VOLUME EIGHT OF FOURTEEN

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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JUN 22 2011

S.C. Supreme Court

Appeal from Orangeburg County

Diane Schafer Goodstein, Circuit Court Judge

BAYAN ALEKSEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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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

Q. All right. I'm going to ask you if you've ever seen copies of these two, this will be Applicant's 49, copies of looks like two starter checks. There's no address or name on it.
A. From Commerce Bank in the amount of looks like $9,800 or is that $4,800?
Q. I believe it's 4.
A. I don't know that I've seen either one of these checks.
Q. But those checks that are --
A. If they were in the file then, yes, I've seen them, but if they're not in the file I haven't seen them, no.
Q. But they seem to match up with the 4,800 and the 5,000 from the May 11th and May 14th withdrawals?
A. Yes, that's right.
Q. Okay. And so if she testified at trial -- if she had testified at trial that Mr. Aleksey withdrew the money, and would you like to have information like this to impeach her with?
A. Sure.
Q. Okay. Were you ever provided this Applicant's 48 which is a series of bank photos that would show her in the car withdrawing the money?
A. I don't know I can't see it from here.

Q. They're actually not very good copies, but....
A. They're even worse from back here.
Q. Yeah.
A. No, I don't believe I've ever seen these photographs at all. I can't really see. The only one I can make out -- these are particularly bad photocopies. The only one, seems like I've got some of the male and female in the car together at the -- I guess a teller window.
Q. The one at the top right corner.
A. Right.
Q. You can see her with a pen in her hand in the passenger seat?
A. It looks like that, yes.
Q. Which would be something that somebody would normally do if they're signing a check in a bank drive-through?
A. Sure. Sure.
Q. These are the type documents that you would expect to get as a defense lawyer filing a discovery or Brady motion in a case if there's a witness coming down who's going to testify about these matters? I mean, this is potentially exculpatory and also potentially could be used for impeachment?
A. It certainly looks that way, yes.

Q. All right. We'll move on to the last witness that I want to discuss with you, this would be Sara Pivero and as another woman that came down and testified about a number of things that she says Mr. Aleksey did that caused her to lose a great deal of money, and buying lots of automobiles and just similar to what the other women testified to.

I'm going to direct your attention to trial transcript page 1,606.

A. 1,606?

Q. Yeah, line 6. Actually line 24 and then 1,607 through 1,607, line 6. This is direct by Solicitor Bailey and at the bottom of 1,606 is "Are you employed in Pennsylvania?"

"Yes."

"What type of work do you do?"

"I'm a hair dresser."

"What is the name of the place you work at?"

"Sensational Scissors."

"How long have you been a hair dresser?"

"A little over four years."

A. Yes, I see that.

Q. Do you recall or remember that at all?

A. No. But I'm reading it from the transcript, that's accurate.

Q. Okay. And do you recall, there is a large amount of documents that were given to you in discovery about an incident involving a Lexus that Bayan was supposed to have gotten her to buy for him, this is Thompson Lexus, it's Applicant's 55.

A. I've reviewed the transcript, so I recall her testifying to that.

Q. Okay.

A. That she made $15,000 a year, she bought a $60,000 Lexus with him I believe is the --

Q. Right. She had indicated that she was making 90,000 on the credit ap?

A. She lied on the credit application, yes.

Q. Okay.

A. I'm not sure if it was 90. I think it was 79, but it might have been 90, I can't remember exactly the number.

Q. You recall she was working at Sensational Scissors making whatever, 90,000, 70,000?

A. Yes.

Q. I can try and flip through it for you and help you find it.

A. If you could show me the credit slip that would

be fine. Is it in the back?
Q. It's in the back.
A. The next to the last page. Manager Sensational Scissors, total gross monthly income $7,500.
Q. I was just wanting you to see that she indicated at that time, which I don't have a date on it.
A. That is dated -- I don't know that this has a date on it. I see her birth date, I don't see --
Q. That's okay. Just in general.
A. And the W-2 form indicates $78,984 wages, tips and other compensation.
Q. Okay. The front of this page we've got it's roughly -- report date of this is October '96, the incident supposedly occurred around September '96. But basically so she's saying here that she worked at Sensational Scissors and then at trial in August of '98 she said that's where she works, she had been working as a hair dresser for four years?
A. That's right.
Q. Direct your attention to this is a copy of a guilty plea transcript from Bucks County, Pennsylvania, dated July 28, '97 it's Applicant's 51. And I can just publish this.

Page 4 they ask her "Are you working now?"

And Sara says "Yes. Not where I used to, because I lost my job because of him."

"Were you working up in New Hope at a grocery store?"

So basically it would indicate in this guilty plea that because of what happened at the end of '96 she lost her job at Sensational Scissors, had to go to a grocery store to work.

A. I haven't seen that. I mean, I may have seen that, I can't see it from here, but if that's what it says then that's....

Q. It's a transcript of a guilty plea for the offenses involved with the Thompson Lexus incident.

A. That's what it appears to be, July the 28th, 1997.

Q. It's actually page 4 where they talk about where she works.

A. Yes. Checking the date of the -- yes, that's what it seems to indicate there.

Q. And let me show you Applicant's 53 and especially the second page of that, those documents, it appears to be an affidavit of indigency trying to get I think a public defender for the case dated May 1st, '97. And could you see on there where she indicates where she's employed?

A. Employer's name, Giant, 202 New Hope, Pennsylvania. This is my first week. And that would have been October the 23rd, 1997.

Q. Where did you get that date? I've got 5/1/97 at the bottom of that page.

A. Oh, I'm sorry, I was referring to the date on the first page of the order is October the 23rd, '97. Yeah, this looks like May the 1st, '97 is when she signed that, yes.

Q. That was her first week at the grocery store?

A. That's what it indicates on the application.

Q. All right. Did you recall ever being provided any of this information regarding her guilty plea or any of the documentation from the clerk's office at the Bucks County Courthouse?

A. I do not, although again as you can tell because there's probably 12 boxes over there I don't know -- if it's not in the file then, no, I didn't see it, but if it was in the file then, yes, I had to have gotten it one way or another or Mr. Sims got it.

Q. Okay. But --

A. But I do not recall it independently sitting here right now, no.

Q. Would these types of documents be the types of things that you were sending your investigator up to

the northeast to investigate the backgrounds of the different witnesses that were going to testify that you would want to get documents like this?

A. Yes.

Q. Now, those documents also indicate that she was convicted -- or Sara Pivero was convicted for theft by deception three counts, and bad checks two counts.

A. Yes.

Q. Basically five different criminal convictions.

A. Right.

Q. She indicates I believe at some point in her direct testimony by Walter Bailey that she was on probation because of things involving Bayan.

But I was wondering if you recall a reason why she was not impeached with the convictions under Rule 609, but I believe it was Mr. Sims that did the cross.

A. Mr. Sims did the cross-examination. If you could point me to the part of the transcript where she says the probation, I don't independently remember that.

Q. I'm just kind of going off the top of my head.

MR. TARR: We can have Mr. Brown look for that while we go on.

Q. I want to talk about --

A. I don't - oh, I'm sorry, I've just read through it. I don't see that. But it might have been in there some other place.

Q. Yeah, it may be in the cross. I'm going to have Mr. Brown look for that while we move on, won't take up any more time.

I want to talk a little bit about how Sara Pivero characterized her relationship with Mr. Aleksey and how some of the documentation that you and Mr. Sims had in your possession may have been used to impeach her.

On page 1,607, line 25 through 1,608, line 3 it says "What relationship developed between you and Mr. Aleksey?" this is direct by Solicitor Bailey.

Says "We lived together for a few months up until roughly about November of '96."

THE COURT: Not quite so fast.

MR. TARR: Oh, sorry.

THE COURT: That's okay.

Q. "And we were boyfriend and girlfriend type I thought."

A. Yeah, I've got -- yes, I'm reading that.

Q. Okay. Let me go over this, this rather lengthy report and set of reports from a Detective Logan

who's an investigator for Doylestown Township Police Department. I believe this was provided in discovery as Applicant's 55.

A. Okay.

Q. And I guess I'll just hand it to you and I'll direct you to a couple different places in there. Page 1, paragraph four, this is from the October 11th, 1996 report regarding the Thompson Lexus.

A. Right.

Q. It seems to indicate there, I believe it's page 1, paragraph four, that she had indicated when she went into Thompson Lexus that Michael Pivero, who he was called at that time, was her brother.

A. That's right.

Q. Okay. Then we've got if you flip through to the 10/17/96 report same Detective, Dean Logan.

A. They received a phone call from Michael Pivero, is that -- I'm sorry, what are you asking about it?

Q. It's the October 17th, '96 report.

A. Yes, I've got that.

Q. Have you got page 1, paragraph three?

A. Oh, I'm sorry.

Q. I believe it talks about Jim Cusart who was the dealer at Thompson Lexus had called Pivero about the

checks.
A. She said she lived with her brother.
Q. The Lexus was leased for her brother, right. And then if you could flip through to the November 15th, '96 Detective Logan police report, did you find that?
A. Yes.
Q. Okay. And I want you to look specifically at page 2, paragraph one, this is an actual interview with Ms. Pivero by the police. She says "Michael Pivero is my half brother."
A. Yes.
Q. And then the report if you could flip to the next report, November 20th of 1996 page 1.
A. Yes.
Q. I believe there may be an underlined portion, I don't know if that copy's underlined.
A. Yes.
Q. And there's where she says, no, he's not a relative of hers but her boyfriend, his true name is Michael Angelo.
A. Yes.
Q. Okay.
A. But I don't know if it says Michael Angelo. Yes, that's right, I see that now.

Q. Okay. These are all statements that she gave to the police or --
A. Right.
Q. -- somebody who's investigating the matter --
A. Right.
Q. -- regarding this Lexus that she wrote bad checks to purchase.

I mean, do you think those would be important things to impeach her on, the fact that she's saying that it's her brother and says -- and then a half brother and eventually, well, we're not related at all, he's my boyfriend?

Specifically I want to point you -- testimony between 1,615 and 1,621, it's five pages worth of Sara Pivero's testimony at trial where she's basically -- it's just five pages of her minimizing her guilt.

A. Yes.
Q. Basically putting everything off on Bayan. And do you think it would be important to impeach her with evidence that she was part of the deception in the purchase of this Lexus?
A. Let me answer that as honestly as I can. The problem I've got is I don't remember exactly what Mr. Sims said other than reading the transcript as

far as his cross-examination.

The Lexus deception I think was obvious from the very beginning. She admitted that the W-2 form was wrong and she was in the middle of that and I don't think there's really any question from even the direct testimony about that.

Now, whether or not Mr. Sims cross-examined her effectively on that or not I simply just -- I just don't recall. The paperwork that you've given me, Applicant's 55, also unfortunately indicates that Mr. Aleksey made phone calls to the same dealership, so saying that he was her brother.

So you have to weigh -- and I'm not sure exactly what weighing Mr. Sims took into consideration, but you certainly have to weigh how much help it's giving you versus how much damage it's causing.

And I think just from reading the direct transcript I think it's obvious to me, and I think it's obvious to the jury that she was in on the deception. There's no possible way that you could pull that off without being in the middle of it.

Q. Right.

A. But I don't know right off the top of my head if

I could go through Mr. Sims' testimony whether or not that was an effective cross-examination, I don't know.

Q. All right. But you would agree that you would rather have a jury think that if they're going to know your client did something wrong you would rather have them think that he didn't victimize this 19-year-old girl, but actually did it in concert with her?

A. Sure.

Q. Okay.

A. I don't particularly remember any of these people coming off as very good victims, to be honest with you. And our notes -- I'm looking back on my trial notes and most of them indicate to me that none of them particularly hurt us.

The only people that -- the only event that hurt us was Mr. Aleksey shooting at the car, otherwise everything was nonviolent which is what we were trying to show to begin with.

Q. Sure. But don't you think it would also be important to point out any previous lies or misleading statements that Ms. Pivero made to law enforcement in other cases when she's coming down here and testifying that he confessed to her over the

phone that he shot the trooper?
A. That was obviously -- that was a big deal. When she made that statement, that was certainly a big deal. And if we had something that showed that she was lying, certainly.

I don't know if that's answering your question or not, but as far as any misstatements that she made, that depends on if it's consistent with the theory, it depends on if I'm doing more damage than good. And a lot of times I think we all unfortunately do more damage than good by confusing the jury when we've got some real important points to make.

Q. Okay. Also let me direct you to trial transcript page 1,615, line 8.
A. 1,615?
Q. Yeah.
A. Okay.
Q. Through 1,616, line 5. This is basically where she's stating the total number of money that -- total amount of money that she lost due to Mr. Aleksey and that he had drained her investments basically about $50,000.
A. This is Mr. Sims' cross. And Mr. Sims' statement is "I believe you're talking about a

situation where it may have been like $50,000 that was spent?"

And her response is "No, not that much was spent. I don't know how much was spent. I don't --"

Q. Then if you look at the top of 1,616 her answer, line 3 and 4, it says "It probably came to 50,000 with everything."

A. Okay. Yes, that's what the transcript says.

Q. Okay. If you could look at the November 20th, '96 Doylestown Police Department report that you looked at previously.

A. Yes. What page?

Q. Page 4.

A. Okay.

Q. I believe she also indicates there she talks about the investments that he's supposedly drained.

A. I may be reading the wrong page.

Q. Is it November 20th, page 4?

A. Okay. I'm sorry. Which --

Q. I apologize. I do that --

A. I'm sorry, I may be looking at it.

Q. I don't have a copy of it, I'm just going by my notes.

A. All right. We're looking for...?

Q. Talking about investments that she --
A. "Michael was supposed to be getting two checks to cover the cost from lighting work that he had done at the club, but he never received the money. I'm down here, the fifth paragraph.

"She advised she had removed approximately $8,700 from her investment and that the money was to go towards down payment on the unit. She advised that the realtor kept pushing back settlement, the settlement costs became more than she could afford, the realtor's office backed out of the deal."
Q. It's just above that, that same paragraph, she's talking about draining money out of her investments.
A. "In speaking with her further, it was learned that Michael may be responsible for draining her money out of her investments. She advised that to date the money is gone from her account so she has no idea where the money is."
Q. And could you also -- there's a --
A. Then it goes into the thing about buying the house or the unit.
Q. That same paragraph there's an indication of an address in there. Comly Road. She further advised for a short period of time she lived at the Comly

Road address in Philadelphia, which is the address that's on the Westin Suites for Vince Black.

A. If you have it I'll look at it.

Q. I know you can't recall. That was for the Court.

Let me ask you if you've ever seen this, this is Applicant's 56.

A. Okay.

Q. It appears to be a card from November 20th, '96 and then a letter November 26th, '96 written from Sara to Bayan.

A. I -- I'm looking at this and this is Applicant's Number 56. I don't believe I've ever seen this. Now, if it's in the file it may have come to Mr. Sims because this doesn't -- this doesn't look familiar to me at all.

Q. All right. But you would agree that whether or not you've seen it the card on the back, the second one I think was done -- the one after that, it lists a day -- it doesn't have the date on it, but it lists Friday would be the 22nd, you kind of figure out that it's the 20th. It's the same day she's telling Detective Logan that this guy's drained all her investments, he's the bad guy, done all these things, she's writing him a love letter.

A. It might very well be. Where is the -- show me what I'm looking for.
Q. I believe it's right there.
A. Okay. "By the way, I got this one because Friday, November the 22nd, we will have been together for six months. Seems like longer, huh?" So that would have been -- does that match up with the time that she's telling Investigator Logan?
Q. There are other things in there can match up, it's really not that important.
A. Okay.
Q. Basically the same time period.
A. Sure.
Q. And then you've got the 26th which is six days after she made this report saying that he did all these bad things to her, where if you look at that, the front of that Applicant's 55.
A. Okay.
Q. Or is that --
A. Applicant's 55.
Q. I'm sorry, this one right here, 56.
A. Okay.
Q. One of the first few sentences says "I can't help but think this is all my fault," Sara telling Bayan this.

A. "...until I got the phone call from Ellen. Michael, I'm so sorry about this. I feel like somehow this is all my fault."

Q. But it goes on to, you know, say she loves him, she's always going to be there for him and, you know, on and on and on typical love letter.

A. Okay.

Q. Does it appear to you to be something to be written by someone who had been victimized by another person for $50,000?

A. No.

Q. All right. And I understand that you said that you don't recall seeing that. If you had that and Mr. Sims was doing a cross, do you think that would be a good thing to cross-examine her on?

A. If it matches up with the time -- this is November 26th, '96. If that matches up with the time that she's saying she's being victimized then sure.

Q. That's six days after that November 20th report where she basically finally admits that it's not her brother and that he's done all these bad things, I mean....

A. Sure.

Q. All right. And let me move on now to some of the statements that she made regarding trying to

explain why she didn't know the checks she was writing were bad for the Lexus.

Trial transcript page 1,911, lines 6 through 13. And I guess this would be moving on to her penalty phase testimony, she testified in both, basically saying she didn't know when she wrote the checks they were bad, Bayan was supposed to be depositing money into her account.

A. I think that's right, yes.

Q. Now, I'm sorry, I think I took away some of the documents. Applicant's 55, the November 15th report of Detective Logan, and this would be page 1, paragraph three, where she said she was hoping to receive checks from her friend to cover the Lexus checks, but did not know if she would be getting this check.

A. 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, did not know at this point if she would be getting the check.

Q. Okay.

A. Is that what you're asking me?

Q. Yeah. Then could you move forward to the November 20th report again, page 4.

A. (The witness complies.)

Q. Where she said she was expecting two checks from Michael for lighting work.

A. Right, that's what -- yes, I had read that a few minutes ago.

Q. Okay.

A. He was supposed to receive money for lighting work for a club, but didn't get the money and, therefore, didn't give it to her.

Q. Okay. I've just got a couple other things I want to cover regarding this witness and we've pretty much gone over them, I just want to touch on them again. As far as false statements that she made about her income in order to get this loan.

A. Yes. Yes.

Q. Which you would agree would be pretty important.

A. Yes.

Q. If she's coming down here saying he called, he said I killed a state trooper, anything you could do to attack her credibility as far as honesty would be important.

A. Yes.

Q. Now, she -- trial transcript 1,909, line 21 right at the bottom, 21 to 23.

A. Yes.

Q. She made $15,000 a year cutting hair.

A. Right.
Q. Okay. And you've already read from the credit application that she said she made $90,000 a year, 7,500 a month.
A. Yeah. She said 7,500 a month in one spot and the W-2 form indicated 68,800 or something like that, I can't remember the exact number, close to 69,000.
Q. $7,500 a month would work out to be about 90?
A. Sure. Don't ask me to do math up here, I can't do that.
Q. Right. Especially this early.
A. I can't do it late, either.

THE COURT: If you can do math you would be a doctor.

THE WITNESS: Exactly, yes. Wishing I had made that decision now.

Q. All right. I want to also turn your attention to trial transcript 1,910, lines 1 through 9.
A. Yes.
Q. Where she said the W-2 was faxed to the dealership.
A. Yes.
Q. She says -- Solicitor Bailey's asking her I guess starting line 3 "The W-2 form was faxed to the Lexus dealership. What does it indicate your income

as being it?"

"Says 78,000."

"How did that come about?"

"I don't know. It was faxed to the dealership. I wasn't there, I didn't hand it to them."

A. That's right.

Q. All right. Well, if you can flip to that 11/20/96 report, page 3, bottom of the fourth paragraph.

A. (The witness complies.)

Q. It's where Detective Dean Logan confronts her with the W-2 where she says "That's my handwriting. I must have written that."

A. I'm sorry, what page is that?

Q. November 20th, '96, page 3, bottom of the fourth paragraph.

A. Okay. Page 3 what paragraph?

Q. Bottom of the fourth paragraph.

A. Okay. "I showed her 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." Is that the right language?

Q. I think also above that.

A. Okay.
Q. "She advised..."
A. "She advised that the Lexus was for Michael. However, again was in her name. Initially Sara advised me that she did not fill out any of the credit application nor was she aware of how much income was on the W-2 form supplied to Thompson Lexus."
Q. And then two sentences after that.
A. "She advised that she must have filled out the information because it was her handwriting and her signature."
Q. All right. Do you have any recollection of this report, all those reports you've been reading from was provided to you in discovery?
A. Right, yes.
Q. One we know that Mr. Sims didn't use that to impeach her when she said she didn't know anything about the W-2 that it was faxed to the dealership, but do you recall Mr. Bailey informing the Court or alerting the Court that this was perjured testimony?
A. No, I don't recall that. I would have to read through the entire transcript, but I don't recall that.
Q. Because in order for you to have gotten this in

discovery it had to come through Mr. Bailey's office. I mean, you didn't get anything directly from SLED or anything like that, did you?

A. Wow, I don't know. I wouldn't think so, but I don't know.

Q. Now, I've got a couple questions that are off this topic, this would be right about the end of my direct examination and I apologize, I've reviewed the transcript from the last hearing, but I just cannot recall whether I asked these two questions. They regard a couple of types of experts that could have been hired and I'm just asking what went into the decision not to.

Number one, did you consider a false confession expert? And I think we might have touched on this.

A. We did touch on it.

Q. You had a CV.

A. I received his CV and reviewed it. We put in instead a neuropsychologist -- neuropsychiatrist I believe from Charleston that indicated there was post concussion syndrome which would have affected his confession.

We opted for a physician instead of the false confession expert. We also -- that -- and

I believe his statement was in his testimony that that could have lasted for -- the symptoms from that could have lasted for a number of months, for a few months.

And so I thought that was from a medical standpoint something that the jury would like a little bit better than a confession expert.

Q. Okay.

A. That's -- I can tell you we thought about it from that standpoint. That was the best I can do right now, but I'm sure that -- I don't know exactly everything else went through.

Q. I think we did discuss that and I'm remembering that now. One other expert that we may have touched on this, prison adaptability expert.

A. Right.

Q. Considering the fact that there was an allegation of an escape attempt which I think you used the term was bogus at the last hearing, that it was just --

A. God, I hope I didn't use that word.

Q. But it wasn't an escape attempt.

A. Not legitimate, no, at least from our investigation. I think we sent an investigator over to the Orangeburg jail to take a look at the window

and the window that Mr. Aleksey supposedly broke out was very narrow, it was not possible for him to get out of it.

But I think the director of the detention center indicated that they always charge somebody with escape if they break anything that goes outside or goes out of the cell itself.

Q. Okay. Well, given that fact that there was that allegation.

A. Yes.

Q. And the jury had to choose between life in prison without parole --

A. Right.

Q. -- or death sentence --

A. Yes.

Q. -- and that other than that pretty much a lack of any bad behavioral problems he adapted pretty well pretrial for eight months to confinement, why didn't you choose to call a prison adaptability expert?

A. I've got to disagree with you he acted very well during the eight months we were waiting on trial. I think breaking the window out is not a real smart move when you're trying to show that you could adapt in prison.

He tore off the chair, the metal --

which, in fact, we went and took a look at it, it was actually a steel chair that was attached, bolted to a table in his cell, he tore that off. I don't know exactly how he did that to be honest with you.

Q. Yeah.

A. The difficult part about it is from the -- and certainly looking back on it it appears to have been the wrong theory because it didn't work, but the theory that we had was Mrs. Aleksey was the best thing that Mr. Aleksey had going for him.

We were trying to establish some credibility with the jury and trying to get them obviously to give him life in prison instead of death.

Q. Uh-huh (affirmative response).

A. And I know personally I was very afraid of either watering down the good testimony with bad testimony or losing that small bit of credibility I thought we might have developed with the jury.

I felt Mrs. Aleksey did a very nice job, I thought she came across very well and I knew she would. But the prison adaptability, I think the escape hurt us, I think the chair hurt us, and I think if we're going to the jury asking them for something, I think we've got to preserve a little bit

of credibility, and I think that would have been a hard sell.

Q. But have you ever come across Jim Aiken?

A. Yeah, I think I've actually used Jim Aiken before. I know the name. The last death penalty case I had in Orangeburg I used a prison adaptability expert and I honestly cannot remember his name, it might have been Jim Aiken.

Q. But do you think it could have possibly been more effective than simply raising the issue on cross-examination to have someone who has been the warden of, you know, prisons before and run death rows and things like that to say that this was not an escape attempt, there's no way he could have gotten out, or I mean do you think it was just obvious from looking at the window?

A. I don't think that's the issue. The issue of whether or not he escaped or not or tried to escape is probably not my main concern. The fact that he is in jail in a detention center, he's tearing up the inside of the cell and he's breaking out the outside window, and I've got to put a witness up on the stand that says actually he will do well in jail, that's a concern I have.

Now, you know, maybe I look at it now

and say, sure, maybe I should have done that.
Q. Yeah.
A. I should have done something different, it didn't work. So that's -- it's obviously at this point I can look back and say, yeah, we might should have tried that.

But my concern at the time was simply that, I was trying to preserve a little bit of credibility with the jury and putting what I thought was the best testimony that we had up there.
Q. Okay.

MR. TARR: Your Honor, that's all the new questions I have. There are about three exhibits that I'd like to introduce that I neglected to do when I was doing the Gloryvee Perez. Mr. Zelenka has seen these.

THE COURT: Okay. Any objection?

MR. ZELENKA: No objection.

THE COURT: Very well. If you'll just identify them and put them in the record.

MR. TARR: Okay. And actually I think I need to -- I've not asked him about these so I would just ask him one question for each one.

THE COURT: Absolutely. Come on back.

MR. TARR: And then we'll be....

THE COURT: Certainly. Certainly.

Q. Let me hand you a copy of four different checks written on Gloryvee Blackwell's MCAS account, the account that was closed at the time that she was writing the checks on the closed account.

A. Right.

Q. These are four new checks, not new checks, but checks we did not have in our possession at the last hearing that were since acquired.

I also want to hand you this, this is a money order made out to Gloryvee Blackwell for $500 with a $30.99 processing fee.

A. Right.

Q. And I believe there's already a $200 money order in evidence that looks pretty much identical to that.

A. These look familiar from the last hearing that we had.

Q. Okay. But basically they were in the Mustang somewhere and I was wondering if you could look at the two checks made out to Com Data that I showed you --

A. Okay.

Q. -- right there. Tell me what the dates on those are.

A. Wow. No, I cannot tell you the date on this

one. It says '97, it says the 20th.
Q. Okay. And this --
A. Before that I can't tell. The other one is 12/21/97.
Q. This money order for $500?
A. Yes.
Q. The one that you said that said the 20th, is that for 500?
A. Right, that was for $530.99.
Q. That would seem to match up as a check she may have written for the money order, her $500 money order with a $30.99 processing fee?
A. Yes.
Q. Okay. And then the next one you said is December 21st?
A. Looks like December the 21st, 1997.
Q. And that's for 217.99?
A. 217.99.
Q. What is the signature on both of those?
A. Gloryvee Blackwell on both of them.
Q. Hand you these other two checks back. If you could tell me what the dates are on those.
A. 238, December 29th, '97 for $53.55. The other one is December the 26th, '97 for $438.33.
Q. That one's to All State?

A. That's right.
Q. And that would be about the same time that she was trying to purchase the car at the Burlington Lincoln Mercury, do you recall that?
A. I don't recall that, but if that's the date that's --
Q. Okay. What are the signatures on those two?
A. Gloryvee Perez.
Q. All right. So the other two are Blackwell?
A. Yes.
Q. Those were the 20th, 21st?
A. Yes.
Q. We've got Perez all of a sudden the 26th and 29th.
A. Right.
Q. And she was fired from the doctor's office on the 24th for stealing the checks, and that's when they started moving around the hotels, and she was changing the name on the hotel receipts at the same time. Do you recall that from the last time?
A. I don't recall that. It might very well be.
Q. Okay.

MR. TARR: Your Honor, at this time we would offer the four copies of the checks as one exhibit, it would be Applicant's 76. Then I

want to offer the $500 money order as Applicant's -- 75 for the checks, 76 for the money order.

THE COURT: Okay.

(Entered into evidence was Applicant's Exhibit 75, checks.)

(Entered into evidence was Applicant's Exhibit 76, money order.)

MR. TARR: Then I've just got one other thing.

Q. One of the many, many photographs that you probably or may have reviewed in this case.

A. Right.

Q. Appears to be the driver's seat. And you recall from Mr. Bailey's testimony or direct examination of Gloryvee Perez when he was eliciting testimony regarding the positioning of personal items throughout the Mustang.

A. Okay.

Q. And to say basically all her stuff was on one side, all her [sic] stuff was on the other side. Can you tell, I know it's folded there, but there's a brochure on that seat.

A. Yes.

Q. Can you see what that says on there?

A. Great trucks, great service, great something, great V.
Q. Great V could be value?
A. Could be value.
Q. All right. Have you ever seen that brochure, have you ever provided that in discovery?
A. I do not remember seeing it. If we had something in the file then obviously I did, but I don't recall that right now --
Q. Okay.
A. -- whether we saw that or not.

MR. TARR: Your Honor, at this time we'd introduce this as Applicant's 77, this photograph.

THE COURT: Very well. There's no objection; is that right?

MR. ZELENKA: No objection.

THE COURT: All right. Very well.

(Entered into evidence was Applicant's Exhibit 77, photograph.)

MR. TARR: Your Honor, for the record at a later time this week we hope to provide some evidence to the Court that that brochure, that's a slogan for Penske which would coincide with the other photograph of the Penske receipt which

we have a photograph of, but don't have a document for.

THE COURT: All right.

MR. TARR: Both of which were on the driver's side of the car and the receipt was in Ms. Perez' name.

Beg the Court's indulgence one moment, make sure I've got everything.

THE COURT: Sure. Sure.

(Pause in proceedings.)

Q. Just one other thing briefly. In your I guess it's the billing sheet.

A. Yes.

Q. Series of sheets describing basically what you did on the case.

A. Right.

Q. On page 4 at the bottom on March 18th it says you reviewed a video of Gloria Blackwell. I guess that's the eight year old? I'm just wondering if you recall that, what that video was?

A. No, I don't recall that off the top of my head what that was. That has a contemporaneous note, but off the top of my head I can't remember what that is.

Q. All right.

MR. TARR: Your Honor, for the record I

just want to identify these last three exhibits, where we got them from. The photograph is from the SLED photos that we got, the money order was from the SLED file that we subpoenaed, and the four checks were from a subpoena we served on MCAS Bank.

THE COURT: Okay.

MR. TARR: That's all I have, Your Honor.

THE COURT: Very well. Let's take a short break until we get into cross-examination. Take about a five-minute break.

(Recess, from 10:31 a.m. to 10:50 a.m.)

THE COURT: Cross-examination.

MR. ZELENKA: I think in the break Mr. Tarr decided there was something else he needed to introduce.

MR. TARR: Your Honor, I thought we had already introduced it as the last thing and we hadn't. It's very similar to --

THE COURT: It looks like the one you just --

MR. TARR: It's very similar to Applicant's 76, it's a photocopy of another money order, this one's for $200 and the four checks introduced, Applicant's 75, one of those checks

corresponds exactly with this one so there's two money orders, two checks that correspond. We would just like to introduce this as Applicant's 78.

MR. ZELENKA: No objection.

THE COURT: No objection. Very well.

MR. ZELENKA: The document comes from the SLED files.

THE COURT: Right. As the others did. Okay.

(Entered into evidence was Applicant's Exhibit 78, money order.)

THE COURT: Yes, sir. Listening to you, Mr. Zelenka.

CROSS-EXAMINATION

BY MR. ZELENKA:

Q. Mr. Stone, one of the initial issues raised in this case was an inquiry as to whether there was an actual conflict of interest which existed at the time of your representation of Mr. Aleksey based upon two factors, one factor your role as an assistant solicitor, the second factor the civil practice which you had at that time in South Carolina.

A. Yes, sir.

Q. At the time of your appointment, what kind of

communications did you have with Mr. Aleksey, if you can recall, concerning the fact that you were an assistant solicitor in the Fourteenth Judicial Circuit?

A. Well, I discussed that -- I discussed that with him and I think my notes reflected in fact that I did that. I had -- my specific recollection is that I went to the trouble of explaining to him what a solicitor was.

I know in most states they're referred to as state's attorneys, district attorneys, and I remember specifically explaining to him what the solicitor was as well as explaining the Insurance Reserve Fund stuff.

There is -- and of course he was with us in the hearings when I explained that to the Court and that transcript is probably more accurate than my memory.

So my exact language to the judge at that time is probably more accurate than what I'm telling you right now, but that's what I recall.

Q. Okay. Referring back to 1997 and 1998 contemporaneous at the time of the trial.

A. Yes.

Q. What was your work in the Fourteenth Judicial

Circuit?
A. Prosecuting cases for Solicitor Murdaugh in Beaufort County. I did not, and have to this day not tried any cases or worked on any cases outside of Beaufort County.
Q. Okay. And at that time were you ever specially appointed to be a special prosecutor by the attorney general --
A. No.
Q. -- in any other cases --
A. No.
Q. -- which existed at that time?
A. I had done that in the past, but had not -- no, was not at that time.
Q. Before you began basically a -- well, let me ask you this: At the time you were a part-time prosecutor in the Fourteenth Judicial Circuit, have you defended any other cases in South Carolina?
A. Yes. I was appointed on a death penalty case in Orangeburg after this one. The -- I can't remember exactly the time frame, it was not much longer, I think it was about a year.
Q. Okay. How about other criminal defense representation, has it been limited to those two cases or other cases?

A. I had a DUI case that I was doing with another attorney friend of mine up in Greenville in Pickens County, there was another DUI case that was still pending, believe it or not, and is to this day still pending from Columbia that I was working on, then this death penalty case, the second death penalty case with Patty Syphert was my client in that case. Right now I believe that would be it.

Q. Okay. At the time of your representation of Mr. Aleksey in 1997, were you aware of South Carolina Bar ethics advisory opinions which allowed a part-time solicitor to represent defendants in cases outside of that particular circuit's jurisdiction?

A. I was probably more in tune with because I had never done any part-time work before with the solicitor's office. When I came down in July of '97 and approached Solicitor Murdaugh about that, that was the first time that I had been in that position.

My experience was probably more with the court rules that I think, and I still think, require me actually to put myself on conflict lists outside of the places in which I have a conflict. And I may be reading that rule wrong, but that is at least my impression of it and when I studied that particular issue that's the way I understood it.

Q. Okay. But as far as your recollection is, you did not review any of the ethics advisory opinions which may have addressed that?
A. I honestly don't recall.
Q. Okay. With respect to your role as a part-time prosecutor, did you have any feeling or opinion at that time in 1997 that you could not adequately represent Mr. Aleksey based upon the fact that you were a part-time prosecutor in the Fourteenth Judicial Circuit?
A. No.
Q. Was there anything which occurred during your representation that caused you to think or to hold back on any cross-examination, any development of evidence based upon that role as a part-time prosecutor in the Fourteenth Judicial Circuit?
A. No. And if I may, I have since, since I went to law school I've enjoyed criminal law and I enjoy practicing criminal law. That's what's fun for me.

The particular people involved is secondary to me doing what I think would be the best job I can do and I just -- that's the way I look at it.

Q. Okay. Let me ask you to refer to -- and I'll bring this up to your attention -- Rule 407 of the

South Carolina Appellate Practice Rules, Rule Number 1.7 which addresses conflict of interest, a general rule. And let me ask you basically to look at that rule, particularly subsection (b) (1) where it states the lawyer --

A. You've handed me 1.7?

Q. Yes. "The lawyer reasonably believes that the representation will not be adversely affected."

A. Yes.

Q. Looking back somewhat in hindsight, do you feel that your assessment at the time of the particular representation is any different then or now based upon your handling based upon part-time solicitor?

A. No, it's not a bit different.

Q. With respect to your role in being assigned cases by the Insurance Reserve Fund, on direct examination you testified that in your role on occasion you represented Orangeburg County.

A. Yes.

Q. The sheriff of Orangeburg County.

A. Yes.

Q. South Carolina troopers.

A. Yes.

Q. And the Department of Public safety.

A. I have.

Q. Among other state entities. Isn't that correct?
A. Among a number of state entities, yes.
Q. At the time of your representation in 1997 through 1998, did that possibly ongoing representation of some of those entities, did that impact at all on your ability to defend Mr. Aleksey in this matter?
A. No.
Q. How were you sure --
A. When I say that no, from the standpoint of any ethical concerns I would have had or conflicts. Do I have a certain amount of knowledge concerning police procedures and things like that because of my representation, probably, which I think would be an advantage to Mr. Aleksey and from the standpoint of being a prosecutor part-time, same thing.
Q. Okay. In your discussions with Mr. Aleksey did you go over the fact that you had this dual representation with some of those state or county entities at the time of your trial?
A. Yes. And, again, I know that there was something in the transcript about me explaining to the judge what -- everything that I told Mr. Aleksey, and that would probably be more accurate than my independent memory now but, yes, I did.

Q. Okay. At any time during your representation after that initial consultation did Mr. Aleksey seek to have you remove yourself --

A. No.

Q. -- based upon that?

A. No.

Q. Did he consistently consent to that, to your continued --

A. Yes.

Q. -- representation?

A. Yes.

Q. A couple of other questions in this area. At the time of this particular trial, what was your working address, your business address where matters, confidential matters and the like would be sent?

A. Everything would have been sent to my office. At that time I was on Craven Street, I believe. I've had so many offices in Beaufort it's hard for me to remember exactly what address, but I think that would have been the Craven Street address in Beaufort. All of my material would come to my law office.

Q. Okay. So none of that information --

A. Is that --

Q. -- would go to the Fourteenth Circuit solicitor's office?

A. Absolutely not, no.
Q. So you kept those offices totally separate throughout this representation --
A. Yes.
Q. -- is that correct?
A. Yes.
Q. Did the fact that you had a relationship with Orangeburg County in the jail impact upon the manner that you looked at, for example, the escape charge, the allegations made against your client while he was incarcerated in Orangeburg?
A. No.
Q. Why is that?
A. It didn't have anything to do with it. The only thing that was relevant to me about his escape attempt was to determine if it was a real escape attempt.

The director at that time I believe was -- might have been Willie Bamberg, I'm not sure if he was the director at that time, and it seems that either I went to him or Mr. Sims went to him to find out exactly why they charged him with escape after looking at the window, because it was not a window that he could have gotten out of.

And if he would have gotten out he

wouldn't have gone anywhere, I think there was fence around that. That was my issue with the detention center.

Q. All right. Were there issues of allegations of brutality raised by your client with you during this representation which may have gone to SLED, troopers, Orangeburg County?

A. From the standpoint of the case itself?

Q. Yes.

A. Yes. He had told me before that the police officers, and he told me at least at one point that the -- that the police officers coerced his confession. That was part -- that was an obvious defense we were going to have to put forward anyway.

The problem with that was it wasn't backed up by the tape to WIS television. But he certainly had made comments about being coerced by these police officers, specifically the two SLED agents.

Q. Okay. Did the fact that you had a role with the Insurance Reserve Fund in representation of the various state agencies, did that cause you or affect you in any way as to your approach to those claims by your client --

A. No.

Q. -- towards potential officers within agencies that you were representing?
A. No.
Q. Why is that?
A. The confession itself, the obvious challenge point on the confession was that you had a two-hour and seven-minute gap between the -- his first statement and his second statement. I say he, I'm talking about Mr. Aleksey.

The obvious cross-examination on that is what happened during those two hours and seven minutes. I remember using a board in the courtroom during the cross-examination of the officers, kind of like outlining the time frame he was pleasant, he was happy, not happy, but at least he was comfortable, there was a two-hour gap, the tape goes off, he starts back up, he's crying.

All of that the officers I cross-examined them on because I thought that was an important foundation to lay for the jury that I could argue later.

The form that they gave Mr. Aleksey about his confession that he could stop answering questions at any time, I in fact even used the solicitor's table and put those up on the board or up

on the monitors and asked them specifically what does it mean to you when somebody says they don't want to talk anymore, because Mr. Aleksey's statement at the very end of his first statement was that's all I've got to say.

I felt like that was awfully important and I thought that would be -- I thought it actually would have been a bigger appellate issue than it turned out to be from my reading of this appeal. But be that as it may, that was an obvious cross-examination, it was an obvious point that I needed to go to and Mears and Darnell being the two SLED agents.

In fact, we did a Freedom of Information Act request and I remember doing that as well, getting every case that those two agents had handled in the past to find out how many of those cases that they worked on they got confessions from and I remember cross-examining on that as well.

But there was nothing in that that would have made me feel uneasy about cross-examining them. I simply -- that's simply not something that I take into account because I think that's what we're supposed to do as lawyers. And that's how I look at it.

Q. And, again, isn't it true it's your opinion that the representation of the Department of Corrections, Orangeburg County, Orangeburg jail, SLED --

A. Yes.

Q. -- and other entities did not cause you to hold back in your investigation concerning the taking of this statement; isn't that correct?

A. No, it did not.

Q. One of the allegations, the initial allegation that was raised in this action concerned posttrial your failure to maintain custody and control over your --

A. That's right.

Q. -- particular file; isn't that correct?

A. Yes. Yes.

Q. And at the time that Mr. Aleksey made a request of the file to you, what was your opinion as to who should maintain custody of that file initially?

A. Initially and even to this point I feel the same way. I think what should have happened is, and what I believe I sent Mr. Aleksey a letter on, was that I need to hold the file until your lawyer's appointed. The minute that you get appellate counsel I'll take the file over to them.

Now, I was not familiar with the code

section that said that I couldn't -- that I had to be the keeper of that file or I would have never given it up no matter what I thought. But I did, I messed that up I guess.

But from the standpoint I think it's really dangerous to send a -- send the file to prison, I don't know what the attorney/client privilege status is once it gets to a public institution like that. And that was a concern to me.

I was also concerned that I did not know how much of the stuff he could keep and how much of the stuff the guards would have seized. That was a concern to me as well.

So my -- my feeling was let me hold on to the file, I will get the file to your appellate lawyer when it should not take too long to get somebody assigned.

Q. And the code section which is stated that you didn't -- that you weren't aware of at that time.

A. Right.

Q. That's part of the Post-conviction Relieve Act?

A. Apparently so.

Q. I refer you to 17-27-130.

A. Yes.

Q. That's the particular section you were citing

to?

A. Yes. The bottom paragraph in the case, a defendant who has been convicted of a capital offense and sentenced to death the defendant's prior trial counsel or appellate counsel should make available...there's something is this -- the -- there's a -- I apologize, I may have gotten the wrong one. I'm talking about the code section that said I'm supposed to keep the original file.

Q. Do you know of any other code section other than that?

A. Does that say that I'm -- I think it's -- I'm sorry, is it in this line?

Q. Yes.

A. "The capital defendant's collateral counsel may inspect and photocopy the files, but the defendant's prior trial or appellate counsel shall maintain custody of the respective files except as to the material which is admitted into evidence in any trial proceeding."

I guess that's what I'm talking about. I had just -- I apologize, there was a -- when I saw the petition for PCR there was a reference to a code section that stated, at least my reading of it I was supposed to maintain the original copy -- or, excuse

me, the original file. I don't know if that's it or not.

Q. Okay. Now, with respect to further requests by your client.

A. Yes.

Q. What caused you to relieve custody of that particular file?

A. When he grieved me, when he sent a grievance in to the grievance board.

Q. And do you recall when that was done in relation to this case?

A. I don't remember the exact date. I'm sure I have the --

Q. Let me show you a document dated February 19th, 1999.

A. Okay.

Q. See if that may refresh your recollection.

A. February the 19th, '99 is the letter I sent to Mr. Richardson explaining -- yes, this is my explanation to Henry Richardson's office of disciplinary council concerning the file.

And at that point -- and it was exactly that point that I determined that once he filed the grievance that I was going to turn over the file.

Q. Okay. And at that particular time that was before this post-conviction relief action was ongoing?

A. That's right.

Q. And it was file --

A. That would have been February the 19th, 1999, yes, sir.

Q. And the appeal was still pending at that particular time also; isn't that correct?

A. I believe it was. And in all fairness to Dr. Adams who is a teacher at the law school and is referenced in that letter as somebody I spoke to concerning this, he is a -- he teaches ethics at the law school. I spoke to him specifically about it.

However, the code section is a criminal code section. I did not bring that up to him, I would not expect him to know that code section. And in all fairness to him I don't want the record to reflect that I relied on Dr. Adams to tell me to give up the file.

That's -- I met with him, asked his opinion, he told me to give up the file or at least that was his opinion, but I did not discuss that code section and I don't expect that he would have known about that code section.

Q. Okay. And what was the manner that you disclosed the file to Mr. Aleksey at that time?

A. I sent it to him. I did not retain a copy of the entire file because his letter indicated that I could keep a copy of the file if it didn't delay the process of sending him the file. And there is no -- or at least was no at that time Kinko's or anything like that as far as a fast copying place in Beaufort, or at least there wasn't one that I was particularly satisfied with, nor did I want to hand a file over like that to strangers to make copies.

So I felt the best thing for me to do is to retain copies of my billing records which is the stuff -- the contemporaneous notes that I have out of my Amicus program and retain some other stuff that I thought might be good as far as keeping my memory as to what the case involved and then turning the file itself, everything over to Mr. Aleksey which is what I did.

Q. Okay. Did you have discussions with your co-counsel, Thomas Sims, about this matter contemporaneous to that time?

A. I am sure I did. I am sure I did. I can't tell you exactly when I would have had that conversation, but I'm sure I did.

Q. Okay. Was it your understanding he was going to do the same thing, turn over his files?
A. I think so. I'll be honest with you. In a grievance proceeding I am not a gutsy human being, I'm not interested in being brave to the grievance board. When I received the grievance my first thought was make a determination and get rid of this file which is exactly what I did.
Q. Okay. Going back to the conflict issue, did you ever ask Mr. Sims, your co-counsel at that time, to independently either within your presence or out of your presence discuss any right your client may have to independent counsel, the possibility of asking for that right?
A. I don't remember doing that, no.
Q. Okay. And do you have any knowledge if Mr. Sims did that outside of your presence?
A. I don't know.
Q. Was there any indication to you after the information again was disclosed about your representation as a part-time prosecutor and with the Department of Public Safety, basically the South Carolina Highway Patrol, was there ever any indication that your client did not want you to handle this matter based upon the fact that a highway

patrolman was the victim in this case?
A. No, I thought -- no. I thought he understood and I also thought that he -- that he liked the idea that I was on the case.
Q. Okay. With respect to the Jackson v. Denno hearing which you briefly talked about already, was there ever any indication to you as -- if you can recall, that your client was ever beaten based upon the information your client ever gave you, physically beaten?
A. No, I don't believe so. I know he used coerced, I know he told me coerced, but, no. And I think what's probably as important about anything about this more than anything else is the fact that the WIS tape, the interview he did with the news media prior to my appointment, he did not mention that either. He didn't mention being beaten.
Q. But how did he describe the coercion that he was suffering under at that particular time, if you recall?
A. I don't recall ever getting an actual -- a vivid description of the coercion. If I could have just a moment, I've got a note on this.
(Pause in proceedings.)
A. Well, I do have a note actually from March the

23rd. One of the letters from Bayan stated, and my reading of it, nothing was particularly new about it except the allegations of beating the confession out of him.

And then my notes from that was the problem I had was he did not tell WIS-TV about this. And I believe, and I would have to review the tape, but I believe they specifically asked him why would you confess to shooting a trooper.

And I think his response to them was he was just under a lot of pressure, but it was not anything that -- I do not recall him ever saying to anyone else when he had the opportunity that they beat the confession out of him. But there is a note from one of his letters on that.

Q. Okay. And upon receipt of that letter --

A. Yes.

Q. -- at some time did you inquire of Mr. Aleksey as to why this might suggest some physical contact when previously he had said no?

A. We spoke a number of times, from what I can remember, concerning the confession and what caused him to do it. I felt, though -- I can't remember specifically what we discussed other than he told me he was coerced, he told me he was pressured, there

weren't any physical signs from what I recall and he had not given me the information, or he had not given -- not made that statement to WIS again and that was -- that was tough to get around, I believe.

Q. Okay. At the Jackson v. Denno hearing you could have placed Mr. Aleksey on the witness stand to have him explain that comment --

A. Yes.

Q. -- that he gave to you in that letter; isn't that correct?

A. Yes. And we discussed doing that.

Q. And why was that not done?

A. We had the hearing I believe in Columbia and I spoke with Mr. Aleksey about it along with Thomas. You know, I said you could certainly testify and say whatever it is you need to say.

I think, in fact, at that time I said it was highly unlikely the judge would throw out the confession one way or the other at this stage and it was the early Jackson/Denno hearing.

I remember discussing it with him and I remember deciding not to do it, but I don't remember what was the final statement about why we didn't do it.

I know that we kept out one of the

statements which was one from the highway patrol trooper at the hospital and that he was clearly in custody at the time, the trooper did not read him any Miranda, none of the Miranda rights had been read to him at the time of his statement and at that time I think Mr. Aleksey made the statement that there was a Russian hit out for him or some Russian mob member or something like that after him or he felt the trooper was involved in that.

We kept that statement out which I think -- I don't know if there was anything else specifically we discussed from that standpoint.

Q. Okay. And again and I'll be asking this question frequently as we go along.

A. Yes.

Q. Did your role as a part-time prosecutor in the Fourteenth Circuit or your Insurance Reserve Fund work impact particularly on the presentation challenges you made in the Jackson v. Denno hearing?

A. No.

Q. With respect to the change of venue, your notes --

A. Yes.

Q. -- as reflected in Exhibit 66 which is your contemporaneous --

A. Yes, I remember it.

Q. -- law office notes, indicate initially the defense team was of the opinion they were going to look at a change of venue issue?

A. Actually Mr. Sims was. I think I talked him out of it, I don't know. I know the first time it came up Mr. Sims and I were talking I believe on the telephone, Mr. Sims mentioned that he thought we needed to change venue. And then we discussed the issue in depth after that and decided that primarily we couldn't think of another county we would rather be in.

Q. Okay. And why is that? Why would you prefer to be in Orangeburg County than other counties in the state?

A. I think the Orangeburg County jury questions law enforcement more than a lot of other juries. Maybe from that perspective I had some experience with Orangeburg County jurors, I had represented police officers in Orangeburg County and the reputation was certainly one that they were not a pro law enforcement jury panel.

The -- and I do know that from the standpoint of working Insurance Reserve Fund cases we have in the past settled cases because we've had that

jury panel, that we didn't want to try a case in front of the Orangeburg County jury panel because if we're representing law enforcement there's a lot of questions that we have seen, or at least that's the representation, our understanding from it.

So from our standpoint trying a death penalty case of any nature I would think that the best jury to have would be one that questioned law enforcement because we needed them to question law enforcement in this case.

Q. Okay. All right. Did you discuss that with Mr. Aleksey as to the ability that you might have to change venue out of Orangeburg County?

A. I don't recall a specific time in which we discussed it. And I know that Mr. Sims had talked to them as well, and I don't recall which one of us or if either one of us had actually sat down and said, look, we can change venue or at least we can make a motion, here's what we're thinking. I don't recall if we did that or not to be honest with you.

Q. Okay. The jury that you ended up with, did you have a sense that that was going to be a fair jury?

A. I thought it was a good jury. I was obviously wrong, but or at least from our standpoint. The only juror that got on there that I didn't particularly

like I think I'd even made a note about and Mr. Sims changed my mind on that, but the -- as a general rule I thought we had a pretty decent jury panel and a pretty decent jury pool, pick, but....

Q. There have been some questions raised on direct and in the application about some of the inquiry that either you or Mr. Sims had of the jurors --

A. Yes.

Q. -- during the voir dire process.

A. Right.

Q. One of those goes to questions made and I believe at your suggestion based upon your direct about whether they could be fair to a foreign national.

A. Yes.

Q. Do you recall that?

A. Yes.

Q. Why did you choose to do that in this particular case?

A. First of all, I choose to do it in every -- well, I've tried three death penalty cases, I'm asked to do it either put it in the jury questionnaire or I've asked it specifically, it's from the federal questionnaire. I -- having experience in federal court that question gives you a very good idea of the

mentality of the juror.

Now, I don't know, it's uncovering a prejudice without asking the question are you prejudiced. And I think that's important to know in any case. Certainly Mr. Aleksey -- I -- he wasn't a foreign national, but he certainly was somebody that looked like he potentially was not from this country, he certainly had a name that elicited that and we -- I think it's information that we just needed to know.

So that -- that's one of those -- that is a question that I consistently put in these cases. Obviously the federal court agrees with me to some certain extent, it's their question. But I think it really gives us an idea about hidden prejudice without asking the question. And I don't know how you question the jury individually and ask them, by the way, are you prejudiced against anybody whether that would be African-Americans or someone not from this country and get an honest answer, I don't think you can do that.

Q. Okay. Also during the voir dire process there's a general theme of not asking the jurors about in the defense examination of their feelings on the death penalty; is that correct?

A. Yes.

Q. Was that a decision that you made --

A. Yes.

Q. -- in this matter? Why was that decision made?

A. My first exposure to a death penalty case was in 1986. I believe I was working as a law clerk for Jim Anders in the solicitor's office in Columbia. And sitting in on jury selection in that case it was obvious to me not just being a very naive, not knowing much about the courtroom at that point, not knowing much about the case, it was obvious to me that the defense had presupposed the defendant's guilt because all the questions in voir dire toward the individual jurors were about the death penalty.

I could not, nor can I at this moment think of a way to get around that without running the risk of presupposing the guilt of your client. And it was -- it was at least my thought that we should try everything we could to keep the discussion of the death penalty to a minimum.

I believe at least my gut was telling me that residual doubt itself was the best approach in this case, hopefully casting enough doubt during the guilt phase that the jury would not, if they did convict him, would not give him the death penalty.

And my thought was the less I talk

about the death penalty the better. If I'm trying to suggest to the jury that the penalty is not my concern, it's whether or not you'll treat him fairly in the guilt phase and that was my approach with it.

So that was at least what my thought was and my discussion with Mr. Sims was, that's why I tried to get the judge to rule that the solicitor couldn't ask him any questions about it either. The judge himself was going to ask the questions, so I knew the base would be covered. And that was at least the strategy.

Q. Isn't it true at that time that that strategy was occurring you would have already developed in your investigation preparation for this case your theme that Mr. Aleksey was not the triggerman?

A. That's right. We were not trying this case from the standpoint of, okay, he's guilty, but don't, don't give him the death penalty.

It was the theory from the very beginning and the theory that we tried to get across to the jury was number one women were capable of violence, just because Gloryvee Perez Blackwell was a woman, the trooper did not the give her the respect that he would have had he walked up to the window of a man and that she actually was the one pulling the

trigger and we needed to make sure that that was the -- the message that we were sending to the jury in voir dire. And I think most of my questions reflect that.

Q. Okay. Did you make a conscious decision, one that was evidence or information that a juror was likely to become disqualified --

A. Yes.

Q. -- based on being unalterably opposed to the death penalty a decision not to seek to rehabilitate some of those jurors?

A. I recall trying to rehabilitate a number of jurors that I knew weren't going to make it one way or the other. I don't recall letting any of them go by that I did not try to rehabilitate unless it was exceptionally obvious and it may very well be.

I don't know that I can remember a specific juror that would fall into that category. But it is absolutely possible that one or two of the jurors were so obvious that there was no way that I could rehabilitate them.

And in the same fashion that the solicitor had the same problem I guess it was on the other end of that.

Q. Okay. Let me show you a transcript page --

A. Sure.

Q. -- 449, it's in Volume I, Robert Goodwin.

A. It would have been easier had I taken your volume, wouldn't it? What page?

Q. 449.

A. 449, okay.

Q. Down at the bottom of that page begins your voir dire examination.

A. Yes.

Q. And I ask if that refreshes your recollection on your attempt to clarify or at least rehabilitate in that issue?

A. Yeah. His answer had been from the solicitor, "If you had your choice between life without parole and the death penalty, would you always pick life?"

"I would," was his response.

My question after that was "Mr. Goodwin, am I hearing you right, because I want to make sure. I'm not trying to change your words, I want to make sure I understand, you said you would keep an open mind I know when it came to the guilt phase in order to determine somebody guilty or not guilty, wouldn't you? Would you keep an open mind and listen to everything?"

"Yes."

"After you have found, or if the jury itself had found that this fellow in here is guilty, he is a murderer, could you still keep an open mind, could you still listen to stuff coming either from the solicitor's office as well as the defense?"

"I don't think somebody should take another life."

"Right, sir, but if you are sitting on a jury and you have already determined that and you have come -- gone to the second phase and the second phase, you as the jury, have to sit there and listen to evidence from the solicitor's office and evidence from the defense counsel, some of it would be good, some of it will be bad, could you listen to that information and determine whether or not you should give somebody life in prison or the death penalty, or would you automatically say I'm not listening to anything, I'm never going to give anybody death period?"

And his answer was "I would say I still say life in prison."

And I asked him again "Could you ever give the death penalty?"

"No, I couldn't do that."

"Thank you." So I tried.

Q. But you attempted, but weren't successful; isn't that correct?
A. That's right.
Q. But, in fact, isn't it true that when you thought you might be able to clarify, to some extent truly rehabilitate a juror based upon the information you perceived was occurring, you would do that?
A. Well, my -- my statement to the Court is, "Yeah, I thought I had him there."

And the judge said, "No. No, you didn't." And so I think -- I tried at least in that instance to rehabilitate him despite the fact that he clearly was not going to fall into the category that we needed him to fall into to be qualified.
Q. Okay. Now, keeping that transcript up there just following that particular juror, juror Gigi Hayes testified; is that correct?
A. Yes.
Q. And that venire person suggested in fact that she had some knowledge about law enforcement, isn't that correct, her husband was a military policeman?
A. Yes. I can go back to my juror notes on her, it might be easier.
Q. Okay.
A. I was trying to read the transcript. Gigi

Scofield Hayes, husband military police. I noted that she was a leader, at least when I mean that as somebody that's my response, just my subjective thought that this particular person would be in the jury panel and would take a position one way or the other and try to get the other jurors to follow her and that she knows Trooper Lingard.

Then, in fact, my note on the right of that is to get rid of which means I didn't want her on the jury.

Q. Do you recall if he sat on the jury?

A. She did sit on the jury, I believe.

Q. Okay. And why didn't you utilize that information and strike her from the jury when you had peremptory challenges available to you?

A. Because Mr. Sims told me that he thought she would be good.

Q. What was the basis for that belief, if you can recall?

A. He either knew her or knew someone who knew her. And his information was that she would actually be a good juror to have, to have on the jury. And from the standpoint of another at least what I would consider an advantage is that Mr. Sims is from Orangeburg, had participated in a political race in

Orangeburg, knew a great number of people in Orangeburg and in the Orangeburg area and that would give us an advantage on the jury as well. At least he would know some of these people or know something about it. And I deferred to him on that.

Q. Okay.

A. I'm making an initial impression right off the bat and he has much more experience in this area.

Q. Okay. Did it concern you the fact that this juror knew the victim --

A. Yes.

Q. -- in this case?

A. Yes.

Q. That seems to be a fairly heavy and important issue as to be addressed in this particular setting; isn't that correct?

A. Yes.

Q. Was the information that you got from Mr. Sims that it dealt with opinions on the death penalty, or was it just general feel good he may have had about this juror based upon information he had?

A. He knew -- if my memory serves correctly, I believe that he knew someone whom she either worked for or something like that.

But this was from specific knowledge

that Mr. Sims had, this wasn't Mr. Sims and I sitting down and him saying I don't know her, I don't know anything about her, but I think she would be good. It wasn't -- it was not that type of conversation. It was I know someone who knows her and they've assured me that she would be a good juror.

So I don't know from the standpoint of I can't remember if it was guilt phase or penalty phase that she was more important to us on, but that was the reason. It was a specific knowledge on Mr. Sims' part.

Q. Okay. Yet as you already testified, even though you only used seven of the peremptory challenges.

A. Right.

Q. Even though this person sat who knew the victim in this case, you were still satisfied with that jury at that time?

A. Yes. At that time, yes.

Q. There's been an issue raised concerning the role of SLED Agent Buster Edwards in this case.

A. Yes.

Q. Agent Edwards, as the records reflect, did have according to records some contact with the defendant early on in January 1998 at the hospital; is that correct?

A. Yes. From what -- yes.
Q. It appears that he was released to him, that Mr. Aleksey was released to him from the hospital on that date --
A. Yes.
Q. -- isn't that correct?
A. Yes.
Q. Did Mr. Aleksey ever suggest to you in any of your conversations with him that he had made any statements either exculpatory or inculpatory at any time to Mr. Edwards --
A. No.
Q. -- during any transportation process?
A. No.
Q. Did Mr. Edwards ever appear to you to be a witness of any sort, material or otherwise, in your preparation, investigation of this case?
A. No.
Q. At the time that Mr. Edwards was selected to be the foreperson of what I would call the bailiff or security crew, did that give any concern to you, or did Mr. Aleksey ever suggest to you that he was concerned about that particular role that Mr. Edwards may have?
A. No.

Q. Was Mr. Edwards on the witness list that the State had provided to you?
A. No.
Q. Was Mr. Edwards -- did he testify in the case?
A. No.
Q. Did you have any information developed throughout the trial, or your representation that Mr. Edwards was acting in violation of his oath at any time during that trial proceeding?
A. No.
Q. Did you have any indication that any of the bailiff crew was improperly communicating or expressing any bias or favoritism towards the jurors at any time during that situation that Mr. Edwards would have had to discipline, correct, or supervise?
A. No.
Q. Now, you stated on direct and earlier that one of your themes in the guilt phase of the case was to remove the gun from Mr. Aleksey and place it essentially in the hands of Gloryvee Perez Blackwell; isn't that correct?
A. Yes.
Q. In your opening statement you declared to the jury that, in fact, that they may not like Mr. Aleksey, suggested that he had been arrested

numerous times, sly with fake ID's, other factors that probably did not put your client in his best light.

A. That's right.

Q. In an unbiased viewpoint that may be given to that statement --

A. I'm sorry, I didn't hear you.

Q. In an unbiased viewpoint that may be given to your statement at that particular time; isn't that correct?

A. Right.

Q. What was your goal that you were looking at at that time in your opening statement for the first impression that you were trying to give the jury with your client and why was that part of your defense?

A. The bigger picture. The first thing I was trying to do with the jury is the first thing that I'm assuming every lawyer tries to do which is get credibility with the jury.

If they think I'm lying to them it's not going to matter what I say at the guilt phase or the penalty phase or any other phase. I felt like a good bit of the information was going to come in at least to establish motive.

I felt sure that the solicitor was

going to try to show that he was running from charges, that he was out on bond and that's the reason that he shot the police officer. I do not believe that the solicitor would have tried to show that Mr. Aleksey shot a police officer because he was speeding.

So I have to assume a certain extent of what Mr. Bailey, Solicitor Bailey, was going to try to prove. So from that perspective I am thinking most, or at least some of his prior arrests are going to come into evidence. Now, what do I do with that? Well, the response I guess in my mind would be I can either ignore it, hope it doesn't come in which I think would be naive, or try to use it to my advantage.

And what I was trying to do was to use it to my advantage. He had six, I want to say six identifications on him at the time. He was being stopped for speeding and he had a consistent pattern of being stopped by the law enforcement or being arrested by law enforcement and going to jail, presenting a false identification, bonding out of jail and never being seen or heard from again.

If you have someone like that that is able to do that and has done it on a consistent

basis, I think it's -- I think it's very good to be able to use that and present it to the jury, look, he's got -- he had fake ID's on him, he's gotten out of trouble before simply by going to jail and bonding out, why would this be any different?

He had a way out, he had six fake ID's and he knew how to use them. That was my approach with the jury because on that end we had -- we had Mr. Aleksey, and on the other potential shooter had no way out and shooting a police officer could very well be her angle of getting out. So that -- that was my thought process.

Q. Okay. At the time you made your statement, your investigation had included developing some background witnesses -- information, excuse me, on Gloryvee Perez; isn't that correct?

A. Right, yes.

Q. So you had a sense as to what her role could be seen in this particular case; isn't that correct?

A. Yes.

Q. And generally what was that character about Ms. Perez that you had that thought would -- that you thought would be able to work to your advantage in the guilt phase of this case?

A. We had -- well, we had two things that I thought

were important, the drugs and the -- and her volatile temper with her ex-husband. Hard to tell which one of those were more important, but my position was Trooper Lingard I believe was working with the Ace Team.

I look back on that now and I'm trying to determine whether or not we knew that or whether or not we just felt very confident that was the case. It was an Interstate 95 stop which is a high drug corridor, I know that from my work with the solicitor's office and I believe I cross-examined one of the officers and got him to admit that.

That being the case, they're out there looking for drugs, it is a corridor, it is a drug corridor, if I could link her with the drug trade, then I felt like that would give her a reason to shoot a police officer as well as a reason for her fleeing, a reason for just about everything.

She had a prior drug conviction for I believe cocaine. What I thought was important was not so much that she had a possession of cocaine, but that it appears that she was charged in an indictment with her mother. Her mother ended up going to prison and she ended up getting a -- I believe a probationary sentence.

It looked to be from the paperwork that she -- she cut a deal with the State, testified or at least provided information against her own mother and then her mother goes to jail and she doesn't.

There was also some history in her family concerning ballooning heroin which is the ingestion of heroin, getting on airplanes, landing, passing the heroin and selling it. I do not recall right off the top of my head if it was her father, some relative, and there was some connection on that in there as well.

The -- we -- we -- we couldn't develop -- I don't recall whether or not we developed enough of that information. Judge Cottingham would not let us go into anything other than the fact that she pled guilty to possession of cocaine, so it sort of limited it.

We were able to cross-examine, I can't remember if it was Brett Baker from SLED or someone concerning the fact that heroin flows from the north to the south and that that is a drug corridor trying to establish the drugs.

The other thing that we had was that she shot at her or supposedly shot a gun that her

ex-husband, she kicked out his windshield, she had a volatile temper, that I believe that shows.

Judge Cottingham would not let us go into that either and that was something that I know Mr. Sims proffered that was sort of a big deal because we were trying to establish that she could handle a gun, it was a gun that was purchased for or at least was light weight enough for a female to carry, we got testimony actually out of some of the witnesses to establish that, that she had used a gun before, that she had fired a gun, that she had a volatile temper and that she had experience with the drug trade.

So that was -- we knew we could get at least a good bit of that in, some of which we didn't get in. But that was the approach that we were taking.

Q. Okay. What did you develop from your client, Mr. Aleksey, about his relationship with Gloryvee Perez and more particularly the circumstances of this particular crime?

A. Well, the -- I think I -- it seems that I had a number of conversations with Mr. Aleksey concerning this, but I can't really put my finger on any one thing that I recall.

Certainly he sent me a letter at one time that indicated that she was -- and I think I've already discussed this, that she was -- that she had stolen some checks that he in fact deposited.

It gave me a good -- a good amount of information that they were involved in criminal activity together, or at least that was my feeling.

I know at one time I had specifically asked him about drugs, he denied any knowledge of drugs, but he said that Perez Blackwell threw something out of the window as they were going down the road. Whether or not that was true or not I don't know, but that was -- that was my understanding.

As far as the relationship it sounded like pretty consistent with all the rest of the relationships kind of a boyfriend/girlfriend coconspirator sort of relationship.

Q. Okay. Was there -- based upon your review of statements and information from Ms. Perez, did she ever acknowledge that she had been the trigger person in this case?

A. No.

Q. Did you interview her?

A. No. She had a lawyer at that time.

Q. Okay. So she basically lawyered up as far as --
A. She had a lawyer -- I was appointed after Mr. Aleksey was noticed the death penalty, I believe, or at least the understanding was that he was going to be. She had Michael Culler from the public defender's office and everything that had happened to establish who was representing whom, who was going to trial for the death penalty had already been established by the time I was appointed. So that was done.
Q. Okay. And according to your notes on Exhibit Number 66 you had a number of telephone calls with Mr. Culler; isn't that correct?
A. Yes. I asked Mr. Culler if his client would mind us going through her personal belongings and he told me that he wasn't sure, that didn't sound like anything she would object to. And then I think I spoke to him the next day and he said, in fact, she does object.

So that -- I know I spoke to him a number of times concerning this case, how the case was going to be developed and things like that. But I did not interview Ms. Blackwell.
Q. That sounds like an unusual request. Why did you want to go through her belongings or review her

belongings?
A. You never know what you're going to find. And I didn't know what the materials that she had, that she had at the jail with her that potentially were not searched. I didn't know at that time if they had been searched or not and whether or not they were searched very well.

I have, believe it or not, in my experience looked through property and found items that became very useful that the police missed and so that's what I wanted to do, I wanted to go through it in the same fashion I wanted to go through the Mustang which was gone by the time I was appointed as well.
Q. Okay. In having your conversations with your client, did he suggest that there was something else there that you should be looking for?
A. I don't -- I don't recall him suggesting that, no.
Q. Okay. Now, there was some information about GSR tests that were done and were not done.
A. Yes.
Q. You hired Jeff Hollifield to look at that information?
A. I did, yes.

Q. What was the reason for that?

A. Jeff Hollifield -- that was my best defense. From the standpoint of this, the overall case, the fact that his gunshot residue test was negative was without a doubt the best evidence that I had. Very rarely do I have any evidence at all in a death penalty case, but this was good stuff.

A negative gunshot residue test meant that they at least tested him, they tested him within what they thought were the time parameters and yet they were negative.

They did not test Gloryvee Perez or Blackwell and I know she goes back and forth as far as names. That was obviously the best thing we had.

I hired Jeff Hollifield, he was an expert in gunshot residue, in fact had trained Dotty Fuller who was the gunshot residue person at SLED. And Mr. Hollifield worked with me very closely on this case, I put him up on the stand and in fact arguably had been qualified as an expert prior to him even taking the stand.

I believe the transcript will reflect that I asked on cross-examination some of the SLED agents, Dotty Fuller, and I believe she brought in her supervisor as well, specifically if they knew

Jeff Hollifield, if he was an expert in the field. They, in fact, indicated he was and this is before I even put him up on the stand.

His testimony I thought was very good. He clearly said that there was a negative gunshot residue test, that the three elements antimone, barium, and lead were not present in elevated levels, at the same time the elements on Mr. Aleksey's hands indicated that he had not washed them or they had not been rubbed off.

So I thought his testimony was essential and that's why I hired him and that's why I used him.

Q. In your defense and in your opening statement as far as him being a con artist, did you want to portray Mr. Aleksey as a nonviolent womanizer?

A. Yes.

Q. And a con artist?

A. Yes. It's arguably the same thing.

Q. And were you aware that the State was going to be presenting testimony from Lisa Watson, Ms. Batkilina, Jamie Farrell --

A. Yeah, I was -- I'm sorry.

Q. -- those other witnesses about their relations with Mr. Aleksey and their role --

A. Yes.

Q. -- together?

A. Yes. I didn't know exactly, obviously the specifics of what they would be testifying to, but the general idea, and most of which ended up being in the newspaper I think about the same time that I was appointed, so I had some idea. I remember specific articles about this, but yes. Yeah, go ahead. I'm sorry.

Q. That's fine. Did you have discussions with your client about each of these witnesses?

A. Yes.

Q. And Ms. Batkilina, the record Exhibit 66 again reflects you had a telephone conversation with her and you spoke of that particular conversation.

A. Right. Yes.

Q. Do you recall what occurred during that conversation, if anything?

A. Well, I remember talking to her and I remember just from reviewing my notes yesterday that she, that she told me that she was on probation because of him, him being Mr. Aleksey, that she had I believe spoken to the solicitor, but right now it's very difficult for me to remember exactly what the entire conversation was.

But I do remember talking to her about it or at least having the conversation. And I want to say that she actually called me, I don't know. I want to say that she called me after speaking to Mr. Aleksey, but I don't have any notes that reflect that.

Q. Okay. And Mr. Sims took this particular witness, although you had had a personal discussion with her; isn't that correct?

A. Yeah, we tried to keep it consistent with the people that we were cross-examining. And if you'll notice, Mr. Sims did I believe every one of the women.

And again the theory being that he was -- he may have been a con artist or a womanizer, but he wasn't anybody that had done anything violent and that was -- that was the same theme and we felt like Mr. Sims could just stay on that theme with every one of the witnesses and that's why we did it that way.

That's why you'll notice that he does almost all of those people and I did almost all of the police officers.

Q. Okay. In your discussions with Mr. Aleksey, did he suggest to you that with Ms. Batkilina that there

had been some criminal involvement on her part?
A. I don't remember that, no.
Q. Do you recall whether she was an individual that he was trying to seek some help for based upon some charges in Florida?
A. At some point I believe he had made the statement, or at least there was a reference out there that he had made a statement concerning her, I think she had some trouble in Florida.

And I don't want to confuse her with another one, but I think that's -- I think that's the one and that he had asked for some help for her on that.
Q. Okay. But that's information that you think you got from Mr. Aleksey about Ms. Batkilina?
A. No. I got that information that he asked for the help for her trouble in Florida from either -- I don't recall where I got it from, I don't think I got it from Mr. Aleksey.
Q. Was it in one of his statements that he may have given?
A. May have been.
Q. Did you ask him at all why he would want to help her with the trouble in Florida when he was facing such significant charges?

A. I know we went -- when I say "we," Mr. Sims and I were back and forth, he was obviously going to speak to Mr. Aleksey as well. And I know that we had discussed with him these women and if he had anything on them.

And I think at one time Mr. Aleksey called Mr. Sims, I want to say, maybe called me and said, Look, I've got some stuff on one of these women and I don't remember exactly which one it was. And I think Mr. Sims' response was if you've got anything you need to give it to us. And we received very little specifics on that.

Q. Okay. Now, was she the one that essentially provided the evidence of the gun to your client?

A. I'm sorry.

Q. Was there evidence of a gun that came to your client through her?

A. I believe so. Is that...?

Q. Was there any indication in your discussions with Mr. Aleksey how he acquired that particular gun that was in his possession when he was stopped?

A. I wish I could tell you I remember that and I don't right now. I don't recall if we had that discussion or not.

Q. Okay. Would you have generally asked him how

did the gun get in your possession?

A. Yeah. I mean, I think -- and I apologize, I'm not trying to evade anybody's questions, there's just so much paperwork and there were so many meetings, it lasted so long it's very difficult to remember specifically what we talked about and what we didn't because I would normally try to cover everything I possibly could, perhaps that's a problem, but I would think so.

The gun itself though was in the car so we weren't going to get around that. The best stuff that we had, the best evidence that we had was testimony from Mr. Baker, Brett Baker from SLED who stated that Mr. Aleksey's fingerprint was on the gun.

However, in the transcript no way -- I don't think it's possible the transcript can reflect this, but I got Mr. Baker to hold the gun in a fashion that would show where Mr. Aleksey's fingerprint was on the gun and it was in reverse order of pointing the gun.

So in other words, it was as if he took it from somebody, Mr. Aleksey took it from somebody and the print matched that. So in other words, if the gun is pointing in your direction, if the hand fingerprint would have reversed it and we

got that testimony in and I thought that was -- I thought that was important. That was about the best as far as that concerned the gun was in the car. I wasn't going to get around the fact that it was there.

Q. Okay. And you couldn't get around the fact that that gun was traceable to a transaction with Ms. Batkilina, correct?

A. It was, right.

Q. And you couldn't get around the fact that it was not only traceable to Ms. Batkilina, but traceable to his association --

A. Yes.

Q. -- with her; isn't that correct?

A. That was coming in, yes.

Q. And she was also an individual that was acting as his girlfriend, correct?

A. Yes.

Q. Had posted bond previously for him, correct?

A. Yes.

Q. That apparently continued in a sort of friendship even during the period of time that he was in custody for these particular charges; is that not also correct?

A. Yes. Which is why I think she called me after

she had talked to him. I'm pretty sure that's the case.

Q. Now, in your discussions with Mr. Aleksey, did he ever tell you that he at the time of that incident had taken the gun from Gloryvee Perez in the manner that you said was a possibility, did he ever tell you that in your case?

A. I think so. And I think there was some -- there was some reference that at one point he told me that she held him at gunpoint. Another point he had made the statement, it might have been in his confession, that she threw the gun in his lap or handed it to him or something like that.

I'll be honest with you, I don't remember at what time those -- they were inconsistent and they changed a good bit back and forth, but that was the gist of it.

I think we actually had a fingerprint expert that outlined the fingerprint for me and showed me the -- showed me the angle and we hired that, I can't remember his name right now.

Q. With Lisa Watson, we've already some testimony on her part, she testified in the -- both in the guilt phase and the penalty phase about the vehicle; isn't that correct?

A. I believe so, yes.
Q. And some other matters related to his character?
A. Yes.
Q. Prior to the time she testified, did you have a discussion with Mr. Aleksey about their relationship together?
A. I don't recall if we did or not specifically. I'm sure we did. I think my pattern would have been to go through all the witnesses with Mr. Aleksey and ask him what he knew about each one of them. And if I didn't do it, Mr. Sims would have done it, and that kind of back and forth maybe more so him because he was cross-examining her, but specifically remembering having that conversation I don't. But I'm sure we would have, that would have been....
Q. Okay. Concerning some fraudulent activity that she was involved in and the purchasing of the vehicle and the like.
A. Yes.
Q. Did your investigation and discussions with Mr. Aleksey reveal that he was present generally during most of those, or actively involved in that fraudulent activity?
A. Yes. I apologize for interrupting you. Yes, and everything we had uncovered there was always --

there was always the two or at least it seemed like it was. And looking back on it my memory would have been that, yes, he was involved in it as well.

Q. Okay. And did you seek to further investigate particularly with Ms. Watson --

A. I don't remember now.

Q. -- misstatements made within the applications and the like?

A. I asked -- I remember sending Mr. Davis up to find out as much as he could about Perez and I think at some point he -- and I know he had looked into some stuff with Lisa Watson as well.

It was such a running investigation from that standpoint; it was every time we got new information it was what do you know about this. But keeping in mind that most of the information that we were getting was more consistent with our theory than it was anything else.

Everything that we were getting from these women as far as, you know, yes we went off and bought a Lexus together, or yes we went off and bought a motorcycle and things like that were consistent with the there was a relationship, it was a romantic relationship at some level, but it was -- and it showed that he knew how to get out of trouble

if he needed to.

He was actually pretty street smart when it came to that, so why would this guy shoot a police officer when he was speeding. And that's something we tried to cling to the whole trial.

So when we're getting this information in looking back on it, yes, was it relevant, should we have cross-examined more? Maybe on the fraud and the things like that, maybe. But the big, the big point I thought was that everything we were getting was still consistent and there was absolutely -- could not have possibly been any shock value from the guilt phase because all of that came out in the penalty phase.

Q. Okay. What in Ms. Watson's statements concerning the culpability, general culpability with your client with the information the State was trying to seek out, what information were you basically trying to impeach with these female witnesses?

A. I mean, our -- and I may not be answering your question, but our point with every one of these female witnesses was to establish that he was nonviolent, that -- and no matter -- even the ones that tried to, say well, he handled a gun or something like that, every one of them said, well, we

didn't take him seriously.

It became more -- it was either humorous, and I say humorous from the standpoint of the alleged victim, the woman that would be involved would either think he wasn't serious with the gun or it became pitiful looking like he was almost suicidal.

But he never hurt any of these people. In fact, in one of them I remember specifically he got in a fight with and she beat him up. The -- I thought that was important information and I thought that kept very well with our theory.

The only thing that did not help us in all of that material was him shooting at a car, that was up in the north, and I can't remember exactly what town that was. That hurt and that was the -- that was the bad stuff as far as what I could tell.

Q. Okay. Much has been made yesterday of a difference in the dates with respect to the date of the purchase of the gun.

A. Yes.

Q. Be it November 1996 or November 1997.

A. Yes.

Q. At the time of the trial you did have and clearly had access to the report which revealed it

was November 1996; isn't that correct?
A. Yes.
Q. Why, or what was the value that you perceived as a member of the defense team at that time with the 1996 and 1997 that you would have not tried to make some correction, clarification, or impeachment of that particular time factor?
A. Three things. One is if the solicitor is confusing the jury, I'm going to let him. I'm not going to correct him, I'm not going to clear it up for him. I'm not going to make it simple for the jury.

Number two is if on any cross-examination you go in, you get what you can get and prove the points that are important, you get out. You spend an hour and a half or two hours on cross-examination, although I have seen lawyers do it very effectively, I can't. I have to get in, get my points, and get out.

I cannot belabor the point because I find out I'm now confusing the jury. I may have had some good points that they've forgotten about now because I've moved on to something that I thought was not very important.

The time frame I can honestly say that

I can't -- I don't see the significance of it today much less at the time of the trial. I don't really care when they were in a relationship, if one of these women or both of these women had had the time frame, and I think one of the time frames may have been a year off, I don't think I care. I can't think of a way that that's going to help my case other than to maybe look silly. My angle was to -- in all cross-examination would be to do that.

That being said, Mr. Sims did the cross-examination. I wasn't pulling on his coattail by any stretch of the imagination and telling him to cross-examine her about this. But that is at least the way I address cross-examination.

Q. Okay. And is that though the same if telephone calls are being made at an earlier time?

A. Yes.

Q. A month earlier than a relationship made?

A. That is through all of cross-examination and every bit of the information that I had.

Q. So assuming possessed with that information, that wouldn't have been an area that you could see as a reasonable counsel you should have focused on?

A. The phone call, the dates, no.

Q. With respect to the rap sheets, I assume that

prior to the time of trial upon receipt of the rap sheets from the solicitor you reviewed those particular matters --

A. Yes.

Q. -- isn't that correct?

A. Yes.

Q. Similarly, with respect to the photographs, I believe Exhibit 66 reveals both a telephone call to Rita at SLED, that may be Rita Shuler who is in charge of the photography department at SLED?

A. It was, yes.

Q. And a fee of approximately $300 for SLED photographs, correct?

A. Yes.

Q. Did you --

A. Absolutely. That's right.

Q. Did you take those photographs, review those photographs?

A. Yes.

Q. Did those photographs reveal the inside of the car?

A. They did.

Q. And to a normal viewpoint could have revealed where certain paperwork was within that car; isn't that correct?

A. Yeah. That would have -- I don't mean to say the photographs speak for themselves, but they would. Now, whether or not I knew what I was looking for, I don't know. I can't go back right now and tell you that I knew exactly what I was looking for when I was looking through those photographs. There certainly was a lot of them.

Q. Okay. And the information you had from your client about the purpose of the trip, where he was stopped in Orangeburg County on New Year's Eve, what did he tell you the purpose of that trip was?

A. From the stand -- from the actual trip itself?

Q. Yes.

A. I believe he was -- I believe he told me the Disney World trip, too. I can't -- I'd have to go back and specifically look at something that I did on that, but I did not get any information from him that they were doing anything illegal or that they were going to Florida for any illegal purpose.

That was I guess my theory or my guess. And maybe this would have been consistent that he would not have known if she was, in fact, moving drugs.

Q. Okay. Did he ever indicate to you in your discussions with him that on that day that he left

Philadelphia that he went up to New York and then came back down?

A. No.

Q. Did he indicate to you that the root was directly essentially Philadelphia over to 95 and straight on down?

A. Yes. And I think the only thing that Mr. Aleksey told me that was -- that I think they switched drivers in North Carolina, I want to say. And I think Mr. Sims at some point on cross-examination tried to make a big deal out of the fact that that's a long trip to make as one person being the driver and at some point they should have switched. But I can't specifically point to any of that in the transcript.

Q. Okay. And if they would have made the trek up to New York --

A. Yes.

Q. -- as has been suggested, that would have added at least possibly 200 miles to the trip, at least 100 miles from New York on down --

A. Sure.

Q. -- isn't that correct? And he made no indication of that to you?

A. I don't remember anything about that, no.

Q. Was there any indication that he had gone there to try to rent a truck --

A. No.

Q. -- at any time contemporaneous with shortly before the trip?

A. I don't believe so. I'm trying to go back and remember every conversation I had with him and certainly it was a lot, telephone calls as well, and I tried to make as many notes as I could, but sometimes I would be speaking to him and I would not have access to a computer, not be able to write everything down.

So I don't recall that, can't tell you one way -- I can't tell you 100 percent sure it did not happen, but I don't recall that.

Q. Okay. Now, again with Lisa Watson concerning the purchase of the vehicles or the vehicle, there was no doubt that your client had possession of the Mustang; isn't that correct?

A. Yes.

Q. And did your client ever indicate to you that that Mustang was merely borrowed rather than stolen?

A. I don't know that we ever necessarily acknowledged that it was a stolen car. I think the tag was stolen, but I don't know that -- I don't

remember that being particularly important.

Again, he got into much more serious trouble I thought than that and the patrol officer, everybody acknowledged that he was stopping the car for speeding and that was the big issue behind the stop, or at least from the standpoint of the people inside the car.

I think Mr. Aleksey always maintained that that was the reason the car was stopped; Blackwell did the exact same thing. Everybody's statement is consistently the reason they were stopped is not because the car was stolen, because there was a stolen tag or because they had done anything wrong other than speeding.

So that's the theory that we stayed on and that was the approach we took. So the other stuff did not play out as particularly important.

Q. Did you discuss with Mr. Aleksey how he got in possession of that Mustang vehicle which was not registered to him?

A. I'm sure we did. I cannot remember that right now, but I'm sure we did.

Q. Okay.

A. Yeah, we talked -- because we talked about there was some modifications made to the Mustang and it

became an issue at some point how loud the Mustang was because there was testimony, or there was at least a reference in one of the newspaper articles concerning someone hearing a male voice saying "How are you doing, Officer?" That turned out to not come into trial -- into the evidence at the trial, I don't believe, other than from Ms. Blackwell.

But the point what we were trying to do was we were trying to run down, so we did discuss with Mr. Aleksey the car itself because his testimony was the car itself was very loud and even at idle that car would have been so loud nobody would have heard it had somebody said anything outside of that car.

That, of course, was important because if we had another officer at the scene who heard a male voice saying "How are you doing, Officer?" that puts the only male in the car behind the wheel.

But that did not end up coming into evidence, at least it didn't come into evidence from the police officer standpoint, the officer that was backing up Trooper Lingard.

Q. Okay. Did you have a discussion with your client about the financial dealings he had with Lisa Watson, credit card fraud and the like which may have

occurred?
A. Actually I do not recall. I don't recall if I did or not, I'm sorry.
Q. In your investigation preparation of the case, did you become aware of the fact that the eight-year-old child in the car was going to be a potential witness?
A. Yes.
Q. Gloria Mai Perez.
A. Yes.
Q. Did you attempt to contact her and speak to her, or are you aware if Mr. Sims sought to do that?
A. I think so. I can't -- I know we spoke to some members of the family, and I don't recall if Mr. Sims was specifically going to try to talk to her or how that worked.

I know there was a family court hearing we were going to try to go to, but we weren't able to do. The best -- I thought the best cross-examination or material that we had concerning her was the fact that, and we actually had the officer admit this on the stand, is that she was left with her mother at the police station in the car by herself after all of this took place prior to anybody speaking to her, giving the mother plenty of

opportunity to tell the child what to say.

And that I know we got that out on cross-examination, but I don't recall anything other than that specifically at this point.

Q. And her testimony was essentially that she was asleep when --

A. Yes.

Q. -- all this happened, woke up with the gunshot; isn't that correct?

A. Yes, that's right.

Q. Were you aware of any information that was presented here today that the child witness had told someone the mother told me what to say or words to that effect?

A. I apologize, I don't -- I do not recall.

Q. Okay. Sara Pivero was another witness that testified in this particular case; is that correct?

A. Yes.

Q. And, again, her prior criminal or dishonest conduct was not revealed or cross-examined; isn't that also correct?

A. I think that's correct.

Q. Were you aware of the potential testimony that Ms. Pivero was going to give in this case?

A. Hum, I'm trying to find my specific notes on her

after her testimony. I'm trying to remember which one she is.

Q. She testified at 1,606 through 1,612.

A. Yeah.

Q. And again at 1,919, I believe.

A. She's the one that he confessed to one hour later supposedly.

Q. That would be correct.

A. I was aware that she was going to testify that he spoke to her on the telephone. When I was made aware of that I don't recall that she -- that he supposedly had confessed.

And I think Mr. Sims on cross-examination made a point of saying, no, you're getting a phone call from a jail cell and that's going to sound like I shot the trooper when, in fact, he said "They say I shot the trooper." I think that was the -- that was the cross-examination on that.

Q. Do you have that part of the record in front of you?

A. I can get it. What page?

Q. Look at page 1,919.

A. Sure.

Q. See if that refreshes some of your recollection.

A. What volume would that be in?

Q. I'm sorry, it's Volume IV.
A. Okay. What page?
Q. 1,919. You may want to refer back to 1,918, too, it's cross-examination by Mr. Sims.
A. (The witness complies.) Okay. I've looked over those couple of pages. I'm sorry, what was your question?
Q. That information suggests some knowledge by Mr. Sims about an incident that may have assisted you in your defense to show that he was a nonviolent person despite the use of the gun --
A. Yes.
Q. -- isn't that correct?
A. Yes.
Q. Is that the reason why that was brought out?
A. Yes.
Q. And what impact was the defense team trying to make with the fact that the defendant was curled up in a fetal position with a gun?
A. It was as if he was a child. He was -- he was -- he was weak and I think if you can -- and, in fact, looking at Mr. Sims' testimony and, in fact, I believe the witness ended up saying he was afraid to lay next to me because he thought I would hit him. And this again is the female making the statement.

And Mr. Sims' question "So it wasn't like a big bully that you could beat him up yourself?"

Although she didn't admit to that her response was that "He didn't want to pull the trigger on himself or anyone." And it goes back, it's still consistent with the nonviolent nature. He's got a gun, he has the ability to pull the trigger, but -- or at least physically the ability to pull the trigger and not psychologically.

Q. Okay. Now --

A. Which also goes -- and I don't mean to interrupt you. Also goes with when he was stopped in the car in I want to say Holly Hill and the police officer, that was when Blackwell jumped out of the car.

He had the gun then, the police officer was in sight and he did not shoot at the police officer, he did not point it at the police officer, he pointed it at himself which actually flows pretty well with this statement here.

Q. Okay. Now, earlier on in her testimony Ms. Pivero testified about the two telephone calls she received, I believe it was January 2nd and January 3rd --

A. Okay.

Q. -- from the defendant; isn't that correct?
A. I don't have that here but, yes, if that's in the transcript.
Q. Okay. Did you have information that there was a telephone exchange between Mr. Aleksey and Sara Pivero?
A. At some point, yes. Now, when I found that out I don't recall if I found out about it at trial or prior to trial, I can't remember.
Q. In your discussions with Mr. Aleksey, did he describe to you the circumstances of that telephone call, the reasons for it and what occurred during those telephone calls?
A. I don't believe so.
Q. You don't believe so.
A. I don't recall if I specifically asked him about those telephone calls that he made to Sara Pivero or that she made to him --
Q. Yes.
A. -- while they were in the jail. I don't recall if I did or not to be honest with you.
Q. At the time that she was testifying about these particular telephone calls, did he suggest to you that she was lying, the calls never occurred, I never said that while the case was ongoing?

A. Her testimony is that he confessed to shooting the trooper. What he tells me at that point is not relevant. I'm going to have to assume that she's lying, I'm going to have to assume that she's making it up or that she misunderstood or something. His -- if he were to have leaned over to me and said she's lying, that would have meant next to nothing to me because we've got to show that she's lying anyway. We certainly can't let that testimony just sit there.

And so Mr. Sims' cross-examination's directed toward you really misunderstood him, you heard him say, you know, why would he just call up and say "I shot the trooper." He, in fact, said it on a jail telephone, which is very difficult to hear, that you misunderstood him, you heard him say "They said I shot the trooper."

And that was -- it would be nothing more than telling me the obvious if Mr. Aleksey leaned over and said she's lying. And I don't know if he did or not, but it didn't make any difference one way or the other because we still would have cross-examined on that point, that still had to be put out of the mind of the juror in some way -- of the jury in some way.

Q. Okay. Other than that attempt to clarify, why

wasn't she impeached with attempts at showing some dishonest conduct on her part, again albeit with Mr. Aleksey?

A. I don't recall specifically discussing with Mr. Sims what he was going to do as far as cross-examination other than getting rid of that statement.

I certainly don't think it would have been a good idea to make them coconspirators in a -- in a -- in any scenario because I don't necessarily want -- I wouldn't want him to be -- to feel comfortable telling her he shot the trooper for one thing, I don't think that's such a good idea.

So I don't know, I don't know if that would have helped or not. It might have, but I don't recall specifically discussing with Mr. Sims anything other than that.

Q. Did you have any knowledge or reason to believe she was testifying falsely when she said she was employed at that moment as a hair dresser?

A. No.

Q. Is that, if you can recall, consistent with the information that Mr. Aleksey had given you about what Sara Pivero did?

A. I certainly didn't look at it as if it were an

important issue, and I don't recall much more than that.

Q. Okay. And, again, she was not impeached with the information from a rap sheet, was she?

A. Apparently not. I don't see it.

Q. And the purchase of the Lexus was done with Mr. Aleksey there?

A. Well, there was certainly some involvement between Mr. Aleksey and her as far as the Lexus, but I also think that the -- it was clear she was involved at some level with the purchase of the Lexus as was he. And I don't know that that's particularly earth shattering one way or the other in dealing with the case.

Q. And it's not earth shattering that the forms would contain false information under the circumstances as you knew.

A. I think it was obvious to the jury that she had been involved in that at least at some point.

Q. Okay. With respect to Jamie Farrell and her checks.

A. Okay.

Q. The information with Vincent Caruso and that situation as to who deposited the check, was it Mr. Aleksey who put it in, did Ms. Farrell put it in,

in the photographs that were shown to you --

A. Right.

Q. -- there were at least two individuals in the car; isn't that correct?

A. Yes.

Q. And in the photographs concerning those, and there were a number of different day transactions, it does appear that Mr. Aleksey is a likely resemblance of the other individual in that car; is that not also correct?

A. Yes. Yes.

Q. Is it reasonable that you would have not impeached her for some of those statements about who deposited the check under those circumstances?

A. It looked to me like at least from those photographs that they're both depositing them together. Whether or not she's writing it, at least one of the pictures looks like she's writing so there is certainly -- there's some indication there that she's involved and I don't think there would be really a question one way or the other.

But in all of those pictures, at least the ones that I recall looking at, and they were very poor pictures so I -- very difficult to tell who is in them, but certainly looks like Mr. Aleksey is in

most of them.

Q. Okay. Similarly with Theresa McCann who testified, penalty phase witness, about the matters that the defendant was a funny little man, other things like that.

A. Yes.

Q. Do you recall what your understanding was that she was going to testify about at the time of the trial?

A. I hate to ask you which one she was, but which one was she?

Q. She was the one with the motorcycle purchase.

A. Yeah, she's -- okay. I put in my notes, and these are the notes that I'm taking while she's testifying, that she tried to get him arrested, didn't pay for the vehicle, but I thought what was more important, of course what really -- I don't know if it hurt us, certainly was unusual testimony, Ms. McCann testified that Mr. Aleksey had jumped up and down on her bed wearing her bra and panties and she thought that was funny. This again doesn't sound like somebody that is a violent person.

I wrote -- my notes indicate that she did not hurt us, that there was no violence and, in fact, they had gotten in a fight over some type of

Visa bill in the visor of the car and her statement was I fought him and won. So she actually testified that she beat him up.

This was certainly consistent with what we were trying to -- how we were trying to portray Mr. Aleksey to begin with and I didn't think it hurt us.

Q. Was it clear from your investigation that Mr. Aleksey had shared in the proceeds of whatever fraudulent activity Ms. McCann may have been involved in among them?

A. Yeah, they were -- it was a -- all of these people looked like -- all of the relationships were just about the -- just about identical. They all appeared to be two people that were romantically involved and at the same time were playing with bank accounts and it was pretty consistent throughout all of them.

Q. Was that consistent with the information that Mr. Aleksey had revealed to you in your investigation and discussions with him?

A. I believe so.

Q. Now, at some time prior to trial or during the trial was a decision made that your client would not testify?

A. Yes.

Q. Or you would not recommend that he testify?

A. Yes. And I've gone back over -- I've gone back over the transcript on this as well and it looks like there was some confusion at least at the guilt phase whether or not he would testify. And the unique way that death penalties are -- the procedure, it seems to me that there is an advantage to the defense to put up their client in the argument stage but, therefore, allowing the client to actually make a statement without cross-examination by the solicitor.

And there seemed to be some confusion in the record of whether or not he was going to do that and whether or not that was a decision he made during the closing arguments.

And I've looked back at the transcript, I'm a little bit confused about that, but certainly we discussed that. His -- the statement that we kept out with the highway patrol trooper concerning the Russian mafia probably would have come in on impeachment when it could not have come in under the Jackson/Denno ruling, so that would have certainly been something. I don't think he would have made a particularly good witness. In fact, looking back it on he was not a particularly good

witness.

He testified in the sentencing phase, and I think I did exactly what -- or at least we ended up doing as a team exactly what we tried not to do which is hurt the good part of our case with the bad part.

Mrs. Aleksey testified. She was, I thought, very effective and I did not think Mr. Aleksey was. And when he testified I think that watered down a good bit of the good stuff we had in from Mrs. Aleksey.

But I know we discussed it, I know it was something that I brought up in front of the Court prior to closing. And, in fact, I believe the judge even offered to bring the jury back in if Mr. Aleksey decided to testify or make a closing statement in the guilt phase.

And the record, at least as I was reading it, Mr. Aleksey indicated he did not want to do that.

Q. Okay. You said when he testified. What you mean is when he made his closing statement in the penalty phase?

A. He made a closing statement in the sentencing phase after -- gosh, I don't remember if it was after

or before his mother.

Q. Let me show you, ask you to refer to transcript pages 2,069, 2,131 ask if that refreshes your recollection?

A. 20....

Q. Sixty-nine and 2,131. 2,069.

A. Actually you can back up a little bit on that. There's 265 is where I believe the -- or 264, actually, in my transcript. "Gentlemen of the defense..." this is from the Court "...tell me whether or not you're -- the defendant desires to testify in this proceeding."

"He does not."

"And have you fully advised him of his right to testify?"

"Yes, sir."

"Has he been fully advised of his constitutional right not to testify?"

"Yes, sir." And then I think the judge then goes into it at that stage, testimony from Mr. Aleksey that his decision was not to testify and that he fully understood that. Then we go to -- what was the next one you wanted me to look at?

Q. 2,069, Vera Aleksey's testimony.

A. "Defense at this time would call Mrs. Vera

Q. And in that statement he declared that Gloryvee was the trigger person at line 11 through 12 of page 2,132; isn't that correct?

A. Yes.

Q. And in that statement, which would be the day before, he says "That night I also had a bad feeling we were supposed to leave and I didn't go. I ended up in New York." Suggesting that was the day before, correct?

A. Right.

Q. Then he says "The next day, that morning we left, I had a very bad feeling. I knew something was wrong, but Gloryvee convinced me. I reluctantly went down to Florida, drove down to Florida, tried to help her." Isn't that also correct?

A. Yes.

Q. So in his statement isn't he, in fact, saying that on that morning he had gone to New York the day before, correct?

A. Yes.

Q. But that morning he left and went to -- headed on down to Florida?

A. Yes.

MR. ZELENKA: Judge, I don't know what time you want to break. I'm guessing I have about a

half, an hour more, no more than that I don't think. Do you want me to go forward or what's your...?

THE COURT: It's probably as good a time as most any to take our lunch break.

MR. ZELENKA: Okay.

THE COURT: Why don't we do that. We'll take our lunch break now. I'd like to keep it to an hour, it's now one o'clock, I would like to start back right at two o'clock. Thank you so much. We'll be adjourned. Don't talk to anyone about your testimony during lunch.

THE WITNESS: Yes, ma'am.

THE COURT: Very well.

MR. TARR: Your Honor, I anticipate a very short redirect so I think Mr. Bailey will probably be ready to go sometime about three o'clock.

THE COURT: Okay.

MR. TARR: Something like that.

THE COURT: He hears what you're saying. Thank you.

MR. TARR: Thank you.

(Whereupon, lunch recess is taken from 1:01 p.m. to 2:03 p.m.)

THE COURT: Is everyone ready? Great. All right, Mr. Zelenka, you may proceed.

MR. ZELENKA: Thank you.

BY MR. ZELENKA:

Q. Mr. Stone, you had assistance other than Mr. Sims in your preparation of this defense; isn't that correct?

A. Yes.

Q. One of those individuals was Toni Bovea?

A. Yes.

Q. What was her role?

A. She was a mitigation -- her job was mitigation. She, in fact, had the title of mitigation expert or specialist.

Q. What did you ask her to do?

A. Her job was to investigate anything that we could have used in mitigation in the mitigation stage of the death penalty case, primarily Mr. Aleksey's background and anything that we could put forth to help us on that.

Q. Okay. And in doing that did she meet with family members and discuss --

A. She did.

Q. -- factors with them?

A. Yes.

Q. Particularly Vera Aleksey?
A. Yes.
Q. Based upon that information that you received, did you make a decision as to whether or not a social worker would be necessary?
A. We actually had a social worker, I want to say Dr. Rosengard, I don't know if that's the specific name or not, we had someone that -- I have to refer to my notes to get the exact name, that we went ahead and brought from New York and had them available at the trial and decided not to call him. And all of that was coordinated through Ms. Bovea and she found most of that information for us.
Q. Okay. Was he a psychologist?
A. He might very well have been. I'm trying to go back and find specifically. But as far as a social worker, I had worked on a death penalty case in Lexington prior to this and we had a social worker and a mitigation specialist, they're duplicitous, it is not -- and, in fact, looking back on it I probably would have opted for just two investigators instead of even that, even the mitigation specialist, but the social worker that we used in the Lexington County case, it was stuff that we could have put up there with Ms. Bovea if necessary. That sort of was the --

it was the exact same thing.

Q. Okay. And in developing that background information --

A. Yes.

Q. -- did you also retain the services of psychiatrist Dr. Donna Swarts-Watts?

A. Yes.

Q. And why did you hire her?

A. I had also worked on a death penalty case with Dr. Swarts-Watts and her job was to give us any information she could concerning Mr. Aleksey's psychological state, anything that she could have testified to as to even from the standpoint of being able to pass the M'Naghten test and going through the M'Naghten standards, she did all of that.

She met with him numerous times to give us a psychiatric background on Mr. Aleksey and to provide any information that she could.

I worked with her before and continue to work with her on cases today and met with her many times concerning all of the psychological, I say psychological, she is a psychiatrist, but all of the psychological issues.

Q. Did you call her as a witness in this case?

A. No.

Q. Why not?
A. She couldn't give me anything that was helping me. We talked in great detail and she was -- she was on board very early in this case and we were -- we were in constant communication.

She was never able to provide me any information that would have helped us despite what I would have -- what I would have deemed a very extensive workup.
Q. Okay. How did -- if you have that information, how did she describe Mr. Aleksey?
A. Wow. I say "Wow" because I don't know exactly what I would look to. I'm sorry, I spoke to Dr. Swarts-Watts so often and she was such an integral part of the team it's hard for me to point to one specific thing that says this is what her findings would have been.

But we -- I asked her to look into anything that we could possibly use that would have covered any type of insanity defense as well as anything that could have mitigated this. And she could not come up with anything that would have helped us. I think --
Q. Did she suggest he had any major mental or psychotic illnesses around the time of this event?

A. No.
Q. Now, you also retained Dr. David Bachmann.
A. Yes.
Q. A neurologist from the college -- Medical University of Charleston?
A. Yes. In fact, Dr. Swarts-Watts pointed me to Dr. Bachmann, I don't remember when, but I got him through her.
Q. Okay. And he testified in the guilt phase of the case --
A. Yes.
Q. -- concerning the concussion trauma that Mr. Aleksey had around the time of the incident?
A. That's right. Excuse me, I'm sorry. Yes, that's right, we used Dr. Bachmann to try to establish that the confession was the product of somebody who had suffered a concussion and that his medical review of the records indicated that Mr. Aleksey had a concussion, there were a number of signs that he had a concussion and that he would have suffered those symptoms for at least a few months I believe is what he said. And we used him to establish the confession was not voluntary.
Q. Okay. Did Dr. Bachmann ever suggest to you any need to have a neuropsychologist evaluate your client

or do any --

A. No, other than -- no. He looked at it from the medical records standpoint but, no, he didn't -- he did not indicate there was any need to go any further with that.

Q. Okay. Now, you mentioned Dr. David Rosengard. What information did he give you concerning Mr. Aleksey's mental health in New York?

A. Rosengard, and I have some specific notes, I know at one point that I made. At first I thought he was going to be very beneficial and we brought him down from New York and my intention was to get him to testify.

Once he got here we had a meeting at Mr. Sims' office, Mrs. Aleksey was there along with Mr. Sims and this doctor. And unfortunately the conclusion that we all came away with after that was that he blamed most of Bayan's problems on his mother saying that -- and let me -- if I could find these notes real quick to make sure I get this right.

He -- he had -- apparently had given us the idea that Bayan was an angry child, that he had some type of separation disorder. She had -- Mrs. Aleksey had said that I believe that she had broken up with her husband or something like that

when he was very young, something around three years old. He was in parochial school, but could not do very well and had had some emotional problems. And most of the stuff that Ms. Aleksey was saying is the same thing that Dr. Rosengard, Rosenbloom, Rosengard, I can't remember his exact name, said.

When we set down with that meeting, the doctor said, Well, the reason he was like that is because you never -- you never told him how to act and you never forced him, you never disciplined him.

That kind of hurt our theory because we had Mrs. Aleksey that we were going to put up on the stand to say all these things about Bayan and at the same time about their relationship and had we put him up on the stand he would have blamed everything on her. That would not have gone well I don't think with our theory of mitigation.

So we did not -- that's why we did not -- in fact, like I said before, we brought him down actually from New York, had him in the -- had him ready to go and after that meeting decided not to put him up.

Q. Who was Joe Teroni? Does that name ring a bell with you?

A. Yes.

Q. Did he have a role in this case?
A. I cannot place him right now. I know the name.
Q. Okay. Thomas Davis, what was his role?
A. Tommy Davis was the investigator.
Q. What did you generally ask him to do for you in this matter?
A. I kept -- it was a very free-flowing investigation, I kept sending him bits and pieces of information to investigate. He was the fact investigator, his job as opposed to Toni Bovea's was to investigate the facts of the case and various things and the various people involved.

So he was the fact investigator as opposed to Bovea who was more mitigation, more background information investigator.
Q. Okay. Did you send him to -- to look at any criminal history background concerning Gloryvee Perez?
A. Yes. I sent him and asked him to find out everything he could about Gloryvee Perez, recognizing that's not a very specific instruction, but I didn't know exactly what I was looking for either.

He went to Pennsylvania and New Jersey and I believe New York as well looking for various information and that was basically his job. His main

focus, or at least my main focus, was having him investigate these people as we'd found out about them.

Q. Okay. Did he also look at the other females?

A. Yes, I believe he did.

Q. All right. And he was trying to get background information on them in their local communities?

A. Yes. And he did neighborhood -- I know he did neighborhood investigations, I know he spoke to a number of police officers in these areas as well.

Q. Okay. Did you also retain the services of Robert Taylor, an engineer?

A. Yes, I did.

Q. And what was the purpose for that?

A. We had Mr. Taylor drive the scene and videotape it when he did to give us a -- we wanted an exact idea of how long it would have taken to have gone the distance and things like that.

What we were trying to establish is that there was a substantial gap between the time that the police saw the white Mustang and the time that they actually came in contact with it again with Bayan driving.

We were able to show that though on a map and under cross-examination in the State's case,

I remember going into that. But we had him videotape it just to make sure that there was a -- first of all, it was more for information for us; and second of all, to make sure there was the gap that we thought there was between the time the shooting actually occurred and the time that they see Mr. Aleksey behind the wheel.

Q. Okay. John Collins was a fingerprint expert?

A. Yes. He's the one that reviewed the fingerprints in the case and, in fact, he's the one that told me or showed me the fact that the fingerprint was inverted on the gun indicating that it looks like it was handed to Mr. Aleksey as opposed to Mr. Aleksey holding it and pointing in the direction of a police officer. And I believe there was only one fingerprint on that, on the gun.

Q. Okay. Did you call Mr. Collins --

A. Or that they actually did testing on.

Q. Excuse me.

A. I'm sorry.

Q. Did you call Mr. Collins as a witness?

A. No, I do not believe I did. I know I got the cross-examination up. I believe Brett Baker was a SLED agent and showed me that, so I didn't need to have him. I had him in the background in case I

needed him. I don't believe I called him.
Q. Okay. Now, you testified generally about why you didn't hire a prison adaptability expert.
A. Yes.
Q. Is it your opinion that sometimes adaptability experts generally could backfire on a defendant?
A. Oh, I believe so, yes.
Q. In this particular case with his prior charge of escape when he broke out the window as well as the tearing up of the steel chair.
A. Yes.
Q. Did you have any other information developed either through Dr. Swarts-Watts or the Dr. Rosengard or Dr. Bachmann which would have suggested that the defendant had a mental state such that he would be adaptable to prison?
A. There was nothing else out there that they provided me that would indicate that he was particularly adaptable to prison.

I know at some point there became an issue of lawsuits as well, and I want to say that -- make sure I get this right, but I'm pretty sure Mr. Aleksey filed a number of lawsuits in federal court at some point either during the trial or right before the trial started.

So at this point Mr. Aleksey is -- at least has been in the detention center for maybe eight months, during that time he has an escape attempt, they charge him with malicious injury to the chair and then we have this lawsuit and stuff out there as well.

I thought it was a big risk putting somebody up on the stand to say he would adapt well to prison.

Q. Okay. Well, to backtrack --

A. I just didn't think it was credible at that time.

Q. -- the lawsuits which Mr. Aleksey filed were against individuals that either were or were potentially IRF clients; isn't that correct?

A. Yeah. He asked me about it. I didn't speak to him very much about this. He made a comment to me, in fact I sent him a letter that said -- I think I sent him a letter on March the 19th telling him basically I can't help you with any lawsuit with the Department of Corrections, I can't give you any advice on it and that's -- because of my representation for the Insurance Reserve Fund. I may have, in fact, in that letter again, explained I represented the Insurance Reserve Fund and prison

people in Orangeburg County.

Q. As a result of that letter and the fact of those lawsuits, did that affect the way you handled his criminal defense in this particular case at all?

A. No. We -- no.

Q. You also had information about a false confession expert, Dr. Saul Kassin, I believe?

A. Yes. Yes.

Q. And isn't it true that you decided to use him in lieu of the present -- or similar type of testimony in lieu of the presentation by Dr. David Bachmann?

A. Yes.

Q. It was a theory you had in the case, however, isn't it correct, that Mr. Aleksey had given a false confession in his particular case?

A. I'm sorry, I didn't understand your question. I couldn't hear you.

Q. Let me ask it a different way. Did you have a theory that Mr. Aleksey had given false confessions in this case?

A. My theory was that from the confession standpoint they had at some point coerced his confession. Everything was based on the two-hour-and-seven-minute gap between the two tapes.

As far as actually establishing that

as a false confession, I don't know if that's exactly what would be deemed as a false confession. Coerced, yes, not voluntary due to the fact that he was under the medical diagnosis of a concussion, yes. If that was outlining a false confession, I'm not sure it's the same thing.

Q. Okay.

A. I hope I'm answering your question.

Q. Having been aware of Dr. Kassin even with the -- and aware that your client had, in fact, made a statement.

A. Right.

Q. Stating that he was the triggerman at one point of time.

A. Yeah.

Q. Why would you not have similarly used Dr. Kassin in addition to the concussion theory?

A. The first statement that Mr. Aleksey made may have hurt him more than the second statement. As much as I would have liked to have pinned everything on this statement that he made after the two-hour-and-seven-minute gap period, his first statement to the SLED agents was very jumbled.

He would make a statement that I was driving, no, she was driving and constantly correct

himself in the first statement. When I'm talking about the first statement, I'm talking about the one prior to the time when he's crying, prior to the time he said, "I shot the trooper and she didn't have anything to do with it."

The first statement itself I thought was probably more damaging because it clearly wasn't confessed -- coerced, there wasn't any crying, there wasn't really anything I could point to and say that.

Now, on the other hand, the brain problem that Dr. -- that the neuropsych would have testified to could have explained that, at least it could have established, well, look how confused he is from that standpoint and the -- I thought it was pretty consistent, at least as consistent as we could achieve.

So I thought that was the very best testimony we had. Very rarely do you have medical testimony, or at least in my experience it's very rarely I have an actual doctor that will take the stand and comment on a confession like that. And I thought that was pretty strong testimony and that's what I relied on.

Q. I think that's probably all the questions I have at this time.

THE COURT: All right. Thank you.

Any redirect?

MR. TARR: Yes, Your Honor.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. TARR:

Q. Mr. Stone, going back to the alleged escape attempt, malicious injury.

A. Right.

Q. You said you thought possibly Mr. Bamberg may have been the head of the jail at that time, the detention center?

A. That sounds right. I don't know if he was or not, but I think that's right. I know I saw at some point a reference in my notes that I think I even spoke to him or Mr. Sims may have spoken to him concerning that, because testimony came from the jail that the reason they charged Mr. Aleksey with escape was because anytime you break an exterior wall or window that would lead to the outside, even if it's surrounded by fence, they're going to call it escape. So that's -- that's the reason I think that Mr. Bamberg may have been the director at that time.

Q. And do you have any recollection of whether I think his name had come up before in terms of

Insurance Reserve Fund representation, possibly representing him in his capacity as --

A. Mr. Bamberg?

Q. Yes.

A. In his capacity in the detention center?

Q. Yes.

A. I think I have represented him in the past, yes.

Q. I was just asking if you can recall whether or not you were representing him at that time?

A. No, I don't believe I was, but I'm not sure.

Q. Okay. Now, there was some testimony last time we had a hearing regarding the file that was eventually turned over, both you and Mr. Sims turned your file over to Mr. Aleksey.

A. Yes. Yes.

Q. And I believe at some point in the testimony the phrase you were ordered to do so by the disciplinary council came out. There was never an official-like order that you turn it over, it just --

A. No.

Q. -- basically said you probably need to turn it over?

A. No. I don't think I said I was ordered to turn it over, no.

Q. Yeah, I couldn't remember. I think --

A. I think everybody assumed that but, no, I was not ordered.
Q. Okay.
A. I did it very quickly. In fact, you could tell from the letter to Mr. Richardson that I think at that time I said I intend to turn this over as soon as possible.
Q. Okay. And but whatever you needed to do, whether it might take a day or two days to copy the file, you just felt like you -- it was best to just turn it over without doing that regardless of the statute?
A. It took us a while to copy the stuff that I did copy and I still was just copying my billing notes and various things like that and trying to get as much as I could together. I don't know that I could have duplicated the file. I don't know that it would have helped me had I duplicated the file, but I wanted to get it to him. His letter, when I say he, I'm talking about Mr. Aleksey's letter said you can make a copy unless it's going to delay the process and from that I just sent him the file.
Q. Okay. I want to ask you about the juror Gigi Scofield Hayes.
A. Yes.

Q. A lot of discussion about her. On page 149 to 150 of the trial transcript the judge is conducting -- Judge Cottingham is conducting a voir dire of specific issues in the case; namely do you know, you know, these people are going to be involved in the case.

A. Right.

Q. On page 149, 150 he's asking is anybody a family member, close personal friend or acquaintance of the victim or the victim's family.

A. Yes.

Q. And she didn't stand up at that time. And I'm wondering if you knew at that time or had a reason to believe at that time that she did know the victim?

A. I'm not so sure I can agree with you that she didn't stand up. I don't know when she stood up, but I made the note that she knew Trooper Lingard.

I don't know when she did that. I made that note and I would not have known independently that she knew him. So she would have had to have stood up or made some indication at some point and it might have been in her jury questionnaire, I don't know.

Q. Or could it have been that Mr. Sims, you've already testified his knowledge of the community,

could he have maybe said something to you that he thinks she knows Lingard?

A. I don't think so. I mean, it's possible and certainly I don't know where I got the information, but that is a note that I made as the jurors were called and she would have had at least two opportunities to tell us that she knew one of the parties involved. And I don't know if there was --

Q. But if there's nothing in the record then you don't -- you're just not sure where you got it from? If she didn't stand up and say I know the trooper, then you must have gotten it from somewhere else, you just can't recall, is that --

A. That's right.

Q. Okay. Now, I'd asked you earlier regarding Elizabeth Blackwell about having her in Orangeburg ready to testify and not calling her in reference to the statement that the daughter had made about Mommy told me to say this or that.

A. I remember you asking me that question, yes.

Q. Okay. Now, specifically the attorney general had asked you about Marcus Blackwell.

A. Yes.

Q. It's our understanding that he and his mother were both in Orangeburg ready to testify and that

neither was called.
A. I don't know that's true. It might have been true, but I don't know that. I know he was -- I think he was contacted. When he was contacted he was in Beaufort, Marcus was, I don't know that they were there in Orangeburg or not.
Q. Was there a reason you chose not to call them, wherever he was?
A. Thomas tried -- excuse me, I keep saying Thomas. Mr. Sims tried to go -- the testimony that we would have elicited from Mr. Blackwell is that she had an explosive -- that Gloryvee Perez Blackwell had an explosive personality that, she kicked out his windshield, that she shot his gun and told him she just got through shooting the gun, all of which Mr. Sims tried to go to on cross-examination and Judge Cottingham wouldn't let him. So that was the testimony that we would have elicited from him.
Q. Well, didn't Judge Cottingham say one of his reasons for not allowing you -- a quote from Judge Cottingham was "I've seen a lot of windows kicked out where anger wasn't involved."
A. Yes, he said that.
Q. So do you think it might be possible that if you said, Judge, look, we've got Marcus Blackwell, the

ex-husband, or soon to be ex-husband of Ms. Perez who's here to tell you that anger was involved, do you think that that might have changed the judge's ruling?

A. Honestly, no, I don't think he was going to let us get into that regardless. I thought it was a legitimate question, and I don't mean to differ with his ruling, but I thought it was. Whether or not she had an explosive personality, I think Mr. Sims should have at least been able to ask the question.

But Judge Cottingham would not even let him ask the question. I think his specific comments were that he wasn't going to get into all the divorces. I don't know exactly, maybe that's just something he doesn't want him to testify.

Q. Have you ever heard of a window getting knocked out where anger was not involved?

A. No, I have not.

Q. I want to show you this Applicant's 25 affidavit of Marcus Blackwell. If you could read number 9 and just let me know if that refreshes your memory or if you still don't recall him being in Orangeburg.

A. I read that and it says that we had him there, we called him, we met with him at the hotel, but I don't remember that.

Q. Okay.
A. I'm not saying it's not true, I just don't remember that.
Q. Wherever he was, the reason you didn't call is because you didn't think the judge would allow it anyway?
A. Yeah. That was the stuff that Mr. Sims tried to get into and that would have been exactly why we would have called him.
Q. Okay. All right. Another thing that the judge didn't allow you to do was to cross-examine Ms. Perez about the nine indictments for drugs that were dismissed.
A. Right.
Q. And one concern that he had was that just because there were ten indictments, she pled to one, doesn't mean anything, doesn't mean there was a deal.
A. Right.
Q. He basically said you've got to show me something that says there was a deal because I have no evidence before me that there was a deal, you know, the other nine indictments, they could have found that there was just no evidence.
A. No, I don't think that's what he said. I mean, I remember the testimony, but I don't -- he said he

was going to allow Mr. Sims to cross-examine on the possession of cocaine, the other stuff he said, and I remember him specifically saying that, well, the prosecutor's office might not have had enough evidence to go forward with and all these other things.

But the bottom line was he wasn't going to let us get into that. And I don't think there was anything that we could have presented that would have changed his mind on that.

Q. We'll come back to that. I'll have Mr. Brown look through the record.

Do you think it might have been helpful in the argument to the judge to try and get -- get the judge to allow you to ask those questions if you'd ordered the transcript of the plea of the -- Gloryvee gave and then you could have read for yourself and educated the Court on the reason why the nine counts were dismissed and the fact that there was a deal and that she had agreed to testify against her own mother in exchange for a plea for probation and dropping nine counts against her?

A. I hear what you're saying. Do I think it would have made a difference arguing to Judge Cottingham, no. But that could have potentially helped.

The page you're looking for is page 1,316 in the transcript. Mr. Sims has made the point she was indicted for ten separate counts, she pled to one of those counts, she made a bargain and plead to one of those counts. I think that that is the information that's totally relevant and I think you can go down --

Q. Line 6?

A. What's that?

Q. Line 6.

A. Yeah, the Court saying "You can't say if she made a bargain; they may not have had sufficient proof. I will not get into nine different cases whether she was guilty or not guilty. I will permit you to inquire as to whether or not she pled guilty to one or other of them, but the fact that she was indicted, you don't want to give her the presumption of innocence that you want this jury to give your client, that's not fair."

Q. So that's basically what I had said, is that he said there was no evidence that there was a plea bargain and so he wasn't going to let you get into it.

He doesn't have any evidence before him, and my question is if you had ordered -- I can't

remember what the number is of Gloryvee Rivera's guilty plea transcript. It's Applicant's 37.

A. Yeah.

Q. In that transcript it goes over what the deal is, that she's got ten counts, they're dismissing nine, she's pleaing to one, she's agreeing to testify against her mom. And this page 7 from Applicant's 37 the Court says "Now, Ms. Rivera, you indicated as part of the plea agreement that you knew some things concerning drugs and Gloria Perez Frederico and Vascaz and Xio Rivera; is that correct?"

She says "Yes, sir." And then she goes on to proffer what her testimony would be. And you know from before Xio Rivera was her first husband and Gloria Perez is her mom.

If you had ordered this transcript, at least you could have tried to argue to the judge that there was a deal?

A. Sure.

Q. And then he wouldn't have had that basis to rule against you, he might have found another one, but would you agree with that?

A. Would I agree that -- I wish I could help you. I can't honestly say that I think Judge Cottingham would have changed his opinion regardless of what we

would have presented him.

Would it have been nice to have that and argued it? Sure. Do I think it would have changed anything? No, I don't think he's going to let us go into anything unless it was something -- obviously as a conviction that's going to be admissible under the rules. Not having a conviction you're going to have to get it in in some other angle and, you know, I don't know.

Q. Are you aware of court cases that allow knowledge of the court system and the ability to cut deals as being relevant? Like in this situation she's charged with murder, she gets the charge dropped, she's getting instead of facing the death penalty she's facing nothing.

A. Right.

Q. So the fact that, you know, six years earlier she'd agreed to testify against her own mom, she gets nine charges dropped and gets probation.

A. Right.

Q. I mean, that's one angle I think you were talking about you might be able to use.

A. Sure.

Q. But basically all I was saying was if you would have had that transcript, he couldn't have said

there's no evidence of a bargain?
A. That's true, sure.
Q. He couldn't have based his ruling on that?
A. Sure. That's right.
Q. Okay. Now, Mr. Zelenka asked you about the investigation that was done by Mr. Davis.
A. Yes.
Q. And specifically about what he did regarding the -- all the girls that came down and background check.
A. Right.
Q. I mean, what evidence do you have that he conducted an investigation into the actual allegations that they made that they got conned and scammed by your client?
A. I don't know how to answer that question. What evidence do I have that Mr. Davis did an investigation at all?
Q. No. No, I mean not -- what do you know of your own knowledge that he did to look into like when Lisa Watson says he stole $7,500 off her credit card.
A. Right.
Q. I mean, what -- or Sara Pivero said, you know, he conned me into buying this Lexus or whatever, I mean all the different things just looking through

his bill which is Applicant's 68, I believe.
A. Right.
Q. And you look at what he did, basically he made phone calls up there. And I'm just wondering if you have any other information regarding what he did to track down leads on the backgrounds or allegations made by these women against Mr. Aleksey.
A. That's hard to answer at this point. I know back then we were -- I talked to him a number of times. I know that he gave us information about a car stop in North Carolina involving her that did not -- I know that he was up in New York and Pennsylvania and New Jersey and I know he was reporting to us and at some point he was talking to Mr. Sims, some point he was talking to me. And basically all of my notes that indicate the times that I've talked to him. But I did not have him do a specific report, and I don't have any of that as far as his notes with me.
Q. Okay. And specifically before Tommy went up there, and I believe he went up his bill shows I believe the 11th through the 15th of August.
A. Okay.
Q. Do you recall whether or not you gave him any written list of things you wanted him to do?

A. I had sent him letters I know. I don't know if I gave him a specific list of things I wanted him to do or not.

Q. Okay. This August 11th through 15th was just he basically got back from his trip about nine days before the start of the trial.

A. Maybe that's correct.

Q. So basically when he went up there he had access, or at least you had received basically everything you were going to receive information wise?

A. That's right.

Q. Either through discovery or through Bayan before he went up there?

A. That's right. I'm sure we got stuff after that time, but to be able to specifically point you to stuff that we didn't have, I don't know.

Q. Okay. I think it would be easier for me to go -- these are all things we've gone through before, but I just want to list out things you had either through notes or letters from Bayan asking you to do things.

You got a letter from March 29th, '98 saying that you need to -- that Gloryvee had a checking account down in Beaufort, MCAB or something,

it has those letters, you need to call Summerfield Suites which is where we got the three bad checks she wrote.

He lists out the checks, the exact amount for them, $700 check to Atlantic City, New Jersey, MPC which would appear to be the $500 and $200 money order, that's 700 is Atlantic City where that was done, Telecheck which was going to be in regards to Summerfield Suites as well as the Penske matter.

April 19th he sent you a letter that actually gives you the name of -- gives you Summit Bank in Philadelphia which is where the checking account was opened by Gloryvee after she stole the checks from Dr. Bang, he gives you Dr. Bang's name and his street his office is on which is right near where Mr. Davis went, gives you the checking account again in Beaufort, Burlington Lincoln Mercury where she tried to get the Mark VIII, the certified check for $20,000.

That Telecheck, call Al at Penske, that's from April 19th, got a to-do list here that I believe you testified is Applicant's 63, is Tina Lawing, your paralegal's handwriting, it says look for police reports Bensalem, Pennsylvania, Westin

Suites by the airport, Michael DeAngelo, Vince Black, this is her notes back from before you even went to trial so now we've got Vince Black tied in with Westin Suites.

Summerfield Suites, Telecheck, here's your notes that are typed, you have Applicant's Number 65, March 30th, '98, actually March 25th, '98 reviewed the information Bayan sent me and some letters on new information, concerns what Gloria was doing prior to leaving Pennsylvania, apparently she was working with a doctor's office.

Bayan deposited checks that Gloria had given him, need to contact the doctor's office that Gloria worked for, find out if they had any checks stolen.

That was Applicant's 65, attorney notes, your notes typed up from March 25th, '98. You also had provided in discovery Applicant's Number 32 which were checks, Dr. Bang's checks that were found in the Mustang written out and just blank series of blank checks which would correspond with what he told about her stealing checks from the doctor.

From looking at Tommy's bill and just from your recollection, can you tell that he looked into any of these things that Bayan had said you

might want to look into?

A. I know he went to a doctor's office. I don't know if he went to the right doctor's office. I know he went to one doctor's office, but I don't have his bill in front of me.

I also don't have any particular notes from him that I would receive. The stuff that you asked me about just now I have notes in my to-do list and it would have been my practice to give that material to Mr. Davis.

You may also note that some of the people, I also had them running down information in Charleston because I tried to run down whether or not anyone had heard Mr. Aleksey say he wanted an attorney or if the police beat him or he acted funny. So I had Mr. Davis and his crowd do that as well.

Carol, if there's a reference in my notes to Carol, that is Carol Wingard who also works with Tommy Davis, or did at that time, in the Quantico Group so anything that he did would have also been the same thing.

I -- and I had both of them doing that. I don't know whether or not -- and like I said, I don't believe there's a written report from Mr. Davis. I would not have asked him to produce

one.
Q. Right. But, I mean, you're aware basically that if he would have just, you know, taken these letters and gone to Fuld Street and gone to Dr. Bang's office that he would have been led to just countless bits of criminal activity by Ms. Perez and would have established motive for her to kill the trooper?
A. I think there's -- that information I'm assuming was available at that time and he could have been able to get it, I'm assuming.
Q. All right. This is just a brief point I want to make. There's been some testimony from you regarding like what the strategy was when questioning certain witnesses and that this -- such and such was our strategy. There's nothing inconsistent about having more than one reason to ask a question, I mean necessarily, is there?
A. I'm sorry, I don't understand.
Q. Like you could possibly have -- you can ask one question expecting to get beneficial, you know, more than one beneficial thing out of the answer.
A. Sure.
Q. And so asking, trying to get, bring out that the defendant is nonviolent through the girls is not inconsistent with also bringing out that they're not

credible or that they're not really victims? I mean, you can bring out that he's nonviolent.

A. Right.

Q. And that they were in all the stuff with him?

A. Sure.

Q. And that's not inconsistent?

A. No.

Q. And Sara Pivero who Bayan supposedly confessed to over the phone.

A. Right.

Q. And had a number of things that could have been impeached on, are you aware that out of all the list of statements that SLED said that they had taken in this case that she -- that hers is the only one that's missing?

A. I don't have any reason to doubt you. I don't know that to be a fact one way or the other.

Q. Okay. You made several statements regarding how it -- in your opinion it was clear to the jury that these girls were kind of in on it with Bayan, and specifically you were citing the Lexus deal with Sara Pivero.

And I went back and I was reviewing that testimony and basically she says that he did it, she didn't now anything about it, he made up the W-2

and sent them back to the dealership, she didn't even know what was on it and that he took it and she got stuck with it and now she's on probation for something she didn't do and it goes unchallenged.

I'm just wondering why you think the jury thought that she was in on it based on that testimony?

A. What part of the transcript is that? I'll be glad to answer that question, I just don't know what you're asking me.

Q. Okay. You got 1,619 starting at line 12.

A. Well, I'm not sure I can agree with you that he wasn't crossed on it. This is Mr. Sims' cross-examination, obviously it's not mine, but he -- he starts the questioning on line 12 of 1,619: "I believe there was an incident with a Lexus; is that correct?"

And she said, "Yes."

"You went to Thompson's Lexus up in Pennsylvania somewhere; is that correct?"

"I met Michael up there later." So she's indicating obviously there that she meets up with him. He -- her statement is "He called me up there to come see the car and fill out the credit ap," I'm assuming that stands for application.

And Mr. Sims' question is "Then you filled out the credit ap and signed your name and wrote a check?"

Her response is "Reluctantly, yes." I think it's hard to understand why that wouldn't be both of those together. Now, whether or not that was effective or not, I don't know.

Q. Okay. I apologize, I put you to her guilt phase testimony.

A. Okay.

Q. I did not mean to do that.

A. I'm sorry.

Q. That was my fault. We've gone over this, it's 1,909 to 1,910.

A. Okay.

Q. All right. This is where Solicitor Bailey's asked her about getting the Lexus. And she's already testified in the guilt phase that she signed the stuff.

A. Yeah, right.

Q. Now, look at the bottom of 1,909 going through 1,910 and read what she says she did.

A. "I will hand you a copy of the W-2 and ask if you can identify it?"

"To identify it, yes, it's a W-2 form

that was faxed to the Lexus dealership."

"Does that indicate your income as being a little in excess of $78,000? How did that come about?"

"I don't know. It was faxed to the dealership. I wasn't there, I didn't hand it to them."

"Did you know it was going to the dealership?"

"I know that they asked for proof of income. I didn't deal with them at all, though, I only went there to sign the papers. I went there once to fill out the credit ap and once to sign the papers."

Again, to me she's signing papers, she's -- she's in the middle of signing all the documents which she already admitted to doing so I don't know that there was much that Mr. Sims needed to do to clarify that.

Q. But you would agree he never -- he never brought out all of the things that she lied about to the police when she was questioned about it.

A. Sure.

Q. Never brought out the fact that she was convicted of five counts of criminal acts because of

it?

A. Sure, right.

Q. Okay. Okay. And I'm going to make clear that Mr. Zelenka had asked you if you had hired a social worker. And I don't believe you did hire one?

A. No, I did not. I thought it was Rosengard, but he was, I believe, a psychologist.

Q. And Rosengard was actually a doctor that had seen Bayan as a child and --

A. In the very least he had a good bit of information about the childhood problems or things like that, yes.

Q. I mean, basically what I'm getting at, was he an expert witness or was he a witness that had seen Bayan for a number of years and treated him for a number of years and just was kind of brought up as a personal psychiatrist for Bayan as a child?

A. I know that Mr. Aleksey was in psychotherapy from 1980 to '85. Unfortunately those records were lost, there was a fire or something in the hospital I believe. And we had checked with Dr. Rosengard on that so maybe there was some indication that Rosengard had seen him through that time. He was going to be an expert one way or the other.

Q. Right.

A. I think.
Q. Right. I just -- it was my impression that he wasn't hired as an expert, but that he had simply knew Bayan from treating him over a course of years, and he was just coming up to testify about the different times he evaluated him psychiatrically. And that could be a misunderstanding on my part, I'm asking the question.
A. I know he saw Charlotte Selzer at Creedmore Psychiatric Center in August of '87, December of '87 so I know there was another one, but I don't know why he -- he was brought up because of the background in Bayan's past and whether or not I'd actually called him up as a specific expert or he had been involved some way.

He had to have been involved in some way in Bayan's past, I certainly wouldn't have gone to New York to find a psychologist.
Q. Right. Right. Now, with regards to Donna Swarts-Watts you indicated that she didn't testify because she didn't have anything good to say. I was wondering if it was actually more the case that she had some decent things to say, but Dr. Frierson for the State was sitting out in the courtroom the whole time waiting so that if she did get up and testify he

was going to get up and say that Bayan was antisocial and that was the reason why she didn't testify, and it wasn't so much because she wasn't going to say good things, it was just that Frierson was going to say some really bad things to rebut what she said.

A. Well, I know that the doctors that had seen Mr. Aleksey and the ones that unfortunately phrased them in my notes as doctors, so it's hard for me to tell you exactly which had diagnosed him with a borderline personality disorder. He was unbelievable and manipulative, he was angry and he had explosive outbursts.

None of those things, especially the angry and explosive outbursts, were things that we wanted to get into. And I don't know that I could tell you right now whether or not she was there as a preventive measure or not. I just know that she could not provide me anything that was helpful and she had been involved in the case from the very early stages.

Q. Okay. But do you have a recollection that her diagnosis was not that Bayan was antisocial, but that if she got up and testified that's what Frierson was going to say?

A. I think that is what Frierson would have said,

yes.

Q. Okay.

A. The more -- probably the bigger concern I had other than that would have been the manipulative responses to the questioning as well as the explosive outbursts. That's the only thing, obviously stuff we were trying to hide from as much as humanly possible and the stuff that they had not established very well up to that point.

MR. TARR: That's all I have, Your Honor. Thank you.

THE COURT: Any recross?

MR. ZELENKA: None, Your Honor.

THE COURT: All right. You can come down. Is this witness free it leave, counsel?

MR. ZELENKA: No objection.

MR. TARR: Fine with me.

THE COURT: Very well. You are free to go.

(Whereupon, the witness steps down from the witness stand.)

THE COURT: Call your next witness, please.

MR. BROWN: Your Honor, excuse me. At this time the applicant calls Walter Bailey.

(Walter Bailey, called as a witness, having first been duly sworn, is examined and testifies

as follows:)

THE COURT: When you are seated if you would state your full name for the record.

THE WITNESS: Walter Bailey.

THE COURT: Your witness, Mr. Brown.

MR. BROWN: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. BROWN:

Q. Mr. Bailey, what I'm going to do is just ask you a little bit about what I think the most important witness in your State's case was and that's Gloryvee Perez, she goes through a number of names.

One thing you had argued is motive. Would you agree motive was an important part of your case?

A. Yeah.

Q. And you would agree that motive may have been the strongest argument that you had that Mr. Aleksey was the perpetrator of the crime?

A. I would disagree with that. I think his confession that he did it was the strongest piece of evidence we had.

Q. His confession?

A. Yeah.

Q. Apart from his own statement which he

contradicted, so obviously he's not telling the truth on one of those, whether he's telling the truth he did shoot him or telling the truth that he didn't shoot him, obviously he can't be telling the truth on both of those, apart from that what was the next strongest piece of evidence you had?

A. Probably Sara Pivero's testimony about the phone call in which he again admitted that he was the triggerman in the death of Sergeant Lingard.

Q. You gave eight factors in your closing argument that indicated that only Mr. Aleksey was the shooter. Do you remember, do you recall that?

A. I recall itemizing for the jury what I felt like that the evidence showed were the factors that proved his guilt, yeah.

Q. And if I can refer you to page 1,752.

A. What volume is that in?

Q. IV. Do you have a set?

A. Yeah.

Q. I apologize. Line 7. This is following a paragraph where you said "Taken together, maybe not individually, taking all eight of these together it proved that Bayan Aleksey, only Bayan Aleksey murdered Frankie Lingard."

A. Okay.

Q. Line 7 says "The first fact is Gloryvee Blackwell had no motive to kill Frankie Lingard."
A. Right.
Q. "There's no motive whatsoever."
A. Right, that's what it says.
Q. Okay. And then on 1,753, lines 11 through 20 you say "Gloryvee Blackwell is no angel, she has a record. I brought that record out. She has a conviction for cocaine and a conviction for shoplifting. Excuse me, shoplifting back several years ago."
A. Okay.
Q. And it goes on all the way down to 20 and it says "The thing, the important thing is that other than a couple of speeding tickets she has not got anybody looking for her. There's no warrants out on her."
A. Okay.
Q. "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 what it says.
Q. Okay.

MR. BROWN: Just one second, Your Honor.

At this time we would move into evidence without objection Applicant's Number 79, it's three pages stapled together and one separate. And what it shows is one's a correspondence -- actually two pages of correspondence from the Hamilton Township in Hamilton, New Jersey, one is to me, it's a fax cover sheet, one is Mr. Aleksey and then on top of it, the top document, is a copy of a document I'm going to show Mr. Bailey at this time.

THE COURT: And it's been marked as...?

MR. BROWN: Applicant's 79, it's in evidence without objection and it was obtained by post-conviction counsel.

THE COURT: Thank you. That's correct?

MR. ZELENKA: That's correct.

THE COURT: Very well, Mr. Zelenka, all right.

(Entered into evidence was Applicant's Exhibit 79, three documents.)

Q. Now, Mr. Bailey, you would agree that that's a warrant?

A. This appears to be a computer printout of some type that references the notice of the warrant for the arrest of Gloryvee Rivera.

Q. I apologize, it's not the actual warrant, it's notice of a warrant.

A. Yeah.

Q. And it's for Ms. Gloryvee Rivera?

A. Yeah. It's dated apparently May 19th, 1994.

Q. That was the date the warrant was issued? I believe it says warrant date 03/08/95?

A. Notice date March 9th, '95. The date on the summons is apparently March 19th, 1994.

Q. And this is a warrant she didn't come to court, so she's been charged with contempt of court for not showing up for that earlier summons?

A. That would appear to be what this is saying. I don't recall seeing this before.

Q. You would agree that the --

A. I may have, but I don't have any specific recollection of seeing this before.

Q. Okay. And at the top it's got some handwriting that says per Judge, and I'm going to read the best I can, Kevin Neese.

A. Okay.

Q. It's still valid as of June 23rd, 2003.

A. All right.

Q. So she was wanted back in '95 all the way through now?

A. Based on this document, which I said I don't recall seeing before, that would be correct. Apparently it's a traffic ticket of some type that she didn't respond to and there's an outstanding warrant out for that ticket.

Q. And so the argument could not be -- in light of this you could not make the argument at trial that there, quote, is no warrants out on her?

A. I would not have made that argument if I would have been cognizant of the fact that there was a warrant out for her. I would have tailored my argument differently.

Again, I don't recall seeing this before. I ran a rap sheet on her, I don't recall seeing anything on that rap sheet to indicate she had any outstanding warrants against her.

Q. You would agree Hamilton Township is a municipal court which would be a government agency?

A. Yeah.

Q. And if I can refer you to page 1,289 which would be in Volume III.

THE COURT: While he's getting there, Mr. Brown, hold on one second before you ask the question.

MR. BROWN: Yes, ma'am.

(Pause in proceedings.)

THE COURT: Thank you, Mr. Brown.

MR. BROWN: Your Honor, 1,289, lines 17 through 21 is the next thing I'd like to point out. And what's happened here, there's a discussion outside the presence of the jury about impeaching Ms. Perez in which -- some testimony with some traffic violations.

I distinguish that because even though this bench warrant may have been related to a traffic violation actually, or the notice of the warrant, the notice actually indicates on the face that it's for contempt of court is what that notice --

THE COURT: Okay.

Q. I would point out on line 17 through 20 or 21, Mr. Bailey, I think at that point you said, "Your Honor, you'd like an opportunity since this was new to you to check with Ms. Rivera to see if it was really her related to these traffic tickets which are out of the same township or actually that was -- excuse me, those are Trenton, New Jersey, but you would like to check with her and then you may need to explore further."

A. Yeah.

Q. Okay. Can you tell me whether you did any further explanation besides asking Ms. Perez?
A. Yeah. On page 1,294, starting at line 5, I'm addressing Judge Cottingham: "Your Honor, she acknowledges that is her address, that's her name. She just has no recollection of these speeding tickets." So she's acknowledging her name appears on that document, but said she has no recollection of it.
Q. Right. But you mention on the other page you would speak with her, you may need to explore further.
A. Yeah. And that's what -- I did speak with her and that's my report back to the Court after I had spoken to her.
Q. Right. Did you explore further past her?
A. No.
Q. So if, in fact, she killed Mr. Lingard because she was on the run from warrants, she lied to you about having warrants outstanding, there was no other investigation you did?
A. Well, I don't think I can answer the question the way you posed it. All I can say is that I asked the judge to let me talk with the witness to inquire as to whether or not she had any knowledge of those

warrants, and basically she told me that she recognized her name there, which she had no recollection of it, and I reported that back to the judge.

Q. Okay. All right. But basically there was no further exploration?

A. That's correct.

Q. Okay.

THE COURT: Let me just clarify. Mr. Bailey said she had no prior notice of warrants and I thought you all were talking about speeding tickets. Are you talking about warrants or speeding tickets?

MR. BROWN: We're talking about Number 79 in relation to his arguments to the jury.

THE COURT: I understand that, but Mr. Bailey said he didn't know about that, that that wasn't brought to his attention, that there was a question and you were specific to talk about speeding tickets.

It was the speeding tickets as I understand that Mr. Bailey asked for an opportunity to talk to Ms. Perez about it. So are we talking about warrants or are we talking about speeding tickets?

MR. BROWN: They're talking -- they called them traffic violations, that warrants were issued. It's a little unclear. They don't give a citation number, Your Honor.

THE COURT: Okay.

MR. BROWN: So we don't know exactly what they're talking about in that case there, but I would point out they give her driver's license number in the transcript in 1,289, and if you look at the notice of the warrant that Mr. Bailey never knew anything about, it cites the same driver's license number on there.

THE COURT: Okay.

MR. BROWN: That's why I asked, because if there had been further exploration like pulling a copy of her driving record as opposed to a rap sheet under this driver's license number which they had at trial, I would assume it might showed this warrant that it's still active today.

THE COURT: Okay.

MR. BROWN: But I can't answer the question at trial what they were talking about. I mean, what we're talking about is this warrant or notice, the warrant referenced here.

THE COURT: I know that you left that though, Mr. Brown, and then you shifted to what went on at trial.

MR. BROWN: And I did because he mentioned he wanted to take time from the trial to explore it.

THE COURT: Right.

MR. BROWN: And my question is did you explore it besides just asking Ms. Perez.

MR. TARR: Your Honor, to be -- I think the traffic --

THE COURT: That's okay. Go ahead and ask another question.

MR. BROWN: Thank you.

BY MR. BROWN:

Q. And since you didn't know anything about this, Mr. Bailey, I would take it that you did not turn this over to the defense?

A. I have never -- I don't recall ever seeing this particular document. I may have or may not and just don't recall it. The reason I think it may not be that same document, is you've handed me one sheet that's apparently generated by the municipal court in New Jersey.

Mr. Sims on page 1,288 is talking

about three copies, maybe four copies of some warrants that are outstanding under the name of Gloryvee Rivera. Then he goes on to talk about Trenton, New Jersey, and gets in the driver's license number.

Q. And he refers to --

A. Mr. Sims asked on line 10 "All four of these, or all three of these are the same thing."

And Judge Cottingham says "Just traffic tickets?"

Mr. Sims says "Yes."

Then I ask for the opportunity since this is new to me and nothing appears in the rap sheet to check with her and see if that really is her. So that -- that's what I asked the judge permission to do; he gave me time to do it. I did check with her, she told me, yeah, that's my name, but I don't recall getting these speeding tickets.

Q. And the Court would even suggest to you you might be able to verify it, Mr. Bailey, he doesn't reference you by name, but he gave you some numbers there you could verify it with her driver's license number?

A. I could have, but I'm in the middle of a trial and it's difficult when you're in the middle of a

trial to, you know, stop and do that type thing.
Q. Sure. And you would agree that this warrant they reference in here is not for a traffic citation?
A. It appears the basis of it is a traffic ticket. It was -- and then she didn't show up so a warrant was issued for contempt of court.
Q. You would agree she could be punished, even if she was found not guilty of all the traffic violations she could be convicted for contempt of court under your understanding of the criminal justice system?
A. Under my understanding of what this purportedly is at the present time, yeah. I don't recall anything in Mr. Sims' questions or my inquiry of Ms. Rivera that indicated there was anything involving contempt.

Now, this may have been the document he gave me, but I don't think so because he was referring to more than one document.
Q. Sure. And you had no --
A. If you have those, if you have the documents Mr. Sims had in court I would be happy to look at them and see if they refresh my memory.
Q. Sure. And let me ask you, you don't have any indication that Mr. Sims knew about a contempt of

court charge?
A. I don't recall, unless it's some other place in the transcript, reading anything here today that indicates contempt of court situation, no.
Q. Do you have any information that you turned over anything to the defense regarding a contempt of court warrant?
A. The only thing I would have given the defense was what I got through my normal process, would have been the rap sheets. The rap sheets did not show any outstanding warrant to the best of my recollection.
Q. But you would agree that Brady means -- under Kiles v. Whitley Brady has been interpreted to include all government, whether it's turned over to the prosecutor or not?
A. Well, I understand.

MR. ZELENKA: I'm sorry, that's not a correct statement of the law. All government?

MR. BROWN: It's all law enforcement government.

THE COURT: If he doesn't agree -- you've asked the question. If he doesn't agree he'll say he doesn't agree.

MR. BROWN: He may disagree, yeah.

A. The way I understand that case, the prosecution

has an affirmative duty to inquire of law enforcement what they have of an exculpatory nature and to obtain that and turn that over to the defense. I did that in this case.

Q. Did you speak to the Hamilton Township Police Department?

A. I did not. I assumed, again, we're taking about something that the defense knows about at this point in time that I don't. So I don't know that I've got any duty to disclose to the defense something I don't know, but they do know.

Q. Well, now, Kiles doesn't deal with whether you know about it, does it? It says you've got to seek it out even if you don't know about it.

A. Right. And I sought it out by seeking a rap sheet. And if the rap sheet had shown something, that would have been turned over to the defense, okay.

I have no idea from reading the rap sheet or any other source pretrial that there was anything other than what was disclosed on the rap sheet and that was the cocaine and shoplifting, as I recall.

Q. Right. And I understand that, but you don't have any indication the defense knows about this

contempt of court warrant, do you?
A. I don't know what the -- what's in somebody else's mind, no, I don't know.
Q. Do they ever bring it up in the proceedings? I don't mean to cut you off.
A. You know, the transcript is like five volumes and I can't, you know, tell you what's on every page of that transcript. I've reviewed it, but it's been sometime since I've reviewed it, but it speaks for itself.
Q. Yes, sir. I would agree the transcript speaks for itself.

At this point I would like to move on to bad checks that Ms. Perez was writing on a Marine Corps Air Station Credit Union account.

MR. BROWN: And I apologize, Your Honor, some of these checks were just entered. We'll take the liberty of stapling this.

Q. If you would refer to Applicant's 75.

MR. BROWN: Which, Your Honor, it's four checks from Marine Corps Air Station that have already been introduced into evidence.

Q. Marine Corps Air Station Federal Credit Union account of Gloryvee Blackwell.
A. Okay.

Q. Now, you would agree that writing checks in that amount that weren't any good could prompt some authorities to go looking for somebody?

A. I would agree that writing a fraudulent check is a criminal offense in South Carolina, that could prompt someone to take out a warrant against you and could result in you being looked for by law enforcement, yes.

Q. And I'm not an expert, but since the money here is in a federal credit union maybe in and of itself and since the checks were being written somewhere other than South Carolina, we've probably got use of at least the mails if not some wire. And if she's committing fraud in writing a check that's not worth anything that could be a federal offense or wire fraud or mail fraud?

A. Conceivably could be. I'm not an expert on federal law.

Q. Me neither.

A. Again, I don't recall ever seeing these checks until you handed them to me.

Q. And I believe they were introduced, they were received pursuant to a subpoena that we issued.

A. Okay.

Q. But then I would ask you to take a look at

Applicant's 41 which is a list of documents, but the front page has three checks to Summerfield Suites. And would you agree that those are written on the same bank account?

THE COURT: Same bank account as what?

MR. BROWN: As the four checks in Applicant's --

THE COURT: The Marine Air Station Federal Credit Union account?

MR. BROWN: Yes, ma'am.

THE COURT: Okay.

A. Yeah, they all have the same address on them.

Q. And have you seen those checks before?

A. Let me look at the rest of the document, see if that jars my memory.

Q. Sure.

A. I may have, I don't have any specific recollection of seeing these before, but I can't deny I've seen them. This does not appear to come through discovery from my office.

My secretary normally puts a little red check, but of course wouldn't be red in the copy, but a check in the upper right-hand column of the documents I produce during discovery. I also would itemize everything and the check is just kind of a

backup on the itemization.

I don't see that check on here so this did not come to the defense through my office, but I could have something -- I could have -- I know you got your file assimilated from different sources.

Q. Yes, sir. I would ask you part of this --

A. If you let me retrieve my file I've got most of it here and that may help me if I can --

Q. Sure.

A. Mr. Brown, what I normally do is any documents pertaining to potential witness I've got a notebook with a tab for that witness, I put those documents behind that tab.

Q. Yes, sir.

A. If I thought it was something pertaining to the witness, but really had no direct bearing on the case, I would stick it under another tab that just said miscellaneous or notes or something to that effect.

I don't see it behind Ms. Blackwell's tab here, so without doing a whole lot more digging through the file I can't tell you at this point in time that I've seen this before.

MR. BROWN: And, Your Honor, to refer these back we entered these as documents retrieved

from SLED by subpoena we served as post-conviction counsel.

Q. The reason why I ask you that -- and, Mr. Bailey, if you'll notice there's some correspondence, it doesn't say who it's to, it's from a Mt. Laurel Police Department, Exhibit 41, and it seems to indicate that somebody has sent a picture of Ms. Blackwell and Mr. Aleksey to the Mt. Laurel Police Department and that they've confirmed that both the individuals stayed there and they're sending some documents related to that stay.

A. Okay.

Q. And with that is the three checks written on the same account signed by the same signature person.

A. All right.

Q. Purporting to be Ms. Blackwell.

A. Okay.

Q. And I just ask you that because if SLED had that, then that would -- because one of them says account closed and that's about $1,500 worth of checks.

A. Yeah. Apparently all three of them say account closed.

Q. It says $1,500 right there. And if you look that's the same month as the ones that were the other

four checks, same account, same month.
A. Okay.
Q. So she's writing a fair amount of bad checks --
A. Yeah.
Q. -- it would seem to indicate.
A. Okay.
Q. And that would be inconsistent with somebody who had nobody out looking for her?
A. Not necessarily. I mean, people write bad checks all the time. They pick them up. I had no knowledge of any warrant outstanding against her.

In my mind, in my opinion at that time there was no evidence of a warrant which would cause somebody to be afraid to stop for the police. Writing a bad check is not going to put you on NCIC, give you a motive to stop the police officer that stops you when your name pops up on NCIC check.
Q. Let me ask you this: If she's got a bench warrant for not showing up for court for a traffic citation for '95, she's written here seven bad checks that we know of, she doesn't know whether that's enough for somebody to pick her up or not, does she?
A. I can't tell you what she knows.
Q. Right. But if she feared she would be apprehended then that would be a motive to avoid the

officer's intervention if she was the driver of the vehicle?
A. You asked me to speculate on what she would have thought and I can't do that.
Q. You said that was not motive and I'm asking would that not be motive?
A. I said -- can you ask me the question again, make sure I understand what you're asking?
Q. Sure. Would be wanted for the bench warrant, which I'm going to call it a bench warrant, a contempt of court warrant from Hamilton, New Jersey, being wanted on that, writing at least seven bad checks for a significant amount of money, we're talking about $2,500 or more, would that not, could that not provide motive to avoid apprehension?
A. It could conceivably provide a motive to avoid apprehension.
Q. And that's the argument you made about Mr. Aleksey's motive to shoot Mr. Lingard?
A. That's one of the arguments I made, yes, that he had numerous outstanding warrants for his arrest and --
Q. He had a motive to avoid apprehension?
A. Yes.
Q. And I think your quote again from 1,753 was "The

only motive of anybody in that car to avoid apprehension is Bayan Aleksey," those were your words?

A. I said that and I think that's a fair comment on the evidence that was introduced.

Q. Yes, sir.

A. There was evidence there were arrest warrants outstanding on Mr. Aleksey. I don't believe there's any evidence before the jury that there were any outstanding warrants against Ms. Perez or Blackwell.

Q. But in light of this information, you couldn't in good faith make that argument even if it was introduced?

A. I couldn't make it today.

Q. Yes, sir.

A. But I make the argument based on the knowledge that I had at the time. That's the knowledge I had at the time.

Q. I understand. I understand what you're saying. But you could not have made that now knowing this?

A. I would have still made it with the check situation, because as I said people write bad checks all the time, but they very -- they don't often show up on the NCIC as far as warrants being taken out.

I think with contempt citation we were

talking about tickets during the court proceeding, and to the best of my knowledge this is the first time contempt has been mentioned. I would have altered the argument if I had known at the time of trial that there was a contempt citation out.

Q. Which by having to alter it you would not have been able to make that argument?

A. Not to the same extent that I did. I would have made a very similar argument.

Q. Because I think part of the argument there is, quote, "No evidence she is wanted by anybody"?

A. Yeah. And if I had evidence that she was wanted before the jury then I would have made the argument in a different --

Q. If you would have had it in your file, nobody would have introduced it, would you have made that argument?

A. No.

Q. Okay. Next I'd like to move to what I call the Trenton check scam and there were -- have you ever heard of an individual named Pat Cubberly?

A. Doesn't ring a bell.

Q. How about Keith Randall?

A. Doesn't ring a bell either.

Q. Or Chris Sontag?

A. Doesn't sound familiar.
Q. Okay. How about Dr. Bang?
A. Yeah.
Q. How do you know Dr. Bang?
A. I don't know him.
Q. What do you know about Dr. Band?
A. My understanding is Ms. Blackwell worked for him at one time, she stole some checks at some point in time while she was employed there and I believe Aleksey forged the checks or did something with them.
Q. Okay. Now, if, in fact, Ms. Perez or Ms. Blackwell would have stolen checks from Dr. Bang's office and tried to pass them at a bank, Summit Bank in Philadelphia roughly for $26,000 within a week of coming to South Carolina and Mr. Lingard being shot, would that give her some motive to avoid apprehension?
A. If she knew there was a warrant out for her arrest for that, yeah.
Q. How about if she went to the bank, passed off $26,000, gave them a $26,000 check then went to a Lincoln dealership and tried to use that deposit receipt to obtain a roughly $50,000 Lincoln and then been informed that the police were looking for her and never came back to the Lincoln dealership,

Dr. Band, her employer, or the Summit Bank. Would you consider that motive to avoid apprehension?

A. I would consider that a potential motive to avoid apprehension if all that occurred.

Q. I'm going to ask you to take a look at some items and let the Court have the numbers before I hand them to you.

Affidavit of Chris Sontag is Applicant's 39, the documents from the Burlington Lincoln dealership is Applicant's 35, the affidavit of Pat Cubberly is Applicant's 31, the affidavit of Keith Randall who is from the Lincoln dealership is Applicant's 33, and Applicant's 40 is a Summit Bank notice of hold regarding a $24,000 check. And at the bottom it has a note in the same handwriting as the Mt. Laurel Police Department which is in Applicant's 41.

A. Okay.

Q. If those documents say basically what I said, that she even in concert with Mr. Aleksey tried to pass 20 some thousand dollars in checks to obtain a $50,000 car, checks that were taken from her doctor, her employer, Dr. Bang's office, that would be important evidence of motive of Ms. Blackwell's to avoid apprehension?

A. The only way I can answer that, and I've not reviewed all the stuff that you handed me, this particular case had literally hundreds of documents --

Q. Yes, sir.

A. -- that I was familiar with at one time, I'm less familiar with them now. All I can tell you, in general terms if somebody commits a criminal offense and they know the authorities are on to them, or think there may be a warrant out against them --

Q. Yes, sir.

A. -- that would constitute motive to avoid apprehension.

Q. Okay. And certainly I want you to look at those documents what. I'm going to try to do is go forward because that answered enough of what I need right now, those are in evidence. I'm certainly not trying to keep you from looking at them, but we would be here for a long time at that point -- this point.

A. Sure.

Q. Do you know whether there was any information related to Dr. Band that was in the car that was processed by SLED?

A. I think there was some checks that were in the car. Hold on a second, let me -- I can review my

discovery file here and....

Q. And while you're looking, Mr. Bailey, I'm going to hand you something that might help. This is in the trial counsel's file because Mr. Stone has identified as pencil writing at the top Applicant's 32, the third page, the fourth page is a Xerox copy of what looks like a roll of payroll checks typed or some type of business checks.

A. Okay. Again, this doesn't have my check mark at the top of it and it could have potentially come from Mr. Davis, I think his investigator. I don't know. I would have to keep looking through my discovery file to see whether or not I was aware of this at the time of trial.

Q. That's fine. That's fine. But you would agree -- anyway, it's in the record.

MR. BROWN: I apologize. I withdraw that.

THE COURT: You want him to keep looking, Mr. Brown?

MR. BROWN: Your Honor, actually at this time I've got State's -- what's been entered as State's 2 as a letter from Mr. Bailey to Mr. Sims and Mr. Stone and I believe that ties in with --

A. Okay. Yeah. Yeah, that's it. State's 2 is a

letter from me to Duffie Stone and Thomas Sims dated June 3rd, 1998 providing some discovery which included copies of four pages of checks dated December 26, '97, December 18, '97 found in the Mustang.

Q. And again back to Applicant's 32, is that the four pages?

A. Four pages December 26th, '97 and December 18th. That appears to be -- this appears to be a copy of what I sent to Mr. Stone --

Q. And let me ask you --

A. -- and Mr. Sims.

Q. -- knowing that Mr. Aleksey has been charged with a lot of con and frauds, would that give you some indication when he's got a doctor's checks on the floorboard, Ms. Perez has given a statement, she cries, said she was homeless, that maybe something's not -- something in the milk isn't clean, so to speak?

A. I never claimed something in the milk was clean. I was aware of the checks.

Q. Yes, sir.

A. I turned them over to the defense and I don't know what else you want me to say.

Q. Well, then if that would have been pursued and a

call would have gone to Dr. Band, is there a chance you would have seen Applicant's 34 which is a Trenton police report regarding the theft of the checks?
A. And your question is if the fact that some checks were found in the Mustang had been pursued by somebody, by me, would that have resulted in me obtaining this Trenton Police Division Investigation Report? I don't know.
Q. That's correct. And you say some checks, because actually I just want to make clear that it's -- that Applicant's 32 is a photocopy of, and I'm going to ball park, maybe 30 checks from the doctor.
A. Yeah, I'm not aware of 30 checks. I'm aware of checks, apparently two checks, one dated December 26th, '97 and one December the 18th, 1997 found in the Mustang that I turned over to the defense.
Q. And Applicant's 32 is four pages which is consistent with the four pages listed on there?
A. I think the four pages would have been the front and back of two checks.
Q. Those checks hadn't been negotiated?
A. The four pages you've given me include this apparent computer printout of some undated checks,

like out of a checkbook.

Q. Like the blank checks that are reported stolen in the Trenton police report?

A. Yeah.

Q. In other words, if you would have called the doctor's office he may have said I've reported this to the Trenton Police Department and that would have been the first step to getting the Trenton police report, then you could have contacted Chris Sontag and Pat Cubberly and Keith Randall as those individuals are listed in the various documents including the affidavits of each other?

A. Give me a second if you could, please.

Q. Yes, sir.

(Pause in proceedings.)

A. Assuming that what I turned over to the defense as indicated in the letter of June 3rd, 1998 was two checks on those two particular dates that I mentioned. I don't know if there's anything at that point in time that would have triggered my mind that these were fraudulent checks.

They're paid by the doctor for someone's name. I can't -- the payee name I can't read on the December 26 check. The other one apparently looks like a payroll check of some type to

Ms. Perez. I don't know at that time that I was aware there was anything wrong with these checks.

Q. Did you ask her who she worked for before she was arrested? Because y'all arrested her and charged her with murder; did you not?

A. When you say all, yeah, the Orangeburg County Sheriff's Office made that charge.

Q. So she was charged --

A. Against both of them.

Q. She was charged with murder on January 1st?

A. I believe that's correct.

Q. Okay. Did you ask her -- at some point she became a cooperating witness?

A. Yeah.

Q. And that was early like within the first week or so?

A. Very early, yeah.

Q. Did you ask her where she worked before she was arrested on January 1st maybe to say, hey, you need to get back to your job, you've been down here for two weeks and in jail for a week, where's your boss, I can give him a call, make sure?

A. I think the way it happened was that, as you said, she was cleared very early, the charges were dropped.

Q. Yes, sir.
A. She went back up north. Sometime later, much later, I went up with Kenny Mears and George Darnell to interview the witnesses that were in New York, one in New Jersey, some were in Pennsylvania. And at that time I spoke to her and I think that may have been the first time I talked to her.

We ran her down somewhere in Pennsylvania she had an apartment up there. And I don't recall whether I asked her specifically where she was working at the time this had happened, it wasn't a big -- it wasn't a big part of the things I wanted to know at that time.

Q. If I were to refer you to page 1,296 of the transcript which is in Volume III.
A. (The witness complies.) 1,296, okay.
Q. Okay. And at line 11 you start out "What type of work are you doing now?" is your question.
A. Okay.
Q. And you asked "Who do you work for?" at line 17.

She says "A Dr. Linenball (ph)."

A. Okay.
Q. And then if I may refer you to 1,299, lines 24 through 25.
A. (The witness complies.)

Q. And you asked her about when she met Michael.
A. What page is that?
Q. 1,299.
A. 1,299.
Q. I said 24 and 25, if you go up just a couple of lines.
A. Okay.
Q. You asked "You moved in with a friend, you ran into Mr. --" she cut you off and answers she met Michael.

You asked "Where were you working? Were you working then?"

She says "Yes."

And your question is "Same job?"

A. Same thing, different job. Different job.
Q. She says she was working for a different job. Then goes on "What were you doing?" The same thing, she was a phlebotomist.
A. Okay.
Q. But you never asked her who you worked for then, did you?
A. Let me check my notes from when I questioned her and see if I can answer that. (Mr. Bailey checking notes.) Let me correct something I said earlier. I said I thought the first contact I had with Blackwell

was in Orangeburg. I see some notes of a conversation I had with her in the presence of Michael Culler in the Orangeburg jail on February 25th, '98.

Q. And she was being held at that time not as a murder defendant?

A. If you'll give me a minute I need to try to get back to your question about whether I had knowledge of her working for Dr. Band here.

Q. I apologize. I apologize.

A. (Mr. Bailey checking notes.) The only reference I see to her employment was that when I talked to her apparently in Pennsylvania, I don't have the date here, she had told me she was planning on going back to work at a medical office.

She was unemployed at the time I talked to her. But I don't have anything in my notes that indicates that I asked her where she was working prior to the time that she got involved in this problem with the charges.

Q. And you never asked her whether at the first time or anytime through the end of Mr. Aleksey's trial where she worked before the crime occurred?

A. I don't recall asking her that. I'm sure I asked her in court where she worked, what kind of job

she does, where you live, just sort of background like I'd ask any witness, but I don't have any notes or independent recollection that would indicate that I knew specifically where she was working the last job she had prior to the time she got arrested.

Q. And you never asked her that in trial, either. You asked her what she did, but not where she worked?

A. Well, hang on a second, let me see. (Mr. Bailey checking notes.) I may have. I'm not looking at the transcript right now, I'm looking at my outline of the questions I asked her. And were you working at the time is about as close as I get.

Q. That's on 1,299. "Were you working then?"

A. Okay. I don't recall asking her specifically where she was working. It just didn't fit into what I was trying to elicit from her.

Q. If you would have asked her who were you working for then, she would have said Dr. Band, that could have caused problems because of these other documents?

A. As I said, the only documents I had were two checks that I turned over to the defense.

Q. Right.

A. Which appeared to me at that time to be legitimate payroll checks, so there's nothing that

triggered any kind of suspicion in my mind that there's anything wrong if I'm recalling correctly.

MR. BROWN: And, Your Honor, I'm going to move on and not ask any more questions about that, but I would ask Your Honor to take a look at again the substance of those Applicant's items of evidence.

THE COURT: Surely.

MR. BROWN: To tie back in the significance of this.

THE COURT: Surely.

Q. Now, one other thing related to Gloryvee's, I guess it would be motive still, you had asked some questions on 1,307 through 1,309 of the --

A. Which volume?

Q. Volume III.

A. 1,307.

MR. BROWN: And I apologize. It's not related to motive, Your Honor, but identity of the driver.

A. Okay.

Q. And at the last line of page 1,307 it says "I'll put some pictures up here and I will ask if you can identify any of your stuff in these pictures." And it goes on through 1,309.

And would you agree your general thrust of those questions was to ask her about the location of her items, as you said, of the part of the car being the passenger side of the car?
A. Yeah. I'm looking at her personal items, the kind of things that she would normally have access to, hairbrush, purse, comb, that kind of thing. Sunglasses, baby bottle, stuff that you would be using if you were sitting in the seat of a car.
And as I recall most of her -- most, if not all, of the stuff we could identify as hers were in the passenger side, most of the stuff we could identify as Aleksey's was on the driver's side.
Q. And on that point you don't ask about a hairbrush, that's actually done on cross-examination, isn't it?
A. Okay.
Q. But everything that was positively identified as hers was identified as being on the passenger side?
A. I showed her a picture --
Q. Yes, sir.
A. -- which was State's 63 and asked her to identify whatever she saw in that picture that belonged to her and point it out and she did.
Q. And I'm going to show you 20 -- Applicant's 26

which is -- and I believe it is seven photographs, it's 26-A through I believe that's G. And you would agree that those are SLED photographs?

A. Yeah.

Q. Because they have SLED stamped into the photograph?

A. Right.

Q. And on 26-A would you agree that it looks like there's a folder under a floor mat?

A. There's a folder partially under a floor mat with a soft drink up on top.

Q. Would you take a look at Applicant's 30?

A. (The witness complies.) Yeah, Applicant's 30 is a manila folder with nothing in it, some writing on one side of it, scribbling on the other side.

Q. And photo under the floor mat, there are some items in there?

A. Yeah.

Q. And I'm going to show you Applicant's 29 and ask you if that's a series of documents on top, some Summerfield Suites hotel receipts.

A. Okay. All right.

Q. Okay. And if those items are in that folder -- first let me go back on 26-A. That's the driver's side of the car?

A. I'm trying to orient myself on this picture and I'm accepting your word it's the driver's side, but I can't tell.

Q. And if those --

A. Yeah. Yeah, okay, the steering wheel's -- okay.

Q. And if those documents are in the folder under the mat then that's Ms. Gloryvee Perez's hotel receipts on the driver's side of that car?

A. Yeah.

Q. Okay. I'm going to ask you to take a look at Applicant's 38.

A. (The witness complies.) Okay.

Q. And then I believe you may also have Applicant's 77.

A. Well, I'm not sure.

Q. And it's a photograph, it's a single photo, it's not the ones that are marked on the back as 26. And actually while -- I'll come back to that.

If we'll take a look again at Applicant's 26. Would you take a look at Applicant's 26? I had said A, I apologize I was wrong, 26-A, 26-B. Can you tell what those items are?

A. It says rental agreement, New York truck leasing and Penske, Gloryvee Perez. Keep on?

Q. Have you ever seen that document before?

A. These are the SLED -- the document or the picture of the document?

Q. The actual document.

A. To the best of my knowledge all I've seen is the photographs.

Q. Okay. And did you ever give the defense a copy of that document, not the photo, but the document itself?

A. Well, if I had never seen the document I could not have given that to the defense and I have no recollection. Again, I'd have to go back through my discovery file. And I itemize all the discovery and I'd have to review that to determine whether or not I gave that to the defense. If I got it I gave it to them. If I didn't get it, I didn't give it to them.

But I can't tell you right now whether or not the document shown in these pictures was ever something that I have seen before.

Q. But it looks like the document at least in that photo is in the custody of SLED?

A. Yeah, SLED. Right, SLED took a picture of it.

Q. Okay. And would you look at Applicant's 26-G.

A. Okay. Appears to be a door panel with some sunglasses and some paperwork and a bottle of aspirin or something in it.

Q. And if you'll look closely, and it's going to require some effort, does that computer paper look consistent with the papers in the other ones?

A. Yeah.

Q. Which would put it on the driver's side of the car?

A. I'm going to accept you at your word, but I'm not oriented to the picture, how -- whether this is this way -- yeah, that would be the driver's side.

Q. And so that's a receipt, that Gloryvee Perez Penske truck rental receipt?

A. Okay.

Q. And it's in the driver's pocket of the door.

A. Okay.

Q. We've already been through and that's actually dated December 31st.

A. Yeah, I was in the courtroom and y'all were talking about the date on these, okay. It says December the 30th.

Q. That's correct. And then the 31st is the date of pick up on the truck which would include a truck trailer for a '98 Mustang on a one-way trip to West Palm Beach, Florida.

A. Okay. Whatever it says, it says. I mean, I haven't read the whole thing.

Q. Okay.
A. If I could, Mr. Brown, and I'm not trying just to randomly speak, but to answer your question what I was trying to elicit from Ms. Blackwell was the personal property that she would normally have in use on her side of the car. I handed her a picture that I believe showed the entire interior of the car and asked her to point out what articles she remembers being hers and she picked some articles out, apparently didn't pick this out.
Q. And I'm going to show you Applicant's 77. Applicant's 77 appears to have a brochure in the seat there?
A. Yeah.
Q. Okay. And it's maybe hard to read, but on there it says "Great Trucks, Great Service."
A. Great value or something.
Q. And if that's the Penske logo or slogan for their truck rental, that would appear to correspond to the Penske retail truck rental receipt or whatever the green and white --
A. Okay.
Q. And would you agree that that's a photo of the driver's seat?
A. It appears to be a photo of the driver's seat.

Q. Okay. Have you ever seen that brochure?
A. I don't recall seeing that. I recall seeing the photographs of the interior of the car, but not that specific brochure.
Q. And then I'll show you Applicant's 76 and 78. Have you ever seen those items before?
A. I've seen 78, it's a SLED photograph. Seventy-six appears to be the -- a Xerox copy of what's shown in this photograph. So I've seen the photograph before, I can't tell you whether or not I've seen Applicant's 76 before.
Q. You wouldn't argue that actually 76 would be a $500 money order, 78 would be a photograph of a $200 money order?
A. Yeah, well, I can't read the amount. I was making an assumption it was the same thing, 633880. No, they're different. All right. I've seen 78, don't know whether I've seen 76 or not.
Q. And 75 was four checks from the MCAS Federal Credit Union, two of those were to ComData, I believe it's already in the record that those seem to correlate with those two money orders, two of those checks correlate with those money orders?
A. If you're asking a question, I'm sorry.
Q. And I apologize, but you don't recall seeing

those actual documents besides that?

A. Yeah. Yeah.

Q. Okay.

A. All the pictures I've seen them, the SLED pictures. I can't recall if I had seen this before, if I had had it in my possession before it would be itemized in my discovery and I think that my discovery file was made a Court record, that's what I normally do.

So I would have to defer to my discovery file. It should be in the case file from what I turned over to the defense. I gave the defense everything that I got and itemized it when I gave it to them. If it's in that particular file that I filed with the Court, I had it and gave it to them. If it's not, I've never seen it.

But I can't right now looking at these documents cold tell you whether or not I have or have not seen them before.

Q. I understand. I'm going to show you Applicant's 38. And it's just to catch you up, it's a receipt that Gloryvee signs, it's some items given to her by a George Darnell.

A. Okay.

Q. And we refer to it as personal property receipt.

A. All right.
Q. And do you know what checks that are referred in that document, what are those checks that are being returned to Ms. Gloryvee?
A. I don't know.
Q. You don't know whether they're MCAS checks she had been writing, all these bad checks, or whether they're Dr. Bang's checks?
A. I don't know.
Q. Okay. And can you tell us whether those were turned over, a copy or information related to those were turned over to the defense?
A. Probably not. This occurred March 3rd, '98 which I think was after the charges against Ms. Blackwell were dropped. All of her personal property was turned back over to her. That included some -- a checkbook and some other papers that are not really enumerated or specified as to what they are.

It refers to other important papers, so I guess you'd have to ask Mr. Darnell about that because he apparently turned this over to her. My recollection is that once the charges were dropped, she asked for her personal property back and that was turned over to her.

Q. If that personal property had Brady material in it, you would still have an obligation to turn it over?

A. Yeah. Yeah.

Q. Okay. Even if it was returned to her you would have had an obligation to supersede her rights to --

A. Yeah, if I knew there was Brady material turned over to her it would have been my responsibility to follow up on that, turn it over to the defense if I possibly could.

Q. All right. And would you say turning a copy of a photograph of a Penske truck rental receipt for example, would that comply with Brady?

A. Yeah.

Q. Okay. And how about a copy of like the Penske truck brochure that's in the seat that's folded up?

A. If all of the content -- assuming it's Brady material.

Q. Yes, sir.

A. If all the content, once they're turned over to you, Brady Rule 5 is going to be a copy of the original, not the original. The photograph is a form of copy, photocopy, Xerox copy would be another form of a copy.

In my opinion as long as you get

something that's as legible as we can get it through mechanical reproduction then Brady's been complied with, whether it's a photograph or a Xerox.

Q. Now, let me turn -- at this time I'm going to turn my attention to a witness for the State named Yelena Batkilina.

A. Okay.

Q. And what I first want to start with is the implication that Ms. Batkilina never saw Bayan after the purchase of the gun. And I say implication because I don't know that that's the words, exact words used.

But to give you context, what I'd first like to do is to establish through Applicant's Number 4 which is a set of documents from the Bureau of Alcohol, Tobacco and Firearms. And would you agree it lists a sales date of a, gun or excuse me, the actual receipt of the gun date as being November 2nd of 1996?

A. Firearm purchase November 2nd, 1996. That's correct.

Q. So we know for a fact that is the day the gun was actually received?

A. Yeah. Yeah.

Q. Okay. And I would refer you to transcript page

919.
A. (The witness complies.) Give me a second, I'm looking for something else.
Q. Yes, sir.
A. Okay.
Q. Okay. 919, lines 10 through 12 there's a question and answer between you and Ms. Batkilina regarding the gun purchase date.
A. Okay.
Q. And just to publish it, your question is "Is this the gun you purchased at Tom's Sporting Goods back in October and November of last year?" And that question is being asked during August of 1998, correct?
A. Right.
Q. Okay. And her answer is "Yes."
A. Okay.
Q. Which means that she's saying it was purchased in October or November of 1997.
A. Uh-huh (affirmative response).
Q. And, in fact, if we go over to -- well, excuse me, go down 919, line 21 -- excuse me, 9 -- excuse me, 919, line 25 through 920, line 21 there's a series of questions about "After you bought the gun, what did you do with it, where did you take it?"

Her response is "I brought it home, gave it to my mom."

"Where did she keep it?"

"She put it in her room."

"When's the last time you saw the gun, do you remember?"

"Yes, when I gave it to my mom."

"Do you remember about when that was?"

Her answer is "Wherever the date was I picked it up. I don't remember the date."

A. Okay.

Q. "So if the date on that form is November the 2nd, that would have been the day?"

And her answer is, "Yes, that's the day, the last time I see the gun."

"You never saw the gun after that?"

"No."

"When is the last time you saw Bayan Aleksey or Michael Pivero?"

"Somewhere in November."

Next question: "You never saw him after November of 1997?"

And her answer is "No."

A. Okay.

Q. Now, that with the exception of the lines 13

through 24 it goes from the question about the gun being purchased in November of last year all the way through to not seeing him again after November of '97.

A. Uh-huh (affirmative response).

Q. Now, if you'll turn to your closing argument which is 1,763, lines 15 through 19.

A. What volume?

Q. It would be Volume IV, I believe.

A. Sorry, what page?

Q. 1,763.

A. Okay.

Q. Lines 15 through 19. And to put in context what your implication is about that questioning, you argue quote, "You recall from Ms. Batkilina's testimony that she had a relationship with Aleksey who she knew by a different name. She carried the gun home. The gun disappears, he disappears, and she sees it again here in court the next time."

A. Okay.

Q. Which from the questioning implies that the gun came home November 2nd of '97 because that's the only year besides the last year, which when you're referring to last year you're talking about '97 in a '98 trial.

A. Okay.
Q. So the implication is that the gun's purchased in November '97 and Mr. Aleksey and the gun both have disappeared in November '97.

But based on Applicant's Number 4 Ms. Batkilina's testimony on 919 that the gun was purchased last year, November of last year is false testimony, isn't it?
A. Okay. Let me answer that by -- by kind of giving you maybe a long-winded background if I could.
Q. Sure.
A. And I'm going to get to a point.
Q. Sure.
A. Normally when I interview a witness in preparation for trial I'll do the initial interview, take some notes, maybe have a statement if they've given a statement. I don't know what I'm going to ask them particularly, I'm looking to see whether or not they're going to be a witness and what they can testify to.

I then go back, take those notes and draw up an outline of the questions I'm going to ask that witness, I then have a second meeting and I go over that testimony with the witness prior to trial, here's what I'm going to ask you and I go through it

so they don't go in there cold.

Q. Sure.

A. What I did in this case since all these women were out of state pretty much, most of the witnesses were out of state, I interviewed them and didn't get a chance to sit down with them that second time to fine tune everything.

What I did when I dictated to my secretary my outline, my notes, I either told her '97 for the purchase date or she typed in '97, whatever it was, but in my outline for both Tom French who was the gun seller and Ms. Batkilina I had '97 written there.

So Ms. Batkilina I think was my first witness that I called, I know I called her prior to calling French up. I had the documents that I was going to put into evidence, I think there are two different forms relating to the purchase of the gun that clearly showed '96 as the correct date. '96 was the correct date.

My experience with witnesses is they don't remember dates, they don't remember times. And what I try to do when I ask a question, I'll give them the date and I'll give them the time and I did that in this case. I said '97, she knew what

incident I was talking about and that was the date she bought the gun and started talking about buying the gun then.

I -- through her I introduced the gun purchase records and asked her to identify her signature and right beside the signature is the '96 date. So I wasn't trying to pull anything off with anybody or I wouldn't put that into evidence.

I thought at the time I asked her that it was a '97 transaction even though I had the documentation showing it was a '96. When I got to Tom French and he was saying '97 I'm thinking, you know, this -- excuse me, he's saying '96, I'm still thinking '97, then I asked him that question because he was getting me confused, was it '96 or '97. And then he said it was '96 and clearly it was '96. So that's how that came about.

Q. Okay.

A. Now, the thrust --

Q. The reason I ask --

A. The reason I wanted to elicit that testimony was to link Aleksey to the gun.

Q. Sure.

A. We knew that was the murder weapon.

Q. Sure.

A. The firearm showed that was a murder weapon there were two adults in the car.

Q. Sure.

A. One of them did it and I'm trying to show a link between Aleksey and that gun. The link was Ms. Batkilina, the date didn't make a bit of difference to me.

Q. But you asked a lot about -- actually I was going to ask you about that. The date's not really important, Ms. Batkilina came to court, said I used to date Mr. Aleksey, that is the gun I purchased. He was with me around the time I had the gun, that would have linked it?

A. That would have linked it.

Q. You asked a lot of questions about the date though?

A. Yeah. I actually put the forms in to show the date, to show the purchase, to show who bought it, to substantiate, to corroborate her testimony as to when she bought the gun and who was with her when she bought it.

Q. And you would agree that the one reading or inference from your closing argument that Yelena Batkilina carried the gun home, he disappeared and the gun disappeared, that implies that it happened in

that type of synchronicity?
A. You could interpret it that way.
Q. But she testified she doesn't see the gun after the day she brought it home.
A. Right. She testified she bought the gun, she turned it over to her mother and --
Q. She never saw it.
A. And never saw the gun again.
Q. Okay.
A. At some point in time of course she never saw the gun again, and at some point in time never saw Aleksey again.
Q. And the implication or inference that's possible from the closing argument is that that happened at the same time?
A. That wasn't the inference I was trying to put out. That could be an interpretation of that, the way you're saying it.
Q. My follow-up question, what is your understanding of the last time Ms. Batkilina saw Mr. Aleksey?
A. Are you referring to a specific question here?
Q. Well, was it in November of '96 that she last saw him when the gun came home?
A. I don't know when she last saw him.

Q. But you said you didn't imply that it was a simultaneous disappearance. That may be a possible inference, but that's not your implication?

A. In my closing argument I was not attempting to imply that. What I'm trying to show is she bought the gun, Aleksey's with her, Gloryvee Perez is not even in the picture at the time the gun is purchased, there's no connection between that gun and Ms. Perez.

I'm trying to link him to the gun and I'm doing that by introducing the document where she purchased the gun. The date was not that relevant. The date was just to establish that she did purchase the gun on a specific date, and I had the gun shop owner testify to that, I had her testify to it, and the gist of that was that Aleksey was there, he had access to the gun, Ms. Perez or Blackwell did not.

Q. And even though -- and I'll be honest with you, because I understand what you're saying, but that's not what you argued because your argument's not that the gun disappeared and then he disappeared, it's that he disappeared first and the gun disappeared.

If the gun is disappearing on the day it's brought home that's November 2nd, '96. If he's disappeared before or simultaneous with the gun disappearing, which is the way you phrase, it he

disappeared and the gun disappeared in that order.
A. She doesn't know when the gun disappeared because she gave it to her mother. The next time she sees it, is in court. So I don't see how you can put any relationship between when he disappeared, the gun disappeared. Maybe she may know the last time she saw him, but she turned the gun over to her mother immediately after the purchase and never saw it again.

The gun obviously disappeared at some point in time, as it turns up here in South Carolina as the murder weapon.
Q. And the gun can't disappear -- if Mr. Aleksey took the gun, it can't disappear after he's disappeared, it either disappeared before, in other words, he stole the gun and came back and dated her for seven months and then he left after he had already stolen the gun, or he leaves and takes the gun with him last time he's with her?
A. I don't know about all that.
Q. He can't last see her in November of '96 and then have the gun, that she's still got the gun for five months and then it disappears five months later with him?
A. I don't know when he took the gun. I can't tell

you.

Q. I understand. What I'm saying is logistically it has to happen that, way doesn't it?

A. Ask me again, make sure I understand the question. I'm not sure.

Q. Okay. The gun either has to disappear before she either last sees Mr. Aleksey because he took it before he left her because he could have done that, he could have taken it on November 2nd and then stayed with her five more months.

A. Okay.

Q. And then put it in some other hideout?

A. He could have taken it November '96 or could have done it in '97. I don't know when that happened.

Q. But he can't take it after he's last there?

A. If you want to argue theoretical possibilities, the mother had it, not her, according to her testimony. And I don't know how he got it, when he got it, who he got it from. All I know is the witness says I bought the gun with him, gave it to my mother, and then I never saw it again. At some point in time the gun disappears, at some point in time Mr. Aleksey disappears.

Q. Okay.

A. But I can't sit here and tell you that I had some theory of when he took it because I don't.
Q. What I'm going to move to next would be Applicant's Number 3 and ask you if you've ever seen this?
A. I don't believe I have, no.
Q. Okay. And that's a court transcript of a conviction of Ms. Batkilina for credit card fraud in Oceola, Florida. Now, did you turn information related to that over to the defense?
A. I turned a rap sheet over on Ms. Batkilina and to the best of my knowledge that was not on the rap sheet. If you give me a minute I'll pull that.
THE COURT: What's the date? I'm sorry, I forgot the date of the transcript. I knew it, but what is the date of the transcript?
THE WITNESS: March 12, '98.
Q. And that was during the pendency of these proceedings, correct?
THE COURT: Say it one more time.
Q. And, Mr. Bailey, if I would show you Applicant's 7 it's a rap sheet on Ms. Batkilina.
A. Yeah, this is Ms. Batkilina's rap sheet that I turned over to the defense. It indicates one offense which is a theft of leased property in Pennsylvania

that was nolle prosed.

Q. Okay.

A. There's nothing on the rap sheet to indicate any -- any arrest record in Florida.

Q. Okay.

A. The only thing I knew about that was that at the Jackson v. Denno hearing when we were developing the testimony there or going over the testimony prior to that hearing, the SLED agents Darnell and Mears when I was asking them what occurred during that break between the first statement and the second statement, they went through a series of things that occurred during that break, I think Aleksey wanted to go get a jacket because he was cold and some other things like that.

One of the things that occurred was according to either Darnell or Mears, I forget which one, he said that his girlfriend had had some problems down in Florida and could they help out with that. So that's the first I knew of any potential problem in Florida.

Q. And after you learned that, did you obtain any documents related to the Oceola conviction? Because at the time of Mr. Aleksey's arrest she hadn't been convicted yet, because the transcript of the plea's

in March of '98. So at the time of his arrest she has not been convicted.

A. All right.

Q. And prior to the time of the rap sheet she has not been convicted?

A. Yeah, I'm just trying to see when the ran the rap sheet. Hold on a second. (Mr. Bailey checking his records.) Looks like the rap sheet request was sent in -- I tore it off -- June 11, '98.

Q. So she's been convicted at that time. And that's just following the Jackson v. Denno hearing?

A. I don't recall when the Jackson v. Denno hearing was, all I can do is give you the date. I ran the rap sheet June 11th, '98, did not show a Florida arrest or anything else.

Q. June 8th?

A. I'm not even certain, and I could be mistaken on this, when he said his girlfriend had some problems down in Florida which girlfriend he was talking about. He might have given Batkilina's name; he may not have.

Q. I understand.

A. I would have to look at the transcript of the Jackson v. Denno hearing.

Q. Just for your information June 8th of '98 was

the Jackson v. Denno, so three days before you ran the rap sheets.

A. Okay.

Q. Okay. Now, let me refer you to Applicant's Number 4 again which was the ATF trace report which indicated the date of purchase of the gun.

A. Okay.

Q. And would you look at the corner when you find that document, the bottom corner of that document?

A. I can't seem to put my hands on that. Here we go.

Q. That gun was purchased again by Ms. Batkilina?

A. Yeah.

Q. At the bottom of it what does it have in the corner?

A. Born in the Soviet Union, Batkilina involved in credit card scam, et cetera.

Q. That's what she pled to?

A. I don't know what she pled to. I mean, as I said all I had on the rap sheet which I ran on June the whatever date I said.

Q. Right.

A. June the 11th, was a theft of property, it was nolle prosed.

Q. Okay. Here's an Applicant's Number 6 which is

an information which is a fancy term for another charging document that was an indication that she was charged with a credit card fraud.

A. Okay.

Q. You would agree?

A. Yeah.

Q. Which is consistent with the information that ATF gave to, I believe, a member of the State Law Enforcement Division that requested the trace report on the gun.

A. Give me a second.

Q. Yes, sir.

A. I'll tell you whether I've seen this particular trace report or whether I got information somewhere else.

Q. And I believe, Mr. Bailey, that trace report was entered into evidence at your trial.

A. Okay.

Q. At the 1998 trial.

A. All right.

THE COURT: Mr. Brown, do I have a copy of the transcript from the Jackson/Denno hearing?

MR. BROWN: You should, Your Honor, it should be in Volume V.

THE COURT: In other words, it's

encompassed?

MR. BROWN: In the very back, yes, ma'am.

THE COURT: Let me just double check, be sure I have it.

MR. BROWN: I apologize.

THE COURT: I've got it right here. I've been working with it, I just don't remember.

MR. BROWN: The page numbers I have on my question is from the looseleaf transcript which are not going to correspond.

THE COURT: I have it marked. I marked it the first time, Jackson v. Denno. Here it is.

MR. BROWN: I think Mr. Bailey conceded they brought up the girlfriend had a problem in Florida.

THE COURT: Don't know who the girlfriend is, that is what I was curious about. The girlfriend. And was the girlfriend named?

THE WITNESS: He may have named her, I just don't recall.

THE COURT: Every time he's asked you to mention during the hearing it's been girlfriend, so I'm interested to take a look. But I don't want to slow you all down, I can do that some other time.

MR. BROWN: Your Honor, I've got the pages that refer to it, but you're going to have to look at the page for the actual transcript which is the smaller number at the bottom.

THE COURT: Got it.

MR. BROWN: Okay. It's 102.

THE COURT: Okay. Hold on one second. Got it.

MR. BROWN: Eighty-five and 67, those are three different pages. And I can give you the line numbers, too, I didn't want to give you too many numbers at one time.

THE COURT: Hold on because I see what you're talking about, let me see.

MR. BROWN: My co-counsel does inform me it does say Batkilina in the transcript all three times.

THE COURT: Well, look at 103, line 1.

MR. BROWN: I apologize, Your Honor.

THE COURT: Look at 103-1. What was the other page, 85?

MR. BROWN: Yes, ma'am.

THE COURT: Okay.

MR. BROWN: 102, lines 22 through 25. Line 1 would be the next page, I assume?

THE COURT: That's right. Okay. I see what you're talking about. Got it.

MR. BROWN: Okay.

A. Okay. On Applicant's 14 you asked me about if this was put into evidence. I mean, I'd have to refer to the file on that. And looking at my file the records I have of that transaction are Commonwealth of Pennsylvania record of sale of firearms which has the '96 date, that's apparently a card of some type, a short form.

I have Ms. Batkilina's driver's license then I've got a Department of Treasury form which is different than the form you handed me and I don't see -- just look at this real quickly -- that that record, that any reference to a record is on here. I could have missed it.

Q. Now, let me ask you, it was run, the ATF trace report was run --

A. You want me to hand you the documents I've got regarding that pistol?

Q. And I apologize I misstated, it was actually run for an ATF agent in Charleston, not a SLED agent, but it was run by the government and that trace report was run specifically related to this shooting; was it not?

A. I would assume so. But as I was saying, I don't believe this is the trace report that I got. And you asked me about my knowledge of this reference to the credit card scam, and in reviewing the paperwork I have on the pistol behind the tab under Tom French, I've got a Pennsylvania form and a Department of Treasury form, but it's in a different format than what you have.

But what I've got appears to be a copy of the original paperwork filled out and this is some kind of a completely typed in document that you just handed me which is Applicant's Number 4.

Q. And let me clarify something. The reason why I say that it looks like this was the ATF trace is run related to this shooting was because it was run on January 2nd of 1998.

A. Okay. So I would assume that's why it was run.

Q. And so somebody called, SLED called ATF, said find out who bought this gun and that was like a day later they ran it and the ATF agent got that, his name's Scott something or other at the top.

A. Okay.

Q. And he is actually in Charleston.

A. All right.

Q. And I assume that the SLED agents that were

doing this, some of them were dispatched from the Charleston division.

A. All right.

Q. And I guess what I'm saying is law enforcement as a whole, the government as a prosecutor or the executive branch in this case was on notice that she had a credit card problem, it's in the corner of that document.

A. Right. Whoever ran the trace and received this, there's an indication on here born in the Soviet Union, Batkilina involved in credit card scam et cetera. No date, no state, no further information on that.

Again, what I've got, and apparently this is faxed to law enforcement of Bucks County Sheriff's Office, is the Pennsylvania form, and then what appears to be a copy of the original paperwork on the Department of Treasury form where Ms. Batkilina November 2nd, '96 filled out the application.

I don't have a copy of Applicant's Number 4 behind the tab where it would be normally if I had had a copy of this.

MR. BROWN: I'll be honest, Your Honor, I thought it was entered into evidence.

A. It may have been.
Q. There are two items -- I cannot say that it is, I don't want to misstate, there are two items, one's a record of sale which may be the sporting goods document, store document, and one is a firearms transaction record which may be the other document he's referring to which I believe is Applicant's 3.
A. If I can clarify that, the document I've got has firearms transaction record. The one you handed me just now, Applicant's Number 4, has firearms trace report.

MR. BROWN: And just, Your Honor, to let you know we got that document not from our subpoena of the solicitor's file, we actually got it from the subpoena, that came from a subpoena of the SLED file. So it may well be that Mr. Bailey has never seen that document, we don't know.

THE COURT: Well, what I'm interested in is which of these documents has the handwritten note about something credit cards.

MR. BROWN: It's not handwritten, Your Honor, it's printed.

THE COURT: I shouldn't have said handwritten. I guess that was in my mind.

MR. BROWN: Applicant's 4.

THE COURT: Which of these documents makes reference to the credit card situation?

MR. BROWN: Applicant's 4 which Mr. Bailey says he has not seen before. I believe that's his implication, I'm not trying to put words in his mouth.

THE COURT: He said it's not in his area in his notebook where he would anticipate it would be. He's not going to tell you that he hasn't seen it or he didn't admit it into evidence, he's just telling you it's not in his, as I understand it.

MR. BROWN: Right.

THE WITNESS: Yes, ma'am.

THE COURT: Okay.

MR. BROWN: Your Honor, just put this in perspective. This is more or less related to information I would assume related to a Brady claim, because I don't believe he's seen any of the information related to the Oceola. Case the government, the defense, never impeached Ms. Batkilina about her credit card conviction and Mr. Bailey may not have seen it, but somebody in the government had seen it related

to the investigation of this shooting and that's to tie it all in, not trying to testify, but that's put in context.

Q. And let me ask you related to the date, and when was the date that you interviewed Ms. Batkilina?

MR. BROWN: He said he interviewed her.

A. I interviewed Ms. Batkilina, Mr. Cruise, Ms. McCann, Farrell, all the out-of-state witnesses within a period of two to three days in New York. Give me a second, I'll see if I can find a date. I can't readily find that date.

Q. How about a ball park?

A. I couldn't tell you. I wouldn't want to guess at it. It was sometime after the arrests were made.

Q. Before the Jackson v. Denno hearing?

A. Yeah.

Q. So sometime between January and June?

A. If you need for me to I can research it tonight and let you know tomorrow. I don't assume I'm going to finish today.

Q. Well, we hoped to finish you today and I'm prepared to go on until we finish, although wanting some break at some point.

THE COURT: Unfortunately, Mr. Brown, just as yesterday I have another conference call with

those same folks.

MR. BROWN: And, Your Honor, I've got two more matters to question him about.

THE COURT: Sure.

MR. BROWN: And we're done with this, this is a stopping point.

THE COURT: I got you. This is a stop 15 minutes early to give me a breather.

MR. BROWN: I say two, two matters.

Q. And the next thing I would refer to would be information related to Ms. Batkilina's theft of a rental car in Plymouth Township and ask you if you're familiar with that? It's Applicant's 8.

A. I'm going to have to answer the same way I answered the other questions. I don't believe I've seen this before. This does not appear to have come from my office because the check mark which would normally be on the upper right-hand corner is not here.

If I did receive it, I gave it to the defense and that would be listed in my discovery file which is filed with the Court.

Q. But you don't recall seeing that?

A. I don't recall seeing that.

Q. Okay. But you would agree that that is listed

on the rap sheet which is Applicant's Number 7?
A. Yeah, let me check that. Arrest date January 15th, 1998. You know, I'm not familiar with the format of this incident report here. I would assume it's the same thing because they're both Pennsylvania, both Plymouth Township, okay.

Pretrial the defense made a motion, filed a motion for me to provide rap sheets on all the witnesses with the exception of law enforcement which you assume would not have a record and I complied with that, I sent the rap sheets to them.
Q. Now let me show you what's Applicant's 9 and 10 and this is related to the same matter, it's a Lower Moreland police report and ask you if you've ever seen that?
A. Same answer. I don't recall seeing it, it does not appear to come from my office. If I received it I gave it to the defense and I would have to refer to my file.
Q. Can you recall turning over either Applicant's 8, the Plymouth Township police report documents or Applicant's 9, the Lower Moreland Township documents to the defense?
A. Again, I can't specifically recall this document. If I received it I gave it to the defense.

In order to preserve what was turned over to the defense for situations like this it's my habit to go ahead and file the transmittal letters on discovery, put it all in one envelope, close it up and make it part of the court file so that if anybody's interested in what the defense got they can look at that. But this does not appear to be something that I sent to the defense, I don't have any specific recollection of ever seeing it before.

Q. And Number 9 -- I mean, excuse me, Number 10 is some documents from a car dealership that's related to the Number 9 Lower Moreland police report.

A. Okay.

Q. And on there it says customer is a fraud.

A. I can't read all of what it says. It says bounded varred (ph) customer is a fraud, pack Batkilina, I don't know what all that means.

Q. And that could be potentially impeachment material --

A. I don't think so, not unless it resulted in a conviction is my understanding of the rules.

Q. Well, under 608 if she has committed conduct which shows truthfulness or lack thereof, would that be subject to impeachment, specific instances?

A. I'd have to review the rule.

Q. And if she had written in this case a $33,000 check for a Volvo, she's 21 years old or so, that's no good, the police track her down, that sounds like untruthful activity?

A. Well, those documents speak for themselves and it would appear to be unlawful activity involving a scam or fraud of some type.

Q. And actually beyond just impeachment under 608 for truthfulness, if the implication is she never saw him after the gun was purchased, if that's the thrust of the argument that November 2nd of '96 she never saw him again because he disappeared the day -- November '96 she says in response to the question may have been '97, but that may have been a typo, if that's the thrust of the argument or he disappeared, the gun disappeared, it's all the same day, then the fact that the Plymouth Township rental car theft, the Lower Moreland Township documents which are Applicant's 8, 9, an Applicant's 10, also Applicant's 3, the Oceola credit card conviction, all those occur after 1996, would you agree?

A. Based on these documents here. But again, that wasn't the thrust of the attempt of my argument. My argument to the jury was to link Mr. Aleksey to that gun to the exclusion of Ms. Blackwell. And the link

was through Ms. Batkilina.

I didn't care whether it was 1996, 1966. The gun disappeared, she never saw it after she gave it to her mother, according to her testimony, at some point the gun disappeared, at some point he disappears, they both show up here in South Carolina with a dead highway patrolman.

Q. The way you phrase it there is exactly the opposite of the way you phrased it in the court. There you phrased it he disappeared and then the gun disappeared.

A. I didn't say that.

Q. That's your quote from 1,763 in the transcript, lines 15 through 19.

A. The gun disappears, he disappears and she sees it again here in court the next time. They both disappear. He disappears, the gun disappears.

There's nothing in there regarding when they disappeared or whether they happened at the same time or one before the other. I mentioned gun first, but it didn't mean the gun disappeared first.

Q. Actually you mention he disappeared first.

A. Well, no, no, no, no. What it says was she carried the gun home, line 17. The gun disappears, he disappears and she sees it again here in court

next time. Just like Ms. Crawl saw her license tag here in court after it got missed from her car.

MR. BROWN: I stand corrected on that, Your Honor.

Q. But you would agree that the documents that show -- which the Court has already been through this, the documents show that there's allegations from other police departments or that she committed these crimes with Mr. Aleksey in '97, the thrust of the argument is that she came home with the gun on November 2nd, '96 and that they both disappeared on that day, these documents contradict that testimony?

A. If that was what the testimony of the argument was.

Q. Sure.

A. I don't think that's what the case is though, so I can't accept the premise you're operating under.

Q. And then let me show you this, and this is something you would not have had at trial, it's Applicant's Number 5. Just to show you Ms. Batkilina's truthfulness here, it's a Bucks County transcript recording return of bond, it's entitled Commonwealth of Pennsylvania v. Michael DeAngelo. Do you recall that as being one of Mr. Aleksey's aliases?

A. Yeah, he had about ten of them.
Q. But that was one of them, Michael DeAngelo?
A. Yeah. Okay. Are you asking a question?
Q. And then she testifies that she doesn't see him, whether it's November '96 or '97 she doesn't see him after November. Would you see what she tells the Court when she's asking for $10,000 bond money back from the Bucks County Clerk of Court's Office, what does she tell them, this is just regarding her truthfulness as a witness. Do you see at the bottom of that page I've handed you?
A. I'm trying to look at the whole page, put it in context. Starting at line 7 someone is asking, I assume, her how much money needs to bail him out, she says $10,000.

"How did you get the money?"

"Borrowed it from my mom."

"He said he was going to return the money to you? When did he tell you he was going to return the money?"

"As soon as he was going to get out of jail."

"What happened after he got out of jail?"

"He said he was going to New York, get

the money. Never seen him again."

"Did you ever see him again after that?"

Answer: "No."

Q. And he bonded out if you'll notice in that transcript in February '97.

A. Okay.

Q. So if she's doing these other frauds in August of '97 and she's lied to that Court, even though that lie happened after Mr. Aleksey's trial?

A. Yeah. I mean, I can't argue with what's printed here. I assume that's a valid transcript of what occurred.

Q. Sure. It doesn't seem that Ms. Batkilina's is a very truthful person even under oath, despite being under oath.

A. I never presented any of these young women that were young debutantes that were innocent people that just happened to get taken in by him. I mean, they were all people like the kind of people he would be associated with.

MR. BROWN: And, Your Honor, this is a stopping point. And to let you know it's actually halfway through my questions.

THE COURT: That was good notice to you,

too. All right. Very well. Nine o'clock in the morning.

MR. BROWN: Yes, ma'am.

THE COURT: Thank you so much. And I think the schedule worked out pretty well this morning?

MR. BROWN: Yes, ma'am.

THE COURT: And Mr. Aleksey I think was here a little bit before that.

MR. BROWN: Yes, ma'am.

THE COURT: Gave you all opportunity to meet with him briefly.

MR. TARR: Yes, Your Honor.

THE COURT: Same thing, too, since you're not able to remain in St. George you are traveling back and forth, Mr. Zelenka.

MR. ZELENKA: That's okay. I made it here by eight o'clock.

THE COURT: Now you know you can sleep an hour later in the morning.

MR. ZELENKA: I won't try that.

MR. TARR: Your Honor, scheduling. I've got two witnesses, our next two witnesses have travel issues and I just want some guidance from the Court.

THE COURT: I love that travel issue, that's a wonderful term, tell me about the travel issue.

MR. TARR: I've got Professor Freeman who I don't want to burden too much, he's coming from Columbia.

THE COURT: It's okay. He cannot grade you anymore. You're safe.

MR. TARR: Lucky I never had him. I've got Jim Aiken coming from Bravard, North Carolina, it's about four hours. There's a chance we'll get finished with Mr. Bailey before lunch and Professor Freeman is going to be 30 minutes tops, total cross, very short witness.

THE COURT: What I would just do is tell them both to be here tomorrow afternoon. I wouldn't burden them to be here in the morning, and if we take an early lunch, we take an early lunch. It's absolutely not a problem.

MR. ZELENKA: Judge, we're going to move to exclude his testimony.

THE COURT: Which he?

MR. ZELENKA: Professor Freeman under Green v. State. There's one more case cited in Green that talks about legal opinions.

THE COURT: It does. It does.

MR. ZELENKA: And the exclusion of expert witness testimonies on matters of law, so....

MR. BROWN: For scheduling maybe we can just proffer his testimony like it was accepted without objection and argue about admissibility at a later point. I mean, if we spend the court time arguing about the admissibility of it without arguing it on paper.

THE COURT: It doesn't matter, it's got to be in the record either proffered or accepted.

MR. BROWN: That's what I was saying, we could go through it. Whether or not they can voice their objection we go through it the same way, we can argue about the admissibility at a later point in time.

THE COURT: Sure.

MR. TARR: As far as the rest of our witnesses I'll just have George Darnell, Ken Mears here Thursday morning, we can do them back to back then we'll be done maybe by lunch.

THE COURT: I think that makes good sense. Thanks.

MR. TARR: Thank you.

THE COURT: Good plan. Good plan,

Mr. Tarr.

And, Mr. Zelenka, how many witnesses approximately do you anticipate?

MR. ZELENKA: Approximately zero.

MR. TARR: We'll have to have a hearing on that.

MR. BROWN: We may object to that.

MR. TARR: We'll have to proffer none of your witnesses.

THE COURT: Great. Thank you all so much.

MR. ZELENKA: I think everyone will have testified.

THE COURT: I was wondering whether or not that would be the case. All right.

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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 8th day of March 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,)	VOLUME VII, Pages 1340 - 1511
Applicant,)	
)	TRANSCRIPT OF RECORD
-versus-)	
)	POST-CONVICTION RELIEF
STATE OF SOUTH CAROLINA,)	
Respondent.)	July 9, 2003

B E F O R E:
The Honorable Diane S. Goodstein

A P P E A R A N C E S:
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(July 9, 2003.)

THE COURT: Just for everyone's edification, I've got a case file that I'm trying next week and I'm fixing to send it to Orangeburg and we're going to go ahead and bring the case file back here. Just in the event anybody needs it, it will be here and then once we've finished with that I'll transport it back to Orangeburg.

But as soon as my paralegal can get the one from here that needs to go to Orangeburg, then the other will go and it will probably be back in a couple of hours.

MR. ZELENKA: Is that going to be the general sessions case file also?

THE COURT: It can be whatever you want.

MR. ZELENKA: Yeah.

THE COURT: It could be whatever you all would like to have, how about that?

MR. ZELENKA: Okay.

THE COURT: And what we'll do is we'll take a break in about -- let's take -- well, why don't we make that decision now and then I'll just send a note. Tell me what -- I was going to get the -- I want the general sessions file

as well as, okay, and this of course, this PCR file. Got it. Any other files you all think would be appropriate?

MR. ZELENKA: I think primarily Solicitor Bailey had noted that he had filed his --

THE COURT: Notes? I mean, discovery.

MR. ZELENKA: -- discovery, correspondence.

THE COURT: Sure. Y'all step up for me just a second.

(Whereupon, a bench conference was held off the record.)

MR. BROWN: May it please the Court, Your Honor.

THE COURT: Yes.

CONTINUED DIRECT EXAMINATION

BY MR. BROWN:

Q. Mr. Bailey, we're going to start up today, we had ended with questions regarding Yelena Batkilina. Today I'm going start out with Lisa Watson. Lisa Watson was a lady who had purchased a white Mustang?

A. Actually she had leased it for Mr. Aleksey.

Q. Leased. That's to give the Court some context. And what I want to do is turn you to 1,965 which would be Volume IV and it would be line 4 through 12, lines 4 through 12.

A. (The witness complies.) Okay. 1,965, lines 4 to 12, okay.

Q. And one thing that she had testified about was not only the Mustang itself and how she had lost -- well, how she had been scammed out of the Mustang, but she also talks about how she had lost money to Mr. Aleksey and how much the relationship cost her.

A. Okay.

Q. And if you'll notice she starts out the question on page -- or line 4 was -- maybe I asked you this earlier when you testified because she testified in both phases and this is the penalty phase that she's testifying in.

"How much did this relationship you had with Mr. Aleksey end up costing you?"

And her answer is "$42,000."

Your follow-up question is "How did you break that down, how did you lose $42,000 because of him?"

And her answer is "The car, my husband's credit cards and my credit cards." Okay. And so part of that loss she's attributing as to her husband's credit cards. And are you familiar with a gentleman named Rickie Pattin?

A. Rickie Pattin?

Q. Yes, sir.
A. His name may have appeared somewhere in the file. I don't recall if it did or not.
Q. I'm going to show you what's been entered as Applicant's 13, it's an affidavit of Mr. Patton. I'm going to give you an opportunity to look over that.

MR. BROWN: Your Honor, for your edification he worked for Western Union, he is the one that investigated some fraud on Mr. Watson's credit card.

THE COURT: I remember that, yes.

A. This looks familiar. I think I've seen it before.
Q. Basically he details an investigation he did into some transactions that was -- that occurred on Mr. Andrew Watson's credit card?
A. That's what it says, yes, sir.
Q. Okay. And I'm going to hand you Applicant's 14 which is a fax cover sheet to me from Mr. Patton, underneath that's a fax cover sheet and there's a two-page letter and then there's two other accompanying documents.

THE COURT: Mr. Bailey, that's Applicant's what is that?

MR. BROWN: Fourteen, Your Honor.

THE COURT: Fourteen.

A. Okay. I've briefly reviewed them.

Q. I'm sorry?

A. I briefed looked over the Applicant's 14.

Q. Yes, sir. Okay. And you would agree back to the Applicant's 13 affidavit you mentioned you thought you had seen it before?

A. Yeah.

Q. That affidavit was actually filled out in the last 12 months. So you're saying you've seen the content of that affidavit?

A. The content looks familiar. Whether or not I've seen this specific document or not I couldn't say. I doubt if I did. You know, referring again to looking at the date 2002, I would have had no reason to look at it.

But I have seen something similar to this and that could very well have been the correspondence, or some of the correspondence attached to Applicant's 14.

But again, my problem as previously is that there are literally hundreds of documents in the file, some of which were in my view of probative value and would be necessary in my case, some of which I felt like were Brady material, but rather

than try to make a call what was Brady material or not I've got an open file policy. So I sent everything I got to the defense.

The reason I filed routinely, I believe I did it in this case, my transmittal letters on discovery with itemization is so that I can, or someone, whoever's interested can, refer to that file to see what was provided to the defense.

But, again, I've got a great deal of difficulty here looking at this stuff cold and letting you know whether or not I've seen it before and I hate to guess at it.

Q. Sure, I understand. Let me show you Applicant's 15 and it's on the top, it's a letter to Mr. Mears of SLED and it's from Rickie Pattin and accompanying it is a series of Western Union checks.

A. Okay.

Q. It has a front and back, it has both the endorsement on the back and the front of the check and the checks are written to Lisa, or the Western Union money order check is written to Lisa Watson on Andrew Watson's credit card and they're endorsed on the back Lisa Watson.

A. Okay.

Q. And then the back page has Ms. Watson's driver's

license, okay?

MR. BROWN: And, Your Honor, we've already submitted, and I apologize, it would be Applicant's 73 which is our handwriting expert's opinion regarding the affidavit and let you know it just says it's most probable that the signature on the back of those transactions are actually -- is actually the signature of Lisa Watson.

THE COURT: Okay.

Q. And the reason I point that out, Mr. Bailey, did you ever go back in or can you show us in the transcript where you came and corrected Ms. Watson's testimony that Mr. Aleksey was responsible for the loss to her husband's credit card instead of herself?

A. I didn't correct it. I accepted her at her word. That was her testimony and I had no reason at that time to assume that she was not telling the truth. Her credibility was for the jury to judge and I don't recall knowing of any reason that she was not telling the truth about what had occurred.

Q. But now in Applicant's 15 there's a letter that Mr. Patton at Western Union writes to Mr. Mears at SLED and that's dated I believe January 7th of 1998.

A. Yeah.

Q. Within the first seven days of this case.
A. Okay.
Q. And he says here are the front and back of the checks and here's the driver's license more or less.
A. Okay.
Q. And again --
A. I would need to refer back to the testimony, but my recollection is that in most cases these women, Aleksey would go in and do the paperwork in their name and they would go in and sign what was already prepared at the dealership at some point in time.

So I'm not -- I don't have total recall on the specifics of the transaction involving Ms. Watson, but that was a general trend of what I recall was occurring.

They would sign these documents, but they signed them at his request and the paperwork was filled out by somebody else.
Q. Okay. Now, but she testified that the money, her husband -- that she lost in the relationship was including her husband's credit card.
A. Right.
Q. And this transaction was on a credit card.
A. Okay.
Q. And so her testimony doesn't appear to be the

whole truth at the least?

A. Well, her testimony, again I'm not arguing with you, I'm just trying to answer the question, is very abbreviated in regard to that. She's got a -- again, referring to page 1,965, how much did it end up costing you, $42,000. I asked her for a breakdown and she doesn't say how much goes to each one, but she's got three categories, the car, the husband's credit card and her credit cards.

Now, apparently according to your handwriting expert and the letter here Ms. Watson signed some drafts. The Western Union, I don't know what led up to that, what specific involvement Aleksey had, what the deal was and I can't tell from looking at this documentation, you know, whether this was a credit card she's talking about or whether it's something else. I mean, I just....

Q. Okay. And you go to that, I wasn't going to go into this, but I will refer you back.

MR. BROWN: Your Honor, it's going to take just a moment. There was some testimony when we went through with the trial counsel regarding Ms. Watson's differing statements regarding what she had lost and I'd point out her SLED statement's Applicant's 20.

And she testified in the trial that she lost again $42,000 at 1,965 in the transcript, but she said she lost in the SLED statement again which is Applicant's 20, she says she lost $7,500 off of her husband's credit cards.

THE COURT: Okay.

MR. BROWN: Which is the same amount of these transactions. So it would tend to indicate the loss she's talking about is this same loss here or coincidental as the same. And obviously I guess somewhat rhetorical questions.

Q. But if you had submitted those documents to the handwriting expert or the government, you could have found out at that time that she actually wrote those checks?

A. Yeah. And I don't know if that's in dispute that she wrote the check.

Q. Or she cashed the checks?

A. Or she cashed the checks or whatever. Again, I can just answer your questions in a general way.

Q. Sure.

A. Mr. Aleksey and these various women were involved in different schemes to get money and spend money. Usually a third party, a bank or a spouse or

somebody got burned and ultimately the women ended up getting burned in some fashion or another and Mr. Aleksey would disappear and take up a new identity a new girlfriend. That was the gist of what I was trying to elicit from these people.

As far as the specific dollars and cents and exactly how they came about, it wasn't something I was particularly interested in at that time, it wasn't part of my case.

Q. Now, you would agree in Mr. Patton's affidavit, Applicant's 13, that he writes in August of '98 he had correspondence with the Philadelphia district attorney's office where Mr. Watson and Ms. Watson lived in Philadelphia and he was ready to prosecute the case as the victim or representative for Western Union.

A. Okay.

Q. And that the Philadelphia DA said there was going to be a prosecution of Ms. Watson.

A. Okay.

Q. That was shortly before Mr. Aleksey's trial before she testified here.

A. Yeah, okay.

Q. Oaky. If she had been convicted of some type of credit card fraud or wire fraud since this happened

in several states and money's being transferred like that, that would have been used to impeach her or could have been used?

A. Yeah. If she was convicted and she was convicted at the time of the trial.

Q. Sure.

A. And if it was known to me, disclosed to the defense, otherwise that information was obtained by the defense it could have been used to impeach her, yes.

Q. In fact, under 608 it could have been used even if she hadn't been charged a specific instance related to truthfulness or untruthfulness?

A. You're asking me to assume a whole lot. And all I can tell you is that I asked SLED to give me their file.

Q. Sure.

A. I got the file from SLED in bits and pieces and I made copies of it and sent that to the defense.

Q. Okay.

A. My interest was not in the specific dimes and nickels and exactly how these things transpired, I didn't want to bore the jury any more than I had to to listen to this testimony.

My attempt was to show in general

terms the character of Mr. Aleksey in the penalty phase of the trial, that he had a pattern of conduct of coming in, taking up with different woman who were at a low point in their lives for some reason, but generally had some money or assets or ability to get money and that together they would go out and do things that were inappropriate and people would get financially taken advantage of, including the women he was with.

That was the -- what I was attempting to do as far as presenting that case in the penalty phase. That was the reason I called these people in the penalty phase for the most part.

Q. Can you show how Ms. Watson was taken advantage of related to this transaction?

A. Can I show how she was taken advantage of relating to this, meaning the $7,500?

Q. Yes, sir.

A. No, I didn't ask her that. My question was how much did it cost her. In response to that she included a loss to her husband's credit card which she attributed to some action on the part of Mr. Aleksey.

Q. Right. But was she ever victimized because of this transaction?

A. Was she victimized? According to her testimony she's out $42,000 as a result of her relationship with Mr. Aleksey.

Q. Including $7,500?

A. Including some amount of money which may indeed be $7,500, I don't know.

Q. She includes her husband's credit cards?

A. Yes.

Q. And she had prior given a statement to SLED that he had $7,500 from her husband.

A. Okay. All right.

THE COURT: Mr. Brown -- yes, sir Mr. Zelenka.

MR. ZELENKA: I think this is asked and answered and answered again.

MR. BROWN: Sure. And the point I'm trying to make is that she testified that she was -- the thrust of it is I've been victimized including the loss to my husband's credit card. She didn't say my estranged husband or my ex-husband, at this point she's saying my husband.

THE COURT: Okay.

A. She referred to him as her husband.

Q. But, in fact, she's the perpetrator, maybe a

co-perpetrator?

A. Mr. Brown, I can't tell from the affidavits and letters who the perpetrator was. Apparently she --

THE COURT: Mr. Bailey, the point is you know I'm getting more than it is.

MR. BROWN: Sure.

THE COURT: It's these women's position that, yes, that while they may have participated and it's the solicitor's testimony that it was his theory of his case that, yes, they participated and, no, they weren't sitting at home, that, yes, they were participants; but the point is that they happened to be women who were in a place that according to the theory of the solicitor, that this gentleman was in the position to take advantage of them.

That's his theory. That's going to be his theory. If you ask him another hundred questions, that's still his theory.

MR. BROWN: Sure. But my question relates to how this false testimony that she lost $7,500 is correct --

THE COURT: It's still her theory. Though they participated, it's the women's theory that even though they participated.

MR. BROWN: Right.

THE COURT: That they didn't -- that they participated because they were taken advantage of. It's the old, you know, I love you therefore you must do the following things. That's just his theory.

MR. BROWN: I understand. But he has an affirmative obligation not as an advocate for one side, but as the attorney for the government he has an obligation to correct false testimony that he knows or should have known was false.

THE COURT: He doesn't think it's false, Mr. Brown. He thinks that while they participated that they still felt like they participated because they were duped by Mr. Aleksey.

I mean, it's just not going to go anywhere other than that. I mean, I got your point, but I got his point and you're not going to get him to agree they were false statements even though they participated. These women felt as though they were victimized and, yes, they participated.

I mean, isn't that right, Mr. Bailey?

THE WITNESS: That's correct, Your Honor.

THE COURT: They were in varying degrees participants.

THE WITNESS: In varying degrees.

Q. Did she ever tell the jury she participated in the scam of $7,500 for her husband, did she ever tell that to the jury?

A. I don't believe the question was ever asked of her.

Q. And you didn't ask her that?

A. No. I asked her a very simple question what her relationship with Aleksey cost her. In response to that she lumped in the car, meaning the Ford Mustang which she leased in his name, he never made a single payment on it, drove off in it, her husband's credit cards and her credit cards and she's got an aggregate figure of $42,000.

That's the question I asked her and that's the answer she gave me. But I'm not a CPA and I didn't get out there and try to do an audit of all of her transactions.

Q. But you'd agree if she cashed these checks, she got the $7,500, she's not out it?

A. I don't know who got it. Assuming she signed the check, which apparently your handwriting expert said she did, and I don't dispute that.

Q. Sure.
A. I don't know the circumstances under which she signed the check, I don't know what happened to the money, I don't know whether he profited from it or whether he did not. All I know is that's what her testimony was and I have no reason not to believe that at the time.
Q. I understand. But at the time that she cashed the check she didn't lose $7,500?
THE COURT: Mr. Brown, I got the point.
MR. BROWN: Yes, ma'am.
Q. Are you familiar with a tape entitled fraud, "Lisa Watson Fraud"?
A. I don't believe so.
Q. Okay. Are you familiar with turning this over to the defense?
A. Well, I'm going to have to answer the same. Anything I got I gave to the defense. So if you got that from me, from my file, I gave that to the defense. If you got it from some other source I may or may not have.
Q. Okay. I'm going to show you Applicant's 16.
A. Okay.
Q. Is that not entitled "Lisa Watson Fraud"?
A. It is. It's entitled "Lisa Watson Fraud Copy

9/24/02 G. W. D." which I assume is George W. Darnell.

Q. That's what I was going to ask you. George Darnell is the SLED agent who worked with Mr. Mears?

A. That's correct.

Q. Okay. And the letter on the thing from Western Union went to Mr. Mears on January 7th?

A. That's correct.

Q. And then it appears that Mr. Darnell's got a tape entitled "Lisa Watson Fraud"?

A. Yeah.

Q. Okay.

A. And in answer to your question I may or may not have received this tape, I don't specifically recall and I can't say that I did.

Q. It's not entitled "Bayan Aleksey Fraud"?

A. No, it's entitled "Lisa Watson Fraud."

Q. It's not entitled "Andrew Watson Fraud" saying that he was the victim of the fraud?

A. I don't know how else to answer it. It's entitled "Lisa Watson Fraud."

Q. I just -- okay.

A. Does not mention anybody else's name on the outside of this or the back.

MR. BROWN: And, Your Honor, to point out

our -- this may not be in dispute with the State, the handwriting expert said it's most probable that she wrote this, he had the originals.

THE COURT: What's the -- this, you're just talking about a tape.

MR. BROWN: Excuse me. She signed the back of the money orders from Western Union, that Lisa Watson, it's actually her signature on there.

THE COURT: I know.

MR. BROWN: And I'm telling you he says he could give a better opinion if he had the original. And the letter from Mr. Patton to Mr. Mears on January 7th says I'm sending you the actual drafts, the original ones. So they went to SLED.

So if there's a question because we couldn't get the originals, if there's a question about the handwriting opinion I just point that out to the Court that SLED somewhere has got the original document, our expert --

THE COURT: I don't think it's in dispute though, Mr. Brown.

MR. BROWN: Just for the record though.

THE COURT: Yeah, I really don't think there's -- I don't hear that there's any dispute about whether or not she signed it.

MR. BROWN: I understand.

Q. Now, let me ask you about the report of the car being stolen. And I believe on line 1,280 -- excuse me, page 1,280, lines 6 through 9 of the transcript.

A. 1,280?

Q. Yes, sir.

A. Wait a minute, 1,280. Is that Volume III?

Q. That would be Volume III, I believe.

A. Okay. 1,280?

Q. Yes, sir.

A. Okay. I've got that page.

Q. You said, "When did you report the car stolen roughly?"

The answer was "Right after probably October, the first week of October."

A. Right.

Q. And I put that in perspective. She said the car was purchased on September 30th.

A. I'll take -- I'll accept that, I don't see it right off the bat in the transcript, but whatever's in the transcript, yeah.

Q. It's on the preceding page, the 30th.

A. Line 23: "When is the last time you saw the Mustang?"

"Probably the 30th right after I signed the papers."

Q. So she signs the papers on the 30th of September, she never sees the car again. She reports it stolen she says the beginning of October, maybe the 1st.

A. I asked her, my question was --

Q. The first week?

A. -- "When did you report the car stolen roughly?" I didn't ask her for a specific date, didn't really care. Her answer was "Right after probably October, the first week of October." So she's giving me an approximate date at that time when she reported the car stolen.

Q. And Applicant's 17, if you'll take a look at that.

A. Okay.

Q. That's a Philadelphia police report?

A. Right.

Q. And she's reporting the car stolen?

A. It appears the report's November the 13th, 1997.

Q. And can you show me where you corrected that testimony of Ms. Watson?

A. I can't show you that because I had no reason at the time she said that to doubt that that was the correct date.

Q. Did you have some Ford Motor Credit notes?

A. I have some information from Ford Motor Credit, whether or not it's the same thing that's in Applicant's 17, I do not know, I would have to again refer to the -- to the file. But whatever information I got regarding Ford Motor Credit I would have sent to the defense.

MR. BROWN: And, Your Honor, we would just report, let the Court know that Applicant's 21 is the Ford Motor Credit notes. And previously the Court's heard where they go through and ask her has it been reported stolen yet, has it been reported stolen yet. And those were -- and that's the document that the prosecutor had.

THE COURT: And the records from Ford Motor Credit indicate she had a conversation then subsequent, just subsequent she made the report?

MR. BROWN: On the same day, the 13th of November, they said have you reported it stolen she says, yes, I have. Although at that time about three hours later she goes and reports it stolen, yes, ma'am.

THE COURT: Okay.

MR. BROWN: And, Your Honor, besides the issue we brought up of correcting the false testimony we would also allege these same things, the Western Union transaction and the reporting the car's date as Brady material issues that can be cleared up I think when you get the file from the clerk of court that has the correspondence about what was turned over to the defense.

THE COURT: Sure.

MR. BROWN: And so I'll leave it at that --

THE COURT: You were characterizing testimony. Just for the record, I want to be fair to both sides. Solicitor Bailey is not accepting your characterization, I would not think, but that's your characterization.

MR. BROWN: Yes.

THE COURT: And I just want this record; isn't that correct?

THE WITNESS: That's correct, Your Honor.

MR. BROWN: I would make this distinction. I'm at this point characterizing it as false testimony, not necessarily perjurious testimony, I believe there's a difference. If I say I have

$3 in my pocket, I actually have $2, that would be false, but that doesn't mean I'm intentionally misleading the Court.

THE COURT: The point is, is that you have an outline, you've been so good about telling me where you are in your outline, but it's your outline, it's your characterization.

MR. BROWN: Yes, ma'am.

THE COURT: What I don't want this record to reflect is that I am taking your characterization to be -- a portion of your outline as you direct the Court, you've been so good about doing that.

MR. BROWN: Yes, ma'am.

THE COURT: And I really do appreciate that.

MR. BROWN: Yes, ma'am.

THE COURT: I just don't want the record to reflect that that is a characterization that either the State agrees to or certainly this witness agrees to.

MR. BROWN: Sure.

MR. ZELENKA: I agree with that. I consider them to some extent large hypotheses before he asks the questions. I haven't been

objecting when he's been doing as he's been trying to explain it going on.

But we're not stipulating to his characterization nor have we intended to stipulate at any time during the proceedings this week and the previous week.

THE COURT: And I think everybody agrees, understands.

MR. BROWN: We agree with that, Your Honor, it's ultimately your decision whether somebody meets the standard that we're seeking.

THE COURT: Sure. Thank you so much, Mr. Brown.

MR. BROWN: That concludes the testimony with Lisa Watson. Again as far as the Brady issues, we'll look at the other stuff that comes over.

THE COURT: Very well.

BY MR. BROWN:

Q. Theresa McCann is the next person I would like to move to.

A. Okay.

Q. She testifies in the penalty phase at 1,873, lines 9 through 19 which would be in Volume IV.

A. Hang on just a second. 1,873?

Q. Yes, sir. It's Volume IV.
A. (The witness complies.) Okay.
Q. And she's talking about some -- some -- some vehicles that were purchased.
A. Right.
Q. At number 9: "Did you purchase or lease a motorcycle in your name while you knew Mr. Aleksey?"
A. Okay.
Q. And her response: "That happened also while I was at work."
A. Okay.
Q. "He wanted a motorcycle and he said we were going to have a good summer, you know, we would travel. So he purchased a motorcycle also. I think I faxed my driver's license to the place."
A. Right.
Q. Question: "What kind of motorcycle was it?"

"A Honda CVR 600."

And the next question: "Was that leased or purchased in your name?"

And her answer: "Yes."

A. Okay.
Q. Now I would hand you what's been entered as Applicant's 44.
A. Okay. Without reading every word of it I have

it and it's an installment contract security agreement for a Honda motorcycle.

Q. That's a Honda CVR 600?

A. Yeah.

Q. Okay. And at the bottom it's got a signature of Theresa McCann?

A. Yes, it does.

Q. Okay.

MR. BROWN: And, Your Honor, again our handwriting expert says this is Ms. McCann's signature.

Q. And then my question for you, Mr. Bailey, is in light of that sales agreement can you tell us where Ms. McCann's testimony that Mr. Aleksey purchased the motorcycle and she only faxed her driver's license down there, where was that corrected?

A. That isn't what she testified to at line 18. My question was, "Was that leased or purchased in your name?"

Her answer line 19 is "Yes." That's consistent.

Q. And her response -- I'm sorry?

A. It's consistent with her signature being on the form and I believe consistent with your handwriting expert.

Q. And if you look at line 13 with the sentence that starts "So he..."

A. Same page or where?

Q. Same page.

A. Okay. Line 13?

Q. Yes, sir. It's two sentences, starts "So he..."

A. "So he purchased a motorcycle also. I think I faxed my driver's license to the place."

Q. That's saying he purchased the motorcycle?

A. Right. I think that's consistent with what my understanding was and what his pattern of operation was going back to line 11.

Well, going back up to line 19, question: "Did you purchase or lease a motorcycle in your name while you knew Mr. Aleksey?"

She answers "That happened while I was at work. He wanted a motorcycle and he said we were going to have a good summer, you know, we would travel. So he purchased a motorcycle also. I think I faxed my driver's license."

Okay. I think that is consistent with what has happened on the Mustang, the Lexus, the Jeep and the other automobiles where he would pick out a vehicle, make arrangements to purchase it and then get the woman who was with him at that particular

time to sign the documentation.

Q. But she doesn't say I signed the documents, does she?

A. Well, she didn't say it but I don't believe I asked her that. I asked her was it leased or purchased in your name and she answered yes. And her name's on the document, so....

Q. I don't want to belabor it, the only thing she said she did was fax her driver's license down?

A. No.

Q. That she did. I mean, I know you're saying it was leased in her name.

A. No. She said they had a discussion that he wanted a motorcycle. This is again on line 11, that he wanted a motorcycle, he said we were going to have a good summer, we were going to travel, so he purchased a motorcycle. She faxed her driver's license.

She describes the motorcycle and states that it was leased or purchased in her name. I don't think that is inconsistent with the documentation, is not inconsistent with her testimony, in my opinion.

Q. She didn't testify though that at trial I went down there and signed the agreement?

A. Well, nobody asked her that. And I don't think it was that significant at least as far as the presentation of my case.

Again, I'm trying to show a general pattern of conduct and I'm not trying to claim delivery on the motorcycle.

Q. And I'm going to show you Applicant's 45, it's the New Rochelle police report.

A. Yeah.

Q. And that's filled out in May of 1996.

A. Okay.

Q. And that's two months after the motorcycle sales document was signed.

A. Okay.

Q. And in there does the -- Officer Gado who's taking the report, does he not indicate that Ms. Watson had called to say her motorcycle had been stolen?

A. It sure does. And, again, if I can anticipate your question would be consistent with the fact that she's got the title to this motorcycle in her name.

Q. Sure.

A. And has the obligation legally since it's in her name to make the payments and he disappears with the motorcycle as he did with the Mustang and in her mind

that motorcycle's been stolen.

She has the obligation, she owns the motorcycle, Mr. Aleksey's got it, the payments aren't being made so she thinks it's stolen, I would agree with her. And I would agree the Mustang was stolen.

Q. And I'm not disagreeing that the motorcycle may have been stolen from her, but again --

A. Okay. So could I ask you what your question is? Because I've lost track here.

Q. Sure. But she doesn't testify to that at trial that she bought a motorcycle, that she considered it her motorcycle and that Mr. Aleksey stole the motorcycle from her, that's not her testimony at trial though, is it?

A. Well, she responded to the questions that I asked her in regard to the motorcycle. And I can read it again if you like, but she says that she bought this Honda motorcycle and that it was leased or purchased in her name.

Q. Okay.

A. He also bought a jet-ski and so on and so forth.

Q. Now, let me ask you this: You didn't turn over the -- you didn't have a copy of the sales contract regarding the motorcycle?

A. Again, I don't know if I had a copy of the sales

contract of the motorcycle, I doubt if I did. I do believe that I had some of this stuff from the New Rochelle Police Department in the file, but I would have to review my file to say for sure.

Q. Sure. Next I'd like to move to Sara Pivero.

A. Okay.

Q. And specifically testimony at 1,910, lines 1 through 9.

A. 1,910.

Q. It's again Volume IV.

A. Okay.

Q. And Ms. Pivero's never impeached with the fact that she ended up on probation for the purchase of a Lexus. Would you agree with that?

A. No. On page 1,920, line 5 -- excuse me, line 3 Mr. Sims has asked her "Let me ask you about this motorcycle. You said you followed him for him to ditch it?"

Her answer was "Yes, he ditched the motorcycle. I guess apparently Theresa somebody he was afraid maybe that it would get back to where he was, so he got rid of it."

Question: "So he got rid of the --" I might -- wait a minute, let me -- I'm sorry, I meant to refer to page 1,921, the next page.

She says on line 16 she's on probation. That was elicited by Mr. Sims. "Not to mention rap sheets, I had gotten on probation I'm on so I can pay back his cards."

Q. Does she show she was convicted of fraud though in the purchase of that Lexus? Does he ever bring out the conviction under 609?

A. To be on probation you have to be convicted in my experience.

Q. But technically it could be conviction for something that's not even a 609 crime. I mean, you can get on probation for a 30-day charge which is maybe not subject to 609 impeachment?

A. I don't know that you can get on probation for a 30-day charge.

Q. Judge Goodstein might be able to -- or excuse me, a circuit court might be able to order somebody, simple assault and battery, put them on probation for five years, 30 days.

A. Whatever the judge orders generally happens.

Q. But they would not be subject to impeachment under 609 with that?

A. I'd have to review the rule, I don't know.

Q. But arguably that would be so and so -- and I will stand corrected on that.

Is she ever impeached with the conviction?

A. Well, the fact she's on probation for an offense is brought out and generally when you're on probation it's something above a magistrate's level offense, that's common knowledge in South Carolina to juries.

He elicits the fact that she's on probation as a result of a transaction involving what she refers to as his automobile. So I don't know what else he could have done.

Q. Sure. Then let me go to her testimony about her involvement in the purchase of that Lexus again on 1,910, the lines 1 through 9. And actually I guess she talks about --

A. Okay.

Q. -- the W-2 form, it's the W-2 form that was faxed to the Lexus dealership.

A. Yeah.

Q. And what does that indicate your income as being? And she says --

A. It indicates that the faxed form which apparently Mr. Aleksey had some involvement with indicated erroneously that she had in excess of $78,000 income which apparently she did not have.

She was asked how that came about, she

said she didn't know, that form was faxed to the dealership, she wasn't there at the time it was faxed to the dealership, she didn't hand it to them.

Q. So she's saying I don't know how that income got listed on that W-2?

A. That's my interpretation of what she's saying. On line 15 the question from me is "You did not fill out a form indicating that your income was $7,500, correct?"

Her answer was "I didn't fill out a W-2 form."

Q. Let me refer you to the November 20th police report of a Detective Dean Logan, it's Applicant's 55.

A. Okay.

Q. And on page 3, and I think I gave you page 4, page 3 of the November 20th report if you'll look at paragraph four.

MR. BROWN: And again, Your Honor, this report was filled out nearly two years before the trial where she testified what we just heard.

A. Okay.

Q. And there's a quote in there that she's shown a copy of that W-2 and she says, quote, that she must

have written that.
A. Well, let me catch up with you there.
Q. Yes, sir.
A. The third line there says, quote, "Initially Sara advised me that she did not fill out any of the credit applications nor was she aware of how much income was indicated on W-2 form supplied by Thompson Lexus.

"I showed her a copy of the application that she filled out signed with her name. She advised that she must have filled out the information because it was in her handwriting and her signature.

"I asked her if she was aware that the W-2 indicated that she made in excess of $70,000 in 1995. She advised that she was not aware that it listed that much money."

I can keep on reading, I'm not sure what -- but it appears to me that that is consistent with her trial testimony that the form was faxed, apparently altered by somebody, I assume that the inference would be Mr. Aleksey altered her income to get credit to buy the car. I don't really see an inconsistency with what she told me.
Q. I'm confused. She said at trial line 17 "I

didn't fill out a W-2 form." That's her quote.
A. Right.
Q. But in that police report we just read --
A. As I read the police report she's saying that she was not aware of how much income was indicated on the W-2 form supplied to Thompson Lexus.
Q. She indicates she was not aware of that, but she also has a sentence, and I'm going to read it, it's a quote. Quote, "She advised that she must have filled out the information because it was her handwriting and her signature."
A. Okay. She's referring to a credit application.

MR. ZELENKA: Your Honor?

THE COURT: Just a second.

THE WITNESS: I'm sorry.

MR. ZELENKA: We're talking about two different items. We're talking about a W-2 form which is a typed document and the credit application which was handwritten which says $7,000. And I --

Q. And the credit application has her monthly income listed at...?
A. I don't know.

THE COURT: I understand. I pondered that myself with the examination. We're talking

about two different things, Mr. Brown. One is a W-2 form and one is a credit application. Credit application is not necessarily a W-2 form. I think a W-2 form is a term of art and I don't see any indication that other than a W-2 form is a W-2 form, a credit ap is a credit ap.

MR. BROWN: And I understand, Your Honor.

THE COURT: Sure.

MR. BROWN: What I would like to show you is in conjunction with that the motor credit application that they referred to that she says is in her handwriting....

(Pause in proceedings.)

Q. If I may turn to that, the credit application appears in that same police report, in Applicant's 55, and it lists her monthly income in the document she said she filled out?

A. Yeah, it lists total gross monthly income $7,500.

Q. Which is $90,000 a year?

A. If my math is right, yeah. Okay.

Q. Okay. So she says that in court she doesn't know how the $78,000 got on the W-2?

THE COURT: That's two different things, Mr. Brown.

MR. BROWN: I understand that. Your Honor, I think in a trial when you swear to tell the truth it's the whole truth.

THE COURT: I don't need to be lectured to, Mr. Brown. You asked the solicitor about the W-2.

MR. BROWN: I understand that.

THE COURT: And she -- the testimony was that she didn't fill out the W-2.

MR. BROWN: I understand that.

THE COURT: And you've been cross-examining him on the police report on the W-2.

MR. BROWN: I understand.

THE COURT: Now, if you want to switch to the credit application that's one thing. But you can't cross-examine a witness as to their feeling about a W-2 and all of a sudden they're supposed to be -- they're supposed to be testifying regarding the credit application. It's not fair, so....

MR. BROWN: And, Your Honor, one other thing. And have you ever seen -- and we'll move on right past that. I just submit to the Court that her testimony is not the whole truth regarding that. And I'd submit that, Your

Honor, as our position.

MR. ZELENKA: Judge?

THE COURT: Yes, sir, Mr. Zelenka.

MR. ZELENKA: We would with all due respect to counsel's handling of the case, I mean this is a question and answer time and if we want to do argument, I would suggest that that be reserved at the conclusion of the evidence than during the evidence.

THE COURT: Thank you, Mr. Zelenka. I tend to agree with you. Very well.

BY MR. BROWN:

Q. Mr. Bailey, would you show us the statement Ms. Pivero wrote to SLED.

A. Give me a minute, I'll try to find it. Oh, Ms. Pivero?

Q. Yes. I will give you all the time you need.

A. Oh, I am sorry, Ms. Pivero?

Q. Yes.

A. She did not write a statement to SLED to the best of my knowledge. And I can tell you my understanding of how that transpired if you would like.

Q. Would you agree that there's a SLED summary written by Mears and Darnell that indicates item

Number 44 of an attachment is Sara Pivero's SLED statement?

A. Yeah.

Q. And, in fact, her mother gave a statement?

A. Her mother gave a statement to the best of my recollection.

Q. And that's included?

A. The mother's statement is attached to the SLED statement. Sara Pivero, to my knowledge, never gave a statement.

Q. But what is listed?

A. I'll be happy to try to explain to you how that came about according to my understanding if you want me to. If not, I'll be quiet.

Q. Just a question and answer. Was her statement turned over to the defense?

A. There was no statement to the best of my knowledge.

Q. But the SLED summary does indicate Number 44 is her statement?

A. Right. And I'll be happy to explain that to you if you would like for me to.

Q. I think you may get that question from the attorney general, but basically there was no statement turned over?

A. There was no statement period to turn over.
Q. Okay.
A. If there had been a statement and I had it I would have given it to them. To the best of my knowledge there was no statement ever and still is no statement.
Q. One thing that came out in the trial was --
MR. BROWN: And, Your Honor, I'm going to move on.
Q. You received a Brady Rule 5 motion from the defense?
A. Yeah.
Q. And it included language from Gigleo, Brady, and --
A. Right, yeah.
Q. And I think that would be listed in the Court's file. There was a hearing where a statement was made, it ended up in the newspaper that Mr. Aleksey was a suspect in a New York murder.
A. Okay.
Q. And can you tell us where that information came from?
A. That information, I believe, came from conversations that SLED agents were having with different police agencies in Pennsylvania and New

Jersey, New York, that area that he was a suspect in a murder. That was conveyed to me and I believe that that came out at maybe a bond hearing.

Q. Can you give us any more specifics regarding where that information came from?

A. No.

Q. But you made that assertion to the Court?

A. I remember saying that he was a suspect, we had information that he was a suspect and we did have information that he was a suspect, but as far as specifics at this time I can't give you any other than that.

Q. Do you believe you could provide us with that documentation at some later point?

A. I don't know that there is any documentation. I think that was a telephone conference either Agent Darnell or Mears had at some police office in the northeast that was relayed to me, I relayed that to the Court.

It had something to do, I believe, with some nightclub owner or manager being killed in New York and it was a club where he did some lighting. But just in very general terms that's all I can recall.

And it was pretty -- I might add it

was pretty consistent with some of the comments he made, he had problems in New York and that he was running from the Maffia and that type stuff.

Q. And I'm going to ask you now to turn to Jamie Farrell.

A. If you can give me a volume number and page.

Q. She testifies in the penalty phase roughly 18, late 1,800 pages.

A. 1,800?

Q. The late 1,800s, that's correct.

A. Okay.

Q. Okay. And I would turn to page 18, specifically 1,898.

A. (The witness complies.) All right.

Q. And this is regarding some deposits that were made regarding checks from Theresa McCann's that were deposited into an account opened by Ms. Farrell.

A. Okay.

Q. And her testimony, lines 6 through 17 and then 21 through 23, you can pretty much read them all together, deal with how the deposits were made and how the withdrawals were made on those transactions.

A. Okay.

Q. And I would like to read it to get some context to my questions.

A. Okay.

Q. And starting at line 6, the question: "Look on the back and tell me whether or not those checks were deposited into the account that you opened in New Jersey."

Ms. Farrell's answer is "Yes. It says Commerce Bank."

Question: "Ms. Farrell, those checks total almost $10,000. Did you have any knowledge they were deposited into your bank that you opened with the $20 in it?"

And her answer is "No."

A. Okay.

Q. And the next question: "And were you with Mr. Aleksey on May 10th, 1996 in New Jersey when those checks were deposited?"

A. Okay.

Q. And her answer is "No."

A. Uh-huh (affirmative response).

Q. And it goes on "Did you and Mr. Aleksey have any discussion about money coming into your account?

And she says "Yes."

And then another pertinent question: "But you did not know those checks had been deposited in your account?"

A. Okay.
Q. And her answer is "No."
A. All right.
Q. And I would turn you to 1,900, lines 3 through 10.
A. If I could put it in context, the next question is "What did Mr. Aleksey tell you about the status of your account?"
And her answer was "He said he was getting a wire transfer for $10,000 and he got a writing from the bank clerk."
Q. She said specifically she was not with him when the checks were deposited, she did not know the checks were deposited in her account?
A. She thought it was a wire transfer in the same amount.
Q. That's right. And then over on 1,900, lines 3 through 10, question: "Who withdrew it? This is the money from the same account."
A. Right.
Q. "Mr. Aleksey."
A. Okay.
Q. "How much did he withdraw?"
"About $10,000."
And how -- "And did you know he was

withdrawing it?"

"Yes."

"Did he tell you why he was withdrawing it?"

"No."

A. The next question, she thought that was his money and the answer was yes.

Q. Okay. Then I turn you to Volume V which is page 2,122.

A. Okay. Just a second. Volume V?

Q. That's correct, yes, sir. 2,122.

A. 2,122, okay.

Q. And it's your closing argument in the penalty phase.

A. Okay.

Q. And the pertinent parts, lines 2 through 11.

A. Okay. And you gave a little summary, 8 through 11. So Aleksey deposits -- Aleksey deposits these two forged checks into her account. They credit the account, he pulls the $10,000 out. He's gone and who gets arrested? Jamie Farrell.

Q. Okay. All right. And the checks themselves were entered, or you asked her about those checks at trial. And Applicant's 49, I'll show you is two checks, it's a front and back of two checks, it's two

pages.
A. Okay.
MR. BROWN: And, Your Honor, Applicant's 73 which is the handwriting expert, that's Ms. Farrell's signature on those checks.
Q. And I would hand you what's been listed as Applicant's 46, which is an affidavit of a Vincent Caruso who is the Commerce Bank senior investigator. And I'll give you an opportunity to look over that.
THE COURT: Mr. Brown?
MR. BROWN: Yes, ma'am.
THE COURT: Pass me the Applicant's 73.
MR. BROWN: Yes, ma'am.
THE COURT: Let me look at that.
MR. BROWN: And, Your Honor, if you'd like I'll try to get you to the page regarding this. And the exhibits that we're talking about are A-1, A-2, A-3. A-1 is actually a signature card for the account.
THE COURT: Okay. Great. Thank you.
MR. BROWN: And then you have to turn over to the results page.
A. If I can try to get some clarification on something. The two checks you handed me, the $9,800 and the $5,500 written out of the bank, Commerce

Bank, did you say in your question to me that these were the checks that were introduced in my case?

Because my recollection is the checks I introduced were the deposits off of Theresa McCann's checks. Not the withdrawal from Commerce Bank, but the money put into the bank.

Q. And that may be correct and I retracted my statement, they were introduced, and you did talk about some checks.

A. Okay. I don't recall seeing these checks before. Again, my same stock response. I may or may not have, you would have to refer to the file.

Q. Let me ask you, it would be $4,800 instead of 9,800?

A. Okay, yeah. I guess that is 48. Looks like a 9.

Q. And I would agree, but together that comes out to about a total of like 9,850?

A. Right, okay.

Q. Now, the reason why I asked that is if on the question who withdrew the money and she said Aleksey withdrew it, if that's her signature on those checks --

THE COURT: Let me ask you this question, Mr. Brown, as I review these.

MR. BROWN: Yes, ma'am.

THE COURT: You said there was an account that was opened with $20?

MR. BROWN: Yes, ma'am.

THE COURT: Is that this account, the same account that these checks that Mr. Bailey has in his hand?

MR. BROWN: Those are starter checks on that account.

THE COURT: On that account. And the exemplar that the handwriting expert is utilizing is the signature card on this same account?

MR. BROWN: That's correct.

THE COURT: So while your handwriting person says that it's made by Jamie Farrell, he doesn't know that they're made by Jamie Farrell, only that the signature card and these checks have the same handwriting signature; is that correct?

MR. BROWN: It's correct that he matches it with the known signature on that card, whoever the maker of that card may have been we agree with that.

But, Your Honor, we would also tell

the Court that there are other signatures of Ms. Farrell that he has been provided as well.

THE COURT: Who is "he"?

MR. BROWN: Our handwriting expert. Such as her signature on her SLED statement and I understand that's not what it's compared to there, I understand that. And we could certainly get that point clarified.

I would just tell the Court that there are other signatures that we provided him with as well from Ms. Farrell that -- and maybe Mr. Tarr can clarify that report because he's the one that dealt with Mr. Gidion our handwriting --

THE COURT: That's okay. That's okay.

MR. BROWN: But we would certainly like to come back to that issue if there's a question about whether Mr. Aleksey or Ms. Farrell signed the signature card, because we certainly understand the importance of that distinction.

But I think she testified she opened the account in her name because Mr. Aleksey could not open an account and that's in her testimony as well.

BY MR. BROWN:

Q. Okay. And then I would show you some photographs, and they're actually black and white Xeroxes of these photographs.
A. Okay.
Q. I ask you to take a look at this one, the photograph itself is dated May 11th.
A. Okay.
Q. And it appears to show Mr. Aleksey in the driver's seat of an automobile?
A. Right.
Q. And it appears to show a female in the passenger seat?
A. That's correct.
Q. With a pen in her hand?
A. Yeah.
Q. And that would correspond with May 11th, the date the $4,800 check withdrew $4,800 from that account?
A. Yeah. The check's dated May 11th, 1996 and the photograph is dated May 11, 1996.
Q. So that appears to be a photograph of her actually withdrawing the $4,800?
A. Appears to be a photograph of a female with a stick or a pen in her hand. I can't identify who that is. I can identify Aleksey, but I can only see

this is apparently a white female.
Q. And that would be consistent with her --
A. It could be consistent, yeah, if we're assuming that is Ms. Farrell.
Q. That's correct. And if that's her signature on there then regardless of whether that's her in the photo, they coincidentally would be at the same time at the same bank, we have her signature withdrawing the money assuming that is established it's her signature?
A. If you assume that's her signature, yeah.
Q. Okay. Her testimony on 1,900, lines 3 through 10 that Aleksey withdrew the money --
A. 1,900?
Q. 1,900, lines 3 through 10. I've already read it, I'm going to paraphrase it because I don't want to --
A. Okay.
Q. Basically he withdrew the money and she didn't know he withdrew it.
A. Okay.
Q. Would you consider that to be false testimony, not perjurious but false?
A. "He withdrew about $10,000."
"Did you know he was withdrawing it?"

"Yes."

"Did he tell you why he was withdrawing it?"

"No."

"But you thought it was his money?"

"Yes." Okay.

Q. Right. But the question on 3 to 4 was "Who withdrew it?"

A. Okay.

Q. And the answer was...?

A. Give me a second to look, please. Yeah, the way I read her testimony here is an assumption you make with the photograph and the two other checks, there would be some inconsistency there between her testimony and this. She says who withdrew it, Aleksey is there with her, whoever it is in the car.

Q. And then I'll get on 2,122 in your closing argument, lines 8 through 11. "So Aleksey deposits these two forged checks in her account."

A. Okay.

Q. "They credit the account, he pulls the $10,000 out. He's gone and who gets arrested? Jamie Farrell."

A. Okay.

Q. Which the implication is she was victimized by

Mr. Aleksey.
A. Right.
Q. But, in fact, she was a participant?
A. Right. And I've never denied or tried to present these women as anything other than participants in these scams.
Q. But now at this part you're saying who gets arrested, you're saying Mr. Aleksey doesn't get arrested, but you're also saying Ms. Farrell does get arrested, he does all --
A. I believe she did get arrested.
Q. Right. Right. And you assert that.
A. Right.
Q. But you say he deposits the two checks, they credit the account, he pulls the money out, he's gone and she gets arrested.
A. Okay.
Q. But you don't say they go in and do this together and he doesn't get arrested but she does.
A. I didn't say that in my closing.
Q. Okay. Did you ever correct the --
A. I had no reason to correct something that I felt was correct at the time. That was Ms. Farrell's testimony, and I think that was an accurate summary of what she testified to. I believed her testimony

at that time. I had nothing to my knowledge at that time to indicate that was not a correct statement of the facts.

Q. Okay. You had nothing at that time to indicate that her statement was incorrect?

A. To the best of my knowledge I had nothing in my file to indicate that this was an incorrect statement.

Q. You would concede it was partly contradicted by the --

A. I would concede that the information you've got would cast some doubt on certain aspects of her testimony as far as what transpired.

Q. Also in Mr. Caruso's letter as far as the deposit of the checks into her account, not the withdrawal of it, when it's asked who is depositing the money which is back on 1,898. "Did you have any knowledge they were deposited in your bank that you opened with the $20 in it?

And her response is "No." That's lines 11 through 14 on 1,898.

A. Right. Her testimony was that if she thought he was doing a wire transfer into that account.

Q. Would you look at the Vincent Caruso affidavit and his -- specifically his portion regarding the

May 10th deposit.

A. (The witness complies.) Okay. It says on May 10th Ms. Farrell deposited check number 1826 dated 5/10/96 in the amount of 4,892 into her account at the Absecon branch.

Q. It said she deposited the money in there and he's --

A. Deposited a check withdrawn on Theresa McCann's account.

Q. And he's the senior investigator for the bank or he's --

A. I assume. "I was the senior investigator for the security department," right.

Q. Okay. And then I want to show you, and I'm going to -- and I asked that question about him being a senior investigator. Have you ever spoken to Vincent Caruso?

A. Not to my knowledge, no.

Q. Have you ever heard of him?

A. The name sounds familiar.

Q. Okay. But you had no information to believe that Ms. Farrell's testimony was --

A. To the best of my recollection I had no knowledge at that time in my file that would indicate there was anything improper -- inaccurate in her

testimony. If I had been aware of it, then I would have brought that to the Court's attention.

Now, can I say that there wasn't something hidden down in the paperwork or file somewhere I might have missed, I can't. But again, whatever I had I gave to the defense.

THE COURT: Counsel, there seems to be a break in the action as you all confirmed which is perfectly fine. We'll just take a short break. It will be time for one of those Beaufort County comfort breaks.

MR. BROWN: That's fine. I'll take one with you.

THE COURT: That will give you sort of an opportunity to shift. Very well, thank you.

(Recess, from 10:38 a.m. to 10:55 a.m.)

Q. Mr. Bailey, I would ask you to take a look at Applicant's 46 again which is the Vincent Caruso affidavit.

A. Okay.

Q. And at the back of that exhibit there's a letter from Vincent Caruso to Lieutenant Faisst.

A. Okay.

Q. Lieutenant Faisst works with the Absecon Police Department.

A. Okay.
Q. That letter tracks the language out of Mr. Caruso's affidavit.
A. Okay.
Q. So even though Mr. Caruso's affidavit was filled out in 2002 --
A. Okay.
Q. -- it appears to be based on information he included in a 1996 letter.
A. All right.
Q. Would you agree with that?
A. That appears to be correct, yes, sir.
Q. Okay. And he details the same information about Ms. Farrell both withdrawing the money and making the deposit on May 10th?
A. That's his interpretation of what occurred and that may or may not be correct, I don't know.
Q. Do you have anything besides Ms. Farrell's testimony to indicate that Mr. Caruso's information is incorrect?
A. No.
Q. And, in fact, the photos of the withdrawal and the signature match that was made by the handwriting expert would tend to corroborate Mr. Caruso's information?

A. Yeah, if you assume that is Ms. Farrell in the car and I have no reason to dispute that, I just cannot identify her one way or the other in the photograph.

Q. I understand. Okay.

MR. BROWN: And, Your Honor, at this time I would move into evidence Applicant's Number 80 which is a letter to Detective Gado, Mark Gado of the New Rochelle Police Department dated May 30th, 1996 from Mr. Caruso.

We've shown it to the attorney general and this is a letter we received pursuant to a subpoena issued in New Jersey court for the prosecutor's file and it was done by a law firm that associated with us on this matter, Your Honor.

THE COURT: All right. Very well.

(Entered into evidence was Applicant's Exhibit 80, letter.)

Q. I would hand you Applicant's Number 80, Mr. Bailey, ask you to take a look at that letter.

A. Okay.

Q. And the content of that letter, Mr. Caruso at the bank is sending Mr. Gado, a detective and to give you some background, Mr. Gado's a detective in New

Rochelle, New York, which is where Ms. McCann lived.
A. Okay.
Q. Ms. McCann was partly a victim of this because her checks were used to deposit the money into the account.
A. Right.
Q. So that's how Mr. Gado is involved in a New Jersey matter.
A. Okay.
Q. And that letter, I mean it speaks for itself but one thing it says is that I am sending -- Mr. Caruso says I'm sending to you, Mr. Gado, the original checks and photographs of the suspects.
A. Okay.
Q. Have you ever seen that letter before?
A. Don't recall seeing that letter before. My answer again is I may or may not have. If I did receive it, that would be in the discovery file that I gave to the defense.

And if I might just further respond to your questions in general here, when I undertook to collect up the file in this case, I was investigating Mr. Aleksey and Ms. Perez or Blackwell. I was asked to furnish rap sheets on the potential witnesses which I did.

But I don't construe Brady or Kiles v. Whitley or Rule 5 as requiring me to go out and investigate every witness to gather every file regarding those witnesses.

Whatever I got that SLED provided to me, again, I gave to the defense but I didn't undertake to do anything other than run rap sheets on the different witnesses. And that's what I did.

Q. And let me ask you, I mean, but you would agree as a prosecutor you have responsibilities that are above and beyond a normal lawyer --

A. Yeah.

Q. -- as far as seeing that fairness is done?

A. Right.

Q. You also have a responsibility, I'm not trying to get into legal matters here, but you have to deal with your witnesses wherever they come from. I've heard people say that sometimes you have to go to hell to get the devil or something like that.

A. Yeah.

Q. And I say that because you sometimes have to put unsavory folks up as your witness.

A. Yeah. I don't create facts, I just try to investigate it, present the witnesses I feel that are necessary to get the truth to the jury.

Q. If you had somebody who took the stand, said I saw Mr. Aleksey shoot Trooper Lingard and then they also said and I shot J. R., I shot Ronald Reagan and we all know that's not true, even though they're your witness, you didn't investigate that, you would have an obligation to correct that testimony if it wasn't true?

A. If I knew it was incorrect, yes.

Q. That's -- okay. Okay.

MR. BROWN: Your Honor, at this time we would offer Applicant's 81.

THE COURT: Okay.

MR. BROWN: And it's been shown to Mr. Zelenka.

THE COURT: Any objection?

MR. ZELENKA: No objection.

THE COURT: Applicant's 81 in evidence without objection.

(Entered into evidence was Applicant's Exhibit 81, letter.)

MR. BROWN: Your Honor, we received this again from the Atlantic County, New Jersey, prosecutor's file pursuant to a subpoena.

Q. And, Mr. Bailey, I'd ask you to look at that letter.

A. (The witness complies.) Okay.
Q. And I would ask you, that letter can be characterized as a letter from your office signed by you to Lieutenant Faisst with the Absecon Police Department in New Jersey?
A. Right.
Q. And Absecon Police Department appears to be the prosecuting agency, the prosecuting law enforcement agency, Atlantic County would be the prosecutor's office there.
A. Okay.
Q. And that -- in that letter you indicate to Lieutenant Faisst that you have a copy of a letter from Commerce Bank to Detective Mark Gado?
A. Let me reread it. Right. I said I'm enclosing copies of the checks for your reference together with a copy of a letter to Detective Mark Gado of the New Rochelle Police Department from Commerce Bank.
THE COURT: How do you spell that name?
THE WITNESS: G-a-d-o.
Q. We've already introduced Applicant's 80 which is a letter from Commerce Bank to Mark Gado.
A. Okay.
Q. And the letter from Commerce Bank to Mark Gado, assuming that's the same letter you're referencing in

your letter, that letter, Applicant's 80, indicates that there are photographs and copies of the drafts regarding I think suspects with an "s."

A. Okay.

Q. And so you've got a letter that indicates if you've got that letter, the Commerce Bank to Gado letter which you claim to have in your letter to Faisst, then you've got notice that there are suspects referred to in that letter.

A. Okay.

Q. And that there are photographs that Mark Gado has.

A. Yeah.

Q. Okay. Would that give you some notice or reason to believe that Ms. Farrell may have been involved in this more than she testified to?

A. Again, possibly, but I could not identify the person with Mr. Aleksey in the car from the photograph that I had. It may have been Ms. Farrell, it could have been somebody else. I mean, he had a lot of different women he was involved with at different times. I don't know who that was in the picture, it's a poor quality.

Q. And if you would have gotten a copy of the checks withdrawing the money and found that the

signature matched Ms. Farrell, then you would have known when she testified that she did not withdraw the money, that her testimony was false?

A. If I had gotten the checks where the money was withdrawn from the bank, yeah, that would have alerted me to that.

Q. And this at least gave you the -- the inside tip on who to go to to get those checks?

A. Yeah.

Q. But you've got -- you claimed to have a letter from Commerce Bank so you've got Mr. Caruso's name on that letter from Caruso?

A. I believe I told you previously that Vince Caruso sounded familiar to me.

Q. Sure. So that would give you the way to contact Mr. Caruso, get a copy of the photos or a copy of the checks?

A. Right.

Q. Do you recall, and this is a question I've given a candid answer to, do you recall giving any of this information to the defense?

A. When you say "this information," what?

Q. Any of the information that implicates Ms. Farrell in this scam.

A. I gave the defense whatever I had regarding

Ms. Farrell which may or may not have included police reports, correspondence and so forth. Whatever I had I gave them to Ms. Farrell.

Q. Okay.

A. Gave them to the defense.

Q. Do you know if you gave them those letters? Would you have given them a letter that you wrote to another police department in New Jersey?

A. Yeah.

Q. They're not cc'd on that letter though?

A. No, I wouldn't copy the defense with every letter I'm sending. But I would make that part of my file and make that file available to the defense.

Q. Even you would not consider that to be work product? I mean, you writing another letter to a law enforcement agency?

A. Generally what I would look at to be work product would be my notes that I took.

Q. Sure.

A. I would view this as a part of discovery, I think would have provided that to the defense unless something slipped between the cracks, but normally letters would have gone, been provided to the defense.

Q. Do you know where you received the letter from

Commerce Bank from Vincent Caruso to Mark Gado, New Rochelle Police Department? Do you know where you got that letter? Because you claim in your letter you have it. All right. You're saying to Lieutenant Faisst --

A. I would have probably gotten that from SLED, either Kenny Mears or George Darnell.

Q. So SLED would have contacted those folks when Mark Gado gave SLED that letter that he had gotten from Vincent Caruso --

A. There was a lot of telephone communication going back and forth between the northeast police departments and Agents Darnell and Mears. As a result of those conversations some paperwork was sent to SLED.

Q. Sure.

A. I asked them for the paperwork, I got some paperwork from them regarding these different investigations and I sent that to the defense. That's the best answer I can give you.

Q. Did you ever meet periodically with the SLED agents to go over what they found out from the New England police departments?

A. I met from time to time with them. I wouldn't say it was like a set every Monday afternoon we would

meet.

Q. Sure. Do you all have -- is there any documentation regarding who was contacted up north?

A. Well, I think if you'll recall Agent Darnell's testimony he was interrupted several times during the interrogation of Mr. Aleksey by telephone calls being returned from the northeast, I mean, and I believe he said he did not document, make any notes of those conversations.

Q. Okay. So you don't have any -- do you have any notes of what he told you he found out from, let's say, the Clarkstown, New York, Police Department?

A. I don't believe so. If I got any correspondence or paperwork at all I made that a part of the file and gave that to the defense.

Q. Okay. And then the last question I would ask you, Mr. Bailey, is you didn't correct any of the false testimony, and I use that word, I know that may not be agreed to, that Ms. Farrell gave regarding her involvement in the scam in Absecon?

A. At the time she testified her testimony was consistent with what had occurred with the other women, it was consistent with Theresa McCann's testimony that her checks were taken from her. I had no reason to doubt what had occurred.

The fact that she was convicted was elicited I believe by me as a result of her involvement in this transaction involving the Commerce Bank account.

Q. So you agree that Ms. Farrell was convicted of this?

A. Yeah. I believe she testified that she was convicted of that. But I could be mistaken, I just skimmed over the record yesterday, but I believe she testified that she --

Q. Okay.

A. In my closing argument I think I said that, which you went over.

Q. That she got arrested?

A. Yeah.

Q. Right, I understand. And so I understand that what she testified to was consistent at least with your theory that these women would be involved with Mr. Aleksey and then take the -- get caught holding the bag.

A. Right.

Q. But you would also agree that her testimony is not consistent, or is somewhat inconsistent with the facts Mr. Caruso gives?

A. It is somewhat inconsistent with Mr. Caruso's

affidavit.

Q. As far as who did the withdrawals and who did the deposit on May 10th?

A. Yeah.

Q. Okay. And you did not correct that -- those points?

A. Didn't know there was anything to correct.

Q. Okay. Okay.

MR. BROWN: And, Your Honor, I don't believe we have any other questions of Mr. Bailey.

THE COURT: Very well. Cross-examination.

MR. ZELENKA: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. ZELENKA:

Q. Mr. Bailey, with respect to Gloryvee Perez on direct examination you were presented with a Trenton, New Jersey, warrant for contempt of court arising out of a traffic violation. Do you recall seeing that?

A. I was presented that yesterday, first time I saw that.

Q. Do you recall seeing that yesterday?

A. Yeah.

Q. You had never seen that document before; is that correct?

A. No. The only documents I saw related to that were documents shown to me by the defense after the trial started. And I believe in looking over the testimony yesterday at some point maybe during the break or something Mr. -- I believe it was Mr. -- it wasn't Thomas, Duffie had mentioned to me that he had information that there were some traffic tickets available he wanted to cross-examine her on and that there might be a warrant as a result of those traffic tickets.

I advised Judge Cottingham I would run a rap sheet, that material wasn't on there and I didn't want to get sandbagged with it and he inquired of the defense -- and I can try to find this in the transcript -- whether or not there were tickets outstanding and some documentation was given to me that, to the best of my recollection, didn't mention contempt or characterized as traffic tickets.

And when I gave my closing argument I acknowledged that there were traffic tickets, no warrants other than some traffic tickets, so....

Q. And you had run a rap sheet on Ms. Blackwell around June of 1998; is that correct?

A. Yeah.

Q. And those, that particular warrant did not show

up on that rap sheet; is that also not correct?
A. It did not. None of the tickets or contempt citations as a result of those tickets were on rap sheets. As I recall, there was a shoplifting and then I think the nine-count indictment about the cocaine charges.
Q. And, again, you were shown some bad checks allegedly drawn on the --
A. From Dr. Bang, yeah.
Q. And you didn't have information about that in your possession at that time as best you can recall?
A. At that time all I knew about that was there were checks found in the car that were turned over to me and I gave that to the defense.
Q. Similarly the Summerfield Suite checks that were presented, I believe it's Exhibit 41, you did not have that same information about those checks either, did you?
A. If I'm not mistaken, that was in the folder that was turned over back to Ms. Blackwell after the charges were dropped.
Q. And you didn't, to the best of your recollection, review the documents within that folder?
A. I did not, no.

Q. And -- now, there is some reference in I believe -- maybe in Exhibit --

MR. ZELENKA: Court's indulgence for a moment.

THE COURT: Okay.

(Pause in proceedings.)

Q. Were you aware that sometime a number of items were turned over to Mr. Aleksey's counsel, Mr. Thomas Sims?

A. Yeah.

Q. Was that done at your request or your approval?

A. I think they ran it by me; I didn't request it. I think Mr. Sims requested some information of some personal property that came out of the car that had no apparent probative value as far as being able to prosecute the case and that was turned over to Mr. Sims.

Q. Okay. Let me show you a 6/23/99 receipt for property document and ask if that refreshes some of your recollection on that matter?

A. Yeah. Yeah.

Q. And do you know what receipts, hotel receipts or telephone receipts were specifically turned over to him?

A. I do not. I would assume it was the contents of

that manila folder, but I don't know that because I never looked inside the folder. I had never seen those documents until yesterday when Mr. Brown showed them to me.

Q. Assuming those were the documents turned over. But you still don't know what those documents were; is that correct?

A. No. Hotel, motel receipts.

Q. Okay. But your records did indicate such had been turned over to him, you just don't know what it was; is that correct?

A. Right.

Q. Now, with respect to Yelena Batkilina and the ATF form.

A. Yeah.

Q. That was shown to you that had the credit card fraud information listed down at the bottom?

A. Right, yeah.

Q. You had not seen that, isn't that correct, during your investigation in the trial of this case?

A. I had not seen that, to the best of my knowledge, until yesterday. What I had come up with is the Pennsylvania gun form and the initial ATF form is filled out in the gun shop that they use to generate the form that I saw yesterday.

Q. Okay. And you had run a rap sheet on Ms. Batkilina also?
A. Yeah, I had.
Q. And the information that you had was that there was an ongoing relationship with Mr. Aleksey; is that not correct?
A. That there was a prior relationship with Mr. Aleksey. And I'm not sure what you mean by ongoing.
Q. Okay. And let me ask you to refer to Volume -- I believe it's Volume II, pages 952 through 953.
A. (The witness complies.) Okay.
Q. Does that refresh your recollection that on the cross-examination that the defense was inquiring of Ms. Batkilina about her getting Mr. Aleksey out on bond?
A. Yes. Lines 12 and 13 she helped get him out of jail. Fourteen, her answer: "Yes, I did."
Q. So it's clear that they had some information directly at least from their client, if not from another source, that Ms. Batkilina's relationship extended throughout the period of time where he was getting her out on bond; isn't that correct?
A. That's correct.
Q. And is it your understanding that was in

February of 1997?

A. I don't recall, to be honest with you, when that was.

Q. Okay.

A. When he was bonded out. It may be in the transcript somewhere, I don't know, I just don't see it right now.

Q. With respect to Ms. Batkilina's relationship with Mr. Aleksey, you became aware, isn't it true, during the Jackson v. Denno hearing, if not possibly before, that Mr. Aleksey had asserted to the SLED agents that he was seeking some assistance for Ms. Batkilina for trouble in Florida; isn't that correct?

A. For some kind of trouble she had in Florida which I assume was of a criminal nature, but there's no way for me to follow up on that. I did check the rap sheet and it did not appear in the rap sheet. And in order to do any further follow-up on that I would have had to notify every county, every municipality in the state of Florida until I found something and it just wasn't practical to do that.

I assumed Mr. Aleksey knew what he was talking about, he was apparently with her when whatever was done was done and could provide his

attorneys with the jurisdiction where those charges occurred and they could obtain what they needed.

Q. Okay. Subsequent to that Jackson v. Denno hearing did his lawyers ever make any representations to you about particular problems that she had that they may be asking you to look into?

A. No.

Q. Now, Lisa Watson testified at the trial, and let me refer you to page 1,965 about the credit card loss.

A. (The witness complies.) Okay.

Q. And you were asked a number of questions about that. Is it your understanding that based upon your investigation that Mr. Aleksey was intimately involved in the actions that Ms. Watson had that resulted in these losses?

A. Yeah.

Q. That he based upon the information you had received a benefit from those actions?

A. That's the information I had from Ms. Watson and that was consistent with his relationship with the other women he was involved with that I knew about.

Q. Okay. I need to find Applicant's Exhibit 21. Do you have it up there?

A. No.

Q. Let me ask you to refer to page 6 of 6 on Applicant's Exhibit 21, the October 15th, 1997 entry.

A. Okay.

Q. Let me know when you finish reading it.

A. Okay. (Mr. Bailey reviewing document.) All right. I'm finished reading that.

Q. In that entry it's reported that she is telling the credit company, the insurance company, at least, essentially that that car is no longer in her possession; is that correct?

A. Right. This appears to be a call initiated by Ms. Watson on October the 15th, 1997 claiming that Joey Barclay, which is an alias for Mr. Aleksey, had the car.

Q. And she also claims a detective from Falls Township had called her about the unit at that time --

A. Yes.

Q. -- is that correct?

A. Yes.

Q. And that's on October 15th, 1997?

A. That's when she reported it. She doesn't say when the call was made.

Q. She also asked that company to seek to locate the unit --

A. That's correct.
Q. -- is that correct?
A. Yes.
Q. And she was advised at that time to also contact the police; isn't that correct?
A. A-d-v, I guess advice or advise need to contact police.
Q. So at least as of October 15th, 1997 she is reporting the matter as being a stolen vehicle to someone; isn't that correct?
A. That's correct.
Q. Sara Pivero, there's been some discussion about the SLED report which you received and disclosed that noted that there was an item alleged to be a Sara Pivero statement --
A. Yeah.
Q. -- in existence within that file?
A. Right.
Q. And you've testified on direct examination that there was no statement.
A. That's correct.
Q. Please elaborate as to your recollection and understanding of the circumstances of that statement.
A. Okay. Prior to the time I went to the northeast with agents Darnell and Mears to interview these

witnesses that I was going use for this trial, I had the SLED report, I reviewed it, I noted a reference to Sara Pivero's alleged statement and I inquired of the SLED agents where the statement was because it wasn't attached to the report.

My recollection is that one or both of them told me that they had tried to contact Ms. Pivero in New Jersey or Pennsylvania, wherever it was, had talked to her mother and gotten the statement and she had worked at a hair dresser's or a beauty salon of some type.

They had tried to contact her there and were rebuffed by an older woman who was being protective of her. They left a form, a blank statement form either with the mother or with this woman and were assured Ms. Pivero would fill the form out and get it back to them.

So they assigned that form a number even though it was a blank form assuming Ms. Pivero would fill the form out send it back in. To the best of my knowledge she never did complete the form.

When I went up to talk to her I got the information from her, but then there's no SLED form statement form ever to the best of my knowledge.

Q. Okay. At the bond hearing you reported that

Mr. Aleksey may be a suspect in committing a New York crime?
A. Yeah.
Q. Was that based upon information that you had received from law enforcement officers within South Carolina?
A. It was based on information I got from either George Darnell or Kenny Mears that had been obtained by them I think over the telephone from some investigators in New York, I believe.
Q. Okay. Did you resolve whether, in fact, subsequent to that time he was or continues to be a suspect?
A. I don't know if anything ever materialized as far as paperwork or anything to corroborate that suspicion that somebody up there had, so that kind of just fell by the wayside.
Q. So subsequent to that as far as you know he hasn't been charged with any --
A. To the best of my knowledge, I have no knowledge of any other charge, any other homicide.
Q. You never asserted that as an aggravating factor or --
A. No.
Q. -- aggravating evidence of his character?

A. Never mentioned at that point anytime during the trial, jury selection, any aspect of it other than the bond hearing.

Q. Okay. With respect to Jamie Farrell, do you have in your file your copies of the two exhibits?

A. Give me a second, I'll check.

Q. And the exhibits being the two checks which were drawn on Theresa McCann's account to the name of Jamie Farrell. I believe they're State's Exhibits 84 and 85 at the time of trial.

A. All right. Let me.... I don't see copies of checks, I'm sure I had them, but I don't see them behind her tab. I do see some documentation provided to the defense that I testified previously that the name Vincent Caruso rang a bell with me and there's some documentation here, it's some court documentation, State of New Jersey v. Bayan Aleksey that references the transactions to the Commerce Bank. But I don't see copies of the checks although I did have them.

My file has been copied a couple times for PCR and Privacy Act and so forth so I'd have to attempt to locate those checks.

Q. Okay. Let me show you two documents, or two pieces of paper and see if you may be able to

identify those.
A. Okay. Yeah. These would appear to be copies of the two checks that I put into evidence.
Q. Okay. Is there a reference on that documentation which suggests that you had either seen that, those two particular pages, or provided them to counsel?
A. Yeah, there's a check mark in the upper right-hand portion which my secretary normally does when she sends discovery to the defense to avoid her from having to duplicate sending something that may have already been sent out just as a backup to the itemization. So that would have come from my file to the defense.

MR. ZELENKA: Your Honor, we would like to have these jointly introduced as Respondent's exhibit I believe it would be number 3.

THE COURT: All right. Any objection?

MR. BROWN: No objection, Your Honor, and I believe that the checks themselves, not the check mark, the actual checks were introduced at trial.

MR. ZELENKA: Seventy-four and 85.

MR. BROWN: As State's 84 and 85 at the trial.

THE COURT: Thank you. Very well. Thank you very much. And it's in as Respondent's Exhibit 3.

MR. ZELENKA: 3.

(Entered into evidence was State's Exhibit 3, checks.)

Q. Mr. Bailey, if I can approach looking at page 1 of Respondent's Exhibit 3, check number 1847, who is that -- what checking account is that drawn on?

A. It's drawn on Theresa McCann's checking account New Rochelle, New York, payable to Jamie Farrell.

Q. Okay. And it's alleged to be signed by whom?

A. Appears to be signed by Theresa McCann.

Q. Okay. And does that copy reveal any signature as far as the deposit, who signed for the deposit on that particular check, if you can tell?

A. I don't see a copy of the reverse of this check.

Q. Okay. And that check was made on, or made -- the date of that check was --

A. May 10th, 1996.

Q. -- May 10th, 1996. What about the next check that's also deposited?

A. The next check is also a check on Theresa McCann's account in New Rochelle, New York, dated -- I have trouble reading the date. It's check number

1826 in the amount of 4,000 looks like 892 payable to Jamie Farrell allegedly was signed by Theresa McCann.

Q. Okay. And on the back of that check or what appears to be the back of that check, does it indicate a signature of anyone?

A. No. It says for deposit only. I don't see a signature on here.

Q. Okay. It doesn't include Ms. Farrell's signature on that page, does it?

A. No.

Q. Nor does it include Mr. Aleksey's?

A. No.

Q. State's Exhibit 46, the affidavit of Vincent Caruso, the letter from Commerce Bank, let me ask you to refer to page 1 of that in the last paragraph. Let me show you so we don't get things messed up, let me show you the actual exhibit.

A. Okay.

Q. The last paragraph.

A. Okay.

Q. Isn't it true that in that exhibit the information from Commerce Bank attached to Mr. Caruso's affidavit is his letter where he states that on May 16th that Ms. McCann had contacted them when she was informed regarding the negotiation of

that check and advised them that her boyfriend, Bayan Aleksey, had stolen those checks?

A. Yes.

Q. Now, in your investigation in preparation of this case, did you have access to evaluations that were done by the South Carolina Department of Mental Health involving Mr. Aleksey?

A. Yeah. I subpoenaed their file in the case and I was included some background material that I think had been provided by the defense or had gotten direct by the Hall Institute people regarding some previous hospitalizations that Mr. Aleksey had.

Q. And you're aware that there were some disagreements upon Mr. Aleksey's mental health, the status as to whether he was --

A. Yeah. I don't recall a specific diagnosis, but I think in some of the records it indicated somebody diagnosed him with a conduct disorder at some point in time, you had to be under 18 to get that diagnosis, Dr. Frierson said he had borderline personality disorder, some antisocial traits, was asked if that was consistent or inconsistent with the previous childhood record, he said it was a different diagnosis. Just from memory.

Q. Okay. Were you aware that he had also been

evaluated on the part of the defense by Dr. Donna Swarts-Watts?
A. Yes.
Q. Were you prepared that if additional mental health testimony was presented to present evidence at the time of the penalty phase of this case?
A. Yeah. I had Dr. Frierson, to the best of my recollection, on standby in case Dr. Swarts-Watts testified to something that I thought was -- could be impeached by Dr. Frierson.
Q. Okay.
A. She did not testify so I didn't call Dr. Frierson.
Q. As part of the mental health workup, did they provide you with a sense of a social history of Mr. Aleksey?
A. Yeah. The narrative they sent out I believe over Dr. Bierman's (ph) signature, was actually prepared by Dr. Frierson, references a social history that was obtained.
Q. Okay.
A. Which as I recall was fairly extensive, came primarily from his mother but it included school records and previous psychiatric hospitalizations, I think two of them that he had.

Q. Okay. And were those records of the Hall Institute Forensic Unit provided to the defense prior to the time of the trial?

A. Yeah. I think they came from the defense, most of them to the Hall Institute, if I'm not mistaken, but at any rate when I got them I provided that to the defense also to the best of my knowledge.

Q. Okay. And Vera Aleksey testified about her recollections, understanding of their family background at the time of this trial; isn't that correct?

A. Yeah.

Q. And essentially sought to present a social history of that particular family background; is that not also correct?

A. She did. She did.

Q. With respect to the testimony presented by Lisa Watson, Sara Pivero, Jamie Farrell and Yelena Batkilina, did you have any information that suggested to you at that time that that testimony given concerning their relationship with Mr. Aleksey or the participation and knowledge or involvement in some of Mr. Aleksey's fraudulent activity was false, incorrect?

A. No. The only thing incorrect I can think of at

this point in the testimony was my fault, that related to the 1996 versus '97 gun transaction and I think I may have explained that partially yesterday, that when I dictated my notes some way or another it came up '97 in the identification hearing we had pretrial with Tom French, I used 1997 and, you know, he did not correct me on that.

When we actually started trial I called Ms. Batkilina prior to calling Mr. French and again I gave her the date and she knew I was talking about a specific incident. She answered that question without correcting me, I got into the testimony of Mr. French after that, he also initially said '97. I said '97 in my preliminary questions, he then responded it was '96 which confused me because I'm still thinking '97, even though the documentation I've put into evidence said '96, and he corrected that at that point in time. So I thought that was cleared up.

But other than that, I was not aware of any inconsistency in one witness's testimony as compared to another or any inconsistency with any previous statement that any of these witnesses had given or any inconsistency with respect to any other information I had.

Q. Okay.
A. If I had been aware of that I would have disclosed that or made some comment to the Court.
Q. Again with Gloryvee Perez you did an investigation into her background; is that not also correct?
A. Ran a rap sheet on her, I went up to I think she was living in Bensalem, Pennsylvania, at that time, interviewed her, had some documentation I believe on her in addition to that, but I can't be specific on that.
Q. Okay. And in assisting in making -- were you involved in the charging decision with respect to her --
A. Yeah.
Q. -- ultimately?
A. They told me what they had, at some point shortly after trial felt like they did not have a case against her, that she was basically an innocent bystander.

When I reviewed the file everything I saw was consistent with her innocence here including her statement, the child's statement, Aleksey's second statement to the police officers in Holly Hill and in Summerville, everything was consistent with

his guilt and inconsistent with her guilt.
Q. Okay.
A. So we elected not to prosecute her; I was involved in that decision. We knew she would be leaving the state, there's no plea agreement with her.
We did get a material witness order so we could produce her for trial because we were concerned that she may just go back to Puerto Rico or somewhere.
Q. Okay. When you make charging decisions, do you consider sometimes evidence which may not be admissible at the time of a trial in making your charging decisions?
A. Yeah. Yeah. I want -- one example would be -- wouldn't apply in this case, would be a polygraph. I may take the passing and the failing of the polygraph into consideration even though it's not admissible. There could be other things, there could be hearsay.
Q. Do you know whether a polygraph was run on Gloryvee Perez?
A. Right now I can't remember one way or the other.
MR. ZELENKA: Court's indulgence one moment.
THE COURT: Okay.

(Pause in proceedings.)

MR. ZELENKA: I apologize, Your Honor.

THE COURT: All right.

Q. If you had information that a polygraph was run on Ms. Gloryvee Perez, would that be a factor in your consideration?

A. If she passed the polygraph, yes.

Q. Okay.

A. Or if she failed it, either way I would have taken that into consideration as long as a reputable polygraph operator had done it. I don't put 100 percent faith in those things, but they do have some -- if they're consistent with whatever else I know about the case I look at it.

Q. All right. I have no further questions at this time.

THE COURT: Very well. Any redirect?

MR. BROWN: Just briefly, Your Honor.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. BROWN:

Q. As far as the questions about what else you take into consideration regarding the charges against Ms. Perez, did you take into consideration the gunshot residue test of her hands?

A. There was none.
Q. But there was gunshot residue taken out of the car off Mr. Lingard's, there was evidence that gunshot --
A. There was gunpowder, a gunpowder pattern on Officer Lingard's jacket. As I recall there was gunshot residue on the driver's side of the Mustang.
Q. Okay. And how about the gunshot residue test of her clothes?
A. I know there was a jacket and a -- that there was two jackets, one hers, one his. I can't recall right now what the results of, you know, whether or not there was -- I believe there was gunshot residue on one or both of them but I can't recall.
Agent Dorothy, Dotty Fuller testified so whatever the transcript says her testimony was is what it is.
Q. Do you recall whether they even tested her clothes?
A. My recollection is there were two jackets, one appeared to belong to him, one belonged to her that were tested, but I can't recall the results of the tests.
Q. Was she wearing that jacket -- you're saying the jacket she wore when she exited the vehicle?

A. The jacket that was in the car. I don't know whether she was wearing it when she got out of the car or whether it was retrieved from the car, I just don't recall.

Q. How about her clothing that we know she was wearing when she came out of the car?

A. I don't recall what was sent. I mean, I'm sure it would have just been limited to outer garments because that's the only place you expect to find any residue.

Q. Right. But if she had like a shirt on the jacket was in the back seat or the trunk or wherever?

A. Yeah. I would assume they would have sent whatever outer garments she had at the time based on whatever information they had.

Q. So you assume that was sent for GSR?

A. Yeah, I believe so. As I said, you would have to refer to Ms. Fuller's testimony as far as what was sent. I recall the two jackets, maybe articles of clothing, but I can't be more specific of that.

Q. There was no testing of her hands?

A. No.

Q. And you said you would have taken into account the testing of her clothes if, in fact, that was done?

A. I would have taken into account anything they gave me.

MR. BROWN: I beg the Court's indulgence.

THE COURT: Okay.

(Pause in proceedings.)

Q. What has been entered as Respondent's 3 was the item that had Ms. McCann's checks, I mean it was a Xerox that had Ms. McCann's checks deposited into Ms. Farrell's account.

A. Okay.

Q. On Respondent's 3 does it not have Mr. Caruso's name at the bottom?

A. Yeah, that's why I told you the name Caruso rang a bell with me, but I couldn't really be more specific. That's where the name was and there's also some documentation, the New Jersey court papers against Aleksey which referenced him I believe maybe as a witness or a complaining party.

And that was as a result of the Commerce Bank transaction in which he stole Ms. McCann's checks and forged her name.

Q. Okay. So besides the letter that you reference, besides the letter that is Applicant's 80 from Commerce Bank to Gado, which you claim you have in a letter which is Applicant's 81, you also had

Mr. Caruso's name listed at the bottom of that?
A. Listed where?
Q. At the bottom of now what's Respondent's 3?
A. Yeah. Yeah.
Q. Okay.
A. And I'm not sure whose handwriting that is but it is Caruso's name and it came from my office, so, yeah, I sent that to the defense.
Q. Now, to go back to Ms. Batkilina she testifies that she did bond out Mr. Aleksey.
A: She did.
Q. She doesn't give a date in trial?
A. When Mr. Zelenka asked me about that I glanced at the transcript, did not see the date that she said she bonded him out. She may have at some point, I don't know.
Q. And so we know from what's been entered as the exhibit regarding the return of that bond that the bonding out date was February '97 which was, in fact, after the gun purchase date of November 2nd, '96.
A. Yeah.
Q. But that never came out at trial that the bonding out was after the --
A. I don't recall the date of the bonding out ever coming up at any point.

Q. Just want to clarify that.
A. Okay.
Q. And I believe this may be the last thing. Mr. Zelenka showed you a document that showed items returned to Mr. Aleksey, personal property items.
A. Uh-huh (affirmative response).
Q. That first letter's dated 6/23/99 which was after this trial.
A. Okay.
Q. So it was returned, they were returned afterwards. There was a mention about hotel, motel receipts that were turned over?
A. Yeah.
Q. Okay. Now, there are some hotel, motel receipts that are entered as 74 -- excuse me, I apologize.

MR. BROWN: I beg the Court's indulgence just one second.

THE COURT: Okay. Sure.

(Pause in proceedings.)

Q. And I would show you these which are Applicant's 29.
A. Yeah.
Q. Do you know whether those were items that were turned over to Mr. Aleksey June of '99?
A. I don't know that. I would assume that's what

it is, but I don't know. It's reported to be documentation inside the manila folder which was found in the white Mustang.

Q. Yes, sir.

A. And, you know, if I had to guess I would assume this is what's referred to in that chain of custody form.

Q. And we have no reason to believe those items were turned over to Ms. Blackwell --

A. Okay.

Q. -- do we, because nobody has seen from her since the trial I assume?

A. I certainly have not, no.

Q. Okay. So it's not like there's been some correspondence to return Ms. Blackwell's receipts. The reason why I asked that is those receipts actually have her name and not his name on it, don't they?

A. Yeah, they do. I haven't looked at every one of them, but her name does appear throughout here, yeah.

Q. And so I guess my question is why would that have been returned to Mr. Aleksey as his property if it's her receipts?

A. I don't know. I don't know. I think the best source of information on that would be whoever turned

that over as well as Mr. Sims.

Q. So that's a better question maybe for one of the SLED agents?

A. I believe so, yeah.

Q. Okay.

MR. BROWN: We have nothing further from Mr. Bailey and we have no objection to him being excused.

THE COURT: Thank you so much. Is there any recross?

MR. ZELENKA: No recross.

THE COURT: No recross. You are free to go.

MR. BROWN: The only thing I would suggest, Your Honor, and we don't intend needing to recall him, we do have the file regarding the Brady correspondence.

THE COURT: Sure. Mr. Bailey, you're not planning on going on vacation this afternoon or tomorrow?

THE WITNESS: Not this afternoon or tomorrow. I'll be around.

THE COURT: Great. If we need you we can get you, we'll just call the office. Thanks so much. Mr. Bailey says if we need him just call

his office and they'll find him.

(Whereupon, the witness steps down from the witness stand.)

MR. BROWN: And, Your Honor, thank you. That's it. There's a couple housekeeping matters I wanted to bring up since it may be a convenient time. We have two witnesses that would be in the vein of expert witnesses that are I think going to be here after lunch.

THE COURT: And we talked about that yesterday.

MR. TARR: They'll both be here at 1:30.

THE COURT: That sounds perfect.

MR. BROWN: And there are a couple of other that I would like to bring up.

THE COURT: Sure.

MR. BROWN: We have sent a subpoena to a company, Telecheck, which is a credit type agency. They've sent us a response they would be willing to comply subject to the following federal regulations which require a Court order as opposed to a subpoena.

And so we've talked to Mr. Zelenka, I don't think he has any position one way or the other, and so at some point we're going to ask

Your Honor to consider giving us a Court order, I'm not familiar with that federal statute so we have to look up --

THE COURT: I'll tell you what. If you all want me to consider signing a Court order, draft one for me.

MR. BROWN: Yes, ma'am.

THE COURT: I'll be happy to review it. Of course show it to Mr. Zelenka. If that will assist, that will be fine. You might need to call them and ask them to send you an exemplar.

MR. BROWN: Yes, ma'am.

THE COURT: Because, as you know, when you start dealing with those different folks that need those orders prompted by federal regulations you got to hold your mouth just right, so maybe ask them for an exemplar, that would be great.

MR. BROWN: Yes, ma'am.

THE COURT: All right. Now, what other housekeeping matters?

MR. TARR: Other than that, Your Honor, we've got the two witnesses coming at 1:30. I don't think both of them together the entire testimony won't be much more than an hour.

THE COURT: Okay.

MR. TARR: And then we've got Agents Darnell and Mears going to be here I told them probably at 9:00 a.m, but I was going to wait and see if that's when you wanted to start.

THE COURT: That sounds great.

MR. TARR: So 9:00 a.m. tomorrow, we would probably finish by lunch.

THE COURT: That sounds excellent. Let me tell you, gentlemen, I have a one o'clock hearing by phone so the fact you all scheduled 1:30 couldn't be more perfect. So we'll take our break now. Thank you so much.

(Lunch recess taken from 12:01 p.m. to 2:00 p.m.)

MR. TARR: Judge, Agent Mears who is going to be one of our witnesses in the morning just happened to be near the courthouse, stopped by.

THE COURT: Great.

MR. TARR: I told him you would be able to let him know exactly what time you would start in the morning. I told him I thought nine o'clock.

THE COURT: Nine o'clock would be great. Don't be speeding to get here. That would be

great. Thank you. Thank you for being here.

All right. If you all would call your next witness.

MR. TARR: Your Honor, at this time we call John Freeman.

THE COURT: Great. If you would raise your right hand.

(John Patrick Freeman, called as a witness, having first been duly sworn, is examined and testifies as follows:)

THE COURT: If you would please be seated.

THE WITNESS: Thank you.

THE COURT: And when you are seated, if you would state your full name for the record.

THE WITNESS: John Patrick Freeman.

THE COURT: Your witness, Mr. Tarr.

DIRECT EXAMINATION

BY MR. TARR:

Q. Mr. Freeman, you're currently a professor at the law school --

A. I am.

Q. -- at USC? What's your address?

A. My address at my home in Columbia is 236 North Stonehedge Drive, S-t-o-n-e-h-e-d-g-e Drive, Columbia.

MR. TARR: And, Your Honor, I've discussed with Mr. Zelenka Mr. Freeman's qualifications and would ask at this time if he would stipulate that Professor Freeman is an expert in legal ethics.

MR. ZELENKA: I will stipulate to that or I have no objection to him being qualified as an expert.

THE COURT: Thank you very much.

Q. Professor Freeman, could you tell the Court why you --

THE COURT: Hold on one second. I'm sorry, Mr. Tarr. I'm sorry.

Q. Professor Freeman, could you tell the Court why you're here today?

A. I've been asked to testify as to whether in my opinion a lawyer who was operating in a criminal case under the circumstances that Duffie Stone was operating and when he was representing Mr. Aleksey in his death case, death penalty case, what a reasonable lawyer would reasonably believe that his representation of someone in Mr. Aleksey's position would not be adversely affected by the fact that first Mr. Stone, aside from being appointed a criminal defense lawyer, was also a part-time

solicitor with a, by his statement, essentially a full-time case load in Beaufort County at the same time.

And secondly, was employed by and had as a major client the Insurance Reserve Fund in South Carolina and would derive a portion of his income representing people in law enforcement when you would have witnesses in this case who would potentially fall within that category of potential civil client.

So question number one is the reasonableness of the belief that you had a waivable conflict and the second would, the second opinion I would hold would be whether assuming that there was a waivable conflict, whether I have seen evidence of a proper waiver under the circumstances.

Q. And would you characterize your testimony --

MR. ZELENKA: Judge, at this time if I may interpose an objection with that understanding to his opinion in this matter under Rule 703 and 702 we would submit that such testimony is improper and unnecessary because it's purely a matter of law under the decisions of the South Carolina Supreme Court in Green v. State, a 2002 opinion. The South Carolina Supreme Court held opinions on the law coming from expert witnesses

are improper in these types of proceedings, such testimony falls outside of Rule 702, South Carolina Rules of Evidence.

The Green case was recently cited by the South Carolina Supreme Court in the case of Dawkins v. Fields, a 2003 case pending with the South Carolina Supreme Court that no doubt Professor Freeman is familiar with because that case involved the exclusion of consideration of Professor Freeman's testimony submitted on affidavit on a summary judgment issue.

Again, the South Carolina Supreme Court held in the Dawkins case relying upon Green again that as a matter of law falls outside of Rule 702 as appropriate evidence, essentially that the judge is the sole finder and giver of the law in these circumstances.

So we would interpose an objection at this time to his testimony and expert opinion.

THE COURT: Very well. We talked about that yesterday and decided I thought, gentlemen, that irrespective of whether the testimony would be considered substantively as part of the case or simply for a proffer that we would -- we would take the testimony and then have arguments

later in the interest of time. And I think we'll proceed in that regard.

MR. TARR: Yes, Your Honor. And I'll just say one thing from speaking with Professor Freeman on this issue.

THE COURT: Sure.

MR. TARR: It would you be our position he's not here to tell you what the law is, he's not here to tell you that there was a conflict in this case as a matter of law. He's here to analyze the factual basis that Mr. Stone was in and compare that to the duties that a reasonable -- a lawyer, a reasonably competent criminal defense lawyer, what duties he owed to a client and things of that nature. So we'll argue it at a later time.

THE COURT: Sure.

MR. TARR: Obviously I just wanted to put briefly on the record that our opinion is that his testimony is not something that would fall within the purview of these two cases.

MR. ZELENKA: Your Honor, I don't mean to go back and forth.

THE COURT: Sure.

MR. ZELENKA: But is it my understanding

that you've agreed to my objection and this will be a proffer and the reason --

THE COURT: What I had wanted to do, gentlemen, in the interest of time, the interest of these witnesses is the testimony has got to be taken one way or the other. It is non jury.

I'm interesting in having more of a discussion debate and argument on the issue and what I would prefer to do, and I can't think of any problems that would be generated because the testimony has got to be proffered for appellate purposes.

MR. ZELENKA: Correct.

THE COURT: So the testimony would be taken.

MR. ZELENKA: I'm just trying to clarify on if I would have based upon what he was attempting to clarify a need to further object each time he gives a response.

THE COURT: I understand what you're saying. I would it take that there would be a continuing objection to all of the testimony, that while you certainly may cross-examine, that you do that with a reservation without any waiver is how I certainly would be understanding

the way that we would be proceeding.

MR. ZELENKA: Okay.

THE COURT: And that we will argue this issue and I will certainly rule on this issue.

MR. ZELENKA: Okay.

THE COURT: Very well.

MR. TARR: And, Your Honor, I think that will be appropriate because right now we're just guessing what he's going to say, so the arguments of whether it should come in we'll know what he said and then we'll know whether it falls within these cases.

THE COURT: Not only will we know what he says, because there will be no question.

MR. TARR: Yes, Your Honor, because you've got a great court reporter.

BY MR. TARR:

Q. I think you told us basically why you were here, what you were asked to do. What have you done to prepare yourself to come into court and testify on these matters?

A. I've read authorities and I've read factual materials. Factually I have considered the February 2nd, 1998 colloquy involving alleged waiver and Judge Brown was involved.

MR. TARR: Your Honor, that would be Applicant's 70.

A. The May 28, 1998 colloquy with Judge Cottingham being involved, same issue. And a pre voir dire colloquy between Judge Cottingham and the defendant at the actual trial of the case in August of '98.

I've seen a letter from the State Budget and Control Board detailing income reaped by Mr. Stone for the years 1998, '99 and 2000.

I have read Mr. Stone's testimony pages 739 of the transcript through 847 of the transcript and this would be from November of last year.

I have read Mr. Sims' direct examination and I think that's it, November 12th, 2002 talking about alleged conflict.

I have looked at the Schwarz case out of New York, the so-called unwaivable conflict case. I have considered ethics advisory opinion from South Carolina and the ABA concerning joint employment by a lawyer as prosecutor and defense counsel. I have considered Rule 1.7 as well, also conferred with counsel. That's it.

Q. Okay. And did -- would it also include the conversation that we had a little while ago about

Mr. Stone's testimony yesterday that you did not have access to because you weren't here regarding the percentage, the high percentage of income he derived from Insurance Reserve Fund representation at the time of his appointment in this case?

A. It would.

Q. Okay. And after you conducted all this research and reviewed all those materials, what opinions have you reached?

A. My opinion is that he shouldn't have been in the case and on the ground that because of his service as a part-time but full-time case load prosecutor, coupled with his civil work from which he's drawn a fair amount of money where he would from time to time be representing law enforcement officials, that his independence was compromised, that somebody in this situation should not believe that representation would not be adversely affected.

Because this being among other things a death case, a death penalty case, I think standards are high and I think his behavior was inappropriate in accepting the case, granted that he was asked by a judge to do it and he should not lightly turn down a judge's request for an appointment.

The other side of that coin being that

a reason for turning down a request is conflict. And besides that, assuming that for purposes of argument was a waivable conflict, my testimony is that it wasn't, I don't think it was properly waived at least based on what I've seen in the record that's been made to date.

Q. And I believe you've reviewed three separate attempts to get a waiver from Mr. Aleksey in the past, one was actually at trial and two were pretrial.

Did you see anything in any of those three waivers that would indicate that a judge or anyone else had informed him of the potential negative side effects or possibilities of Mr. stone's representation?

A. I didn't see any of that. Any information that I saw of that nature would be -- in my judgment would be expecting Mr. Aleksey to infer or assume or sort of connect the dots as opposed to those dots being explicitly stated.

And I just think that those waivers are inadequate and particularly given that this is a death penalty case where just going -- of going through the motions is not in my judgment adequate. You got to go into more detail and cover the pluses

and the minuses and the foreseeable consequences. And as I say, I don't think he should have been in the case to begin with.

Q. Okay. One last question. Did you see anything in Mr. Sims' testimony that would have led you to believe that conversations or actions by Mr. Sims could have cured any of these potential conflicts?

A. No. And I wanted to mention as well, that there is some authority by the proposition that I take about this being the type of situation that a lawyer should avoid, and I specifically reference South Carolina Bar Ethics Advisory Opinion 77-2 which to my knowledge after checking has not been reversed by the bar, if it has I haven't been able to find it, saying there's no ethical prohibition against a prosecuting attorney engaging in the private practice of law where permitted by statute, except that the following restrictions must be observed: Restriction one is a prosecuting attorney may not defend a criminal case in either federal or state court and here you had a prosecuting attorney defend.

And likewise there's an ABA Ethics Opinion 142 it says it's improper for an attorney -- just a second, maybe it's 262. Yeah, the question is is it improper for an assistant prosecutor or his

partner to defend a client in a criminal case. And they go on and explain why they consider that to be ethically impermissible. And I haven't seen the ABA revoking that opinion either.

Q. Let me ask you this one final question. If for some reason these opinions, any one or all of them have been overturned or superseded by other opinions, would that change your opinion in this case?

A. It wouldn't in this case and I want to explain why. This is a death penalty case and the stakes are high in a death penalty case, the public's entitled to a proceeding that is squeaky clean, that is beyond reproach where there's not opportunity for imagining that a party was subject to improper influence.

MR. TARR: Thank you, Your Honor. That's all I have for Mr. Freeman.

THE COURT: Do you have the ABA cite?

THE WITNESS: Yes. It's ABA Ethics Opinion 142. Holding, quote: "It is improper for an assistant prosecutor or his partner to defend a client in a criminal case." And then they go on and discuss that and explain it.

THE COURT: Thank you. Mr. Zelenka.

MR. ZELENKA: Subject to my reservation.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. ZELENKA:

Q. Professor Freeman, briefly you are familiar with South Carolina ethics advisory opinions in 1991 to 1995 that allowed part-time prosecutors to represent criminal defendants outside of their jurisdiction, aren't you?

A. I haven't seen those and I did some checking and didn't find any sign that 77-4 had been revoked. If you got authority there....

Q. South Carolina Bar.

A. I'm familiar with the South Carolina Bar, yeah.

Q. Let me show you Ethics Advisory Opinion 91-19 and the Ethics Advisory Opinion 94-31.

A. I see these opinions. I don't see any reference here to the opinion that I was referring to, either of the opinions I was referring to.

Q. Okay. Both of those opinions would suggest that it's not an ethical violation for a part-time prosecutor to defend a criminal case outside of that prosecutor's area of jurisdiction; isn't that correct?

A. Just a minute. Well, you can draw an inference that is the inference you draw. Ninety-four-31 doesn't deal with the same lawyer wearing two hats,

it deals with somebody in a law firm where you've got a partner. So that's a somewhat different situation.

Q. But there is some dicta in there that suggests that though?

A. Well, but I didn't see any dicta in there talking about a death penalty case either. And let's see, let me look at your second one. This says it's no violation for a public defender in one county to represent criminal defendants in other counties. I don't see that having anything to do with prosecutors.

Q. On the second page in the blue marked lines.

A. Okay. They're talking about a different opinion. Can I see that?

Q. Sure.

A. They're talking about 82-26. This is one South Carolina Bar Committee's opinion about another opinion which I don't have. The holding in 91-19 says it's no violation of the Rules of Professional Conduct for a public defender in one county to represent criminal defendants in other counties. That's the holding and that's not pertinent.

This other one deals with people in a law office, but not the same lawyer which is somewhat different from what I'm talking about.

Q. Okay. Let me ask it this way since I'm on cross-examination. Doesn't Bar Ethics Opinion 94-31 state "Additionally we have held that absent some prohibition of law there's no per se ethical violation against an assistant solicitor representing criminal defendants in another circuit," citing Ethics Advisory Opinion 91-19?

A. You read that right.

Q. Ethics Opinion 91-19 states in Ethics Advisory 82-26, Committee concluded that assistant solicitor, a public official, might have undue influence over the witnesses for a state, usually police officers or vice-versa. Rule 1.11 clearly prevents a lawyer from exploiting public office for the advantage of a private client.

Rule 1.7 prevents a lawyer from representing clients with adverse interest. If the attorney reasonably believes that his position as assistant solicitor will not be used for the benefit of a private client in that his representation of the criminal defense client will not be adversely affected by his responsibilities as assistant solicitor, then he is free to undertake representation in other circuits. Doesn't it say that?

A. It says -- what you're doing is using a reference in 94-31 to 91-91 to dicta in 91-19. I haven't seen any opinion on point, just references to dicta. The opinions that I have, Mr. Zelenka, are on point.

Q. Okay. And you're aware of the opinion in Beaver v. Thompson, Fourth Circuit case that in conflict of interest exists in trial counsel's representation of defendant even though counsel is a part-time assistant solicitor in a neighboring county, Fourth Circuit Opinion 93, Fed3d 986.

A. I'm not aware of it. I'll take it as a Fourth Circuit opinion. Again it doesn't change my view and it's not the law of South Carolina.

Q. Okay. Now, subject to my objections is there a specific rule or does 1.7 specifically say a part-time prosecutor cannot defend cases in another jurisdiction?

A. That language is not in the rule explicitly, sir.

Q. Okay. Is there anything in the rule that says a part-time prosecutor cannot also handle civil cases?

A. It doesn't use the phrase part-time prosecutor at all.

Q. Does it use the phrase prosecutor?

A. It does not.
Q. Okay. So then your testimony is basically an interpretation of what South Carolina law is?
A. It's an interpretation of what a reasonable lawyer would conclude based on the facts that I've seen concerning this matter.
Q. Okay. Is that an objective test or a subjective test?
A. It's based on a reasonable lawyer's standard, a reasonable person's standard. Reasonable person informed under the circumstances.
Q. Okay. And would a reasonable person informed under the circumstances review in that situation the ethics advisory opinions of the South Carolina Bar?
A. A reasonable person would do that in part, yes, sir.
Q. Okay. And a reasonable person who would review the ethical opinions of the South Carolina Bar would see those two opinions which I just provided to you --
A. If --
Q. -- if they would have done that in 1997 or 1998; isn't that correct?
A. I am not sure, sir, because those opinions are not on point, whereas 77-2 is on point. And I'm not

sure what credence you would give to opinions that don't speak to a matter and don't overrule a prior opinion which is contrary.

Q. Okay. And --

A. Personally --

Q. -- 77-2 were we practicing under the current rules of professional conduct, were we practicing under different rules of professional conduct at that time?

A. Different rules.

Q. Okay. So when did we begin practicing under Rule 407 the model rules, particularly the rules you cited, 1.7?

A. 1990, September of 1990.

Q. Okay. So at the time that Mr. Stone would have done his representation he would have been relying upon those particular rules?

A. He would have been expected to adhere to those rules, yes, sir.

Q. And the 1991 and 1994 ethics advisory opinions I showed you were based upon the rules we're acting under at the present time?

A. No, I disagree. And I would like to have those opinions back and explain my answer. Here's why I asked for these things back. The '94 opinion and the

language you read is pertinent because it references a '91 opinion.

So we go from '94, the trail goes back to the '91 opinion. The '91 opinion doesn't deal with this issue at all, it deals with public defender in one county, public defender in another county.

And it then has dicta as I mentioned earlier referencing Advisory Opinion 82-26. Eighty-two-twenty-six which is the fount of your position here which I don't have in front of me is an opinion that predates the model rules. So the basis for these opinions predates the model rules.

Q. Okay. I understand your answer. But when you say it doesn't pertain to it, it clearly discusses it; isn't that correct?

A. Clearly discusses what?

Q. Part-time prosecutors?

A. It has that language in there which is dicta.

Q. So you're telling me that you would read this information if you were a part-time prosecutor, criminal defense lawyer and say I can ignore this ethics advisory opinion that has that language in, it's not reasonable for me to rely upon this?

A. It's reasonable for you to rely upon existing authority. You've got an existing -- and as far as I

can tell never overruled opinion in the form of 77-2 and you have another opinion there, the 82 opinion which I don't have and I'd want to see that opinion before I make a judgment.

MR. ZELENKA: Okay. Court's indulgence. I may have that.

THE COURT: Sure.

MR. ZELENKA: I'm not sure.

THE COURT: Okay.

(Pause in proceedings.)

Q. Here's 82-26. A part-time assistant solicitor who is employed as a part-time basis by a private law firm may not represent criminal defendants in any courts. However, an associate in the law firm may represent criminal defendants in the courts outside of the county where the assistant solicitor is employed.

A. That's entirely consistent with my testimony. Thank you. That is entirely consistent with what I've been saying here. And that is the position of the South Carolina Bar which goes back to the 77-4 and entirely supports my testimony.

Q. So there seems to be a change in the bar, however, isn't that correct?

A. I don't understand what you're saying. A change

in the bar?
Q. Well --
A. That says if you're an assistant solicitor you're not to be involved in defending criminal cases.
Q. That's correct. The more recent opinions are saying that you can.
A. More recent opinions are misrepresenting the holding of that case.
Q. Is this a case? I thought it was an opinion? Or the opinion, of the opinion. So what you're saying is any part-time prosecutor in this state, of which there are many, are committing ethical violations every day in the defense of criminal cases, committing ethical violations every day when they're appointed by judges, per se violations?
A. Have you asked your question now?
Q. Yes.
A. Okay. Here's what I'm saying. I'm saying that there is authority, and you've just brought up an additional piece of authority, directly on point saying that this practice is wrong.

It's not my fault if people are doing things that they shouldn't be doing, it's not my -- I'm not a bad guy for standing up and saying that.

This is a death penalty case, it is a poster child for the type of case where you want to do things scrupulously correctly and where you've got an ABA opinion, a South Carolina opinion and another South Carolina opinion saying in essence that Duffie Stone should not be representing Mr. Aleksey, then I think that means something.

Q. Okay. Are you aware that under Rule 608, I believe it's 608 since the individual is a part-time, not full-time prosecutor he has a requirement as a matter of law to make himself available for appointment in criminal cases?

A. I'm aware that there's a rule that nearly everybody in South Carolina has got an obligation to make themselves available for appointment, subject to the ethical impropriety of taking an appointment.

Q. Excuse me. You borrowed my book and now I need it back.

A. Yes, sir. I would even rent it to you.

Q. Thank you. Okay. Let me refer you to Rule 608 (D)(1) subpart (b) which talks about individuals who are exempt from appointment as a matter of law passed by the General Assembly under the rule-making authority with the South Carolina Supreme Court.

A. Yes.

Q. And who does it say is exempts from appointment?
A. It says a whole raft of people.
Q. I thought it set out some particular subsection which was subsection (d). Excuse me, subsection (b).
A. Members who are solicitors or assistant solicitors for a judicial circuit if those members do not engage in the private practice of law.
Q. Okay. Now, there's no doubt that Mr. Stone engaged in the private practice of law; isn't that correct?
A. True.
Q. So there's no doubt that he would be required to subject himself to appointment?
A. Subject to proper conflict of interest and subject to the Court having this issue brought before it and reconsidering that rule. I rest on my testimony. It shouldn't be in a death case.
Q. Okay. Well, so if an individual is charged with murder, the State doesn't seek the death penalty, it would be okay to do it under your opinion?
A. I wouldn't do it in a murder case, no.
Q. Okay. You wouldn't do it, but if you were appointed to do it --
A. I'd make a record and have it fully considered every step of the way and make sure that every judge

understood why I was hesitant to do this and I would -- then if I -- I would broach it with my client and handle it appropriately with my client as well, which wasn't done here.

Q. Okay. I thought you said you reviewed three situations that in fact that part-time prosecutor situation was discussed both with the Court and with the client in open court?

A. Yeah. And I consider those to be superficial and improper waivers.

Q. Superficial?

A. Sure.

Q. In those responses made by an officer of the Court and Mr. Aleksey concerning that situation?

A. I consider it to be going through the motions and perfunctory, sir. I don't consider that to be adequate disclosure and I don't consider those to be adequate waivers, that's my testimony.

Q. How is telling the Court in your client's presence that you're a part-time prosecutor merely going through the motions?

A. It's superficial, it's not explaining to the client the fact that you work with law enforcement, the fact that you got to get along with law enforcement, the fact that law enforcement is on the

other side of this case, the fact that that's -- may even subconsciously make it more difficult for you to cross-examine vigorously law enforcement, et cetera.

Q. Okay. So all that information has to be in the waiver; is that what you're saying?

A. Yes. We don't require just simply disclosing that there's a conflict, we require disclosing all the ramifications of the conflict, pluses and minuses.

Q. Okay. Who is "we"?

A. The South Carolina authorities do.

Q. The South Carolina authorities. And where is that authority?

A. Well, the judiciary, for example, in the Leatherwood Law Firm case, Bruce v. the Leatherwood Firm, they referenced an Oregon case and the Oregon case said that you aren't doing your job if you don't get a very detailed -- give a very detailed disclosure to the client so that the client, the phrase was, can understand why non conflicted counsel could be desirable or preferable. And you have to explain all the possible ramifications and the possible contaminations so the client can understand this.

And you have to explain it in a way

that the client can comprehend, because not everybody is capable of comprehending lawyer talk at a high level.

Q. Okay. Not everybody is able to comprehend -- do you know whether Mr. Aleksey was able to comprehend based upon his discussions that he understood that Mr. Stone had a similar position as being a prosecutor in another county in this state?

A. That was disclosed and I think that much was understood. The ramifications, no. There's no coverage of that, Mr. Zelenka, the record's clear. And I'm saying the ramifications count.

Q. So you're saying that Mr. Aleksey had no knowledge what a prosecutor was?

A. I'm saying that he had no knowledge of why this was something where he shouldn't give a waiver, if he was asked to give a waiver, and why independent counsel would have been better for him.

Q. You don't know that Mr. Aleksey was told that Mr. Stone didn't have to be appointed to represent him, is that what you're saying?

A. No, that's not what I said. I rest on my testimony what I said.

Q. Okay.

MR. ZELENKA: I don't believe I have any

further questions, Your Honor.

THE COURT: Very well. Any redirect?

MR. TARR: Just a couple questions, Your Honor.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. TARR:

Q. Professor, you had mentioned this briefly and I want to touch on it. Is it a customary practice when you're attempting to secure a conflict waiver from a client to have independent counsel appointed to advise them on whether they should do that or not?

A. I don't believe that is a customary practice. It's not a bad idea, but I don't in my experience, it's not customary.

Q. Okay. Do you think it should be done in general terms?

A. I've seen it in death penalty cases where there's conflicts issues where independent counsel will be appointed to advise and confer with the client as to that issue. But that is extremely rare.

Now, in a lot of conflict cases you want the person to seek independent assistance, but often they don't.

Q. Okay. You had referenced the Second Circuit

Schwarz case.

A. Yes.

Q. Involving the so-called unwaivable conflict.

A. Yes.

Q. Did they appoint an independent counsel in that case to go over the waiver?

A. Did the Court appoint independent counsel? I'd have to go back and look at it.

Q. Well, don't worry about it. We'll make sure that the Court has a copy of that case and I'm sure the judge already has that. We mentioned it last time. I'll move on.

Do you think that some of the problems that the Court would be concerned about, some of the potential conflicts in this case could have been alleviated somewhat if Mr. Stone had not done the cross-examination of all the police officers and Mr. Sims had done that?

A. Here's the point. Mr. Stone, I know Duffie Stone, I like Duffie Stone, I've got no dislike at all about the guy. I think he's a good fellow. I don't think he should have been in this case period. Period.

Q. One last question. You were asked about Rule 608 and the appointment list.

A. Yes.
Q. And attorneys' obligations to subject themselves to a list.
A. Yes.
Q. Are you aware that under that statute or rule there are two lists, civil and criminal, and that you only have to be on one list and you can satisfy your obligation?
A. In the vague reaches of my memory having been on that list I think that's true.
Q. And, in fact, the criminal list is only for people who represent three or more clients in general sessions court in a one-year period and all other attorneys are on the civil list under that rule.
A. I don't know that amount of knowledge. It says whatever it says.

MR. TARR: Okay. That's all I have, Your Honor.

THE COURT: Any recross? All right. Is this witness free to leave?

MR. TARR: Yes, Your Honor.

THE COURT: Very well.

(Whereupon, the witness steps down from the witness stand.)

MR. TARR: Your Honor, we have the one more

witness. We can go now or take a break, it's up to you.

THE COURT: Counsel, I'm ready to hear your witness.

MR. TARR: All right. We call Jim Aiken to the stand, Your Honor.

THE COURT: All right. Come along, please, and be sworn.

(James Evans Aiken, 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.

THE WITNESS: My name is James Evans, E-v-a-n-s, Aiken, A-i-k-e-n.

THE COURT: Your witness, Mr. Tarr.

DIRECT EXAMINATION

BY MR. TARR:

Q. Mr. Aiken, where do you live?

A. I live in Brevard, North Carolina, Transylvania County.

Q. Do you work there as well?

A. Yes.

Q. And what do you do there?

A. I am president of James E. Aiken and Associates, Inc. a correctional consulting firm.

Q. Okay. And what type of -- where were you born?

A. I was born in Camden, South Carolina.

Q. And what type of education do you have?

A. I was educated in the public school system as well as Mathier Academy in Camden, South Carolina. I received my undergraduate degree from Benedict College and that's in Columbia, South Carolina, as well as I received a master's degree in criminal justice from the University of South Carolina, Columbia, South Carolina.

Q. Okay. And what is your employment history and associated duties with each of those positions?

A. I started in the Department of Corrections in 1971 in the capacity as a social worker in a substance abuse program at the Manning Correctional Institution which was a medium security male facility located in Columbia, South Carolina.

From there I was promoted to administrative assistant to the warden of that same facility and then promoted to deputy warden of that same facility.

From then I was promoted to deputy warden at Central Correctional Institution commonly

known as CCI which is the state penitentiary for South Carolina at that particular time. That facility housed the most predator dangerous population, criminal population in the state and that was inclusive of death row population, individuals that are waiting trial in what is known to the statutes as safekeepers as well as disruptive inmate population and it was classified as a maximum/medium security facility.

From there I became the warden of the Women's Correctional Center also in Columbia, South Carolina. In that capacity I was the chief administrator of that facility that housed maximum, super maximum, as well as medium security as well as minimum security female population.

From there I was promoted back to the state penitentiary, CCI, in the capacity of warden which is the chief executive officer of that facility.

And as stated before, I managed death row population as well as forensically, psychologically evaluated population as well as super maximum security population and the most predator gang oriented disruptive inmate population in the South Carolina system.

While in that capacity I had to carry out two executions as required by statute and the courts.

From there I became deputy regional administrator over the Midlands Correctional Region and this is within the South Carolina Department of Corrections where I supervised I think it was 16 facilities within that region and they ranged from healthcare facilities all the way to super maximum security and minimum security environments, both male as well as female population.

From there I was appointed Commissioner of Corrections for the Indiana Department of Corrections. I was the chief executive officer of the juvenile correctional system, of the adult correctional system and also I was appointed and a cabinet member of the governor's office within that jurisdiction. And if I remember correctly approximately 46 facilities within the Department of Corrections of Indiana as well as parole services.

And from there I became director of corrections for the United States Virgin Islands which consisted of male population, female population, adult, juvenile population as well as pretrial jail population. And from there I became

president of James E. Aiken and Associates.

If I could backtrack on two points. Number one, from starting off at the Manning Correctional Institution all the way through to what I've just got finished I had to classify inmate population.

I had to make sure inmate population was properly housed, properly managed, properly supervised and received the proper level of security. And I evaluated inmate population on a continuous basis throughout my career to include and up to that point as well as to help design as well as implement, validate, improve classification systems.

I was also in charge of all security while being warden and working in the facilities as well as to evaluate all aspects of a prison operation.

Also in 1986 I was asked to become a consultant with the National Institute of Corrections, United States Department of Justice, to which I provide correctional services in my private capacity as well as my time with the justice department as a consultant to just about every correctional system in the United States. And they range from providing expert assistance in

relationship to gang management, management of the hard-to-manage inmate, riot and disturbances, gang, hostage situations, teaching wardens how to be wardens, that is new wardens, updating existing wardens, teaching super maximum security wardens how to operate their particular facilities, developing and implementing classification systems in relationship to prisons, as well as the use of technology, managing security systems, evaluating critical events to of course reduce the probability of critical events.

And also I not only for the United States, I've also done it for jails, prisons as well as regional jails and I also provide some services, have provided such services to the countries of Costa Rica, Canada, Dutch Kingdom as well, of course, as the United States Virgin Islands and Puerto Rico.

Q. All right. And have you in the past been qualified as an expert regarding future prison adaptability of inmates who are housed pretrial and then later are convicted?

A. That is correct, sir.

Q. Okay. Have you been qualified in South Carolina?

A. Yes, sir.

Q. In what other states have you been qualified?
A. I've been qualified as an expert in the state of Florida, the state of Georgia, the state of South Carolina, the state of North Carolina, the state of Virginia, the state of Alabama, the state of Mississippi, the state of Louisiana, the state of Missouri, the state of Arizona, and the United States District Courts.

MR. TARR: Your Honor, at this time we'd offer Mr. Aiken as an expert in future prison adaptability and risk assessment of prisoners.

THE COURT: Is there any voir dire?

MR. ZELENKA: I don't have any objection to him being qualified as an expert in correctional policy. He is not qualified as an expert in predicting future adaptability of a particular individual; he does not possess expertise in the psychiatric or psychological area that those matters may fit into.

But as far as simply within a correctional system on inmates generally I don't have an objection to that. If he's going to give an opinion that Mr. Aleksey based upon his profile, psychological or otherwise, is adaptable or not adaptable I think that is

beyond the level of his expertise.

THE COURT: Would you care to examine him in that area, Mr. Zelenka?

MR. ZELENKA: Be happy to.

THE COURT: All right. Very well.

VOIR DIRE EXAMINATION

BY MR. ZELENKA:

Q. Mr. Aiken, in your educational background you are not a psychologist; is that correct?

A. I'm not a psychologist, that is correct. I do not have a degree in psychology.

Q. Okay. Do you do any clinical psychological testing?

A. I have not performed clinical psychological testing.

Q. Do you evaluate psychological test scores to make a determination as to the existence of an individual's potential for behavior?

A. Yes. I evaluate what specialists, those people that are qualified give their opinion as well as their raw data to me. And as a warden I have to consider that as well as other things from an operational perspective.

Q. Okay. And when you were at the Department of Corrections there was intake testing done generally

of inmates to try to categorize those inmates in certain levels of classification; isn't that correct?

A. There were some basic things, yes, sir.

Q. And you used that information as provided to you in doing an initial assessment of inmates; isn't that correct?

A. I would use that information. However, the final decision was based upon my knowledge, my expertise and my experience.

Q. Okay. And in your experience you frequently had to change that initial level of assessment which you did on inmates; is that not also correct?

A. I don't know the word "frequently." I don't keep count, I look at each case individually so I couldn't tell you the frequency of that.

Q. Would you say 80 percent of the inmates that you initially evaluated or reviewed their evaluations for placement, that that remained the same within the correctional setting?

A. Mr. Zelenka, I honestly can't give you even a guesstimate because I have classified thousands and thousands and thousands of inmates.

Q. Okay. Did you have assistance of making that assessment?

A. Sure.

Q. Did you rely upon other people to provide you that information?

A. Such as the psychiatrists, the psychologists, security people, gang management people. But the final decisions rest with me.

Q. As the warden?

A. That is correct. And also as commissioner.

Q. Okay.

MR. ZELENKA: My objection's the same, Your Honor.

THE COURT: Very well. Yes, sir.

MR. TARR: Your Honor, I would just submit to the Court that his experience, I mean vast experience of -- how many years have you been doing this?

THE WITNESS: Over 30 years.

MR. TARR: -- over 30 years that all the courts that he's been qualified in, I mean, Your Honor, basically when I was going through his qualifications just to make it easier mainly for me just went through a transcript of the testimony he gave in Greenville just within the last couple years. And Judge Kitchel qualified him exactly as I had asked him to be qualified. He's been qualified in all of these 15 or so

states, United States Government as a prison adaptability expert.

He's assessed, evaluated and classified individuals, thousands and thousands and thousands of them over 30 years and, you know, I don't know, if he's not qualified to assess whether somebody will be able to adapt to prison then nobody is. And that would be my position, Your Honor.

THE COURT: Very well. I think I should be consistent, Mr. Tarr, and in that I have previously qualified Mr. Aiken as an expert in the area of adaptability and correctional risk I will certainly do so.

I think one of the concerns might be the way that you talked about future adaptability. I think instead of future adaptability, what you are talking about is adaptability of one to correctional life versus how they might act in the future. That would cause him to be clairvoyant.

MR. TARR: Yes, Your Honor.

THE COURT: But in terms of the art of correctional risk, I do think he's so qualified and I would certainly qualify him in those

areas.

MR. TARR: Thank you, Your Honor.

THE WITNESS: Thank you, Your Honor.

THE COURT: Yes, sir.

BY MR. TARR:

Q. Now, Mr. Aiken, were you asked by Mr. Aleksey's counsel, namely me and Jim Brown, to assist us in reviewing some records and documents in this case to determine what type of testimony you or some other prison adaptability expert may have been able to give at the time of his trial in August of '98?

A. That is correct, sir.

Q. Could you please tell the Court what you relied upon to come to the findings that you're about to give today?

A. In a brief synopsis I had the opportunity to look at his criminal history, to look at his incarceration or confinement history, to look at his social history, to look at the psychological information that was provided, also his medical information that was provided, as well as to have an opportunity, a brief opportunity to converse with him today.

Q. Okay. Now, had you been called as a witness at the trial of this case and you were asked to give an

opinion as to how likely Mr. Aleksey would be to adapt to prison life and to behave in a way that a warden would want a prisoner to behave in his institution, what would you have been able to tell the Court at that time?

A. It would be my opinion that Mr. Aleksey could be properly housed and secured in a correctional environment for the remainder of his life and without presenting an undue risk of harm to staff, inmate, or the community.

Also that the Department of Corrections has the capacity to include the structure, staff, systems, legal authority to use lethal force if required to adequately manage him for the remainder of his life. And I've had inmates like him and with the type of reason for him being incarcerated and have managed those people very well.

Also to understand that community behavior is one thing, institutional behavior is something else. And that looking at his institutional behavior and adequately evaluating that institutional behavior certainly, certainly is the foundation that I would use and I've used thousands of times before in classifying inmates saying that this individual can be properly housed and secured in

a correctional environment.
Q. In looking at the records of his incarceration pretrial, do you see any evidence of any violence and while he was being housed in the jail or in the Lee County Correctional Facility awaiting trial?
A. I did not see anything that would give me concern in relationship to him providing injury to staff or other inmates. Maybe himself, but not to other folks.
Q. All right. Particularly do you think it would have been helpful to Mr. Aleksey and his defense to testify regarding this alleged escape attempt that was brought out at trial?

MR. ZELENKA: I object, Your Honor. It calls for a legal conclusion beyond the area of his expertise.

THE COURT: Yes, sir. Let me hear from you.

MR. TARR: Well, I don't see -- I don't know if I understand the objection. I could rephrase the question.

THE COURT: Rephrase the question, see where we are.

MR. TARR: All right.

Q. How would you characterize the actions

Mr. Aleksey took that resulted in the charge of escape when he was charged with escape and malicious injury to property?

A. I think that the exact charge was attempted escape as well as malicious injury to property less than $1,000. And I have to, as a warden, receiving inmates from county facilities, have to interpret the events.

For example, you talk about the attempted escape. My information after reviewing the records certainly concludes that he broke a chair off of a table in a cell, threw that against a window in the cell, breaking the window, then advising staff verbally of what he has done. And he was charged with attempted escape.

And I'm not going to and I'm not qualified to determine the legality of what is an attempted escape and what isn't, but I'm just looking at it from an operational standpoint that this individual is coming to my prison now because that county facility says they cannot handle him. And I'm making an operational assessment.

And in layman's terms there are attempted escapes and then there are attempted escapes. And let me try to explain and maybe give

examples of the contrast to which I could have provided to a jury.

The contrast of him flinging a chair into a window and telling the officer what he has done or whatever that motivation would be, I would not classify that in a higher level of severity in relationship to him taking an officer hostage or attempting to take an officer hostage for an attempted escape, having gang members on the external part of the prison at the perimeter opening fire on the gun towers and holding them down while he's attempting to escape, also having people to invade the facility, the perimeter, and getting him out of the prison and taking him away. I did not see that higher level of severity.

In fact, I did not see where he used force or attempted to use force in order to -- to effect an escape, neither did I see him even leaving the confines of his cell in this attempted escape.

I saw no escape plans that were validated, I saw nothing to indicate to me that this is a high or higher level of escape attempt.

One final thing that I always also look at is the adjudication, has he been found guilty in a court of law for violating the statute. And I

did not find that either.

Q. Okay. And just cutting to the chase in layman's terms you've seen the pictures of the room or cell he was in?

A. I saw some pictures that were submitted to you from you to me, yes.

Q. Okay.

A. That certainly connect to what the narrative was about, yes.

Q. Could a human, an adult human being his size get through the window that he broke?

A. Very doubtful, to say the least, if from a warden's perspective it is impossible.

Q. Okay. And given even if he were able to fit through the window, how was Mr. Aleksey being -- once he was in the cell, you know, he couldn't get out, out of the cell, but was he also in restraints?

A. My understanding is that he was in restraints when he was in the cell also. And how he could negotiate out of that window that was too small for him in the first place, plus being restricted physically, you know, are things also I would have to consider. And also if he got out of the window you still got the perimeter fence and how he would be able to negotiate that also.

Those are the things that I have to consider when I'm receiving a safekeeper and making a determination of the level of severity of escape this individual will have.

Q. Okay. So if you were assessing Mr. Aleksey, he's coming into your institution and you reviewed this attempted or alleged escape you would conclude that to be, would you consider that as being something that was worthy of your consideration?

A. Obviously I consider everything. A warden has to consider everything and you have to put level of severity. And I would put it at the lowest level in relationship to his conduct at that facility.

I would have other concerns about him in the management of him to include obviously he's being charged with a very serious crime and, therefore, he would have to stay in a maximum security environment as long as, you know, he was under my authority, for example.

Q. As a warden overseeing a large number of inmates and being responsible for them, are you as concerned with an inmate being annoying as you are with inmates who are going to cause problems with violence or gangs or things like that?

Like, for example, Mr. Aleksey filed a

number of lawsuits while he was awaiting trial and also has been known to file grievances against CO's, correctional officers. Are those the type things that you would say would make him less adaptable to prison life?

A. I would say to the contrary. And the reason why is because when inmates start exercising their constitutional right in a civilized manner and addressing their grievances through existing systems, indicates to me that those systems are working; and number two, this individual is not using violence, intimidation, predator behavior to include throwing body waste on individuals, to include trying to incite demonstrations and riots and circumvent the authority of the facility, coercing others to do that.

So the many lawsuits that you file is fine with me and that's the reason why we have a legal department and that's the reason why we have a constitution. And it's appropriate behavior for an individual to follow those avenues versus setting fires, versus throwing things at people, versus fighting, getting weapons and doing other disruptive behaviors in order to get some attention.

Q. So whether you agree with the substance of the

lawsuits or the substance of the grievances, the fact that he knows how and is willing to operate within the confines of these avenues that you're talking about that are put in place to do -- to address grievances in a manner that you want, that that's not a problem?

A. That's exactly what I'm saying. I'll tell an inmate in a minute I will read your 30-page grievance or your 50-page grievance, that's what I'm paid for and I will make a decision. If that decision is right or a decision that's in your favor, I'll make it in your favor. If not, it will be against you. And if you want to file a lawsuit you're welcome to do that, too. But don't try to tear up my jail and don't try to hurt my people.

Q. And, Mr. Aiken, do you take every case when a lawyer calls you up and says we want you to be our expert, do you automatically just take the money and run, so to speak?

A. No, I don't, sir.

Q. If you felt like that Mr. Aleksey had you been called to be a witness by Mr. Stone and Sims in 1998, if you'd reviewed everything about his incarceration and came to the conclusion that he would never adapt to prison life, would you have said I'll work for you

and testify?

A. No. What -- when I get finished telling a lawyer they used to say thank you very much and hang up.

Q. And one final question. I believe you reviewed some documentation regarding Mr. Aleksey's incarceration posttrial?

A. That is correct, sir.

Q. Have you seen anything in that documentation of his behavior and disciplinary actions that would be contrary to what your testimony would have been in 1998?

A. No, sir.

MR. TARR: Thank you, Your Honor. That's all I have.

THE COURT: Cross-examination.

MR. ZELENKA: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. ZELENKA:

Q. Just a point of clarification on the record. Mr. Aiken, we've known each other for a number of years?

A. That is correct.

Q. About 20 years or so; isn't that correct?

A. It's been a long time.

Q. And in my role with the attorney general's office I've had occasion through habeas actions and some 1983 actions to essentially represent you although we haven't really had an attorney/client privilege relationship; isn't that correct?
A. Well, your memory's probably better than mine. I remember specifically the death penalty executions to which you kept me advised as to what the United States Supreme Courts and District Courts were involved in and in my preparation to carry out those executions.
Q. Okay. To be more specific on a number of habeas corpus actions and the like you were named one of the custodians in a number of the cases that I represented the State; isn't that correct?
A. I don't know what a habeas corpus is in relationship to what you're saying. But obviously I stated to you the relationship as I recall it.
Q. Okay. Now, in doing your assessment of inmates you said that you relied upon psychological and psychiatric information, correct?
A. I said I relied upon that from an operational standpoint to include a wealth of other material.
Q. Okay. And in this case did you rely upon the evaluation done by the South Carolina hospital of

Mr. Aleksey that found him to have an adjustment disorder, borderline intellectual functioning and mixed personality disorder with borderline and antisocial features?

A. Are you referring to the William S. Hall?

Q. Yes.

A. Yes, sir.

Q. And when you have an inmate that suffers from antisocial traits, mixed personality traits, that suggests to you certainly that this could be a problem inmate, doesn't it?

A. Well, I'm just going to say it like it is: I have had far many inmates with those type of disorders than I had with people with normal behavior patterns and I don't say that facetiously. Just about every inmate that I've evaluated has some reference towards some type of personality disorder. And my operational assumption's based upon they're in prison because they can't function in the community --

Q. Okay.

A. -- due to these disorders.

Q. And an individual with threes types of disorders, borderline, mixed personality, antisocial features suggests that they may have problems with

authority figures, correct?
A. Yes, just like the vast majority of the population I've had to manage, correct, sir.
Q. May have problems with the truth?
A. Most definitely.
Q. May have problems with malingering to get their way?
A. Manipulative, malingering, con artist, that's prison.
Q. Okay. And in your review of these records, did you review the safekeeping petition that was done to have Mr. Aleksey removed from the local detention center?
A. If I'm not mistaken I reviewed three documents, one from the solicitor and two from the county jail authorities if I'm not mistaken.
Q. Okay.
A. Mr. Bamberg being one.
Q. Okay. And those individuals expressed an opinion in that documentation that they were unable to maintain order and authority with Mr. Aleksey's presence; isn't that correct?
A. That is correct with the Orangeburg Detention Center and that's the reason why they sent him to me.
Q. Okay. And it also revealed the outbursts that

you've described, correct?

A. Yes, if I'm not mistaken. I don't have it before me, I'm trying to recollect as best I can.

Q. Okay. Where an individual picks up a chair and throws it with force and breaks out a window, correct?

A. That's correct, sir. And that was in January of '98.

Q. Okay. My assumption is that the window that was broken out would be glass?

A. Well, when you say "glass," it could have been Plexiglas, it could have been Lexan (ph), it could have been tempered glass, some type of transparent material.

Q. Okay. Do you know whether that type of material could, based upon breakage and the like, could possibly result in an independent weapon itself?

A. I considered that and it goes back to what I was sharing before. I've had inmates to take a chair leg and instead of throwing out a window, throwing it at a window, they throw it at staff, wait until staff come in and make an attack upon them. And those are the things that I considered in relationship to the severity level to which I referred to before, sir.

Q. Okay. After this -- this incident, did you have

any indication or was his supervision level within the local detention center described to you, was he housed more closely, more securely at that period of time?

A. If I'm not mistaken, I stand corrected, it was a ten-minute watch plus he was put in restraints.

Q. Okay. So after he did this incident he was then placed in restraints where he couldn't do further damage to either himself or other individuals within the local facility; isn't that correct?

A. Well, obviously he couldn't do it to others and himself, but the point is, is that I found no inference that he had caused harm to others.

Q. Okay. Based upon that information, the local facilities opine that he was not adaptable to that particular setting; isn't that correct?

A. And -- yes. And that's not uncommon. This is a, for lack of a better phrase, a transient facility where you have people coming in and going out on a continuous basis, people coming in from the street whereas in a prison environment people are there for -- especially a maximum security environment, people are there for extended periods of time to include life.

Q. Okay. If -- at that point he was then taken to

a more secure Department of Corrections facility; is that correct?

A. Yes, sir. If I'm not mistaken he was transferred to Lee Correctional Facility in Lee County out of Bishopville.

Q. Okay. And an individual in safekeeping status as you know it, would they be in the general prison population or would they be in a more secure area under a tighter watch?

A. They would be in isolation from the general population, but having the same level of security within that facility.

Q. Okay. Explain that to me, isolation. I mean, would they be alone in a cell, would they be housed --

A. They could be alone in a cell and have minimum exposure to other inmates, as well as all of the inmate population. As in general population, for example, is enclosed in a perimeter security system as well as having a correctional staff supervision.

Q. Okay. Now, on your direct examination you made one statement that I want to ask you a little bit more about concerning when an inmate is in trouble or may be a problem you directed your attention to that inmate as "Don't tear up my jail"; is that correct?

A. That's correct.
Q. Or else what?
A. I will manage him.
Q. And how would you manage him if he began to tear up your jail?
A. Up to include death.
Q. And but that's part of your management concept of an adaptable inmate; is that correct?
A. No. What I'm saying is that -- and maybe I shouldn't have used a colloquial phrase "Don't tear up my jail." That is don't be disruptive. File all the lawsuits you care to file, but we will manage you and if it includes having to use lethal force to kill you, we will do that also.
Q. Okay.
A. And I have done that.
Q. You have done that with inmates who you initially assessed and put in a less restrictive environment; isn't that correct?
A. No. What I am saying, sir, is I've had inmates, I've ordered inmates to be killed or inmate.
Q. And there's at least one inmate that ended up dying as a result of the placement in the facility; isn't that correct?
A. I've had more than one.

Q. Okay. Well, the one I'm talking about is the placement of Mr. Gaskins.

A. Yes, sir.

Q. And you were one of the individuals that made that decision as to how he would be placed before that crime was committed; isn't that correct?

A. That's not correct, sir.

Q. Explain that to me. I thought you were one of the warden team in that matter.

A. I had just taken over that facility and Mr. Gaskins was already there and I was in the process of assessing the security, the systems of that facility to make as well as you see afterwards a more validated classification system, more validated security systems and a better run not only external classification system, but I implemented an internal classification system for that facility.

And also talking in relationship to him and that was well over 20 years ago. Correctional expertise and the technology and our experience certainly has improved tremendously and that was a stepping stone for me in getting national and international prominence in how to manage hard-to-manage, difficult inmate population. So that was just at the beginning.

Q. Okay. So someone other than you in the South Carolina Department of Corrections who was responsible for making an assessment of inmates placed Mr. Gaskins in the type of situation an individual who had committed the crime of murder at least once, if not more, had previously been sentenced to death row a situation where he would have access to death row, access to plastics, access to the ability to create a bomb and kill another inmate, correct?

A. That's correct, sir. And on that same token if you would look throughout my career you will find that there is nothing adverse in relationship to me personally and my professional standing and also you would note and I guess if you ask any inmate or ACLU or anybody else that I run very harsh, very conservative, hard institutions.

I have taken maximum security institutions and locked inmates up in their cell for two years and not let anybody out except as required by law.

Q. Okay. And you're not currently employed in the South Carolina Department of Corrections, are you?

A. No, I have not -- I am not. I've been offered the commissioner position or director, it is now on

two occasions, by two separate governors since then to which I have respectfully declined.

Q. If Mr. Aleksey was sentenced to a life sentence in 1997 you would not be the person that would make those correctional decisions for Mr. Aleksey in the South Carolina Department of Corrections; isn't that correct?

A. I didn't get the question.

Q. You would not be the person that would be making the correctional placement decisions of Mr. Aleksey in 1997, isn't that correct, '98, '99?

A. If I had taken the position you mean?

Q. No, today or in 1997.

A. No. You're talking about the actual person, no.

Q. Yes.

A. I'm not employed with the Department of Corrections as of today, sir.

Q. Okay. So another individual like another individual in the Gaskins case would be the one making that decision; is that not also correct?

A. Well, not necessarily so. And the reason why is because I've had opportunities to teach wardens. For example, Mr. Aleksey was at Lee and I had the opportunity within the last several years to teach the warden of Lee at the National Academy of

Corrections in Colorado as well as his supervisor if I could remember correctly.

So I've had an opportunity to make contact with these people, to share people -- with people new expertise, new technology, new systems in order to better manage inmate population.

Q. Okay. So it's your opinion that Mr. Aleksey as any other inmate in the Department of Corrections can be managed?

A. Yes, sir.

Q. Any inmate can be managed, correct?

A. When you say "any inmate," what I'm saying to you is that within the realm of a person like Mr. Aleksey or an individual that we have to use lethal force, lawful lethal force, we're capable of doing that, sir.

Q. And you can't say Mr. Aleksey couldn't or wouldn't have the same type of outburst that he had in the local detention center, can you?

A. Well, you can't do absolute. Just because we can't absolutely predict behavior, that's no reason why we can't better predict human behavior.

And I know very well that inmate behavior patterns are built very quickly and what I mean by that, look at his arrest and look at the time

of this incident and then look at his incidence afterwards. You will see a marked decline. This is very typical of inmate population. They burn out. You burn out, I certainly burn out with age. I'm not as vigorant as we -- as I was the first time I met you. I'm not, trust me.

Q. Nor am I.

A. Okay. And they burn out, especially in a concentrated environment such as that with the police watching you 24 hours a day and you're around very predator type individuals, antisocial behaviors.

Q. Okay. You can't --

A. You can't fake it.

Q. You can't say that Mr. Aleksey, if he receives a life sentence and is placed in the general prison population, would not have a violent confrontation with other inmates or the prison guards, can you?

A. The probability is very miniscule in relationship to classifying thousands of inmates as well as managing people just like him, as well as understanding that the Department of Corrections has the capacity to manage him even if he did demonstrate these behaviors.

Q. The best predictor of future behavior is past behavior; isn't that correct?

A. The best predictor of community behavior is past community behavior. The best predictor of prison behavior is past prison behavior.
Q. Okay. Thank you.
A. Thank you, sir.
THE COURT: Any redirect?
MR. TARR: Two questions.
THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. TARR:
Q. Mr. Aiken, did you have a chance today to meet Mr. Aleksey for the first time?
A. Yes.
Q. All right. And did he tell you why he broke that window out?
A. Yes.
Q. And was it not because that SCDC policy was being violated and he was in a four-point restraint and in a cell at the same time?
A. That is correct, sir.
Q. And nobody would listen to him when he was asking them to take him out of his restraint?
A. His exact words, if I remember correctly, was that he was trying to get some attention and it is coinciding with reading the record where he went and

told the officer what he had just done.

Q. In fact, he went and said he was cold, the window was broken?

A. That is correct, sir.

Q. And one other question. A little while ago today, this was the first day we ever met, correct?

A. That is correct, sir.

Q. We've spoken on the phone before?

A. That is correct, sir.

Q. I was standing about this far away from you. I'd ask you if you had a chance to meet Pee Wee Gaskins?

A. Yes, sir.

Q. And talk to him?

A. Yes, sir.

Q. And what did you tell me?

A. I said I've been very close to him.

Q. Closer than I am to you right now?

A. That is correct. Closer.

Q. Okay. And you today sat in a small cell in the back with Mr. Aleksey, didn't you?

A. Yes, I did.

Q. Would you compare Pee Wee Gaskins to Bayan Aleksey?

A. He doesn't hold a light to Pee Wee Gaskins.

Q. Thank you.

MR. TARR: Just one moment, Your Honor.

(Pause in proceedings.)

MR. TARR: That's all I have, Your Honor.

THE COURT: Very well. Any recross? Is this witness free to leave? All right. If you would call your next witness, please.

(Whereupon, the witness steps down from the witness stand.)

MR. TARR: Your Honor, it's 9:00 a.m.

THE COURT: Concludes the work for today. Very well. I will begin again at nine o'clock in the morning. Thank you all for being so prompt with me just as you've done this week. If you would do it of course again tomorrow, I would be appreciative. Thank you so much.

MR. BROWN: Thank you, Your Honor.

THE COURT: Thank you, gentlemen.

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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 9th 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 VIII, Pages 1512 - 1710
Applicant,)
) TRANSCRIPT OF RECORD
-versus-)
) POST-CONVICTION RELIEF
STATE OF SOUTH CAROLINA,)
Respondent.) July 10, 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
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(Thursday, July 10, 2003.)

THE COURT: Were you able to hear from the officer down in Bamberg? Did you get him?

MR. TARR: No, Your Honor.

THE COURT: That's okay.

MR. TARR: No, Your Honor, he has spoken with Officer Mears, he told him they were putting him on the stand the first thing. He is supposed to page me when he was leaving.

THE COURT: As soon as he's finished.

MR. TARR: It's about thirty miles away.

THE COURT: What we will do is when we've finished if he's not here, we haven't heard, we'll check on it and I'll see what I can find out as well.

Okay. If you would call your next witness.

MR. BROWN: Your Honor, at this time we would call SLED Agent Kenny Mears.

THE COURT: All right. All right, sir, if you would raise your right hand.

(Kenneth M. Mears, called as a witness, having first been duly sworn, is examined and testifies as follows:)

THE COURT: Thank you. If you would please

be seated and when you're seated if you would state your full name for the record and spell your last name.

THE WITNESS: My name is Kenneth M. Mears, M-e-a-r-s.

THE COURT: Your witness, Mr. Brown.

MR. BROWN: May it please the Court, Your Honor.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. BROWN:

Q. Agent Mears, you were one of the two lead agents on the case against Mr. Aleksey?

A. Yes, sir.

Q. And just as a preliminary matter, Solicitor Bailey had mentioned that there had been some correspondence with law enforcement in other states when this case was being investigated. Were you involved in that, any of that correspondence with those law enforcement agencies up north?

A. Yes, I was.

Q. Do you have any notes or reports related to their -- to that correspondence?

A. I have a case file with statements from those individuals from the other states.

Q. Okay. And I'm going to go through, just ask you some police departments and see if you remember speaking to these folks. Do you remember speaking with anybody from Mt. Laurel, New Jersey, Police Department?
A. Name. I mean, I remember going up there but without a particular name I can't recall --
Q. Sure.
A. -- exactly all them I spoke to.
Q. How about the Absecon Police Department, a Lieutenant Faisst, F-a-i-s-s-t?
A. I can't recall speaking to him.
Q. Okay. And maybe I can do this. And some of this, would you have any notes that you might refer to that would tell you whether you had spoken to Lieutenant Faisst or anybody else from Absecon Police Department?
A. Everyone that I spoke with would be in this case file here. Do you have any dates or anything that might indicate when I spoke with them?
Q. How about anyone at the Atlantic County prosecutor's office?
A. Atlantic County, I mean what state is that?
Q. New Jersey, which would be Absecon, New Jersey.
A. At this moment I don't recall speaking with

anyone from that office. I could have.

Q. Nobody named like Betsy Philips? And I'm sorry, you don't -- you don't have any notes of speaking with anybody? I thought you were looking something up, I apologize.

A. Not that I can recall.

Q. Okay.

A. At this minute I don't see anything.

Q. And I mentioned the Mt. Laurel, New Jersey, Police Department. How about specifically a Detective Jed Lechford?

A. I talked with a number of people, but those names, that does not -- that name does not ring a bell.

Q. How about a Detective Dean Logan?

A. Logan?

Q. Yes, sir. With the Doylestown Police Department.

A. I could have spoke with him but I don't have anything in my notes.

Q. Okay. How about the New Rochelle Police Department?

A. I was in New Rochelle. The officers that I spoke with I don't know particular.

Q. Detective Mark Gado, G-a-d-o?

A. We talked with several officers up there, but I don't -- I can't remember all of the names.
Q. Okay.
A. Mostly for directions and things like that.
Q. How about a Detective Carletto, C-a-r-l-e-t-t-o?
A. He's from New Rochelle also?
Q. I'm sorry, Clarkstown, New York. How about an investigator named Vincent Caruso with a bank?
A. With a bank?
Q. Yes, sir. Specifically with Commerce Bank.
A. Located in?
Q. In New Jersey. Well, the particular branch would be Absecon, New Jersey, it's a town.
A. In reference to...?
Q. Well, it's in reference -- may be more than one lady, either Theresa McCann or Jamie Farrell.
A. Those two names I can -- I recall talking to those two ladies, but the bank I don't, I don't remember anything from the bank particularly.
Q. How about a Western Union a man named Rickie Pattin?
A. I remember talking to someone from the Western Union, I think it was a Mr. Pattin.
Q. And how about a lady named Philamenia Monico?
A. From the Western Union?

Q. No, sir. But related to the same matter with the Western Union, I believe she works in the Philadelphia district attorney's office.
A. I don't remember that one.
Q. You never spoke with her?
A. I didn't say I didn't speak with them.
Q. Okay.
A. I just don't remember if I did.
Q. Okay. And you have all your correspondence that you would have taken in that file?
A. I have, yes, sir, the whole file.
Q. Okay. All right. You took a statement, and I'm going to at this time try to do it in the order of the ladies who testified at trial. I'm going to start with Gloryvee Perez and you remember her as a lady who was charged with murder for some period of time?
A. That's correct.
Q. And you took a statement from her?
A. Yes, sir.
Q. At some point she said she was homeless in that statement?
A. If I can refer back to my notes.
Q. And I've got a transcript of a tape recording that was made and it's Applicant's 42-B and I'll let

you look at it, I was going to try to find the spot in here. I'll let you take a look at that.

THE COURT: I need you to be sure that you're speaking up. You're a little bit far away from the microphone, which is fine, as long as you speak up enough for Ms. Keil to hear what you're saying. I can hear you fine, but it's important that she's able to hear you clearly.

THE WITNESS: Okay. Thank you, ma'am.

Q. I used the word homeless, I think her words may be something along the line of I didn't have a place to stay.

A. According to this document, this is Agent Darnell and Gloria Perez. I don't see my name on it anywhere.

Q. You're right, he's on there asking questions. I didn't know if you were privy to that interview or not.

A. I can't speak for him, I don't know.

Q. You weren't there for that interview? It's a tape recorded statement.

A. I could have been there, but apparently I didn't ask any questions.

Q. Okay. And maybe if you'll refer to the end pages of that transcript. And I can't say

specifically the end page, but I think you may have asked some questions on there.

A. I don't see my name on here anywhere where I asked any questions.

Q. So you did not -- okay. You did not participate in that interview?

A. I could have been there, but I didn't ask any questions according to this document.

Q. What was your understanding of where Ms. Perez was living before she was arrested on January 1st, December 31st?

A. I think it was in New Jersey, if I'm not mistaken.

Q. Do you know who she was living with and where she was, like in her own house or apartment, or...?

A. If I can find her statement, we have an address and everything in her statement. I think it was an apartment.

Q. You have her SLED statement? You have her written statement she made to SLED?

A. That's what I'm looking for now. We have a question/answer statement. The current address that's on this is 3131 Knight's Road in Bensalem, Pennsylvania.

Q. And that's on the top of the written statement?

A. No, sir. That was on another statement.
Q. Do you have that -- she gave you that address?
A. That's the address --
Q. On her booking report?
A. Booking report, right.
Q. Let me give you Applicant's 43 which is a statement, do you recognize being on SLED's written statement form.
A. Okay.
Q. And she gives an address at the top of that.
A. 2900 Street Road, Bensalem, Pennsylvania.
Q. It's a different address?
A. From that other one. It's the same state and town, it's a different street address.
Q. Okay. And if you'll read in that statement where does she say -- did she not say she moved in with Mr. Aleksey?
A. Okay. This is a statement that was obtained by Agent George Darnell and Detective E. Rush at the Orangeburg County Sheriff's Office.
Q. Right. But as one of the lead investigators on the case you would have been aware of all these documents?
A. Okay. You want me to read the statement? You said read the statement.

Q. I guess the statement speaks for itself, but doesn't it in there say she moved in with Michael?

A. Says "I met Michael the first or second week of December '97, saw him on the weekends and by Christmas I moved in with him, Michael." That's what it says reading from the statement.

Q. And do you know where -- and Michael's referring to Mr. Aleksey?

A. It doesn't say. It says Michael.

Q. Who would you -- who did you believe that Michael referred to?

A. Apparently Michael is an alias of the defendant there.

Q. So she moved in with Mr. Aleksey?

A. The statement --

Q. She met Michael --

A. The statement does not say that, but she says she moved in with Michael, not Aleksey, but assuming that she was referring to Aleksey.

Q. Right. And you had testified at an earlier hearing regarding a statement that Mr. Aleksey made that he had given the name of Michael DeAngelo, Michael Aleksey, Michael DeAngelo Aleksey.

A. He used so many names I can't recall all of them. It would probably take a while to recall.

Q. Sure. And your prior testimony speaks for itself, too. Okay. I just wanted to find that out. And I'm going to show you Applicant's 30 and Applicant's 29. If you look at Applicant's 29 on top are some hotel receipts.
A. Okay.
Q. And they have whose name on there?
A. Gloria Perez.
Q. And that's the same person that was charged with murder along with Mr. Aleksey?
A. That's correct.
Q. And what date is on those, that top hotel receipt?
A. The top one is 12/14/97.
Q. Okay. So that would be the second week of December?
A. The 14th of December '97, that would be the second week.
Q. Which she testified she moved in with Michael?
A. The first or second week.
Q. Actually looks like according to that receipt she's got her own hotel?
A. If she moved in according to this receipt. Now, it doesn't say that she moved -- on this receipt doesn't say that she moved in with him.

Q. Right. She said in her statement she did.
A. The receipt says she was in a motel, at least got a room in her name.
Q. Right. And if you look through those documents and, of course, they speak for themselves, but that's not the last night of that hotel?
A. That's correct. There are several of them.
Q. Okay. So it looks like she stayed there for a little while or at least had a room there.

And those documents that are 29, I'm going to show you a picture which is Applicant's 26-F and Applicant's 26-E. And Applicant's 30 is the folder and that's the folder that you see in those two photos?
A. I don't know if that's the folder or not. I just see the exterior of the folder on the picture. It's a folder similar to the one I have in my hand. I can't actually say it's the same one.
Q. And what do you find similar between the folder in the picture and the folder in your hand?
A. What do I find similar?
Q. Why do you say they're similar?
A. I see a marking on the picture and the folder itself that looks like the same marking.
Q. Okay. And there's maybe two markings, one's a

squiggly dark pen mark and one's a highlighter mark?
A. That's correct.
Q. Okay. So actually two markings that look similar from the photograph to the folder that you have?
A. That's correct.
Q. Okay. And then let me ask you if you can look, and you may have to look pretty good there, but on this picture here it's got the word "CliniForms" right there written at the top and that's in Applicant's 26-F.
A. I don't see "CliniForms." It might say that but I can't -- I can't make it out. I can't make out that word.
Q. Would you agree it looks similar to that?
A. I can see it on the actual form, but I can't make it out on the picture, on the photo.
Q. So what you're saying you see the word "CliniForm" in Applicant's 29 as one of the documents?
A. Yes.
Q. But you can't say for sure that's the same word that's written in the photograph?
A. That's correct.
Q. Okay.

THE COURT: I saw it in the document. Let me just glance at the photograph.

MR. BROWN: I would like you to, that's why I did that.

THE COURT: I think I need new glasses. Oh, wait, I'm looking at it wrong. Oh, there it is, this way. Uh-huh.

Q. And again the photograph speaks for itself as well. The CliniForms document, does it have a doctor's name in the top left-hand corner of this document? The top left corner.

A. It has -- that looks like Byung-Kee Bang, M.D.

Q. Do you know who that doctor is?

A. No, sir.

Q. You never heard of Dr. Bang?

Now, let me ask you, this folder and these hotel receipts, they were -- what happened with those after they were taken underneath this floor mat?

A. I don't know. They were probably taken out of the vehicle by the crime scene.

Q. Which would not be you?

A. Would not be me.

Q. Do you recall logging those into evidence or having reviewed an evidence log with those?

A. If it was logged in, the crime scene would have logged them in.
Q. Do you have those crime scene log documents?
A. Crime scene would have that.
Q. Do you have a copy of that in your case file?
A. I would have to take a look. Would you like for me to take a look?
Q. Not at this moment. For purposes -- it's not that I don't want you to look at it because actually I do, but for purposes of efficiency I think we'll come back to that.

And, let's see, do you recall any checks from a Dr. Bong or Bang, B-a-n-g, being recovered from the automobile?
A. Blank checks or cashed checks, or...?
Q. Would be non-negotiated checks and blank checks, so actually I guess it's two questions do you recall.
A. There were so many items that were in that vehicle and that I looked at and crime scene did some, I just can't say without referring to some notes or something if I actually received any or looked at them.
Q. Let me show you Applicant's 32 and ask you if those look familiar?
A. I remember Gloryvee making a statement in

reference to working for a doctor, but I can't remember his name and this could be the doctor that she worked for.

Q. Now, one of the things that happened is that Ms. Blackwell's charges were dismissed. That's a question. Do you remember her charges were dropped at some point?

A. That's correct.

Q. Okay. And that decision was made well before she testified after Mr. Aleksey's trial?

A. That was made by the solicitor. I don't know what decision he made or when he made them.

Q. Were y'all the lead officers at the time her charges were dismissed?

A. Yes, sir. We were the lead agents throughout the trial, throughout the investigation.

Q. Right. So at the time that her murder charges are dismissed you're one of the two lead officers on this case?

A. That's correct.

Q. Okay. So Mr. Bailey would have presumably looked to you and the other lead officer for information or investigation related to her involvement in this murder?

A. We presented Mr. Bailey with a copy of our

report.
Q. Okay. And Ms. Gloryvee denied her involvement in this murder?
A. Correct.
Q. And at some point Mr. Aleksey had denied his involvement in this murder?
A. At one point, but he changed his mind and told us otherwise.
Q. Okay. And so then my follow-up question is just because a person says that they didn't have anything to do with it, law enforcement doesn't just take that at face value, do they?
A. Well, we just don't stop the investigation, we continue to investigate.
Q. Just as somebody says I've been charged with murder, but I didn't do it, drop my charges, that's not alone enough?
A. No. We continue the investigations.
Q. Okay. And so one thing -- did y'all know anything, had State Law Enforcement known anything about Gloryvee Blackwell before January 1st, 1998?
A. Nothing.
Q. Okay. So presumably y'all would do some investigation into her background?
A. Correct.

Q. Okay. Did you check with her employer before -- who -- her most recent employer before January 1st of 1998?

A. Repeat your question please, sir.

Q. Did you consult with her immediate employer before January 1st, 1998?

A. I didn't. Agent Darnell may have, but I know I didn't.

Q. Okay. So you never spoke to -- you don't know who her employer was before that date?

A. No, I don't.

Q. Because you never spoke to them?

A. I don't know who she worked for.

Q. Okay. And let me ask you this: You're correct when I mention that you didn't take the statement that was audiotaped, or your name doesn't appear in the transcript and your name doesn't appear on her SLED written statement. Were you privy to any statements Ms. Gloryvee made to law enforcement?

A. I am certain I have read them.

Q. Were you privy when -- were you there for any questioning of Ms. Gloryvee?

A. The initial onset, no, sir, I was not there.

Q. Okay. Do you recall being privy to any statements that she did make?

A. I remember talking with her on various occasions, whether or not statements were obtained from her during that time or not I have to look back to see.

Q. You have -- do you have notes of the times that you spoke with her?

A. If I took a statement from her it would be in this case file.

Q. How about if you spoke with her and there was no statement taken?

A. Spoke with her and just took notes?

Q. Yes, sir.

A. I probably wrote down --

Q. Okay.

A. -- some times if I talked with her.

Q. Because she was represented by the public defender in Orangeburg. And I say that, I mean it's kind of a question I already know, but I don't know if it's incorrect.

A. That's correct.

Q. Okay. And she had a lawyer fairly early, so did Mr. Aleksey within a week or so of this case?

A. I don't know exactly when she got a lawyer.

Q. Does that sound -- within the first month at least she had a lawyer?

A. I'm almost certain she did, but I'm not certain, but she will have an attorney.

Q. And the reason why I asked that is your questioning would have involved some contact, it wouldn't be an informal I ran into Ms. Gloryvee on the side of the road, we just chitchated because she was incarcerated on a murder charge and had a lawyer. So if you did speak with her, it would have probably been something that would have been a little more formal than just passing conversation, wouldn't it?

A. If she had an attorney I'm certain that we went through her attorney when we spoke to her.

Q. I agree with you. Sure, I agree on that. What I'm saying, it wouldn't be some kind of casual conversation like how are the New Jersey Nicks looking for next year or anything like that?

A. No. I would not talk with her without the presence of her attorney or either the authorization to speak with her.

Q. Right. Okay. Right. That's just what I'm trying to get out.

Do you remember her -- any information about her living in South Carolina before this?

A. No.

Q. Okay. And you don't remember her being married

to a Marine at some point in time?
A. I remember her mentioning being married to a Marine, but maybe he was from South Carolina, I don't know. I can't recall if she said she lived in South Carolina or married a Marine from South Carolina.
Q. Okay.
A. But she was married to a Marine I think she said in Beaufort.
Q. Okay. And do you remember seeing some documents from a bank in Beaufort?
A. What type of documents and from what bank?
Q. Some checks specifically.
A. In her name?
Q. That's correct.
A. I don't think I have anything in my report about any checks from Beaufort in her name.
Q. Okay. You don't recall any checks. Let me show you Applicant's 41 and I'll ask you if that refreshes your memory any?
A. I can't say that I've seen these checks before. I could have, but I don't remember seeing these checks. Like I say, it was so many documents and different pieces of evidence and things the particular one's just not familiar right now.
Q. Okay. You don't -- you don't know what -- you

don't recall those checks specifically?
A. I can't remember seeing these checks.
Q. Okay. And I had mentioned a guy named Jed Lechford with the Mt. Laurel Police Department. If you'll flip through that exhibit.
A. Right.
Q. There's some documents from Mr. Lechford and they reference booking photos of Mr. Aleksey and Ms. Perez. And they say that these -- the -- and the exhibit speaks for itself, but I think basically they say Mr. Lechford is saying the Summerfield Suites identified these two people as staying there and he's got a little note to that effect. Is that note in a conversation with you or Mr. Darnell?
A. Right. I don't think I talked with Mr. Lechford. So evidently had to be someone other than me.
Q. And let me ask you this: Are you aware of any law enforcement agent from South Carolina contacting these departments for this investigation besides you or officer -- Agent Darnell?
A. Well, there are different divisions here in SLED. Now, it could have been the firearms or it could have been the DNA or, you know, I work with the criminal part.

Q. But on this case specifically. I mean, obviously I'm sure they have contact all the time on different matters, but would anybody -- would you all have authorized anybody else or did you authorize anybody else to contact other law enforcement divisions?

A. In an investigation like this several departments would get involved. If there's a gun involved then firearms would do their contact, then DNA they would do their part.

Q. Was there any DNA evidence in this case?

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

Q. Okay. I don't recall any either.

A. But just different departments will do different things. Take the crime scene --

Q. Right.

A. -- they will do all of the crime scene picture taking and things like that. Criminal investigations, I'm assigned to the criminal investigations, we do interviews and things of that nature.

Q. What I'm trying to find out is there anybody else besides you or Agent Darnell that would have corresponded with Jed Lechford?

A. Agent Darnell could have. I didn't. I can't

speak for someone else and I don't know.
Q. Right. And that answers my question. You did not contact him?
A. I don't remember contacting him.
Q. Okay. And it looks like from that note, and I know you didn't contact him, but that exhibit seems to indicate that not only did those pictures end up going to the Mt. Laurel Police Department, but somebody spoke on the phone?
A. Did someone speak on the phone?
Q. Well, the notes that Officer Lechford writes back implies that there had been a telephone conversation also.
A. I don't see where it implied there was a telephone conversation.
Q. Okay. Okay, that's fine. Now, there was a gunshot residue test done in this case, that's another part of SLED that may have been involved?
A. That's correct.
Q. And there was a test done of Mr. Aleksey's hands?
A. That's correct.
Q. Okay. Was there a test done on Ms. Gloryvee's hands?
A. I don't know. I was with Mr. Aleksey at the

hospital, Agent Darnell was in Santee with Ms. Perez. I was with Mr. Aleksey when the GSR was done on him.

Q. Okay.

A. So I don't know who was --

Q. You don't know whether one was done on her or not?

A. I don't remember.

Q. I'm going to follow that up with another question. Are you aware of any test results involving Ms. Gloryvee Perez? You said, "I think" that maybe implied in an answer you just gave that you don't know that one was done or not.

A. Am I aware of any --

Q. Results, shot residue results on Ms. Gloryvee.

A. Gunshot residue?

Q. Whether it was a positive test, positive result or negative result, are you aware of any result?

A. Give me a minute, let me read this report here.

Q. Yes, sir.

A. Okay.

Q. With the Court's permission.

A. (Agent Mears reading report.) I believe if you would ask trace if a gun residue was done, I'm certain I read the report, but it's been a while. And I just don't remember everything right offhand.

But trace could answer that question for you if a gun residue, gunshot residue was done on Ms. Perez or not.

Q. Right. And but as far as my follow-up question whether you're aware of any results, I assume the answer would be, no, you're not?

A. Not right offhand.

Q. Right.

A. I'm not aware.

Q. Right. You're not aware of any from what you can recall?

A. No, sir.

Q. All right. And that would be the same for clothes as well, you're not aware of any test results on her clothes?

A. I don't know what kind of test was done. I do know tests were done and I don't know what kind or who did it or when they were done.

Q. I understand what you're saying, but and I'm trying to follow up. I understand that you don't know exactly what tests were done, but you are aware that a gunshot residue test was done on Mr. Aleksey. And I'm asking you if you're aware of any test results on either Ms. Gloryvee's hands or clothes and I'm not trying to beat this thing too much, I'm

just....
A. I can't answer that question because I don't know.
Q. My question's not whether it was done, but whether you are aware at this time that one was done. Can you say one was done today?
A. If you'll give me four or five minutes, let me read this report I can tell you.
THE COURT: Go ahead. You can read your report, sure.
MR. BROWN: Sure, that's fine. I'm trying to make as efficient --
THE COURT: I know you are, Mr. Brown, but you're trying to elicit information. Obviously he needs to look at his report and that's fine.
MR. BROWN: Yes, ma'am.
(Agent Mears reading report.)
A. Okay. Here is one here from trace, a test was done from Gloryvee --
THE COURT: You've got to keep your voice up. I know Ms. Keil can't hear that.
THE WITNESS: I'm sorry.
A. Here's one test from trace where it tested Gloryvee's clothing.
Q. Do you know what they tested for?

A. It does not state.
Q. So we don't know that's a gunshot residue test, or do we?
A. Gunshot residue from a jacket from Mr. Aleksey was done.
Q. Uh-huh (affirmative response).
A. It does not state that in here.
Q. Do you believe that would indicate that one was not done?
A. No, I'm not saying one was not done. It does not state in this case file here.
Q. Okay. And so what we do know is that a gunshot residue test was done on Mr. Aleksey's hands and it was done on his jacket?
A. Correct.
Q. Okay. But you have no indication that any testing was done on Ms. Gloryvee's clothing or hands?
A. It may be in here but it would take some time to really look through the whole file.
Q. Sure.
A. I'm not saying one was not done.
Q. Okay. But you haven't found any evidence that one was done yet here this morning?
A. In the quick view I looked over in this file I have not found one.

Q. Okay. All right. We'll go on from there with that. Can you tell me about any conversations with Kenny at Meineke?
A. Kenny at Meineke?
Q. Yes, sir.
A. When did this take place?
Q. It would have been a telephone conversation or it could have been a conversation up in New England in the Philadelphia area.
A. I recall a statement from Gloryvee about her vehicle being at some place being repaired or something and was left. It could have been at Meineke, I don't know exactly where it was left at.
Q. Do you know what happened with her vehicle?
A. No, I don't know what happened to it.
Q. Okay. Because she would -- she was incarcerated even after her charges were dismissed as a material witness?
A. She was incarcerated after her charges were dismissed?
Q. And she was released on bond at some point after as a material witness?
A. She was released on bond at some point, I don't know when or what time or how long she stayed incarcerated.

Q. Okay. And she didn't --
A. But I'm certain I could find out that information.
Q. I'm sorry.
A. Go ahead.
Q. She didn't return in the white Mustang, she didn't drive out of South Carolina in that? One thing it was wrecked, another thing it was turned over to Ford Motor Credit, I assume.
A. She didn't leave South Carolina in the white Mustang.
Q. Do you recall how she told you she had a vehicle?
A. Beg your pardon?
Q. Do you recall how you came about -- how you became informed that she had a vehicle that was being repaired at Meineke, maybe at Meineke?
A. She made that statement to us at some point.
Q. Do you remember -- okay. And one of the times when you spoke with her? And that would have been your conversation with her?
A. I don't know if it was after she was out on bond or before, but she did make a statement about she left a vehicle at a shop or something.
Q. Okay. And let me ask you this: Was there a

cellular telephone in the Mustang, not the vehicle referenced, Gloryvee's, but the white Mustang?
A. I don't know.
Q. Do you remember SLED ever coming into possession of a cellular telephone?
A. Maybe crime scene may have gotten one, I don't know.
Q. You don't remember. You don't recall any telephone calls being received on that phone?
A. I don't know about a phone, I can't tell you about a phone so I wouldn't know about any phone calls.
Q. Okay. And so you wouldn't recall speaking to anybody who would have called the cell phone looking for Mr. Aleksey?
A. I'm certain I didn't.
Q. Okay. Okay. And can you tell me what you know about Penske Truck Leasing?
A. I can't tell you anything about any Penske Truck Leasing.
Q. Okay. Do you have any notes of a conversation with Sal, with Sal?
A. That does not ring a bell either not at this moment.
MR. BROWN: I beg the Court's indulgence.

THE COURT: Sure.

(Pause in proceedings.)

Q. And I'm going to ask you to look at Applicant's 26-A, 26-B and then also 77, Applicant's 77. And the first question I'd have in relation to Applicant's 26-A and B is can you tell me where that document exists at this point in time today?

A. I don't have the slightest idea.

Q. Have you ever seen that document before?

A. I can't say that I have.

Q. You would agree, again the document speaks for itself, but it says "SLED" on those photos?

A. It says "SLED."

Q. Stamped into the photo?

A. Right.

Q. Twenty-six-G, I ask you to take a look at that.

A. Okay.

Q. And this would be the driver's door.

A. Okay. What about it?

Q. You would agree that picture depicts the driver's door, that's 26-G?

A. I can't say that's the driver's door, I mean....

Q. This is the threshold of the car?

A. Right. But I can't say what vehicle that is or if that's a driver's door.

Q. Now, let me ask you, it's got a "SLED" number stamped in there and that's the case number and that case number corresponds with all the other photos I've shown you?
A. That's the lab number. It's got an L98 that means the lab took these pictures.
Q. Right. And the lab number corresponds with that one case?
A. Correct.
Q. So it's not like that lab number's on other case photos?
A. No, it would be on this particular case.
Q. Can you tell me any other automobiles that were photographed in this case?
A. I didn't photograph any. The lab, I don't know what they photographed.
Q. Are you aware of the lab photographing or processing any other vehicle besides the white '98 Mustang?
A. No, I'm not.
Q. Okay. All right. So, now, this would be the driver's door of a vehicle or the driver's side of a vehicle, excuse me, when you compare the door opening with the threshold of the car in the photo?
A. That appears to look like the left-hand door --

Q. Okay.
A. -- of a vehicle.
Q. A Mustang's always a two-door vehicle, they never made a four-door vehicle?
A. Not that I know of.
Q. Me neither. Then it's got some items in the pocket of the door?
A. Correct.
Q. Okay. Can you tell me whether one of the items appears to be a green and white computer paper form which corresponds to 26-A and B?
A. I see a paper folded up in what appears to be a car door, but I can't compare it with the other photos here. There's nothing to identify the two, the two photos.
Q. And can I ask you in 26-A there's a box in the left-hand corner, it says "Penske" in it?
A. That's correct.
Q. Okay. And then 26-G, does there not appear to be a box in the top left-hand corner of that document?
A. I don't see any box. I mean, it does not appear to be a box in that photo. It could be, but I can't see one.
Q. Okay. Okay.

MR. BROWN: Your Honor, I would just ask at some point....

Q. Now, can you look at 26-A and B and tell me whose name is -- appears to be the customer on that Penske leasing document? And I guess I can kind of speed this up. The matter speaks for itself, it appears to be Gloryvee.

A. Gloryvee Perez, 3333, looks like, Comly Road.

Q. Comly Road.

A. Philadelphia, Pennsylvania.

Q. Bensalem is a suburb of Pennsylvania, you mentioned she lived in Bensalem?

A. According to the address.

Q. Right. That would appear to be the same person?

A. Same name.

Q. Same name?

A. Right.

Q. It's got a date on there of December 31st, 1997? It's got a date of December 30th but a pickup date is December 31st.

A. I don't see that.

Q. That's fine, the document speaks for itself. That's fine.

A. It's got a date I see on the other copy, on copy 26-B.

Q. Yes, sir.
A. It does show 12/31/97, look like 9:00 a.m.
Q. Okay. And would that have some interest to law enforcement investigating Ms. Gloryvee who was charged with murder occurring on the same day?
A. It would indicate that she was at this particular place.
Q. I agree. And do you recall going to New York and investigating that?
A. Not this particular I don't.
Q. Did you fly to New York at some point?
A. Drove.
Q. Drove. Drove to New York?
A. Right.
Q. I apologize. You did travel to New York for some investigation?
A. Correct.
Q. Do you remember who went with you?
A. I went twice. Agent Darnell and myself went the first time, Agent Darnell, myself and Solicitor Bailey went the second time.
Q. And in 77 it just is a photo, appears to have a brochure in the driver's seat? It's not one of those two, I think it's another one I placed up there.
A. Appears to have what now?

Q. A brochure, folded brochure.
A. Right. It has a brochure with a $5 bill and a couple, two, three calling cards.
Q. Okay. And --
A. Business cards.
Q. And that brochure has a little slogan at the bottom?
A. That's correct. Great trucks, great service, great something.
Q. Okay. Do you know where that document is at this time?
A. No, I don't.
Q. Have you ever seen that document besides in this photograph?
A. I could have. I can't say that I have.
Q. All right. Do you know anything about the return of some items to Ms. Gloryvee, some personal property items?
A. Returning items? No, I did not return any, any items.
Q. Okay.

MR. BROWN: I beg the Court's indulgence just one second.

THE COURT: Sure.

MR. BROWN: Okay. And this is about to

conclude the stuff with Ms. Gloryvee. But let me just come back to two things.

Q. You mentioned one thing is that Gloryvee had mentioned she left a vehicle for repair?

A. She mentioned about leaving a vehicle at some location, I can't remember what state or town, but something about her vehicle.

Q. And then also you recall her making a statement about working for a doctor?

A. Yes, sir. At one point she did say that she worked for a doctor.

Q. Okay. And I hate to do this because this may be a time consuming request, but I'm going to ask you to tell me when she told you those things.

A. I don't know when. I don't know.

Q. Okay. And I say that because I would certainly provide you with -- I think they're already in evidence -- all the written statements or transcribed statements that she made to SLED and so this may be a time consuming request, but I'm going to ask you to look through your notes and tell us when those statements were made to you by her, and I'll help you by providing you, I think you may already have them, here again is Applicant's 42-B which is a transcription of 42-A, which is her taped statement

and then the other one would be her SLED written statement which is Applicant's 43.

A. You want to know if she made a statement about her vehicle being at some shop in her statement?

Q. No. I want to know when that statement was made to you. And I say that, I believe when -- I've handed you those two exhibits are the only memorialized, well, statements that we have. I mean, I say that, I'm not trying to encourage an objection.

MR. ZELENKA: Actually there is one more statement. And he would have it in his SLED sheet as I believe it would be item -- it may be around item 52 of the SLED statement which was the polygraph --

THE WITNESS: Polygraph.

MR. ZELENKA: -- statement of Gloryvee Perez.

MR. BROWN: The answers to the polygraph questions.

MR. ZELENKA: That's the statement, yeah.

A. I don't see anything in any of these statements where she mentioned a vehicle. But I recall her making a verbal statement about leaving her vehicle at some shop. It's not in these written statements.

Q. And Mr. Zelenka referred to other statements

being some responses to polygraph questions, usually polygraph relevant questions are fairly short, in other words, like two, two questions that are trigger questions?

A. I'm not a polygraph examiner so I don't know how they --

Q. Okay. Sure.

A. -- organize their questions.

Q. The reason why I asked is do you recall her making those statements in response to a polygraph examination, that either she had an automobile at a repair shop or that she worked for a doctor?

A. I'm certain it was not made -- if it was made at the polygraph examiner I would not have been around her.

Q. That's not where you heard those things?

A. No.

Q. Okay. And the only thing else I'd ask about this at this time is, if we could at some point take a look at your file notes that reference that.

THE COURT: Yes, you can.

MR. BROWN: Okay. And we'll move on from there on that with Ms. Perez at this time.

Q. And next I would like to move to Ms. Batkilina. And do you remember a witness named Yelena Batkilina?

A. Yes, I do.
Q. And can you tell me any conversations you had with the Kissimmee, Florida, Police Department?
A. I'm not certain if -- I think Agent Darnell spoke with that police department in Florida.
Q. Do you know when he spoke with them?
A. When?
Q. Yes, sir.
A. I don't know when, not dates.
Q. It was prior to Mr. Aleksey's trial?
A. I would say so.
Q. You would think -- you think so?
A. Yeah.
Q. All right. I'll take that qualified answer, that's fine.

Okay. And one of the things Mr. Aleksey made a statement to you, he spoke to you about a friend who had trouble in Florida and he named Ms. Batkilina?
A. He mentioned a name, it could have been Batkilina or it could have been some other name, but I remember him saying that a friend in Florida.
Q. Right. And there was a Jackson v. Denno hearing, and I apologize, the Jackson v. Denno hearing is in the back of the transcript.

THE COURT: I've had a chance to read it.

Q. I would refer you to page 102, that's your testimony from that hearing. It's 102 in the Jackson v. Denno pagination. And basically you -- there was some conversation about Ms. Batkilina and her trouble in Florida?

A. That's correct.

Q. Okay. And I'm going to just show you these two documents. And you, I guess, already answered about Mr. Darnell speaking to them. And one of them's Applicant's 13 and one's Applicant's 6.

A. Three.

Q. Excuse me, Applicant's 3 and Applicant's 6. And did -- do you recall gathering any information related to some credit card fraud information in the legal sense of the word like an indictment or a plea? And you already said that Mr. Darnell spoke to them and that may have answered this question, but out of an abundance of caution I'm going to follow up on it.

A. As stated earlier, I don't remember talking with authorities in Florida.

Q. Okay. And one other question about Ms. Batkilina. Do you know Kathy Cauford (ph)?

A. Happy?

Q. Kathy Cauford?

A. Kathy Cauford, I don't know that name.
Q. You never heard of that name before?
A. Not Kathy Cauford.
Q. Do you recall speaking to the U. S. Marshal's office?
A. Okay. In Philadelphia I think, right, that may have been her name.
Q. Okay. And can you tell me which of the trips you took up north -- did you speak to them in person?
A. No, I didn't.
Q. Did you speak to them on the telephone?
A. Telephone.
Q. Okay. Do you know who -- you spoke with her?
A. I spoke with a lady and Kathy could have been her name with the U. S. Attorney --
Q. Maybe like a Fugitive Task Force?
A. Correct.
Q. And they provided you some information regarding Mr. Aleksey?
A. Correct.
Q. And they -- and they knew Mr. Aleksey because he was, I guess lack of a better word, a fugitive that was on their list?
A. That's right.
Q. Okay. And how about Ms. Batkilina?

A. Did they mention Batkilina's name?
Q. Yes, sir.
A. Not as I can recall.
Q. Okay. And I'm going to show you Applicant's Number 9 which is a Lower Moreland Police Department report.
A. Okay. What about it?
Q. And this is on page -- and I apologize -- all right. Well, there's a page inside the report that has a headline that says Glina Batkilina, begins with a G, G-l-i-n-a, and that was Ellen's mother. I'm not trying to put information in the record, just give a context.

You would agree on this page, this police report, that the detective writing this report says that U. S. Marshal's office has been looking for Ellen and Michael?
A. It says in part, direct quote from reading it says "Detective Mote and Detective Sergeant Dillon spoke to Galina Batkilina, Ellen's mother. Galina Batkilina had not seen Ellen for several weeks but has spoken to her on the phone. She told Mote and Dillon that the U. S. Marshals had been to her home looking for Ellen and Michael several months ago. Yelena Batkilina is wanted for theft of a rental car

in Florida and Plymouth Township, Montgomery County, Pennsylvania."

Okay. And since that's been referenced I'm going to show you Applicant's 8 and Applicant's 10 and I'm going to ask you about Applicant's 8, and that's a police report from Plymouth Township that's referenced in that, in the Applicant's 9, the Lower Moreland police report.

A. Incident report from Plymouth Township Police Department, it reference Yelena.

Q. Right. And that seems to be the same reference that's in the other police report? That's the same police, or the same township?

A. Same township.

Q. Okay. And same -- and at least Ellen's the same person?

A. Well, it said Yelena on this one, it didn't say Ellen.

Q. Right. Sure. Sure. And do you recall Ellen being referred to as Yelena -- or Yelena, Yelena's her real name actually, you would agree with that?

A. I don't know.

Q. Okay. Well, I mean y'all investigated this case.

A. Yeah.

Q. Okay. And the record speaks for itself, I won't belabor that point.

A. We've talked with hundreds of people and names, just specific names and things that kind of alludes me.

Q. Sure. And let's go back to Number 9, the Moreland police report, you've already read it, but it mentioned I think a Detective Cauford by name.

A. Right.

Q. Right. And with the Fugitive Task Force?

A. Philadelphia Police Department, let me see, Detective Kathy Cauford with the Philadelphia Police Department working with the fugitive task force and looking for Michael and Ellen.

Q. Okay. And that's why I asked that because that report references some law enforcement officers that are either with the Philadelphia DA or working in conjunction with the task force who are looking for Ellen?

A. That's what the statement indicates.

Q. Okay. Okay. I will ask you one other question. Do you have any notes of your conversation with the lady you spoke to in the U. S. Marshal's office?

A. I may have had some, I don't have any at present.

Q. Do you know where those notes would be?
A. If they're not -- if I didn't write it in my case files, I am certain that they are destroyed. It may be a few in Agent Darnell's case file.
Q. When would they have been destroyed?
A. When?
Q. Yes, sir.
A. I said if they were destroyed, I don't know when.
Q. Oh, okay. You're saying they're not in the file you have here today?
A. Correct.
Q. Okay. What other file might they be in?
A. George may have a file.
Q. Okay.
A. I don't have a file. The only file I have is just the one with me here.
Q. Okay.
A. And there's no reference to that.
Q. Okay.
A. So....
Q. I'm sorry. You mentioned if they had not been destroyed, and I just want to follow up. When would they have been destroyed, if they had been?
A. If it was just little notes for personal use

after this was written we gather our notes, write the case file from our notes.

Q. And then they're routinely destroyed or they might have been destroyed?

A. They may have been destroyed or sometime misplaced, but the information that would be on them would be in here if it was relevant to the case here.

Q. And the determination of whether it was relevant to the case was made by y'all when y'all wrote the report?

A. If it pertained to it.

Q. Right. Who determines whether it's relevant to the case before a decision's made to destroy records?

A. We don't destroy SLED records, we destroy our, our little notes.

Q. And I apologize. Before the decision might be made to destroy notes, who's in on that decision that it's relevant or not? And certainly I agree, I mean if you get something that --

A. Well, if it's my notes I make the decision if I need them anymore or not.

Q. I understand.

A. If it's George's notes he makes that decision. I don't make decisions on George's notes.

Q. I got you. Okay, that answered my question.

And would anybody else be a part of that decision such as Solicitor Bailey?
A. Not on my notes.
Q. Okay. All right. And one last thing. Do you know Scott Ethridge?
A. Scott Ethridge, not right offhand, maybe if you can....
Q. And I assume that he's an agent with the ATF.
A. Okay. I don't --
Q. You don't know?
A. I don't know him.
Q. Okay. And I'm going to ask you -- I'm going to show you Applicant's Number 4 and ask you if you've ever seen this document. And I'll take some of this stuff back.
A. Okay. I saw this document this morning.
Q. Have you ever seen it before?
A. I haven't seen it before.
Q. And Scott Ethridge's name's at the top?
A. That's correct.
Q. It looks like the person who ran that report or who requested it? I mean, I....
A. It doesn't say so I can't say.
Q. Somehow or another it looks addressed to him at least, either he's made some request for a trace?

A. Firearms trace report.
Q. Okay. But you've never seen this document?
A. I saw it this morning.
Q. You've never seen it before being in court today?
A. No, sir.
Q. Ever?
A. No, sir.
Q. Okay.

MR. BROWN: And, Your Honor, that concludes the portion of my questioning relating to Ms. Ellen Batkilina.

THE COURT: Okay.

Q. And next I want to move to a lady named Lisa Watson. And Lisa Watson was the young lady who had purchased the white Mustang. And I'm not trying to mince words about whether it was purchased or leased or -- but she was a person who was linked to the white Mustang? I mean, the record speaks for itself but I'm just trying to get on the same sheet of music here.

THE COURT: If that's a question, do you know that.

Q. Do you know that Ms. Watson was somehow linked to the Mustang?

A. I remember talking with Ms. Watson. The reference right now -- until I take a look at my notes in reference to what I talked with her about, I don't remember unless I refer to my notes.

THE COURT: I'll tell you what. Why don't we do this. Let's take a short break and show him.

Q. Let me show you Applicant's Number 20 which is a SLED statement of Lisa Watson.

THE COURT: There we go.

MR. BROWN: We can take a break and you can review that.

THE COURT: Let me ask you this question: After Ms. Watson are there other statements that he needs to put his hands on, maybe review it, make it go a little bit faster? Because he obviously doesn't have any memory.

MR. BROWN: Sure. What I'll suggest, I'll give him a copy of the SLED statements from the young ladies.

THE COURT: And I think that will help him refresh his recollection, maybe go a little bit faster. I know that's got to be tough for you to hear right here and try to read the statements.

MR. BROWN: Your Honor, I would suggest -- I'm at least halfway through with my questions for him.

THE COURT: Okay.

MR. BROWN: Totally, so just to let you know.

THE COURT: Okay. Just you take your break, too, now.

THE WITNESS: Okay.

THE COURT: But go ahead and put your hands on those statements.

(Recess, from 11:30 a.m. 11:49 a.m.)

THE COURT: All right. You may proceed.

MR. BROWN: Thank you, Your Honor. May it please the Court.

THE COURT: Thanks, Mr. Brown.

Q. Are you familiar now that you've looked at Ms. Watson's statement, you're familiar with what role she played in the trial of Mr. Aleksey's case?

A. Yes.

Q. Okay. Do you recall some testimony regarding Western Union or her husband, Andrew Watson's, credit cards?

A. According to her statement, that's correct.

Q. Okay. How did you find out about the Western

Union matter?
A. I think we interviewed Ms. Watson and she gave us information and then we -- Western Union was contacted.
Q. Okay. And the date of your interview with her when you got the Western Union information, how close was it to the taking of her SLED statement?
A. I don't have the date of the Western Union.
Q. In other words, but you're indicating that she told you about Western Union then you contacted them?
A. If I'm not mistaken, I think. Give me one second, please.
Q. Sure, yes, sir.
A. (Agent Mears looking through report.) I don't know how long the difference between the statement and the paper from Western Union, I don't -- I can't find the Western Union date, so....
Q. Okay. Sure. Did you speak -- let me ask you this: That Western Union statement -- I mean, excuse me, that SLED statement that Lisa Watson made that was made to SLED but made outside the state of South Carolina, it was made in Philadelphia I assume?
A. That's correct. It was on the 21st of January.
Q. Did you speak to Ms. Watson before that trip to Philadelphia?

A. I don't think so.
Q. Okay. Okay. And now in light of that I would show you Applicant's 14 and 15, ask you to look at Applicant's 15. And that's a letter you wrote, the top page?
A. No. I didn't write this letter.
Q. Excuse me, written to you. I apologize.
A. Oh, that's correct.
Q. From an agent with Western Union, an employee of Western Union?
A. That's correct.
Q. Okay. And the date of that letter actually precedes the date of her statement by two weeks?
A. That's correct. This is the 7th from Western Union and the 21st on the letter of the statement of Ms. Watson.
Q. And did you know -- and the person who wrote that letter to you is Rickie Pattin?
A. That's correct, yes.
Q. And did you know Rickie Pattin before anything, investigation of this case?
A. No, I didn't.
Q. Okay. And so now seeing that the dates seem to -- the order seems to be a little different, do you have any other recollection of how you received

the Western Union information about Lisa Watson?
A. I don't have the slightest idea.
Q. Okay. Now, part of that letter indicates that there were original drafts.

MR. BROWN: And I apologize, Your Honor, before I finish that question if I could take a look at that document.

THE COURT: Okay.

MR. ZELENKA: You're referring to Exhibit 15?

MR. BROWN: I am. I am.

Q. And that letter indicates -- from Mr. Pattin indicates that he has the actual drafts of the Western Union money orders that Ms. Watson negotiated?
A. The letter states "Also submitted are the actual drafts signed by Ms. Lisa Watson."
Q. And so he's talking -- and he's talking about submitting them to you?
A. Apparently.
Q. Okay. Can you tell us where those drafts are?
A. I don't have the slightest idea.
Q. Okay. Do you have any records that indicate that those drafts were released from SLED?
A. I don't know if they were released or if there

were any actual drafts, original drafts sent, I don't have any idea where they are.

Q. Now, let me ask you this to follow up on that, because I understand what you're saying, the letter says enclosed are the actual drafts, but you don't know whether you actually got them.

If you got a letter that said I'm sending you in this case some evidence and it didn't come with it, would you document that somehow saying you sent me a letter but I never got these documents?

A. If I were to ask for a specific document and didn't receive a specific document, sure I would inquire, make reference to that it wasn't received.

Q. Okay. Okay. So you don't have any recollection of where those drafts may be and you indicate you don't even know whether you ever got them?

A. That's correct.

Q. But the letter seems to indicate they sent them to you?

A. The letter indicates that the actual drafts were submitted.

Q. Okay. And how about a document called a "To Receive" document?

A. A document a, "To Receive" document?

Q. That's correct. And I'm going to hand you

Applicant's 13, it's an affidavit of Mr. Pattin and it talks about a, quote, "To Receive" document. And for some background, my understanding is that's the document you had to fill out when you get -- when you go to Western Union to collect your money order.

And my question with that would be do you recall -- do you have any information regarding a "To Receive" document on these money orders whether you either discussed it with Mr. Pattin or received it?

A. I don't recall any "To Receive" documents.

Q. Okay. Do you recall anything else that you received from Western Union regarding this matter?

A. I remember talking to a subject, and I assume it was Mr. Pattin, over the phone about these documents.

Q. Okay. And do you remember speaking to Ms. Watson or her making a statement regarding her husband's credit cards?

A. According to her statement, that's correct.

Q. And she did speak about that?

A. She spoke about her husband's credit cards, that's correct.

Q. Something to the effect of Mr. Aleksey taking $9,500, I say 9,500, I know the checks, the money order's actually for 7,500.

A. Said a total of $9,500, whether it was one money order, I mean one or two, but he said a total.
Q. She says 9,500 though there?
A. Yes.
Q. Okay. And that's in her SLED report?
A. That's correct.
Q. Okay. And she doesn't indicate that she helped Mr. Aleksey steal any items?
A. She mentioned that she did not know that she was leasing the Mustang, she thought she was co-signing for the vehicle.
Q. Yes, sir. Let me focus it just briefly more specifically. She didn't indicate that she was involved in the scam with her husband's credit card?
A. That's correct.
Q. And Western Union?
A. Right.
Q. Okay. Okay. In fact, the implication -- would you agree the implication is that Mr. Aleksey did this and that she was somehow victimized?
A. That's the indication.
Q. That she was a victim of her husband's credit card scam with Western Union?
A. Correct.
Q. Okay. And if I told you that in Applicant's 15

the signature on the money orders that are attached is Ms. Watson's signature and the driver's license is her driver's license with the same signature on it, would you agree that that may indicate that she was involved in that scam?

A. I can't say that. That's Ms. Watson's signature --

Q. Assuming it is?

A. Okay.

Q. Would you agree then that she would have been involved in that scam?

A. No, I wouldn't. I mean, I can't assume that, I don't know.

Q. Okay. And that's fair enough, I take your answer to that, but -- and I'll leave it at that. I'll leave it at that.

I'm going to ask you to take a look at Applicant's 16. And have you ever seen that Applicant's 16 before?

A. I probably have, but I don't remember. I'm certain I've seen everything in our statements and evidence, but there's certain items that I just don't recollect at the time.

Q. Now, let me ask you this: If -- if Ms. Watson was, in fact, involved in this scam, then her

statement that she gave to SLED would not be a truthful statement in the sense that it's the whole truth about the credit card scam on her husband's credit card?

A. If she was involved?

Q. That's correct.

A. I don't know if she was involved or not, I can't -- I mean, that's assuming. I mean, I don't know if she was involved or was not involved so I can't comment as to she was telling the truth or a lie in her statement.

Q. If she was involved would you agree that statement she gave, that written SLED statement is not truthful?

MR. ZELENKA: Your Honor, I would object, calls for speculation.

THE COURT: Sustained.

Q. She never told you that she helped steal any money off of her husband's credit card?

A. No, sir. She did not.

Q. In fact, she put the blame on Mr. Aleksey?

A. She wrote a statement and stated that she didn't know anything about it.

Q. Okay. And you don't doubt that you all had at least the letter from Mr. Pattin that indicates he's

sending the checks themselves and that tape that's entitled "Lisa Watson Fraud"?

A. This tape is George Darnell's.

Q. Right. But you don't dispute that SLED had all that, all these items?

A. You'll have to ask George Darnell about the tape, I don't know. That's his initials on it so he can answer questions about that.

Q. And the last thing, and I'll conclude with this, would your notes indicate the conversation you had with Mr. Pattin prior to this letter being sent to you?

A. I don't know. I don't know if I wrote down exactly everything that was -- that transpired or not, but a lot of things I did and I'm quite certain a lot of things I did not.

Q. And the reason why, part of the reason I ask is that this is January 7th, the date this letter is written which is seven days after the crime occurs, it's very early.

And the letter is addressed to you from Western Union and I would assume Western Union -- I mean, it's out of Missouri -- didn't have any reason to contact you regarding a shooting where Ms. Gloryvee, Mr. Aleksey was arrested and

Ms. Watson's name didn't appear anywhere in the newspapers in that seven-day time span, so I would assume there was a prior conversation before this letter was sent, would you agree with that?

A. No, I wouldn't. Calls were made to SLED in reference to the trooper being shot.

Q. Sure.

A. And a description of the vehicle and different items, people would call and that's where a lot of the information came from about different things. And this may have been one of the incidents where the Western Union saw the vehicle and who it was registered to because it was over the national news. So that could have happened like that.

Q. The vehicle being registered to Ms. Watson was in the national news?

A. No, no, no. No, I didn't say that.

Q. Okay.

A. I said people were calling SLED with information after the trooper slaying hit national news.

Q. Yes, sir.

A. And a lot of things may have come up in reference to maybe the vehicle or from that area.

Q. To follow up because I was at a concluding point, but Ms. Watson wasn't ever implicated in the

shooting?

A. No.

Q. And she wasn't ever tied to the gun that was used in the shooting?

A. Not that I know of.

Q. And she was tied to the automobile?

A. Correct.

Q. But the Western Union had nothing to do with the Mustang?

A. No, but with Lisa Watson. Western Union was dealing with Lisa Watson. It may be the Mustang and Lisa Watson rang a bell and they could have contacted us, I can't say.

Q. In other words, they would have seen in the paper the Mustang used in the shooting was owned by Lisa Watson?

A. I don't know if that's the case or not, but possible.

Q. And another way would be that y'all called Western Union checking Lisa Watson's background?

A. Possible.

Q. And they wrote a letter back in response, here's what we have on her?

A. That could have.

Q. Okay. And you can't tell me whether that's how

that came about or not?

A. No, I can't.

Q. Okay.

MR. BROWN: And I have no other questions about this topic, Your Honor.

THE COURT: Okay.

Q. Next I would move to Theresa McCann. And I've already asked you about speaking to two of these folks, one of Detective Carletto in Clarkstown, New York.

A. Okay. What about the letter again?

Q. This is moving to Theresa McCann.

A. Okay.

Q. And Ms. McCann was a lady who was from New York who was involved with Mr. Aleksey and she didn't offer any testimony related to anything involved in the shooting, but she did offer testimony about Mr. Aleksey's acts, and I would say bad acts, I guess to use --

A. She provided us with a statement.

Q. Okay.

A. Dealing with her involvement with Aleksey.

Q. Did you ever speak to a Detective Carletto in Clarkstown, New York, related to Ms. McCann and Mr. Aleksey? And I asked you earlier, you didn't

recall it, I asked you again now that you may have -- your memory may have been refreshed a little bit.

A. I could have. Again, all of the names of the people, different ones that we spoke to we didn't write everyone's name down.

Q. If you received police reports from Clarkstown Police Department, where would those reports be?

A. I would not know if we received any reports from them. If we would have received some from them and they were part of the case, chances are they would be in the case file.

Q. And there's no chance that those would have been destroyed?

A. I would doubt it.

Q. Okay. Okay. And next I'm going to move to New Rochelle, you mentioned being in New Rochelle, New York.

A. That's correct.

Q. Detective Mark Gado.

A. Again, the officer's name, I met a lot of officers that give us information and directions as to where we wanted to go, but just the name itself does not ring a bell in particular.

Q. Do you recall information regarding a motorcycle, a Honda motorcycle?

A. I recall some motorcycles that Aleksey had; particular brands I don't recall.

Q. Okay. All right. How about a jet-ski or more appropriately a Sea-Doo?

A. I remember a jet-ski, some mention of a jet-ski or water-ski of some type.

Q. Okay. And in following that up did you ever speak to a police department called the Egg Harbor Police Department, either Egg Harbor Township Police Department or just an Egg Harbor, there's another police department, there's two of them I think harbor.

A. To...?

Q. You don't recall speaking to anybody there?

A. No.

Q. But if you received a police report from them that would also still be in your file or the SLED file?

A. If I received it.

Q. Okay. And also in this matter do you remember speaking with anybody from Absecon Police Department regarding Ms. McCann's checks?

MR. BROWN: And I know these questions have already been asked, Your Honor, and I apologize.

A. If it's in the statement I probably talked to

someone, but just right offhand again these names, there are just so many names I just don't -- I just don't remember all of them.

MR. BROWN: Your Honor, that ends the information related to Theresa McCann. And I'm going to move at this point to some more general questions and then I have one more lady I'm going to ask about.

THE COURT: Okay.

Q. You testified about being dispatched the night of 31st of December '97 that went into January 1st of '98. Can you tell me who you met with at Summerville Hospital?

A. I remember meeting with Captain Dairy of the South Carolina Highway Patrol.

Q. And that was at the Summerville Hospital?

A. I think that -- that was not at the hospital, I believe the initial was at the parking lot of the direct vehicle that Aleksey was driving.

Q. Before that you went to Summerville Hospital?

A. I think he was already transported when I got there.

Q. Right. Mr. Aleksey had already been transported to the hospital?

A. Right.

Q. Okay.
A. I met Aleksey at Charleston Hospital.
Q. Sure. And who did you speak to at the Summerville Hospital? That's what I'm trying to find out.
A. Let me see if it's in here. Okay. It says that I met with Captain Luther instead of Captain Dairy, it's Captain Luther of District Six Highway Patrol.
Q. And where did you meet him at?
A. It was in Summerville. And he's the one that told me that Aleksey had been transported to the MUSC Hospital in Charleston.
Q. Okay. And do your notes reflect who you spoke with at the Summerville Hospital?
A. It doesn't say who I spoke with at the Summerville Hospital. I don't know if Captain Luther was at the hospital or he was at the scene, but he's the one that told me that Aleksey was transported to MUSC in Charleston.
Q. Okay. And what do you remember about going to the Summerville Hospital?
A. I know I spoke with some troopers, I think the trooper that was driving the wreck, that actually collided with Aleksey's vehicle was at the Summerville Hospital.

Q. Do you have any notes related to that meeting?
A. No, I don't.
Q. Do you know if Agent Darnell was there?
A. He wasn't. He was at the -- he was at Santee area.
Q. Okay. Okay.
A. There were two different crime scenes, so to speak.
Q. I understand, sure. Exit 97 is almost right over the Santee Lake on the south side?
A. Agent Darnell was sent to that scene and I was sent to the scene in Summerville/Charleston.
Q. Do you remember ever speaking with the trial counsel either Mr. Sims or Mr. Stone?
A. I remember --
Q. Did they ever interview you in a somewhat not casual conversation, but did they ever sit down for an interview with you?
A. I don't think they did.
Q. And I'm going to ask you a question: Can you tell me about, and I don't mean to go into any irrelevant part of this, can you tell me a -- in a brief description your personal relationship with Mr. -- with Trooper Lingard?
A. My personal relationship?

Q. Just how would you describe that relationship?
A. I knew First Sergeant Lingard for quite a while. As a matter of fact, I worked with his mother in Hampton County for a while when we were both working at Westinghouse. I think she worked at Westinghouse for a while.

But I knew him from being from Hampton County and I'm the next adjoining county over and he was a trooper also in the Allendale, Hampton County area.

Q. Are you from Allendale?
A. No, sir. I'm from Colleton County.
Q. Colleton County, I apologize. You mentioned an adjoining county.

MR. BROWN: And, Your Honor, I hate to -- actually I'm going to tie up one thing that was with Ms. McCann.

Q. I'm going to show you what was State's 3, ask you if you recognize a handwriting at the bottom of that page, it's got a name Vincent Caruso.
A. I don't recognize the handwriting.
Q. And I just asked because I don't know whose it is.

Do you remember serving warrants on Mr. Aleksey at a hearing, I believe it was in

Orangeburg? And it's not the warrant, the warrant in this case, but serving warrants from other jurisdictions?

A. From another jurisdiction?

Q. Yes, sir.

A. I see that Sergeant Darnell served one warrant it looks like.

Q. Do you have a date for that?

A. I think Agent Darnell may have served those warrants. The date looks like one of them is 2/2/98.

Q. And you wouldn't dispute that that was the date of the notice the death penalty was served on Mr. Aleksey?

A. I....

Q. Do you remember going to a hearing where they served him with notice that the government was seeking the death penalty?

A. I don't know what date it was on.

Q. Do you recall being at that hearing?

A. I think I was, I'm not certain, but I'm almost certain I was.

Q. You think you were at that hearing?

A. Yes, sir.

Q. Okay. And did Agent Darnell, was it Agent Darnell or you that had a tape recorder when y'all

served that warrant on Mr. Aleksey?
A. I don't know a tape recorder being used and serving a warrant.
Q. When the warrant was served, do you recall the warrant being served? I mean, you recall there not being a tape recorder?
A. I can't -- I -- I don't remember the warrant being served or either a tape recorder being used in serving a warrant.
Q. Okay. You don't recall warrants being served, so you don't know whether there was a tape recorder or not?
A. Right.
Q. Okay. You don't remember being there having the warrant served or reading off any warrants from Hatboro, Pennsylvania?
A. I am aware of warrants being outstanding in other jurisdictions, but I can't -- I don't remember serving any of them. I see two of them here where Agent Darnell served the warrants on him.
Q. On 2/2/98?
A. 2/2/98. Now, whether or not a tape recorder was used, I don't know.
Q. Okay. Okay. And you don't believe you were there?

A. I don't know if I was there or not. I was -- I mean, when the warrants was served?
Q. Yes.
A. I don't know.
Q. Do you have any notes of whether you were there when the warrants were served?
A. If I had the notes they would be in -- I would either have them here or -- there was a lot of paperwork, there was a lot of --
Q. This paperwork was coming from these other --
A. A lot of things going on and I don't know, I can't remember where I was. I know I was involved in the case from the start through the ending. And when the warrants was served, who served them, it's on the warrants itself and it states that Darnell served the warrant. If I was standing right there when he served them or not I -- I really don't remember.
Q. Okay. How about Thomas Sims or Duffie Stone?
A. Were they there?
Q. Uh-huh (affirmative response).

THE COURT: If he was there how would he know they were there?

MR. BROWN: How does he know the tape recorder wasn't there? I don't know, I'm asking him a question.

THE COURT: I mean, I can't imagine somebody knowing if he doesn't know how -- if he was there or not how in the world would he know --

MR. BROWN: And I agree with that logic, but I asked the question because maybe that would change his answer.

THE COURT: Okay.

MR. BROWN: And I agree with your logic, Your Honor.

THE COURT: Thank you.

MR. BROWN: Not that that's important though.

A. Now --

Q. You said you didn't recall whether you were there or not, you don't really recall it? I'm not trying to put words in your mouth but you don't recall --

A. I don't know if I was there or not, I don't know when the warrants was served other than looking at the dates on here.

Q. Okay.

A. And I don't know if Mr. Stone and Mr. Duffie {sic} was there when they were served. I can't answer that.

MR. BROWN: And, Your Honor, at this time I'm going to move to the last portion of my questions for this witness and it would deal with Jamie Farrell.

THE COURT: Okay.

Q. And Ms. Farrell, I believe you've had the opportunity to read her SLED statement?

A. Briefly.

Q. Okay. And so you can recall what role she played in testifying at this case as well. And I had mentioned a gentleman named Vincent Caruso.

A. What about him?

Q. Do you recall speaking to him?

A. No, I don't.

Q. Okay. And I'd ask, and these are questions I've asked before, or Lieutenant Faisst with the Absecon Police Department or Betsy Phillips with the Atlantic County, New Jersey, prosecutor's office or district attorney's office?

A. I don't remember talking with them. I could have, but I don't remember talking with them.

Q. Okay. How about copies of any photographs from a Commerce Bank, do you recall anything, a photograph from the bank?

A. If you have documentations with my signature on

it or something I'm certain I had something to do with it, but other than that I --

Q. I understand. You have a copy of Ms. Farrell's statement?

A. Right. Right here.

Q. Okay. And that is -- that's Ms. Farrell's statement, it's entered in as Applicant's Number 50?

A. That's correct.

Q. Okay.

MR. BROWN: And I beg the Court's indulgence just one second.

THE COURT: Uh-huh (affirmative response).

(Pause in proceedings.)

Q. And do you know anything about Ms. Farrell withdrawing any money out of an account in Atlantic County, specifically in Absecon, I think it's a city within --

A. I don't know her withdrawing any money. I mean, personally, no, I don't.

Q. Okay. But there was a statement taken and she mentions that money?

A. She mentioned it maybe in her statement.

Q. Okay. And would you look in that statement and see if she says whether or not she withdrew the money or Mr. Aleksey withdrew the money?