and one of the things I asked was does this lay a foundation.

Obviously I'm aware that Professor Freeman intends to -- is going to be offered at some point, I gather in this case, as an expert. And it is my question to you whether or not this is relevant regarding the foundation for that testimony, because obviously from your opening statement I know that one of the positions that Mr. Aleksey has taken is that Mr. Duffie had a

conflict which was not a waivable conflict, that although it was waived it couldn't be waived.

And I gather from your comments a little bit ago that the other conflict is that you think that there is a question of fact regarding whether or not Mr. Stone was, even if he had a conflict which was waivable, that somehow he, his conduct in this trial was affected by his relationship with some of the people that he represented?

MR. BROWN: Your Honor, I --

MR. TARR: Yes, Your Honor.

THE COURT: That would be more of -- then I've got to make a finding of fact as to individuality in this case.

In other words, this man failed to represent his client because of his personal relationships with some of the individuals that he represented.

MR. TARR: Yes, Your Honor. We're making a lot of different conflict claims and you stated a number of them already. We're not -- it's not just we say it's an unwaivable conflict, we also claim there were no valid waivers in the case and we'll get to that point in a minute.

But in regards to what Mr. Zelenka's objection was in this instance to relevance, we believe that this testimony regard -- what he's testified to these actual lawsuits are relevant for two reasons regarding our claims.

One, it shows that he's previously engaged in what appears now to me to be a conflict of interest involving two state troopers, he represented one, said he was antagonistic to him, but at the same time he's representing that trooper on another case.

So he's meting out relative culpability among troopers that he represents and then turning around representing the one that he pinned it on in another case at the same time.

THE COURT: I don't care about that. Why is that relevant in this case? I mean, that might be relevant, Mr. Sheldon might have some concern about that or South Carolina Department of Public Safety. Why do I care about that?

MR. TARR: Course of conduct. That's what I'm claiming.

THE COURT: A course of conduct?

MR. TARR: Your Honor, I mean if

somebody's -- obviously this is not a 404(b) situation, but the same logic we think would apply that basically if somebody's done something in the past it can be relevant to trying to prove that they did something in the future. And that's obviously not 404(b.

THE COURT: Even assuming that is a conflict situation that one does not make a course of conduct. Are you telling me that you -- let me ask you this: Are you telling me that there will be several of these?

MR. TARR: Your Honor, I just found out about this ten minutes ago when he testified. I didn't know about this before.

THE COURT: Okay.

MR. TARR: That was something that was kind of new to me, that's why I can't answer that question. And, no, I don't know of any personally and I didn't know of that one until he testified to it.

The other reason I think that this testimony is relevant is because the facts of this case involved brutality, and one of our claims is that Mr. Aleksey's alleging brutality and coercing confession by SLED agents and the

evidence was never presented at Jackson v. Denno or at trial by Mr. Stone. And all the while he's representing troopers who a trooper was a victim in this case and other law enforcement officers for brutality involving the Insurance Reserve Fund making money off that, and possibly, this is just our position and we're not saying that this is the way it is, but possibly the reason that that, those claims of brutality were not made were because of the conflict of interest.

And this is a situation where you go from these attempted waivers that were done, they're attempting to waive potential conflicts, this we would argue would be an actual conflict that has arisen, you know, one of the potential conflicts that has now become actual. And I just want to put that on so you know where we're going.

THE COURT: That's what I understood. I mean, I understood that it went beyond, if you will, a technical waiver or even an unwaivable technical waiver, but it was down to this lawyer did not raise the client's allegations of brutality in the Jackson v. Denno hearing or at

trial because of his personal representation and relationship with other troopers.

MR. TARR: And law enforcement.

THE COURT: Okay. Or other law enforcement.

MR. BROWN: Or also his conflict with his other client which is in effect the reserve fund.

THE COURT: Well, that's a technical one.

MR. BROWN: Well, Your Honor, I believe in the Schwarz case they bring up the fact and they use the terms alterative strategies not pursued and you'll see that in Schwarz and the Schwarz progeny.

And what they discuss is there's a plausible alternative strategy that was not pursued in a serious conflict, you have to look at whether that alternative strategy not pursued would minimize or increase the liability of the attorney's other clients.

And in this case what in part we're saying -- one thing, we have to allege it so many different ways, because we don't know what standard actually applies, it's a very gray area about what conflicts apply.

THE COURT: Mr. Brown, I understand all of that. I understand that. The objection was a relevance objection. And as I understand the tie-in, the tie-in is that it is a personal conflict, it is a conflict that this lawyer did not raise that ground in the Jackson v. Denno case and in the trial because of his relationship to these troopers and to law enforcement.

MR. BROWN: And we believe if he would have raised the claim of brutality and proven it, then he would have increased liability on the part of public safety and reserve fund.

THE COURT: I understand that, Mr. Brown.

MR. BROWN: It just shows that he knows there are ways of lowering or increasing exposure of state agencies. He's representing one trooper witnessed against the other.

THE COURT: No, sir. I don't think that's relevant. I don't think that has anything to do with it at all. And the reason is, is that just as he's indicated, you've got five troopers, he doesn't work for the Insurance Reserve Fund, he represents the Insurance Reserve Fund on various cases as do many lawyers throughout the state.

He doesn't work for the Insurance Reserve Fund, he's not their employee.

MR. BROWN: That's the way it was presented to Mr. Aleksey at the waiver hearing.

THE COURT: No. No.

MR. BROWN: I also work for the Insurance Reserve Fund.

THE COURT: I represent the Insurance Reserve Fund. If he worked for the Insurance -- there's a difference. And I know that there's a difference and you gentlemen know that there's a difference in the way the Insurance Reserve Fund works. All the troopers got a lawyer.

They don't go to Georgia to get lawyers, they retain lawyers who practice law in South Carolina. It is the practice of the Insurance Reserve Fund that they got a list of lawyers and they retain -- I guess they could have the whole bar but they don't, they select the lawyers and all those troopers got a lawyer. He represented one, he represented several, you know.

MR. TARR: Yes, Your Honor, I'm not arguing that.

THE COURT: What he's told you is that in

this particular case that Mr. Sheldon's position was adverse to his client's position, okay?

MR. TARR: And he was representing Trooper Sheldon at the same time in another case.

THE COURT: Okay.

MR. TARR: And also just for the record we're also saying that his -- and let me ask him this question.

BY MR. TARR:

Q. As a solicitor we already talked about a large majority of your witnesses in your trials are law enforcement?

A. Yes.

Q. And you need as a solicitor to have a good relationship with law enforcement to work with them in your trials?

A. Most solicitors don't, but I think I have a fairly decent relationship with law enforcement. But, yeah, it certainly helps --

Q. But you -- I am sorry, I didn't mean to interrupt you.

A. No, no, I'm sorry. It certainly helps to have a good relationship with law enforcement, absolutely.

Q. Okay. Because -- well, okay, that's all I wanted to know.

MR. TARR: And, Your Honor, I'm sorry Mr. Zelenka objected, I responded. Can I continue with these?

THE COURT: You sure can.

MR. TARR: Thank you.

Q. We had -- you had mentioned Trooper Lin Stack as being part of the L. F. Brown v. Sheldon case that you had called him and talked to him about Trooper Sheldon?

A. I don't believe he was part of that case.

Q. I just meant that you called him in reference to that case.

A. Yes. I spoke to him concerning that case, yes.

Q. Okay. And you recall that Lin Stack was, let's see, I'm going to refer you to page 970 of the trial transcript.

A. What volume?

Q. That is Volume II and this is the direct examination of --

A. What page?

Q. 970, direct examination of Lynn Shirer, S-h-i-r-e-r.

A. I'm sorry, one more time. I could not find the volume. What page?

Q. 970. It's going to be line 18. He is --

Mr. Shirer is testifying regarding basically the first people that came upon the scene and of the incident which Mr. Aleksey was convicted of, says who are the first -- this is Mr. Bailey, "Who were the first people that arrived that you can recall?"

"Detective Maurey Journey, Detective Casey Gallop and Lin Stack."

"Lin Stack, he is a trooper; is that right?"

"Yes, sir." Would that -- do you think that would probably be the Lin Stack you know?

A. Yes.

Q. But you don't think he ever ended up testifying.

A. Like I said, I don't remember him testifying and if he, did it must have been fairly insignificant because I don't remember it.

Q. Do you recall whether he gave a written statement to SLED for this case?

A. I believe -- I don't have that in front of me. I believe -- it would not surprise me if he did, everybody did, it was pretty heavy on written statements from just about everybody, but I don't specifically recall whether he did or not.

Q. Okay. Move onto -- and we've actually already talked about this, the next one is the Charles Tyler,

we've got that in there.
A. The Tyler was the pro se, the first pro se case.
THE COURT: That was one involving Mr. Bamberg. Isn't that the one with Mr. Bamberg?
A. Is this the unknown warden case?
Q. Right, John Doe a/k/a Willie Bamberg.
THE COURT: And I've got the ending date of that was...?
MR. TARR: March 4th, '98.
THE COURT: Yeah.
Q. I believe we put everything in reference to that case on the record.
Now, the next one is -- caption is Elton Robinson and GAL v. Deputy Moore and Sheriff Smith, Orangeburg County Sheriff's Department, name of client is Moore and Smith, client's agency, Orangeburg County; type of claim, personal injury, plaintiff pushed from bike by deputy; dates of claim, 12/20/96 to March 31st, '98.
A. I'm sorry, March 31st, '98?
Q. Yeah.
A. Okay.
Q. Do you have any recollection --
A. Deputy pushed him from his bicycle?

Q. Something, yes. Oh, and actually we have listed that it could have actually been Amy Gaffney's case.

A. That's possible.

Q. Did you work together or did she have separate cases and you have separate cases?

A. She had separate cases and I had separate cases.

Q. Okay.

A. Every once in a while we worked together on files if it went to trial. But I don't recall, I doubt very seriously that one went very far.

Q. I apologize for wasting time on that one then.

Next one is Dorothy Tatum, T-a-t-u-m v. Bi-Lo and Kostyk, K-o-s-t-y-k and City of Orangeburg.

A. City.

Q. The client is City of Orangeburg.

A. Yes.

Q. Type of claim is brutality, dates of claim were July 8th, '97 through May 4th, '99. So this would be one of the ones that you may or may not have taken with you.

A. Is this the check-out girl at Bi-Lo, is the check-out fight?

MR. BROWN: If I may respond, Your Honor, what I do remember, because I have this stuff

here is that an off-duty police officer at Bi-Lo made the customer leave and I think the position of Orangeburg or the City of Orangeburg was that he was off duty so we don't have liability.

And I think the fellow was working at the Bi-Lo, the officer, and his name is -- and it's got a strange name, I'm sorry -- Kostyk. Not that strange.

A. I recall that case, yes, he was working, moonlighting for Bi-Lo and there was an altercation at the check-out line and he asked the lady to leave. I do not recall if I represented the officer or the City of Orangeburg or both. But, yes, that was my case.

Q. If the client was City of Orangeburg. And let me ask you this: Do you have any recollection of what Mr. Brown had just stated as the defense basically was that you attempted to minimize the liability of the City of Orangeburg and place it more on the moonlighting off-duty Kostyk?

A. I don't know that I could necessarily summarize that. I think to my knowledge there would certainly be part of the defense is that he was moonlighting and so, therefore, if anyone was responsible it would be Bi-Lo. But I'm not sure that I think that I

thought at the time that the officer had done anything wrong.

Q. Next case is Saylor, S-a-y-l-o-r v. Hilliard and the client is Don Hilliard. And the client's agency's, Orangeburg County, type of claim is slander and the dates of the claim are September '96 through 5/98 which would be another --

A. Through...? I'm sorry, I apologize.

Q. September '96.

A. Right.

Q. Through May '98 so that would be another one, a question of whether you took that one with you or not.

A. Do you know anything about the case other than slander?

Q. Something about a building inspector being demoted.

A. I didn't represent them on that. I met with them, I met with Orangeburg County Council on that, I went back to Columbia, within a few days they requested a law firm out of Columbia that had done some work for them in the past and the Insurance Reserve Fund reassigned it.

Q. Okay.

A. So the close date would probably still be May of

'98, but I would have been off of that case probably by October of '96.

Q. Okay.

MR. TARR: Your Honor, there's something we just found in the previous case, the one that we had.

MR. BROWN: The Bi-Lo.

MR. TARR: Tatum v. Bi-Lo and Kostyk, City of Orangeburg was the clients, dates were July 8th, '97 to May 4th, '99. There was some question as to what the actual defense was and whether you took that case with you. I can tell you I'm looking at a document on your letterhead dated March 18th, '99.

MR. ZELENKA: Show it to him.

Q. And I'll be happy to show this to you in reference to this case, and it looks to be, there's a heading in there "Findings Of Law" and it looks to discuss the -- like it's discussing liability of a public official when he's not acting in the scope of his employment.

A. (Reviewing document.)

MR. TARR: And, Your Honor, there are only five more after this.

A. It's a proposed -- well, actually it's not a

letter, it looks like it printed off on my letterhead as the bottom of an order and it was a proposed order for summary judgment, and the summary judgment would have been -- I don't know exactly what the summary judgment would have been based on, but in this case -- in civil cases there are things that you can make motions for summary judgments for and then there are things that you defend the case for and they sometimes are two different things.

I don't recall if that was -- I don't recall what the finding of law was, but it may have been that the summary judgment was granted because there was no causal connection between the City of Orangeburg and the individual defendant. Because we obviously would not have made a motion for summary judgment based on that didn't happen.

Q. Okay. All right. Because the facts got to be in agreement.

A. The facts would not have won me summary judgment.

Q. Okay. The next case is Valentine v. Heaton and Smith in official capacity, name of client Heaton and Smith, and it's Orangeburg sheriff.

A. That's right.

Q. Client's agency, Orangeburg County Sheriff's

Department, type of claim is bodily injury, false arrest and battery, and dates of the claim -- this is another one, the question is whether or not you took it with you -- October 14th, 1996 and it's another one that ended on March 4th, '98, so there's another case we had already talked about ending then.

A. Did --

Q. May have possibly involved a claim of a helicopter scaring pigs. Do you recall that?

A. Yes. I do very entertaining work.

Q. I don't know how you could possibly recall that case, it's so routine.

A. Yes. I think it was narcotics division that flew over someone's fields looking for marijuana and frightened the man's goats. Yes, I represented Detective Heaton and the sheriff on that case.

Q. Okay.

A. I don't recall when it ended.

Q. Okay. And do you recall whether that would have been one you might have taken with you?

A. Gosh, I hope so, I do. I don't know if I did or not, to be honest with you.

Q. Did you get paid for that? That would have been pretty good.

A. It's a crime.

Q. This next one I have very little information so if you don't recognize it, if you could maybe check your files.

A. Sure.

Q. I have nothing, no dates, I've got name of client Doug McArty, client's agency, public safety.

A. McArty?

Q. M.

A. Capital C?

Q. M-c-A-r-t-y.

A. That's versus South Carolina Department of Public Safety?

Q. Actually I do have more information on that, I'm sorry, it goes on the next page. It was Raymond, et al v. McArty and DPS.

A. Is this out of Sumter?

MR. BROWN: Well, there's a Sumter lawyer for the plaintiff, I believe, John Miles.

THE WITNESS: Okay.

Q. It's the type of claim, bodily injury, dates of claim, March 28th, 1996 through March 36, 1999.

THE COURT REPORTER: March 36?

MR. TARR: Yes.

THE COURT: March 36?

MR. TARR: Actually it must be a typo.

THE COURT: That goes along with the pigs.

MR. TARR: Do you remember what you were doing on March 36?

THE COURT REPORTER: March 36th?

MR. TARR: March 26, '99.

THE COURT: '99?

THE WITNESS: '99?

MR. TARR: '99.

THE WITNESS: Okay.

Q. And actually did receive, I have a check and I'll show it to you, compensation on that case dated February 1st, '99. And let me ask you this.

A. Sure.

Q. If you were to get paid in 1999 on an Insurance Reserve Fund case that lasted between '96 and '99, does that necessarily mean that you took the case with you, or could you have just gotten paid on a case that you left back at Lewis, Reeves & Stone?

A. We get paid in intervals and then we send a final bill in, but I don't know that -- if they paid me for the case then it was my case and I probably finished it, but it could have been an interim billing as well.

Also, and sometimes you're in a bad situation, but you have to send a bill in for old

work and that's -- that happens, it doesn't happen as much now that my wife is in charge of the billing, but when -- in the previous time it was a problem. So, you know, I don't know.

Q. Okay. I guess that's one we want you to check your records on.

A. Sure.

Q. The plaintiff Raymond or McArty? Who's the plaintiff?

MR. BROWN: Janice and Raymond. Janice Raymond, but I believe her husband's also a plaintiff.

THE WITNESS: Okay.

MR. BROWN: Janice Raymond vs. the South Carolina Department of Public Safety.

THE WITNESS: Okay.

MR. BROWN: Sometimes it says Janice Raymond v. Doug McArty or Doug Carty I see on one and South Carolina Department of Public Safety.

THE WITNESS: And it's a false arrest claim, Section 1983 claim or what?

MR. BROWN: I've got the complaint right here.

THE COURT: Bodily injury.

THE WITNESS: Bodily injury.

MR. BROWN: Somebody didn't keep their vehicle under control. I believe that the automobile driven by defendant McArty or Carty ran a red light and crashed into the bank that --

THE WITNESS: Could I see it? I may be able to help you out.

MR. BROWN: Sure.

THE WITNESS: I'm not trying to....

MR. BROWN: No.

THE WITNESS: Yeah. It's on a road in -- I believe in Sumter County, there's a blind curve. A car had come through a T-bone intersection and run the stop sign and wrecked the Camero into the embankment.

The highway patrol trooper arrived on the scene and set up his blue lights on the other side of the road. There was a blind curve there and Ms. Raymond, I believe it was, was coming around the blind curve and she saw the blue lights but they were on the left side of the road and the wrecked Camero was on the right side of the road and she ran into the back of it. That is that case. I handled that case

through the end of it and settled it I believe for $500.

Q. All right. The State's probably still paying that back, I guess?

A. Probably.

Q. All right. Next case, and there's two left, Bradley v. Orangeburg County, Smith and Gordon, client's agency is Orangeburg County. And it looks like C. R. Smith and James Gordon, Jr. And type of claim, civil rights/false imprisonment.

And this started January 15th of '96 and continued through August 4th of '98, which is right about three weeks before the trial of Mr. Aleksey's case.

And it appears from our records there may have been two defendants and one was represented by Lewis, Reeves & Stone and one by you that you may have taken with you.

A. No, that wouldn't have happened.

Q. That wouldn't have happened?

A. I don't think so. If it was necessary for the Insurance Reserve Fund to assign two lawyers it wouldn't have been out of the same firm.

Q. If you could check on that one for us, I would appreciate anything you've got on that record wise.

MR. BROWN: And, Your Honor, the reason or the basis for asking that is on the claim data sheet it says defendant one Orangeburg County, Lewis and Reeves, PC and then defendant two Orangeburg County, attorney Duffie Stone, Craven Street, Beaufort.

Q. Could that maybe mean they took it with you, they got two listings?

A. It might very well be. It might very well be. I don't know, I'll be glad to check.

Q. Last one is Byrd, B-y-r-d v. Department of Transportation, DPS, et cetera, and name of the client's public safety and Trooper Brown, type of claim, brutality. This case started October 25th, '96.

A. Excuse me, October what?

Q. Twenty-fifth of 1996 and concluded September 23rd, 1998, about a month after Mr. Aleksey's trial.

A. Do you know anything about that case?

MR. BROWN: I do. I believe Byrd is the last name, the first name is S-u-k and middle name is J-a and I won't try to pronounce that name, but I think that they were a witness, a bystander at a traffic accident on Decker

Boulevard and the trooper came up and I believe may have battered them, I believe that's the allegation.

And there is a letter on October 28th, '96 from the Insurance Reserve Fund that says PS -- this is written to the Department of Public Safety. It says, "PS: This case has been assigned to you with Lewis, Reeves & Stone..." and then I can't tell after that.

THE WITNESS: Sure. I'll check. I don't remember that, but I'll check on that.

MR. BROWN: There is a complaint in here, I think long story short there was some type of battery and acting violently, pushing and shoving several people. And it goes through a list of a lot of other causes of action, but I think that's the long and short.

MR. TARR: All right. Your Honor, I can continue but that's going to conclude any testimony we're going to try to elicit regarding the conflict.

THE COURT: We're shifting now to a different area?

MR. TARR: Yes, Your Honor.

THE COURT: Why don't we take a short

break, and try to keep it short because we're going to break for lunch around one o'clock, but we hadn't had a break and I think everybody could use, as it's known in Beaufort County and I carry it all over with me, a comfort break. I love it. We're going to take a comfort break.

MR. TARR: Thank you, Your Honor.

(Recess, from 12:15 p.m. to 12:27 p.m.)

MR. TARR: Are you ready to go, Your Honor?

THE COURT: I am ready.

MR. TARR: May it please the Court.

BY MR. TARR:

Q. One final question with regards to the conflicts I didn't think to ask you. Of the individuals we have spoken about that you had either spoken with in your Insurance Reserve Fund capacity or represented that either made affidavits or statements in this case, Willie Bamberg, Lin Stack, I don't know, maybe possibly Captain Snowden.

A. Was Captain Snowden in this case?

Q. I don't know, that's why I say possibly.

A. The only thing I remember about Captain Snowden, I recall that name, I don't know if I actually represented Captain Snowden or he was involved in this case. I just remember the name.

Q. Do you remember telling Mr. Aleksey that Captain Snowden worked for SLED?
A. I don't recall that. I didn't say it didn't happen, but I just don't recall that.
Q. Keep in mind he might not have had anything to do with this case. Lin Stack, Willie Bamberg, if there was something in that affidavit that you thought would have been helpful in your case you would have called them as a witness in this case?
A. Sure.
Q. And you would have been representing them at the time or formerly representing them?
A. I would have formerly represented them, yes. I don't think -- from the standpoint of Willie Bamberg, I don't actually recall if that case was -- if one of those cases were still pending or not. He was in that as an official capacity so my dealings with them would have probably been fairly brief, anyway, but....
Q. Do you recall anything they may have had in the statements or affidavits that you would have thought would be relevant to the case that you might want to call them?
A. From Lin Stack's -- from my recollection and from what -- the transcript that you cited me to

earlier, he came on the scene after it was over. Everything that we wanted to establish with the scene we established on cross-examination and I don't -- the only thing we could have done was messed up something that was going pretty well for us as far as the scene is concerned.

Q. Right.

A. As far as Willie Bamberg is concerned, the escape was certainly something that concerned me because he was charged with escape. And obviously I knew at some point, or at some point I had a good feeling we would be discussing prison life, so I wanted to be sure that escape not being a realistic escape, I think we sewed that up as well. I don't know that that became an issue at all.

Q. Okay.

A. But honestly I don't recall the affidavits themselves anyway.

Q. Okay. Do you recall how you came to be appointed on the case?

A. I got a telephone call when I was in my office and I believe it was from -- I want to say it was from Judge Hughston. It seems like a judge called me and I was at my desk and said something in the line of there's a death penalty case up here in

Orangeburg, you probably heard about it and I had not. But that's as far as knowing how I was appointed, I think that's what I recall.

Q. Do you know where he got your name to call you or why he would have called you when you were not really in Orangeburg County?

A. Actually I do not. I think -- well, I don't know. Back then -- it's different now because now you actually choose the county to put your name on, back then the only way my name would have been on a list was because I had handled cases in Orangeburg.

So my name was on a number of county's lists. But I don't know if that's how he got it or not to be honest with you.

Q. And that would be through work with the Insurance Reserve Fund?

A. It could have been. I think I actually handled a defense case, a criminal defense case here as well. Couldn't tell you the defendant's name.

Q. And you actually had either before or right before or right after Mr. Aleksey's case you handled a death penalty case in Orangeburg County?

A. That's right.

Q. Was that before or after?

A. That was after.

Q. You had one before?
A. One in Lexington before Mr. Aleksey's case and then one back in Orangeburg after Mr. Aleksey's case and very shortly afterwards, in fact.
Q. And this case was your first case as lead counsel?
A. That's right.
Q. In a death penalty case?
A. That's right.
Q. And your second death penalty case overall?
A. That's right.
Q. With regard to -- there's been an issue made regarding trial counsel's file, and I have to ask you, obviously I know the answer to some of these, but just for the record.
A. Sure.
Q. Where is your copy of your trial counsel's file in this case?
A. I have a good bit of the information here. What -- in front of me and behind me. Most of that is -- now, that's -- these are all copies, none of this is original except for the correspondence that I received from Mr. Aleksey after the fact.
Most of this is made up with my billing record which comes from a computer program

that I use called Amicus and that outlines everything I did and the date I did it and how much time it took me and who I talked to. That includes phone calls and events and things like that, so I have all that.

The original file, however, I sent back to Mr. Aleksey at his request.

Q. All right. And do you have any -- did you retain anything that would -- other than your memory that would allow you to know what you received in this case from the solicitor?

A. Yes. And I think -- well, you know, again, and I believe you have copies of -- copies of these as well because I sent a copy, I believe, to Mr. Aleksey.

Q. What are you referring to?

A. Everything I've got as far as the -- that would help me answer those questions, I believe is here in these time records which is the same thing I've been citing to today.

Q. Actually I think I may be wrong. I have been referring to a letter February 22nd, 1999, where you tell Bayan that you're shipping his file to him.

A. Right.

Q. You say you've included, and I don't want to publish it without placing it into evidence, but I

wasn't anticipating placing this in evidence.

MR. TARR: Can I show it to the solicitor?

THE COURT: Sure, go ahead.

MR. ZELENKA: No objection.

MR. TARR: I don't -- I'll go ahead and enter it into evidence, Your Honor, I ask that it be marked as Applicant's 71, it's a letter dated February 22nd, '99 from Duffie Stone to Bayan Aleksey.

THE COURT: All right. Applicant's 71 which is a letter dated...?

MR. TARR: Actually I need to show it to the witness first.

THE COURT: Without objection?

MR. ZELENKA: Without objection.

THE COURT: It's in.

(Entered into evidence was Applicant's Exhibit 71, letter.)

Q. Now, this letter basically telling him you're shipping the file to him and you say I've included everything in the file except my financial records. And the reason I say that is I don't think that he has a copy of the billing records that you're referring to. We do have -- I don't want to testify, but I believe you did send a copy of Tina Lawing's

billing records, so....
A. It -- well, what I've got in here, I enclosed my event list and the event list would have been the same thing except the billing record as far as the money is associated with it. But anyway, that's -- the event list that you have from Tina Lawing I have one as well from me.
Q. Okay.
A. Which I felt that was sent as well.
Q. And would you have any problem giving us a copy of that if it's part of our subpoena?
A. No.

MR. ZELENKA: I have no objection to Mr. Stone's event list coming in.

MR. TARR: I'm not offering it into evidence, I would just like to see it at some point. I don't want to take up the Court's time in doing it right now.

THE WITNESS: I don't have any objection.

THE COURT: All right. In other words, you want to see what the billing record - this record he's referring to you would like to see it at some point?

MR. TARR: Sure.

THE COURT: Any problem with him reviewing

this document?

MR. ZELENKA: Oh, absolutely not.

MR. TARR: Reviewing it at lunch.

THE COURT: Is that a no, Mr. Zelenka?

MR. ZELENKA: Please look at it.

MR. TARR: Thank you.

THE COURT: Got it. Great.

Q. Also in this letter that I was reading from down at the last paragraph you state "Please understand that you have the originals of this file. I have not made any copies nor retained anything other than what I have in my computer and my attorney notes. If you lose any of the materials in this file it may compromise both your appeal and your post-conviction relief petition."

When you sent the file to Mr. Aleksey and didn't retain a copy of the majority of it, were you aware of the State statute regarding capital counsel being required to maintain the original of the file in their custody?

A. I was not, no. I don't know that I'd agree with you that I didn't retain a majority of it. I think I retained enough stuff out of my computer to help me and understand the case.

But, no, I did not know a thing about

that criminal statute. I did not. That was actually a surprise to me and I learned about it for the first time when I saw the PCR petition.

Q. Okay. And -- but is that the file, is that all you retained right there that you have in front of you there, that file?

A. No, I've got materials behind me as well and these are mostly orders and things I pulled off the computer.

Q. Okay.

A. Copies of some things that we made as well and some attorney notes.

Q. Okay. But basically what you're talking about is work product? I mean, you're not talking about all the discovery, the vast amounts of SLED documents and everything?

A. That's right.

Q. That's correct. And that would make up the majority of the file? I mean, you can take a look at it, I mean.

A. Sure.

Q. Would you agree with that? I'm not trying to put words in your mouth. If you don't agree with that, you can say so.

A. Well, the reason I'm hesitant is because that's

the reason I asked to see the file Tuesday, because I wanted to know if there was something in the file that I didn't know about or that I didn't have some reference to and that I couldn't tie things up with. And I simply don't know the answer to that.

Q. Okay.

A. I think I've got a good idea, it's a running tally of every day that I took on the case, so it should give me a pretty good idea.

Again, I don't want to take away from the fact I didn't know about that statute and I did not know about that when Mr. Aleksey asked me for the file. I just didn't want to give it to him, I thought it was a bad idea.

Q. Okay. But is there a reason why you didn't make a copy for him and give him a copy?

A. His letter said that he wanted the original. In fact, I'm reading from the letter I received from him on January 28th, '99. It says "This request is for the original file, not a photocopy. If you want to keep a copy for your own records you may do so at your own expense provided this does not delay the turning over of my file to me."

I felt like I had enough stuff, and I don't mean to cut you off if you need --

Q. Okay. You weren't, finished go ahead.
A. I felt like I had enough information out of the computer, again, the way I work things and everything that I do is pretty contemporaneous and I felt like I had good enough information. There was no -- believe it or not, there is no Kinko's in Beaufort, there's nothing like Kinko's in Beaufort and there would have been a delay in turning the file over if I would have tried to copy all of the materials and, you know, at this time of course this is the 28th and then of course the minute I got something from the disciplinary council I decided to move as quickly as humanly possible.
Q. When you got something from the disciplinary council did you ever call them ask them if it would be okay for you to make a copy of the file?
A. No. I did everything with disciplinary through correspondence. I don't believe I spoke to anyone at disciplinary council, I don't believe that. I don't think I did.
Q. Or did you send a letter to them --
A. Yes.
Q. -- asking them if you could make a copy, have time to make a copy and then turn it over and still comply?

A. No, absolutely not.
Q. Okay. And you would agree with me on Tuesday when you asked for your notes we made copies of them and gave them to you?
A. Yeah, and I already had them. Yes, you made copies of them and I checked, but I already had those as well.
Q. Did you review those that you had to make sure that we had given you pretty much all of them?
A. No, I trust you.
Q. Okay. Thank you.
A. Plus I have my copy as well.
Q. All right. With regards to your discussions with co-counsel Thomas Sims and your decision whether or not to move for a change of venue in this case.
A. Sure.
Q. Could you tell the Court when you had those discussions and what they consisted of and why you decided not to file a motion for change of venue?
A. Yes, sir. I first discussed the change of venue motion with Mr. Sims on March -- in March of 1998. In fact, Mr. Sims brought it up. And his comment at least that I have through my records is that conference with Sims he's calling the mitigation specialist, I'm calling the psychiatrist and he

thinks we need to change venue.

That was in -- I'm sorry, that was again March the 30th of 1998. I discussed again with him -- and I think that's one of those issues that would have been a running concern. And I think that was -- I mean, from the standpoint of individual times that we discussed it, the ones that I have highlighted in my notes probably would have been the first time it came up and then when we started making decisions about it. But it was probably a running concern as was a number of motions.

Now, I did some research on change of venue on February the 4th, 1998 and at some point on May the 11th, 1998 I had a telephone call with Mr. Sims and at that time we were considering not filing a motion for a change of venue, but we had some other motions that we were going to file as well.

Now, that's what I have highlighted. I may have some other ones, those are the ones I could find going through quickly. But I will tell you that was an issue that we discussed and at least as far as I know I thought about it a great deal.

The case got a tremendous amount of media coverage, although I'll say that's pretty

consistent with most death penalty cases. The decision came down to where do you want to try the case. And in all honesty I couldn't think of a county, nor can I think of a county today that I would rather try a death penalty case in --

Q. Okay.

A. -- from a defense standpoint.

Q. You mentioned abundance of newspaper articles and other media --

A. Yes.

Q. -- coverage in this case?

MR. TARR: Your Honor, at this time I had already talked with Mr. Zelenka about this piece of evidence I want to introduce, but I had forgotten to get the court reporter to label it, I think it would be Applicant's 72. And this is a notebook that we have compiled with copies of various newspaper articles and we've printed up a summary on the first page that lists on the left-hand column the news source, in the middle is the county or city where it came from, and on the right is the number of articles.

And so that would kind of make it easy to reference and we just ask that that be marked as Applicant's 72 and moved into evidence at

this time.

THE COURT: Any objection?

MR. ZELENKA: No objection with the understanding that we're not questioning the authenticity of those articles, we're not saying that there are other articles, that those articles were published and that the numbers that they put for the articles that they have copies of would be consistent with the numbers that they have in that material.

THE COURT: In other words, they proposed a summary of the articles that are in the notebook and that's as far as it goes insofar as the State's concerned?

MR. ZELENKA: Very well.

THE COURT: Very well. So admitted.

MR. TARR: Thank you, Your Honor.

(Entered into evidence was Applicant's Exhibit 72, notebook of newspaper articles.)

Q. Do you recall, and I'm having trouble finding it right now, this portion of I believe it's the May 20th pretrial hearing where Judge Cottingham had indicated that if you were going to file a change of venue motion that he wanted you to do it early as opposed to waiting until --

A. Could you give me that date again? I apologize.
Q. I believe it's May 20th, '98 and I am looking for it. I had it down as 2,185 but I do not see it here.
A. We had a motion hearing in Sumter on May the 20th. Is that what you're thinking of?
Q. Yeah, I think that's it.
A. And prior to that on May the 11th was when Mr. Sims and I had the conversation about not filing a change of motion venue.

However, I wouldn't have told the judge that at that time nor would I have told -- well, actually I don't mind telling the judge, but I couldn't do that ex parte and I certainly wouldn't give the solicitor an idea of how I was going to try it, so I don't doubt that he said that on May the 20th.

Personally I think from what I can tell from the law I would think that I wouldn't be able to file that motion until after we get the jury here anyway. But that was -- he may have said that, I don't recall specifically.

Q. Okay.
A. But there was a hearing on that date.
Q. But in any event, once you got to the voir dire

process and actually started questioning jurors there was never a motion filed?

A. Oh, we did not file a motion for change of venue, no.

Q. And what was the gist of your decision with Mr. Sims, what was the reason behind not filing it other than you've already stated that I really liked how Orangeburg County would be the place you would want to try it if you were trying it in South Carolina? What is the reason why you want Orangeburg?

A. Two or three reasons. One is we had a lot of press coverage. I believe though the press coverage also included the negative gunshot residue test on Mr. Aleksey which I think was probably positive for us, certainly was the base of my case and the base of just about everything I tried to talk about throughout the trial. So that had gone public. And I think people knew about that. So I think that tempers a little bit about the press coverage.

I spoke with David Brook who I'm sure everyone knows does a large number of death penalty cases discussing how much effect he thinks it has as far as press coverage. He had just at some point recently finished the Susan Smith case and I felt

like press coverage helped him a great deal in that case. I may be wrong, in fact he told me he thought I was wrong. His angle was he said he didn't think the press coverage made a difference one way or the other when it comes to positive or negative.

So the press coverage was important. I felt like we were going to have press coverage no matter where we went with all death penalty cases or at least the ones I've been involved with generally they're covered pretty well. This case was covered by Court TV which, of course, does nothing but increase the court -- increase the public awareness.

My primary concern, though, was where this case could have been transferred to. And Orangeburg, and interestingly what you have brought out previously concerning the number of cases that I've been involved with in Orangeburg County representing law enforcement, I think that tells me, or at least it told me at that time that people are not shy in Orangeburg County about questioning law enforcement, which is obviously a part of what they would need to do even if it was just questioning Mr. Bailey as someone who represented law enforcement.

In my time in Beaufort compared to my

time in Columbia, my case load changed tremendously from civil rights claims versus now I'm generally representing the highway department. They don't bring a lot of cases, civil rights cases in Beaufort County because most of the lawyers that I know do not particularly think that that is a kind venue towards it.

Orangeburg's different, and I think Orangeburg is probably the best county in South Carolina from that perspective. And when I say best, I mean it from the standpoint of the defense.

Having done some criminal work as well, Orangeburg had a reputation at least when it came to drug cases to not take them very seriously. I don't know if that's valid or not, but it certainly was the reputation Orangeburg County had and I knew a number of people that defended and prosecuted here. So that all went into it.

And I think finally, and I'm sorry for rambling on, but there are a number of reasons, obviously it wasn't anything that we took lightly. But finally Thomas Sims had run for office here, he ran for solicitor here, he was at least from my understanding fairly strong in Orangeburg as far as his numbers were concerned, he was my co-counsel, he

was going to know people that I didn't know.

If we both got shipped to Dillon or Lee County we wouldn't know anyone. And I would not have been able to rely on his knowledge of the jurors or the people involved at all, and that was a concern as well. So I thought that was an advantage to keeping it here in Orangeburg.

Q. So you thought that the personal relationships and public representation of an actor in the case would be beneficial to you like Thomas Sims knowing people and being known by people here, that would be beneficial?

A. I didn't think it would hurt and I thought potentially he could at least give me some idea about who these jurors were.

Q. And couldn't on the same token the fact that the trooper was from here could hurt?

A. Sure.

Q. I mean, this is a --

A. I don't -- if -- I know he was working here at the time, I don't recall if he's from here or not but I think that's right.

Q. Okay. But even if he wasn't from here --

A. They moved him a good bit so I don't know.

Q. But he lived here for a long time.

A. Sure.

Q. And already you've got a police officer which already people are really concerned when a police officer gets shot and killed?

A. Exactly.

Q. And then it's a home-town boy, so to speak, home-town trooper, so did that enter into your consideration, the fact that that is a potential negative in this case?

A. I knew that, obviously that this is a local issue, again the coverage sort of speaks to that. But, you know, the problem that I had then is sort of the same one I have now.

If you have a highway patrol trooper that is killed, your jury is going to be sensitive to that. And whether he was home or not there was still going to be exactly what you just got through saying, it's still a major issue.

But, yeah, I mean we thought about it but again I thought it was outweighed, I could not come up with another county even if I got to pick and I didn't think that Judge Cottingham was necessarily going to let me pick which county I was going to get to go to, but I don't even know if he would have given me that pick I could have made one that would

be better for me at least in my mind from Orangeburg.

But, yeah, I mean I -- certainly I factored in the fact that he was a highway patrol trooper and it happened in Orangeburg and at least at the time he was living here.

Q. Not that you would utilize this in exercising your peremptory challenges by any means, but the fact that there's a majority of the county is made up of African Americans and the trooper in the case was an African American, did that factor into your decision as a possible negative of having it here in Orangeburg?

A. Yes, absolutely, that was a concern. I mean, and I --

Q. Go ahead.

A. I knew having picked juries here before, I knew that I was going to have a number of African Americans in the jury panel and, you know, I don't know -- I don't know how that works. I don't know, I can't honestly tell you that -- I'm not African American, I can't tell you how they think and so from the perspective of whether or not they are going to think in the mind set of civil rights violations versus, you know, my client killed an African American, I don't know. But, yeah, sure, I certainly

thought about that.

Q. Okay. As far as the news clippings go and other press coverage.

A. Yeah.

Q. Would you agree with me that as with any other case there was a lot of coverage about the incident itself?

A. Sure.

Q. But on the other hand, there may have been as much or more coverage of the background, and for lack of better term prior bad acts of Mr. Aleksey?

A. I remember there being a good bit of that. I remember getting a lot of that from an out-of-state newspaper it seems like in Pennsylvania was running a number of articles.

Q. *Philadelphia Inquirer* maybe?

A. Was it Philadelphia? I recall that. But, yeah, I certainly wouldn't disagree with you about that.

Q. Okay. Do you recall the title of an article or an article that may have been entitled "The life and Times of a Smooth Talker" in regard to Bayan?

A. It sounds familiar. I don't have that with me, but if you show it to me I can tell you if I recall it.

MR. TARR: And this is, Your Honor, from

Applicant's 72.

THE COURT: Okay.

MR. TARR: And I'm looking, I believe it's from *The State* paper, Your Honor, but I need to check.

A. Yes, I remember this article and I remember reading this article because it had a number of things in it that -- in fact, I'm not sure this isn't my writing on these articles.

But I don't recall if it came from *the State* newspaper because you've got an ad for the Dutch Square Boulevard in the bottom of it. So it came from a local, it wasn't Pennsylvania.

Q. Okay. And although I don't expect you to remember all the articles that came out around that time, do you recall an article in the paper and an allegation made by Walter Bailey during the bond hearing that ended up being a headline in a newspaper article?

A. That he was the most dangerous --

Q. Strong suspect in a New York murder?

A. Let me see it, if you don't mind.

Q. And I can refer you to the transcript of that hearing as well. Here's the article.

MR. BROWN: And this is actually our copy.

Q. This is from Applicant's 72 as well.
A. Yes, I do recall this.
Q. From *The Times and Democrat*.
A. I do recall this.
Q. And *The Times and Democrat* is Orangeburg *Times and Democrat*?
A. That's right. I'm sorry, my earlier comment is he's the greatest flight risk I've ever encountered is what I specifically remember, but that's another article as well. But, yes, I do recall this.
Q. Okay. And do you recall -- are you still looking at it?
A. No, I'm sorry. Yes.
Q. Do you recall ever being given any information from any source, including Walter Bailey, to substantiate the claim that he was a strong suspect in a New York murder?
A. No, I don't.
Q. Do you think that that type of allegation that ends up in the local paper could have an effect on the jury?
A. Sure. I mean, I think anything that ends up in the newspaper could have an effect on the jury, absolutely. I do have a reference in here on -- what article date was that? I apologize.

MR. BROWN: I believe the bond hearing was on the 8th or I believe January 8th, and actually the article which is in there does not have a date. Sadly it says *Times and Democrat*. I would assume it would be the 9th.

A. The only reason I bring that up is I did some -- I've got a note here I researched a New York drug murder article and I don't know if that was a reaction to that or not.

But I do not recall receiving any information from Mr. Bailey, Solicitor Bailey, concerning Mr. Aleksey's involvement in a murder outside of South Carolina.

Q. And do you recall an article, and it ran in I think basically every paper, *State* paper, *Times and Democrat*, Charleston *Post and Courier*, that Aleksey has a long history of arrest and chronicles all his prior bad acts that were known to law enforcement?

A. Yes, I do.

Q. Allegations? And that's -- those are the types of things that could be kind of, for lack of a better term, poison a jury panel?

A. No question about it.

Q. But that would have gone into your analysis as just one factor to consider in your analysis of

whether to seek a change of venue?

A. It did. And the fact that it was in the *State* newspaper I think I've got a number of stuff that was covered on WIS television as well. The problem is *The State* newspaper goes statewide so I don't know that I could have limited that coverage to Orangeburg County. But, yes, certainly all of that could have prejudiced the jury.

Q. Okay. Let me ask you this: All of those types of articles involving potential other prior bad acts by Mr. Aleksey, there's a chance that if a motion's filed that those things could have been kept out of the trial? I mean, I'm just saying theoretically that's possible.

A. The articles?

Q. No, the actual facts of the allegations.

A. Sure.

Q. Okay. But you had indicated that one reason that you wanted, or that you thought that pretrial publicity may not have hurt you as much is because of the publication of the forensic results of the no gunshot residue on his hands?

A. That's right.

Q. But that was definitely coming in?

A. Yes.

Q. So they would have known about that anyway?
A. That's right.
Q. Okay. So, but the fact that these other prior bad acts may have been kept out probably didn't enter into your consideration because you were going to bring those out yourself?
A. That's right.
Q. And since I asked you that, can you go ahead and explain to the Court your strategy that you and Mr. Sims talked about --
A. Sure.
Q. -- and ended up utilizing in this case?
A. Sure. The case boiled down to this: You had a highway patrol trooper that was killed from gunshot coming out of a white Mustang on I-95.

The eyewitness, if you would really call the officer an eyewitness, didn't see anything. I mean, he basically saw darked out windows or at least that's what he claimed.

Therefore, I'm left with one of two people. Either my client shot the trooper or the passenger in the car shoot the trooper.

Although motive is certainly not --
Q. There was question of who the passenger was, whether or not Bayan was the passenger or whether or

not Gloryvee was a passenger?

A. That's right.

Q. Those are the two individuals you are referring to?

A. That's right. Gloryvee Perez Blackwell I believe was her full name. But from the perspective of a defense in this case it had to be one or the other. And obviously from my standpoint I had to do everything I could to point the direction that she was the driver.

The issue there, and certainly in South Carolina and what I was about to say, in South Carolina motive is not required to prove murder, but it sure does help. And it certainly is something that the jury I think thinks about. They want to know why this happened.

Mr. Aleksey had, as I recall, six or seven fake identifications on him at the time. His prior arrest history was all for non violent offenses, and interestingly in most, if not all of them, he had presented a fake ID, bailed out, and left.

I don't recall Mr. Aleksey actually being convicted of anything, because I think he was, he was savvy enough to be calm through the process,

get arrested, give them a fake ID and leave. And in fact, I discussed that throughout the whole, throughout the entire case.

On the other hand, Gloryvee Perez Blackwell had a prior possession I believe of cocaine conviction, she had drug exposure, she had a child which -- from a divorced husband which gave her motive from the standpoint of not wanting to lose the child.

My position was the fact that he had been arrested before, and I still think this is a very weak part of the solicitor's case, what's the motive for Mr. Aleksey to do this. The solicitor spent time talking about the fact that Mr. Aleksey, you just can't lead that kind of life, that at some time it catches up to you.

I disagree and I always have and I based most of my defense on that theory, that Mr. Aleksey, in fact it didn't have to catch up to him and he never thought it would.

All of his charges were nickel and dime and the trooper is stopping the car for speeding. So there's nothing that would give Mr. Aleksey any -- the fact that the car was -- may or may not have been stolen or the license tag might

or might not have been stolen was nickel and dime crime, it was non violent crime.

And I think the fact that he had bonded out in that fashion and had the ability to do the exact same thing even if the officer on a speeding ticket had not just written him a speeding ticket, had cuffed him, taken him to the detention center. He had absolutely no motive whatsoever to shoot the trooper, and from that standpoint I thought it was important enough to put out there.

And then I didn't -- you know, whether or not the judge would have let it in or not under other circumstances, I don't know. But I thought that presented a viable defense that obviously did not work, but that that was my thinking. And I think Mr. Sims agreed with me on that.

Q. Okay. And you and Mr. Sims developed that strategy based on the information you had provided to you by either your client or Mr. Bailey or SLED?

A. Yes.

Q. Okay.

A. I mean, I brought in a number of -- yes, and I don't want to limit it --

Q. Or your own investigation?

A. I don't want to limit it to any particular

person but, yes, we brought in a lot of information from a lot of various people.

Q. Okay. And we're going to get into this later about what you may or may not have had access to in this case evidence wise.

A. Sure.

Q. But had you learned other information than you had, could other information, depending on what it is, have affected your decision of what strategy to use?

A. Absolutely. I mean, any time that you develop a theory of a case I think you honestly have to take into consideration everything and develop a theory that works best case scenario and worst case scenario.

So if every bit of information that you don't want to come in comes in, you've got to have a theory that stands up to even that. If there was other information I would have absolutely taken that into consideration. I don't know if it would have changed it or not, but certainly I would have taken it into consideration.

Q. Right. Well, we'll get into that later once we go through the other information that we're alleging you did not have.

A. Sure.

MR. TARR: Your Honor, I'm at this point ready to go into another topic.

THE COURT: Perfect. Timing is everything. Thank you so much.

MR. TARR: I'm actually seven minutes past the time you wanted to --

THE COURT: That's excellent. We're all going to take our lunch break. It's about 10 after 1:00. Let's start about back 2:15. Remember, Mr. Stone, Mr. Tarr and Mr. Brown want to see your notes, your billing over the lunch break. How many pages?

THE WITNESS: Sure. Twenty-three. The pencil marks, Judge, are recent pencil marks that I made, but I think it's 23 pages total, yes, ma'am.

THE COURT: Twenty-three. You all just take that, look at that over lunch and return it to him.

MR. TARR: Do you mind if I made a copy?

THE WITNESS: Doesn't bother me at all.

THE COURT: There goes your lunch. Because I think isn't it one at a time? Great. Thank you, super. All right. Go give that to

Mr. Zelenka and he'll make two copies.

THE WITNESS: Can I go to lunch with any of these people or do I need to go by myself? I've never been a witness before.

THE COURT: Exactly.

THE WITNESS: I mean, I'm a lonely guy.

THE COURT: Mr. Stone has asked me, he's not going to talk about his testimony, he just wants to know if he has to go to lunch by himself. I'm not worried about it unless y'all are worried about it.

MR. TARR: I don't care who he goes to lunch with. I know he's not going to talk to anybody about the case.

MR. ZELENKA: I don't know how he's not going to talk about the case.

THE WITNESS: In fact, whichever one will pay for my lunch I'll testify more favorably.

MR. BROWN: No, we don't need to put that on the record. I thought the State was broke.

(Whereupon, a conversation regarding lunch was held off the record.)

(Lunch recess taken from 1:10 p.m. to 2:58 p.m.)

BY MR. TARR:

Q. One brief question, Mr. Stone, regarding I've

just been handed a copy of I guess for lack -- billing records that you had that we got copied during the break.

A. Yes.

Q. And you haven't had a chance to really look at them, but I'll look at the one place you had referenced earlier, the March 30th, and it says conference with Sims.

A. Yes.

Q. I believe it may indicate at that time Mr. Sims thought you might want to get a change of venue in the case?

A. That's right.

Q. But I guess you -- the discussions and analysis of that that you've testified to before came after that and then you decided to not do it?

A. Yeah, that's what I think I testified to earlier. The first time was in March and what that note indicates is that when it says "Thinks we should change venue," that would be Mr. Sims' thought and that's -- yeah, so all the other information that we talked about.

Q. And then it was the May 11th where you finally decided not to?

A. That's correct, although again that's one of

those -- May the 4th we did the research on the venue, or I did research the venue and then, yes, later on we decided that that probably wasn't going to be what we did, that was May 11th, that was a continuing issue that we discussed.

Q. All right. Well, we'll move on to the actual voir dire of the jury conducted by you and Mr. Sims. There was a question that -- there were basically three general questions that you would ask of potential jurors in the case and they were not always asked of each juror, correct, you didn't ask all three questions to each juror every time?

A. I don't recall. I know first of all the three questions you're talking about would be the bumper sticker question, the national --

Q. The violence towards men versus women.

A. Men versus women and the national --

Q. Foreign national.

A. Foreign national question. Are those the three questions you're talking about?

Q. Yes.

A. I don't recall if I asked each and every one about that or not.

Q. We don't need to --

A. So, yeah, I don't know.

Q. Okay. But the question I have is was Bayan Aleksey ever a foreign national, to your knowledge?

A. Not to my knowledge, no.

Q. Okay. Did you ever -- let me ask you this: Why did you ask the jury if they had a bias or prejudice against foreign nationals?

A. Well, I didn't. What the question was, is do you believe, when I say you, the question's directed to the jury, do you believe that foreign nationals should have the same rights as natural born citizens.

It is a question that I took off the federal jury questionnaire along, in fact, with the bummer sticker question, because what I have found with my experience in federal court is that is a very good indication of hidden biases that jurors have but would not answer the question. If I were to say, are you biased against foreign facials, are you raciest, I'm not going to get I don't believe an honest response from that.

That question was out there and I've used it on a number of cases because I think it is a very polite way of -- and more importantly a way in which I get an honest response about people's hidden biases.

And that's the reason that question

was in there, and that was something I brought to the table, it was something I pulled out of the federal questionnaire.

Q. Okay. So what you're saying is a foreign national wasn't something you were saying in reference to Bayan, it was a general question designed to elicit a response that may give you an indication as to their feelings on other things?

A. That's correct. And it may very well, because I felt like Bayan looked at least to some degree foreign and I did not know if that was going to play one way or the other.

Of course, it also relates again back to the fact you have an African American victim. And that is just -- and I've had that question, of course it's a permanent fixture from the federal court so from that standpoint it doesn't matter if the plaintiff is white or African American or what, but I just -- that's the reason I asked that question.

Q. Okay. Did you ever, and I'm sure the record will reflect this, did you ever bring out into evidence that Bayan Aleksey was a US citizen just in case there was confusion on the part of the jury as to whether they thought that maybe you were saying he was a foreign national?

A. I don't believe so.
Q. Okay.
A. If there's something in the record I'm not going to call a question to it but I don't remember. I don't remember doing that.
Q. Okay. And I will refer you to, and this would be in Volume I, pages 177 to 179 of the transcript.
A. 171?
Q. 177 --
A. I'm sorry.
Q. -- to 179. And actually we can really start at the top of page 178. I believe you're speaking to the Court regarding whether or not you were going to question jurors with regard to their views of the death penalty.
A. Right.
Q. And your opinion on whether the solicitor's office should be able to.
A. Right.
Q. And from line 1 to 7 it says -- you say "It's our position that it is abundant -- that is absolutely exactly how much reference to the death penalty these jurors should receive in voir dire. The defense is specifically not going to ask them any questions concerning their feeling of the death

penalty, although we have a statutory right to do so." And then you go on to ask that the solicitor not be allowed to ask any questions and the Court overrules that.

Could you explain your reasoning behind that decision?

A. Sure. The first death penalty case I was involved in I was a law clerk with the solicitor's office in Columbia and it was in Spartanburg and I sat there through jury qualification, the case pled after that, it actually didn't go there trial, but I sat there through jury qualifications struck by the fact that the defense -- well, first of all the judge, then the prosecutor, then the defense depending on the order of the particular juror went through and spent their time talking about penalty.

And I was struck by the -- by the thought that there is no possible way that a juror who comes into a courtroom not knowing anything about the case or, you know, knowing whether or not the defendant's guilty or not, if everyone, especially the defense, talks about penalty, how that presupposed the guilt of the defendant, I feel like, and I don't know if the studies back me up or not, I think they do, I've discussed this with a number of

criminal defense attorneys who have a lot more experience in this than I do, but residual doubt is I think one of the best ways to get a life sentence for somebody. In other words, the jury is not 100 percent deep down inside convinced the guy's guilty or the woman's guilty.

If you go to the jury qualification and you spend your time as a defense attorney talking about penalty, I think it's very difficult to do that without presupposing that your client's guilty to begin with.

I wanted our efforts to be focused on the jury understanding that we didn't think he was guilty. Because obviously if we won that part sentencing was irrelevant. And even if we didn't win that part, if there was enough doubt in their mind that that would be something carried over into the penalty phase, they simply would not -- would not vote for the death penalty because there was still some residual doubt.

Interestingly the solicitor objected to it, and I think it's because sitting with the prosecution before I can tell you that that's exactly the idea, that you want to talk about the penalty as much as possible because then you just skip right

over the fact that the guy is presumed innocent.

And that's why we didn't do it, that's specifically why I wanted at least one person -- further, you know, the judge is going to ask the questions, the judge gives them a sheet of paper with the A, B, and C or 1, 2, and 3 type juror and they sit in the hallway, read it, they come in, get on the stand, the judge questions them about it, then the prosecutor gets them and questions them about it.

Now, the only exception to that would have been, and I think the record probably indicates that I did this in a number of cases, if the juror appears to be somebody that deep down inside would never give anybody the death penalty, then I would obviously talk about penalty because I'd want to get them qualified just enough so that the solicitor would have to use a strike.

So, I mean, from that perspective there is some inconsistency, so I went back in and did that. But generally my idea was to make sure that we did not presuppose the guilt. I felt like I had a pretty good idea one way or the other just after listening to the responses from the solicitor and the judge that we didn't need it, that's why I said that I think all the other stuff that he does is

abundant, and which is really referencing the judge's questions and everything like that.

That was the theory, and that again was something that I think I brought that to Mr. Sims and I think I sold him on that idea.

Q. All right. You would agree in getting a death qualified juror that information is a valuable commodity?

A. No question.

Q. You need as much as you can get to make a good determination of whether you want this juror or not?

A. Absolutely.

Q. So, therefore, there is kind of a trade-off in deciding not to ask those types of questions, and I understand your point, but when you take that position you also are limiting the amount of information that you receive?

A. I don't -- I can't honestly say that we limited it. Because I honestly think I got at least -- comparing it to the other death penalty cases that I've done, I don't know that I got any more or any less information by asking those questions than I did from just listening to how they answered the judge's questions and how they answered the solicitor's questions. It's more of -- and it's very difficult

to describe, but it's more of how they answer the questions than what it is they say. And that's something that I really don't think you can ask.

Q. All right. And you indicated that you thought, from my review of some things you have said to the judge, was that the reason you weren't going to ask the questions of the jury about their views of the death penalty is because you didn't think you were going to get to the sentencing phase.

But what you're saying now is that that wasn't necessarily the case, you thought it could help you with this idea of residual doubt if you did get to the sentencing phase, that you may get life because of the residual doubt?

A. Yeah, I think that's -- I think both of those are true. But I'm looking at the transcript and it says on page 178, line 12, "That is presupposing guilt on the part of our client." And so I think I made that part of it. But I do agree with you.

I was obviously trying to sell it to the judge that I didn't think we were going to get there. I don't know that that was actually truthful, but it was the best I could do.

Q. And just to touch on this briefly, we'll come back to this in more detail, if you got a case where

only one of two people could have committed the crime as we have here.

A. Right.

Q. Obviously nobody's alleging that an eight year old or a ten month old shot Trooper Lingard.

A. Right.

Q. Basically if you don't have absolute evidence to show that one person did it, then basically the best you can do is try and show that there's a 50/50 chance. And 50/50 for a jury, and the State has to get reasonable doubt, has to get around that, 50/50's pretty good you would agree with me?

A. I think the best you could do is actually pin it on the other person.

Q. Right. You can attempt to pin it.

A. Right.

Q. But I'm saying if you can't prove it, if you don't have a video of the other person doing it, you're basically trying to present evidence where in their minds they don't know who did it?

A. Absolutely. I mean, I certainly want to put that in the jury's mind that they would have a reasonable doubt, but I want to come very short of walking up to the jury and saying he can't prove it.

Q. Oh, no.

A. If that's what you're asking me, there's the total difference there with that.
Q. I totally agree you wouldn't want to do that.
A. But certainly I would want to put as much doubt in the jury's mind as I can.
Q. So, again, as I talked to you about earlier, if you had had other information than what you had in this case, and specifically if you had other information in reference to Gloryvee and potential motive to commit this crime, that that would be the type of evidence you could present to the jury?
A. Absolutely.
Q. To get that type of residual doubt either in the guilt or the sentencing phases?
A. Absolutely.
Q. I want to ask you specifically about one juror, and before I -- testimony I had kind of shown you in your note --
A. Is this the one you pointed out to me?
Q. Yeah, pointed out in your notes.
A. I can find it. Gigi Schofield Hayes, Juror Number 144?
Q. That's it.
MR. TARR: And, Your Honor, this would be one of the attorney notes --

THE COURT: I remember the notes.

MR. TARR: -- in the Applicant's 61 which I have not -- I don't know -- this was marked for ID and at this time I would move into evidence with, I believe, no objection.

MR. ZELENKA: I'm sorry?

MR. TARR: It's the notes I showed you earlier.

MR. ZELENKA: Oh, without objection.

MR. TARR: And this is just one of those. This is a group of those, this is voir dire notes.

MR. ZELENKA: You're keeping them all together as one exhibit?

MR. TARR: Yes, and I'll paper clip them together or something as we go through them. Number 61.

(Entered into evidence was Applicant's Exhibit 61, Mr. Stone's notes.)

Q. Have you had a chance to get where I showed you also?

A. Yes. If you're talking about Gigi Schofield Hayes, but Juror Number 144 by my notes.

Q. Right.

A. That's correct?

Q. That's correct.
A. Yes, sir. I'm there.
Q. I want to refer you to the transcript, I just need to get the page number.
MR. ZELENKA: 451.
Q. 451 of Volume I.
A. I'm sorry, 451 of Volume I?
Q. Yes. Specifically line 14, I believe this is page 450 -- wait, I'm sorry, line 14 on page 452. And this is examination by the Court. "In your return that you kindly forwarded to us your husband was employed as a military policeman in the United States Marine Corps?"
A. Yes.
Q. And she answers "Correct." In your notes you have several notes here regarding her and one is husband military police.
A. Yes.
Q. One is leader.
A. Yes.
Q. That's underlined, I assume you mean --
A. I mean she gets on the jury she's a leader, yes.
Q. She can kind of steer people in her view of the case?
A. Yes.

Q. And Family Health Center I believe is -- she testifies to she worked there?

A. That is her occupation, I believe, that's correct.

Q. You have under that knows Lingard and that's underlined?

A. Right.

Q. And then off to the side you have a little bracket and it says -- it appears to say "Get rid of"?

A. It says "Get rid of."

Q. Okay. If you'll refer back here to the strike sheet that's listed that we have already gone over, it appears to be pages 34 and 33 of Volume I, but there's no page number on the sheet.

THE COURT: I remember that.

Q. And I think you've got that there, Volume I.

A. Okay. You want me to leave the testimony and go to that? Sure.

Q. It's at the front, 30 -- it's right after page 32 and right before page 35, it's just not numbered. It should be 33 and 34.

A. Right.

Q. And before I get into that strike sheet, there was some testimony yesterday by Mr. Sims regarding

the "knows Lingard" notation.

Do you have any recollection of whether or not you found out that she actually did know Trooper Lingard or his family?

A. My notes say "knows Lingard." I don't know if the transcript bears out that we got that from questioning, I don't know. But I've got "knows Lingard" and underlined.

Q. Okay.

A. Does that answer your question? I'm not trying to avoid it, I just --

Q. I'm just wondering if you have any recollection of finding anything out after you wrote that note.

A. Yes. Yes, but it doesn't have to do anything about that I don't believe. I heard Mr. Sims' testimony about that Tuesday.

Q. That's just his testimony you're talking about, not your own recollection?

A. No, actually once he said that -- I don't -- he contacted somebody that knew her and my recollection, which may have been different from Mr. Sims' testimony, was that she would not be a bad juror.

I do not believe we found out information, at least from my memory that she did not know Lingard, I think that was just -- I think that's

a fact, I think she knew him. But my understanding or my memory is that we talked --

Q. I'm sorry, you still to this day think she knew the victim?

A. I don't know, I don't recall anything that would indicate that she didn't. I don't know. I just remember that --

Q. I'm sorry. Do you remember why you thought that in the first place?

A. No. Was it not in the transcript?

Q. No. I mean -- I'm not going to testify but, no, I don't think so.

A. Okay. I don't know where I got that from to begin with. And maybe that was -- I don't know. I just remember Mr. Sims talking to someone that she worked for or worked with and coming back and saying that she would be a good juror.

And honestly right now I can't sit here and tell you why, but that was -- that was the reason that the scratch mark over on the left I think would have been one of my number of strikes, but I scratched it out after I talked to Mr. Sims. But honestly I don't remember why it was other than that she would have been a good juror.

Q. Did you develop any information from Mr. Sims'

phone call to reinforce the view that she knew the trooper?

A. Like I said, the only thing I remember from that is Mr. Sims having talked with this person, and I think he told me that next -- I don't know if he told me that next day or not, I don't think he was even there when he made the phone call.

Q. Let me ask you this: If you have a judge who is voir diring or qualifying an entire jury panel, he asks them do you know any of these people in the case one of which is the victim and everybody says no and you have an indication that one of these jurors may know the victim and you don't inform the Court and you put them on the jury, is that -- I mean, I'm not trying to mischaracterize it, that sounds like what you're telling me.

A. I don't know what I'm telling you from that standpoint. I am honestly telling you that the only thing I know for sure, I've got down here "knows Lingard." For all I know we got that from her standing up during the qualifications. I simply don't remember.

But the fact that she knows Lingard is of course important to know, but it's not the end-all question because a lot of people know a lot of people

they don't particularly like. And I don't know -- the only thing I do remember specifically is I had -- I had a no. I did not want her on the jury.

I talked to Mr. Sims later and he said that he had spoken to somebody that knew her and said she would be a good juror. And so that's again one of the reasons we're in Orangeburg is because Mr. Sims has the ability to do stuff like that.

Q. Right.

A. So that was -- that's where that came from.

Q. Okay. I'll move on from this. One other thing I wanted to point out. At that time there had already been nine jurors seated and you'd only used four strikes?

A. She was number 10, yes.

Q. So you have two more jurors after her and you would still have, even if you had struck her you would have three jurors left to pick for the 12-juror panel and you still have five strikes?

A. That's right.

Q. Okay. But your recollection is whatever Mr. Sims told you changed your mind about get rid of and everything?

A. Exactly.

Q. Okay. Turn to the topic of SLED Agent Buster

Edwards, I believe he was in charge of taking -- keeping track of the jury being sequestered in the case, basically would make sure they didn't talk to anybody they weren't supposed to, he would keep track of them over at the hotel, when they ate, monitor all their calls and movements and things like that. Do you recall that?

A. I do not. I heard the testimony Tuesday and I don't dispute that, but I don't recall that at all.

Q. Do you recall whether you knew at the time he had been assigned that he had been involved in the case as a SLED agent?

A. I do not. And I'm -- as far as being a SLED agent involved in the case or somebody that may have served the warrant, I don't know, I did not put that together, no. And -- no, I did not.

Q. Okay. So --

A. I did not think of that as a significant issue, but I don't recall even if I made the connection between the two.

Q. Okay. Well, let me ask you this: If you had known that Buster Edwards had gone to the MUSC where Mr. Aleksey was after the incident, had signed him out of the hospital and put him in his patrol car and driven him, served him with a warrant for murder and

driven him to Orangeburg County jail which would be somewhere between probably an hour 15, hour and a half drive with just the two of them, if you had known that, even if that was the extent of the -- his involvement in the case, would you have at least brought it up to the judge's attention so that a judge can make a determination whether there might be a conflict with him being, you know, the -- in such close contact with this jury for the entire duration of the case?

A. Yes, I think so.

Q. Okay. So I'm assuming from your comments that you did not speak to Mr. Sims about this -- if Mr. Sims were to say that he knew that Buster Edwards had involvement in the case and evidently you didn't speak to him about that?

A. I do not recall that. I don't know if I did or not. But I don't -- I do not have any memory of that conversation.

Q. So if you did, you just don't recall it now?

A. That's correct.

Q. Okay.

A. And I've looked through most of this, I don't believe I've got any reference to it, but once you get into the trial these notes are not going to help

me as much.
Q. Right.
A. Because obviously your mind set changes a little bit.
Q. Okay. And I'm moving on now to the interrogation of Mr. Aleksey by George Darnell and Ken Mears over at the complex of January 2nd, I believe, '98.
A. Right.
Q. Did, in your conversations with Bayan, or in any way did Bayan communicate to you that he, his allegations that he was beaten, threatened and otherwise coerced into changing his statement to saying that Gloryvee was not the one that shot the trooper but that he was?
A. Yes.
Q. Okay. And do you recall when he told you that, how many times, and what he told you?
A. Going through my notes I do, I just want to find exactly. The first -- yes. The first comment was from a letter from Mr. Aleksey that I received and reviewed on March the 23rd, 1998.

And the reason that that was the first is because my summary of the letters that I received, and I believe that was two letters, my comment is

"Nothing new except allegations of beating confession out of him," which would have been the first time that I heard the confession. The problem, and I continue with my note on this, the problem is he didn't tell WIS television about this.

The next time -- and that was the actual first time. I also believe that at some point I met with Mr. Aleksey and I've got notes that I've reviewed them at, that he indicated one of the SLED agents, and I don't recall which one, hit him in the chest and the other SLED agent told him I believe, if I'm not mistaken, that he had killed a friend of his, that he wasn't going to get out of here alive. And this was stuff that he told me on a face-to-face meeting.

Q. And that would -- and do you have the copy of the notes that we gave you, or the other copy you said you --

A. I've got my copy of the notes, but I don't know if they're going to be in the same order that you have. If you show them to me I can identify them.

Q. The March 23rd you said you reviewed his letters.

A. Right.

Q. That's the date you reviewed them, not the date

of the letters probably?

A. That's the date the letters came into my office. I made a pretty good habit of reading them. I don't know when they would have been mailed. And going out in the prison mail, I don't know what the turnaround time would be for that, but I've got March 23rd, '98.

Q. Okay.

MR. TARR: All right. I believe, Your Honor, this list that I have of Exhibit Number 2 is one that not in evidence that --

THE COURT: Right.

MR. TARR: And I'm trying to find that because we were going to get it in through Mr. Stone.

THE COURT: Sure. Ms. Keil can help you find it.

MR. TARR: And I think it's over here. Okay. Here we go. Also at this time would like to move in Applicant's Number 60 which is a letter dated March 7th and also would like to move in Number 2 at this time which is the one that was previously not in evidence, both letters from Mr. Aleksey to Mr. Stone and Sims that came out of trial counsel's file.

THE COURT: All right. Any objection?

MR. ZELENKA: No objection.

THE COURT: Very well.

(Entered into evidence was Applicant's Exhibit 2, letter.)

(Entered into evidence was Applicant's Exhibit 60, letter.)

Q. Let me show you the two letters I'm talking about if you can maybe try to find your copies so I can go over it with you. Those were dated March 6th and 7th, would have been first reviewed March 23rd I guess.

A. Okay.

Q. All right. Did you get a chance to read both of them?

A. Yes.

Q. Do you think, or do you have a recollection of whether these may be the two letters that you referred to in your notes there on March 23rd?

A. I don't know. I have some letters that I received from Mr. Aleksey on March the 17th that would have been closer to that date as opposed to the 23rd.

I also don't know what days these are, if they went over the weekend, but -- and we used to -- I used to get a number of letters and sometimes

they would all come together, so I don't know to be honest with you. Could be. I don't know.

Q. Okay. But you would agree that the March 6th letter says "Dear Mr. Sims" -- it's addressed to Thomas Ray Sims and Mr. Duffie Stone.

"Dear Mr. Sims: I want you to know that when SLED was questioning me they told me if I say I did it that I would get out of jail in five years, that they would help me. When they were in the office the black SLED agent said to me and then the white SLED agent Darnell said the same thing. The SLED agents then beat the shit out of me when I didn't agree."

A. Yes, I would agree with that, that's what those letters say.

Q. That's what he said. And then on the March 7th, '98 letter addressed to both you and Mr. Sims it says "I was beaten into saying I did it."

A. Yes, sir.

Q. All right. Now, I have just kind of a general question for you. At some point during your representation of Mr. Aleksey did you or someone from your office ask him to stop writing both offices and just send everything to you and that you would get it to Mr. Sims?

A. Um --
Q. I think there's been testimony that you kept the centralized file at your office, I was just wondering if that was ever done?
A. No. I sent him a letter and I don't -- I reviewed this a few days ago, I sent him a letter at one time and told him to call me whenever he wanted to, that I would be in the office.

I think there were certain days I would be out of the office, but if I was not, feel free to talk to Tina Lawing who was my paralegal and I also gave him my 1-800 number so he didn't have to do the collect deal. And I honestly don't know where that letter is right now. But I've reviewed it and I know I have it.
Q. I've got it right here.
A. Yeah, here it is, right here, I'm sorry. It was dated March the 19th.
Q. Okay.
A. "I'm writing this letter to assure you there's no problem calling my office when you need to discuss any legal issues." Is that -- I mean, I'll be glad to read that if that's what you like.
Q. Right. But I guess my --
A. I don't recall telling him to send everything to

me and not send everything to Thomas or to Mr. Sims, I don't recall that.

Q. You don't recall, all right. That's fine. Let me show you what's been marked as Applicant's 69, tell me if you recognize that.

MR. TARR: And I guess I can go ahead, move it in at this time, there's no objection, it's just the curriculum vitae of Saul Kassin.

THE COURT: All right.

(Entered into evidence was Applicant's Exhibit 69, CV of Saul Kassin.)

Q. Do you recall ever receiving this fax? It looks like it was faxed somewhere.

A. I'm sorry, does it have a date on that? I did not look at that.

Q. 2/25/98.

A. February the, I'm sorry --

Q. February the 25th, '98 and we believe this came out of trial counsel's file and that, you know, the fax, you know, could have been faxed to someone else and just happened to get in your hands, I don't know, but I was just wondering if you happen to remember it? Actually if I can maybe refresh your memory.

A. Sure.

Q. Your billing sheet page 16.

A. Mine?
Q. Yes.
A. Okay.
Q. And it's July 10th, '98 about the middle of the page.
A. Yes, reviewed article and CV on Saul Kassin, K-a-s-s-i-n. But I've got July the 10th, '98. What fax --
Q. Yes.
A. I'm sorry, I was looking.
Q. It says you received it then apparently it was maybe faxed to someone else and they gave it to you or something?
A. Yeah, because I don't know -- exactly know where -- yes, I reviewed it on that day so that would have been the day I received it.
Q. Do you think it's possible you may have gotten it from a guy named Charles Grose who was a public defender in Orangeburg at the time you were representing Mr. Aleksey here?
A. Well, it's possible. I spoke to Mr. Culler a number of times who is the public defender. Of course, I spoke to the public defender's office in Beaufort as well, so I talked to a number of criminal defense lawyers, I could have gotten it from any of

them.
Q. Do you recall reviewing this document?
A. Yes. And I've got that on my notes that I did that, yes.
Q. Do you recall whether or not -- you testified you don't recall exactly who you got it from?
A. I don't recall who I got it from.
Q. Okay. Do you recall whether or not you had asked for it from whoever it was or whether or not somebody had just talked to you about it and given it to you?
A. I do not. I'm sorry, I don't.
Q. Did you ever contact -- first of all, do you know who Saul Kassin is?
A. Other than that resume, no, I do not, I don't know him.
Q. For the record he is a false confession expert.
A. False confession expert. No, I do not know him.
Q. Did you ever contact him?
A. No.
Q. Okay.
A. I do not believe I did.
Q. Are you aware of two cases that Mr. Kassin worked on the same year of Mr. Aleksey's trial, 1998?
A. I don't believe so. Are these the two cases

that you talked to Mr. Sims about Tuesday that ended in acquittals?

Q. State v. Tregg Johnson, Orangeburg County, Charles Grose was the attorney.

A. Okay.

Q. And ended in acquittal, and State v. Dennis Stevens in Bamberg County, I believe Chris Wilson was the attorney, it ended in an acquittal, both murder cases.

A. Okay.

Q. You're not familiar with either one?

A. No.

Q. Okay. Is there a reason that you can recall why you didn't consult a false confession expert just to see if this person can possibly help you in this case?

A. I don't recall reading through that and what my final decision was from -- concerning that individual. I can tell you that when we got to the confession issue I felt that we were going to have two very distinct advantages and I focused on those.

One advantage I thought was the tape player and the two-hour gap, specifically after the Miranda warning being read that you can stop talking at any time.

I felt that Mr. Aleksey's comment was -- "That's all I have to say" was a pretty good indication that's all he had to say. Unfortunately, the Supreme Court hasn't agreed with me on that.

The second thing is that we had Dr. David Bachmann who I had used in a previous death penalty case. And Dr. Bachmann, after speaking to him, which I spoke to him on August 13th, 1998, after reviewing the medical records he told me he saw obvious signs of a concussion and the symptoms can last as long as a few months, which of course would have encompassed the time the concussion took place at the time of the car wreck which was the end of Mr. Aleksey's case and it came -- and the confession came after that. Those were two angles I used and focused on.

I can't say that I looked at Mr. Kassin's CV and said anything one way or the other about it. But I do remember that my focus was on those two issues.

Q. Okay. Now, you did -- in the trial you did cross-examine Agents Mears and Darnell about the -- their confession rates in other cases?

A. Yes, that's right.

Q. Did you just gather statistics like numbers, or

did you actually look at the cases to see what cases they worked on?

A. I did a Freedom of Information Act request, as I recall, to State Law Enforcement Division and asked them to provide me with the cases that they have worked on and whether or not those ended up in confessions so that the numbers I used were -- were specific numbers to those two individuals.

And it appeared, and my angle on that was to try to establish that these were the closers, these were the two guys that SLED sent in or whatever, sent in to get the confession they needed to get and that was the angle there.

But those came from actual numbers and I think it was as a result of an FOI request. Does that answer your question?

Q. Yeah. I was wondering did you just get numbers from it or did you get actual case names or things like that?

A. I don't recall. I don't recall. I know I got numbers, but I don't recall if I actually had case names or not. I know I had figured out the percentage was pretty good and that that was -- that was a strong angle I thought.

Q. Okay. And if you -- would you still have what

you received from them in your request?
A. Yeah, I believe so.
Q. Okay. Basically what I'm getting at --
A. Sure.
Q. -- is if they had given you names of actual cases.
A. Right.
Q. And you had had the name Tregg Johnson, Dennis Stevens --
A. Right.
Q. -- as being cases that George Darnell and Ken Mears had elicited confessions on.
A. Right.
Q. One in Orangeburg, one in Bamberg, both go to trial prior to this case in 1998.
A. Right.
Q. That you could have found out that those ended in acquittals and that Saul Kassin testified in one of them and given advice to the other attorney on the other case?
A. If I was very good I can honestly tell you I don't think I would have ever done that, only because my focus was trying to prove that these two SLED agents were the closers.

And to look beyond that I think -- I

mean, obviously knowing what I'm knowing now and the stuff that you're telling me it would have been a help. But I can honestly say I wish I would have been that smart, but I don't think I would have.

I think my focus was just on did these guys get called in by SLED and get confessions and that was kind of -- that was my angle. I'm sorry if I didn't answer your question.

Q. You said you didn't recall where you got CV from.

A. I don't.

Q. Well, would it be -- well, I don't want you to speculate.

MR. TARR: I'll withdraw that question, Your Honor.

A. What date did I get those, July?

Q. July 10th.

A. I'm sorry, I don't.

Q. Okay. And you think whenever we take a break it's possible you could review what you got from SLED and see if you had any notations regarding --

A. Sure.

Q. -- whether or not you knew the names of cases or anything else?

Now, in regard to the Jackson v. Denno

hearing, do you recall whether or not you and Mr. Sims advised Mr. Aleksey that he could testify at that hearing on the sole issue of the voluntariness of his statement?

A. Yes.

Q. You do recall that?

A. I do. I do.

Q. Would that have been that day of the hearing?

A. Yes.

Q. Or sometime prior?

A. That would have been -- I don't recall how much discussion we had prior to the hearing itself, but I recall having the discussion in the holding cell in the Richland County Courthouse.

I think we did the Jackson/Denno in Courtroom One of the Richland County Courthouse if I'm not mistaken, I could check my notes, but I think that's right. And we had that discussion with Mr. Aleksey in the holding cell there which is in the hallway attached to the courtroom.

Q. And at the Jackson v. Denno hearing you didn't argue that the alleged confession may have been induced by a promise that he be moved from the infirmary isolation basically to the general population?

A. I don't recall if I asked that question or not. If it's in the record, I did, but I don't recall it.

Q. I can tell you it's in the record -- it's out in the record --

A. That I asked that question?

Q. Yeah. It's in the record. But what I was asking is whether or not you recall having had that in the record, arguing to the judge the confession should be thrown out as a result of being induced by this promise that was fulfilled?

A. I'm sorry --

Q. Or whether you considered arguing that?

A. I had two feelings about that, about the Jackson/Denno hearing and I don't know if this is answering your question or not because I don't specifically remember exactly what I argued to Judge Cottingham.

The first very obvious reaction that I had was that Judge Cottingham wasn't in any way, shape, or form even contemplating throwing out that confession. I got that from the body language on the stand from him and just from -- just from -- in fact, I had spoken to some defense attorneys in Beaufort that did a lot of death penalty cases and they were not impressed with that, with him as the judge. Not

that they weren't impressed with his legal ability, but they felt like he was very conservative from that standpoint.

So number one, I didn't think he was going to throw it out anyway. Number two, is honestly I thought we had a very good angle with the fact that the Miranda warning, even the written Miranda warning said you can stop talking at any time. And Mr. Aleksey said, and I'll never forget this, 'That's all I've got to say."

And that was the angle I wanted to hit hardest because I felt like that was the strongest, the strongest thing that I had. And if Judge Cottingham wasn't going to throw it out for that then he sure wasn't going to throw it out for any other reason.

So I don't recall exactly what I argued. I do know that that was my focus.

Q. So that coupled with the two-hour gap was your crux?

A. That is the two-hour gap. From that standpoint he made a statement which was unfortunately partial, a partial confession, but he made a statement that primarily pointed the finger at --

Q. Gloryvee?

A. -- Gloryvee Perez Blackwell and then I had a two-hour gap on the tape in which the tape went off.

And I thought what was also important with that is that when the tape went back on he was crying and I specifically recall making a big issue of that especially at trial. Probably more so at trial than I did in the Jackson/Denno hearing because again I didn't think we were going to get the confession thrown out and I also didn't want to educate the SLED agents of what I was going to do to them in front of the jury panel. And that was -- that's sort of how we played that. But I honestly don't recall exactly what I argued to Judge Cottingham.

Q. All right. And you did not raise any of the claims of brutality as alleged in the March 6th and March 7th letter to you from Bayan?

A. In the trial or the Jackson/Denno?

Q. Jackson/Denno.

A. I don't recall.

Q. Okay. And getting to the trial, you did not argue that the statement was induced by a promise?

A. That -- no, I don't believe I did. I don't believe I did argue the promise. I don't believe so.

Q. Okay. And you didn't argue that he was beaten

into saying it?

A. I don't believe I argued the promise because I think that's inconsistent with the fact that he was beaten. And I think -- I do believe I argued it.

Now, whether or not I actually said these SLED agents beat him, I don't know. But I do remember I actually used the back of the gunshot residue test board and after cross-examining the SLED agents on their statistics as far as confessions, and then after showing them the Miranda form, which I used Solicitor Bailey's overhead projector to show them the line that says this is -- you know, I can stop talking at any time, on the back of that board I made -- I made notations this is the time he said I didn't do it, this is the time the tape went off, two hours later he comes on and he's crying.

And to me that is an argument to the jury concerning during a two-hour gap. And whether or not I actually said they beat him, I don't know. I don't recall that.

Q. So basically you wanted them to draw the inference that something may have happened.

A. Exactly.

Q. Instead of spelling out the allegation?

A. Exactly.

Q. And I think something that you had already mentioned regarding your notes, and this is Applicant's 61, part of the attorney notes, this is a meeting with Bayan at Lee County, he told you as far as the confession. And let me know when you found it.

A. Show it to me real quick and I'll tell you if -- I mean, that's mine. Yes. You want me to summarize it or anything? That's my stuff, that's my paperwork. I don't know if I can actually find it in here or not.

Q. Okay. Tell me if you remember writing this.

A. Yes.

Q. On the confession he said he was handcuffed?

A. Yes.

Q. Shackled?

A. Yes.

Q. Threatened?

A. Yes.

Q. Black guy hit him in the chest?

A. Was it the black guy that hit him in the chest is what he said? Yes, I remember one of them hit him in the chest and the other one said something like you killed my friend and you're not leaving here alive. Is that in there as well?

Q. "I'll beat it out of you." It looks like agent and it looks like choking, but I don't want to -- it's kind of hard.

A. Yeah, that's choking. Terrible handwriting but, yes, I've got agent, I've got choking, Darnell comes back in, going to take the rap. So I'm assuming what I meant by that is Agent Darnell came in, said you're going to take the rap and threatened him.

And that's why I wrote on here check for rewind on the original tape, then they admitted it was a two-hour gap. So, yes, that's what it says.

Q. Okay. Now, in your notes of the Jackson v. Denno --

A. Yes.

Q. -- and also in the transcript there was testimony from the SLED agents that during the two-hour gap one of the things that Bayan had asked them about, asked to be moved to the general population.

A. Right.

Q. They called over there and got it done, do you recall that?

A. Yes.

Q. That's one of the things. Then he said he had a girlfriend who had trouble in Florida and wanted to

know if they could help him out.
A. Right.
Q. And that was Yelena Batkilina?
A. I don't know if I knew that was her name but, yes, I remember that part. Maybe I did remember that name, I don't know.
Q. Here is your notes from the Jackson v. Denno, it's circled there if you could just read that, refresh your recollection.
A. Yeah. I've got Lena, I believe, but I don't believe that's what it ended up being, Batkilina. Trouble in Florida, help her out, yes.
Q. Okay. If the transcript indicates Batkilina, then that's probably what you meant there?
A. Yes, absolutely.
Q. Do you recall -- and I realize you got a rap sheet from a solicitor regarding Ms. Batkilina that indicated no convictions -- do you recall taking this information that she had trouble in Florida and going to investigate whether or not she had been convicted there, or even was arrested awaiting trial?
A. I do not recall doing that. I don't -- what -- I'm sorry, what date was the Jackson v. Denno?
Q. I believe that was June 8th; is that correct? June 8th. We're going to get to this later so we can

probably move onto something else.
A. Sure.
Q. If you had known, if you had looked into it and found out that she was convicted on March 12th of '98 for credit card fraud in Florida, that's something you would have liked to have known when she was on the stand?
A. Sure. I didn't cross-examine her but, sure, I think obviously any convictions for a witness is important to know.
Q. Okay. If you were sitting over here assisting Thomas, Mr. Sims, and he came back to sit down, hadn't asked those questions, you had knew about it, you would definitely say, hey, you forgot to impeach her on this conviction?
A. Sure. I would make sure he knew about it. I would leave the decision of whether he wanted to cross her up to him but, yes, I would have certainly brought that to his attention.
Q. Okay. We'll come back to that later.

Do you recall either in talking with the SLED agents or with Bayan that during that two-hour gap that they -- the agents had tried to kind of guilt him in to taking the wrap because Gloryvee, she's got two kids --

A. Had two children.
Q. You don't want to, you know, blame it on this woman with two kids, why don't you go ahead. Do you remember that?
A. I had -- no, actually I don't, but I saw in my notes that I had some reference to her having two children. And I specifically remember them apparently going out and getting him a Pepsi during the two hours at least by their testimony.
Q. All right. You would agree that in order -- obviously your aim in this case was to have Bayan found not guilty first off?
A. That's right.
Q. And if you didn't get that, to life in prison?
A. That's right.
Q. And in order to be found not guilty the jury would have to doubt the truth of that confession?
A. Absolutely, I think so.
Q. So this was one of, if not the most, important obstacles as far as the defense to get around in this case?
A. Yes. Yes.
Q. If this confession had not been in evidence, do you think that would have made a big difference in the outcome in either phase?

A. Well, I think the phases would be tied together as far as the confession is concerned. They would have a very difficult time despite the fact they found him behind the wheel of the car with the fingerprint on the gun. I still think the confession was very important to the case, there's no question about it.

Q. You agree that fingerprint on the gun was not in the manner of which if you were holding the gun to shoot?

A. Yes. I remember specifically crossing the SLED agent and making him hold the gun in the fashion that that fingerprint would have matched and he was basically facing it towards him.

Q. It was like he was taking it from somebody?

A. Exactly.

Q. Okay. And he had told you and he had told the agents in the first part of the statement that Gloryvee was driving?

A. That's right.

Q. And that after she shot the officer, she was just hysterical, they pulled off the side of the road and switched?

A. Right.

Q. Okay. Can you tell me the thought process that

went into the decision to not tell him not to testify but advise him not to testify in this case?

A. Yes. The problem we had from the very beginning with the case is that, and even unfortunately through sentencing, is that Mr. Aleksey's story changed frequently.

The interview that he did with WIS television, and I think that was a telephone call that he actually made in the jail was with a reporter, and I do not remember her name, but I remember listening to the tape, and his statement about the confession on that tape was he said he was under a lot of pressure to give that statement.

And she asked him, I remember specifically her asking him, you know, something in the line of what kind of pressure are you talking about that would make you confess to the killing of a police officer. It was just a lot of pressure.

He didn't say I was beat, he didn't say they promised me I would get out of jail or they would help out a woman. These are things that kept adding up.

Now, I don't mind that as far as from the standpoint I don't necessarily have to believe everything Mr. Aleksey tells me, but the problem is

every time he spoke there was a new story. And it became more -- it wasn't that he lied, I don't mind that, I don't care about that, it was that he was not very good at it.

And if he would have taken the witness stand there is no possible way that he could have opened his mouth without adding another story or making it worse than it already was.

Even the initial confession that he made which wasn't a confession, the first statement that he made's blaming it on the passenger of the car. Unfortunately, he said two or three times even in that statement alone I was driving -- I mean, she was driving and back and forth.

Arguably he could not have made it any worse. He did give one statement to a highway patrol trooper in the hospital that we kept out at the Jackson/Denno hearing that was actually excluded and because he had not read him his Miranda rights and was clearly in custody at that point.

And that statement came out and that was the statement concerning that -- in other words, what the trooper said was that Mr. Aleksey shot the trooper -- that Mr. Aleksey told the trooper he shot the trooper because he was, he thought that

Mr. Geeshan out of New York had a contract on his head and had sent the trooper to kill him. Of course, there's no way for the trooper to know anything about a Mr. Geeshan and that's information we heard again from Mr. Aleksey.

So, I mean, it really -- putting him up on the stand obviously that statement would have come in. I mean, you could have used that again on rebuttal when he could not have put it in in his case in chief.

And I didn't think he was going to come across very credibly, and in all honesty in the sentencing phase when he did testify I didn't think he was very credible then either.

So, yeah, I remember very much about putting him up on the stand.

Q. All right. You would agree that although those inconsistencies may have been used against him, there was going to be no door opened as to prior bad acts with him testifying because y'all brought out those in opening statements?

A. I don't think there were any other bad acts that had not already been brought out, no. I think it would have brought in that statement about Mr. Geeshan wanting -- you know, wanting the contract

on his head. But no other bad acts, no.
Q. When he was in the concussion he alluded to this Dr. Bachmann --
A. Dr. Bachmann told me the concussion could have lasted for a matter of months, and so my argument was that he was under the concussion even when he gave the statement to Darnell and Mears. But the one I'm talking about --
Q. The one that was very close --
A. He was in the hospital. Yeah, he was in the hospital when he made that statement.
Q. And I had forgotten to ask you a question about Dr. Bachmann. He did not conduct any tests, independent tests on Bayan, he just relied on records from the hospital?
A. He just used the medical records, that's right. That's right. Welsh is the trooper's name. I apologize, W-e-l-s-h.
Q. And he never examined Bayan either.
A. I don't believe he did.
Q. Purely looking at the records.
A. I believe he was strictly on the records, yes.
Q. Okay. Have you ever been made aware of another tape recorded statement of Mr. Aleksey after the WIS phone call with George Darnell and Ken Mears?

A. You mean the audiotape of him talking to Mears and Darnell, the one the tape goes off for two hours, is that what you're talking about?

Q. Are you aware of another one that came -- you've got the January 2nd tape --

A. WIS.

Q. -- to Darnell and Mears to our gap tape. Then the fourth you've got the WIS phone call --

A. Right, I remember that one.

Q. -- right?

Are you aware on the 5th of George Darnell and Ken Mears coming back, getting Bayan with a tape recorder and asking him if he wanted to -- if he had anything else to say?

A: Let me make sure I understand your question because I'm not -- are you telling me -- is there another tape other than -- I've got the WIS tape in my memory, that was the first -- no, that was actually the actual tape.

Q. Don't get me wrong, I'm not expecting you to know about it. I want to make sure you heard about it.

A. No, that's what I'm asking. I want to make sure I am clear on that because I don't have any memory of any tape other than WIS which is what he had the

telephone interview with the reporter and then the tape with Mears and Darnell that was cut off for two hours and that there was a gap.

And if you're telling me there's another tape other than that, I don't have any independent memory of that and I could check my notes, but I don't think so.

Q. I'm not -- I don't intend to sound like I was telling you that, I was asking you if you had any information that that had occurred?

A. I do not. I don't think so.

Q. Okay. But if it did you weren't aware of it and they certainly didn't give you a copy of it?

A. I don't think so, no. And again, I'll be glad to look through these notes but I have no memory of that at all.

Q. Okay. Are you aware that the day February the 2nd, '98 when you had the notice of intent to seek the death penalty hearing --

A. Yes.

Q. -- that there were a number of warrants from three different jurisdictions, Montgomery County, Pennsylvania, Absecan police, New Jersey, and New Rochelle, New York, that were served by George Darnell on Bayan without counsel being present?

A. No, I don't believe so.
Q. All right. Do you recall Bayan telling you that the day of the hearing before he went out in the hearing that they had come back and served the warrants on him and that he had asked for his lawyer and they said they're busy, you don't need them?
A. I do not -- I don't have any memory of that. If you've got something in my notes I'd have to look at that, but I don't -- do you know if I have any notes on that?
Q. No, I don't.
A. Okay.
Q. That's why I'm asking. If I knew, I would have showed them to you.
A. I don't remember that, but....
Q. Okay.

MR. TARR: Beg the Court's indulgence, Your Honor.

THE COURT: All right.

(Pause in proceedings.)

Q. Okay. Mr. Stone, you've already testified regarding the strategy that was used in this case and basically what the theory was and that you were going to show Mr. Aleksey to be kind of a smooth talker that kind of got women to do stuff for him and then

took off and got arrested and would bond out, change his name and go do it again.

A. Right.

Q. And wasn't violent and, therefore, there's no reason why, he's never shot anybody before, when he tried to arrest him why would he do it now basically?

A. Yes. It was a little more complicated than that but, yes, sure.

Q. Okay. Did you ever discuss -- the solicitor had filed a 404(b) motion to admit Lyle evidence on June 3rd, '98 --

A. Right.

Q. -- it was about five days later to one of your pretrial motion hearings. That was never argued on the record. I didn't know if you discussed with him the fact he didn't need to argue it because --

A. No, absolutely not. I did not discuss that with him. The part of the trial strategy from my standpoint just maybe it's -- well, I'm not going to tell the solicitor how I'm going to try my case. That's the advantage the defense has the prosecution sometimes doesn't have.

But I would not have discussed that with him and I -- and did not because I didn't want him to know if I was going to bring that out. I

wanted to leave at least a little bit of guesswork on his part. So, no, I would not have discussed whether he needed to argue that motion or not.

Q. Okay. So you don't have -- you don't know why he filed the motion and then didn't argue it?

A. I don't know.

Q. Okay.

A. I don't know that.

Q. Can you tell me if you would have known that had you tried -- I may have asked this before and I can't recall, if you had known that had you tried to keep these bad acts out that they would have been kept out by the judge, would you have had changed your strategy knowing what you knew at the time and not having any benefit of evidence that you may hear from your testimony here?

A. In other words, if I was confident the 404(b) motion wold have been denied would I have tried the case the same way? Probably. The -- the problem is even if I keep it out at guilt phase, I don't think there's any question it comes in at penalty phase. Did I say that right?

If I kept it out in the first phase, going into the sentencing phase it's coming in. If I can take the heat off of the sentencing phase by

getting that out there earlier, if I know it's coming in then that sort of factors into it a little bit as well.

But again I thought that was -- it might have been a very bad strategy, but it was -- I thought it was an advantage, I really did. And to this day I still think it -- the whole case seems a little odd because of that.

MR. TARR: Your Honor, I would like to look at the Court with some guidance regarding some timing. I've included all the kind of smaller topics that don't take much time to go through and --

THE COURT: We're going to go until about 5:30, so let her rip. Do you want to take a break before you get to it?

MR. TARR: That probably would be good and decide what we're going to do.

THE COURT: That would be good. Let's start back in about ten minutes. Okay, great.

(Recess, from 4:13 p.m. to 4:27 p.m.)

Q. Mr. Stone, we had talked a little bit about the strategy that you used and how that could have been effected by other information that was not known to you at the time.

A. Okay.
Q. Okay. Specifically I want to move and talk about the individual who was initially charged with murder along with Mr. Aleksey.
A. Right.
Q. Ms. Gloryvee Perez Blackwell Rivera, you know, whatever.
A. Yes.
Q. Would it be fair to say that it was a focus of your investigation in this case to come up with as much impeachment on Ms. Rivera or possible evidence showing that she was either the shooter or to impeach her credibility?
A. Yes.
Q. So that she couldn't come in here and appear to the jury to be someone that they should believe?
A. Yes.
Q. Okay. Because if they thought she was lying then he very well may not be here today, he could have been walking out of the courtroom?
A. Exactly.
Q. I would like to refer you to page 2,371, that's in Volume V, 2,371.
A. Okay.
Q. I think this is where and you Mr. Bailey and

Mr. Sims are going through and deciding what to redact from his statement to SLED so that you would have a redacted version that would go in front of the jury as to avoid any potentially irrelevant or prejudicial matters.

A. Yes, I think that's what this is, this part is.

Q. Okay. Refer you down to line 12.

A. On page 2,371?

Q. Yeah, actually line 10. The Court says -- and I believe prior to that you're arguing that something in the statement about trouble and problems that Bayan has in New York and Philadelphia is irrelevant to the case.

And Mr. Bailey -- the Court says "Let me hear State's position."

Line 12, Mr. Bailey: "Yes, sir. Your Honor, what I'm going to say about this kind of carries through all these references to his flight and prior offenses and all that. I have to establish motive in this case.

"The State's testimony in regard to motive is going to be that the car Aleksey had was reported stolen, the tag was reported stolen. In addition to that, he had numerous arrest warrants out for him in the northeast, Philadelphia, New York and

all.

"And he gave a statement as Your Honor knows initially that Gloryvee Perez Blackwell, the young woman with him, was the one who did the shooting. He later recanted that statement and admitted that he did the shooting. Also at some point in time he called WIS and blamed the shooting on the girl. So unless I am totally shocked at trial, he was going to try to pin this murder on somebody else than was him."

A. Yes. That's what it says, yes.

Q. And so basically what he's saying is at least for the State's position that motive is absolutely crucial in this case, that he's got to show that Bayan's the one who had the motive.

A. Factually he's correct, legally it's not necessary. But, yes, I think that was his weakest part and that's what we tried to focus on if that's answering your question.

Q. Yeah. Okay. Let me refer you to 2,373 where the Court is kind of responding to the arguments being made by counsel on this issue. It seems to me -- this is line 20, page 2,373.

"It seems to me that the State's case has got to be that this event for whoever did it

occurred because they were afraid of being arrested, knowing that these arrest warrants in this prior record would come out.

"It seems to me it is clear that the State is entitled to show motive for not accepting a simple driving under suspension charge or speeding charge." And you go on to state that you agree, or that you would submit that if the State's going to get into that that you believe that -- and this is line 6 -- "I would say this though: It is our position the co-defendant in this case, the old co-defendant," meaning Gloryvee Perez, "has the same types of problems Mr. Aleksey does. If we get into it for Mr. Aleksey's standpoint I will at trial try to get into it for Ms. Perez."

A. Right.

Q. Basically the State is saying this is crucial, the judge is saying it's his opinion this is crucial to the State's case that he shows the person who did the shooting was afraid of being pulled over by the trooper and you're saying, well, if they get into that then we're going to bring up what we got on Ms. Perez?

A. That's right.

Q. Okay. So -- because if they were to get in a

lot of evidence concerning potential motive for Mr. Aleksey it would be really good if you could stand before the jury and say, yeah, well, look at her, she's got just as much. Would you agree that if there are two people in a car, one of them did the shooting?

A. Yes.

Q. Only one of them is shown to have motive, the jury is going to have a harder time believing the one without the motive did the shooting?

A. Absolutely. Yes, absolutely.

Q. Okay. I'm going to refer you to I believe this would be Volume IV, page 1,752. All right. This is where in the guilt phase closing argument Solicitor Bailey lists out eight facts that he says show why Bayan Aleksey is the only person that could have committed this killing.

A. Okay.

Q. The first fact that he mentions, the one that appears to be very important because he lists it first, page 1,752, line 7. "The first fact is Gloryvee Blackwell had no motive to kill Frankie Lingard." I'm sorry.

A. 1,752, what line?

Q. Line 7.

A. Right.
Q. "The first fact is Gloryvee Blackwell had no motive to kill Frankie Lingard, there's no motive whatsoever.

"Bayan Aleksey had a motive. Number one, we know the Mustang he had been driving was reported stolen by Lisa Watson..." and it goes on to say a bunch of stuff about his -- his motive.

Look over at 1,753, line 9. "Y'all have seen the fake ID's, the aliases up here on the board." Then he goes on to say Gloryvee is no angel, she has a conviction for cocaine which you knew about.
A. That's right.
Q. But line 19 he says "There is no evidence she is wanted by anybody, she has got no motive to run from anybody. The only motive of anybody in that car to avoid apprehension is Bayan Aleksey."
A. That's right. That's what it says.
Q. Okay. Now, if you had either developed information through your investigation or provided information through law enforcement or the solicitor that Ms. Perez Blackwell Rivera had a significant motive in this case, he wouldn't have been able to say that?

A. That's right.
Q. And that would have been pretty, pretty big for the defense?
A. Sure.
Q. Okay. 1,758, page -- line 4: This is he's going on about why Bayan, this is another fact that he has in issue that one of his eight facts that he lists, and I believe this is fact number three from page 1,755. He said, "Fact number three: Bayan Aleksey was behind the wheel." And he's going through all the evidence that he says shows he was the driver and so, therefore, must have been the shooter.

Page 1,758, line 4 the next thing we have got -- before we got into that, we showed you these pictures of the personal property. All of Ms. Blackwell's stuff is sitting on the passenger side of the car, not the driver's side. And you recall from her testimony where you showed her pictures, asked her is this yours?
A. Hairbrush, I think there was a pink hairbrush right beside the gun.
Q. Key chain in the passenger pocket of the door?
A. I don't remember the key chain, but I don't disagree.

Q. Pocketbook and stuff, all the personal property in the front part of the car?
A. Right.
Q. He's trying to say that it's more likely than not if Gloryvee's stuff's on the passenger side then she's probably not the driver is basically what he's --
A. Is what his argument is, yes.
Q. Okay. All right. If you can refer to Applicant's Number 65.

MR. TARR: And I just ask if this has been moved in yet, I marked it for ID.

THE COURT REPORTER: I don't think so.

MR. TARR: Okay. This is three pages of typed attorney notes, I believe they're Mr. Stone's, and I don't believe there's an objection from Mr. Zelenka.

THE COURT: All right.

MR. TARR: I showed them to you before. I think you have them. January 14th, '98.

MR. ZELENKA: I have no objection to this.

Q. Those --
A. Let me just check with this, if it's okay. Yes, those are my notes.

(Entered into evidence was Applicant's Exhibit

65, Mr. Stone's typed notes.)

Q. And in keeping with this idea of being able to show motive on behalf of Gloryvee Perez would have been important, on January 14th, '98 which is I guess roughly a week after you were appointed in the case you've got "Gloryvee Blackwell Perez: We need to get an investigator to check everything we can find out on Gloryvee Blackwell Perez, Gloria Blackwell Perez."

A. Right.

Q. So early on in the case you realized that was an important issue?

A. Yes.

Q. Something you really needed to develop if possible.

And I would like for you to go over the next page, it's March 25th, 1998 notes.

A. (The witness complies.)

Q. And you say 'I've reviewed the information that Bayan sent me in some letters. The only new information concerns what Gloria was doing prior to leaving Pennsylvania. Apparently she was working with a doctor's office, Bayan deposited some checks that Gloria had given him, these checks were reported as stolen. We need to contact the doctor's office that Gloria worked for, find out if they had any

checks that were stolen and if they were deposited by Aleksey for Gloria."

A. Yes.

Q. Do you recall that?

A. Yes.

Q. Do you recall whether that was done?

A. I don't recall. I thought we did, but I don't recall. I would have to look back through the notes to see because that was March 25th, '98.

Q. Uh-huh (affirmative response).

A. And I simply don't know. I can go back through my notes and see if they're in there or not, I don't know.

Q. Okay.

MR. TARR: Your Honor, at this time I would like to introduce Applicant's 63, it's a five-page -- five pages worth of notes that I believe Mr. Stone will identify as being his paralegal Tina Lawing. I've shown them to Mr. Zelenka, he stated he doesn't have an objection.

THE COURT: It's 65, right?

MR. TARR: Yes, Your Honor.

THE COURT: Applicant's 65 into evidence without objection.

THE COURT REPORTER: It's 63.

MR. TARR: Is it? Okay. Sixty-three, I'm sorry.

THE COURT: All right.

(Entered into evidence was Applicant's Exhibit 63, Tina Lawing's notes.)

A. I believe these are Tina Lawing's notes, it looks like that, I believe that's correct.

Q. All right.

A. I don't know what other notes they would be if they're not Tina's, but I think that's correct.

Q. Do you have these in your file or would they be somewhere else in your office or do you even know if you have a copy of them? Because obviously these are the original notes.

A. I don't know. I don't have it.

Q. That's okay.

A. Sure.

Q. This is the original, you may not have copied it. That's the fourth page.

A. Right.

Q. Can you read what's -- the top half of that page, what's written on it?

A. "Westin Suites by airport, Michael DeAngelo, black, Summerfield Suites," looks like "Glory,

Telechecks, Social Security number, driver's license, call aunt, Gloryvee was calling mother about Marcus."

Q. Just that top part.

A. Okay.

Q. Do you know whether or not you or an investigator or anyone ever contacted Summerfield Suites?

A. I don't know. I honestly don't know. I don't recall at this point.

Q. Okay. I wanted to ask you, we had -- in talking about something else, and I believe it was the change of venue that you discussed with Thomas Sims you indicated, you indicated that you had a conference with Thomas on March 30th, '98 in relation to the change of venue.

A. Okay.

Q. And that was the day I think that he had said that he thought you might want to move for a change of venue and later on you decided --

A. "Thinks we need to change venue," yes, that's my telephone notes from March the 30th, '98.

Q. Okay. I want to show you -- actually I'm just going to read it to you, this is Applicant's Number 22, it is the notes from Thomas Sims' assistant, Danetta, concerning a conference call she had with

Bayan on March 30th, '98, and I'm just going to ask you if you remember talking to Thomas about these things either at that time or at some other time.

"When Gloria and him were together she took the checks from her job and opened an account at Summit Bank in Pennsylvania, Northeast Philadelphia, Pennsylvania, $26,000, total of two checks." And then "Call Al at Penske Truck Rental Company in Manhattan, New York, 26th Street, 11th Avenue, call Telecheck, find out Gloria's bad checks." It gives a driver's license, Pennsylvania driver's license number, "Summerfield Suites, Maple Shade, New Jersey, talk to Paul.

"Also Gloria has a checking account in Beaufort, South Carolina, checking account. Gloria cashed check at Trump Casino, Atlantic City, National Processing Center."

And then there is indication down here, it says "Bayan sent letters to Mr. Stone and diagrams and wants us to get copies from him."

Do you recall any of those things that Bayan had suggested you do with relation to your investigation of Gloryvee and whether you talked to Thomas either on the 30th or on some other date about that?

A. I remember -- I remember having those conversations concerning I know the car rental and some other stuff as well. I don't recall specifically if I talked to him on that day.
Q. Do you recall talking to him about what's listed in the notes there?
A. Well --
Q. I see you've pulled out the -- that's your investigator's bill.
A. Right.
Q. Who was that?
A. Tommy Davis, The Quantico Group. Tommy and one other person actually worked with them. And my general instructions to Tommy were to go out and find out everything he possibly could about Gloryvee Perez Blackwell. Now, whether or not -- that's kind of what I was looking through here to see if some of that involved running down this check, this check information.
Q. Okay.
A. Because apparently -- and I apologize if I get this incorrect, but I believe she had some family in North Carolina, she had some ex-husband in Beaufort and she had some other connection up in Pennsylvania so I sent I believe Mr. Davis everywhere.

In fact, on June the 5th, '98 he traveled to Greensboro, Reidsville and Caswell, North Carolina, locate and interview Blackwell family.

Q. Right.

MR. TARR: Your Honor, he's reading from this document, it is Applicant's 68, I would move it in at this time, I don't think any objection from Mr. Zelenka.

MR. ZELENKA: No objection.

THE COURT: All right. Applicant's 68 in evidence without objection.

(Entered into evidence was Applicant's Exhibit 68, Quantico bill.)

MR. TARR: This was from trial counsel's file.

THE COURT: All right.

MR. ZELENKA: Could you just identify that for the record?

MR. TARR: It is The Quantico Group Investigation Service that had been hired by Mr. Stone to do investigation in this case. And this is the final bill stated September 9th, '98.

Q. Mr. Stone, what -- what date do you have indicated, and I believe it's on the last page of

this -- the second to the last -- I'm sorry, the second page bottom, near the bottom, what date do you have that he actually -- Tommy Davis actually left to go investigate this case and Gloryvee Perez and whoever else up in Philadelphia, Pennsylvania, and New Jersey and New York?

A. I think you're asking me two different questions. I'm not clear. Are you asking what day, when did he start his investigation or actually when did he go --

Q. When did he go up to the northeast area of the United States to investigate this case?

A. When he went to the northeast?

Q. Or Philadelphia, Pennsylvania, to start with. If you look at the bottom August 11th, '98 you see it.

A. Okay. Yeah, I've got a telephone call May the 6th of '98 with Falls Township, that's a telephone call. August the 12th, '98.

Q. August 11th.

A. Okay. "Traveled to Philadelphia, Pennsylvania, and Bensalem, Pennsylvania."

Q. Okay. And then August 12th it indicates that they're in Bucks County, Pennsylvania, Bensalem and Trenton, New Jersey.

A. Right.
Q. Conduct interviews with police officials on August 13th in Trenton, New Jersey, and Bordentown, New Jersey --
A. Right.
Q. -- interview at the office of Dr. B. S. Sandue?
A. Right.
Q. Do you happen to know who that is?
A. Isn't that the doctor she used to work for? I can't recall if that's the -- I don't recall right now. I'm thinking it might be the doctor she used to work for.
Q. All right. Let me show you some letters here to you and Mr. Sims, one is dated March 29th and one's dated April 19th. And these are -- the March 29th letter is Applicant's 23-B, April 19th is Applicant's 23-C. Let's see if you can recognize that as the March 29th letter.
A. March 29th, 1998?
Q. I don't know if this will help you, I'm going to read off of it, Applicant's 66, Law Office of Duffie Stone, paralegal Tina Lawing's time sheet.

MR. TARR: I would like to introduce it at this time, there's no objection I don't believe.

THE COURT: All right. It's number...?

MR. TARR: Sixty-six.

THE COURT: Sixty-six. Any objection?

MR. ZELENKA: No objection.

THE COURT: All right. Applicant's 66 in evidence without objection.

(Entered into evidence was Applicant's Exhibit 66, Tina Lawing's time sheet.)

Q. Ms. Lawing also -- she did work for you, was your paralegal and worked for you on this case?

A. Yes.

Q. Did a lot of coordinating telephone calls and keeping up with everything?

A. That's right.

Q. She indicates she reviewed some of Bayan's letters on March 31st, I don't know if that would help you find --

A. Okay, March the 31st. I've got April the 2nd, yes. I've got that I reviewed this on April the 2nd, 1998, describing the check care, says testimony and Williams' office the day of the confession.

I don't know if that's -- this looks like the check care system, whether or not we've got Williams' office the day of the confession on here or not. I don't see anything about that. So maybe there's another day, but yes.

Q. And I've got the April 19th letter, you could see if you could find out --

A. April the 19th?

Q. Yeah.

A. I've got April the 27th letters from -- I've got Bayan, letters from Bayan. Probably would have received multiple letters at that point.

Q. Do you have any reason to believe from looking at these that you never received these?

A. No. I mean, I believe -- my notes indicate I did receive those.

Q. Okay.

A. Yes. And this as well. But I don't think that was the only letter I received in that particular group.

Q. Okay. The March 29th letter Bayan sends, basically when he's sending you letters most of the time it's not to say, hey, how are you doing, I'm in prison. It's to say, hey, can you do this, can you do that?

A. Sure.

Q. March 29th starts out "Mr. Stone, Mr. Sims: Gloria Blackwell has a checking account in Beaufort, South Carolina, Highway 301, the bank is MCAB or something that has those letters, call Summerfield

Suites Motel in Maple Shade, New Jersey, ask for Paul. She wrote checks there for the room, one check was for 947, $50, $400, that's with the Telecheck writing service." And then goes on, "Also with NPC," National Processing Center, "she wrote a check for $700 at Atlantic City, New Jersey, Casino Trump Taj Mahal."

And you recall the -- I think it was the notes of Tina Lawing -- this is the March 29th letter. This March 30th is the conference with Mr. Sims' assistant, Danetta.

A. Okay.

Q. Where he talks about bad checks, that she was writing bad checks and mentions Summerfield Suites and things like that.

Do you -- now, April 19th, '98 letter about midway down he says "I know that Mr. Darnell, SLED, has hotel bills with her number on them, and this is who she is, isn't really that important, but call the Westin Suites where I stayed in Philadelphia," tells you where to call.

"Also I was with Gloria at Summerfield Suites at Maple Shade, New Jersey, we stayed there, Gloryvee Blackwell also stayed at Motel 6 in Maple Shade, New Jersey."

He goes on the next page, it says "I remember SLED asking, telling me about a wire transfer to her account in Pennsylvania, Summit Bank in Philadelphia and about some checks from her job. She was working in Trenton, New Jersey, at a medical center, it was on Oslee Avenue." And then it says "Not sure, it was on Fuld Street, Dr. Bond, Dr. Bang, not sure, the telephone number is on the hotel bills."

Also goes into "She went to Burlington Lincoln, Mercury, Ford, certified check for $20,000, to get a Mark VIII, tried it get a loan from Commerce Bank."

Let me show you Applicant's 23-A and see if you recognize that. It appears to be something Bayan sent his mother and told her to forward it to you. It somehow ended up in trial counsel's file, I assume that's what happened.

A. You don't have a date on this, it's going to be kind of hard.

Q. No, I don't.

A. But this is a letter that Mr. Aleksey sent to his mom?

Q. I think it's written up at the top.

A. It says "Mom: Tell the lawyers what the police

have."
Q. And he had indicated in this other letter from April 19th, Applicant's 23-C, that "Mr. Darnell, SLED, has the hotel bills because they were in the Mustang." Let me ask you this:
A. Sure.
Q. Do you ever recall getting any hotel bills in your discovery from the Mustang?
A. I do not. I don't --
Q. I was just checking, we're going to get to that later, we'll go through them.
A. I do not right now have any independent memory of that, no.
Q. Okay. And again in this letter that went to you by way of Bayan's mother, says "Hotel bills, Summerfield Suites, Westin in Philadelphia; hotel, Westin Suites, also they have the checks that Glory stole from her job, about 30 company checks." Saying "The police have this."
A. Right.
Q. "Thirty company checks, doctor's checks, Trenton, New Jersey." It says "Sara cashed a check for $330 for Glory at her job at Giant Supermarket," which we know is Sara Pivero.
A. Right.

Q. Basically what he's doing is sending you all these letters telling you not only that you need to check into some of these things, that she is writing bad checks, motels, she's stolen her doctor's checks and opened a bank account, tried to forge checks for 26,000, those say, going to car dealerships trying to pass certified checks for $20,000. You realize that she didn't have much money, the testimony came out that she really didn't even have a place to stay at the time until Bayan came along.

A. Right.

Q. And they were living in motels. If -- and he's also telling you that the police have a lot of this stuff. Do you recall getting any, anything like this through discovery?

A. I don't believe so. I don't -- I do not believe -- I don't believe so. I don't recall that.

Q. Okay. If these things that he's telling you she was doing --

A. Right.

Q. -- are true --

A. Right.

Q. -- and would that not be -- and if they happened somewhere close to the time of the shooting, would that not be evidence of motive?

A. I --
Q. If Walter Bailey's going to get up and say that Bayan's done all these things and he knows he's done them and so when he gets pulled over he doesn't want to go to jail so he's going to shoot the trooper, if she's done these same types of things, you know, right before the crime, wouldn't that give her motive as well?
A. Oh, it certainly could. It certainly could.
Q. I mean, you would have liked to have known that?
A. Sure.
Q. Getting back to the Tommy Davis' bill with Quantico, and I'm looking at page 2, carrying over to page 3, it looks like the whole -- the investigative trip started August 11th which was 13 days prior to trial.
A. That would have been the first -- that would have been the first travel time that he did up there, yes, I guess so, if that's what the bill says.
Q. Okay. 'He returned to Columbia August 15th and then August 18th he meets with you and Thomas Sims I guess concerning what he found out up there.
A. Right.
Q. Okay.
A. What was the date on this now at this point?

Q. August 18th when you met with him which is about six days prior to trial.

A. Yes, I've got a meeting in Orangeburg on August the 18th, '98 with Mr. Sims. So -- and I had spoken to Mr. Davis August the 14th. I spoke to him a number of times, but that was one of the times I had spoken to him.

Q. And that would have been while he was on the trip?

A. That's right. That's what it appears, yes.

Q. And is there any indication in his notes from August 11th to August 15th during that trip that he went to any of the places that Bayan advised you you might want to go to look to secure evidence of this possible criminal activity by Ms. Gloryvee Perez?

A. I don't know. I can't -- I can't tell you whether he did or did not. I don't think there's any reference in there to him going to any of those particular places.

Q. Do you recall ever talking to him regarding any phone calls or other methods he may have used to track down any of that information if he didn't do it while he was up there August 11th through August 15th, 1998?

A. Do I recall any phone calls that I had with

Mr. Davis --
Q. Do you recall any knowledge of any other investigation that he did trying to track down that information that Bayan had given you?
A. I don't, not as I sit here right now, no.
Q. I want to show you Applicant's Number 41 and ask you have you ever seen that before or any of those documents?
A. No, I don't believe I've ever seen this.
Q. And this first page, does it appear to be Gloryvee Blackwell checks?
A. Yes.
Q. Drawn on a Beaufort account?
A. Yes.
Q. To Summerfield Suites?
A. Yes.
Q. Totalling roughly $1,400?
A. I didn't add it up, but that's fine.
Q. Fifty dollars, 49, 964.
A. Okay.
Q. And all three of them indicate the account was closed at the time the checks were passed.
A. I didn't look at that. Yes.
Q. In the letter, one of the letters we had read, Bayan had indicated that same amount of checks that

were written at that motel.
A. December 14th, 1997 is the date, yes.
Q. And are you familiar with the MCAS Beaufort Federal Credit Union?
A. Yes.
Q. It's right near basically where you do a lot -- where you live and work?
A. Yes, it isn't far away.
Q. So if SLED had provided these to you --
A. Yes.
Q. -- it would have been very easy for you to find out about the account, subpoena it, get somebody in here and testify about her writing bad checks?
A. Sure.
Q. On December --
A. Seventeenth or 14th.
Q. December 14th --
A. Sure.
Q. -- in the same packet of information here there's photocopies of motel receipts?
A. Yes, for Summerfield Suites.
Q. Yeah. Do you see up at the top -- can you tell us what the arrival date and departure date is?
A. December 14th, 1997; departure December the 24th, 1997.

Q. And you don't recall ever getting that from SLED?
A. I don't.
Q. I'm going to hand to you a couple photographs, these are marked Exhibit 26-A and 26-B and see if you've ever seen that, if you could tell what it is and then say whether you've ever seen that before.
A. It appears at least from -- 26-B appears to be a rental reservation agreement that's actually a photograph of a rental reservation agreement concerning a 1998 Ford Mustang with Gloryvee Perez as the customer.
Q. What's the date that the rental's supposed to be picked up?
A. When it was supposed to be picked up? Date out December the 31st, '97. Date back January the 7th, '98.
Q. December 31st, '97's the day that Trooper Lingard was shot, correct?
A. Yes.
Q. And these photographs you just reviewed.
A. Yes.
Q. Can you tell what company that is?
A. Penske.
Q. Can you tell what their address is?

A. 336 West 26th Street, New York, New York 10010.
Q. Do you see any type of employee name that may have taken that reservation?
A. Taken by Sal, I believe is what it says. Statement by cash taken by Sal.
Q. Okay. Can you tell the conference call here with Thomas's assistant Danetta March 30th about roughly five months prior to trial, about four and a half months prior to the investigator being sent up to the northeast it says call Al at Penske Truck Rental and gives the address?
A. This is entitled "Conference Call with Danetta."
Q. Yeah.
A. I mean, I don't have any problem with this, I don't have any way of identifying it though one way or the other, but it's --
Q. Right. And we had talked before about whether or not you may have talked to Thomas about what was contained in the notes.
A. I'm sure we did, we had a number of conversations, obviously.
Q. In regard to these photographs, these are SLED photographs from the case from the actual crime scene things that were taken out of the Mustang. Did you purchase a copy of those photos to have in the file?

A. I don't recall if I purchased them or not. I know I went through them, but I don't recall whether or not I purchased them or not.
Q. Or were you provided them in discovery?
A. I know that I had requested all of the discovery through the standard Rule 5 Brady and I know that the solicitor had directed me that there were a number of photographs at SLED. Whether or not I got an extra copy of those or not, I don't recall. But I know I went to SLED and going through the photographs, but I don't recall which ones I went through.
Q. Do you recall ever seeing this one?
A. I don't know. I honestly don't know.
Q. If you had seen this one and seen that it's a one-way rental and the one-way destination is West Palm Beach, Florida.
A. Right.
Q. And it's dated the date of the incident and it's $1,700, it's in Gloryvee Perez's name.
A. Right.
Q. That would have been something pretty -- of interest to you, wouldn't it?
A. Everything is of interest and I would like to have seen everything. Whether or not I could have put that together with something useful, I don't

know.

Q. All right. Well, you testified they were going to Disney World --

A. Right.

Q. -- for a week. This is a one-way rental, Penske, for $1,700 from the girl who has no money and it's the date of the incident.

A. Right.

Q. And let me show you Applicant's 26-G and tell me if down in that driver's side door --

A. Right.

Q. Do you, can you tell whether that might appear to be the Penske Truck Rental receipt folded up in there?

A. I can't tell. I don't doubt that it is, but I don't --

Q. Can you try and read something out of there and see if you could match it up?

A. I wish I could read something off of this, but I honestly can't.

Q. Let me ask you this:

A. Sure.

Q. Do you recall ever seeing that picture?

A. I don't know if I did or not to be honest with you.

Q. Do you recall ever getting this document in discovery?
A. No.
Q. Forget about the pictures, this document.
A. No, I don't. I do not.
Q. If this document is in the driver's side door --
A. Right.
Q. -- would that have been important to know when Walter Bailey is eliciting testimony from Gloryvee about personal items on either side of the car?
A. Sure, yes.
Q. Okay. Have you ever seen --

MR. ZELENKA: Court's indulgence. If they could specify what the document is. I can't see from here.

MR. TARR: I already specified that it was 26-G.

MR. ZELENKA: Okay.

THE COURT: Very well.

MR. TARR: And now I'm asking him about whether he has ever seen the photographs 26-E and 26-F.

A. I do not remember seeing these photographs.
Q. Okay. Do you ever remember --
A. I remember there were a lot of photographs and I

don't want to -- I don't want to lie to you one way or the other, but I don't recall seeing those, no.

Q. Okay. Does that appear to be a folder lying on the one picture under 26-E partially covered by the floor mat on the driver's side?

A. It appears to be a folder with some paperwork in it.

Q. Okay. And 26-F --

A. Appears to be the folder itself with the paperwork.

Q. And they've moved the floor mat out of the way.

A. That's right.

Q. Is this --

A. And there's a pole of some sort beside it, but I can't tell what it is.

Q. Okay. Do you recognize anything on this folder that might make you think it could be that folder in the photograph or be consistent with it?

A. There are pen marks that appear to be consistent.

Q. Have you ever seen that folder either at SLED viewing evidence --

A. No.

Q. I mean, you said you don't remember seeing the photograph.

A. I don't remember seeing this.
Q. Did Walter ever call you and tell you that that folder was found on the driver's side of the Mustang?
A. No.
Q. Did he ask Gloryvee Perez on the stand whether that folder was on the driver's side of the Mustang or whose that folder was or anything about that?
A. I don't recall him asking that question whether he did or not. Whatever the transcript says on that.
Q. Okay.
A. But I don't recall.
Q. I want to show you a photograph, this photograph again, this 26-F.
A. Sure.
Q. It's the folder that is not obstructed by the floor mat, before they have they have taken the floor mat out. I'll show you what's been marked Applicant's Exhibit 29 for ID purposes and the one form that is -- that is in here, could you tell me if you can see something consistent with --
A. In other words, if this appears to be the paper what's in that folder?
Q. If you can see it hanging out.
A. Yes, it looks like it's the same paperwork, it has triple I CliniForms, C-l-i-n-i-F-o-r-m-s.

Q. Could you look at the top left of that form as well?
A. The top left of...?
Q. The form, the CliniForm.
A. It says Byung-Kee Bang, M.D.
Q. Okay. You recall from the letter of April 19th that Mr. Aleksey had said you might want to go to Gloryvee's, that would be the doctor that she had stolen the checks from?
A. I remember you asking me about that, yes.
Q. That was the name that was in there?
A. Yes.
Q. Okay. Does that appear to be consistent with what's hanging out of that folder?
A. It does.
Q. Okay. And if that is from the doctor's office where Gloryvee worked and it's in that folder and it's on the driver's side of the car, would you have liked to have known that at the time of trial?
A. Yes.
Q. But if Walter's going to stand up here and tell the jury that everything that's Gloryvee's is on the passenger side, that wouldn't be true.
A. That's right.
Q. Because that's the doctor's office she worked at

or at least used to work at.
A. That's correct. I want to make sure we're clear. We never had the opportunity to see the car itself, all the evidence had been moved at that point.
Q. Exactly.
A. So there's no way we could have checked what was in the car.
Q. You actually made a motion --
A. I did.
Q. -- to see what was in the car?
A. I did.
Q. And the car was already long gone?
A. It was. And I tried to look -- to run it down. I believe the last we could find of it was in Florida, but I'm not sure. Yeah, there's a car dealership in Miami, Florida, named College Auto Sales, I spoke to Michael at that dealership, he told me that he sold the car the end of February. And that was pretty much the end of the tracing of the Mustang.
Q. Let me show you Applicant's 26-C, ask you if you've ever seen that before, if you can identify what it is.
A. I do not know. I don't recognize this and I'm

not sure I can identify it, either.
Q. Does it is appear to be some type of money order or check written out to someone?
A. Yes. And it appears to be written out, pay to the order of Gloryvee Blackwell for $200. And dated December the 21st, 19 I think that's 97, I'm not sure, it might be '92 but I would expect it to be '97.
Q. I'm going to show you Applicant's Number 32, it's a copy of two checks and then two pages worth of photocopies of what appear to be a series of checks.
A. Sure.
Q. And see -- have you ever seen those before? And I think you may have because it looks like I think that might be your handwriting on the top of them.
A. Yes, that is my handwriting up top that says "File under Bayan."
Q. What do those checks appear to be?
A. Blank checks signed by -- well, the first one -- first one appears to be signed by Byung-Kee Bang, M.D. in the amount of $726.80.
Q. What's the check number?
A. Check number is 7362.
Q. All right.
A. The next one is check number 362, is a payroll

check to Gloryvee Perez in the amount of $1,373.84.
Q. Does that check appear to be, appear as if it could have been somebody taking 7362 and taking off a 7, does it appear to be identical in every other respect other than not having the 7 before the 362?
A. I'm sorry, I don't understand. Excuse me, I'm sorry.
Q. That may call for speculation.
A. It might not -- I'm just not sure I understand your question.
Q. One is 7362, one is 362.
A. Right.
Q. Does it appear somebody could have taken, whited out the 7 and made a forged check? And you may not be able to tell.
A. I don't know.
Q. That's okay. If you want to look --
A. I'm sorry.
Q. That's okay.
A. Certainly it's possible, I can't tell from that.
Q. Do you recall seeing that? I know you say you must have because it says "File with Bayan" in your handwriting.
A. Right.
Q. But maybe the last two pages may help refresh

your memory.
A. Sure.
Q. There's a series of checks. Could you tell us what -- look at those two pages, tell us what the earliest check number in the series is?
A. 7386 appears to be the earliest number. No, I'm sorry, 7383, 7371. I'm sorry, it's in reverse order. The last page of the document appears to be out of place, it's 7363 is the first check running through 7408, I believe.
Q. Okay. Now, if Bayan had told you in numerous letters and transmitted information to Thomas Sims' office regarding Gloryvee having a job in a doctor's office where she stole his checks and then you're provided two checks in discovery from SLED and then a whole series of blank checks from the doctor's office in Trenton, New Jersey, which is where she was from, do you know why your investigator would not have gone to the office and found out if possibly Gloryvee had stolen the checks?
A. I don't know. I have no idea when I got that, if I've gotten that. That is my handwriting on the front page.
Q. Let me show you, this is actually State's Exhibit 2, it's a letter from Walter Bailey June 3rd,

'98 approximately two and a half months prior to trial and it lists three items that he is sending you in further discovering the case.

A. It says copies of checks dated -- well, it says three things, but the second one is checks dated December 26th, '97 and December the 18th, '97 which were found in the Mustang, four pages. So that appears to be four pages, that must be it. And that is -- I'm sorry, that's June the 3rd, 1998?

Q. Yeah.

A. I'll get a date on that.

Q. And could you tell me, and I'll tell you that the last name is pronounced "Bong."

A. Okay.

Q. Could you tell me what the address is on the check?

A. Forty Fuld Street, Suite 404, Trenton, New Jersey.

Q. You recall us going over the April -- I'm sorry, I'll let you finish looking through your notes.

MR. TARR: Your Honor, I apologize. I thought that Number 29 had already been in, it was entered in as ID to be gotten in through Mr. Stone. I would like to put it in at this time.

MR. ZELENKA: No objection.

MR. TARR: I apologize for doing that out of order.

THE COURT: Very well. Applicant's 29 in evidence without objection.

(Entered into evidence was Applicant's Exhibit 29, hotel, motel, telephone receipts.)

MR. TARR: I apologize to the Court. I may have picked the wrong person to start, the wrong topic to start questioning about knowing our time since it's now 5:30, but I can finish up this portion of her.

THE COURT: Good.

MR. TARR: All the testimony I want to elicit regarding Gloryvee Perez.

Q. On the April 19th letter, Applicant's 23-C I addressed earlier addressed to Mr. Stone and Mr. Sims and he's saying I remember SLED asking, telling about a wire transfer to her account in Pennsylvania, Summit Bank in Philadelphia about some checks in her job. She worked at Trenton, New Jersey, for a medical, says -- it says on Oslee Avenue (not sure) it was on Fuld Street, Dr. Bond or Dr. Bang. And then June 3rd you're provided with blank checks found in the Mustang on Dr. Bang and then August 11th your

investigator goes up to Trenton, New Jersey, and doesn't even go to the doctor's office. I mean, do you know why that wasn't done?

A. No, and I don't know that he did or did not go to the doctor's office. I don't know. I have got March the 25th, '98 talking about what Glory was doing prior to leaving Pennsylvania and the fact that she was working with a doctor's office. Bayan deposited some checks that Gloria had given him and these checks were reported as stolen. And it seems like we did that, but I cannot recall specifically talking to the doctor's office.

Q. Okay. And --

A. But I could go back and check through this again, but I don't know, I don't recall that.

Q. Okay. I'm going to show you Applicant's Exhibit 34, it's a report of theft of checks, Dr. Byung-Kee Bang dated 12/24/97. Ask you if you've ever seen that?

A. No, I've never seen this, I don't believe.

MR. ZELENKA: Which exhibit is that?

MR. TARR: Thirty-four.

And, Your Honor, I would let you know I'm nowhere finished in talking about the topic we're on so whenever you want me to stop I'll

stop.

THE COURT: Very well.

A. No, I -- I mean, it lists Gloryvee Perez as a possible suspect along with Michael Toscani, that was another alias that at least Mr. Aleksey was accused of using. And the report indicates that she was saying he stole them, but I don't know. I don't recall seeing that document.

Q. Okay. So that wasn't provided to you by Walter Bailey?

A. Not to my knowledge.

Q. Does it list -- can you tell me does that say on the top right the person who made the complaint?

A. Pat Cubberly.

Q. Could it be Cubberly, C-u-b-b-e-r-l-y?

A. Yes.

Q. Let me hand you Applicant's 31, actually it's an affidavit. Let me read it to you. Have you ever heard of who Pat Cubberly is?

A. I don't know. I don't know.

Q. Okay. Her affidavit says "I, Pat Cubberly, do state Dr. Martin J. Scott in Hamilton Township, New Jersey, currently employs me as a nurse. During the year 1997 I was employed as a nurse/office manager for Dr. Byung-Kee Bang in Trenton, New Jersey.

During my employment with Dr. Bang I was a supervisor of Gloryvee Perez.

"On December 24th, 1997 in the course of my employment with Dr. Bang I learned the following information: On December 24th, 1997 Gloryvee Perez opened a personal checking account using two checks from Dr. Bang's business account, check number 7385 in the amount of $24,000, and check number 7361 in the amount of $4,532, both made out to Gloryvee Perez, were deposited into this account on December 23rd, 1997. Ms. Perez opened this account at Summit Bank in Philadelphia, Pennsylvania.

"An employee of Summit Bank, Chris Sontag, became suspicious of the transaction, notified Kathy Bayer employed with CoreState Bank. CoreState Bank is where Dr. Bang had his business checking account in 1997. I also spoke with Mr. Sontag. He described the woman who identified herself as Gloryvee Perez in such a way that in my mind she could not have been anyone else.

"Mr. Sontag also informed me that they had a trap set up for Gloryvee. The bank notified her the money was ready for pick up. Mr. Sontag had the police waiting at the bank to arrest her. However, she never showed up.

"After determining the checks were stolen from Dr. Bang on December 24th, 1997 I relayed what I learned to the Trenton Police Department. An incident report was taken and the police responded to Dr. Bang's office. Gloryvee was questioned and denied involvement. She did, however, state that her boyfriend, Michael Toscani, had been in the office on December 23rd, 1997, that he must have taken the checks.

"From my knowledge of the location where Dr. Bang kept his business checks at the time it would be impossible for anyone to have taken the checks without Gloryvee's knowledge. The checks were kept in a desk in Dr. Bang's office. Only Dr. Bang, Gloryvee, and I knew where the checks were located. Furthermore, Gloryvee was aware that not only should her boyfriend not have been at the office at all, but that absolutely he would not be allowed outside of the lobby and under no circumstances would he be allowed access to Dr. Bang's private office."

And there's more information we can get into later, but basically this is the woman that was the office manager and nurse for Dr. Bang, Gloryvee's supervisor, says that she reported checks stolen, fired Gloryvee, Gloryvee tried to open the

account at the bank.

MR. TARR: You want me to keep going?

THE COURT: I want you to finish this question.

MR. TARR: Oh, okay. Actually, Your Honor, I mean really I'm right in the middle so I can stop now.

THE COURT: I do want you to finish the question because I think the end of the question is did you know any of these things.

MR. TARR: Okay. Basically, yes.

THE COURT: Right.

Q. There's an affidavit here, it's a real long question.

A. Yeah.

Q. The affidavit of Christopher Sontag who was mentioned in Pat Cubberly's, I'm not going to read the whole thing, basically this affidavit states he worked at Summit Bank, that Gloryvee had come in and opened an account in Philadelphia during the month of December '97 and that Ms. Perez deposited two checks totalling more than 25,000 in this account, two checks were written on Dr. Bang's account, she returned trying to get the money, he actually gave her an amount of money and he actually came to court

here a couple days ago and testified that he thinks it was about $1,000, that he had contacted the Philadelphia police and they had set up a trap for her and -- but in between that time -- and the Trenton police had come to her job. Therefore, when he called to tell her the money was available she never showed up.

THE COURT: She was gone from the doctor's office at that point. She had left the doctor's office at the point in time when Sontag called, remember, he talked to the -- she was gone. She wasn't still at the office.

MR. TARR: Okay.

Q. She had already been fired from her job for stealing the checks.

A. And what was the date of this that she was fired?

Q. December 24th, one week prior to.

A. Okay. One week prior to?

Q. Yeah.

A. She was fired for stealing the checks?

Q. Yes. And the police report was taken and had a trap set up for her. Basically Mr. Sontag testified that because she didn't get the money that she was trying to get, that the police were not going to

arrest her, but she didn't know that.

Were you aware of -- and I'm sorry, I mean, had to --

A. No.

THE COURT: Did you know that?

A. I don't know what I knew. And I don't take that lightly, but here's -- here's the concern. I have a worksheet that I prepared when I was doing preparation and it was Aleksey versus Blackwell. And on Blackwell's side I have outstanding warrants and I have a notation of shoplifting. I have a prior record of possession of cocaine, prior arrests for fraud, shoplifting, and drugs in Puerto Rico. I learned that from my investigator.

THE COURT: I'm sorry, that's for Ms. Blackwell?

A. And that's who we're talking about, I believe, isn't it? Gloryvee Perez Blackwell is who I lined these up against. The reason I go to that trouble to tell you is because we have prior arrests for Aleksey for fraud, Aleksey for fraud and prior arrest for her for fraud. And I don't know if I thought of those as the same thing. But I do know that I knew of something she had for prior arrests for fraud and that she had an outstanding warrant for shoplifting.

I knew I knew that.

I don't know if I knew the details of her financial dealings with the doctor, although I think certainly I knew that she was -- or at least I was on notice that she had some problems with the doctor and the doctor had fired her and I believe because she stole checks. But that's -- that is -- that's the extent of what I recall knowing about her other than the heroin situation which is totally different.

Q. Okay. Well....

THE COURT: That is a good stopping -- that really is a good stopping place.

MR. TARR: Okay.

THE COURT: Great. Mr. Stone, you of course are on the stand.

THE WITNESS: Yes, ma'am.

THE COURT: And I would just instruct and remind you not to discuss your testimony while you are on the stand. And you are going to likely be off the stand for a little while.

THE WITNESS: Yes, ma'am.

THE COURT: And just remember that. All right.

MR. ZELENKA: We had previously discussed

availability of the defense counsel's records. I know that Mr. Sims is interested in that --

THE COURT: Yes.

MR. ZELENKA: -- resolution at least.

THE COURT: Yes, he is.

MR. ZELENKA: I mean, his access to it.

THE COURT: Right.

MR. TARR: And, Your Honor, we would state -- I mean, we don't have a problem. Obviously Your Honor wanted them to have a copy of their file back, but we obviously don't feel like we should have to pay for it, it's going to be enormous cost and it was turned over by them voluntarily. And, I mean, we would be happy -- but we also don't want it to leave our possession, we would like to work something out where we make the copies at a copy place and turn them over.

MR. BROWN: We don't mind somebody else being with us to make sure that we're copying everything except as far as what's privileged as far as our indexes.

MR. TARR: If we're going to do it we would like somebody else to have to do it, too.

THE COURT: You're not going to stand there

and do it, I'm sure.

MR. ZELENKA: My only concern is that they are able to have access to their files. It's got nothing to do with copies.

MR. BROWN: Right. And we're willing to accommodate that I guess is what we are saying.

THE COURT: Great. Great. Well, here's the way I'm going to leave it. I'm going to -- I've already ordered that access to the file be given to Mr. Sims and Mr. Duffie. And if you want to come along and do that, Mr. Zelenka, with them that certainly is fine. I know that you expressed yesterday --

MR. ZELENKA: Okay.

THE COURT: -- your position regarding the protocol, and your position regarding the protocol is that it's their file, it's not your file, it's their file.

MR. ZELENKA: Correct.

THE COURT: And, therefore, if you wish to come with them, you know, that's -- I certainly leave -- I'm not going to bar you certainly from seeing it.

Now, it seems to me that it is most appropriate and most economical that counsel be

given an opportunity to look at the file and that they bring some sort of indicater, you know, the Post-it Notes or whatever to have some indication in the event they need a portion of it copied.

MR. BROWN: Sure.

THE COURT: If they need a portion of it copied, it's perfectly fine if you all want to go copy it. And if you want to be present and y'all do it together or if y'all are kind enough to do it on your own, that's fine.

MR. BROWN: And this may make it a little bit easier. The file has generally been maintained in my office which is in Beaufort and Mr. Stone is also there. And even though we didn't at the time, we do have a Staples now that makes mass copies. They weren't there --

THE WITNESS: That's new.

MR. BROWN: And it's not in his area, it's not in Bluffton, it's in Beaufort though, but it's about a mile from my office, it's a Staples.

MR. TARR: It's already on the record, but I don't think Mr. Stone heard it. The file, it came in from and you, Thomas, and Bayan put it

all together so you're not going to have a separate file. I mean, I think you can tell what's yours because Aleksey wrote Sims on the top of everything he got out of Sims' file so just so you'll know, if you see something that says Sims up top then at least that's Mr. Aleksey saying it came from Sims' file.

THE WITNESS: How big is the combined file?

MR. BROWN: Substantial, like 19 volumes -- 19 three-ring bound volumes.

MR. TARR: Yeah, that is.

MR. BROWN: That's about right.

THE COURT: Oh, okay. And then y'all will share with them at a later date how it seems to be, is it chronological or topically done.

MR. BROWN: Well, that's the order we put it in. Frankly, what we're going to do is take our index out and let them go through it. Obviously our index is kind of the way it's broken down now.

THE COURT: Well, just share with them how it is, you know, how you've done it. While you don't necessarily have to share your actual index, give them some idea of how it is.

MR. TARR: Yes, Your Honor.

MR. BROWN: It is kind of broken down thematically.

MR. TARR: We'll work with them, we're not going to toss it down the stairs because then we'll have to do it.

THE COURT: It's not intentional, but they do seem to occur.

MR. BROWN: Like those Insurance Reserve Fund documents I got were kind of that way in a box.

THE COURT: And if you all have any difficulty.

MR. BROWN: Yes, ma'am.

THE COURT: Let me tell you where I'm going to be.

MR. BROWN: Yes, ma'am.

THE COURT: I think y'all know where I'm going to be. I'm going to be holding court in Dorchester County.

MR. BROWN: And I do have one other thing.

THE COURT: Sure.

MR. BROWN: Some of the stuff -- we entered in 70 pieces of evidence, all most all of them we have made duplicate copies of, but I can't guarantee you we have a copy of everything. And

I've got a list of them which I want to confirm at the end of this hearing, but if we find out we're missing a copy of one of them we'll just track down the court reporter and I guess --

THE COURT: Absolutely. Let me mention one other thing to you. It -- I don't know where, you know, we'll reconvene, it depends on the date that we reconvene and whether or not we will reconvene here or in Dorchester County. It's actually more convenient for Mr. Aleksey if we're in Dorchester County because Lieber's so close to St. George versus coming all the way to Orangeburg.

So you all are in St. George all the time anyway. So I'm not sure about that. I only mention that to you because I know you have those tickets, I know you've got to redo those tickets for your experts and --

MR. BROWN: Sure. Maybe Charleston instead of --

THE COURT: Exactly.

MR. BROWN: -- Columbia.

THE COURT: Exactly. Exactly. It will make about 30 minutes' difference in time probably, but I just wanted you all to know

that, just to remember that as we make it.

I think what's best is for -- is -- and I think in an abundance of caution let's get a week where we can have most of the week.

MR. TARR: No Veteran's Day on Monday.

MR. BROWN: But I would suggest something. We have some experts that will testify to isolated issues and if we can't find a week that's convenient to everybody, if there is a day that we knew enough in advance maybe we could get one person to testify on one subject on a Friday.

THE COURT: Again, if would need to be a non jury we can do that. I think probably what you all need to do is that you need to send me the next six months you're schedule.

MR. BROWN: Yes, ma'am.

THE COURT: Good weeks.

MR. BROWN: Yes, ma'am.

THE COURT: Good weeks. Chuckle, chuckle.

MR. ZELENKA: Just tell me -- just tell me their schedule, I'll have to deal with it.

THE COURT: You want to do that? Why don't then you get that to Mr. Zelenka or y'all get together and then y'all send me some weeks.

MR. BROWN: Okay. We weren't looking at December.

MR. ZELENKA: What I'm saying, get their schedule, work it out, and then I'll be able to have to deal with it that way.

THE COURT: I don't think you can because, I mean, at the point in time when you've got circuit court judges waiting for you on PCR's, I don't think you can do that.

MR. ZELENKA: Well, what I'm saying is I may have to send somebody else to do the hearing.

THE COURT: Some weeks might be better than others.

MR. ZELENKA: Yeah. I mean, the one week I know is a bad week is the week of January 20th.

THE COURT: There you go.

MR. ZELENKA: And I know the week of February 23rd is a bad week.

THE COURT: And I'm going to be in a three-week class action here so that's out.

MR. BROWN: And that's in -- your class action is in which month?

THE COURT: Oh, it's in February starting the 17th.

MR. BROWN: So February is not a good month.

MR. TARR: I think one of our experts February is real bad for him.

MR. BROWN: January looks like a better month? See, I actually have got a couple civil cases.

MR. TARR: She said six-month schedule.

MR. BROWN: So we're looking for like March.

THE COURT: I would love to be able to do it in January. However, the beauty of it is I'll be able to have not only these transcripts, but I'll be able to have a transcript of this week as well.

MR. BROWN: That's what I would like. We would like to get a copy of this week's transcripts, get somewhere put on the list.

THE COURT: I'll tell you this: It's going to be -- what's difficult is that there are new, there are new rules on court reporters and I know that Ms. Keil is, she's about to begin a death penalty transcript and I know that she has a lot on her plate, so --

MR. BROWN: Get our request in early?

THE COURT: Let me talk to you guys a minute about that. Maybe Ms. Keil can step back in and talk about something about that.

MR. TARR: She was saying that death penalty transcript's only 5,000 pages.

THE COURT: She's going to tell you that. And this PCR is going to be 5,000 pages.

- - - o0o - - -

STATE OF SOUTH CAROLINA )
: C E R T I F I C A T E
COUNTY OF DORCHESTER )

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 1st day of March 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 V, Pages 972 - 1073
Applicant, )
) TRANSCRIPT OF RECORD
-versus- )
) POST-CONVICTION RELIEF
STATE OF SOUTH CAROLINA, )
Respondent. ) July 7, 2003

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

Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit
Post Office Box 3335
Summerville, SC 29484-3335

# I N D E X


| WITNESSES | Page | Line |
|---|---|---|
| ISAAC MCDUFFIE STONE, III | | |
| Continued Direct Exam By Mr. Tarr | 977 | 18 |


## E X H I B I T S


| NO. | DESCRIPTION | ID. | EV. |
|---|---|---|---|
| A-73 | Resume and Report | | 976 |
| A-74 | Telephone Records | 994 | |

(Monday, July 7, 2003.)

THE COURT: Please be seated, everyone, and thank you. We are back on the record in Mr. Aleskey's application for post-conviction relief in his matter and of course he's here with counsel. How are you?

MR. BROWN: Fine, Your Honor, how are you?

MR. TARR: Good.

THE COURT: How are you?

MR. ZELENKA: Good, Judge.

THE COURT: When we were together before primarily the applicant called Mr. Sims. And, of course, I have my notes and I have continued to keep with me and have the transcript present today.

And, counsel, if you are ready to proceed if there aren't any preliminary matters I'm ready to listen to you.

MR. TARR: Your Honor, there are a couple just real quick preliminary things.

THE COURT: Sure.

MR. TARR: We had a copy of an affidavit that we introduced at the last trial. We just want to substitute it with the original.

THE COURT: Okay.

together, a CV and a report.

THE COURT: Okay.

(Entered into evidence was Applicant's Exhibit 73; resume and report.)

THE COURT: Do you want to pass that up for me, Mr. Tarr?

MR. TARR: Yes, Your Honor.

THE COURT: Give me just a moment to review it.

MR. TARR: Your Honor, I could call Mr. Stone after that, that's all.

THE COURT: That would be fine. Yes, sir, Mr. Stone, if you would come around.

THE WITNESS: Yes, ma'am.

THE COURT: Raise your right hand.

(Isaac McDuffie Stone, III, called as a witness, having first been duly sworn, is examined and testifies as follows:)

THE COURT: If you would please be seated, and when you are seated if you'd state your full name for the record, but that would be about it until I finish looking at this.

THE WITNESS: Yes, ma'am. Isaac McDuffie Stone, III.

MR. TARR: I will state for Your Honor, you

might have missed it at the beginning, a qualification that he makes in his report that applies to all the exhibits he reviewed that he said a handwriting expert cannot give an unqualified opinion, meaning can't say this is absolutely somebody based on a copy, a photocopy or a facsimile transmission.

We had no originals to give him. They're hard enough to get as it was as copies, so most of the time he's going to say things like this was most probably authored by so and so but he cannot say this was absolutely because they're copies.

THE COURT: Okay. All right, Mr. Tarr, thank you very much. You too, Mr. Stone, and you may proceed.

CONTINUED DIRECT EXAMINATION

BY MR. TARR:

Q. Mr. Stone, when we concluded I guess around eight months ago we were talking, we had just finished talking about the -- Gloryvee Perez. But there were a couple things I wanted to go back to with regard to the conflict issue.

A. Sure.

Q. Now, there were some Insurance Reserve Fund

cases that you had with you in Columbia at Lewis, Reeves & Stone that you were going to check on whether or not you took them with you when you went to your own -- your private practice opened up in Beaufort. And I believe you looked over that and you brought that with you to court today?

A. I did.

Q. If you could read into the record the names of the cases that you took with you I think that would probably be about all we need on that issue.

A. Sure. Let me make sure I'm clear on this. First of all I don't recall exactly which cases. What I did was I went back through my computer program as well as the word processing unit and picked out every case that I could find that matched the list you asked me about. The other cases don't indicate that.

I have that I took with me to Beaufort the case of Brown v. South Carolina Department of Public Safety, that case I sent -- the last thing I did on that was July the 28th, 1998. I accepted it February the 23rd, '96.

The other next case was Trusdale v. Baird and that would have been Trusdale versus it was two or three other people involved in that other than

just Trusdale, but that's how I have it listed. I answered that case September the 25th, 1996 and my final correspondence on that was January the 8th, 1998.

I do not recall if you asked me about this or not. I represented South Carolina State in Orangeburg, I accepted that case August the 16th, '96 and my final correspondence was June the 23rd, '99.

Tatum v. City of Orangeburg and that was -- my earliest document on that is July 22nd, '97 and my final correspondence was June the 19th, '99.

Valentine v. Heaton and Smith and Smith would have been the sheriff at the time of Orangeburg County. My earliest correspondence on that was October the eighth, '98 and my final correspondence was February the 9th, '98.

So that may in fact have been after this case. But anyway, Raymond v. South Carolina Department of Public Safety was a case in Sumter county, my earliest on that was September the 6th, '96 and my final correspondence was January the 14th, '99. I note that I settled that case in November of '98.

Bradley v. Orangeburg County Sheriff's Department, that answer -- I answered that case July

the 22nd, '97 and my final correspondence was March the 31st, '98.

I also represented Santee Cooper and South Carolina Department of Health and Environmental Control in two Orangeburg cases named Glover and Boldro, neither one of those the sheriff's department or highway patrol. And I do not have the -- I did not get the dates on that because I didn't know that was applicable.

Other than that the people, the cases you asked me about any record of in my personal law firm that might have been they would have been Lewis, Reeves & Stone but not me in Beaufort at least as far as I can find.

Q. Okay.

A. Okay.

Q. I think that's in the record now, that clears that up. I appreciate you doing that.

Also with regard to the conflict issue I've got a couple of documents I want you to look at, I'm not going to offer these into evidence, they're -- one of them is a South Carolina Bar Ethics Advisory Opinion 77-2 from January '77 and they cite two American Bar Association ethics opinions, one's dated ABA Formal Opinion, or it's numbered 142 and

one's numbered 262.

They all deal with prosecutors representing other people in a private practice and whether or not you should or should not do that. And I just want to hand these up to the witness, ask him if he's ever seen these before.

A. I don't know.

Q. Or heard about them or anything.

MR. ZELENKA: What was the date of that?

MR. TARR: January '77 is the South Carolina.

A. Which one? I'm sorry, which one are you calling my attention to? I have two, three, and four, actually.

Q. The South Carolina Bar ethics opinion I think it's the....

A. There are four of them.

Q. The second one on that first page. This carries over to the second page, 77-2.

MR. ZELENKA: What's the number?

MR. TARR: 77-2.

MR. ZELENKA: 77-02?

MR. TARR: I think so.

A. The one that talks about a circuit solicitor intends to become a full-time solicitor?

Q. I believe it's the one 77-2, January of '77. I think the main portion I wanted to ask you about is where they cite the ABA opinion, one of the ABA opinions that I have handed you, it's on the second page at the top and it basically states that it's no problem to have a private practice as a solicitor, but -- and then it lists exceptions of what you can't do and I was wondering if you could read what the first exception was.

A. I'll be glad to read this. I just don't know exactly what you're asking me.

Q. Basically I'm asking if you've seen it before.

THE COURT: Don't speak at the same time. Go ahead.

A. I've gotten the stuff from the South Carolina Bar ethics, everything it seems to indicate about full-time solicitors which I'm sure at some point I've gone through that, but I don't recall specifically looking at it.

Q. If I could just point --

A. Sure.

Q. I'll show you exactly what I'd like you to read. I'll just ask you if you've ever seen that before.

THE COURT: Why don't you just publish it, Mr. Tarr, it will be quicker.

MR. TARR: Okay. Thank you, Your Honor. This is from South Carolina Bar Ethics Advisory Opinion 77-2 from January 1977. And this is from the opinion. It says there's no ethical prohibition against a prosecuting attorney engaging in the private practice of law where permitted by statute except the following restrictions must be observed.

Number one, a prosecuting attorney may not defend a criminal case in either federal or state court.

Q. And that's basically what I was wondering, if you'd ever run across this in your practice as an attorney.

A. I wouldn't -- that -- again, I mean that's talking about a full-time prosecutor and I haven't been a full-time -- when I was a full-time prosecutor I didn't have any private clients period and that would have been in 1989 through '92, '93 something like that. I'm not trying evade your question.

Q. No. Basically I mean the opinion is -- the question is couched in the opinion as for a full-time solicitor.

A. Right.

Q. But they cite this opinion that deals with the

prosecutors in general and that's what I was reading from.

A. Okay.

Q. I was just wondering if you had ever seen that?

A. I've always assumed that full-time prosecutors could not have a private practice so I never looked at it from that standpoint.

Q. Have you ever heard of a part-time solicitor or prosecutor being prohibited under ethic rules from representing a criminal defendant in state or federal court?

A. Outside of their circuit, no. Obviously --

Q. If you haven't heard then that's fine, I'm just asking for my --

THE COURT: Mr. Tarr, we're early in the week. Don't interrupt the witnesses.

MR. TARR: Yes, Your Honor.

THE COURT: That's about the fourth time already.

MR. TARR: I apologize.

A. No, I'm sorry.

Q. I don't want to interrupt you.

A. Let me give you what you're asking me for. If you're asking me if I have looked into whether or not a part-time prosecutor with defend cases outside the

Fourteenth Circuit that would apply to me, what I did on that was simply look at the court rules which told me as far as being appointed, put myself on the appointment list and there was clearly the prohibition from me taking cases inside the Fourteenth Circuit and a requirement on the other end of that to put my name on the list for conflicts outside of the circuit in which I practiced.

So from that standpoint that's what I've looked at. And I've just gone basically by the South Carolina rules on that.

Q. Okay.

A. But as far as that particular opinion that would have always been my assumption that the full-time prosecutor could not have a private practice anyway. That was a long time ago in South Carolina that they could do that I think.

Q. Okay.

A. If that's answering your question.

Q. Yeah, that's fine. That's all I was looking for.

A. Okay.

Q. The last thing I want to touch on before we get back to where we were, could you give an estimate to the Court, I know this probably fluctuates each year,

but an estimate as to what the percentage of your practice income wise is derived from the Insurance Reserve Fund representation?

THE COURT: When?

Q. Just in general terms.

THE COURT: When, today?

MR. TARR: On a yearly basis, I know it's going fluctuate year to year. We've already seen those three years that we've introduced into evidence were vastly different.

A. Right.

Q. In general over the years that you've handled Insurance Reserve Fund cases, what range, like from the lowest year percentage wise of your income to the highest rough estimates. I know you don't sit around and figure this out, but I'm looking for like maybe 20 percent to 50 percent or whatever in your mind is the percentage.

THE COURT: Yes, sir.

MR. ZELENKA: I've got an objection to relevance to any time beyond the period of the time that he was appointed on this case.

THE COURT: Yes, sir, Mr. Tarr. Why would it matter beyond the period of this case?

MR. TARR: It wouldn't. It wouldn't be

nearly as important.

Q. I would be fine if you want to confine it to the time prior to -- prior to working on this case and during your work on this case.

A. I do not know the exact number. I know that when I was -- and I have not looked at that, but when I was in Beaufort in July of '97 I started with no cases other than the Insurance Reserve Fund that I had brought with me from Columbia and I think I took some defense cases, criminal defense cases that I would have had, but the percentage would have been very high.

I just -- I don't know the exact number and that would have stayed that way -- well, no, it still wouldn't, probably at that point it would still be -- as much of my time would have been split between the Insurance Reserve Fund and the solicitor's office.

When I picked up the Aleksey case the -- it changed substantially as far as my time. As far as the numbers, I don't know.

Q. All right. Okay.

A. Does that help you?

Q. You can't answer anything you're not sure of.

Let's move on to where we had stopped

last time regarding Gloryvee Perez, there were a few other things we needed to go over with her. I want to hand up to you Applicant's Number 38, it was introduced last session.

A. Sure.

Q. It's a document from March 3rd of 1998, it's a receipt of property that was given from SLED to Gloryvee Perez when she picked up -- she was released from jail and picked up her property from SLED.

A. Right.

Q. Can you review -- publish that for the record so we know what we're talking about? It's only about six items.

A. I, Gloryvee Perez Blackwell, received from S/A -- I'm assuming that Special Agent -- George W. Darnell of South Carolina Law Enforcement Division the following items: One black shoulder purse, two black wallets with pictures, ID cards, driver's license and other important papers pertaining to my children and my vehicle, three checkbooks, four boxes of extra checks, five orange folders with something, and other paperwork.

Q. Would that be résumés?

A. Might be if there's -- the R looks like a P, but if the P in fact is an R it would say résumés.

Q. Okay.
A. Witnessed by Gloryvee P. Blackwell March 3rd, 1998. And some other writing under that it looks like someone's name, but I'm not sure.
Q. Okay. Let me ask you of those items that are listed there, did you ever see those or did you ever get a copy of them from SLED?
A. I don't believe so. I think I know at one point we had asked to go through her, her items, her lawyer denied that and at that time I think this was prior to her getting that back.

Actually I don't know when that was because I don't want to say that it was before she got released from jail. She may -- very well may have been released from jail before I was even appointed. I don't know. I just don't remember.

But, no, I don't believe I've ever seen any of this stuff unless there were copies of things that were in massive amounts of paper that I reviewed from the solicitor.

Q. Okay.
A. I don't particularly recall it one way or the other.
Q. But, I mean, other paperwork could be anything?
A. That's right. That's why I'm --

Q. Box of extra checks. You recall --
A. I don't know what that means.
Q. You recall from the previous week's hearing that the only checks that ever came up with regard to Ms. Perez were checks that she had fraudulently obtained from a Philadelphia bank, Summit Bank?
A. Right.
Q. And then checks that were on a closed account from Beaufort MCAS that she was writing bad checks on, correct?
A. I believe so.
Q. So these checks that were given back to her may very well have been evidence of crime she had committed of -- you know, right before this trooper was killed in this case?
A. I have no idea.
Q. All right. Because you never saw them?
A. That's right.
Q. And that's not your fault.

MR. TARR: Your Honor, at this time I'd like to publish for the Court Applicant's 42-A. This is the audiotape of Gloryvee Perez's statement, taped statement she gave to SLED the day after the incident.

THE COURT: Okay.

MR. TARR: It would give the Court an understanding of how credible and believable the witness sounds so that to make a determination of how relevant anything she said if they were not true or something might have affected the jury or the SLED agents in this case.

THE COURT: Okay.

MR. TARR: So that's why I want to play it.

THE COURT: Okay.

MR. TARR: You tell me when I get to a volume that's okay for you.

THE COURT: Okay.

(Whereupon, an audiocassette tape is played for Judge Goodstein.)

MR. TARR: Mr. Zelenka is reviewing a document I intend to offer.

THE COURT: Okay.

MR. TARR: Just one moment.

(Pause in proceedings.)

Q. All right. Mr. Stone, you were able to hear the audiotape of the statement that Ms. Perez gave right after Trooper Lingard was shot and killed?

A. Yeah.

Q. And I want to kind of go through a little bit what she said there, compare it to what we've heard

in other evidence we received in this case, as well as what she testified to at trial.

A. Okay.

Q. And see if -- how she might have been impeached on some of the things that she said. I want to hand you, that is copy of Weston Hotel from Philadelphia, airport location, it's a receipt and list of phone calls from a Vince Black near the end of November on into the beginning of December. I just first ask you if you've seen that before.

A. I don't know. Mr. Vince Black, Philadelphia, PA. I don't recall. I may have, but I don't recall.

Q. You heard basically we're going to have to get some more information in to make this document completely relevant, specifically what those phone numbers are, but if those phone numbers corresponded to the employer where Gloryvee worked.

A. Right.

Q. There were calls made by Mr. Aleksey to her prior to December of '97.

A. Okay.

Q. That would seem to contradict her statement that she said she met him the first or second week of December if he's already calling her at her work in November. Would you agree with that?

A. Yes.

Q. Okay. And that's all I have with regard to that. We'll tie that up later this week.

MR. TARR: Your Honor, we offer this at this time. And I've allowed Mr. Zelenka a chance to review it, and subject to tying in the relevance as far as the phone numbers introduce evidence that that is -- some of the phone numbers on here are Gloryvee's work and home numbers.

THE COURT: All right.

MR. TARR: There's a lot of relevance prongs he needs to make, Vince Black, that he stayed there, that he made these calls.

THE COURT: Sure.

MR. ZELENKA: I don't know that document shows --

MR. TARR: You want to offer it for ID at this time, and then if we can't tie it up then we won't introduce it.

THE COURT: That will be fine. I guess it would be additional relevance at this point, but we'll see if you tie it up. For identification at this point, that would be Exhibit 74.

MR. TARR: For ID.

THE COURT: Seventy-four for ID. Okay.

MR. TARR: Thank you, Your Honor.

(Marked for identification was Applicant's Exhibit 74, telephone records.)

THE COURT: What are the dates?

MR. TARR: The first dates that actually -- that are relevant to our discussion with the dates where the phone calls start, that's November 30th.

THE COURT: November what now?

MR. TARR: November 30th, '97.

THE COURT: Okay.

MR. TARR: Actually his arrival date is November 29th, departure 12/6 and the phone calls start on the 30th.

THE COURT: Okay.

Q. And as far as the transcript goes, this is in the record, I'll just ask you specific places if you recall this being your testimony on page --

A. That's fine, I reviewed it. Thomas Sims is actually doing the cross-examination on her but that's fine.

Q. If you recall at page 1,298 of the original trial transcript --

THE COURT: I'm sorry, let me stop. Is

there a transcript of the tape? Because my notes reflect --

MR. TARR: Yes.

THE COURT: -- that Ms. Perez said she met him the first of September, she moved in with him in December.

MR. TARR: No. She said she met him the first or second week of December. When she said --

THE COURT: That isn't what she said. She said she met him the first of September, she moved in with him in December.

MR. TARR: There is a transcript.

THE COURT: Okay.

MR. TARR: I'll be happy to play it. It's at the beginning. I've listened to it a number of times. September, she says that's when she said she got separated from her husband, moved back up to Philadelphia, but didn't meet him -- she testified at trial here, page 1,298.

THE COURT: Okay.

MR. TARR: Line 17 and 19: "I met Michael about the second week of December on the road to a night club in Philadelphia."

THE COURT: Okay.

MR. TARR: So here she says second week, there I believe it will be borne out that she said first or second week and then that's why we're interested in the telephone records showing November 30th he's already calling her at work, so it was before that. Basically that's our contention, anyway.

THE COURT: Sure. Sure.

Q. And, Mr. Stone, with regard to what you heard her say on the tape when she -- they asked her where she was living at the time, and she said I have no place to stay, she's crying.

A. Right.

Q. She's homeless.

A. Right. She said something about she might have some friends she might be able to stay with.

Q. That she might be able to call. They asked her where she is going to go if they let her go?

A. Right.

Q. She said she might be able to make a call.

A. Right.

Q. Let me refer you back to the transcript of the trial, page 1,299 lines 4 through 5.

MR. TARR: Your Honor, here's a -- Mr. Brown's got a copy of the transcript from

that audiotape that he can hand up while -- you can look at while we're doing this.

THE COURT: Who transcribed that?

MR. TARR: I believe SLED. I'm not positive on that.

Q. The trial testimony at 1,299 lines 4 through 5.

A. I'm sorry, let me interrupt you. I don't have a copy.

Q. I'm going to read it if that refreshes your memory, I think it will be quicker this way.

A. Sure.

Q. The question is by Solicitor Bailey, "What were your circumstances when you met him?" And this is Gloryvee's testimony asking when you met Michael or Bayan Aleksey.

"I was living with a best friend and the circumstances weren't good. She was married and she was having marital problems. Michael came along and he offered me to move in with him."

Do you recall her saying that at trial?

A. I may have. That sounds right. I don't know.

Q. Okay.

A. I've got the transcript, I'll be glad to read through it with you and confirm that. I don't recall

that independently right now.
Q. Understanding that and having had access to the audiotape of her SLED statement.
A. Right.
Q. And the transcript of it, do you think it would have been important to impeach her with the fact that back then on that date she's crying saying she was homeless and then at trial she's making herself look like she was living with some friends, would that have been something that you would want to -- if you were doing the examination want to impeach her with?
A. I don't know. If I was doing the cross-examination it might have been different, I don't know. But does that impress me as something that would have been something I would have cross-examined her with? Probably not.

It just doesn't sound like anything -- whether or not she was staying with friends or that she could have found friends to stay with doesn't impress me one way or the other as far as that's concerned.
Q. But, I mean, if she was exhibiting a pattern, and we're going to get into the pattern of making herself look better at trial than her circumstances actually were.

A. Right.
Q. That would be something pretty important if she was homeless, crying about it, saying she didn't have a place to live and then at trial saying, no, I was staying with friends, that would be important to impeach her on, wouldn't you think?
A. I don't think I would cross-examine her and show to the jury that she was, in fact, homeless instead of staying with friends. I don't know that that would have helped the case. I'm not trying to avoid your question, I just -- no, that doesn't impress me.
Q. Thank you. All right. Well, after -- after she says that -- she says at trial that I was staying with friends, she also says on her audio taped statement that she kind of took up with Michael or Bayan because he was paying for their hotel, paying for them to have a place to live, she's going from homeless to hotels.
A. Right.
Q. Okay. Do you recall from our last hearing we introduced Applicant's Number 41, these are three checks written on Gloryvee's closed account.
A. Okay.
Q. Three fraudulent checks written to Summerfield Suite. Does it look like to you from those checks

that he was paying for her to live in a hotel?
A. No, they look like her checks.
Q. Okay. And I think if I recall correctly from the last hearing you had never seen those before?
A. I don't recall if I did or not, no. If I said that, that's right.
Q. And if those were in SLED's custody, because it's in a packet of things that were delivered to them from Mt. Laurel Police Department, if those were in SLED's custody, you never got them or at least you don't recall ever seeing them?
A. That's right.
Q. And that could potentially be other paperwork that was given back to Gloryvee --
A. Could very well be, yeah.
Q. -- on March 3rd of 1998. But this would have been significant to be able to impeach her with if she's saying that he's paying for everything not only because she's paying for it, but because she's writing bad checks which is a criminal offense which could give her motive to shoot a police officer?
A. I think my answer would be twofold on that. If -- I would not have crossed her to show that he, in fact, wasn't paying for her and the child, because I think that would have helped him -- it would have

helped her instead of him.

However, yeah, if I knew they were bouncing checks then, yes, that would have been I think something that would have been appropriate for cross-examination. So, yes, that would have made a difference.

Q. If Walter Bailey gets up in his closing argument in the guilt phase, tells the jury that she doesn't have any warrants, has nobody looking for her.

A. Right.

Q. She knows that you know back on the 14th of December she's written bad checks to Summerfield Suites as well as a bunch of other things she's done that she wasn't supposed to do.

A. Yes.

Q. She might really think there are people looking for her?

A. Right.

Q. That motive would already be important?

A. I think so.

Q. We've already established that I believe in November per your testimony.

I'm going to call your attention to the trial transcript page 1,306, lines 1 through 4. I'll read that to you, I know you don't have this

committed to memory.

This is Gloryvee testifying about what happened immediately following the firing of the weapon. And she says "I recall hearing fires and I remember seeing the shooting back. And he said, 'No, he went down. He went down.' That's what he said." Do you recall her saying something to that effect?

A. Right, yes.

Q. Okay. And do you recall from hearing the audiotape when they asked her what he said, did she ever say, "No, he went down. He went down" on that tape that we just listened to?

A. I don't believe she ever said he -- my understanding of her testimony at trial just going back through the transcript was that -- and remembering that Mr. Aleksey actually made the comment "He went down. He went down," I don't know if that -- is that what you're asking?

Q. That's what I was asking.

A. I don't remember her saying that.

Q. Do you remember Bayan saying that on the tape?

A. No. I don't believe so, no.

Q. Would that be something that you would want to impeach her with? I understand it's not a huge point, but --

A. Maybe, I don't know. It kind of depends. I like to try to get the important points across. I try not to confuse the jury with too much, but at the same time --

Q. Okay. Next I want to turn your attention to page 1,329 of the transcript, this is part of Mr. Sims' cross, this would be lines 9 through 12.

This is Mr. Sims asking her about the gun, it's actually 8 through 12. It says "Does it look like this one?"

And she says "It probably does. I mean, I never have held it or anything."

And he says "You've never shot that weapon?"

"No, I never shot the weapon."

MR. TARR: Just one moment, Your Honor.

THE COURT: Okay.

(Pause in proceedings.)

MR. TARR: I'll withdraw that question, Your Honor, I was mistaken about something I read in the transcript.

THE COURT: Okay. Sure.

MR. TARR: We'll move on.

THE COURT: All right.

Q. Now I want to turn your attention to page 1,301

of the transcript, lines 8 through 14, this is still Gloryvee's testimony and it's describing under direct examination from Mr. Bailey what they did on the morning of the shooting as far as when they left. When she says the Philadelphia area.

A. Right.

Q. She says "We left..." -- starts line 7 -- "We left Pennsylvania about one or two o'clock in the afternoon, actually woke up about 11:00 and had breakfast. By the time we left Pennsylvania it must have been about two o'clock in the afternoon."

He said, "This was New Year's Eve?"

She said, "This was December 31st, '97."

He asked her "Where were you all heading?"

She said, "Disney World." Do you remember that portion?

A. I remember that they were heading toward Disney World supposedly.

Q. Okay. Turn your attention to a photograph that was introduced at the last hearing, this would have been applicant's 26, two copies here, 26-A and 26-B, photocopies of the Penske Truck Rental receipt, the reservation was made on December 30th of '97 for a

pick up of December 31st, '97 at 9:00 a.m. in New York City. Do you recall reviewing that at the last hearing?

A. I may have. I don't recall specifically, but if I did.....

Q. Okay. And we'll just go over it briefly. On there it's saying they're picking up a Penske truck in New York City at 9:00 a.m. on the day that they were supposed to be leaving Pennsylvania at two o'clock in the afternoon, it also has a destination on there of West Palm Beach, Florida.

A. That's right.

Q. And this is all in her name. Is that --

A. I see the West Palm Beach, Florida, as the one-way destination, Gloryvee Perez is the customer information on it, the date back is January the 7th, '98 and the date out is December the 31st, '97 at 9:00 a.m.

Q. Okay.

A. So, yeah, did that cover everything?

Q. Yeah. Now, have you ever seen that receipt other than in that photograph in November?

A. I don't believe so.

Q. Do you recall reviewing the receipt?

A. I do not recall reviewing the receipt, no.

Q. You don't recall receiving it in discovery?
A. I don't recall it. I'm not saying it didn't happen, I just don't remember that.
Q. Okay. For a number of reasons this would -- receiving this receipt and being able to use it to impeach her on where they were going and where they left from and things of that nature, this would be pretty important?
A. It might be. It could very well be.
Q. Okay. And does this look like -- I know you've told me in conversation I've had with you you reviewed a lot of photographs.
A. Yes.
Q. And does that look about like the number you might have used, this thick?
A. At least. At least.
Q. So over a hundred?
A. At least.
Q. Maybe 200 photographs.
A. Yes. It seems to me that I saw actually more than that, but if that's all you have, but it seemed like much more.
Q. Okay. But if you're going through hundreds of photographs and there's nobody there pointing out why something might be relevant to your case, it's kind

of hard to see a picture of a receipt or something and know?

A. Especially at that point when we're looking through it, because at that point I don't know that we know exactly what we're looking for to begin with, so yes.

Q. Okay. All right. I want to go over -- that's the end of talking about Gloryvee for now.

A. Okay.

Q. I'm going to move onto her daughter, Gloria Mai Perez, I believe is the eight year old who testified.

A. She's in the back seat I believe at the time.

Q. The back seat of the Mustang who testified at the trial.

A. Right.

Q. Back on the same point, and this is going to be transcript page 1,371, lines 11 through 15, this is direct examination by Solicitor Bailey asking Gloria; they're calling her Gloria Rivera here, it's the eight year old, "Was it daytime or dark when y'all left Pennsylvania?"

She said, "Dark," okay?

A. Okay.

Q. Do you recall Gloryvee testified that we left Pennsylvania about one or two o'clock?

A. Right, in the afternoon.
Q. Okay. Which would not be dark.
A. Right.
Q. Now, if you're leaving Pennsylvania you got to go to New York before you go to Florida, you might have to leave in the morning when it's dark, correct?
A. Right.
Q. All right. Do you recall whether or not -- do you know who did the cross of her?
A. I think Tom, I think Mr. Sims did.
Q. Would that be a point of whether it was light or dark if you had this other information that could lead you to believe maybe Gloryvee Perez wasn't being truthful about when they left or where they left from, when you got an eight year old saying it was dark when they left, would that be something that you would want to clear up or impeach her on or try to impeach Gloryvee on?
A. I don't know. To be honest with you, I don't know. That does not strike me right now as something that's particularly important, although maybe from the standpoint of what time they left or where they actually left from, but I don't know -- because I know where they ended up.
Q. Yeah.

A. I don't know that --
Q. Let me tell you what my thing is.
A. Sure. Sure.
Q. Say you're privy to all this information that you didn't know about.
A. Right.
Q. And so you want to establish that she's lying, they didn't leave Philadelphia at two o'clock, they left Philadelphia early, went to New York, tried to get a truck or whatever and then left and not only that she's lying because she's done these criminal acts that she's trying to cover up.
A. Right.
Q. Then if you've got the little girl who doesn't know that it's a bad thing that they left at dark when Mommy says we left at 2:00 p.m.
A. Right.
Q. Does that make it something more relevant for impeachment to you?
A. It may very well have been depending on the flow of it.
Q. Okay. I want to ask you about your -- this is the last question I have regarding this witness, page 1,375, lines 3 through 8. And this is Mr. Sims crossing the little girl. "Has anybody told you what

to say here today?"

Answer: "No."

"Have I told you to?"

Answer: "No."

"Has your mom told you what to say?"

Answer: "No." Do you recall her testimony saying that her mom didn't tell her what to say?

A. Yeah. Well, if that's in there I don't have any problem with that.

Q. Okay. And do you recall actually having a meeting with her former mother-in-law, Elizabeth Blackwell?

A. Yes.

Q. Okay. And do you recall her telling you that the little girl had told her that my mommy told me what to say when I go to court?

A. I think so. I can't -- that seems familiar, yes.

Q. Okay. I'm going to direct your attention -- now, this would be something different than what -- I mean, you actually had a conversation with Ms. Elizabeth Blackwell. Could you tell the Court why you chose not to call her?

A. I don't know. Do you have a note that I

actually spoke to her or that somebody in my office spoke to her?

Q. It was just my understanding that you had a meeting with her and they were actually in Orangeburg at the time of the trial, but never got called to the witness stand, her and her son, Marcus, her former husband of Gloryvee.

A. I thought actually that my paralegal had spoken to Marcus in Beaufort, but I don't know that there was any particular reason why we didn't run them down.

As far as putting up the testimony from her about whether or not the -- her mother told the child what to say, it seems, and I would have to review the record again, it seems that we showed that on cross-examination for the officer that was with the mother, because I think from my -- just from my memory of it that the child and the mother were put in the car at the police station by themselves for -- and I can't remember exactly how long, at which time she would have had time to tell the child whatever she needed to tell the child.

Q. Okay.

MR. TARR: And one thing I'll just point out to the Court, we had introduced Applicant's

Number 27, this is the affidavit of Elizabeth Blackwell that we substituted the original for today.

THE COURT: Okay.

Q. Number 6 is specifically, this affidavit is basically what she would have testified to had she been called at the original trial.

A. Okay.

Q. Number 6, she's saying questions that she had asked the eight year old. "When I first spoke with Gloria Mai Rivera, asked her did you see who was driving the car when the officer was shot, she responded 'I woke when I heard shooting. Mommy told me Michael was driving.' Repeatedly asked her if she saw who was driving. She never said anything other than 'Mommy told me Michael was driving.'"

She had actually taken notes contemporaneously with the little girl saying that she still has them today.

A. Right.

Q. As of November of last year.

A. Right.

Q. Would you -- if you had a witness in Orangeburg sitting at a hotel who was the former mother-in-law of the star witness for the State.

A. Right.
Q. And she's prepared to testify that the little girl said she told her what to say, is there a reason why you can think of now why you wouldn't have put her up for that reason?
A. No. But I simply don't remember why we didn't do that.
Q. Okay. I want to move on from talking about Gloria Mai Rivera and turn our attention to some of the other witnesses that testified at trial.
A. Sure.
Q. And specifically regarding issues of impeachment possibilities that were not looked into.
A. Right.
Q. Can I ask you with regard to Yelena Batkilina, just to refresh the Court's memory this is the woman who testified that she went to the gun store with Mr. Aleksey and purchased the weapon that was ultimately used in this case. Can you tell the Court of your knowledge what investigation was done on her background?
A. Summing up everything that we had done on her, on her background?
Q. Yes.
A. I know I spoke with her. I know I sent Tommy

Davis, the investigator, to find her and I know he made repeated attempts to talk to her on the telephone. I think she ended up calling me as a result of what Mr. Davis did. As far as anything more specific than that, can I tell you that right now, no.

Q. Okay.

A. Can I tell you that after, I don't know. I don't know if I could answer that question any better.

Q. All right. Now, I showed you some notes that have already been introduced into evidence as Applicant's 61.

A. Right.

Q. Previously a few minutes ago before we started just to give you a chance to kind of refresh your memory.

A. Right.

Q. These are notes that you took contemporaneously with a conversation you had on the phone with Ms. Batkilina.

A. Right.

Q. Do you recall from those notes that she told you that she was on probation because of Bayan?

A. Yes.

Q. Okay. And do you recall, and I never asked you this, but why in her testimony at trial either you or Mr. Sims did not impeach her with evidence of a conviction of a crime?

A. Mr. Sims did the cross-examination. I don't know why he did not impeach her on it, but having reviewed the testimony she didn't hurt us.

Actually she proved something that we wanted because the gun itself was, as we at least tried to show to the jury, a woman's gun and from that standpoint it was a gun that she said she could easily handle.

So she was -- actually her testimony helped us. Whether or not Mr. Sims chose not to cross-examine on her probation or not, I don't know if that was the reason or not. I just --

Q. Were you aware that Mr. Bailey didn't give you any information regarding a conviction?

A. I know we had asked for I believe all the witnesses' rap sheets and information like that, and whether or not we received that on her I don't remember that we did, actually.

Q. Okay. And do you recall in your conversation with her that she told you that she had talked to Mr. Bailey on the phone?

A. She -- that's right. Yes.
Q. Okay. Do you recall whether she told you that she had told him about the probation or not? I don't see anything in your notes.
A. There's nothing in my notes and I don't recall if she told the solicitor about her probation or not.
Q. Okay. But is there anything else in her testimony that you believe was helpful to you, other than the woman's gun? Because what she also did was get on the witness stand and saying that Bayan stole the gun and that she never saw him again, which hurt you.
A. Right.
Q. Is there anything else in her testimony that you can recall right now that would lend, you know, say that she helped you as far as her testimony?
A. No. I -- no.
Q. Okay.
A. That actually helped us?
Q. Yeah.
A. I think Mr. Sims cross-examined her last about I think she lost a bond because of Mr. Aleksey and that was I think a point that he was trying to make on cross, but I don't recall anything else specifically.
Q. Okay. Do you recall, and I may have to dig in

the Jackson v. Denno for this, you may recall off the top of your head, during the Jackson v. Denno hearing in this case the SLED agents testified that during the two-hour gap in the tape when the tape was cut off in Bayan's questioning that one of the things he asked them about was whether or not they could help him out with Yelena Batkilina's criminal trouble in Florida. Do you recall that?

A. I do.

Q. Okay. So that would be another instance that y'all were put on notice that she had some criminal background that could have given you an avenue of impeachment?

A. Sure.

Q. Because you had that --

A. She told me she was on probation so she gave me pretty good notice.

Q. Okay. But y'all never got anything from Walter Bailey as far as you know?

A. Not as far as I know.

Q. Okay. And do you recall, I believe it's Applicant's Number 4, it's the ATF trace report that was done on the weapon that was confiscated in this case and eventually ballistics turned out to show was used in this case.

A. Right.
Q. Down at the bottom when it lists Yelena Batkilina's name it says, notes born in Soviet Union, Batkilina involved in credit card scam, et cetera. Do you recall seeing that on there?
A. I'm sure I did, but I don't recall right now if I did or not.
Q. But that would be another indication that she might have something that you might want to ask her about on cross-examination?
A. Sure.
Q. Especially if you're trying to point out that she was lying about other things?
A. Sure.
Q. If she lied about these other things then she would be more likely -- would be less credible about anything she said?
A. Sure.
Q. Okay. Turn your attention to this, would be actually Volume II of the trial transcript, Yelena Batkilina's testimony regarding the purchase of the gun.
A. Right.
Q. Page 920, lines 5 through 21. I'm not going to read it all, I'm going to paraphrase. If anybody has

a different view of what it says feel free to speak up, I'm just trying to move through this without getting bogged down reading something that's already in the record.

Basically Ms. Batkilina testified that she went in there with Bayan, purchased this gun for herself and that that same month, which was November of 1996, the gun disappeared and Bayan disappeared and she never saw him again. Do you recall that being basically what she testified to?

A. That sounds right.

Q. Okay.

A. I don't have the transcript in front of me, but that sounds right.

Q. Okay. Now, do you recall that in her testimony she actually said it was November of '97 that the gun was purchased?

A. If that's what she said, that's --

Q. Okay. But all of the documentation that's already in evidence clearly shows, I mean the receipt for the gun and everything else from the sporting goods shop shows that it was November 1996.

A. Okay.

Q. Okay. Do you recall Walter Bailey in his redirect of Thomas French who was the gun store

owner --
A. Okay.
Q. -- trying to basically impeach his own witness to say wasn't this 1997 that the gun was sold and he kept -- he stuck firm said, no, it was 1996?
A. I do not recall that. If that's in the transcript, but I don't recall that.
Q. I'm sorry, I don't mean to interrupt.
A. No, no, that's fine.
Q. What I'm getting at is you've got Ms. Batkilina up there saying that it was November 1997 the gun was purchased, the gun disappeared that month and I never saw him or the gun again and you had information that the gun was actually purchased in 1996, that would be something you would want to clear up, especially if you were going to attempt to show that she had been engaged in a lot of criminal activity with Mr. Aleksey in between '96 and '97?
A. I'm sorry, I don't understand your question.
Q. It's very confusing because it's partly because she gave the wrong date.
A. Okay.
Q. But if you've got information, and we're not saying you did.
A. Sure.

Q. A lot of this stuff you didn't have and wasn't provided to you, but if you've got information that she is with Mr. Aleksey committing crimes in the years -- in the year of 1997 and early --

A. Okay.

Q. Yeah, all of 1997.

A. Right.

Q. And she's telling you that the gun was purchased on a date in November '97 and it disappeared that same month and she never saw him or the gun again, it's important whether it was November '96 or '97 because if she's saying that I never saw him after November '96, then that would leave all these, you know, police reports or anything that showed her committing crimes in the year 1997.

A. Right.

Q. Which would be pure lies. And the thing is you know the gun was purchased in '96 because that's what all the records show.

A. Okay.

Q. But basically what I'm saying is considering what evidence that you could have offered if you'd known about it.

A. Right.

Q. It would be important whether the gun was

purchased in '96 or '97?
A. I cannot think of a reason why it would be right now, but it might have well have been. I'm trying to put it all together if whether or not the gun was purchased in '96 or '97.
Q. Okay. If she's saying --
A. I'm not sure.
Q. -- it was purchased in November of '97 that same month the gun was purchased, no matter when it was, he took off with the gun she never saw him or the gun again.
A. Right.
Q. Okay. You'd want to make it clear to the jury it was actually '96 because of several reasons, one after that time is when she bonded him out of jail with the $10,000.
A. Right.
Q. So that she would have been lying about never seeing him again, okay.
A. Right.
Q. Then also she's in Florida committing credit card with him when she's now on probation which you don't know about.
A. Okay.
Q. So if you had all the information of all those

things that happened in '97, you would want to bring that out for one thing, and in order to make it understandable to the jury you need to point out that she was wrong about the date or lying about it.

A. I'm trying to see how that would help Mr. Aleksey, but I can't do it. It seems like if I'm showing the jury that she was actually committing more crimes with him during that time --

Q. But that was your strategy, was to bring out his bad acts so it's not like they're going to hear about things they wouldn't have heard about?

A. Right.

Q. You opened the door to all his bad acts coming in?

A. I did that. Yes, I did that. Not to show that he had bad acts, but to show that he knew how to get out of trouble if he was arrested, that was my whole purpose behind that.

Q. Right. But by doing that, by doing that strategy you opened the door to all his bad acts?

A. I did.

Q. So, therefore, bringing out more bad acts is going to hurt you like in a case you're trying to shield the jury from hearing anything?

A. No. Not particularly, no.

Q. Okay. If you're wanting to prove this woman is lying in the court of somebody put somebody on death row.

A. Right.

Q. You want to be able to show she's lying. If he didn't steal that gun from her and she gave it to him.

A. Right.

Q. You don't want the jury to think he stole the gun. Because then Walter Bailey is standing up in closing argument saying stolen car, stolen gun, this, this and this trying to make it look worse, worse and worse. If that's not the way it happened, you don't want the jury to think it is, right? If he didn't steal that gun and you can prove it --

A. That he didn't steal the gun?

Q. Yes.

A. If I could prove that he did not steal the gun, sure, that would be helpful and I would like to show that, yeah. The date '96 versus '97, help me on that, I can't see that, but it might, I don't know.

Q. I'll just say --

A. Obviously there's some more facts out there I haven't developed.

Q. We'll get to that. Let's just get to that and

I'll ask you again.
A. Sure.
Q. Okay. We'll just go one by one. The gun purchase records shows it was purchased in November '96.
A. Okay.
Q. She's testified the same month it's purchased the gun disappears, he disappears, never see him again.
A. Right.
Q. Okay. We've already got in evidence, and if Mr. Brown would look and let the Court know what exhibit this is, the Bucks County, Pennsylvania, documents for the bonding out that occurred.
A. Right.
Q. That was February of '97.
A. Okay.
Q. Okay. There's one reason would you agree it would be important to establish when that gun was purchased, because if she's saying that the gun and him disappeared the same month the gun was purchased.
A. Right.
Q. Then you need to show the jury that's '96.
A. Right.
Q. Because how could she bond him out in February

'97 three months later if she never saw him again?
A. I know we brought the -- Thomas brought, Mr. Sims brought the bond issue up, I don't know if he put a date on it or not.
Q. He didn't.
A. He did not put a date on it?
Q. No. Okay. That's all. Okay. And if you were to have either been provided by the State evidence of the crimes that she was convicted of in Florida in 1997.
A. Right.
Q. Or if you would have -- had conducted investigation based on what you had found out from her being on probation.
A. Right.
Q. Would it have been helpful to impeach her on the credit card fraud that she committed between April 19th and May 24th, '97?
A. It might have, yes. It might have.
Q. Would that have been helpful for you to establish to the jury that she bonded him out in '96 in order so they wouldn't be confused about her being with him in April and May of '97?
A. Sure.
Q. And I'm not going to go through each one of

these, these are all Applicant's Numbers 3, 4, 6, 7, 8, 9, 10, and 12 are all pieces of evidence that have to do with Ms. Batkilina. Okay. I'll just go through the Kissimmee police report from Florida that outlines the credit card fraud.

A. Okay.

Q. Have you ever seen that before?

A. I don't know.

Q. If you had had access to a police report indicating credit card fraud by Ms. Batkilina.

A. Right.

Q. Would you have used it to impeach her?

A. Probably. I wouldn't have, but I'm sure Mr. Sims would have.

Q. Even if you're not conducting examinations when I ask you a question I'm referring to --

A. Sure.

Q. -- either you yourself do it or advise your co-counsel he might want to ask, that's --

A. Right.

Q. Would you also want to impeach her with the indictment for the offenses that were included in the police report?

A. We would have done it -- we would have done -- if we would have impeached her with any prior

convictions I believe Judge Cottingham would have probably limited us to the question itself and her response. And if she said yes that would have been the end of it, at least that would have been consistent with what Judge Cottingham allowed us to do previously.

Q. That would have been correct under Rule 609 as far as convictions. But when you've got a witness on the stand saying she never saw somebody after November of '96, that would come in as impeachment, substantive evidence of impeachment, wouldn't it, it's contradicting lies told on the stand?

A. I think we could have gotten the date in, sure, with or without the indictment.

Q. Okay. Do you recall ever seeing the booking info or fingerprint sheets from those arrests?

A. I do not.

Q. All right. And May 7th, 1997 were you aware that she was involved in theft of a rental vehicle in Plymouth Meeting, Pennsylvania? Were you provided any documentation about that?

A. I don't recall if I received any documentation from the solicitor's office. And off the top of my head I can't remember if I knew that or not.

Q. Okay. If she had been involved in that, and you

knew about it, would you want to impeach her with that?

A. What was the crime again?

Q. Theft of a rental vehicle.

A. Sure.

Q. Okay.

A. If she was convicted of it, yes.

Q. Okay. And if there was a police report associated with that that showed her lying and telling the police that she was actually her sister, Christina, whey they came to talk to her about it, would you want to question her about that?

A. I would certainly have tried.

Q. Okay. If August 13th of 1997 some nine months after she says she never saw Bayan again, if she was with him in the Lower Moreland Township of Pennsylvania writing a bad check for $33,000 for an automobile, would you want to impeach her with evidence of that, the fact that she was with him?

A. That she had a fraudulent check conviction or an arrest?

Q. No, that she wrote a check with -- not necessarily that, but that she was with your client nine months after she said she was and she wrote a bad check for $33,000.

MR. ZELENKA: Your Honor, that's a matter not in the record. The record transcript page 920 says "When was the last time you saw Bayan Aleksey or Michael Pivero?"

"Somewhere in November."

"You never saw him after November of 1997?"

"No." That's --

MR. TARR: Your Honor, I can explain to the Court what the problem is. Mr. Bailey took her testimony as if it was fact. When Mr. French testified, who was the actual person who sold the gun, that it was November '96, he tried to correct Mr. French's testimony when Mr. French was the one who was right.

But in that same testimony on page 920 -- on page 920 this is clear what she means. Do you remember -- this is line 8 on page 920. "Do you remember when that was?"

"Whenever the day was I picked it up. I don't remember the date she's talking about the gun."

"So if the date on that form is November the 2nd that would have been the day?"

"Yeah, that's the day, the last time I

see the gun."

"And you never saw the gun after that?"

"No."

"When is the last time you saw Bayan Aleksey or Michael Privero?"

"Somewhere in November."

"You never saw him after November '97?"

"No."

See, she's still confused about buying the gun in '97, but it's clear that she's -- I mean, I've gone through this, I mean you'll be able to go through it all yourself and see that the problem is that she's thinking it's '97 and he's not correcting her.

But there's evidence in the transcript that shows that what she means is she -- the gun was taken right after he bought it, she never saw him or the gun again.

And she tells that, we've got that in the transcript from the Bucks County Court and in Florida where she lies to them about -- she says in those transcripts that he took the gun the same month he bought it, never saw him or

the gun again.

So it's clear looking at those transcripts with this what she means. And the reason it's so confusing is that Mr. Bailey was either confused or whatever when he's trying to correct a witness who was in fact correct, instead of correcting the witness who is mistaken. And, I mean, you can see that by looking at the transcript.

THE COURT: Okay. I got it. I got it, Mr. Tarr.

BY MR. TARR:

Q. And with regard to the August 13th, '97, if you had a police report from Lower Moreland Township that says Ms. Batkilina was with your client writing a check and she wrote a check on her account for 33,000 that was no good for a car.

A. Okay.

Q. She said she hadn't seen him after November and this is nine months later, would you want to impeach her on that?

THE COURT: I thought it was August of '97.

MR. TARR: It was. It was. But she said she never saw him after November.

THE COURT: That wouldn't be nine months

later. August to November.

MR. TARR: November to August.

THE COURT: You want to go November to August not August to November?

MR. TARR: November preceding is what she's trying to say.

THE COURT: '96.

MR. TARR: Right. Right.

THE COURT: I'm with you. Okay.

MR. TARR: It's clear from reading all the transcripts where she testifies that that's what she means.

THE COURT: Okay.

MR. TARR: Just this trial she just keeps saying '97 and Walter doesn't -- a lot of times in -- the same with Mr. French he'll bring out documents regarding the gun to refresh his memory. He doesn't bring out the document about that shows the correct date ever. So that's the problem, it says in the transcript as if she's right. She's wrong.

THE COURT: Let me ask you this question: There is testimony -- I got your point about the lack of clarity vis-a-vis when the gun was purchased, was it purchased in '96 or '97. And

the implication is that the gun was purchased in the fall of '97, she never saw him again. But then there's some other testimony that the gun was actually purchased in '96.

MR. TARR: Right.

THE COURT: She does testify though, doesn't, she that she did not see him after November of '97?

MR. TARR: That's what she says.

THE COURT: Okay.

MR. TARR: But we also have the Bucks County transcript from February of '97.

THE COURT: Which would have been before November of '97.

MR. TARR: Actually it's in April of '99 where she's getting the money back, the $10,000 that she put up in February of '97 as she tells the Court there that she never saw him again after she bonded him out, which is February '97. So you've got here --

THE COURT: I'm with you.

MR. TARR: You know, she's telling the Court one thing and then she's saying I never saw him after November, then she's telling him because they know she saw him in February, never

saw him in February.

But all these things occur after both those dates, so it just shows she's lying in both cases. Then she also in the Florida transcript from March of '98 five month months before this trial where she pleads guilty of credit card fraud, she lies there about Bayan. So it's all in the record here.

THE COURT: I'm with you. I'll tell you what. While you are shifting to your next documents, we're going to take just a real short comfort break is what it's called in Beaufort County, right, Mr. Brown, a comfort break. I learned that in Beaufort.

MR. TARR: We didn't discuss how long you want to go today.

THE COURT: We're going to stop probably -- I have a conference call at five o'clock with a matter I'm beginning next week. So let's keep this real short, literally about five, six, seven minutes then we'll go straight to five o'clock.

MR. TARR: I think just for scheduling purposes we're obviously going to go into the morning because of cross-examination.

THE COURT: Sure.

MR. TARR: I'll let our witnesses know probably closer to lunchtime as opposed to the morning the ones that are going to go tomorrow.

THE COURT: Sure. That will be fine. Do you want to start at 9:00 in the morning instead of 9:30?

MR. TARR: That would be great with us because we're five minutes away.

(Recess, from 3:42 p.m. to 3:58 p.m.)

BY MR. TARR:

Q. One question I forgot to ask you -- I'm about to move on from Ms. Batkilina to Thomas French, the gun store owner, but one question I forgot to ask you after we listened to the tape of Gloryvee Perez' statement.

A. Yes.

Q. And going through the transcript there's one thing I left out. You heard on the tape where they asked her if she was aware of Mr. Aleskey's criminal record?

A. Yes.

Q. She said he didn't present himself to be that type of person?

A. That's right.

Q. Then she goes on to say, "I asked you if you knew anything about a criminal record, if he had a record. You may not even know that."

And she says "Exactly, 'cause --"

And they say "Because you haven't known him that long."

She says "I don't know him that long. Even if I did, he might not have said anything to me being the person that I am," basically making out to be that she's like a good person that somebody bad wouldn't tell them about the bad thing he's doing. Would that be your --

A. That sounds right.

Q. Okay. 'He probably never said anything, said anything about any kind of criminal record."

Having heard about all of the criminal activity that the two of them were involved in in the week or two leading up to this incident.

A. Right.

Q. And how believable she sounded on that tape, do you think that would have been pretty important to be able to impeach her on that on all the motive and the criminal activity?

A. Sure.

Q. Because, I mean, you heard the tape yourself,

she sounded -- she sounded like she was telling the truth the whole way through there. She was crying she seemed just really believable to me. I don't know if you agree with that or not, but that's all I have on that.

I just left -- actually one thing. Pages 1,755 to 56 is where Mr. Bailey is talking about her testimony, Gloryvee Perez' testimony.

A. I apologize. In what section of the case, what part of the case?

Q. This is the guilt phase closing page 1,755.

A. Okay.

Q. First of all this is after he lists eight facts of why Bayan is guilty, this is fact number three, the bottom of page 1,755 line 22.

Says "First of all you've got Gloryvee Blackwell's testimony. She got up here, testified under oath that she was a passenger in the car, she had just met this guy a few weeks earlier."

Next page, 1,756, "She had poor judgment. She took up with this guy she has not known for too long, they're going to Disney World, she doesn't know anything about his past. She doesn't even know his real name. She thinks he is I think Michael Toscani or Pivero or something. She

knows him as Michael; she doesn't know who he is."

If all of that evidence about what she was doing and the fact that she did know what type of person he was and that she was a similar type person doing the same thing.

A. Yes.

Q. He wouldn't have been able to argue that?

A. No.

Q. Let's move on, I think we pretty much finished with Ms. Batkilina.

Thomas French was a witness and this is getting back into this, the date thing, the date business with the gun and when it was purchased.

A. Okay.

Q. The transcript on page 931 and 932, this is Thomas French's testimony about the date the gun -- he sold the gun to Yelena Batkilina. This is direct examination by Mr. Bailey.

MR. ZELENKA: What page? I'm sorry.

THE COURT: 931, 932.

MR. TARR: I believe it's 932. 932 is actually the -- you can look at page -- line 17 on page 932.

Q. "I think when I asked you about the date you said November 2nd, '96. Was it '96 or '97?"

And the answer is "'96," okay.

So basically -- and it -- if you want to we can go through the actual documents, the receipt of the gun and everything but they all say '96.

A. Okay.

Q. So Walter Bailey has got a witness up here who's trying to give correct information and Mr. Bailey is trying to correct him as if he's wrong, and then you've got Ms. Batkilina saying it's '97 and he's letting that stand as if it's correct.

A. Okay.

Q. Do you see how it could be confusing for the jury, you might have wanted to clear that up at the time?

A. It's confusing to me. So, yes, I can see how it's confusing to the jury.

Q. All right. Okay. That's all I have on Mr. French.

I'm going to move on to talk about Lisa Watson, this is a witness that testified -- I believe she testified both in the guilt and the sentencing phase. The guilt phase she testified mainly to, or was brought down to testify about the purchase of the Mustang that was driven on I-95 and

that was involved in the incident with Trooper Lingard and then in the sentencing phase she was brought in more to kind of say some of the bad things that Bayan had supposedly done to her.

There are a number of documents that we entered into the record that are relevant about this discussion with Ms. Watson, Applicant's 13 through 21.

Now, were you ever provided in discovery, or did you ever see anything when you went out to SLED to look at evidence with regard to a Western Union transaction, fraudulent transaction that Lisa Watson and Bayan were involved in?

A. I don't recall that. There's something familiar about that question, but I can't -- I don't recall whether or not I actually saw anything or not.

Q. Okay. You're aware that at trial Lisa Watson basically testified that part of the way she was scammed by Bayan is that she had taken about $7,500 off her husband's credit cards. Do you recall that testimony or something to that effect?

A. That sounds right.

Q. Okay. Let me show you Applicant's 16, it's a tape, it's labeled "Lisa Watson Fraud."

A. Okay.

Q. It's got George Darnell's initials on there. Did you ever -- were you ever provided with that or were you ever shown that tape or ever given any piece of evidence that would lead you to believe that there was a tape entitled "Lisa Watson Fraud"?

A. I would have -- I do not recall that as I sit here. I would have to go back and look at all of my notes, which there are 25 pages of those, to see if they're in there. If they are not in there, then I would not have looked at it, no, I would not have listened to it and I don't remember seeing it or hearing it.

Q. I want to hand you a copy of Applicant's Number 14, it's a number of documents from Western Union that we received but one of them is page 5 specifically, if you could look at that.

A. (The witness complies.)

Q. Have you ever seen that? It's a letter January 6 or 7 just a few days after the shooting of the trooper to Agent Kenny Mears of SLED saying here's a tape showing Lisa Watson and Bayan involved in this fraudulent scheme to get $7,500 off her husband's credit card.

A. No.

Q. Have you ever seen that letter?

A. I don't remember seeing this letter.
Q. Okay. Were you ever given, or did you ever see, this is Applicant's Number 15, photocopies of one, two, three, four checks, Western Union checks totalling $7,500 with now on the front it says sender, Andrew Watson, which is Lisa Watson's husband who Bayan supposedly took the money from, those are all checks that were cashed by Lisa Watson at the Western Union. Did you ever -- were you ever provided with any of that?
A. I do not recall seeing these. Then again I would have made reference to those in my notes had I done so.
Q. Let me ask you --
A. Yeah.
Q. -- if you've got a woman who's testifying that she bought a car for your client and that he stole it from her.
A. Right.
Q. And she's also saying that he stole $7,500 off her husband's credit card and you've got information that she was involved in the theft.
A. Yes.
Q. Would that be important to you in cross-examination?

A. Sure.
Q. But you weren't provided that as far as you can recall?
A. Again, I don't have any memory of that and if it were in my notes -- if I had, I would have put it in my notes but I don't see that. But I haven't specifically gone through the 27 pages to find that particular entry, but I do not recall that.
Q. All right. Can you -- I'm just asking you if you can think of a situation where you would have in this case knowing what she testified to and you had this evidence in your back pocket, would you have -- can you think of any reason why you wouldn't have used it?
A. The reason I would not have used it against her?
Q. Yeah. If she stood up -- if she got on the stand, said that he stole $7,500 off my husband's credit cards.
A. No. I think Mr. Sims said that, too, and I'm sure he would have done that had we had that information.
Q. Okay.

MR. TARR: Then, Your Honor, this -- I'm not going to go through every time we've got something that's signed by any of these people.

If you want to anytime something has a signature on it, you can review the Lisa Watson portion, Mr. Gidion, where he said she most probably authored, which is the best he can say when he's looking at a photocopy.

If on any of these documents the government can get originals we would be happy for them to review those.

THE COURT: Okay. Thank you, Mr. Tarr.

Q. I believe that letter to Mr. Mears indicates they sent the original copies of those checks?

A. Does it?

Q. But y'all never saw the letter or that.

A. The letter's to Ken Mears from -- who is at SLED, is that what you're asking me?

Q. Yes.

A. Yes, that's right.

Q. Now, I want to move on to her testimony, it's roughly pages 1,277 to 1,280 where she's talking about going to this car dealership, Chris Cook car dealership to get the Ford Mustang.

A. Would you like me to look at the transcript?

Q. It's just -- basically you tell me if it's roughly what you remember.

A. Sure.

Q. That she was basically leasing this car for him, and he had told her it was going to be paid off immediately she said, it was going to be in her name but he was going to be the one with the car basically.

A. Okay.

Q. And she basically said she was in the dealership for about a half an hour -- this is page 1,285, line 4 through 6 -- signed the paper and out the door. Applicant's 18 is a whole bunch of documents from that dealership.

A. Okay.

Q. Regarding the purchase of the vehicle.

A. Right.

Q. And these are documents that I believe were provided to you in discovery and they actually list three different dates where there were forms signed by Ms. Watson.

A. Okay.

Q. If that were the case then, you had those documents in your possession, she's up there telling the jury that she was in the dealership for half an hour, signed the paper and left, the last she saw the car, and you've got evidence that she was there three times on three different dates, signed three

different documents, would you attempt to use that in impeachment if it was your theory that he didn't steal the car and she was lying?

A. I think I would impeach her more directly than that. I don't see anything here from a three-day -- the fact that she went three days instead of one day, I'm not sure how that would have helped me.

Q. I believe she had testimony regarding her head was spinning everything happened so fast, she was in there half an hour and I just signed the papers and left.

A. Sure.

Q. If she said that and you had information that she was there on the 27th, 29th, and 30th signing papers that would be pretty important if she was trying to say he stole the car, she never saw it again.

A. Under either theory it seems that she would have still taken the lease and he would have still been in the same position to take the car. And whether or not she did it quickly or if it's something that she thought about over a period of three days, I don't know. Maybe I err too much on the side of the limited cross-examination, but I'm not sure that's not confusing and it gets the point across.

Q. What if she had testified as she did on page 1,963, lines 5 through 22, that he had held a gun, he presented a gun and threatened to kill her to get her to sign for the car and she was asked if she thought -- if she took him seriously she said, no, he was laughing about it.

A. Right.

Q. Would that -- take that line and then look back at her statement that she gave SLED January 21st of 1998 where she said he held a gun to my head and he cried and said he was sorry.

We've got these different statements, one that says he held a gun, was laughing about it, I didn't take him seriously, but then back in January she gave a written statement to SLED where she said he held a gun to her head and cried said he was sorry. Would that be the type of thing you would want to impeach her on?

A. Was this prior -- was this prior to him trying -- the attempted suicide event, is this the same time frame?

Q. I believe it -- I believe on one of her statements she says he held the gun -- the one that she gave SLED January 21st.

A. Right.

Q. Where she said he cried, said he was sorry, I think she said held it to his head after that.

A. Held it to his head.

Q. At trial she said he was laughing and never said anything about him crying or holding a gun to his head. That's a pretty big distinction between a recollection of what happened. Would you want to clear that up if you were doing her examination or assist counsel with it?

A. It's possible. It's possible.

Q. Okay. Now, if she said at trial that the last time she saw the vehicle was September 30th.

A. Okay.

Q. And then she testifies two different places, one on page 1,280, lines 8 and 9, that basically right after that first week of October she reported it stolen, would it be important to you, would it have been something you would want to use to impeach her on that date she says was the first week in October? Forget the 30th of September.

A. Okay.

Q. She testifies at trial that she pretty much immediately -- she never saw him again, it was the first week of October, maybe the first week of October she reported the car stolen.

A. Right.
Q. If you know she reported the car stolen actually on November 13th after Ford Motor Credit had started calling her up asking her where the car was.
A. Right.
Q. Would that be something you would want to impeach her with if she was trying to tell a jury in South Carolina that he stole this car from her? She buys the car, he disappears immediately, never sees the car again and she says -- she said should I call and report it stolen, here's a police report that says no, it's actually six weeks later. Would that be something you would want to impeach her on?
A. It could very well be.
Q. This is Applicant's Number 17, I don't believe you've ever seen it before, I'll just hand it up, ask you if you recognize it.
A. Yeah, it appears to be a Ford Motor -- I'm not sure what it is, it's a computer runoff from the Philadelphia Police Department. I don't recall if we saw this or not. There's some blacked out stuff in here, too, and I don't know if that --
Q. It's like address.
A. There's a phone number blacked out, an address blacked out, offender information, part of that's

blacked out as well and the report date's November the 13th, '97, so....

Q. But the government as far as you can recall never provided you with a police report that would contradict the testimony she gave at trial?

A. Honestly I don't recall if we saw that or not.

Q. If you had it, do you think you would have used it to impeach her?

A. Because -- is your question because it changes the dates of when she reported it stolen, whether she reported it stolen immediately or a month and a half later?

Q. Right. If she's telling a jury that she went, signed for the car, her head was spinning, she signed for him, you know, he talked her into it.

A. Right.

Q. He was supposed to make the payments and then immediately she never sees him again.

A. Right.

Q. Doesn't see the car again and so she immediately reports it stolen, that would seem plausible, but if you know she didn't report it until November 13th after Ford Motor Credit said she was going to have to pay for it.

A. Right.

Q. That would lend credence to the belief that maybe he didn't steal it, maybe she knew what was going on. I mean, it makes it a lot -- it's definitely not right when she knew he was gone.
A. Okay.
Q. Why would you wait six weeks if it was the way she said?
A. My gut reaction is because she didn't care, but I don't know that that's the -- I don't know that that's the reason or not. Maybe it would have been relevant depending on how the cross-examination was going.
Q. But if she signed for the car in her name.
A. Sure.
Q. She was responsible for paying for this brand new 1998 Ford Mustang.
A. Sure.
Q. And the guy she had just met says he's going to pay for it, then he disappears with the car, obviously she thinks -- I mean, it's important to tell the jury she reported it stolen immediately because that's what she told them even though it wasn't true.
A. Okay.
Q. That's all I was getting at.

Going back to the Western Union.

A. Sure.

Q. She said September 30th is when they bought the car, he disappears, never sees him or the car again. October 1st, '97 the next day is when she's stealing the money from her husband's credit card with him.

A. Okay.

Q. So do you think that would make that even more important if she's supposedly calling up reporting a car stolen the first of October, yet she's with him in Atlantic City at a casino stealing money from her husband?

A. Right. I think that in itself would have been important for cross-examination. Whether or not it would have related to the time frame or not, I'm not sold on that. But, yes, would it have mattered if she was stealing money from her husband, sure.

Q. But it's hard to never see somebody again if you're actually with them committing a crime?

A. Absolutely, sure.

Q. All right. And something else that you had and was actually used to some extent on cross-examination I believe by Mr. Sims was the Ford Motor Credit printout --

A. Right.

Q. -- of things, steps that Ford Motor Credit took to try and secure the location of this vehicle.
A. I remember getting some material from Ford Motor Credit and it seems like Mr. Sims used it, but I don't recall exactly how.
Q. Okay. I want to turn your attention to the actual credit application itself.
A. Sure.
Q. A lot of this is going to be stuff you probably don't frankly remember.
A. Okay.
Q. May not have ever known. But on the trial transcript at, 284 she testifies that she was unaware of the information on the credit application, basically that Bayan had just, you know, done it himself and she didn't know about it.

Do you ever recall seeing an entry on the Ford Motor Credit -- this is Applicant's Number 21 -- from November 20th where she tells them when they call her up that all the information on the credit application's false?
A. I'm sorry, I don't understand. Are you asking me if there's -- the application itself?
Q. She testified that she didn't -- at trial she didn't know what was on the application, okay?

A. Okay.

Q. Okay. They're calling her up trying to get this car back starting in --

A. "They" being Ford Motor Company.

Q. Ford Motor Credit. They're asking her on November 20th, they got a note from a call where she tells them all information on the application is false.

A. Okay.

Q. Then also on November 20th ten minutes later they got another call to her, actually this is to the actual dealer that sold them the car.

A. Okay.

Q. Says that Lisa Watson was present when the deal took place, the credit application was filled out, and that at that time had told them that my client, Bayan, who was going by the name Joey Barclay at that time was her nephew.

A. I remember something about that.

Q. Okay. Would that be something that you would have liked to have cross-examined her about?

A. I would have to look at the transcript. But I felt that was something that Mr. Sims cross-examined him on, but maybe not.

Q. Okay. She also testified on page 1,964, lines 5

and 6 that she called every single day from September 30th to see if a payment was made.

A. Okay.

Q. Do you recall reviewing this document for Ford Motor Credit where it shows she only called them one time, that every other time they were calling her?

A. They were calling her, I believe so.

Q. Okay. Do you recall whether or not she was impeached on that?

A. I don't recall.

Q. Okay. Do you recall from November 13th at 10:52 a.m. on this Ford Motor Credit they've got an entry where they called her up, they've got notes in here where they say a caller, Lisa Watson, appears to be making up as she goes along? Do you recall that?

A. Is that on there?

Q. Yeah.

A. Is that on the record?

Q. Yeah.

A. May I see it?

Q. (Mr. Tarr complies.)

A. On the last page?

Q. It's actually the first page, they go backwards. Actually --

A. They're doing it in reverse chronological date.

Q. The first page would be actually when they find the car in South Carolina, January.

A. This seems familiar to me, I don't -- I can't specifically tell you but, yes, that sounds familiar to me. We did some searching on the car itself and maybe I'm confusing that as well because we were trying to find the car.

Q. Right. You never could even -- you never got a chance to look at the car?

A. No. And I did everything I could to do that. I asked the judge to help me, but at that point I think it had already been -- I think the last time we found the car it was in Florida and we actually sent one of the investigators to try to run that down from there.

So we had done some stuff on the Ford Motor Credit, so it is entirely possible we went through that. That language seems familiar to me, but I don't know of a way to confirm that one way or the other.

Q. SLED processed the car immediately?

A. Yes.

Q. Took a couple hundred pictures?

A. Yes.

Q. That include a number of items you never saw, still to this day have only seen because they're in

those pictures?
A. Okay.
Q. They send the car off, you don't even get a chance to look at it?
A. That's correct.
Q. And then hold back evidence or lose it or something because a lot of the stuff that could have helped you is not even available now, never given to you?
A. The car itself I thought was particularly important because of the noise the car may or may not have made because there were some statements supposedly made by Mr. Aleksey at least reading some articles and things like that which the officer may or may not have been able to hear, but we were unable to run the car down.

We tried, and I think the last, like I said, I think the last thing we found it was in Florida, but we were not able to actually get our hands on it despite asking.
Q. I believe you at a hearing had specifically asked on the record.
A. Yes.
Q. Walter said he would do what he could, by that time it was already gone?

A. It was already gone, that's correct, because I believe I referred to it as part of the crime scene that was necessary for us to get involved in.

Q. Okay. Also on that same call, 10:52 a.m. she tells them the car was reported stolen.

A. Okay.

Q. But you see on -- I'll hand you back up Applicant's 17 -- the police report where she actually reported the car stolen?

A. November the 17th, is that right?

Q. Applicant's Number 17.

A. November the 13th, '97?

Q. Yeah. That same day --

A. Right.

Q. -- that that call was made where she tells them at 10:52 the car's reported stolen already?

A. Sure.

Q. That police report says it's 2:30 p.m. that she calls and reports it stolen?

A. Right, 2:30 p.m.

Q. So when she tells them the car's already been reported stolen, it hadn't, she gets off the phone, is scared out of her mind and calls and reports it stolen three hours later is what it appears to be.

A. Right.

Q. And but y'all didn't impeach her on that?
A. I don't know if we did or not. I'll let the transcript -- I don't have that with me, but....
Q. All right. Okay. I want to go through -- and this is basically going to be the end of Lisa Watson's questions I have for you regarding her.
A. Okay.
Q. But it's a number of different statements she gives to different people about what the relationship with Bayan Aleksey ended up costing her.
A. Okay.
Q. At the trial transcript page 1,965 she says $42,000, this is the cross by Mr. Sims, and she gives a breakdown of the car, my husband's credit cards, my credit cards. Okay. Do you recall roughly?
A. Sure.
Q. You agree that's what the transcript says?
A. If that's what the transcript says, it's --
Q. Okay. The statement to SLED she gave January 21st, 1998 -- this is Applicant's 20 -- she says as far as how much this cost her about midway down $75,000, she says she breaks that down about $9,500 off credit cards. So it's about $33,000 more than she said at trial.
A. She said at trial -- in other words, she said

that he lost her less money than she said earlier?
Q. Right.
A. Yes.
Q. And then she said two different things in the SLED transcript, she says $9,500, then she says 7,500, I think that's credit cards in general, then she says 7,500 off her husband's credit card.
A. Okay.
Q. Okay. Which would correspond to the exact amount of money that she signed for at Western Union, $7,500, with sender Andrew Watson off his credit card to Western Union.

Now, the Ford Motor Credit notes on Applicant's 21, actually it's a call about 12 minutes later, November 13th, 11:04 -- actually, no, it's the 10:52 call she says Barclay stole she and her husband's credit cards, first said charged 11,000 later said 12,000.

So there at Ford Motor Credit she's telling him that he stole the credit cards, charged 11 then later on in the conversation told them 12. So that's one, two, three, four, five different statements she's made, they've all been different about how much he supposedly stole from them.
A. How much was the trial number?

Q. Trial number was $42,000. She doesn't break down, she just says 42,000 lost and then she says the car, my credit cards, my husband's credit card.

A. Okay.

Q. All those statements that she had given prior to trial concerning how much money he took and whether, in fact, he was even the only person involved in taking it, that would be pretty important to impeach her on, I mean this is -- she's talking -- a lot of this is the penalty phase. We got a jury trying to decide between life and death and all they're hearing about is all these bad things he did to her and now she was just a victim. In fact, I mean, she's just in it with him.

And it looks like from looking at the Western Union stuff you never saw because you weren't given it, the basic question is would you have used those other prior inconsistent statements to impeach her?

A. We might very well would have.

Q. Okay. We'll move on to Theresa McCann, about some of her testimony. Theresa McCann testified about several things that she says that Bayan stole from her or victimized her with scams.

Page 1,873 of the transcript, lines 13

through 15, this is where she's talking about a motorcycle, a Honda CVR, and this is direct examination by Mr. Bailey. Did you -- starting at line 9, "Did you purchase or lease a motorcycle in your name while you knew Mr. Aleksey?"

"That happened while I was at work. He wanted a motorcycle and said we're going to have a good summer, you know, we would travel. So he purchased the motorcycle also. I think I faxed my driver's license to the place."

Were you ever provided with a purchase agreement from the House of Power for that Honda motorcycle that had her signature on it?

A. I don't know if I did. Do you have that there? I'll be glad to look at it.

MR. TARR: I need to get those exhibits out, just one moment.

(Pause in proceedings.)

MR. TARR: Your Honor, it was just pointed out to me, Mr. Zelenka, on page 1,873 of the transcript I had had a misrecollection when I was talking about Lisa Watson at the dealership and saying that her head was spinning, that was actually something from 1,873, Theresa McCann's testimony. I just had that mixed up; everything

else was accurate.

THE COURT: Okay.

MR. TARR: But it was pretty much the same thing, she was saying that it all happened fast, but the head was spinning and it was actually a direct quote of Theresa McCann.

THE COURT: Thank you.

MR. TARR: I apologize. Thank you for showing me that.

Q. I'll just ask you this, Mr. Stone.

A. Yes.

Q. We're unable to locate right now the actual sales receipt.

A. Okay.

Q. We have it, we've just got to find it. If it has her signature on there.

A. Right.

Q. Which means she went to the dealership and signed for it and bought the motorcycle and that it wasn't done while she was at work like she testified to, would that be something that you would want to impeach her on?

A. Was her testimony at trial that he had actually --

Q. That she was at work and that he did it and that

she thinks she faxed her driver's license. That's it.

MR. ZELENKA: Your Honor, again, 1,873, "Did you sign it?"

"I did unfortunately."

"Why did you sign the papers for a conversion van?" I apologize.

MR. TARR: That's a conversion van, that's something else. We'll get to that later.

THE WITNESS: I'm sorry.

A. If she said he signed for it, in fact she signed for it and we found information that showed --

Q. If she said I wasn't even there I was at work.

A. Right.

Q. I might have faxed my driver's license, that's her testimony, basically he did everything else, he's the only one that went to the dealership and yet you have the sales contract of the purchase of the vehicle and she had signed it.

A. Right.

Q. And you got a handwriting expert that says that she most probably is the author of that, would that be something you would want to impeach her on?

A. It might.

Q. Also do you recall ever seeing some police

reports -- now, this is Applicant's Number 45 from -- the police reports from New Rochelle, New York, Police Department.

A. Okay.

Q. But I believe you had received some New Rochelle police reports in discovery.

A. Yes, I recall some new Rochelle police reports. I don't know where I received it, but I recall that.

Q. Okay. I want to show you Applicant's 45, this is the first page of one of those reports, I believe it's dated May 13th, '96. Can you read the very beginning of the body of that incident report and what it says that she says he did?

A. Comp, which I'm assuming says complainant, appeared at GIU to report her motorcycle listed above stolen by the above suspect Aleksey, her former boyfriend. Comp states that he has admitted taking the motorcycle from the garage in phone conversations with her. Aleksey also stole a van and a jet-ski from comp. She has also reported those stolen, see ins, which is I'm assuming incident number 17648 for the complete details surrounding a series of incidents concerning Aleksey. Vehicle theft report was also completed by comp and signed.

Q. That's all. Now, also in the transcript when

she's talking about the jet-ski there was a question on page 1,874, lines 3, 5, and 7 there was also a jet-ski, a Sea-Doo, I did not sign for that, my name was signed. This police report dated May 13, '96 she's going to the police and saying that he came to her house and stole her motorcycle and her jet-ski and a van out of her garage.

She's telling the trial court here in South Carolina that he's going out to these dealerships and doing this stuff on his own and putting it in her name and basically that's how he's stealing it, using her name, and yet she's going to the police up there and saying that these were her items, they were her vehicles and that he stole them from her.

Would that -- would this be something that you would want to use to impeach her if you got a client, you know, facing life or death and she's trying to make him look bad basically?

A. I know that at some point Mr. Sims made a point about her trying to get him arrested, or at least that came out at some point.

Q. Basically, I mean, Mr. Sims testified a lot about the theory that he had and you had in the case.

A. Right.

Q. And what he was going -- when he was cross-examining these girls he was basically trying to show that they were in it with him, having a good time, spending lots of money, driving nice cars and that they were having fun.

A. That's right.

Q. Okay. This would be perfectly consistent with that, this police report that says he stole these things from me would have been very useful in impeaching her when she's telling the Court that he's taking her, you know, name and signing her name and forging it. Why would these things be in her garage and be hers if he's doing --

A. It's consistent with -- Mr. Sims and I both, and I specifically recall the purpose of showing that they were involved, that they were both having a good time, that it was almost like they were using each other.

But I think what Theresa McCann and most of these other people really helped out was as far as our case is concerned is that they were showing that Mr. Aleksey was not violent.

Even if you go back to Lisa Watson's testimony when she talked about the gun play it became more it was either a joke, depending on if you

believed how she looked at it, or it was pitiful because Mr. Aleksey was pointing the gun at himself and did not hurt her.

Theresa McCann basically testified as I recall, and my notes indicate that she beat him up, that they had gotten into a fight in the car and that Theresa McCann beat him up which I thought was particularly helpful to the overall nonviolent nature of Mr. Aleksey.

But, yeah, that would have been consistent. But it seems to me that Mr. Sims, my memory without specifically citing you the transcript, would be that Mr. Sims asked almost every one of these witnesses, the female witnesses which he -- that was what he was doing, about whether or not -- weren't you guys in it together, you were having fun, you were playing with him and things like that, so....

Q. Can you recall any specific instances where he impeached her with these actual documents that I've gone over here?

A. No, I don't. If it's in the transcript, if it's not then, no, he obviously did not.

Q. Okay. I believe this is already in evidence, some of the letters that Bayan wrote to you and

Thomas.

A. Okay.

Q. This specifically is one I want to ask you about, I'm trying to find where the letters are. I can't find them exactly, but actually there's a letter from Bayan to you dated May 28, '98 I can find that specifically here in a minute.

A. Okay.

Q. But it says check with McCann's Visa credit card and she testifies in numerous places in the transcript that he had taken money off her credit cards. And I'm wondering if you had, or your investigator had ever looked into getting copies of any videotape or still photos from ATM locations where her Visa credit card may have been used to make withdrawals in order to determine whether or not she was actually in the photo with him?

A. I don't know if we did or didn't to be honest with you.

Q. All right.

MR. TARR: Your Honor, I am about to move on to another topic. I don't have much more, I mean I've got more that we can do today but I don't have much more for this witness.

THE COURT: Okay.

MR. TARR: But the topic I'm about to go into probably would take longer than ten minutes so I don't want to run into your conference call.

THE COURT: Thank you so much for that, Mr. Tarr, I think then with that since I do have that five o'clock conference call that we'll stop here and I appreciate you noticing that.

Of course don't discuss your testimony --

THE WITNESS: Yes, ma'am.

THE COURT: -- since you are on the witness stand. And I'll leave it to you, counsel, whether or not you want to leave your things here or take them with you. The courtroom is locked at night so I'm sure they'll be fine.

MR. TARR: As far as scheduling I was wondering if Mr. Zelenka had any idea how long his cross for this witness might take, because I'm trying to determine who to tell to come tomorrow.

THE COURT: Surely not longer than a day.

MR. ZELENKA: It's not going to take a day. I would estimate about two hours.

MR. TARR: I think we definitely would be

STATE OF SOUTH CAROLINA )
: C E R T I F I C A T E
COUNTY OF DORCHESTER )

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 7th day of March 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 VI, Pages 1074 - 1339
Applicant, )
) TRANSCRIPT OF RECORD
-versus- )
) POST-CONVICTION RELIEF
STATE OF SOUTH CAROLINA, )
Respondent. ) July 8, 2003

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

Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit
Post Office Box 3335
Summerville, SC 29484-3335

(Tuesday, July 8, 2003.)

THE COURT: All right. Are you all ready to proceed?

MR. TARR: Yes, Your Honor.

THE COURT: Great. All right. Listening to you.

MR. TARR: Your Honor, for the record the item that we entered in for ID yesterday, the record from the Westin Suites Hotel from Philadelphia Airport, found out looking through some of the other exhibits that were already in evidence, specifically the Trenton police report which is number -- Applicant's 34, that lists Ms. Perez's home phone number and work phone number that you can match up with the phone numbers that are on the hotel bill.

Also she says on page 1,300 of her testimony that she -- when she first met Mr. Aleksey he was staying at that hotel, she lists it by name.

And then Vincent Black, we're looking through his rap sheet, the number of different aliases that were used in the past, three different Vincents or Vinnie that were used we just have taken all that evidence into

consideration, it makes it a lot more relevant and clear that these appear to be calls from Mr. Aleksey to Ms. Perez prior to December of '97. We would ask to move it in at this time as an exhibit, Applicant's 74.

THE COURT: All right. Yes, sir.

MR. ZELENKA: I mean, they still haven't tied up that Aleksey had actually been the one that made the phone calls, that's the point. Other than that, that's our objection to the relevance. That's what needs to be tied up.

MR. TARR: Your Honor, we would ask, or at least we would say that that would go more to the weight of the evidence.

If somebody wants to argue that this person is not Mr. Aleksey, she said she met him at this motel, it's another one of the names that he's used before, phone calls to her. I mean, I don't know how Mr. Aleksey would have gotten these records, just call up all the hotels in Philadelphia, ask can you give me the records for somebody who called this number.

THE COURT: Here's where you are though, the authentication it's not a self-authenticating document. And what you want

me to do is accept it as a self-authenticating document, it's not. You're not able to authenticate a Westin Hotel bill through this witness, that's impossible.

So Mr. Zelenka has an objection to it and you want to tell me because of the content of a document that that means that the document doesn't have to be authenticated, and that's not the way the rules of evidence work. And Mr. Zelenka objects.

MR. BROWN: Your Honor, if I may, I think his objection was relevance yesterday. And I say that because authentication would be that the document is actually a Westin Suites phone record.

THE COURT: Okay. Does that make it a self-authenticating document?

MR. BROWN: I think that would be the authentication issue, whether it was something that was made up or something that is really a Westin Suites document.

I don't know that Mr. Zelenka has that argument. He's just saying we don't know who made the phone call, maybe Gloryvee went to the hotel room of Vince Black, made a phone call to

her own house, or her own boss, therefore it's not relevant.

I would also -- is this -- Ms. Batkilina is also called from that same record. So since Ms. Batkilina, Ms. Gloryvee don't know each other, this was going to be somebody who knew both these two people, who are from two different areas and stayed at the same hotel where Gloryvee said she met him at.

THE COURT: Uh-huh (affirmative response.)

MR. BROWN: And used the same first name alias as Mr. Aleksey's rap sheet is.

THE COURT: Why don't we hear from Mr. Zelenka what the nature of the objection is.

MR. ZELENKA: My objection is they're trying to show that Mr. Aleksey was the one that actually made the phone calls, that's the purpose. I'm objecting because that document does not show that Mr. Aleksey made the phone calls. All that document shows is that a phone call was made out of that room registered to Vince Black to these phone numbers, Ms. Batkilina's phone number that you're asserting exists in these records and the Gloryvee's telephone number. That's --

THE COURT: All right. So it's not one of authentication?

MR. ZELENKA: It's not one of authentication.

THE COURT: Okay.

MR. ZELENKA: I have no objection to not bringing down a Westin person to authenticate these matters came from their records. That's not my objection. My objection is merely to relevance, particularly these --

THE COURT: Sure. Sure. Tell me where the evidence is in the records, because I don't remember.

MR. BROWN: Sure. The Trenton police report has the phone number from Ms. Gloryvee's house.

THE COURT: That I'm comfortable and I've heard that. Tell me where is the evidence in the record today that says that Mr. Aleksey has an alias of Mr. Black, Vince Black.

MR. TARR: We don't have anything that says that. We've got like ten different names on his rap sheet, three of them are either Vinnie or Vincent. We don't have a Black.

MR. BROWN: His father's name is Vincent.

MR. TARR: Also the address used by Mr. Black was that of Sara Pivero.

MR. BROWN: Right, which is a third girl.

MR. TARR: This is way too many coincidences.

MR. BROWN: Right. In other words, the address of Vince Black, the hotel guest, is Ms. Sara Pivero's home address, Ms. Batkilina's phone number is on there, Ms. Gloryvee's home phone number, her work number are both on that document.

These girls never claimed to know each other, they're from different areas, they're not -- I mean, this is -- they're not like from right down the street.

All their phone numbers are on that same Westin Suites thing which Gloryvee says is where she met --

THE COURT: I'm with you. Tell me what's in the record as of this date? Obviously Gloryvee's phone number is in there.

MR. BROWN: In the Trenton police report. I believe Ms. Batkilina's phone number is on the Burdumy Motors thing with the Volvo where she wrote a $33,000 check, they called her house.

THE COURT: Okay.

MR. BROWN: Those two were on there, Sara Pivero I believe her -- I want to say her driver's license is in evidence.

THE COURT: Is the rap sheet in where it says Vinnie?

MR. BROWN: I don't know if we have that, Your Honor, but we can put that in from the SLED agents because they are supposed to testify.

THE COURT: Here's what I'm going to do. I'm going to at this point admit it conditionally on the link-up. Obviously it seems to me that the link-up of the Vinnie and the other things ought to certainly establish the relevancy.

MR. BROWN: Your Honor, we don't think all of a sudden this one piece of evidence changes the case. It just shows that she testified she met him in December. If you notice on there the hotel receipts start November 24th, he checks out on November 30th. So, in other words, it's before December.

That's all we're trying to say. She fudged. We know she was living in South Carolina with her husband several months before

that so it's not like she was up there for a year or so before.

We're just trying to show not everything she said in a statement where she's crying saying I just met him, I didn't know he did this kind of stuff, she's not telling the truth is what we're saying. That's all.

THE COURT: Okay. And over the objection of the State.

(Entered into evidence was Applicant's Exhibit 74, telephone records.)

MR. TARR: Your Honor, are you ready to proceed with the witness?

THE COURT: All right.

MR. TARR: Thank you, Your Honor.

CONTINUED DIRECT EXAMINATION

BY MR. TARR:

Q. Mr. Stone, I've just got basically two more witnesses that testified at trial that I want to go over with you, shouldn't take very long.

Ms. Jamie Farrell is another woman that came down from the northeast that testified against Bayan. Mainly her testimony centered on him, you know, conning her out of money like the other girls.

I want to point your attention to transcript page 1,898, line 15. It's a question by Mr. Bailey to Jamie Farrell. "Were you with Mr. Aleksey on May 10th, 1996 in New Jersey when those checks were deposited?"

These are checks that were written on Theresa McCann's account payable to Jamie Farrell, deposited in Commerce Bank, on this particular occasion it was May 10th, 1996 in Absecon, New Jersey.

I want to ask you if you've seen Applicant's 46, this is an affidavit by Vincent Caruso who was an investigator at Commerce Bank, it was entered into evidence at the last hearing.

A. Okay.

Q. Which indicates that he makes a statement there that he's reviewed photographs and things from the camera at the Absecon branch of Commerce Bank and that Jamie Farrell deposited the check that was referred to that she said Mr. Aleksey did on page 1,898, that she was the one that actually deposited the check on that date.

A. Well, it says on May the 10th Ms. Farrell deposited a check. How he knows that, I don't know. Is there something in there that said how he would

know that?

Q. There may not be an indication.

A. I don't see anything in here that says that how he would know that. But it does say on May the 10th Ms. Farrell deposited a check. And this is Applicant's 46 that I'm reading from, an affidavit.

Q. Okay. Let me ask you if you've seen --

THE COURT: Mr. Brown, you want to take that box of exhibits to your counsel table?

MR. BROWN: I apologize.

THE COURT: No, no, no. What it might be, it might be a bit more helpful to you, you know what I am saying?

MR. BROWN: Sure.

THE COURT: Let me put it, whatever is helpful for you, if it is helpful for you to take it back to counsel table, feel free to do that.

Q. Mr. Stone, also --

A. Yes.

Q. -- do you ever recall seeing any of the information that you just reviewed from that affidavit regarding the depositing of the check by Jamie Farrell anywhere else in discovery?

A. Well, Vincent Caruso is an investigator for the

Citizens Bank. I didn't know that, I don't know who Vince Caruso is. During my employment I was assigned to investigate a matter occurring in Absecon, New Jersey, in which it looks like he was employed there in 1996. And this Jamie Farrell apparently opened an account on May the 5th, 1996.

No, I don't know that I know of any of this information. Ms. Farrell was charged, arrested, prosecuted to crimes related to the above-listed transactions. I don't know that I have -- if we have her criminal record in the file then, yes, I've seen it. If we do not then, no, I have not seen it.

Q. All right. But as far as you can recall just in general regarding the incidents listed in here, specifically her being the one that deposited that check, you don't recall getting anything from the State to indicate that?

A. No.

Q. Okay. Do you think --

A. Again, unless there's something in the file.

Q. Okay.

A. I have not specifically looked through the file looking for that piece of paper.

Q. Okay. Now, again on page 1,899, line 1 of the transcript Ms. Farrell testifies that it was her

understanding that Mr. Aleksey was getting a wire transfer into that account as opposed to depositing checks and that's how the money was going into the account. That would seem to be contradicted also by this affidavit that states that she deposited the check May 10th, 1996.

A. What line are you referring to from the transcript?

Q. I think 1,899, line 1.

A. He said he was getting a wire transfer.

Q. And that actually you can start at 1,898 the bottom, about "What did Mr. Aleksey tell you about the status of your accounts after you opened them?"

A. "He said he was getting a wire transfer for $10,000; he got a routing number from the bank clerk."

"How do you know he had a routing number from the bank clerk?"

"I had the routing number in my hand."

"So he gave that to you?"

"Yes."

Q. Okay. Now --

A. Said this looks like apparently she may be drawing the checks, but he's actually supposed to be putting money into her account.

Q. That's what she testified to?
A. Yes. I don't know that that document, that affidavit that you have necessarily says anything about that.
Q. Okay. That's what I'm saying, is if you had information provided by the State that what had actually occurred was that she had deposited a check on May 10th, 1996 at that branch and she's testifying that she didn't deposit anything, but that Bayan had simply told her that he was wiring money into her account, that would be something pretty important, because she's trying to make it look like she's a victim at trial and she didn't know anything about anything.
A. It's hard to tell at this point how relevant that would have been. I think it certainly would have been important to know if she had been convicted for those, for bank fraud or something like that.
Q. Okay.
A. And that affidavit certainly seems to indicate that.
Q. Okay. All right. Now, let's -- do you think it would make it more relevant if you look at transcript page 1,900, lines 3 through 4, question from Solicitor Bailey is "Who withdrew it?"

"Mr. Aleksey."

"How much did he withdraw?"

"About $10,000."

A. I don't know that the affidavit has anything about that. If I can look at that again I'll certainly check.

Q. On May 11th and May 14th.

A. Okay.

Q. Who it says withdrew the money?

A. May 11th Ms. Farrell withdrew $4,800 from her account at Absecon branch. I don't know, are we discussing Absecon branch in the affidavit, I mean in the transcript? I'll say I can't tell right now from the transcript, maybe we are. On May the 13th --

Q. Yeah, we -- this would be 1,896 the bottom of the page, it talks about it, a branch bank in New Jersey, Commerce Bank.

A. Okay. And May the 13th payable to Ms. Farrell drawn on Ms. McCann's account was deposited into Ms. Farrell's account. But it doesn't indicate who deposited it, but it states that it was deposited into Ms. McCann's account.

Q. Right. But May 14th is another withdrawal.

A. May 14th Ms. Farrell withdrew $5,050 from the account.