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THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY

R. Knox McMahon, Circuit Court Judge

Supreme Court Case No. 2021-000122

Appellate Case No. 2017-001542

The State, ...Respondent,

v.

James Heyward, ...Petitioner.

**APPENDIX
VOLUME I**

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VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

R. Knox McMahon, Circuit Court Judge

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FEB 01 2019
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMES HEYWARD,

APPELLANT

APPELLATE CASE NO. 2017-001542

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

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State of South Carolina	)	Court of General Sessions
	)	Fifth Judicial Circuit
County of Richland	)	Case No. 2015-GS-40-06014
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	(Days 1-5 of 6)
	)	
James Heyward,	)	
	)	
Defendant,	)	
	)	

June 26 - June 30, 2017
Columbia, South Carolina

B E F O R E:

The Honorable R. Knox McMahon, Judge; and a jury

A P P E A R A N C E S:

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Joanna McDuffie, Esquire
Nicole Simpson, Esquire
Attorneys for the Plaintiff

Steve Krzyston, Esquire
Alicia Goode, Esquire
Adam Ruffin, Esquire
Attorneys for the Defendant

Reported by:
Bonnie Kelly
Circuit Court Reporter

Transcribed by:
Krystal J. Smith
Circuit Court Reporter

1 course, the defendants' and prisoners' rights. We've
2 already covered that in voir dire. Of course, if you have
3 objections to any of those, you can present that.

4 MR. KRZYSTON: I think we've hashed those out already.

5 THE COURT: All right. All right. Once we find our
6 indictments, I'll certainly be ready.

7 MS. CAMPBELL: Your Honor, may I go check on it?

8 MR. KRZYSTON: Judge, I would have just one thing to
9 take up before the jury comes in.

10 THE COURT: Yes, sir.

11 MR. KRZYSTON: We moved on Thursday of last week to
12 prevent presumptive shackling of Mr. Heyward. At current,
13 he is shackled at the feet. If you are within any of the
14 first two rows of the gallery, if you will, directly behind
15 Mr. Heyward, you can see that shackling.

16 Until selection is completed, we would ask the Court
17 that Mr. Heyward's shackles be removed. He has been up to
18 the courthouse now a total of three times. He's never been
19 discourteous to the staff, the Richland County Sheriff's
20 Department, the bailiffs or this Court. He's been
21 exceptionally well-behaved. We would ask that he have those
22 shackles removed.

23 THE COURT: All right. That motion is denied.

24 MR. KRZYSTON: I think the only other thing that I
25 would have is that I just passed a defense's witness list to

1 MR. KRZYSTON: We would -- then we would move that it
2 then be the 11th -- between the 11th and 13th.

3 THE COURT: Any objection, Solicitor?

4 MS. MCDUFFIE: No, Your Honor.

5 MR. KRZYSTON: And the last objection would be the
6 prior objection based on the alias that we had previously
7 argued.

8 THE COURT: All right. Yes, sir.

9 MR. KRZYSTON: And that would extend to all evidence,
10 not just 6-0-250.

11 THE COURT: And you said October 13th; is that right?
12 October 13th?

13 MR. KRZYSTON: Yes, Judge.

14 THE COURT: All right. And the way it reads is that
15 James Heyward did in Richland County on or about October
16 11th, 2015, or between said date and October 13th, 2015.

17 MR. KRZYSTON: Thank you, Your Honor.

18 THE COURT: All right. And you're protected on the
19 record as far as the amendment. All right. Anything else
20 before we bring out our jury from the State?

21 MS. MCDUFFIE: Nothing from the State, Your Honor.

22 THE COURT: Defense?

23 MR. KRZYSTON: Not at this time, Judge.

24 THE COURT: All right. Thank you. Strikes, Solicitor?

25 MS. MCDUFFIE: Ten and five, Your Honor.

1 Our goal is to select 12 members of the jury panel, two
2 alternate jurors, that can be fair and impartial in the
3 trial of this case for both Mr. Heyward and the State.
4 That's our goal.

5 So to accomplish that goal, I will be asking you a
6 series of questions to determine if you are qualified to
7 serve on this panel. As part of the process, I will publish
8 or read to you the indictments. The indictments, ladies and
9 gentlemen, are not evidence. The indictments are the formal
10 charging documents by which an individual is placed on
11 notice of charges that have been brought against him or her.

12 The indictment contains mere allegations and in no
13 sense is it evidence of the allegations contained therein.
14 I will publish or read these indictments to you because
15 there are certain questions that I will have to ask you to
16 determine your qualification.

17 2015-GS-40-06020. That's the indictment number for
18 this particular indictment, and the other indictments will
19 also have numbers on them. The indictment is the State
20 versus James Heyward, AKA Abdul Muslim. The indictment
21 reads that James Heyward, AKA Abdul Muslim, did in Richland
22 County on or about October the 11th, 2015, kill the victim,
23 Alice Tollison, with malice aforethought, either expressed
24 or implied, by means of asphyxiation, and the victim did die
25 as a proximate result thereof, all in violation of Section

1 16-3-10 of the South Carolina Code of Laws, 1976, as
2 amended. That is an indictment for murder.

3 The next indictment, 2015-GS-40-06017, James Heyward,
4 AKA Abdul Muslim, burglary in the first degree. The
5 indictment reads that James Heyward, AKA Abdul Muslim, did
6 in Richland County on or about October the 11th, 2015, enter
7 the dwelling of Alice Tollison without consent and with the
8 intent to commit a crime therein and when affecting entry or
9 while in the dwelling or in the immediate flight therefrom,
10 the defendant was armed with a deadly weapon and/or caused
11 physical injury to a non-participant in the crime and/or
12 used or threatened the use of a dangerous -- dangerous
13 instrument and/or displayed what is or appeared to be a
14 firearm in violation of 16-11-311(a) of the South Carolina
15 Code of Laws, 1976, as amended. That is an indictment for
16 burglary in the first degree.

17 The next indictment, 2015-GS-40-06019, alleges that
18 James Heyward, AKA Abdul Muslim, did in Richland County on
19 or about October the 11th, 2015, unlawfully seize, confine,
20 inveigle, decoy, kidnap, abduct, or carry away one Gwyn
21 E [REDACTED] without authority of law in violation of 16-3-910,
22 South Carolina Code of Laws, 1976. That is an indictment
23 for kidnapping.

24 2015-GS-40-06016 alleges that James Heyward, AKA Abdul
25 Muslim, did in Richland County on or about October 11th,

1 2015, unlawfully seize, confine, inveigle, decoy, kidnap,
2 abduct, or carry away one Alice Tollison without authority
3 of law in violation of 16-3-910. That is an indictment for
4 kidnapping.

5 The next indictment, 2011-GS-40-06014, alleges that
6 James Heyward, AKA Abdul Muslim, did in Richland County on
7 or about October the 11th, 2015, commit robbery by
8 feloniously taking from the person or presence of Alice
9 Tollison by means of force or intimidation goods or monies
10 of Alice Tollison, such goods or monies being described as
11 jewelry, with the intent to deprive the owner of such
12 property while armed with a pistol, dirk, slingshot, metal
13 knuckles, razors, or other deadly weapons or while alleging,
14 either by actions or words, that he was armed while using a
15 representation of a deadly weapon or any object which a
16 person present during the commission of the robbery would
17 reasonably believe to be a deadly weapon, all in violation
18 of 16-11-338 of the Code of Laws of South Carolina, 1976, as
19 amended. That is an indictment for armed robbery.

20 2015-GS-40-06021 alleges that James Heyward did in
21 Richland County on or about October the 11th, 2015, point or
22 present a loaded or unloaded firearm, to wit: handgun, at
23 one Gwyn F [REDACTED] in violation of 16-23-410, South Carolina
24 Code of Laws, 1976, as amended. That is an indictment for
25 pointing and presenting a firearm.

1 2015-GS-40-06018 alleges that James Heyward, AKA Abdul
2 Muslim, did in Richland County on or about October the 11th,
3 2015, commit an assault and battery upon the victim, Gwyn
4 F█████, by unlawfully injuring or offering or attempting to
5 -- attempting to injure the victim, and the act was
6 accomplished by means likely to produce death or great
7 bodily injury or the act occurred during the commission of a
8 robbery, burglary, kidnapping or theft, in violation of
9 16-3-600(c)(1). That is an indictment, ladies and
10 gentlemen, for assault and battery first degree.

11 Mr. Bailiff, I would only want jurors to be sitting in
12 the juror section. Thank you. Thank you, Mr. Bailiff.

13 2015-GS-40-06022 alleges that James Heyward, AKA Abdul
14 Muslim, did in Richland County on or about October -- excuse
15 me just a moment. Y'all see how I do my filing.

16 Again, ladies and gentlemen, 2015-GS-40-06022 alleges
17 that James Heyward, AKA Abdul Muslim, did in Richland County
18 on or about October the 11th, 2015, or between that date and
19 October 13th, 2015, he did possess a pistol after having been
20 convicted of a crime of violence, to wit: robbery as defined
21 in Section 16-23-10 of the South Carolina Code of Laws,
22 1976, as amended, in violation of Section 16-23-30(a). That
23 is a charge of possession of a pistol by certain persons
24 unlawfully.

25 Now, ladies and gentlemen, to sum up, there is an

1 indictment for murder, an indictment for burglary in the
2 first degree. There are two indictments for kidnapping.
3 There is an indictment for armed robbery, an indictment for
4 pointing and presenting a firearm, an indictment for
5 assault and battery first degree, and an indictment for
6 possession of a pistol by a person convicted of a crime of
7 violence.

8 The State is represented by Assistant Solicitors
9 McDuffie, Campbell, and Simpson. If y'all would, please
10 stand and introduce yourselves to the jury panel and any
11 other member of the Solicitor's Office staff that may assist
12 you in the prosecution of this case.

13 MS. CAMPBELL: Hi. My name is Luck Campbell. I'm an
14 assistant solicitor here in the Fifth Judicial Circuit.

15 MS. MCDUFFIE: My name is Joanna McDuffie. I'm an
16 assistant solicitor in the Fifth Judicial Circuit.

17 MS. SIMPSON: And my name is Nicole Simpson. I'm an
18 assistant solicitor with the Fifth Judicial Circuit.

19 THE COURT: Thank you. Thank you very much,
20 Solicitors. Mr. Heyward is represented by Mr. Krzyston, Ms.
21 Goode, and Mr. Ruffin. If y'all would, please stand and
22 introduce yourselves to the jury panel and your client.

23 MR. KRZYSTON: I'm Stephen Krzyston with the Richland
24 County Public Defender's Office. This is James Heyward.

25 MS. GOODE: Alicia Goode with the Richland County

1 Public Defender's Office.

2 MR. RUFFIN: I'm Adam Ruffin, also with the Richland
3 County Public Defender's Office.

4 THE COURT: Thank you, Mr. Krzyston, Ms. Goode, Mr.
5 Ruffin, Mr. Heyward. Beginning with the lawyers, ladies and
6 gentlemen, is any member of the jury panel related by blood
7 or marriage, know, social friends, have any business or
8 professional relationship with any of the attorneys involved
9 in the trial of this case? If so, please stand.

10 (WHEREUPON, two people stood.)

11 THE COURT: All right. Yes, sir. Your number, please?

12 JUROR NUMBER 42: 42.

13 THE COURT: All right. Would you step up here for me?

14 JUROR NUMBER 42: Yes, sir.

15 THE COURT: Your number, please?

16 JUROR NUMBER 156: 156.

17 THE COURT: Would you just step over where the bailiff
18 is to my right?

19 (WHEREUPON, a bench conference was held with Juror
20 Number 42 as follows.)

21 THE COURT: Good afternoon.

22 JUROR NUMBER 42: Hi.

23 THE COURT: Tell me -- tell me your number again?

24 JUROR NUMBER 42: 42.

25 THE COURT: 42?

1 JUROR NUMBER 42: Yes, sir.

2 THE COURT: And tell me your response to that question?

3 JUROR NUMBER 42: I play kickball with Ms. Nicole
4 Simpson. You said socially; right?

5 THE COURT: Okay. All right. And how -- how well do
6 you know her?

7 JUROR NUMBER 42: We play kickball. We're friends,
8 that sort of thing.

9 THE COURT: All right. Often?

10 JUROR NUMBER 42: Yeah.

11 THE COURT: Okay. Given the fact that you play
12 kickball with Ms. Simpson, can you be a fair and impartial
13 juror in the trial of this case for both Mr. Heyward and the
14 State?

15 JUROR NUMBER 42: I believe so.

16 THE COURT: When you say you believe so, you've been on
17 jury duty before?

18 JUROR NUMBER 42: No, sir.

19 THE COURT: Is there anything that if you have that
20 friendship and know Ms. Simpson that would cause you --

21 JUROR NUMBER 42: No, sir.

22 THE COURT: -- to think you could not be fair --

23 JUROR NUMBER 42: No, sir.

24 THE COURT: -- and impartial to Mr. Heyward --

25 JUROR NUMBER 42: No, sir.

1 THE COURT: -- or the State?

2 JUROR NUMBER 42: No, sir.

3 THE COURT: No doubt in your mind?

4 JUROR NUMBER 42: No doubt.

5 THE COURT: I believe you can stay with us.

6 JUROR NUMBER 42: Okay.

7 THE COURT: Thank you.

8 (WHEREUPON, the bench conference ended and the
9 proceedings resumed as follows.)

10 THE COURT: Yes, sir?

11 THE BAILIFF: 156.

12 (WHEREUPON, a bench conference was held with Juror
13 Number 156 as follows.)

14 THE COURT: Yes, sir? Tell me your response to that
15 question.

16 JUROR NUMBER 156: Actually, I was a basketball coach
17 of Steven's. And Nicole, on the other side, I was involved
18 with a fundraiser for Alzheimer's, blondes versus brunettes,
19 football fundraiser.

20 THE COURT: Was that the only knowledge you had of Ms.
21 Simpson?

22 JUROR NUMBER 156: Yes.

23 THE COURT: And what year are we talking about? What
24 timeframe?

25 JUROR NUMBER 156: It was last summer I think was the

1 last time. So a year ago.

2 THE COURT: Okay. Was that the only time you've --

3 JUROR NUMBER 156: Yeah.

4 THE COURT: -- ever been around her?

5 JUROR NUMBER 156: Yeah.

6 THE COURT: Given that fact, can you be a fair and

7 impartial juror in the trial of this case for both Mr.

8 Heyward and the State?

9 JUROR NUMBER 156: Yes.

10 THE COURT: And then you coached basketball with Mr.

11 Krzyston?

12 JUROR NUMBER 156: No. I coached him as a student.

13 THE COURT: Okay. Was he -- was he any good?

14 JUROR NUMBER 156: He was.

15 THE COURT: I knew it. And how long was that?

16 JUROR NUMBER 156: That's been about ten years ago I'd

17 say, maybe longer.

18 THE COURT: And for what period of time?

19 JUROR NUMBER 156: Maybe 15 years ago. Before 2003, so

20 . . .

21 THE COURT: Okay. How long did you coach Mr. Krzyston?

22 JUROR NUMBER 156: Two or three years.

23 THE COURT: Two or three years? Given that fact, can
24 you be a fair and impartial juror in the trial of this case
25 for both Mr. Heyward and the State?

1 JUROR NUMBER 156: I believe so.

2 THE COURT: And when you say you believe so --

3 JUROR NUMBER 156: I can.

4 THE COURT: You can? You -- you'd make your decision

5 based on the evidence presented in the courtroom and the law

6 as I tell you the law is?

7 JUROR NUMBER 156: Yes, sir.

8 THE COURT: And not based on --

9 JUROR NUMBER 156: Right.

10 THE COURT: -- the blondes and brunettes or Mr.

11 Krzyston?

12 JUROR NUMBER 156: Yes, sir.

13 THE COURT: Correct?

14 JUROR NUMBER 156: Yes, sir.

15 THE COURT: Thank you. Thank you very much. I believe

16 you can stay with us.

17 THE COURT REPORTER: Judge?

18 THE COURT: Yes?

19 THE COURT REPORTER: I also know Mr. Knopf.

20 JUROR NUMBER 156: Oh. I did not realize that was Ms.

21 Bonnie there.

22 THE COURT: Oh, okay.

23 JUROR NUMBER 156: I used to be a live-in nanny for her

24 and Mike Kelly.

25 THE COURT: Okay. Now, did you coach her or anybody

1 play kickball?

2 JUROR NUMBER 156: No.

3 THE COURT: Alzheimer's? And what -- what period of
4 time are we talking about?

5 JUROR NUMBER 156: It was before 2003 or around that
6 timeframe. It might have been 2000 to 2004-ish.

7 THE COURT: Okay. Given that fact, can you be a fair
8 and impartial juror in the trial of this case for --

9 JUROR NUMBER 156: I can.

10 THE COURT: -- the State and Mr. Heyward?

11 JUROR NUMBER 156: I can. One of the bailiffs in the
12 previous session when I was going to come down and talk to
13 you -- my son has an ear appointment for ear removal tubes
14 at 7:30 Wednesday morning, and he told me just to wait
15 instead of telling you my excuse prior to, but is that
16 possible that I can go to that or not? I want to go.

17 THE COURT: What time can you be here by? Do you know?

18 JUROR NUMBER 156: The appointment is supposedly at
19 7:30 in the morning on Wednesday at the hospital with an
20 ENT.

21 THE COURT: Let me --

22 JUROR NUMBER 156: It's his third --

23 THE COURT: Let me mull that over.

24 JUROR NUMBER 156: He just told me to wait until we got
25 through.

1 THE COURT: No, no. That's -- that's fine. Let me
2 mull that over.

3 JUROR NUMBER 156: Okay.

4 THE COURT: Okay? Thank you. Thank you very much.

5 (WHEREUPON, the bench conference ended and the
6 proceedings resumed as follows.)

7 THE COURT: Are there any others as to the attorneys
8 besides Number 42 and 156? If so, please stand.

9 (WHEREUPON, there was no response.)

10 THE COURT: The case -- the indictments allege an
11 incident that happened 11 October 2015. One victim is
12 listed as Ms. Tollison, Alice Tollison, and another victim
13 is listed as Gwyn F [REDACTED]. It allegedly occurred at a
14 location in Richland County, [REDACTED] Drive.

15 Is any member of the jury panel friends, associates,
16 acquaintances, have any relationship whatever or had any
17 relationship whatever with the alleged victim, Alice
18 Tollison or Gwyn F [REDACTED]? If so, please stand.

19 MS. SIMPSON: Your Honor, if I might too, the witnesses
20 who we have present will stand when their name is called.

21 THE COURT: Right. And I'm --

22 MS. SIMPSON: So this would be --

23 THE COURT: Well, this is responsive, but I'm not
24 calling the names yet..

25 MS. SIMPSON: Okay.

1 THE COURT: I was just reading from the indictment.
2 Thank you. Thank you, Ms. F [REDACTED].

3 Is any member of the jury panel related by blood or
4 marriage, friends, social, business, professional
5 relationship with Mr. James Heyward, AKA Abdul Muslim, who
6 stood and was introduced to you? If so, please stand.

7 (WHEREUPON, there was no response.)

8 THE COURT: Again, ladies and gentlemen, the incident
9 allegedly occurred -- all but one of these indictments could
10 have been October 11th or 13th, of murder, kidnapping,
11 burglary first, armed robbery, pointing and presenting a
12 firearm, occurred on the 11th at the [REDACTED] Drive --
13 [REDACTED] Drive address.

14 Does any member of the jury panel have any knowledge
15 about the facts of the case whatsoever from any source
16 whatsoever? If there was news coverage at the time -- I
17 don't know if there were -- was or was not. Newspaper,
18 radio, television, Internet, or otherwise. Any news
19 coverage. If so, please stand.

20 (WHEREUPON, there was no response.)

21 THE COURT: Has any member of the jury panel heard
22 anything about the case from any source whatsoever? Hearsay
23 or talking to someone about it? Have any knowledge about
24 the case from any source whatsoever? If so, please stand.

25 (WHEREUPON, there was no response.)

1 a fact in issue. The fact in issue is determined, who the
2 perpetrator of the crime is, and that would be evidence,
3 circumstantial evidence, that the perpetrator of the crime
4 is Mr. Heyward.

5 As I say, it's subject to testimony, the proper
6 foundation, when it is offered in court before a jury.

7 Anything further on this issue, Mr. Krzyston?

8 MR. KRZYSTON: No, Judge. Just over objection.

9 THE COURT: Thank you.

10 MS. CAMPBELL: Your Honor, I just --

11 THE COURT: Any other motions?

12 MR. KRZYSTON: Pardon me, Judge?

13 THE COURT: Other motions?

14 MR. KRZYSTON: I believe for expediency, I would like
15 to take up Biggers -- Neil v. Biggers.

16 THE COURT: All right. Solicitor, Biggers?

17 MS. MCDUFFIE: The State would call Investigator Joe
18 Clarke.

19 THE COURT REPORTER: Ms. Campbell, Court exhibits?

20 MS. CAMPBELL: I'm going to make those Court's exhibits
21 at the break.

22 (WHEREUPON, Dr. Amick's CV was marked and entered as
23 Court's Exhibit Number 3 and Dr. Amick's Qualifications
24 was marked and entered as Court's Exhibit Number 4.)

25 THE CLERK: Do you swear or affirm the testimony you're

INV. JOE CLARKE - DIRECT BY MS. MCDUFFIE

1 about to give in this case will be the truth, the whole
2 truth, and nothing but the truth, so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Thank you. Have a seat in the witness
5 stand, please. State your name for the record.

6 THE WITNESS: Joseph Clarke.

7 THE COURT REPORTER: C-l-a-r-k-e?

8 THE WITNESS: Yes, it is with an E.

9 INV. JOSEPH CLARKE, being
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. MCDUFFIE:

13 Q: Inv. Clarke, where are you employed?

14 A: The Richland County Sheriff's Department.

15 Q: What are your duties with the Richland County Sheriff's
16 Department?

17 A: Currently, I'm a sergeant supervisor over the motor
18 vehicle theft unit.

19 Q: And prior to that, where were you assigned?

20 A: I was in the Special Victims Unit as an investigator.

21 Q: And in the Special Victims Unit, what were some of your
22 duties?

23 A: Primarily, to investigate sexual crimes; abuse crimes
24 against children, sexual abuse against children, rape
25 investigation, and elder abuse.

INV. JOE CLARKE - DIRECT BY MS. MCDUFFIE

1 Q: And on October the 11th of 2015, were you assigned to
2 investigate a homicide that occurred on [REDACTED] Drive in
3 Richland County?

4 A: I was.

5 Q: And what were your duties with that homicide?

6 A: I was on the list of primary homicide investigators at
7 the time and so I received a call to respond to that
8 location due to a possible homicide that occurred.

9 Q: And did you at any point learn that there may be an
10 eyewitness to the homicide?

11 A: I did.

12 Q: And who was that?

13 A: That would have been Gwyn F [REDACTED]

14 Q: And how old was Miss F [REDACTED]?

15 A: At the time, she was 8.

16 Q: And was Miss F [REDACTED] able to -- was Miss F [REDACTED] able
17 to give law enforcement a description of the person who
18 murdered her great-grandmother?

19 A: She was.

20 Q: And do you recall what that description was or what she
21 described?

22 A: We were -- she was being -- well, I had gone to the
23 scene and there saw Ms. Tollison deceased, learning
24 simultaneously that the child was at the hospital being
25 treated. We were understanding she had been bound by

INV. JOE CLARKE - DIRECT BY MS. MCDUFFIE

1 someone. Once the scene was contained, if you will, and we
2 had the lab and everybody there doing their thing, I then
3 went to the hospital to make contact with Gwyn at the
4 hospital.

5 Q: And were you aware that, prior to her being
6 transported, she was able to give a description to 9-1-1 and
7 to the responding officer?

8 A: Yes.

9 Q: And then you further spoke with her, as well as other
10 investigators at the hospital?

11 A: I did.

12 Q: And was she able to give you the facts about the case
13 at that point in time as well?

14 A: Yes, she was.

15 Q: And then, did you ultimately schedule an interview for
16 her at the Assessment Resource Center?

17 A: I did.

18 Q: And why was that done?

19 A: These are professionals at the Assessment Resource
20 Center. These are forensic investigators. You have a
21 medical team there, doctors. They can -- they can examine
22 the child and they can also interview the child in a setting
23 where law enforcement does not speak. This is a third-party
24 entity through the Department of Mental Health. That can be
25 in a controlled environment where the child is made to feel

INV. JOE CLARKE - DIRECT BY MS. MCDUFFIE

1 safe and can give a nice, good, concise interview.

2 Q: And when was that ARC interview scheduled for?

3 A: I don't have the exact date. I want to say it was
4 either the next day -- it may have been the next day I
5 believe.

6 Q: And --

7 MR. KRZYSTON: Judge, can we approach?

8 THE COURT: Yes, sir.

9 (WHEREUPON, a bench conference was held off the record,
10 after which the proceedings resumed as follows.)

11 THE COURT: Yes, sir.

12 MR. KRZYSTON: Judge, we'd enter an objection to the
13 victim being present during the testimony that describes the
14 alleged identification and the circumstances there
15 surrounding.

16 THE COURT: All right. Thank you, and I'll -- I would
17 deny that. I think she's -- she's the main victim in -- in
18 one of the indictments and, therefore, she would have a
19 right statutorily and constitutionally to remain. And I do
20 not think that would affect the defendant's right to a fair
21 trial because there's going to be time for cross-examination
22 and prior -- prior statements by -- by Miss Stevenson. Is
23 that right?

24 MS. MCDUFFIE: F [REDACTED]

25 THE COURT: Say again?

INV. JOE CLARKE - DIRECT BY MS. MCDUFFIE

1 MS. MCDUFFIE: F [REDACTED]

2 THE COURT: F [REDACTED]. I apologize. By Miss F [REDACTED].

3 Go right ahead, Solicitor.

4 BY MS. MCDUFFIE:

5 Q: Inv. Clarke, prior to the ARC interview, had law

6 enforcement developed James Heyward as a subject in this

7 matter?

8 A: They had.

9 Q: And how was that done?

10 A: Through DNA and --

11 Q: Or through fingerprint analysis?

12 A: Through a fingerprint match. I apologize.

13 Q: And was a photo of Mr. Heyward able to be obtained by

14 the Richland County Sheriff's Department?

15 A: It was.

16 Q: And that photo -- was it put then into a six-person

17 lineup?

18 A: It was.

19 Q: Do you have that in front of you?

20 A: I do.

21 Q: Inv. Clarke, State's Exhibit 30, page 2 of 2 of State's

22 30, is this the lineup that was shown to Gwyn F [REDACTED] in

23 October of 2015 at the Assessment Resource Center?

24 A: It was.

25 Q: And did you actually prepare the lineup or did another

INV. JOE CLARKE - DIRECT BY MS. MCDUFFIE

- 1 officer in your department prepare the lineup?
- 2 A: That would have been prepared by SLED through their --
- 3 they have a database that they do that. We have them do
- 4 that. I did not exactly prepare the lineup or put those
- 5 pictures together myself, no.
- 6 Q: But then you received the lineup?
- 7 A: I did.
- 8 Q: And when you received the lineup, did you check and
- 9 make sure that it looked to be a fair lineup?
- 10 A: Yes.
- 11 Q: That there was no person that stood out more than any
- 12 others? That all the individuals in the lineup appeared to
- 13 be consistent?
- 14 A: Yes.
- 15 Q: And if the individuals didn't, what would you have
- 16 done?
- 17 A: We would reject it. We would have not used it.
- 18 Q: But in this case, you felt like that the lineup was
- 19 fair and you decided to show it to Miss F [REDACTED]?
- 20 A: I did.
- 21 Q: And where did you show Miss F [REDACTED] the lineup?
- 22 A: That would have been at the ARC.
- 23 Q: At the Assessment Resource Center?
- 24 A: That's correct.
- 25 Q: And describe for the Court the circumstances around

INV. JOE CLARKE - DIRECT BY MS. MCDUFFIE

1 which you showed her the lineup?

2 A: Miss F [REDACTED] was being interviewed at that time at the
3 ARC obviously for the -- for what had occurred, the event
4 that she had experienced, and at the end of that, the
5 determination was made, since we had the audio camera
6 rolling, to show her this lineup at that time. We figured
7 at that point she had already had some time to collect her
8 thoughts, as an 8-year-old might, and also had been speaking
9 for a while. She had met me before and another
10 investigator, so she would at least be familiar with who I
11 was. So we made a determination to show her the lineup at
12 that time.

13 Q: And that was done on -- and that -- and you showing her
14 the lineup was audio and video recorded?

15 A: That's correct.

16 Q: And you've seen a copy of the video from the Assessment
17 Resource Center?

18 A: It's been a while, but I have seen it, yes.

19 Q: State's 31. That would be the video of you showing
20 Miss F [REDACTED] the lineup?

21 A: Correct.

22 Q: Inv. Clarke, when you showed Miss F [REDACTED] the lineup,
23 did you use suggest to her in any way who to pick out?

24 A: No.

25 Q: Do you know -- what exactly you told her is on the

INV. JOE CLARKE - DIRECT BY MS. MCDUFFIE

1 video?

2 A: Yes. As you see it is how it happened.

3 Q: Can you tell the Court the gist of what you told her?

4 A: I went into the room, just spoke with her briefly, told
5 her, she was a brave little girl, and I needed her to be
6 brave for us again, and I asked her to pick out the man that
7 had done something to her and her great-grandmother.

8 Q: And you asked her if she would take a look at the
9 pictures and see if she saw the man in those -- in the six-
10 pack lineup you showed her?

11 A: Yes.

12 Q: And was Miss F [REDACTED] able to identify anyone from the
13 photo lineup that you showed her?

14 A: She was.

15 Q: And who did she identify in State's Exhibit 30?

16 A: Number 3.

17 Q: And how did you get her to memorialize that she chose
18 Number 3?

19 A: She pointed to it and I had her circle it and then I
20 asked if she could put her initials, and she wrote her name,
21 her first name.

22 Q: And did she tell you that Number 3 looks like the
23 person who broke into her grandmother's house and killed her
24 grandmother?

25 A: Yes.

INV. JOE CLARKE - DIRECT BY MS. MCDUFFIE

1 Q: And then did you have some further conversation with
2 her?

3 A: Briefly, yes.

4 Q: And did she tell you that she couldn't remember whether
5 he had facial hair or not when she saw him?

6 A: I believe that's what the conversation was.

7 Q: And later in the conversation, did she actually tell
8 you something about one of the other individuals in the
9 photo lineup?

10 A: She did.

11 Q: And please tell the Court what that was?

12 A: She said one of the gentlemen in the photographs looked
13 like the janitor at her school.

14 Q: And did you talk to her more about that?

15 A: I did.

16 Q: And did you further ask her if she was confident in
17 Number 3 that she picked out of that photo lineup?

18 A: Yes. When she said that, obviously I wanted to make
19 sure she understood that what the different, you know -- and
20 she used a different photograph altogether and she said that
21 it kind of looks like the janitor at her school. But I made
22 sure she was certain that the pick she had made earlier was,
23 in fact, still the person. That it wasn't -- that she
24 didn't believe that was something different now, that it was
25 still consistent with what she thought was going on.

INV. JOE CLARKE - DIRECT BY MS. MCDUFFIE

1 Q: And so -- and then she told you that, yes, she was sure
2 that Number 3 was the person that broke into her
3 grandmother's house?

4 A: Yes.

5 Q: And, in fact, she got scared when she saw him again?

6 A: Yes.

7 Q: And did you suggest to her in any way who to pick from
8 the lineup?

9 A: No.

10 Q: Did you tell her to pick Number 3?

11 A: No.

12 Q: And for the record, who is Number 3 contained in
13 State's Exhibit 30?

14 A: The defendant.

15 Q: James Heyward?

16 A: That's correct.

17 MS. MCDUFFIE: Your Honor, at this time, we -- I beg
18 the Court's indulgence one moment. Your Honor, at this
19 time, we'd like to publish just the line-up portion of
20 State's Exhibit 31.

21 THE COURT: All right. Yes, ma'am.

22 (WHEREUPON, a portion of State's Exhibit Number 31 was
23 played in open court, not transcribed herein, after
24 which the proceedings resumed as follows.)

25 BY MS. MCDUFFIE:

INV. JOE CLARKE - DIRECT BY MS. MCDUFFIE

1 Q: And, Inv. Clarke, that was the interaction between you
2 and Gwyn F [REDACTED]?

3 A: Yes.

4 Q: And again, you didn't suggest anything to her
5 beforehand or advise her who to pick out or if the
6 individual would even be in the lineup?

7 A: No.

8 MS. MCDUFFIE: Thank you. No further questions for
9 this witness.

10 THE COURT: Thank you, Solicitor. Mr. Krzyston?

11 MR. KRZYSTON: Thank you, Judge. May it please the
12 Court.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. KRZYSTON:

16 Q: Okay. You mentioned that she gave a -- I'm sorry.
17 She, being Miss F [REDACTED], gave a description on the 9-1-1
18 call; correct?

19 A: Yeah. I understand she describes something on the
20 9-1-1 call.

21 Q: Okay. And you were privy to that description through
22 TAC communications; correct?

23 A: I do not recall that.

24 Q: You do not recall that?

25 A: I do not.

INV. JOE CLARKE - CROSS BY MR. KRZYSTON

1 Q: You have a radio?

2 A: I have a radio, but at that time, I was standing out in
3 the driveway of the house coordinating kind of where the
4 investigation was. The radio that I would've had would have
5 been in the car. I did not physically have it on me.

6 Q: Okay. So at the time that you responded to the
7 hospital, you weren't aware of the description she had given
8 to that point?

9 A: I don't remember exactly. I don't remember that
10 conversation with someone, that, hey, this is what we're
11 looking for.

12 Q: Okay. Would black male with an orange basketball
13 jersey sound correct?

14 A: I do remember that now, yes.

15 Q: Any other additional details that you remember right
16 now?

17 A: No.

18 Q: Did -- I believe Inv. Brittany Scott also accompanied
19 you to Palmetto Health Richland?

20 A: No.

21 Q: Nothing --

22 A: She did not.

23 Q: Okay. So there were no other investigators there with
24 you?

25 A: No. Chris Lindler would have been there at the time.

INV. JOE CLARKE - CROSS BY MR. KRZYSTON

1 Q: Okay. Anybody else?

2 A: Not that I remember.

3 Q: And Scott wouldn't have been sitting there?

4 A: Heidi Scott would have been there.

5 Q: Okay. Sorry.

6 A: Heidi Jackson I think at the time. I can't remember

7 whether she was married or not at the time.

8 Q: Okay.

9 A: Yeah. Brittany Scott and Heidi Scott are two different

10 people.

11 Q: Gotcha.

12 A: Okay.

13 Q: Were you -- when you arrived at the hospital, that was

14 kind of after the doctors kind of looked over Gwyn; correct?

15 A: That's correct.

16 Q: And at that point, I believe it was Heidi Jackson who

17 came out to you and told you what was going on?

18 A: Yes.

19 Q: And she related that she did have some information to

20 share with you?

21 A: Who had information to share with me?

22 Q: I'm sorry. Gwyn.

23 A: Yes. I think she wanted to speak with us.

24 Q: Okay. And at that point, did you obtain a description

25 of the perpetrator?

INV. JOE CLARKE - CROSS BY MR. KRZYSTON

1 A: I remember having a conversation with Gwyn about what
2 the events were. I think -- I don't remember having a
3 specific conversation about the description of the known
4 suspect or the ID of the suspect. We probably did discuss
5 it. I just don't -- I can't recall that conversation.
6 That's all.

7 Q: So after you left the hospital, you kind of took it --
8 took the night; correct? To let Gwyn get her bearings; you
9 got your bearings?

10 A: That's fair.

11 Q: Okay. You, I guess, held a briefing. Did you hold a
12 briefing for the rest of the Sheriff's Department that was
13 involved in this case on the 12th?

14 A: That would have been the next morning at a staff
15 meeting briefing.

16 Q: Uh-huh.

17 A: And I would have been one of probably several that
18 spoke.

19 Q: Okay.

20 A: At that point.

21 Q: Because obviously, at this point, you had already been
22 named lead investigator; correct?

23 A: Correct.

24 Q: And do you recall what description you gave at that
25 point?

INV. JOE CLARKE - CROSS BY MR. KRZYSTON

- 1 A: I believe at that point we were discussing a black male
2 suspect.
- 3 Q: Okay. And you were discussing a suspect 5'7" to 5'10"
4 tall?
- 5 A: That sounds about right.
- 6 Q: And you were discussing a subject with medium to dark
7 skin complexion?
- 8 A: That sounds about right.
- 9 Q: And that he possibly had a shirt which was long-
10 sleeved?
- 11 A: I don't remember that.
- 12 Q: Okay. That was orange on it? It had some white on it?
- 13 A: I don't -- I don't remember the specifics of the
14 conversation.
- 15 Q: Okay.
- 16 A: More than that portion.
- 17 Q: Would have had a gym bag which was dark in color?
- 18 A: I think we were hearing that someone may have been
19 carrying something.
- 20 Q: Okay.
- 21 A: Seen walking past the house or walking away from the
22 home or something like that.
- 23 Q: Long pants? Black shoes?
- 24 A: I don't remember.
- 25 Q: You don't remember?

INV. JOE CLARKE - CROSS BY MR. KRZYSTON

1 A: No.

2 Q: Based on information you obtained during that briefing,
3 did you then request SLED to create a lineup including Mr,
4 Heyward?

5 A: What we gathered in that meeting is we were already
6 starting getting some stuff back and one of them included a
7 fingerprint on the defendant and, at that point, we had some
8 analysts looking over who he -- this person may be and, as
9 that description was coming in, it started to match up on
10 what we were -- what preliminarily we had at the time. At
11 that point, folks started working on that aspect of it and
12 then we would get a lineup put together.

13 Q: So the answer to that is, yes, you called SLED?

14 A: I did not call SLED.

15 Q: Okay. Somebody called SLED from Richland County?

16 A: Yes.

17 Q: And created a lineup; correct?

18 A: Correct.

19 Q: And you were aware that Mr. Heyward was in that lineup?

20 A: Yes.

21 Q: And you were aware that Mr. Heyward was a suspect in
22 this offense at that point?

23 A: Yes.

24 Q: And you took that lineup and administered it to Miss

25 F [REDACTED] ?

INV. JOE CLARKE - CROSS BY MR. KRZYSTON

1 A: Correct.

2 Q: And your testimony here today is that she picked him
3 without hesitation?

4 A: That's correct.

5 Q: And that she was certain that this was the man who did
6 that to her grandmother?

7 A: Just saw it on the film. Yes, sir.

8 Q: And during that encounter, it's your testimony that you
9 didn't mislead or lead her or do anything wrong?

10 A: No, sir. Not in any way.

11 Q: And during that encounter, you were wearing your badge?

12 A: I was.

13 Q: You were wearing your gun?

14 A: I was.

15 Q: She had met you previously?

16 A: She had.

17 Q: She knew you were the investigator with the Richland
18 County Sheriff's Department?

19 A: Correct.

20 Q: You met her out there with three other detectives?

21 A: Yes.

22 Q: Holly Wagner, Heidi Jackson, and who else?

23 A: I believe there was else out there, counselor. It was
24 Heidi -- it would have been Heidi Jackson or Scott. Okay?
25 Holly Wagner is a different person altogether.

INV. JOE CLARKE - CROSS BY MR. KRZYSTON

- 1 Q: Right. But she -- but she was at the ARC; correct?
- 2 A: She wasn't involved in this. She might have been there
- 3 that day.
- 4 Q: Okay.
- 5 A: She worked in SVU at the time. I don't know. She
- 6 might have been in the building. I don't know.
- 7 Q: Okay. But there were other Richland County personnel
- 8 at the ARC when Miss F [REDACTED] arrived?
- 9 A: We would have been physically in the building, but as
- 10 our policy goes, if they're -- the way they do things is
- 11 they like to have us kind of off --
- 12 Q: Uh-huh.
- 13 A: -- in other areas so that the children aren't -- just
- 14 for that reason.
- 15 Q: Right.
- 16 A: Just kind of where you're going with this is that --
- 17 Q: Where am I going?
- 18 A: -- is that the children -- I know where you're going.
- 19 Q: Exactly.
- 20 A: But the children -- so that the kids aren't, you know,
- 21 intimidated or somehow bothered by us. So --
- 22 Q: Okay. But your purpose in being there was so that she
- 23 would see somebody she recognized; correct?
- 24 A: My purpose to be there was to show her the lineup.
- 25 Q: Okay. But in your report, you indicated that your

INV. JOE CLARKE - CROSS BY MR. KRZYSTON

1 purpose for being there was so that she would see some faces
2 she recognized because, again, this is a terrible situation?
3 A: What report?
4 Q: Your investigative summary.
5 A: I'd like to see that.
6 Q: Okay.
7 MR. KRZYSTON: Court's indulgence, Your Honor.
8 THE COURT: Yes, sir.
9 (WHEREUPON, there was a pause in the proceedings, after
10 which the proceedings resumed as follows.)
11 BY MR. KRZYSTON:
12 Q: Did you not just say that on direct?
13 A: What did I say on direct, sir?
14 Q: That your purpose for being there was so that she would
15 feel comfortable so that she would know and, you know,
16 recognize somebody there?
17 A: I don't think I characterized my purpose for being
18 there. I think I went there to show her the lineup.
19 Q: Okay. But again, she knew who you were?
20 A: Yes, sir.
21 Q: She saw you?
22 A: Yes, sir.
23 Q: She conversed with you?
24 A: Yes, sir.
25 Q: Okay.

INV. JOE CLARKE - REDIRECT BY MS. MCDUFFIE

1 MR. KRZYSTON: Nothing further.

2 THE COURT: Redirect, Solicitor?

3 REDIRECT EXAMINATION

4 BY MS. MCDUFFIE:

5 Q: Inv. Clarke, had you had the opportunity to speak with
6 Gwyn F [REDACTED] at the hospital prior?

7 A: I did.

8 Q: And she relayed to you facts about the case? She had
9 the opportunity to observe Mr. Heyward?

10 A: Yes.

11 Q: And that was where?

12 A: That would've been in her home.

13 Q: And approximately how long did she say that the
14 interaction lasted or could she say?

15 A: I don't remember a timeline out there. A brief time,
16 the time it took for something to happen in her home and her
17 to be bound and put in a --

18 Q: But she was able to tell you that he carried her back
19 to the back room?

20 A: Yes.

21 Q: Bound her legs and feet?

22 A: Yes.

23 Q: And that she observed him?

24 A: Yes.

25 Q: And she provided a description?

INV. JOE CLARKE - RECROSS BY MR. KRZYSTON

1 A: Yes. He spoke to her, according to her.

2 Q: And she subsequently was able to pick him out of the
3 lineup?

4 A: That is correct.

5 Q: And you didn't suggest or tell her who to pick out in
6 any way?

7 A: Not in any way.

8 MS. MCDUFFIE: Nothing further.

9 THE COURT: Recross?

10 MR. KRZYSTON: Thank you.

11 RECROSS-EXAMINATION

12 BY MR. KRZYSTON:

13 Q: The duration of the crime -- how -- did she describe to
14 you how long that duration was?

15 A: I don't remember having that conversation.

16 Q: Okay.

17 A: I mean how long it took. I think we talked about what
18 happened. I remember the thinking in the hospital of the ER
19 was that this child had been traumatized and we were -- we
20 didn't want to -- we really wanted her to talk to the folks
21 at the ARC. We felt that best.

22 Q: Uh-huh.

23 A: And so what we were trying to do was just, you know,
24 reassure her, we're looking into this, that kind of thing,
25 and then just brief information that she could give us at

INV. JOE CLARKE - RECROSS BY MR. KRZYSTON

1 the time.

2 Q: Is it fair to say that this was one of the most
3 stressful events a human being could encounter?

4 A: I think that's a fair -- yes, counselor, I think that's
5 correct.

6 MR. KRZYSTON: Nothing further, Judge.

7 THE COURT: Thank you. Thank you very much, Detective.
8 You may step down.

9 THE WITNESS: Thank you, sir.

10 THE COURT: All right. Solicitor, you may call your
11 next witness.

12 MS. SIMPSON: The State calls Gwyneth F [REDACTED].

13 THE COURT: All right. Miss F [REDACTED], if you'd come
14 around for me, please.

15 THE BAILIFF: Place your left hand on the Bible and
16 face her. Raise your right hand.

17 THE CLERK: Do you swear or affirm the testimony you're
18 about to give in this case will be the truth, the whole
19 truth, and nothing but the truth, so help you God?

20 THE WITNESS: Yes.

21 THE CLERK: Thank you. Have a seat in the witness
22 stand. State your name.

23 THE WITNESS: Gwyneth F [REDACTED].

24 GWYN F [REDACTED], being first duly
25 sworn, testified as follows:

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

DIRECT EXAMINATION

1
2 BY MS. SIMPSON:

3 Q: Gwyn, how old are you?

4 A: Ten.

5 Q: And I called you Gwyn. What do your friends and family
6 call you?

7 A: Gwyn.

8 Q: Gwyn, I just want to focus on one thing right now.

9 Okay? But I want to go back to the day that somebody hurt
10 your grandma. Do you remember that day?

11 A: Yes.

12 Q: And that was a couple years ago; right?

13 A: Right.

14 Q: And did you actually see a man kill your grandmother?

15 A: Yes.

16 Q: And did he also do something to you?

17 A: Yes.

18 Q: Okay. And what did he do to you?

19 A: He tied me up with wires.

20 Q: Okay. Did he talk to you during this time?

21 A: Yes.

22 Q: He did? At some point while everything was happening?

23 A: Yes.

24 Q: And did you know him?

25 A: No.

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

- 1 Q: Had you ever seen him before?
- 2 A: No.
- 3 Q: And on that day, do you remember if it was, like, the
4 afternoon or was it sunny outside?
- 5 A: The sun was out.
- 6 Q: The sun was out? So it was daytime?
- 7 A: Yes.
- 8 Q: And do you remember where you first saw him?
- 9 A: In the kitchen.
- 10 Q: In the kitchen? And how far away? What did he make
11 you do in the kitchen?
- 12 A: He told me to sit down.
- 13 Q: Okay. And where did you sit down?
- 14 A: Across from grandma.
- 15 Q: Across from grandma? And where was that? Like, were
16 you on the floor or where were you?
- 17 A: At a table.
- 18 Q: At a table? And where was he standing in relation to
19 your grandma?
- 20 A: Like, beside her-ish.
- 21 Q: Beside her-ish? Like, across from you? Like, I'm
22 looking at you. He was over here?
- 23 A: Yeah.
- 24 Q: Okay. And did he have any mask or anything covering
25 his face?

GWYNETH P [REDACTED] - DIRECT BY MS. SIMPSON

- 1 A: Not that I recall.
- 2 Q: Not that you recall? And this lasted for a period of
- 3 time; right?
- 4 A: Right.
- 5 Q: You were able to look at his face?
- 6 A: Yes.
- 7 Q: And see his face?
- 8 A: Yes.
- 9 Q: And could you see what he was wearing or at least part
- 10 of it?
- 11 A: Yes.
- 12 Q: And did you pay attention to what was happening?
- 13 A: Yes.
- 14 Q: I'm glad you paid attention. And why did you pay
- 15 attention?
- 16 A: So I could remember at that time.
- 17 Q: Okay. I want to go to when you went to the ARC, and
- 18 you've heard us mention the ARC?
- 19 A: Yes.
- 20 Q: Do you remember going there?
- 21 A: Yes.
- 22 Q: And you talked to a lady?
- 23 A: Uh-huh.
- 24 Q: And you told her about what happened? Yeah?
- 25 A: Yeah.

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

1 Q: And you had also talked to the 9-1-1 operator; right?

2 A: Right.

3 Q: And gave them a description too?

4 A: Yes.

5 Q: Okay. And at the hospital, did you talk to police and
6 give them a description?

7 A: Yes.

8 Q: And did you give them the best description that you
9 possibly could?

10 A: Yes.

11 Q: I'm going to show you what's been marked as State's ID

12 --

13 MS. SIMPSON: Did you take that back with you?

14 MR. KRZYSTON: It's right there.

15 MS. SIMPSON: Oh.

16 BY MS. SIMPSON:

17 Q: Are you a little nervous here today?

18 A: Yes.

19 THE COURT: What do you want, Solicitor?

20 MS. SIMPSON: Judge? Oh, Your Honor, the photo lineup.

21 BY MS. SIMPSON:

22 Q: Miss Gwyn, I am going to show you what's been marked as
23 State's Exhibit 30 for identification. Right now, I'm going
24 to back up. When Mr. Clarke -- Inv. Clarke came to see you,
25 where did he go?

GWYNETH P [REDACTED] - DIRECT BY MS. SIMPSON

- 1 A: He came to the ARC.
- 2 Q: Okay. And when he got there, did you talk to him?
- 3 A: Yes.
- 4 Q: And did he tell you why he was there?
- 5 A: Yes.
- 6 Q: Okay. And did he actually show you some pictures that
- 7 day?
- 8 A: Yes.
- 9 Q: I'm going to show you what's been marked as State's
- 10 Exhibit 30. Do you recognize this?
- 11 A: Yes. Those are the pictures he showed me.
- 12 Q: Okay. And when he showed you these pictures, did he
- 13 tell you you had to pick somebody?
- 14 A: No.
- 15 Q: And what were you looking for potentially?
- 16 A: The person who looked like -- the person on these
- 17 pictures who looked like the person who killed my
- 18 grandmother.
- 19 Q: Okay. And if you hadn't have seen anybody who looked
- 20 like him, would you have picked anybody out of these
- 21 pictures?
- 22 A: No.
- 23 Q: And did you see somebody who looked like the man who
- 24 killed your grandmother?
- 25 A: Yes.

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

1 Q: And were you able to pick him out?
2 A: Yes.
3 Q: And how did you mark that?
4 A: I circled the number and wrote my name next to it.
5 Q: Okay. And you were sure -- or are you sure that's the
6 man that looked like the man who hurt your grandmother?
7 A: Yes.
8 Q: And you mentioned that Number 2 kind of looked like
9 your janitor?
10 A: Yes.
11 Q: Okay. But is your janitor the man that came into your
12 house?
13 A: No.
14 Q: And killed your grandmother?
15 A: No.
16 Q: Is he the one that tied you up?
17 A: No.
18 Q: And did Inv. Clarke promise you anything or threaten
19 you or make you pick anybody out?
20 A: No.
21 Q: Did he tell you the man was necessarily going to be in
22 there?
23 A: No.
24 MS. SIMPSON: I beg the Court's indulgence.
25 THE COURT: Yes, ma'am.

GWYNETH P [REDACTED] - DIRECT BY MS. SIMPSON

1 BY MS. SIMPSON:

2 Q: And, Gwyn, I know -- have you -- this was a very
3 traumatic experience?

4 A: Yeah.

5 Q: And you loved your Grandma Alice?

6 A: Yes.

7 Q: And you want to remember who hurt her and who did this
8 to her; right?

9 A: Right.

10 Q: And you want to -- you picked Number 3 because you
11 recognized him; right?

12 A: Right.

13 Q: And I want you to take a look in the courtroom and let
14 me know do you see that man here today?

15 A: Yes.

16 Q: And can you point him out for the judge?

17 A: (Indicating.)

18 Q: What's he wearing?

19 A: A white shirt.

20 Q: And where is he sitting?

21 A: In-between two people.

22 Q: Two people? His lawyers?

23 A: Yes.

24 MS. SIMPSON: Your Honor, let the record reflect she's
25 identified the defendant.

GWYNETH F [REDACTED] - CROSS BY MS. GOODE

1 THE COURT: So reflected.

2 MS. SIMPSON: Thank you, Gwyn. Please answer any
3 questions the defense may have.

4 THE COURT: All right. Mr. Krzyston?

5 CROSS-EXAMINATION

6 BY MS. GOODE:

7 Q: Hey, Gwyn. How are you?

8 A: Good.

9 Q: Good. My name is Alicia. Okay? I'm going to ask you
10 some questions too, if that's all right. Okay?

11 A: Okay.

12 Q: Like we said, I know it was a pretty -- it was a pretty
13 awful thing you had to go through; right?

14 A: Right.

15 Q: And you wanted to -- you wanted to help the police get
16 this guy; right?

17 A: Uh-huh.

18 Q: So you gave them as much information as you could;
19 right?

20 A: Right.

21 Q: A pretty detailed description?

22 A: Right.

23 Q: You were able to describe his hair?

24 A: Yes.

25 Q: Is that right?

GWYNETH P [REDACTED] - CROSS BY MS. GOODE

- 1 A: Yes.
- 2 Q: You had described -- you described his hair as a
3 hairstyle that most black men have; is that right?
- 4 A: Yes.
- 5 Q: And you were able to describe in pretty good detail
6 what he was wearing; right?
- 7 A: Right.
- 8 Q: Do you remember what you told them?
- 9 A: All I remember was basketball-like.
- 10 Q: And you even said that he kind of looked like a
11 basketball player; right?
- 12 A: Right.
- 13 Q: He was tall and he was skinny?
- 14 A: Yes.
- 15 Q: And you knew that because you watch basketball
16 sometimes?
- 17 A: No.
- 18 Q: No? And you said that he had a hoodie on; is that
19 right?
- 20 A: The hoodie wasn't over his head.
- 21 Q: It wasn't over on his head?
- 22 A: No. It looked like it was off.
- 23 Q: Okay. But it was orange and red -- orange and white
24 you said; right?
- 25 A: Right.

GWYNETH F [REDACTED] - CROSS BY MS. GOODE

1 Q: And looked like a basketball-type jacket?

2 A: Yes.

3 Q: And you were actually able to see him assault your
4 grandmother; right?

5 A: Right.

6 Q: And you indicated that you were able to see his arm;
7 right?

8 A: Right.

9 Q: And that he used his arm and put it around her neck?

10 A: Yes.

11 Q: And that you could see that he had on long sleeves?

12 A: Yes.

13 Q: And even -- you were even able to tell them that he
14 actually pulled up his sleeve; right?

15 A: Right.

16 Q: And you demonstrated that to the -- to the lady at the
17 ARC; is that right?

18 A: Yes.

19 Q: Because you wanted to give them as much detail as
20 possible?

21 A: Yes.

22 Q: You didn't get a good look at his shoes; is that right?

23 A: Right.

24 Q: But you did say again that he was kind of skinny like a
25 basketball player and that was something that stood out to

GWYNETH F [REDACTED] - CROSS BY MS. GOODE

- 1 you; right?
- 2 A: Right.
- 3 Q: And he had -- you said hair that was kind of like
- 4 crops?
- 5 A: Uh-huh.
- 6 Q: Is that right? Kind of like rows?
- 7 A: Yeah.
- 8 Q: It was very short?
- 9 A: Uh-huh.
- 10 Q: And you told them that's all you could really remember
- 11 about him; right?
- 12 A: Right.
- 13 Q: You tried to give them all the information you could?
- 14 And you remember telling them that he was in there for over
- 15 an hour?
- 16 A: I don't remember telling them that.
- 17 Q: Okay. How long do you think that he was in there?
- 18 A: I can't actually tell because I fell asleep.
- 19 Q: You fell asleep?
- 20 A: Yes.
- 21 Q: You fell asleep while he was in the house?
- 22 A: Yes.
- 23 Q: And is that something that you told the solicitors as
- 24 well?
- 25 A: I'm pretty sure.

GWYNETH F [REDACTED] - CROSS BY MS. GOODE

1 Q: You're pretty sure? You told them that you fell
2 asleep?

3 A: Yeah.

4 Q: And when you met with Inv. Clarke, you wanted -- you
5 wanted to help him find the bad guy; right?

6 A: Right.

7 Q: So when he shows you these six pictures, you wanted to
8 be able to pick someone out?

9 A: Yes.

10 Q: Right? Because you want to find -- you want him to
11 find that guy as soon as possible; right?

12 A: Right.

13 Q: And he showed you six pictures?

14 A: Uh-huh.

15 Q: And you picked a picture that you said kind of looked
16 like the man; right?. Is that right?

17 A: Yes.

18 Q: And you remember telling him that -- do you remember
19 telling him that another one of the men in the lineup looked
20 like your janitor?

21 A: Yes.

22 Q: And then you told him -- let me make sure I'm getting
23 it right here. Because you wanted to think very hard about
24 his face. Okay? And that you couldn't remember if he had
25 facial hair or not?

GWYNETH F. [REDACTED] - CROSS BY MS. GOODE

1 A: I could not remember.

2 Q: Okay. Give me one second. And you told him you're
3 going to try and catch someone who looks like that?

4 A: Uh-huh..

5 Q: Right? And Inv. Clarke told you he was going to catch
6 somebody that looked like that?

7 A: Yeah.

8 Q: And then you say, but it's probably not exactly because
9 that isn't exactly? Do you remember that?

10 A: Yeah.

11 Q: You said because that looked a lot like him, but I was
12 confused when I saw Number 2 because it looked like my
13 janitor?

14 A: Yeah.

15 Q: Is that right?

16 A: Right.

17 MS. GOODE: I beg the Court's indulgence.

18 THE COURT: Yes, ma'am.

19 (WHEREUPON, there was a pause in the proceedings, after
20 which the proceedings resumed as follows.)

21 BY MS. GOODE:

22 Q: Gwyn, do you remember if the picture -- if Picture
23 Number 2 was your janitor?

24 A: No.

25 Q: No, you don't remember?

GWYNETH F [REDACTED] - CROSS BY MS. GOODE

1 A: Huh-uh.
2 Q: And do you -- is Number 3 Mr. Heyward?
3 A: Yes.
4 Q: It is?
5 A: Right here.
6 Q: You're pretty sure?
7 (WHEREUPON, there was a pause in the proceedings for
8 counsel to confer, after which the proceedings resumed
9 as follows.)
10 BY MS. GOODE:
11 Q: Do you think he --
12 THE COURT: Redirect, Solicitor?
13 MS. GOODE: I'm sorry.
14 THE COURT: I'm sorry.
15 MS. GOODE: I'm sorry, Your Honor. I apologize.
16 BY MS. GOODE:
17 Q: Do you think he looks like Number 3?
18 A: Yes.
19 Q: Okay.
20 MS. GOODE: No -- no further questions.
21 THE COURT: Redirect?
22 MS. SIMPSON: Your Honor, for purposes of this motion,
23 I have no further questions.
24 THE COURT: Thank you. Thank you. You -- you may step
25 down. All right. Solicitor, you may call your next

1 witness.

2 MS. MCDUFFIE: Your Honor, we don't have any further
3 witnesses on this issue.

4 THE COURT: Does the defense intend to present any
5 evidence or testimony?

6 MR. KRZYSTON: We do, Judge. Can we have 5 minutes?

7 THE COURT: Sure.

8 MR. KRZYSTON: Thank you.

9 THE COURT: All right. Well, we all ought not to make
10 it in and out in 5 minutes; so we'll take 10 minutes.

11 (WHEREUPON, there was a break in the proceedings from
12 4:48 p.m. until 4:57 p.m., after which the proceedings
13 resumed as follows.)

14 THE COURT: All right. Mr. Krzyston?

15 MR. KRZYSTON: We'd call Dr. Julie Buck.

16 THE COURT: All right. Doctor, if you'd come around
17 and join us, please. I take it the flight has left. Is
18 that correct, Mr. Krzyston?

19 MR. KRZYSTON: What did he say?

20 THE CLERK: Do you swear or affirm the testimony you're
21 about to give in this case will be the truth, the whole
22 truth, and nothing but the truth, so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Thank you. Have a seat in the witness
25 stand, please.

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1 MR. KRZYSTON: Fortunately, we sorted out that out.

2 THE CLERK: State your name for the record.

3 THE WITNESS: Julie Buck.

4 DR. JULIE BUCK, being first
5 duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. KRZYSTON:

8 Q: Dr. Buck, where are you currently employed?

9 A: I am self-employed.

10 Q: And just give us kind of a general -- where are you --
11 like, what do you do for yourself?

12 A: I'm a consultant, expert witness and consultant. I
13 work on eyewitness memory cases, both adult eyewitness
14 memory cases and eyewitness identifications, and then child
15 eyewitness cases. A lot of times those are abuse cases.

16 Q: So do you have a specialization within that kind of
17 field?

18 A: It is -- I mean it defines -- I call it G2 eyewitness
19 memory, and the specialization is in children, child
20 eyewitness testimony involving typically about events and
21 then also child and adult eyewitness identifications.

22 Q: And do you have any degrees from universities or
23 anything of that sort?

24 A: I do.

25 Q: What are those?

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1 A: So I have a PhD from Florida State University in
2 psychology. I have a master's degree in psychology and then
3 also a bachelor's degree.

4 Q: And did you have any concentrations in the PhD?

5 A: And my -- my concentration is in psychology and law.

6 Q: Okay.

7 A: And specific to eyewitness memory.

8 Q: Have you been published before?

9 A: Yes.

10 Q: Approximately how many times?

11 A: More than 10.

12 Q: Okay.

13 A: Or somewhere around there probably.

14 Q: And have you been qualified to testify in this state?

15 A: I have.

16 Q: Okay. And overall, how many times have you been
17 qualified to testify as an expert?

18 A: More than 20.

19 Q: Okay.

20 A: Somewhere between 20 and 30 I'm guessing.

21 Q: Okay. State and federal court or just state court or
22 --

23 A: State and federal.

24 Q: Okay. And did you review some information in
25 connection with a case entitled State versus James Heyward?

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1 A: I did.

2 Q: And what types of things did you review?

3 A: The police reports, the -- the videotape that was shown
4 here, and the prior part of the video where the interview
5 was conducted, the forensic interview, and -- let's see --
6 the 9-1-1 call audio from that, transcript of the -- the
7 interview that was shown here today. I'm trying to think
8 what else. Oh, notes by the victim advocate also.

9 Q: Okay. So pretty much anything to do with what the
10 child -- or the identification that the child gave and the
11 description of the suspect?

12 A: I believe so.

13 Q: Okay.

14 A: You know, everything that I had access to, and I
15 believe that was all the discovery. When we -- when we
16 talked, that was my request is all of the discovery relating
17 to the child's statements, and it sounds like that's what I
18 got.

19 Q: And in your experience, tell us a little bit about how
20 you create a fair lineup, if you will?

21 A: Well, it's -- it's -- I -- let me clarify the question
22 a little bit.

23 Q: All right.

24 A: In the sense that it's not my experience. It is based
25 on research. So we have 40+ years of research on the

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1 subject on eyewitness memory and eyewitness identifications,
2 and so we have a lot of information that tells us what are
3 the best practices for how to not only create a lineup, but
4 also conduct the lineup, administer the lineup. Not all of
5 it is specific to children. Some of it is adults, but then
6 we also have quite a bit of research on interviewing and
7 interacting with children that applies to this.

8 Q: And by virtue of you being retained on this case and
9 your professional qualifications, to include your degrees,
10 have you reviewed research, again, in the way that best
11 practices can be developed and utilized?

12 A: Exactly. Yes.

13 Q: And in this case, did you review the practices employed
14 by the Sheriff's Department and by the government at large
15 in creating the lineup?

16 A: I did. And so what we would want -- we would want a
17 lineup to have at least six members in the lineup, six
18 people or photos, however it's conducted. It should have
19 only one suspect. Both of those things were done in this
20 case.

21 The -- the way the lineup should be created -- so we're
22 looking at how the foils or fillers are put in the lineup --
23 is everybody should match the description that the
24 eyewitness provides. So assuming that the suspect matches
25 the description. So if the suspect matches the description,

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1 then other people should too. If the suspect is different
2 than the description provided, then everybody should match
3 the suspect on key characteristics. And that is how people
4 should be selected.

5 But -- can you get me a little water?

6 Q: Oh, yes. I'm sorry.

7 A: Thank you. And so when the -- thank you.

8 So everybody in the lineup needs to meet those basic
9 characteristics. We're not trying to create a lineup where
10 people look alike. You know, obviously, there is a lot of
11 writing when the description is as minimal as black male.
12 So you want to get that to be closer. So similar age to the
13 suspect, those kinds of things should be -- it should be set
14 up that way.

15 If the suspect, for example, has a tattoo that's
16 visible, that should be either edited so that it's not on
17 the suspect or shown to be on all of the individuals. So
18 those kinds of things should be done to create the lineup.

19 Q: Is it fair to say that creating a lineup is a very
20 detailed-oriented process?

21 A: It is.

22 Q: Something that on its face may not appear to be
23 influential or suggestive, but it could be?

24 A: Yes. And so I -- well, I could look at a lineup and
25 potentially see some of the issues with the lineup.

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1 What you want to do is then show the lineup to a group
2 of mock participants and look at the fairness of the lineup.
3 So the practice that should be done and is recommended is
4 that we then show the lineup to a group of participants that
5 obviously have not witnessed the crime, and ask them to pick
6 out the suspect.

7 If the suspect is being picked out -- picked out more
8 often than chance, we know the lineup is biased. So if the
9 suspect in some way stands out in the lineup and is being
10 picked out by these people that have no knowledge of who the
11 suspect is, that could be a problem. That indicates that
12 the lineup is not -- not fair and is biased towards them.

13 Q: And then, again, consistent with the research and your
14 understanding of how things work, that's the best way to
15 evaluate the fairness of a lineup?

16 A: Exactly. Because if I'm looking at it, I'm going to be
17 using my own judgment and things like that, and that might
18 not be an accurate representation of the true fairness of
19 the lineup.

20 Q: I'm approaching with what's been identified or marked
21 for identification purposes only as State's 30. It is a
22 two-page exhibit, one with the writings that commonly go
23 with a photo lineup. The other is the actual photo lineup.
24 Would you please review that? Is that photo lineup
25 something that you reviewed in connection with this case?

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1 A: I did.

2 Q: And did you evaluate the fairness of that lineup
3 consistent with the methods that you just told us about?

4 A: I did.

5 Q: Okay. What were the results of your evaluation?

6 A: So I showed the lineup to a group of mock witnesses.
7 So people obviously that had no connection to this case.
8 And very briefly described what the crime was and asked them
9 to pick out who the police suspect was or who they thought
10 it was. They had to pick one person and only one person.

11 If this is a fair lineup, like I said, then people
12 should be selected -- all faces -- all six faces should be
13 selected at a rate of about 17 percent, meaning equal
14 distribution across all of those photos.

15 Q: Essentially selection by choice -- by chance?

16 A: Exactly. So if it's a fair lineup, people are randomly
17 selecting because they weren't -- they didn't witness the
18 crime.

19 It's -- I guess another way to think about this is a
20 multiple-choice test. If you're administering a multiple-
21 choice test to somebody that has no knowledge of the
22 subject, if all of the answers are good foils and are good
23 choices or something with no knowledge, then they should be
24 randomly picking those because they don't know the subject.
25 So if you want it to be a good test, a good measure of the

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1 person's knowledge.

2 Q: And to be sure, there can be slight deviations in the
3 response -- the responses selected? Say, in this case it's
4 one out of six. So about 17 percent; correct?

5 A: Right. And so you would actually do a statistical test
6 to make sure that it is significantly different.

7 Q: Okay. So there could be, again, slight variations, but
8 when we're seeing very large variations, we know there's
9 something wrong; correct?

10 A: Right.

11 Q: In evaluating the lineup and asking the sample, the
12 number of people that reviewed the lineup, what were the
13 results of your evaluation?

14 A: So 37 percent of people picked Number 3, the defendant.

15 Q: Uh-huh.

16 A: And again, these are people that have no knowledge of
17 who the identity of the perpetrator is.

18 Q: And --

19 A: So it's about twice as often overall, twice as often as
20 you would expect to find from chance.

21 Q: And to be sure, these subjects came from the state of
22 California?

23 A: Actually. They're -- it's Internet selection. So
24 they're all across the country.

25 Q: Okay. With regard to the administration of the lineup,

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1 are you also familiar with best practices for administering
2 a lineup?

3 A: I am.

4 Q: And did you review the practices of Sheriff -- of --
5 excuse me -- Deputy Clarke or Inv. Clarke -- I'm not sure
6 which -- what the rank is right now and at the time of the
7 lineup. Did you review his practices?

8 A: I did.

9 Q: And what issues did you find with that?

10 A: Well, I -- I talked about the lineup fairness. So
11 that's an initial problem that would increase the risk of
12 the defendant being picked by chance alone.

13 But then one of the things that you want to do in
14 administering a lineup is you want to have a blind or
15 double-blind administrator, meaning you want the person
16 administering the lineup to be unaware of the identity of
17 the suspect because then that prevents the person from
18 purposely or inadvertently influencing the witness in any
19 way. And those could be very subtle things that we may or
20 may not be able to pick up on, but people -- in certain
21 circumstances, it's very clear that just having a non-blind
22 administration increases false identifications.

23 Q: And when you're interviewing and dealing with children
24 as an investigator and somebody in authority, are there
25 certain techniques that you want to use so as not to suggest

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1 things that you shouldn't?

2 A: Yes. So we have a whole lot of research on eyewitness
3 identification and on child witnesses, and we know what the
4 best practices are for getting accurate reports from
5 children. We know that in response to leading questions, in
6 an absence of suggestion or absence of motivation to deceive
7 that children can be very accurate witnesses and -- but
8 their memories -- children's memories can be weaker than
9 adult memories and so they are more vulnerable to suggestion
10 and what the interviewer does than are adults. Now, adults
11 are suggestible too, but children are much more so.

12 So we have to be particularly careful in how we
13 question children. If you just start asking closed-ended
14 questions -- so great examples were used today when asked --
15 when questioning Gwyn up here. There were -- this is what
16 happened; right? So these are very leading questions.

17 So you're suggesting an answer to her when she's
18 questioned or you're asking yes/no questions. When the
19 child is asked is that the person who committed the crime, a
20 yes/no question, accuracy goes significantly down for
21 children and increases their vulnerability to suggestion and
22 false -- false information.

23 THE COURT: Mr. Krzyston?

24 Q: In reviewing the questions that --

25 THE COURT: Mr. Krzyston? Mr. Krzyston, I have to go

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1 sign that one document.

2 MR. KRZYSTON: Certainly, Judge.

3 THE COURT: Do you mind if I step out just a few
4 minutes?

5 MR. KRZYSTON: Certainly.

6 THE COURT: It will take me about five minutes.

7 MR. KRZYSTON: Certainly, Judge.

8 THE COURT: All right. Thank you. You may step down,
9 ma'am. Thank you.

10 (WHEREUPON, there was a break in the proceedings from
11 5:12 p.m. until 5:17 p.m., after which the proceedings
12 resumed as follows.)

13 THE COURT: Please remain seated. Thank you. Thank
14 you very much, Mr. Krzyston.

15 MR. KRZYSTON: Any time, Judge.

16 THE COURT: Yes, sir.

17 (WHEREUPON, the witness returned to the witness stand.)

18 MR. KRZYSTON: Can we get the court reporter to read
19 back the last line, what I said, so I know where to start.

20 THE COURT REPORTER: I can't read back. It was on the
21 record. A voice writer cannot read back.

22 MR. KRZYSTON: Oh. That's fine.

23 THE COURT REPORTER: I can give you an idea what you
24 said. You were talking about techniques that she did. You
25 talked about nonblind tests.

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1 MR. KRZYSTON: Okay.

2 BY MR. KRZYSTON:

3 Q: You're familiar with the best practice for issuing a
4 lineup; correct?

5 A: I am.

6 Q: And did you review -- you reviewed the actual lineup as
7 it was conducted and what issues did you see with that
8 lineup as it was administered?

9 A: We talked about the creation of the lineup and as used
10 there and, again, these best practices are designed so that
11 a lineup is reliable, that it results in a fair lineup that
12 they actually indicate -- or are actually a test of the
13 person's memory.

14 So we use the research in that way. That's what we're
15 looking at by when I say best practices.

16 Q: Okay.

17 A: So with adults and especially with children, where
18 we've already talked about that children have weaker
19 memories than adults do, it's especially important to set up
20 the ground rules for how you conduct a lineup. So before
21 you show the lineup, the officer should make it very clear
22 that the person may or may not be in the lineup. The reason
23 to do this is it shifts the person's criteria to where they
24 realize that the task is only to pick somebody if they are
25 certain that they are the person that committed the crime.

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1 Q: Was that done in this case?

2 A: And it was not done.

3 Q: Okay.

4 A: And actually, there's -- the language that was used
5 suggested that the person was in the lineup, and I believe
6 Officer Clarke continued to kind of say that he believed the
7 task was for Gwyn to pick out the bad person that hurt her
8 grandmother, not to test her memory for whether or not this
9 is the right person.

10 And so setting up the task as you are supposed to pick
11 somebody shifts the criteria to the child or an adult to
12 selecting somebody. So what the person is likely to do is
13 look at the lineup and pick the person that looks the most
14 like the person that committed the crime. That is very
15 different than a person that committed the crime and only
16 picking somebody if you are sure that that person committed
17 the crime.

18 Q: And in this matter, again, you reviewed the lineup as
19 it was conducted, specifically with regard to the
20 instructions to the child, and what language is problematic
21 I mean?

22 A: Well, again, let me also say even subtler things than.
23 -- so you should say may or may not be present. You don't
24 want to say things like take your time or you need to be
25 really careful or look really carefully, that kind of thing.

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1 Again, even with adults, tests show it increases the risk of
2 false identifications.

3 So in this case, the language that was used was I'm
4 going to show you some pictures. Okay? And in the
5 pictures, when I show them to you, I want you to help me and
6 see if you can see the bad man that did -- that did this to
7 your grandmom. It's very important, honey. You have been
8 so brave. I need you to be brave for me one more time.

9 The way that this is set up, this I want you to help
10 me, first of all, is putting pressure on the child.
11 Secondly, and see if you can see the bad man that did this
12 to your grandmom. There's no indication that the child
13 could not make a choice. The way that this is presented to
14 the child is that her task is to look at the lineup and pick
15 the person that she believes did this crime. That that
16 person is there.

17 One of the reasons that this is particularly
18 problematic for children is that children already are more
19 likely to defer to authority than are adults. They are
20 likely to think that adults and authority members,
21 especially a police officer, have information that they
22 don't have, and sometimes they're right about that. Right?

23 We -- we kind of teach children that adults have more
24 information than they do. So it wouldn't be surprising for
25 a child to defer to the officer and especially if the

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1 officer is saying I need you to be brave, I need your help,
2 I need you to do these things, and the child has experienced
3 something traumatic and is very motivated to make an
4 identification, not only to protect herself, but because her
5 grandmother has been killed.

6 Q: And to be sure, I mean coming from a delayed person as
7 it concerns identification, if you will, it's relatively
8 nascent. Just it's nothing he did intentionally?

9 A: Right. Right.

10 Q: Okay. But nonetheless, it affects the quality and the
11 reliability of the alleged identification?

12 A: Yeah. We have years and years of research that show
13 that this is very problematic. And like I said, it's
14 problematic for adults and it's even more problematic for
15 children.

16 Q: And in terms of, you know, conducting these
17 identifications and speaking to the child, can feedback to
18 and from the child about what she's done affect things?

19 A: Yes. And again, adults are vulnerable to this too.
20 When -- when we are provided with feedback on our
21 identification, our confidence goes up. After a person has
22 made an identification, the accuracy of that identification
23 can't change. It's either right or wrong and we don't know,
24 but confidence is very valuable. It can change
25 substantially. If we get positive feedback that we're doing

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1 the right thing, that we made an accurate selection or that
2 we're being helpful, then our confidence increases.

3 Q: In terms of factors -- okay. So we talked a little bit
4 about how you create a lineup, how you create a fair lineup,
5 how you administer a lineup, how you administer it fairly,
6 how you provide appropriate feedback and not. Are there
7 factors that are organic to the actual situation that can
8 affect the reliability of an alleged identification?

9 A: Well, I think you're going back to kind of the encoding
10 phase, the initial phase where the event is happening and
11 the person has the opportunity to view the -- the
12 perpetrator. And certainly, the longer time that we see
13 people, for the most part, the better we are able to
14 identify them or recognize them in the future.

15 This research that I'm talking about is with stranger
16 identification. We're not talking about identifying your
17 brother or somebody you know well. So with more time, we
18 tend to get better at identifications. So amount of time,
19 the duration of the event, and what you're doing during that
20 event. Are you distracted or are you able to see the
21 person? Are you concerned for your safety? What is going
22 on there in that respect can play a role.

23 People who are highly stressed during an event tend to
24 be less accurate and more likely to make a false
25 identification. So really high levels of stress, stress

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1 that's related to physical safety, that tends to affect
2 where our focus is and so we're focused on our bodily safety
3 and what to do to prevent harm versus on the person. So
4 stress as a whole has been shown to decrease the ability of
5 somebody to recall a face.

6 Q: And it's your understanding that being kidnapped,
7 witnessing the murder of your great-grandmother, being tied
8 up, being put into a closet is a stressful event?

9 A: Of course. Hugely stressful.

10 Q: Does it matter in a scenario where a weapon is present?
11 Does that affect the reliability in conjunction with the
12 other factors you just talked about?

13 A: So weapons, more stress tends to also reduce eyewitness
14 identification accuracy with -- where -- whereas a person --
15 we call it -- in research, we call it weapon focus where the
16 person is more likely -- the eyewitness is more likely to
17 look at and focus on the weapon versus the face. And we
18 have different theories on why this is true, but it produces
19 higher witness identification inaccuracy. That is a clear
20 finding of our research.

21 Q: Basically, building off the personal safety aspect,
22 when there's a weapon that's offensively used against you?

23 A: That is thought to be. There is some other theories
24 out there, but that's thought to be the most predominant
25 reason. It also is kind of an unusual thing that somebody

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1 might maybe not expect to see and so we just distract from
2 what's going on.

3 Q: Now, the degree of attention that one is able to pay to
4 the subject, how does that affect one's opportunity to view?
5 I mean --

6 A: Well, we have to be attending to something to -- or
7 someone to recall them in the future. If somebody is
8 present and we -- somebody is present in this room and we
9 never looked at them or tended to them, we're not going to
10 recall them in the future. So you have to be attentive to
11 that individual.

12 Q: Again, you've reviewed the lineup that Officer Clarke
13 or Deputy or Inv. Clarke conducted. In your opinion, did
14 the child make a selection?

15 A: Well, that's the biggest problem with this -- with this
16 lineup is we have no idea what the child was -- was saying,
17 but the language used does not indicate a selection. She is
18 saying that that -- that Number 3 looks kind of like him.
19 The initial statement she makes before -- before she is
20 provided any feedback.

21 So it's been established that her role is to pick
22 somebody and it's kind of the instructions and then what she
23 says is Number 3 looks kind of like him. This is not what
24 would be an open-ended question by Officer Clarke to clarify
25 what does she mean by that. Is she saying that Number 3 is

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1 the person that committed this crime or could be the person
2 that committed this crime or just maybe looks similar to
3 them? But -- and then she says -- in future things she says
4 -- it's along the lines of you should look for somebody that
5 looks like him because not exactly like him, but somebody
6 that looks like him.

7 There is no time in this statement where it is clear
8 that she is identifying Number 3 as the -- as the
9 perpetrator of this crime, and that's not clarified.

10 Further, it's all done by leading questions about
11 confidence and very confusing questions. Referring to the
12 transcript, Gwyn says, because I couldn't really remember if
13 he had facial hair or not, and then Officer Clarke says,
14 okay, and you're pretty confident about that? Is he
15 referring to pretty confident that Number 3 looked kind of
16 like him, which she said earlier? Is she -- is he referring
17 to because I couldn't really remember if he had facial hair
18 or not? It's a confusing question in and of itself and it's
19 kind of for an adult and it's going to be even more
20 confusing for a child.

21 And a response, which Gwyn does respond yes, is
22 unattributable on what she was referring to or meant at that
23 time. And then Officer Clarke says, very good. So he
24 continues to kind of provide positive feedback and tells her
25 to circle Number 3.

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1 MS. CAMPBELL: Your Honor, may we have a copy of this
2 transcript? We've never been provided it and I don't know
3 where she got it from, but if we could help -- it might
4 expedite things if we could follow along.

5 MR. KRZYSTON: It's just a transcript that we created
6 from watching the video. Our clerks created it. If she
7 would like her own copy, we can give her copies. It's
8 something we created so we could talk knowledgeably about
9 what's going on and what was said in the video.

10 THE COURT: Well, she may have a copy. Do you have a
11 copy to -- if the opposing party has a copy to any item
12 anyone takes to the stand, I think, prior to cross-
13 examination. So, Madam Clerk, will you make a copy, please?

14 MR. KRZYSTON: We'd also hand the Court a copy, Judge,
15 if you'd like, whatever would be more expedient.

16 THE COURT: Whichever would be most efficient.

17 (WHEREUPON, there was a pause in the proceedings, after
18 which the proceedings resumed as follows.)

19 MR. KRZYSTON: Judge, we'll just give her ours. We've
20 got some.

21 THE COURT: Well, if that's most efficient, thank you,
22 Mr. Krzyston. Thank you.

23 MR. KRZYSTON: Sorry about that.

24 BY MR. KRZYSTON:

25 Q: Where were we?

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1 A: I was discussing that -- that it's unclear from the
2 transcript and from the video whether or not Gwyn is making
3 an identification because she is for sure saying that Number
4 3 looks like the person -- looks similar to the person that
5 committed the crime. How similar and what that means is
6 completely unclear based on the questions and the response
7 to the questions.

8 Q: Before we go any further, to be clear, you watched both
9 the video identification and are referencing the lineup --
10 excuse me -- the, quote/unquote, transcript --

11 A: Right.

12 Q: -- just for reference purposes?

13 A: Just for reference of the transcript.

14 Q: The problems that you've highlighted with the language
15 and with what Gwyn has already said, can those be fixed by
16 going back and asking her at a later date? Could we just
17 bring her in here like we did and kind of get down to the
18 nitty-gritty of it?

19 A: No. The problem with memory is that it's really
20 constructive. It's -- what's a better way to say this? It
21 doesn't work like a video camera. We can't just go back and
22 play her memory for that event. It is affected by all the
23 events that have happened and intervening events at that
24 time. It's also affected by her mission she has about
25 whether or not Number 3 is the defendant, whether this is

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1 cool with the child, whether the officer said that she was
2 very helpful multiple times or that she's doing a good job.
3 That feedback is all going to influence future testimony of
4 the things that she says. Further, it's very unlikely that
5 Gwyn will be able to recall what she was saying at that time
6 and what she meant.

7 It will also now show her a picture of the defendant.
8 She's already viewed the lineup. If she then sees the
9 lineup again, he's going to look familiar because she's seen
10 it previously; but it would be difficult to determine the
11 source of that memory, whether she's identifying that face
12 as seen before because she saw this person at the time of
13 the crime or because she saw the face in a lineup.

14 Q: Would asking Gwyn to identify the suspect in court
15 sandwiched by three white lawyers about 30 years old and Ms.
16 Goode, 20s, but of our age, of our exposure, is that unduly
17 suggestible?

18 A: Well, a lineup, even if it was a perfect lineup
19 conducted with matching people, is going to provide
20 unreliable information at this point because she has already
21 seen the defendant's face in another context. So you can't
22 go back and fix that. That memory has already been entered
23 in her brain.

24 Q: Would providing the child with awards and stating that
25 she had done the right thing negatively affect potential

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1 reliability issues?

2 A: It doesn't change the reliability of the,
3 quote/unquote, identification that she's -- it's not clear
4 whether she's making or not here, but it does change her --
5 based on the research, it is likely to change her
6 confidence. So it is likely to inflate her confidence and
7 make her feel like she made the right choice, that she was
8 helpful, that she was very accurate without having any
9 effect whatsoever on accuracy.

10 So that that would really should show the same
11 confidence and accuracy is already pretty small if you don't
12 have feedback, but now that she's been provided feedback
13 saying that as she came up here and said I'm a hundred
14 percent sure that's the person, I wouldn't be surprised that
15 it wouldn't have any impact on -- on her identification
16 accuracy because she's gotten so much feedback that she was
17 helpful, that she was doing the right thing. She appears to
18 be -- and when she's shown the lineup, she appears to be
19 kind of directing things and saying, look, you're going to
20 look like some -- look for somebody that looks similar to
21 this or -- let me get her wording correct.

22 She says it's probably not exactly in talking about his
23 face because it isn't exactly. And instead of asking an
24 open-ended question to get clarification, Officer Clarke is
25 saying, well, that's the whole point, but you feel confident,

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1 that was the man you picked out; right? And again, this is
2 another very confusing question. A yes to that, does she
3 mean that she feels confident that that was the person she
4 picked or that that is the person that committed the crime?

5 It doesn't -- and when you look at developmentally,
6 first of all, a child's ability to understand that complex
7 sentence is going to be limited, but I can't understand it.
8 I can't interpret what that -- what the question actually
9 was. Therefore, we don't have this information on whether
10 or not she's making an identification.

11 MR. KRZYSTON: Court's indulgence, Judge?

12 THE COURT: Yes, sir.

13 MR. KRZYSTON: Nothing further, Judge.

14 THE COURT: Thank you. Thank you, Mr. Krzyston.
15 Solicitor?

16 MS. CAMPBELL: Yes, sir.

17 CROSS-EXAMINATION

18 BY MS. CAMPBELL:

19 Q: Ms. Buck, where are you from?

20 A: Tennessee.

21 Q: And is that where you live now?

22 A: No. I live in San Diego.

23 Q: So when was the last time you lived in Tennessee?

24 A: In -- about -- was it 10 years ago? About 10 years
25 ago.

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- 1 Q: And then after you lived in Tennessee, you moved to
2 where?
- 3 A: To Salt Lake City, Utah.
- 4 Q: And you actually had a job there; right? A job as a
5 professor?
- 6 A: Yes. I was a professor then.
- 7 Q: And you were a professor until 2014?
- 8 A: Yes.
- 9 Q: And according to the CV I got from you, I guess after
10 2014 is when you moved to California?
- 11 A: I did. Yes.
- 12 Q: Do you know Dawn McQuiston?
- 13 A: I don't.
- 14 Q: As an expert in this area of identification, you don't
15 know her?
- 16 A: I do not personally, no.
- 17 Q: You haven't read any of her papers she's published? I
18 mean she talks about a lot of the same stuff you do and she
19 lives right up the road in Spartanburg. You don't know her?
- 20 A: I don't.
- 21 Q: And then I believe in 2006 -- and I don't think you
22 qualified as an expert, but you've been qualified before I
23 believe?
- 24 A: I'm sorry?
- 25 Q: You said you've been qualified before?

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1 A: I have, yes.

2 Q: And you said somewhere between 10 and 20 times?

3 A: Twenty and 30 times.

4 Q: Twenty to 30 times? I'm sorry. And those have been in
5 different states?

6 A: They have.

7 Q: And when you testified in those cases, how often do you
8 testify for the defense?

9 A: Besides divorce cases, they've all -- I've always been
10 contacted by the defense.

11 Q: In fact, back in 2014, you actually wrote a paper on
12 why the court system needs an expert like you. "How Common
13 is Common Knowledge about Child Witnesses among Legal
14 Professionals: Comparing Interviewers, Public Defenders,
15 Forensic Psychologists, and Laypeople." You remember that
16 one?

17 A: Yes. So it was looking at what do people know about
18 this recent thing and how familiar people are with it and
19 how to -- certainly, while I haven't testified for the
20 prosecution, I could, but I think that the standards are
21 different and discovery standards and I haven't been
22 contacted. So -- but I certainly would.

23 Q: Oh, I'm not speaking would. If you got paid, like you
24 get paid here today?

25 A: I am getting paid like everybody else that works in

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1 this courtroom.

2 Q: How much an hour do you make? And I'll tell you how
3 much an hour I make.

4 A: 250 an hour.

5 Q: All right. And does that include preparation?

6 MR. KRZYSTON: How is this relevant to the reliability
7 and the factors laid out in Neil v. Biggers?

8 MS. CAMPBELL: It goes to her credibility.

9 THE COURT: Well, it goes to her -- exactly. It goes
10 to the doctor's credibility. Not bias, her credibility. So
11 you may ask, but you don't have to stay in the bank too
12 long.

13 MS. CAMPBELL: I won't.

14 THE COURT: Thank you.

15 MS. CAMPBELL: Thank you.

16 BY MS. CAMPBELL:

17 Q: How many hours of preparation did you work on this
18 case?

19 A: I'm guessing around 20, but I don't know right offhand.

20 Q: Have you done any billings so far?

21 A: I have not.

22 Q: So so far, you've put in 20 hours. Does that include
23 your flying time here?

24 A: It does not.

25 Q: It does not?

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1 A: I mean I'm just estimating. I don't know. I haven't'
2 billed; so I don't -- I don't have those exact numbers.

3 Q: So you don't know, but it's at least -- you're guessing
4 20 before you left California?

5 A: That's my guess.

6 Q: And then since you've been here and your travel back?
7 That's fair. It's your time; right? You're an expert.

8 A: I charge halftime..

9 Q: And you charge halftime for testimony?

10 A: No. For travel.

11 Q: All right. How much do you charge for testimony?

12 A: The same, 250.

13 Q: And I notice in your CV that you give presentations
14 occasionally?

15 A: I do.

16 Q: And just taking the top six back this last winter, you
17 spoke to the National Association of Public Defense; is that
18 correct?

19 A: Correct.

20 Q: And basically, you were telling them about the risk of
21 false identification?

22 A: Correct.

23 Q: And then right before that, you spoke to the National
24 Defender Investigator Association in San Diego? "Evaluating
25 the Risk of False Allegations of Child Abuse?" Is that

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1 correct?

2 A: Correct.

3 Q: And then right before that, you spoke to the San Diego
4 Defense Bar Association, again about the same eyewitness
5 identification?

6 A: (No verbal response.)

7 Q: And then right before that, you spoke to the Utah
8 Federal Public Defender Seminar. Then the Association of
9 Criminal Defense Lawyers, the Colorado Public Defenders
10 Sexual Offense Workshop. So you cater to the defense bar?

11 A: I don't think so. So those are --

12 Q: Those are the only people you speak to at least?

13 A: No. So those are invited presentations that -- where
14 people up front contacted me. If you look at the prior page
15 and the -- I mean something like 70 presentations,
16 Conference Keepers, those are research presentations. So
17 yes, I have presented a handful of times and those have been
18 and that's who has invited me is public defense.

19 Q: Well, let me stop you there. This is your CV. You
20 prepared it; right?

21 A: Correct.

22 Q: And then all these on this first page and the ones I've
23 got highlighted on this page are all to the public defender
24 or defense attorneys?

25 A: So the one on that page --

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1 Q: Uh-huh,

2 A: So --

3 Q: And the rest of these are at Weber State; right?

4 A: So one is a victim advocate that -- it was a victim
5 advocate workshop. Several college presentations. One was
6 for women's studies. One was for the psychology department.
7 One was for Honor Society. But what I'm --

8 Q: Uh-huh.

9 A: -- referring to the majority of my presentations are
10 starting on page 2 and go on to page 5.

11 Q: And that's your papers?

12 A: Those are presentations and those are research
13 presentations that are not specific -- those are specific to
14 researchers and they are peer-reviewed. They're presented
15 to a group of people, other professionals that are doing
16 things like I'm doing, and they are to present -- you have
17 to have basically the research qualified by other people
18 that are experts in this field. So you're having other
19 people peer-review and evaluate whether the research is --

20 Q: Okay. And you agree --

21 A: -- of value.

22 Q: But you agree with me though that those most recent
23 papers were in 2012 or earlier, and they were on things like
24 sex and cheating behaviors and your criticism of the death
25 penalty?

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1 A: That was one of them. Two of them.

2 Q: So it's been a while since you published?

3 A: I think that the interpretation is on the criticism of
4 the death penalty is incorrect.

5 Q: When were you contacted by the defense?

6 A: Sometime this year I believe I was contacted by the
7 defense.

8 Q: Could you --

9 A: I could. I don't have my file.

10 Q: You don't have your file with you?

11 A: I don't.

12 Q: You come to court to testify on eyewitness
13 identification and you don't have your file with you?

14 A: My file on when I was contacted?

15 Q: Your file on this case.

16 A: What file are you referring to?

17 Q: Are we going to play games about what I'm talking
18 about? Your file, including when you were contacted, what
19 you've reviewed, what your decisions are, your testing, and
20 your report. I haven't received your report. Where is it?

21 A: I don't have a file, a paper file, for this case. I
22 have materials on my computer, but I don't have a paper file
23 for this case.

24 Q: You've testified you said between 20 and 30 times, and
25 you never take your file with you?

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1 A: In this case, I have information on my computer.

2 Q: What do you have with you today of which you are
3 relying upon?

4 A: The --

5 Q: I've heard reference to a transcript.

6 A: Right. My vitae, the transcript, notes that I've taken
7 from the testimony, a report that I did, various notes on
8 research articles that I -- I jotted down, those kinds of
9 things.

10 Q: There's a report in this case?

11 A: Yes.

12 Q: Did you give it to the defense?

13 A: I did.

14 MS. CAMPBELL: Your Honor, we've never received a
15 report. We have filed a reciprocal reply. We've received
16 nothing in this case.

17 THE COURT: Mr. Krzyston?

18 MR. KRZYSTON: Judge, we don't know that we intend to
19 introduce the report as evidence in our case in chief and,
20 subject to reciprocal Rule 5, that's all we're required to
21 do. As soon as we decide that we're going to do that, we'll
22 be happy to turn it over to Ms. Campbell. She knows the
23 rule.

24 THE COURT: Well, let me read the rule.

25 (WHEREUPON, there was a pause in the proceedings, after

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1 which the proceedings resumed as follows.)

2 MS. CAMPBELL: Your Honor, under 705, as well as
3 reciprocal reply.

4 THE COURT: Excuse me?

5 MS. CAMPBELL: Under 705, as well as reciprocal reply.

6 THE COURT: I can't turn the pages on this book. I
7 want it sent to my book. Just give me a minute.

8 MS. CAMPBELL: Yes, sir.

9 (WHEREUPON, there was a pause in the proceedings, after
10 which the proceedings resumed as follows.)

11 THE COURT: All right. As to Rule 5, perhaps we're
12 talking about 5(b) disclosure of evidence by the defendant,
13 (1)(B) reports of examination or tests.

14 To kind of cut to the chase, there at the end it talks
15 about such examinations or tests which the defendant intends
16 to introduce as evidence in chief at the trial or which were
17 prepared by a witness whom the defendant intends to call at
18 trial when the results or report relate to his testimony.

19 I mean you're telling me, Mr. Krzyston, you do not
20 intend to call Dr. Buck as a witness at trial?

21 MR. KRZYSTON: Judge, before this, we don't know what
22 we intend to call. I mean we haven't seen their case. We
23 don't know what witnesses they intend to introduce in their
24 case in chief. Our case in chief is necessarily reflected
25 upon what they enter into evidence.

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1 So until such time as we can make that decision
2 competently, I would be perhaps breaching the duty -- excuse
3 me -- the duties owed to Mr. Heyward to just turn her stuff
4 over.

5 THE COURT: Then when I go to Rule 705, the expert may
6 testify -- it doesn't talk about case in chief, it doesn't
7 talk about at trial -- in terms of opinion or inference and
8 give reasons thereof without first testifying to the
9 underlying facts or data unless the Court requires
10 otherwise. The expert may, in any event, be required to
11 disclose the underlying facts or data on cross-examination.

12 I'm ordering this witness to disclose the underlying
13 facts or data during this cross-examination, if such exist.

14 MR. KRZYSTON: I'm sorry. I didn't hear the last part.

15 THE COURT: I'm ordering this witness to disclose the
16 underlying facts or data during this cross-examination,
17 whatever that may be.

18 MR. KRZYSTON: Certainly, Judge.

19 THE COURT: If she -- if she doesn't have facts or data
20 -- and I'm not -- I'm not saying she does. I can't remember
21 the name of the case. It's State v. Terry as a last name or
22 State v. Poole and his first name was Terry, but I'm
23 certainly not requiring her to prepare a report.

24 But if there's data or facts, it needs to be disclosed.
25 And as I say, this rule doesn't talk about evidence at

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1 trial. It just says the expert may testify, and I think
2 that's what she's doing is testifying.

3 MR. KRZYSTON: Certainly, Judge. And that's certainly
4 something that's in the province of your discretion. If you
5 order that we turn over her report, we've got no problem
6 doing that, but we have no affirmative duty beyond that
7 obviously, and that was our simple argument.

8 THE COURT: All I'm saying is I'm reading the rule.
9 Disclose the underlying facts or data.

10 MR. KRZYSTON: And if that's your order, we have no
11 problem with complying with it.

12 THE COURT: Whatever that may be.

13 MR. KRZYSTON: Certainly, Judge.

14 THE COURT: All right. Thank you.

15 MR. KRZYSTON: If she'd like a copy of the report, we
16 can have our clerk prepare that as well.

17 MS. CAMPBELL: I need all of her data, all of her
18 stuff.

19 THE COURT: I think she's entitled to it under -- I
20 think the State is entitled to it under Rule 705. I don't
21 think she's entitled obviously to your attorney work product
22 --

23 MR. KRZYSTON: Correct.

24 THE COURT: -- or the -- the defense strategy or
25 anything such as that, but I think she --

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1 MR. KRZYSTON: Specifically, the report, the --

2 THE COURT: The underlying facts and data.

3 MR. KRZYSTON: The underlying facts and data. So the
4 things that we transmitted to her to review, which would be
5 in discovery, things that they have.

6 THE COURT: Well, now, some of those things -- I mean
7 we don't have to -- we -- that's not limited to you.

8 MR. KRZYSTON: Correct.

9 THE COURT: We is us three right here. We don't have
10 to keep doing that dance. She -- she knows it's the video;
11 right?

12 MR. KRZYSTON: Correct.

13 THE COURT: The video. She knows that she has the
14 photo lineup.

15 MR. KRZYSTON: Correct.

16 THE COURT: The affidavit from the photo lineup.

17 MR. KRZYSTON: Correct.

18 THE COURT: And I think she said there was other police
19 reports.. Just show her what you've got. How long is that
20 going to take?

21 MS. CAMPBELL: Your Honor?

22 THE COURT: Yes?

23 MS. CAMPBELL: She's also testified that she sent out
24 this photo lineup and had it independently tested.

25 THE COURT: Right.

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1 MS. CAMPBELL: So we would ask for that.

2 MR. KRZYSTON: So the data that relates to the testing
3 of the lineup.

4 MS. CAMPBELL: And I believe her notes from what she's
5 observed. And I missed those. Her notes.

6 MR. KRZYSTON: I know that she's certainly a defense
7 agent. She's entitled to create work product that's
8 privileged. I certainly think the data that she compiled in
9 relation to the evaluation of the lineup is disclosable
10 pursuant to 705. I certainly think the report, but let me
11 be clear. The only thing that she has received is discovery
12 and the only thing that she has created is the report and
13 data surrounding the analysis of the actual lineup from
14 discovery. So the only two things that she has, again, are
15 data relating to the analysis of the lineup and this report.

16 THE COURT: What about the doctor's testimony about the
17 Internet-based experiment where 37 percent of the
18 participants picked out Number 3?

19 MR. KRZYSTON: I think you were certainly within your
20 discretion to order disclosure of that, but we are not
21 objecting to that. What we're objecting to is her asking
22 for her privileged notes.

23 THE WITNESS: In my report is -- is the results of the
24 data.

25 MS. CAMPBELL: We would like to see the actual raw

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1 testing and what she sent out.

2 THE COURT: Is there -- is there -- is there such a
3 thing? And I've got in my mind, like, a DNA analyst. DNA
4 analyst sends out a report. DNA analyst has bench notes or
5 what -- whatever they call it.

6 I'm not -- y'all all know that and I'm saying -- I'm
7 not asking her to reveal attorney work product, anything
8 that even sniffs at it, even gets close to it, but there's
9 -- if there's underlying data -- you know, the doctor is an
10 expert of how she selects this group, how she prepares this
11 group for the -- the question of Number 1 through 6, what
12 description she gives or gave of the individual that -- that
13 -- if she gave a description, the details of the
14 description, such as that. That's all. That's all. That's
15 all I'm asking for.

16 MR. KRZYSTON: We have no problems disclosing that. I
17 mean it'll take a moment to get the material together. We
18 probably need to speak to her and allow her the opportunity
19 to get that material together.

20 THE COURT: Do you want to take a few minutes,
21 Solicitor?

22 MS. CAMPBELL: Yes, sir.

23 THE COURT: All right. How long is it going to take
24 you, Doctor?

25 THE WITNESS: I can -- I mean are you wanting the

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1 report or what are we specifically disclosing?

2 THE COURT: Like --

3 THE WITNESS: To prepare right now?

4 THE COURT: How you conducted your test, what notes you
5 took to prepare your test, how you set up the question, the
6 question to be asked of where you found the conclusion that
7 37 percent of the participants in that experiment picked out
8 Number 3.

9 THE WITNESS: Yeah. I think that's addressed in my
10 report.

11 THE COURT: Well, let's -- Solicitor?

12 MS. CAMPBELL: I would like the data she -- I would
13 like what she sent out, the description, things of that
14 nature, and how it was transmitted, all of that information.
15 It had to go out somehow.

16 THE WITNESS: It's on the Internet.

17 MR. KRZYSTON: How about could she look at the report
18 maybe first and then we could kind of go from there and see
19 what she needs?

20 MS. CAMPBELL: It's hard to know what you need when you
21 don't know what's out there. Apparently, nothing.

22 THE COURT: Show her the report, the underlying data.

23 MR. KRZYSTON: Certainly.

24 THE COURT: Redact whatever you think is attorney-
25 client privilege.

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1 MR. KRZYSTON: Thank you, Judge.

2 THE COURT: Or work product. You can seal that. You
3 can have it copied. You can seal it. And if it comes back
4 up, I'll review it later.

5 MR. KRZYSTON: Thank you, Judge.

6 THE COURT: In camera.

7 MR. KRZYSTON: I think --

8 THE COURT: I do not want you to reveal any attorney --
9 and I know you won't, Mr. Krzyston. I know how professional
10 you are and competent you are and ethical you are, and I
11 know the serious responsibility that you bear on your and
12 your colleagues' shoulders. So if there's a question of it,
13 redact it.

14 MR. KRZYSTON: Certainly, Judge.

15 THE COURT: And seal it and I'll look at it later. How
16 long -- how long is this going to take, Doctor?

17 MR. KRZYSTON: For the report and the data associated
18 with the analysis of the lineup itself.

19 THE WITNESS: The -- I can pull up on the Internet
20 right now and show the -- the data and how it's -- I believe
21 I could. And then -- but it's in the report. I'll get it.

22 THE COURT: You have the report up there right now?

23 THE WITNESS: I do. I have jotted notes on it, but I
24 think you have a copy of my report; right? I can email it
25 to you.

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1 MR. KRZYSTON: Why don't you email it to me?

2 THE WITNESS: Okay.

3 MR. KRZYSTON: The report itself.

4 THE WITNESS: Yeah.

5 MR. KRZYSTON: Okay.

6 THE WITNESS: Tell me what your email is.

7 THE COURT: Look at it, Ms. Campbell. How long is this

8 going to take you all?

9 MS. CAMPBELL: At the rate we're going, forever.

10 THE COURT: We could've had it by now.

11 MR. KRZYSTON: Just following the rules, sir.

12 MS. CAMPBELL: No, sir.

13 THE COURT: Ma'am?

14 MS. CAMPBELL: Respectfully, Your Honor, I would just

15 note under Rule 5, if you look at that last sentence, it

16 talks about evidence they're going to present in their case

17 in chief and then it says or any reports by a witness, and

18 I'm paraphrasing. It doesn't say that it's going to be

19 offered in the case in chief.

20 MR. KRZYSTON: Or copies --

21 MS. CAMPBELL: It says offered at trial.

22 MR. KRZYSTON: Or copies thereof within the possession

23 or custody -- excuse me -- possession or control of the

24 defendant which the defendant intends to introduce as

25 evidence in chief at the trial.

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1 MS. CAMPBELL: And then it has another or, which you
2 just keep leaving off.

3 MR. KRZYSTON: Again, whom the defendant intends to
4 call at trial.

5 MS. CAMPBELL: That's right. Or which were prepared by
6 a witness whom the defendant intends to call at trial. We
7 are at trial. It doesn't say --

8 MR. KRZYSTON: We are in pretrial.

9 MS. CAMPBELL: -- in your case in chief at trial.

10 MR. KRZYSTON: In pretrial right there. I think we've
11 come full circle on this issue. You could provide your
12 thing and I think we --

13 THE COURT: I think we've come full parallelogram. I
14 don't think we've come full circle. Just get the
15 information, give it to the solicitor. I'm not --

16 MR. KRZYSTON: She needs an email I believe, Judge.

17 THE COURT: Can you email from the witness stand?

18 THE WITNESS: I can't, but my computer is over there.
19 If you want me to --

20 MR. KRZYSTON: Oh, I'm sorry.

21 THE COURT: You can't?

22 THE WITNESS: I can't. I don't have my computer with
23 me up here, but I --

24 THE COURT: I wish I didn't have mine. Take a break.
25 Get that to Ms. Campbell and y'all tell me when you're

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1 ready.

2 MR. KRZYSTON: Thank you.

3 THE COURT: All right. Thank you. Thank you, Doctor.
4 You may step down.

5 (WHEREUPON, there was a break in the proceedings from
6 6:06 p.m. until 6:18 p.m., after which the proceedings
7 resumed as follows.)

8 THE COURT: All right. Solicitor?

9 MS. CAMPBELL: Your Honor, I just had a report. I have
10 been able to review it. In this report, she quotes one --
11 two -- three -- four -- five -- six -- seven -- eight --
12 nine -- more than ten different sources she's relying on
13 that I don't have access to. I would like to go forward at
14 this point.

15 In addition to that, Your Honor, she did -- she said
16 that the results were in here from her experiment. They
17 were not. So we asked her to log that in. If I can
18 approach, this is what's been provided to us, and if you'd
19 like to see the report, I can hand that up too.

20 THE WITNESS: So I believe the results are on page 6.

21 THE COURT: I'm sorry. What did you say, Doctor?

22 THE WITNESS: The results are on page 6 of my report.

23 MS. CAMPBELL: There is a chart on page 6, Your Honor.

24 THE COURT: Say it -- say it again, Solicitor? I'm
25 sorry. I was reading.

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1 MS. CAMPBELL: There is a chart on page 6.

2 THE COURT: All right.

3 MS. CAMPBELL: But I guess I would have thought that
4 perhaps we would know how it was sent out, to whom it was
5 targeted. There were apparently 37 people it was sent to.
6 How those were -- came -- where those people came from, some
7 background on that, and how that decision was made, I
8 haven't been provided with any of that.

9 THE WITNESS: I would be happy to address that if you'd
10 like.

11 THE COURT: Do you have -- Doctor, do you have
12 documents that address that?

13 THE WITNESS: I do not.

14 THE COURT: And when -- and when I say do you have
15 them, do they exist somewhere?

16 THE WITNESS: No.

17 THE COURT: Okay. All right.

18 MS. CAMPBELL: I can go with that.

19 THE COURT: All right. If they don't -- if they don't
20 exist, but she can be questioned about it, of course. All
21 right.

22 MS. CAMPBELL: Okay.

23 THE COURT: Yes, sir. Mr. Krzyston?

24 MR. KRZYSTON: I was just standing in case I needed to
25 respond.

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1 THE COURT: All right. Do you need to?

2 MR. KRZYSTON: I don't think I do.

3 THE COURT: All right.

4 MR. KRZYSTON: If you're satisfied, I think I'm good
5 with that.

6 THE COURT: Thank you. And then we'll press on.
7 Solicitor?

8 MS. CAMPBELL: Thank you, Your Honor.

9 BY MS. CAMPBELL:

10 Q: Okay, Doctor. Let me back up and get back to this.
11 You indicated that you been provided many different
12 documents by the defense, including a copy of the video?

13 A: Yes.

14 Q: The entire ARC video or just the part that led into the
15 identification?

16 A: The -- I saw the entire video.

17 Q: And did you rely on that or did you mainly focus on the
18 part with the identification?

19 A: I reviewed all of it. So I guess relied on it in what
20 way?

21 Q: You tell me in what way you relied on it. Did you rely
22 mostly on the part with the identity that went on for 30 --
23 40 -- 50 minutes?

24 A: I'm taking all of it into consideration.

25 Q: Okay. So you were able to review the entire video?

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1 A: Yes.

2 Q: And you are aware that the ARC people were getting
3 information from the child about what happened? The ARC
4 interviewer?

5 A: The interviewer, yes.

6 Q: Prior to Inv. Clarke arriving?

7 A: Right. I reviewed that.

8 Q: And she was able to give them details?

9 A: Clarify a little bit. What were you asking? They
10 interviewed her and she responded. She answered things
11 about it, yes.

12 Q: Details of what happened to her?

13 A: Yes.

14 Q: Even now she was tied up?

15 A: Yes.

16 Q: How she was able to get the phone?

17 A: Yes.

18 Q: How she was able -- had to hop around because her feet
19 were tied together?

20 A: Correct.

21 Q: She was able to talk about what she saw?

22 A: Yes.

23 Q: And that she was face to face with this man, that he
24 tied her up?

25 A: I can't say for sure exactly the details on whether she

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1 said face to face, but yes, that she was tied up. So I
2 would assume in close contact.

3 Q: That she saw what he did to her grandmother?

4 A: Yes.

5 Q: That he then was face-to-face or at least touching her
6 when he was tying her up?

7 A: Correct.

8 Q: That she was paying attention?

9 A: Yes.

10 Q: That there was a gun present, but he did put it down
11 for a period of time?

12 A: Correct.

13 Q: So the gun was not a threat at that point?

14 A: That is your interpretation, yes.

15 Q: What's yours?

16 A: I don't know.

17 Q: Okay. She, in fact, gave great detail about what had
18 happened to her the day before; right? Or would you not
19 characterize it that way?

20 A: I don't -- I guess I -- the --

21 Q: But that's not what you focused on?

22 A: Well, I think the quantification of what is great
23 detail -- first of all, we don't know what happened; so we
24 don't know the amount of information that was available to
25 -- to report to. So there's really no way for us to kind of

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1 code it as great detail or not. So from a beta standpoint,
2 that's -- you know, she gave detail.

3 Q: We don't know what happened? We know a woman was
4 murdered in her kitchen. Are you disputing that?

5 A: I'm not. I'm disputing that -- I'm saying we don't
6 know what details were available to Gwyn.

7 Q: Really?

8 A: I wasn't there to observe it and witness it.

9 Q: You also got as information -- you got the ARC
10 interview, you got the transcript you relied on, you said --
11 what other items did you get from the defense?

12 A: Police reports.

13 Q: Police reports about what? How many police reports?

14 A: It was one file of a police report.

15 Q: Was it a two-page report? A three-page report? But
16 you don't know because you don't have any file?

17 A: Well, I have it on the computer.

18 Q: Was it a one-page report or a two-page report or a
19 three-page report?

20 A: It was multiple pages.

21 Q: And in that, did you get a copy of all the statements
22 by the witnesses? The neighbors?

23 A: No, I did not.

24 Q: Did you get a statement by the defendant's friends?

25 A: I did not.

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1 Q: Did you get a statement from any other witnesses other
2 than the child in this case?

3 A: That -- there were -- so there was a statement by the
4 victim advocate, officers that interviewed the children. I
5 don't think there was a witness -- another -- well,
6 eyewitnesses.

7 Q: And you would agree with me that one reason that this
8 all -- whole thing is eyewitness identification is exploring
9 it and investigating as you do is because of the chance of
10 misidentification?

11 A: Correct.

12 Q: Especially in cases that hinge on a single
13 identification?

14 A: Or multiple identifications.

15 Q: Well, in your report, you put, for example, the
16 innocence Project has found that eyewitness testimony was
17 present approximately 75 percent of the cases where the
18 defendant was exonerated based on a later evaluation of DNA
19 evidence.

20 A: Correct.

21 Q: Okay. So that eyewitness testimony was incorrect.
22 What about in cases where the DNA testing --

23 A: I'm sorry. I didn't understand your -- your question.

24 Q: The eyewitness testimony was important in those cases?

25 A: It was a factor in those cases, yes.

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1 Q: Well, according to your report, 75 percent were
2 exonerated --

3 A: Correct.

4 Q: -- with DNA evidence?

5 A: Right. So there's -- in those 300+ cases of the
6 Innocence Project, 75 percent of all that involved an
7 eyewitness --

8 Q: And in that --

9 A: -- was wrong.

10 Q: The accuracy of the identification, it's important to
11 look at things like DNA evidence?

12 A: That doesn't affect the accuracy of the identification,
13 the separate evidence.

14 Q: So you would use it to exonerate someone, not to
15 corroborate someone?

16 A: No. Of course, the jury should make that
17 determination. I am not legally determining whether or not
18 the defendant is guilty. I'm not doing the job of the jury.

19 I am providing research for the jury to use, for the
20 judge to use, relating to what we know about the best
21 practices for conducting an eyewitness identification or
22 conducting and administering a lineup so that we know what
23 the lineup actually means. The results of the lineup are
24 meaningful and that we get true identifications that mean
25 something, and the person says that it was not them, and

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1 that means something.

2 Q: Okay. And specifically, in your first paragraph, you
3 say I am not evaluating the credibility of Gwyn?

4 A: Correct.

5 Q: So you aren't saying she's right or wrong?

6 A: I'm not.

7 Q: Okay.

8 A: No, I'm not.

9 Q: Because you don't know?

10 A: Of course not.

11 Q: Okay. Moving on. Did you ever review any of the DNA
12 evidence in this case?

13 A: I did not.

14 Q: Did you review any of the fingerprints of the defendant
15 found within the residence?

16 A: I did not.

17 Q: Did you review any of the defendant's own statements?

18 A: I did not.

19 Q: Did you review any of the neighbors' descriptions of
20 who they saw coming and going to the house that matched the
21 defendant?

22 MR. KRZYSTON: I'm not quite sure how this goes to the
23 ID. It's well beyond that at this point.

24 THE COURT: I'll allow it. You may answer the
25 question, Doctor.

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1 MS. CAMPBELL: And I'll move on.

2 BY MS. CAMPBELL:

3 Q: Did you review that?

4 A: I don't remember what your question was.

5 Q: Did you review any information from the neighbors about
6 who they saw coming or going from the residence?

7 A: I don't think so.

8 Q: Did you review any of the physical evidence at the
9 house?

10 A: No.

11 Q: Did you review any of the -- or see any of the photos
12 or evidence of the clothing found at the defendant's house
13 that corroborates the victim?

14 A: I did not.

15 Q: Did you actually look at the gun or review the
16 description to see if it matched to the gun that was found
17 at the defendant's house?

18 A: I did not. I didn't have that information.

19 Q: Did you review the crime scene photos to see if what
20 Gwyn said in her, in my opinion, detailed report to the ARC
21 was corroborated by what was found at the scene?

22 A: I did not.

23 Q: Did you review any of the items that were found at the
24 defendant's house that matched items from the victim's scene
25 -- from the scene where she was killed?

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1 A: No.

2 Q: Did you review -- you said you reviewed the 9-1-1 call.

3 Did you review both or one? Or do you know?

4 A: By Gwyn. I reviewed the 9-1-1 call made by Gwyn.

5 Q: The one 9-1-1 call by Gwyn? Or do you know?

6 A: I don't recall.

7 Q: So you don't know if there was one or two?

8 A: (No verbal response.)

9 Q: Your Internet study -- I reviewed the data. You sent

10 it out to how many people?

11 A: So I don't have that, what I gave you.

12 Q: So you have your report?

13 A: I have the report. So I think it's --

14 Q: Don't let me -- I'm not good with numbers. So don't

15 rely on me. You've got to rely on your memory.

16 A: I would have to look at the numbers I sent you because

17 I have the percentages, but it's around -- between I believe

18 30 and 50.

19 Q: Between 30 and 50 people?

20 A: Yes.

21 Q: And how are these people picked?

22 A: So it's -- I use a program on the Internet called

23 SurveyMonkey that basically --

24 Q: SurveyMonkey is what you use?

25 A: That's the name, yes.

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1 Q: You use SurveyMonkey and what do you do with
2 SurveyMonkey?

3 A: So SurveyMonkey is used by professors all over the
4 country and researchers all over the country to select
5 people to participate, and those people then are shown the
6 photo lineup and asked who they believe the suspect is.

7 Q: Based on the information that you provided to us?

8 A: Yes.

9 Q: And then your results came in?

10 A: Right.

11 Q: Let me ask you this. Why does Number 3 stand out? Or
12 did some people just like the Number 3?

13 A: I could make conjectures, but the -- the -- you know,
14 you could look at the lineup and suggest reasons why Number
15 3 stands out, but I don't know.

16 Q: Okay. Let me move on then. When you send out your
17 SurveyMonkey, who did it go to? What type of people?

18 A: A variety of people.

19 Q: How do people get to be in SurveyMonkey? Am I in
20 SurveyMonkey?

21 A: If you choose to be, you could be.

22 Q: If I were -- how do I get into SurveyMonkey?

23 A: It's simply people that are being paid to participate
24 in surveys. So --

25 Q: Oh, they're paid to participate in surveys?

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1 A: So if you're getting paid, you wouldn't still be able
2 to randomly pick the defendant. So not matter how much
3 money you're getting paid doesn't change your responses. So
4 when you look at these results from this, certainly as
5 researchers, this has been explored whether these results
6 are valid and representative of people who, say, aren't
7 getting paid to participate.

8 Q: SurveyMonkey wasn't mentioned in your report though.
9 Who -- who -- how many men got the survey?

10 A: I could probably try to find that, but it doesn't --

11 Q: Whoa. It doesn't matter who you send the survey to?

12 A: It doesn't matter. There's no information to say that
13 women or men are going to be more likely to pick out the
14 defendant or that he's going to stand out. So if you look
15 -- I could certainly provide lots of references of this is
16 best practice on how you evaluate the lineup. I'm sure that
17 the police officers that create these lineups are aware of
18 this research, aware that this is best practices. You can
19 collect the participants however you want. That doesn't
20 really matter.

21 Q: So it doesn't matter if it's men, children, young, old,
22 people that like the number three, maybe somebody that likes
23 the number one, somebody that puts down the same number
24 every time, because they're getting paid?

25 A: Well, so if it was -- so that's a great argument that

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1 maybe these results are random. So if the data was random,
2 then you would actually expect to see the defendant be
3 picked at random chance. So this data should actually be
4 biased against the defendant if -- if indeed this is, as you
5 said, people who are randomly picking numbers because we
6 don't have a reason that Number 3 should be liked by more
7 people than not. Otherwise, the officers creating this
8 lineup wouldn't put the defendant at Number 3. Right?

9 Q: You lost me. I know you've got more bias to make it
10 unbiased.

11 A: Okay. So if people are randomly selecting -- you're
12 saying people are randomly selecting.

13 Q: I'm not saying randomly. I'm saying I like the number
14 three. I put the number three down every time. She likes
15 the number 3 too. She puts number three down every time.

16 A: If there's data to support that, then I would argue
17 that the officers administrating and creating this lineup
18 should not put him in at number three. That is what it is.

19 Q: We're up to it now. Okay. I'm going to move on. So
20 you said that -- did you say -- and I couldn't remember if I
21 asked already. I may have. Did you say you had issues with
22 how the lineup was created?

23 A: I'm saying we should be looking at the fairness of the
24 lineup. I don't know how the lineup was created. I was
25 here during Officer Clarke's testimony and he said he didn't

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1 create the lineup. Somebody else did. I don't know how
2 people were selected to be in the lineup.

3 Q: And your thing is is because 37 percent picked him that
4 it's not a fair lineup?

5 A: Based on best practices, procedures that are published
6 everywhere, you know, researchers who do this across the
7 country, they would agree that this is a problem, yes.

8 Q: A smart one; is that right? But 63 percent didn't pick
9 him; right?

10 A: Correct.

11 Q: So the majority, more than just the majority, didn't
12 pick him?

13 A: Correct.

14 Q: And you don't know who these people are, what they do
15 in life, or anything about them?

16 A: I don't. But vision -- there's not a reason why -- we
17 don't have any data to support that males or females are
18 going to be different in randomly selecting somebody.

19 Q: You just don't have that data?

20 A: No. There's no data to support that.

21 Q: Then you talked about your review of the lineup; right?
22 When you -- in this case, we're lucky because we actually
23 have a lineup that was shown by video, don't we?

24 A: My review of how the lineup was administered?

25 Q: Yes.

DR. JULIE BUCK - CROSS BY MS. CAMPBELL

- 1 A: Yes.
- 2 Q: And you're saying it's not clear who she's identified?
- 3 A: It is not clear whether it is an identification of the
- 4 -- of Number 3 as committing the crime or somebody looking
- 5 similar.
- 6 Q: You would agree with me though that for the judge that
- 7 the tape -- you have no reason to think it's not accurate?
- 8 That it's been altered in any way?
- 9 A: Right.
- 10 Q: So it accurately represents the fact?
- 11 A: Yes.
- 12 Q: And at no point does anyone tell her who to pick or
- 13 that she has to pick anyone?
- 14 A: The suggestion is made that her job is to look at the
- 15 lineup and pick the bad guy.
- 16 Q: To see if he's in there. That's a misquote.
- 17 A: I don't know the exact quote right now, but let me scan
- 18 it. I want you to help me and see if you can see the bad
- 19 man that did this to your grandma.
- 20 Q: I want you to help me and see if you can see; is that
- 21 correct?
- 22 A: Correct.
- 23 Q: And you talked earlier about the degree of attention is
- 24 very important when the events occur?
- 25 A: Correct.

DR. JULIE BUCK - CROSS BY MS. CAMPBELL

1 Q: And for the record -- and I haven't had an opportunity
2 to review all these other reports you're talking about, but
3 you don't know whether or not her identification is accurate
4 or not?

5 A: Correct.

6 Q: And you don't know whether all the physical evidence at
7 the scene corroborates what she said because you haven't
8 even looked at it?

9 A: Correct.

10 Q: And you don't even know how much you're getting paid?
11 Is that fair?

12 A: That's correct.

13 Q: And your job, as you said at the beginning, is because
14 you don't go out and check lineups, you just come to court
15 and talk about why there may be a problem?

16 A: Ask that question again?

17 Q: You don't go out and check lineups, do you?

18 A: I do not.

19 Q: You don't participate in law enforcement in any way, do
20 you?

21 A: As far as administering the lineups, no.

22 Q: And your job, what you get paid for and what you make
23 your living, is your only job now, isn't it?

24 A: Yes.

25 Q: Is to come to court and testify on factors?

DR. JULIE BUCK - REDIRECT BY MR. KRZYSTON

1 A: My job is to come and educate the jury and the judge on
2 the science and the research, and it doesn't change. The
3 science and the research doesn't change because I'm getting
4 paid. I was doing this same thing and presenting the same
5 research to college students and educating them. Many of
6 them were law enforcement officers that were going on to get
7 Master's degrees. And so I was educating them on what the
8 research says on the best practices and what is done and
9 what we want to do so that we're doing this -- that our
10 system is fair.

11 Q: Fair? And you get paid by defense attorneys to come to
12 court and testify exclusively?

13 A: I get paid by attorneys. I get paid to do my job, as
14 do you, the judge, the defense attorneys, and the other
15 employees of this court.

16 MS. CAMPBELL: I don't have anything further, Your
17 Honor.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MR. KRZYSTON:

21 Q: In your experience, after the police close a case, do
22 they ever second-guess the identification?

23 A: I don't know what the officers are thinking or doing
24 after the case is closed and how they're going -- going back
25 about that.

1 MR. KRZYSTON: Nothing further, Judge..

2 THE COURT: Recross?

3 MS. CAMPBELL: No, sir.

4 THE COURT: Thank you. Thank you very much, Doctor.
5 Thank you for being with us today and this afternoon. You
6 may step down. Any other witnesses and testimony to be
7 presented by the defense on this?

8 MR. KRZYSTON: That's all on this issue, Judge.

9 THE COURT: Any evidence or testimony in reply?

10 MS. CAMPBELL: No, sir, Your Honor.

11 THE COURT: All right. I'll be glad to hear the
12 arguments in the morning --

13 MR. KRZYSTON: Certainly.

14 THE COURT: -- as to this motion. Are there other
15 motions, Solicitor? Mr. Krzyston?

16 MR. KRZYSTON: Yes, Judge.. I do have an issue with a
17 witness they disclosed Friday night at 7:30. We can
18 certainly take that up in the morning. I don't think
19 there's any danger that we're going to get in front of the
20 jury without us discussing it.

21 MS. CAMPBELL: There's also a statement by the
22 defendant.

23 THE COURT: All right.

24 MS. CAMPBELL: I don't know if you're --

25 MR. KRZYSTON: Oh, yeah, absolutely.

1 And I realize issues come up that weren't issues before
2 you were selected for the jury panel perhaps, but, you know,
3 we don't have -- we don't have control over what may happen
4 and that's why I have alternate jurors. So if you have any
5 childcare issues you need to address this week or -- you
6 know, just let me know and I'll certainly address that as
7 they come about.

8 All right. So with that being said, please remember my
9 instructions. Do not talk with anyone about the case. Do
10 not read, watch, or listen to any news reports, should there
11 be any. Do not do any independent research or any research
12 on the Internet.

13 With that being said, if you'll be back promptly at
14 11:30. Thank you. Thank you very much..

15 (WHEREUPON, the jury exited the courtroom at 9:58 a.m.)

16 THE COURT: All right. All right. Solicitor, I'll be
17 glad to hear from you on the identifications.

18 MS. MCDUFFIE: Your Honor, I know that the standard is
19 that the State has to establish the reliability of the
20 identification procedure by a preponderance of the evidence
21 and only if the lineup is -- or gives rise to a substantial
22 likelihood of suggestiveness or that is unduly suggestive,
23 then the resulting in-court identification would be
24 suppressed at trial.

25 Your Honor, I don't think that there's any evidence in

1 the record that the lineup itself was suggestive in any way.
2 Your Honor, their own expert couldn't point to a single
3 factor that made this lineup suggestive, other than that she
4 put it on the Internet and 37 people, who she could not
5 identify or tell us anything about, picked Number 3, nor
6 could she tell us why they picked Number 3, nor could she
7 point to a single thing in the lineup that would lead them
8 to pick Number 3. Your Honor, she couldn't point to a
9 single factor that was suggestive and, in fact, at one point
10 testified that she did not think that the police
11 intentionally did anything to make the lineup suggestive.

12 Your Honor, we would ask that you allow the lineup and
13 the following in-court identification in to court at trial.
14 We believe that the lineup was not unduly suggestive, nor
15 the procedure that was used when showing the lineup by Inv.
16 Clarke. You've viewed the entire procedure on video. We'd
17 ask that you admit it at trial.

18 THE COURT: Thank you. Thank you, Solicitor. Mr.
19 Krzyston?

20 MR. KRZYSTON: Judge, in order for there to be evidence
21 to admit at trial, I think under these standards, the
22 condition precedent is that there's an identification in the
23 first place and, even when the child took the stand, there
24 wasn't a positive identification of Mr. Heyward. I think if
25 you go on beyond that and look at the testimony that was

1 elicited on direct examination, there is evidence. To say
2 that there isn't any evidence is not accurate. By chance,
3 he should have been selected 17 percent of the time, and
4 he's over 37 percent of the time selected.

5 Looking at that, I mean if you're fat and you eat
6 McDonald's every day, you might -- there might be other
7 causes, but if you look at the one right on its face, again,
8 there is a cause. The cause here we might not be able to
9 point to one particular thing.

10 Perhaps, the cops didn't -- or the police didn't do
11 this intentionally. We don't have to show that they did it
12 intentionally. We just have to show that there is a
13 disparate effect. That he is -- he is presumptively the
14 person that people are picking. We've shown that
15 presumptively these people are selecting him over twice as
16 much as they should be if they're selecting somebody by
17 chance. And again, Judge, we don't concede that this is
18 even an identification in the first place.

19 THE COURT: All right. Would you hand me -- I think
20 it's Exhibit 30.

21 MR. KRZYSTON: Certainly.

22 THE COURT: Is that the lineup and the affidavit,
23 please? I think that's the one.

24 MR. KRZYSTON: It's a photo lineup with the attendant
25 --

1 THE COURT: Affidavit?

2 MR. KRZYSTON: -- things that they -- yeah, the
3 affidavit.

4 THE COURT: Thank you.

5 MR. KRZYSTON: Yes, sir.

6 THE COURT: Anything in response, Solicitor?

7 MS. MCDUFFIE: No, Your Honor.

8 THE COURT: All right. Well, as an initial matter, I
9 looked at, of course, Neil v. Biggers and State v. Moore,
10 State v. Moore being 343 S.C. 282, a 2000 case.

11 It indicates that before a criminal defendant may be
12 deprived of due process of law by an identification
13 procedure which is unnecessarily suggestive and conducive to
14 irreparable mistaken identification -- it's citing Stovall
15 -- S-t-o-v-a-l-l -- v. Denno, 388 U.S. 293, a United States
16 Supreme Court case, 1967. An in-court identification of an
17 accused is inadmissible if a suggestive out-of-court
18 identification procedure created a very substantial
19 likelihood of irreparable misidentification.

20 In Manson v. Brathwaite, B-r-a-t-h-w-a-i-t-e, 432 U.S.
21 98, 1977, the United States Supreme Court has developed a
22 two-pronged inquiry to determine the admissibility of an
23 out-of-court identification. First, the Court must first
24 determine whether the identification process was unduly
25 suggestive.

1 It indicates to me that I would look at the totality of
2 the circumstances to determine whether an identification is
3 admissible, to include the opportunity for the witness to
4 view the criminal at the time of the crime. The witness'
5 degree of attention, the accuracy of the witness' prior
6 description of the criminal, the level of certainty
7 demonstrated by the witness at the confrontation, and the
8 length of time between the crime and the confrontation.

9 I have reviewed all of those. Both Moore and I think
10 Neil v. Biggers were a show-up type of identifications. In
11 this case, here we have a witness that was eight years old
12 at the time that was presented with a six-person
13 photographic lineup by the detective that is also on video
14 and audio.

15 Although the officer may have said and indicated to the
16 child victim bravery and help, that in no way affects any
17 suggestiveness on the part of the officer that she should or
18 should not pick out a particular individual or any
19 individual whatsoever.

20 It appears that she was in the presence of the
21 perpetrator for a long presence physically, but was close
22 enough to where the perpetrator actually touched her body
23 and bound her. You've got to -- you've got to be pretty
24 close to do that, to bind somebody in that manner in that
25 regard. There's no indication that there was any -- any

1 issues as far as her ability to view her closeness to the
2 perpetrator, no obstacles to that that was offered in this
3 record.

4 When you listen to the -- or when I listened at least
5 to the audio -- and I noted several -- several statements by
6 the officer, and I paraphrase because I didn't -- I wasn't
7 able to get it completely verbatim. See if you can see the
8 man. Also, another part of it -- and that's reviewing
9 State's Exhibit Number 31. Again, if you see the man.

10 I also -- I also took into account my only -- my only
11 presentation and that is six individuals. And those six
12 individuals all appear to be members of the -- all appear to
13 be African-American males. All appear similar with similar
14 features, all having similar facial hairs. All appear to be
15 in the same -- or within the same age range generally.

16 There wasn't really any hesitance. She looked at it.
17 She picked out 3. Whatever her verbiage may be, it looked
18 like the man, that's weight. That's not credibility.
19 That's also many times semantics in that regard and the way
20 one human being expresses himself or herself versus another.

21 And I take into account that the child is five years
22 old. I think Wheeler v. United States in the 1800s was a
23 five-year-old who witnessed the murder of his father down in
24 what has been not even a state. It was a state territory
25 out in the Midwest somewhere.

1 So as far as the officer's presentation, the witness'
2 responses, I see no suggestiveness.

3 When I look and listen to Dr. Buck, I'm trying to -- I
4 was trying to decide in my mind. There's a huge difference
5 between an eyewitness to any event that becomes part of that
6 person's memory because they've experienced it and someone
7 not just reading about the experience, for example, reading
8 a nonfiction book, but just taking a survey and saying,
9 well, who do you think did it or who are you going to pick
10 that did this armed robbery and, as a result, the elderly
11 lady was the victim of a homicide.

12 Those SurveyMonkey, so to speak, aren't witnesses to
13 the event. They're just -- they're just checking. They
14 don't -- they don't have that memory fixed in their mind.

15 And then two years later, she comes in here and she
16 points again. The doctor's testimony may be subject to or
17 fodder for cross-examination. The terminology may be fodder
18 for cross-examination as a defense, but I find -- not only
19 do I not find any suggestiveness, I certainly don't find any
20 -- I certainly don't find the identification process was
21 unduly suggestive.

22 And it directs me if I find it was unduly suggestive, I
23 must next determine whether the out-of-court identification
24 was nevertheless so reliable that it must contain the
25 likelihood of misidentification. I don't think I reached

LT. KEVIN ISENHOWARD - DIRECT BY MS. CAMPBELL

1 that prong because there is no suggestiveness, nor is there
2 no undue suggestiveness.

3 Therefore, State's Exhibit 30 and 31, which I think is
4 the video, is admissible.

5 All right. Jackson v. Denno, Solicitor?

6 MS. CAMPBELL: Yes, sir. The State would call Lt.
7 Kevin Isenhoward.

8 THE COURT: All right. Lieutenant, come around this
9 way for me, please.

10 THE CLERK: Do you swear or affirm the testimony you're
11 about to give in this case to be the truth, the whole truth,
12 and nothing but the truth, so help you God?

13 THE WITNESS: I do.

14 THE CLERK: Thank you. Have a seat in the witness
15 stand, please.

16 THE COURT REPORTER: Spell your last name for me,
17 please.

18 THE WITNESS: Kevin Isenhoward. I-s-e-n-h-o-w-a-r-d.

19 LT. KEVIN ISENHOWARD, being
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. CAMPBELL:

23 Q: Lt. Isenhoward, where are you employed?

24 A: With the Richland County Sheriff's Department here in
25 Columbia.

INV. TRISHA ODOM - DIRECT BY MS. CAMPBELL

1 THE COURT: All right.

2 (WHEREUPON, the fingerprint reports were marked and
3 admitted as Court's Exhibit Number 7.)

4 BY MS. CAMPBELL:

5 Q: And referring to Court's 7, the first report, were you
6 able to make any conclusions on Items 1.1 and 1.2?

7 A: Yes, ma'am.

8 Q: And where were those fingerprints collected from?

9 A: They were collected from the interior side of the door,
10 which is also noted as the POE, which is an abbreviation for
11 point of entry.

12 Q: Okay. And what were your conclusions on those two?

13 A: L-1.1 was made by the left ring finger of James Heyward
14 and L-1.2 was made by the number eight or middle finger,
15 left middle finger, of Mr. Heyward.

16 Q: Moving to Item Number L-7.1, which was collected from
17 where?

18 A: From the side of a small gold box with a sunshine
19 design pendant.

20 Q: And what were the conclusions there?

21 A: It was made by the number six or the left thumb finger
22 of Mr. Heyward.

23 Q: Moving to the next report on that same day, Item L-8.1?

24 A: Okay.

25 Q: And where was that collected?

INV. TRISHA ODOM - DIRECT BY MS. CAMPBELL

- 1 A: From a plastic card attached with a magnet to a
2 multicolored canister.
- 3 Q: And what was your conclusion?
- 4 A: That it was also made by the left thumb of Mr. Heyward.
- 5 Q: Moving on to your last report, L-12.1?
- 6 A: Yes.
- 7 Q: It was collected where?
- 8 A: It's from the front lid to a sewing kit.
- 9 Q: Okay.
- 10 A: And it was made by the left ring finger of Mr. Heyward.
- 11 Q: And in all these cases, whose fingerprints were you
12 comparing on each of these?
- 13 A: Mr. Heyward's.
- 14 Q: And did you also have a set from the victim?
- 15 A: Oh, yes, ma'am.
- 16 MS. CAMPBELL: Your Honor, may I approach?
- 17 THE COURT: Yes, ma'am.
- 18 BY MS. CAMPBELL:
- 19 Q: In doing these comparisons, did you use the procedures
20 and methods that you earlier described?
- 21 A: Yes, ma'am.
- 22 Q: That have been peer-reviewed?
- 23 A: Yes, ma'am.
- 24 Q: And are used in other laboratories as well?
- 25 A: Yes, ma'am.

DEPUTY LAKEISHA WEST - DIRECT BY MS. CAMPBELL

1 THE CLERK: Thank you. Have a seat in the witness stand,
2 please. Please state your name for the record.

3 THE WITNESS: My name is Lakeisha West.

4 THE COURT REPORTER: Spell your first name, please.

5 THE WITNESS: L-a-k-e-i-s-h-a.

6 DEPUTY LAKEISHA WEST, being
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. CAMPBELL:

10 Q: Deputy West, where are you employed?

11 A: Richland County Sheriff's Department.

12 Q: And you need to get a little bit closer to that
13 microphone. It's hard to hear in here --

14 A: Okay.

15 Q: -- for some reason.

16 A: I'm sorry.

17 Q: I'm sorry. The Richland County Sheriff's Department?

18 A: Yes, ma'am.

19 Q: And how long have you been working there?

20 A: Since November of 2014.

21 Q: November of 2014?

22 A: Uh-huh.

23 Q: What do your duties include at the Richland County
24 Sheriff's Department?

25 A: I'm a patrol deputy in Region 2.

DEPUTY LAKEISHA WEST - DIRECT BY MS. CAMPBELL

- 1 Q: And what is Region 2?
- 2 A: It's mainly the Two Notch area, Decker, Percival.
- 3 Q: Is that the area right around Decker, Percival,
- 4 Parklane?
- 5 A: Parklane. Yes, ma'am.
- 6 Q: That whole area?
- 7 A: Yes, ma'am.
- 8 Q: And is the location involved in this case, [REDACTED]
- 9 Drive, [REDACTED] Drive, in that region?
- 10 A: Yes, ma'am. It's right off of Parklane.
- 11 Q: Is that here in Richland County?
- 12 A: Yes, ma'am, it is.
- 13 Q: I want to turn your attention back to October the 11th
- 14 of 2015. Were you working that day?
- 15 A: Yes, ma'am, I was.
- 16 Q: What shift were you working? Do you remember?
- 17 A: I believe it was the night shift.
- 18 Q: The night shift?
- 19 A: Yes, ma'am.
- 20 Q: Typically, what time do you go in when you're working
- 21 the night shift?
- 22 A: Around 5:30.
- 23 Q: And that afternoon, did you have an opportunity to
- 24 respond to a call on [REDACTED] Drive?
- 25 A: Yes, ma'am, I did.

DEPUTY LAKEISHA WEST - DIRECT BY MS. CAMPBELL

1 Q: And what kind of call was it that you were responding
2 to that day?

3 A: It was a -- it was a burglary in progress.

4 Q: Burglary in progress?

5 A: Yes, ma'am.

6 Q: And when you get a burglary in progress, what does that
7 mean to you as a police officer?

8 A: Usually if it's in progress, we have a suspect that's
9 inside of a home where the incident is.

10 Q: Possible suspect?

11 A: Possible, yes.

12 Q: And is that basically the information you're given,
13 where to go, when there's a burglary in process?

14 A: Yes, ma'am.

15 Q: And that day when you responded, were you one of the
16 first officers there?

17 A: Yes, ma'am.

18 Q: Who else responded with you that afternoon that you
19 recall?

20 A: Myself and Deputy Bagby. We kind of pulled up at the
21 same time and some other --

22 Q: Other officers?

23 A: Yes, ma'am.

24 Q: Such as Guyon, Bowman, and other people like that?

25 A: Yes, ma'am.

DEPUTY LAKEISHA WEST - DIRECT BY MS. CAMPBELL

1 Q: And tell the jury what you observed as you were pulling
2 up in front of [REDACTED] -- [REDACTED] Drive?

3 A: When I pulled up, like I said, Deputy Bagby -- we both
4 pulled up at the same time. We were trying to get in
5 contact with Miss F [REDACTED] She was supposedly on the phone
6 with our dispatch and, the next thing we knew, she came
7 hopping outside from the carport.

8 Q: Okay. Let me back you up. At that point, you had some
9 information about who was making the phone call?

10 A: Yes, ma'am.

11 Q: And you said you were trying to make contact with Miss
12 F [REDACTED]. Had you ever known her before this?

13 A: No, ma'am.

14 Q: And your information was what? What did you just say
15 about it? That she was doing what?

16 A: She hopped out into the carport.

17 Q: And could you tell where she came from when she was
18 hopping out of the carport? Was she outside or inside when
19 she came out into the carport?

20 A: I couldn't see from where I was. I just knew once she
21 came out into the carport from -- if I could describe the
22 house?

23 Q: Uh-huh.

24 A: The carport is on the right-hand side and it's, like, a
25 driveway and, when she came around the corner, that's when I

DEPUTY LAKEISHA WEST - DIRECT BY MS. CAMPBELL

1 could see her.

2 Q: And what was her appearance when you first saw her
3 hopping out of the carport? Was it into the carport or out
4 of the carport?

5 A: Out of the carport.

6 Q: Okay. Out into the yard area?

7 A: Yes, ma'am.

8 Q: What was her appearance?

9 A: She -- she was tied up. Like I said, she was hopping
10 towards us, hands would be --

11 Q: Tied up?

12 A: She looked very -- she looked very scared and nervous.

13 Q: At that point, once you observed her, what did you all
14 do?

15 A: We actually grabbed her and brought her over to one of
16 the patrol cars.

17 Q: Why did you want to get her away from the house at that
18 point?

19 A: Just so we could actually go inside and actually make
20 sure no one else was inside and make sure everything was
21 okay on scene.

22 Q: Once she was taken over -- you said you took her over
23 to one of the patrol cars?

24 A: Yes, ma'am.

25 Q: What, if anything, did you do?

DEPUTY LAKEISHA WEST - DIRECT BY MS. CAMPBELL

1 A: I actually sat there and was talking to her with the
2 other deputies.

3 Q: Was she able to give -- what was her demeanor like?

4 A: Very nervous. She was scared. She asked me -- she
5 mentioned that she was scared in her response.

6 THE COURT: Excuse me. Keep your voice up for me just
7 a little bit, Deputy.

8 THE WITNESS: Okay. I'm sorry.

9 THE COURT: That's all right.

10 MS. CAMPBELL: There's not very good acoustics in this
11 courtroom.

12 BY MS. CAMPBELL:

13 Q: And you said she was telling you she was scared, but
14 did she give you any other information or were y'all trying
15 to get any other information?

16 A: Yes, ma'am. We were trying to find out who was in the
17 house and exactly what happened.

18 Q: Okay. Was she able to give you any information there
19 when you were talking to her at the patrol car?

20 A: She did say that her grandmother was inside of the
21 house. She said that the guy tied her up and put her in a
22 closet.

23 Q: And put her in a closet?

24 A: Yes, ma'am.

25 Q: Was she able to give you a description of the guy?

DEPUTY LAKEISHA WEST - DIRECT BY MS. CAMPBELL

1 A: She said it was a black male, bald head, had an orange
2 shirt on.

3 Q: Did she indicate whether or not the man had said
4 anything when he entered the house?

5 A: She said that he stated -- well, she heard initially a
6 commotion in the kitchen and that the --

7 MS. GOODE: Objection, Your Honor. Hearsay.

8 THE COURT: Overruled under 803.

9 MS. CAMPBELL: Thank you, Your Honor.

10 BY MS. CAMPBELL:

11 Q: You can say it.

12 A: That she heard someone saying where's the money and the
13 jewelry. And he also -- he asked her also.

14 Q: Did she indicate that she saw him do anything to her
15 grandmother in the kitchen?

16 A: That he had his arms around her neck, choking her.

17 Q: Did she indicate that he said anything about what was
18 going to happen to her grandmother?

19 A: He -- well, she stated that he said that she was going
20 to sleep.

21 Q: The grandmother was going to go to sleep? Did he
22 indicate whether or not whether he told the little girl,
23 Gwyn, whether or not he was going to hurt her?

24 A: He said -- well, she stated that he said that if she
25 didn't -- if she just sat down, then he wouldn't hurt her.

DEPUTY LAKEISHA WEST - DIRECT BY MS. CAMPBELL

1 Q: Did she indicate where in the house she ended up and
2 how she got there?

3 A: A back bedroom and, once they were in the back bedroom,
4 he asked her about where the money and jewelry was and,
5 because she couldn't tell him, he snatched a cord from the
6 wall and tied her up and put her in the closet.

7 Q: Did she indicate how she got from the kitchen to the
8 back bedroom?

9 A: He carried her.

10 Q: After she was in the closet, did she indicate what, if
11 anything, she heard?

12 A: She said she did hear -- she heard him and saw that he
13 was rummaging through the house, like moving a lot of
14 things.

15 Q: Were you able to get a description of the man from her,
16 as far as clothes?

17 A: Just besides the black male, bald head, and an orange
18 shirt.

19 Q: Orange shirt?

20 A: Yes, ma'am. And --

21 Q: Was it an orange shirt or a jacket?

22 A: Jacket.

23 Q: Did she say anything about the rest of his clothing?

24 A: Also, he had on some jeans and some black shoes.

25 Q: Once she gave you this initial information, what did

DEPUTY LAKEISHA WEST - DIRECT BY MS. CAMPBELL

1 you do?

2 A: We got in contact with our sergeants and investigators
3 and, once they came to the scene, this information was
4 actually turned over to them.

5 Q: And you've heard the term of clearing the scene?

6 A: Yes, ma'am.

7 Q: What does that mean?

8 A: Basically, once we pulled her from the front of the
9 house and put her on top of the car and got some
10 information, we actually went inside of the residence to,
11 like I said, make sure no one else was inside and make sure
12 the suspect wasn't inside.

13 Q: And once you got her to the car, did y'all leave her
14 tied up or did somebody untie her?

15 A: No. We didn't. One of the deputies actually cut the
16 cords off of her wrists and feet.

17 Q: And do you know why he cut the cords off of her wrists
18 and feet?

19 A: They were tied pretty tightly. She had some
20 discolorations in her hands.

21 Q: You said once you got that basic information, then
22 y'all did go inside the house to clear it?

23 A: Yes, ma'am.

24 Q: Tell the jury what you observed as she went into the
25 house?

DEPUTY LAKEISHA WEST - DIRECT BY MS. CAMPBELL

1 A: Miss F [REDACTED] -- not Miss F [REDACTED]. I'm sorry. Ms.
2 Tollison was actually on the floor in the kitchen. You
3 could tell that some of her stuff was kind of moved around
4 as far as inside the residence. That's all that I can
5 remember as we went in.
6 Q: Did you find any suspect or any other persons other
7 than Ms. Tollison's body on the floor?
8 A: No.
9 Q: In the house?
10 A: No.
11 Q: And I believe at that point too you indicated you had
12 already called for investigators and backup?
13 A: Yes, ma'am.
14 Q: And is that standard procedure?
15 A: Yes, ma'am.
16 Q: Was crime scene also called out that day?
17 A: Yes, ma'am, they were.
18 Q: Did you and the other deputies stay there to kind of
19 protect the integrity of the crime scene until crime scene
20 investigators and other people got there?
21 A: Yes, ma'am.
22 Q: And approximately how long was it that you were there
23 at the house that day?
24 A: It had to have been right around -- we started shift at
25 5:30. I did leave a period during the investigation to

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

1 THE CLERK: Do you swear or affirm the testimony you're
2 about to give in this case will be the truth, the whole
3 truth, and nothing but the truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Thank you. Have a seat in the witness
6 stand, please. State your name for the record.

7 THE WITNESS: Gwyneth F [REDACTED].

8 GWYNETH F [REDACTED], being first
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. SIMPSON:

12 Q: Gwyneth, do you have another name you go by?

13 A: Yes.

14 Q: And what is that?

15 A: Gwyn.

16 Q: Gwyn? And is that what your friends and family call
17 you?

18 A: Yes.

19 Q: And let's scoot the microphone up a little bit. There
20 we go. Try that. And how old are you, Gwyn?

21 A: Ten.

22 Q: Ten? When's your birthday?

23 A: [REDACTED].

24 Q: [REDACTED] And what grade are you, I guess, going
25 into next year?

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

- 1 A: Fifth.
- 2 Q: And how do you like school?
- 3 A: I like it very much.
- 4 Q: You love it very much?
- 5 A: Uh-huh.
- 6 Q: Okay. And you have any favorite subjects at school?
- 7 A: All of them.
- 8 Q: All of them? And are you pretty good in classes?
- 9 A: Yes.
- 10 Q: Yes? How are your grades?
- 11 A: A's and B's.
- 12 Q: A's and B's? And at one point were you even a straight
- 13 A student?
- 14 A: Yes.
- 15 Q: Okay. And where do you go to school?
- 16 A: Midway Elementary School.
- 17 Q: Midway Elementary? And you will be going there next
- 18 year too for fifth grade?
- 19 A: Yes.
- 20 Q: Okay. I want to talk a little bit -- where do you
- 21 live? Do you live in Columbia or somewhere else?
- 22 A: Somewhere else.
- 23 Q: Okay. And who do you live with?
- 24 A: My mom and two cats.
- 25 Q: Your mom and two cats? What's your mom's name?

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GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

- 1 A: Melissa Stevenson.
- 2 Q: Okay. And what does she do? Where does she work?
- 3 A: She works at Mattress Firm.
- 4 Q: At where?
- 5 A: Mattress Firm.
- 6 Q: Mattress Firm? I'm going to put the microphone a
- 7 little bit closer. Are you a little bit nervous here today?
- 8 A: Yes.
- 9 Q: Okay. And you said you had two cats?
- 10 A: Yes.
- 11 Q: What are their names?
- 12 A: Penelope and Cole.
- 13 Q: Penelope and Cole? And as far as your father, your
- 14 biological father, do you -- does he live with you?
- 15 A: No.
- 16 Q: Do you ever get to see him?
- 17 A: Yes.
- 18 Q: Okay. Tell me a little bit more about some other
- 19 members of your family. Like, do you have any aunts or
- 20 cousins?
- 21 A: Yes. Lots and lots and lots and lots and lots and lots
- 22 of cousins.
- 23 Q: And I want to talk to you a little bit too -- what
- 24 about the kinds of things you like to do?
- 25 A: Play Minecraft.

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

- 1 Q: Play Minecraft? Do you like to read at all?
- 2 A: Yes.
- 3 Q: What kind of books do you like to read?
- 4 A: Harry Potter and Percy Jackson.
- 5 Q: Okay. And you like to watch the movies too?
- 6 A: Yes.
- 7 Q: Okay. And do you watch just those movies or what kind
- 8 of things do you like to watch?
- 9 A: I also watch other movies as well.
- 10 Q: Okay. I want to talk to you about your Grandma Alice.
- 11 Okay?
- 12 A: Okay.
- 13 Q: Can you tell the jury a little bit about your Grandma
- 14 Alice and your relationship with her and the types of things
- 15 y'all used to do together?
- 16 A: Well, every Sunday, we would -- well, every other
- 17 Sunday, we would go to church.
- 18 Q: You'd go to church?
- 19 A: Uh-huh.
- 20 Q: Did you like going to church with your grandma?
- 21 A: Yes.
- 22 Q: Okay. And do you remember who the pastor was there?
- 23 A: Yes.
- 24 Q: And who would drop you off at your Grandma Alice's
- 25 house?

GWYNETH F. [REDACTED] - DIRECT BY MS. SIMPSON

- 1 A: My mother.
- 2 Q: Your mom? And where would she be? Would she stay with
- 3 y'all?
- 4 A: No.
- 5 Q: Where would she go?
- 6 A: To work.
- 7 Q: To work? And you said you did this every other Sunday?
- 8 A: Yes.
- 9 Q: And what other types of things did you do with your
- 10 grandmother? Did you ever go on vacation with her or
- 11 anything like that?
- 12 A: Yes.
- 13 Q: Okay. And where did you go?
- 14 A: Myrtle Beach.
- 15 Q: Myrtle Beach?
- 16 A: Yes, ma'am.
- 17 Q: And were there other people there?
- 18 A: Yes..
- 19 Q: Like who?
- 20 A: Just some other random strangers.
- 21 Q: Other random strangers at the beach? Okay. So you
- 22 went to -- would you say you were pretty close with your
- 23 Grandma Alice?
- 24 A: Yes, very close.
- 25 Q: Very close? And you spent a good deal of time with

GWYNETH P. [REDACTED] - DIRECT BY MS. SIMPSON

- 1 her?
- 2 A: Yes.
- 3 Q: I want to go -- first of all, I want to go back to --
- 4 do you remember where your grandmother lived?
- 5 A: Kind of.
- 6 Q: Kind of, sort of?
- 7 A: Yeah.
- 8 Q: Do -- do you remember what street she lived on?
- 9 A: [REDACTED] Drive.
- 10 Q: [REDACTED]
- 11 A: [REDACTED] Drive.
- 12 Q: [REDACTED]? And did she also live at [REDACTED] at some
- 13 point?
- 14 A: Yeah.
- 15 Q: Okay. But you might not remember the address, but do
- 16 you remember what your grandma's house looked like?
- 17 A: Yes.
- 18 Q: Okay. And did you have a room in your grandma's house
- 19 or would you stay over sometimes?
- 20 A: Yes.
- 21 Q: Okay. And did you have your own room or did you get to
- 22 sleep with your grandmother or how did that work?
- 23 A: A little bit of both.
- 24 Q: A little bit of both? And when your mom would drop you
- 25 off on Sundays, would she often pick you up when she got off

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

- 1 work?
- 2 A: Yes.
- 3 Q: I'm going to take you back to when you were 8. Okay?
- 4 Do you remember being at your grandmother's house the night
- 5 she -- or the day that she died?
- 6 A: Yes.
- 7 Q: Okay. Now, before we get there, do you remember what
- 8 you were doing earlier in the day?
- 9 A: Kind of.
- 10 Q: Okay. Can you tell the jury what you remember?
- 11 A: Well, I had already gone to church.
- 12 Q: Now, did you go to church -- oh, we're talking before
- 13 somebody hurt your grandma; right?
- 14 A: Yeah.
- 15 Q: Let's back up just a little bit. How did you get to
- 16 your grandmother's that day?
- 17 A: My mom drove me.
- 18 Q: Okay. She dropped you off?
- 19 A: Yeah.
- 20 Q: And did y'all go to church like you usually do on a
- 21 Sunday?
- 22 A: Yes.
- 23 Q: Okay. And when y'all got home from church, what did
- 24 you do with your grandma?
- 25 A: She got on her big -- she sat in her big red chair and

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

- 1 I laid down on the couch and we started watching some TV.
- 2 Q: Okay. And you said her big red chair?
- 3 A: Yes.
- 4 Q: Okay. And like I said, I know you're a little nervous,
- 5 but can you speak up just a little bit for me today?
- 6 A: Okay.
- 7 Q: Okay. And so you're in the living room. Where are you
- 8 in the living room?
- 9 A: I'm -- I'm laying on the couch.
- 10 Q: You're laying on the couch? And your grandmother is in
- 11 the chair?
- 12 A: Yes.
- 13 Q: What you remember happening next?
- 14 A: Somebody knocked on the door and Grandma answered the
- 15 door.
- 16 Q: Okay. Grandma answered the door? Did you go to the
- 17 door with your grandmother?
- 18 A: No.
- 19 Q: No? And when you say the door, I'm going to show you
- 20 -- actually, I'm going to stop you just for a second. I'm
- 21 going to show you what's already been introduced as State's
- 22 Exhibit 38. Do you recognize that?
- 23 A: Yes.
- 24 Q: Okay. And what is that?
- 25 A: That's the door that nobody uses.

GWYNETH P [REDACTED] - DIRECT BY MS. SIMPSON

- 1 Q: That's the door that nobody uses in your house?
- 2 A: Yes.
- 3 Q: Is that the very front door?
- 4 A: Yeah.
- 5 Q: And then I'm going to also show you what's already been
- 6 entered into evidence as State's Exhibit 39. Do you
- 7 recognize that?
- 8 A: Yes. That's the door that everybody uses.
- 9 Q: Okay. So this is the door that everybody uses?
- 10 A: Yeah.
- 11 Q: And is that the carport or the garage there?
- 12 A: Yes.
- 13 Q: And it's open; so people just walk up and that's the
- 14 door they knock on?
- 15 A: Yes.
- 16 Q: And do you know if that's the door your grandma went
- 17 to?
- 18 A: Yes.
- 19 Q: Okay. And what happened next? Where did you go?
- 20 A: Well, I stayed on the couch for a little bit and I went
- 21 to get some of my toys from the kitchen.
- 22 Q: And when you went to get -- you said some of your toys
- 23 in the kitchen?
- 24 A: Yeah.
- 25 Q: Let me show you what's been marked as State's Exhibit

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

1 60. Do you recognize what's in State's Exhibit 60?

2 A: That's the kitchen and on the table are my My Little
3 Pony and Frozen toys.

4 Q: Okay.

5 MS. SIMPSON: Your Honor, at this time, I would offer
6 State's Exhibit 60 into evidence.

7 MS. GOODE: No objection.

8 THE COURT: State's 60 is into evidence without
9 objection.

10 (WHEREUPON, State's Exhibit Number 60, a photograph,
11 was admitted into evidence.)

12 BY MS. SIMPSON:

13 Q: Okay. So this is the kitchen you went into to get your
14 toys that were on the table?

15 A: Uh-huh.

16 Q: And what kind of toys did you say?

17 A: My Little Pony and Frozen.

18 Q: Okay. When you got into the kitchen to go get your
19 toy, what did you see?

20 A: There was a man carrying a duffel -- a duffel bag and
21 some beads fell out of the duffel bag and he told me to sit.

22 Q: To sit? And where was your grandmother?

23 A: On the other side of the table from me.

24 Q: Okay. So he told you -- was he standing when he told
25 you to sit?

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

1 A: Yes.

2 Q: You said he had a bag on?

3 A: Yes. A duffel bag.

4 Q: And did you actually sit down and listen to him?

5 A: Yes.

6 Q: Okay. And what did he say?

7 A: He --

8 Q: What do you remember him saying?

9 A: He demanded my grandma for money.

10 Q: Okay. And at this point, was she still alive?

11 A: Yes.

12 Q: And do you remember what your grandma said?

13 A: She said I don't have any money.

14 Q: Okay. And you're sitting across from her, like the way

15 I'm looking at you?

16 A: Yes.

17 Q: Okay. And is he making you watch?

18 A: Yes.

19 Q: Okay. And when your grandma said I don't have any

20 money, what did he do?

21 A: He killed her.

22 Q: He killed her?

23 A: Yes.

24 Q: Okay. And I want to back up just a little bit. At

25 some point, did he also take something out and put it on the

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

1 table?

2 A: Yes.

3 Q: Do you remember what that was?

4 A: Yes. It was a pistol.

5 Q: It was a pistol?

6 A: Yeah.

7 Q: And at the time, do you remember what it looked like?

8 A: Yes. It was gold and rusty and it had two spots for

9 the bullets.

10 Q: Okay. Gold and rusty? And at some point, where did he

11 put that gun? Did he use that gun to kill your grandmother?

12 A: No.

13 Q: What happened with the gun?

14 A: He put it on the table.

15 Q: Okay. And was your grandmother still alive at this

16 point?

17 A: Yes.

18 Q: Okay. And after he put the gun on the table, what did

19 he do to your grandmother?

20 A: He killed her.

21 Q: And do you remember how he did it?

22 A: Yes.

23 Q: Can you tell us how he did it?

24 A: Yes.

25 Q: Okay. You can take your time. Just breathe.

GWYNETH P. [REDACTED] - DIRECT BY MS. SIMPSON

- 1 A: He rolled up his sleeve and put his arm around her neck
2 and strangled her.
- 3 Q: Okay. And did he say anything when this was happening?
- 4 A: Not that I can recall.
- 5 Q: You can't recall? And what did your grandma look like
6 while he did this?
- 7 A: Her face was turning completely purple.
- 8 Q: And did he tell you something about what was happening
9 to your grandma?
- 10 A: Later on, I guess.
- 11 Q: Later on, he did? And we'll get to that. Let me ask
12 you this. When you walked into the kitchen, did he seem
13 surprised to see you?
- 14 A: I can't remember.
- 15 Q: You can't remember?
- 16 A: But probably. He probably did.
- 17 Q: So after he choked her grandmother, what happened next?
- 18 A: Then he -- then he took me to the closet and he told me
19 to sit in there and closed the door.
- 20 Q: Sit in there and closed the door? And at this point,
21 were you tied up yet?
- 22 A: No.
- 23 Q: No? And had you said anything to him?
- 24 A: Yes.
- 25 Q: What did you tell him?

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

- 1 A: I asked him what was happening, what happened with my
2 grandma?
- 3 Q: And how did he respond to you?
- 4 A: He said she's just sleeping.
- 5 Q: And what did you think about that?
- 6 A: I knew he was lying, but for my own safety I didn't
7 respond.
- 8 Q: You didn't respond? And did you even do something when
9 you were talking to him to change your voice?
- 10 A: Yes.
- 11 Q: And why did you do that?
- 12 A: So he couldn't recognize my identity.
- 13 Q: Okay. And did you want to sound younger?
- 14 A: Yes.
- 15 Q: And in the closet, was it dark in the closet?
- 16 A: Very.
- 17 Q: What -- what could you hear while you were in the
18 closet?
- 19 A: I heard him rummaging through rooms.
- 20 Q: Okay. So you could hear it? And when you say
21 rummaging, what do you mean?
- 22 A: Going through stuff, like jewelry. Probably grabbed
23 some of the jewelry. He was probably looking for money.
- 24 Q: Could you hear, like, doors shutting and -- or drawers
25 opening and closing and things of that nature?

GWYNETH P [REDACTED] - DIRECT BY MS. SIMPSON

1 A: Yes.

2 Q: Okay. And at some point, did he come back to the
3 closet?

4 A: Yes.

5 Q: What happened when he came back to the closet?

6 A: He took me to the very back room on the -- across from
7 my grandmother's room and he told me to turn over; so I did.
8 And then he -- well, first he grabbed wires. He told me to
9 turn over. So I turned over so he wouldn't hurt me. And
10 then he tied my hands, tied up my feet.

11 Q: Okay. And when he took you to the back room, did he
12 say anything to you or ask you about anything?

13 A: No..

14 Q: And when he was tying you up -- you said -- you're in
15 the back room and he told you to turn over. Are you
16 standing up or are you on the bed or the floor or where are
17 you?

18 A: I'm laying on the floor.

19 Q: Laying on the floor? And how did he turn you -- or did
20 you flip to your tummy?

21 A: Yes.

22 Q: Your belly? And you said he tied you with some cords.
23 Do you know where these cords came from?

24 A: One came straight out of the wall and the other came
25 from a telephone.

GWYNETH F. [REDACTED] - DIRECT BY MS. SIMPSON

- 1 THE COURT REPORTER: I'm sorry?
- 2 Q: And the other one came from where?
- 3 A: A telephone.
- 4 Q: A telephone? Okay. And what did he wrap your hands --
- 5 what did he tie your hands with?
- 6 A: The telephone wire.
- 7 Q: The telephone wire?
- 8 A: Yes.
- 9 Q: Okay. And then you said he also tied -- you need to
- 10 take a break? He also tied your feet up?
- 11 A: Uh-huh. Yes.
- 12 Q: And what did he tie that with or those?
- 13 A: The other wire that came out of the wall.
- 14 Q: And did he say anything to you once he tied you up and
- 15 you were laying on the floor?
- 16 A: Not that I can recall.
- 17 Q: Okay. And when he was talking to you throughout this
- 18 whole time -- let's see. This happened in the afternoon?
- 19 Was it daytime still?
- 20 A: Yes.
- 21 Q: And when you are in the kitchen, you could see him and
- 22 your grandmother; right?
- 23 A: Right.
- 24 Q: It wasn't dark in the house?
- 25 A: It was not dark.

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

1 Q: It was not dark? And you were with him a pretty --
2 like, how long was it? Just minutes? Seconds? Or how long
3 did it feel like?

4 A: I can't -- I can't remember because I fell asleep.

5 Q: You fell asleep? At what point did you fall asleep?

6 A: After about 30 minutes of struggling.

7 Q: And where were you struggling?

8 A: On the ground struggling to release my hands because
9 they were getting numb. They were -- they were turning
10 purple, and struggling to get my feet out because they were
11 turning purple. So I fell asleep thinking just let it
12 happen.

13 Q: What was that last part?

14 A: I fell asleep thinking just let it happen. I thought I
15 was dying.

16 Q: You thought you were dying? But did you wake up?

17 A: Yes.

18 Q: And when you woke up, what do you remember?

19 A: I remember calling Mister. I remember calling Mister
20 because -- because I needed to use the restroom. I was
21 going to ask him if I could use the bathroom. There was no
22 response.

23 Q: Okay. So --

24 A: So I called again. Still no response. So I figured he
25 was gone.

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

- 1 Q: Okay. So at the point you woke up, you didn't know
2 whether he was still in the house or that he had left yet?
- 3 A: Yeah.
- 4 Q: And when you realized he wasn't there, you said you had
5 to use the bathroom?
- 6 A: Yeah.
- 7 Q: What did you do?
- 8 A: I -- I bit a blanket and used -- and used my teeth to
9 pull me up on my feet so that I could hop down the hall.
10 What was the question again?
- 11 Q: I said, what happened when you realized he was gone?
12 This is how you got up?
- 13 A: Oh, yeah. That's how I got up and I hopped down the
14 hallway into the kitchen, and there was glass all over the
15 floor, beads all over the floor. I fell multiple times. I
16 got to the phone and managed to call 9-1-1, still falling a
17 couple times.
- 18 Q: Okay. And I'm going to back you up just a little bit.
19 Okay? Because you said you hopped down the hall. Your feet
20 were still tied? You were still bound?
- 21 A: Yes.
- 22 Q: And when you got to the kitchen, did you see your
23 grandmother?
- 24 A: Yes.
- 25 Q: Where was she?

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

- 1 A: On the floor.
- 2 Q: Okay. And the phone -- do you remember where the phone
- 3 was?
- 4 A: Yes.
- 5 Q: Where was the phone?
- 6 A: On the table.
- 7 Q: On the table? And you were able to get to that phone?
- 8 A: Yes.
- 9 Q: Okay. And what type of phone was this?
- 10 A: A home phone.
- 11 Q: A home phone? So it wasn't a cell phone?
- 12 A: No.
- 13 Q: Or, like, a flip phone?
- 14 A: No.
- 15 Q: And when you got to the phone, you said you were able
- 16 to call 9-1-1?
- 17 A: Yes.
- 18 Q: But you'd fallen several times?
- 19 A: Yes.
- 20 Q: And how did you know to call 9-1-1?
- 21 A: Just instinct, I guess.
- 22 Q: Instinct? Did you think you could get help if you
- 23 called 9-1-1?
- 24 A: Yes. I don't remember how I learned that. Just
- 25 instinct, I guess.

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

- 1 Q: Just instinct, you guess?
- 2 A: Yes.
- 3 Q: Okay. And I'm going to show you a picture and it's
- 4 already been introduced as State's Exhibit 32. Do you
- 5 recognize these things?
- 6 A: Yes.
- 7 Q: And what are those?
- 8 A: The phone is the phone that I used to call 9-1-1 and
- 9 the cords are -- and the cord is the cord that my hands were
- 10 tied up with.
- 11 Q: Okay. And so that's the phone you used. So it wasn't
- 12 a cell phone. You were able to press the buttons?
- 13 A: Yes.
- 14 Q: And you didn't have to enter a password or anything
- 15 like that?
- 16 A: No.
- 17 Q: And that's the telephone wire that he bound your hands
- 18 or your feet with?
- 19 A: Hands.
- 20 Q: Hands? Now, Miss Gwyn, would it help you -- because
- 21 you said your hands were behind your back?
- 22 A: Yes.
- 23 Q: You were able to pull up. Would it help you if you
- 24 could show the jury how you were able to dial the phone?
- 25 A: Sure.

GWYNETH F. [REDACTED] - DIRECT BY MS. SIMPSON

1 Q: Okay.

2 MS. SIMPSON: Permission for the witness to step down,
3 Your Honor?

4 THE COURT: Yes, ma'am. She may step down.

5 (WHEREUPON, the witness complied.)

6 MS. SIMPSON: She'll help you with it. And I want you
7 -- if you'd stand right here so you can face the court
8 reporter. Stand up.

9 BY MS. SIMPSON:

10 Q: Can you show the jury how your hands were and how --
11 were they really tight or how were they?

12 A: (Indicating.) They were really, really, really, really,
13 really tight.

14 THE COURT: Solicitor, have her keep her voice up a
15 little bit.

16 MS. SIMPSON: Okay.

17 BY MS. SIMPSON:

18 Q: Can you speak up kind of loud?

19 A: They were extremely tight.

20 Q: Extremely tight? And so how is it that you were able
21 to get to the phone?

22 A: Well, they were a little uneven. So I managed to -- so
23 I managed to scoot my hands around and I knocked the phone
24 off the table and -- and I got down because at least I could
25 bend my knees.

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GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

- 1 Q: You could bend your knees, even though your legs were
2 tied?
- 3 A: Yes. Because it was only my ankles.
- 4 Q: Okay. Just your ankles. And so you --
- 5 A: So I got -- so I got my knees so I could get like this,
6 but at the same time I fell.
- 7 Q: You fell?
- 8 A: So I grabbed the phone off the floor, bit the cabinet
9 to get up, and, like, looked over so I could see what I was
10 doing, and I dialed 9-1-1.
- 11 Q: Okay. So you looked over to see what you were doing
12 and dialed 9-1-1?
- 13 A: Yes. That's correct.
- 14 Q: And that first call, you were in here to hear it?
- 15 A: Yes.
- 16 Q: Yourself on the phone? Okay. And you -- were you
17 trying to get outside?
- 18 A: Yes.
- 19 Q: And did you still have the phone with you?
- 20 A: Yes.
- 21 Q: And how did you try to get outside?
- 22 A: I managed to get the phone in my mouth. I think I
23 dropped it on the floor again.
- 24 Q: Again?
- 25 A: And I bent down and bit it so it was in my mouth.

GWYNETH P [REDACTED] - DIRECT BY MS. SIMPSON

1 Q: Okay. And then you were able to somehow call 9-1-1
2 again? Were your hands still tied?

3 A: Well, I got it in my mouth and I opened the door. I
4 opened the door because I was going to try to see if I could
5 see anybody.

6 Q: And you're kind of flexible too, aren't you?

7 A: Extremely.

8 Q: Extremely flexible?

9 A: Uh-huh.

10 Q: Okay.

11 A: That's probably what I did.

12 Q: And so -- you can turn around. And you get outside?

13 A: Yes.

14 Q: And you're able to hop around through the carport? Is
15 this the door you went out? That you were able to open?

16 A: Yeah.

17 Q: Okay. And where did you go when you went outside?

18 A: I jumped around.

19 Q: Around?

20 A: Right there. I tried to -- I thought about sitting on
21 the bench, but I knew I wouldn't be able to get up.

22 Q: Okay. So -- and at this point, did you think police
23 were coming and help was on the way?

24 A: Yes. But I still -- I wasn't sure because on the way
25 to open the door, I fell multiple times because of the beads

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

1 scattered all over the floor.

2 THE COURT REPORTER: I can't hear her. I'm sorry.

3 Q: Say that one more time? You fell multiple times
4 because there were beads scattered on the floor?

5 A: Yes.

6 Q: And how were your hands feeling? Could you feel them?

7 A: Like --

8 Q: Were they getting numb?

9 A: One percent able to feel them.

10 Q: One percent? Okay. You can have a seat.

11 A: Thank you.

12 (WHEREUPON, the witness complied.)

13 Q: And so on the 9-1-1 call, you're asking for help;
14 right?

15 A: Yes. Begging for help.

16 Q: And they're asking you about the person you saw, but
17 who are you telling them to call? Who do you want to get
18 there fast?

19 A: My mom.

20 Q: Your mom? And where did she work?

21 A: Mattress Firm.

22 Q: Okay. And so when the police get there, do they talk
23 to you about what happened?

24 A: Yes.

25 Q: After they untied you? Or do they leave you bound or

GWYNETH P. [REDACTED] - DIRECT BY MS. SIMPSON.

1 what did they do?

2 A: They cut off the wire.

3 Q: They cut off the wire? And did they just cut the other
4 wire or were they able just to untie it?

5 A: They were able to untie the one on my hands.

6 Q: The one on your hands?

7 A: But they had to cut the one on my legs.

8 Q: Okay.

9 A: Or feet.

10 Q: And was your mom there pretty quickly?

11 A: Yes.

12 Q: Do you remember what happened when she came?

13 A: It's not very -- I can vaguely remember, but pretty --
14 I'm pretty sure when she came I tried to go running to the
15 car because I knew it was her, because I know it was my mom.
16 The police held me back because they didn't -- because they
17 didn't know it was my mom, but when my mom -- but when my
18 mom came out, I ran to her.

19 Q: Okay. And --

20 A: Well, because my -- well, I'm actually not sure if at
21 that point if my feet were untied or not. Probably were.

22 Q: Let me -- did the police ask you some questions about
23 the man that you saw?

24 A: Yes.

25 Q: And do you remember what you told them?

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

- 1 A: Yes.
- 2 Q: Okay. Can you tell us what you remember what you first
- 3 told the police?
- 4 A: I first told the police that it was a bald, black man
- 5 with an orange and white basketball jacket.
- 6 Q: Okay. And what was his build like? Was he short, kind
- 7 of like me or you, or was he tall?
- 8 A: I considered he might as well be a basketball player
- 9 because he was pretty tall.
- 10 Q: He was pretty tall? And the outfit he was wearing,
- 11 what did it remind you of?
- 12 A: A basketball player.
- 13 Q: A basketball player?
- 14 A: Maybe it reminded me of LeBron James.
- 15 Q: LeBron James?
- 16 A: Yeah.
- 17 Q: And you said he had a bag with him?
- 18 A: Yeah.
- 19 Q: That you remember too?
- 20 A: Yeah.
- 21 Q: As well as a gun? And during this time -- I'm going to
- 22 back up a little bit. Before you go to the hospital, while
- 23 you were in there with your grandmother, did he have on
- 24 gloves at all?
- 25 A: No.

GWYNETH P [REDACTED] - DIRECT BY MS. SIMPSON

- 1 Q: Or a mask?
- 2 A: No.
- 3 Q: Okay. And could you see his face?
- 4 A: Yes.
- 5 Q: And did you have a chance to look at his face?
- 6 A: Yes. Both times.
- 7 Q: Okay. And then when you go to the hospital, who goes
- 8 with you?
- 9 A: My mom.
- 10 Q: Okay. When you get there, what happens?
- 11 A: I go to the hospital, but -- and I can barely remember
- 12 what happened after that.
- 13 Q: You don't really remember? Was there a lot of stuff
- 14 going on?
- 15 A: Too much stuff. I'm trying to remember.
- 16 Q: Okay. And do you remember talking to police there?
- 17 A: Yes.
- 18 Q: About what happened? And did you tell them the best
- 19 that you could remember everything you could about what
- 20 happened to your grandma?
- 21 A: Yeah.
- 22 Q: And at some point, do you remember asking for your
- 23 pastor?
- 24 A: Yes.
- 25 Q: What's his name?

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

- 1 A: Pastor Jeff.
- 2 Q: Okay. Gwyn, the next day, were you actually -- did you
- 3 have to stay in the hospital for a long time?
- 4 A: Not really. I was there with my mom.
- 5 Q: And who did you go home with?
- 6 A: My mom.
- 7 Q: Your mom took you home?
- 8 A: Yeah.
- 9 Q: And did your hands and stuff still hurt?
- 10 A: A lot.
- 11 Q: A lot?
- 12 A: For a -- for a long time, I had to wear long sleeves
- 13 and pants every chance I had to cover it up.
- 14 Q: Okay. To cover up the --
- 15 A: Yes. I didn't want anybody to know.
- 16 Q: You didn't want anybody to know?
- 17 A: Yes. I didn't want it.
- 18 Q: Okay. Do you remember a place called -- we call it the
- 19 ARC?
- 20 A: Yes. I remember that place.
- 21 Q: Okay. And how are you able to remember it? Did you go
- 22 there?
- 23 A: Yes.
- 24 Q: And did you talk to somebody while you were there?
- 25 A: Yes.

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

- 1 Q: Do you remember the name of who you talked to?
- 2 A: Yes. Ms. Kristen, I believe.
- 3 Q: Okay. And what did you all talk about?
- 4 A: What happened.
- 5 Q: What happened? And this is the next day; right?
- 6 A: Correct.
- 7 Q: After your grandma was murdered?
- 8 A: Correct.
- 9 Q: Okay. And did you give her a description of the man
- 10 that killed your grandmother?
- 11 A: Yes.
- 12 Q: Okay. And do you remember talking about his hair at
- 13 the time?
- 14 A: Yes.
- 15 Q: Okay. And what did you say about his hair?
- 16 A: That I remember saying that he a popular hairstyle.
- 17 Q: Okay. And was it longer like mine or was it short?
- 18 How was it?
- 19 A: Short, short.
- 20 Q: Really short?
- 21 A: Yes.
- 22 Q: And at some point, did you tell them it was kind of in
- 23 rows, like little dots?
- 24 A: Yeah.
- 25 Q: But were they long or short?

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

- 1 A: Short little dots.
- 2 Q: Short little dots? And did you tell them or tell Ms.
- 3 Kristen, like I said, what happened to your grandma and what
- 4 you saw?
- 5 A: Yes.
- 6 Q: Like you've done here today? And do you remember that
- 7 being recorded on a camera?
- 8 A: Yes.
- 9 Q: Okay. At some point, did an investigator come and talk
- 10 to you?
- 11 A: Yes.
- 12 Q: While you were with Ms. Kristen?
- 13 A: Ms. Kristen left the room first.
- 14 Q: Oh, she left the room first?
- 15 A: Yes.
- 16 Q: And then she came back? And what happened when she
- 17 came back?
- 18 A: Well, then he came in.
- 19 Q: Okay. And by he, do you see him sitting in the
- 20 courtroom?
- 21 A: Yes.
- 22 Q: Do you remember his name?
- 23 A: Officer Clarke..
- 24 Q: Officer Clarke? And what did he want to talk to you
- 25 about?

GWYNETH P [REDACTED] - DIRECT BY MS. SIMPSON

- 1 A: What the man looks like.
- 2 Q: What the man looks like? And did he actually tell you
- 3 we had some pictures to show you?
- 4 A: Yes.
- 5 Q: Okay. And did you actually look at those pictures?
- 6 A: Yes.
- 7 Q: Okay. And when he showed you these pictures, what were
- 8 y'all talking about?
- 9 A: What the man looked like and things that don't change
- 10 and things that do change.
- 11 Q: Okay. And by things that don't change and do things,
- 12 can you tell us what you mean?
- 13 A: Things that don't change, like the shape of your ears,
- 14 shape of your nose, your skin color.
- 15 Q: Okay. And I'm going to show you here in a minute
- 16 what's been entered into evidence or marked for
- 17 identification purposes as State's Exhibit 3 [sic.], page 2
- 18 specifically. Now, when --
- 19 THE COURT: What's that State exhibit, Solicitor?
- 20 MS. SIMPSON: For ID, State's Exhibit 30.
- 21 BY MS. SIMPSON:
- 22 Q: And when Officer Clarke showed you these pictures, did
- 23 he tell you that the man was going to be in there?
- 24 A: No.
- 25 Q: Did he tell you you had to pick somebody out of these

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

1 pictures?

2 A: No.

3 Q: What did he ask you to do?

4 A: He asked me to pick somebody that looked closest to the
5 one who committed the murder and if there was nobody who
6 looked close, looked like him, and if there was nobody who
7 looked like him, then I would -- then I would not circle
8 anybody.

9 Q: Okay. So if you saw somebody who looked like him in
10 there, you would have picked him, but if you didn't see
11 anybody, you wouldn't have picked him?

12 A: Yes.

13 Q: All right.

14 A: I would not have picked him.

15 Q: I'm going to show you the pictures. Do you recognize
16 these?

17 A: Yes.

18 Q: And are those the pictures he showed you?

19 A: Yes.

20 Q: And when he showed you these pictures, did he tell you
21 to pick anybody?

22 A: No.

23 Q: Did he tell you the point out anybody specific or
24 specifically? I'm sorry.

25 A: No.

GWYNETH F. [REDACTED] - DIRECT BY MS. SIMPSON

- 1 Q: All right.
- 2 A: Well, he asked me to point out the person who I -- who
- 3 looked most like him.
- 4 Q: Okay.
- 5 A: Who I thought looked like him.
- 6 Q: Did he say that person was going to be in here?
- 7 A: No.
- 8 Q: No? And were you able to pick someone?
- 9 A: Yes.
- 10 Q: And how did you do that?
- 11 A: I could tell who to pick because none of them popped
- 12 out because they really, really scared me.
- 13 Q: Really, really scared you? And at some point prior to
- 14 even picking, you took your time; right?
- 15 A: Yes.
- 16 Q: Did you even close your eyes so you could remember his
- 17 face?
- 18 A: Yes.
- 19 Q: And what number did you pick out?
- 20 A: Three.
- 21 Q: And did you indicate that that was the man who murdered
- 22 your grandmother and who tied you up?
- 23 A: Yes.
- 24 Q: Okay. And how did you do that?
- 25 A: By seeing, okay, which one scares me and which one

GWYNETH F. [REDACTED] - DIRECT BY MS. SIMPSON

1 looks like him.

2 Q: Okay. And you circled Number 3?

3 A: Yes.

4 Q: And what's that beside it?

5 A: It's my name.

6 Q: Okay. And did you write your name?

7 A: Yes.

8 Q: And the man in these pictures --

9 MS. SIMPSON: I beg the Court's indulgence for just a
10 moment.

11 THE COURT: Yes, ma'am.

12 MS. SIMPSON: Your Honor, at this time, I would offer
13 State's Exhibit 30 into evidence.

14 THE COURT: Subject to previous objections.

15 MS. SIMPSON: Thank you, Your Honor.

16 THE COURT: State's 30 is into evidence.

17 (WHEREUPON, State's Exhibit Number 30, photo lineup,
18 was admitted into evidence.)

19 BY MS. SIMPSON:

20 Q: Okay. So you picked Number 3?

21 A: Yes.

22 Q: Because he's the man who hurt your grandmother?

23 A: Yes.

24 Q: And tied you up?

25 A: Yes.

GWYNETH F [REDACTED] - DIRECT BY MS. SIMPSON

1 Q: And do you actually see him in the courtroom here
2 today?

3 A: Yes..

4 Q: Okay. And can you point him out for us?

5 A: (Indicating.)

6 Q: Okay. And who are you pointing to? What's he wearing?

7 A: A suit.

8 Q: A suit? Where's he sitting at the table?

9 A: In between a man and a woman.

10 Q: Okay.

11 MS. SIMPSON: Your Honor, let the record reflect she's
12 identified the defendant.

13 THE COURT: So reflected.

14 BY MS. SIMPSON:

15 Q: Now, Gwyn, have you ever -- before the day your
16 grandmother was murdered, had you ever seen this man before?

17 A: No.

18 Q: Okay. And you went to visit your grandma pretty
19 frequently; right?

20 A: Right.

21 Q: So you didn't know him?

22 A: No.

23 Q: And is there any doubt in your mind that that's the man
24 who hurt your grandmother or you?

25 A: No doubt about it.

GWYNETH F [REDACTED] - CROSS BY MS. GOODE

1 MS. SIMPSON: I beg the Court's indulgence.

2 THE COURT: Yes, ma'am.

3 MS. SIMPSON: Thank you, Gwyn. Please answer any
4 questions the defense counsel may have for you. Okay?

5 THE WITNESS: Okay.

6 THE COURT: Thank you, Solicitor. Ms. Goode?

7 MS. GOODE: May it please the Court, Your Honor.

8 THE COURT: Yes, ma'am.

9 CROSS-EXAMINATION

10 BY MS. GOODE:

11 Q: Hi, Gwyn. How are you?

12 A: Good.

13 Q: Good. Do you need a break or anything? Are you all
14 right? Okay.

15 A: Ask as many questions as you want.

16 Q: Okay. I'll try not to ask you too many. Okay?

17 A: Okay.

18 Q: I know you've been up here a long time. Okay. So I
19 want to talk to you about your description. I think you
20 described it to Inv. Clarke, but also to Ms. Kristen at the
21 ARC. Okay?

22 A: Yes.

23 Q: Try to think back.

24 A: That sounds right.

25 Q: So you spoke to those two people?

GWYNETH F. [REDACTED] - CROSS BY MS. GOODE

1 A: Correct.

2 Q: You've spoken to a lot of people about this case;
3 right?

4 A: Right.

5 Q: And you remember telling them that the man who was in
6 the kitchen --

7 A: Yes.

8 Q: He had on a long-sleeved jacket-type thing, a
9 basketball jacket?

10 A: Yes.

11 Q: And you saw him pull that sleeve up?

12 A: Yes.

13 Q: And then that's what he used to choke your grandmother?

14 A: Yes.

15 Q: Is that right?

16 A: Correct.

17 Q: And you were able to -- you actually showed Ms. Kristen
18 exactly how far he pulled it up; right? How far he pulled
19 the sleeve up?

20 A: I believe so.

21 Q: And you were able to see his skin?

22 A: Yes.

23 Q: Okay. And you were able to describe kind of how the
24 kitchen looked; right?

25 A: Right.

GWYNETH F. [REDACTED] - CROSS BY MS. GOODE

- 1 Q: That there was glass on the floor; right?
- 2 A: Right.
- 3 Q: And that that was from your grandmother's cup that was
- 4 in the kitchen?
- 5 A: Yes.
- 6 Q: Is that right? And I want to go back through with you
- 7 the description that you gave. Okay?
- 8 A: Okay.
- 9 Q: Do you remember telling Ms. Kristen that he was
- 10 wearing, like, a basketball-type jacket?
- 11 A: Yes.
- 12 Q: And it had long sleeves?
- 13 A: Correct.
- 14 Q: Is that right?
- 15 A: Correct.
- 16 Q: I just didn't hear you. That he wasn't wearing shorts?
- 17 A: No.
- 18 Q: He was wearing pants?
- 19 A: Yes.
- 20 Q: Right?
- 21 A: That would be reasonable for the time of year.
- 22 Q: I'm sorry?
- 23 A: That would be reasonable for the time of year.
- 24 Q: Right. It was October; right?
- 25 A: Correct.

GWYNETH F [REDACTED] - CROSS BY MS. GOODE

- 1 Q: All right. And that he had a bag with him?
- 2 A: Yes.
- 3 Q: Right?
- 4 A: Right.
- 5 Q: It was like a gym-type bag?
- 6 A: Yes.
- 7 Q: Is that right? And it was black?
- 8 A: Yes. I believe so.
- 9 Q: And you described his hairstyle as a hairstyle that
- 10 most black people have -- that most black men have?
- 11 A: Yes.
- 12 Q: Is that right?
- 13 A: That is correct.
- 14 Q: And so you were saying he had a short haircut?
- 15 A: Yes. Very short.
- 16 Q: Very short? And that it was in rows?
- 17 A: Yes.
- 18 Q: But also dots?
- 19 A: Yes.
- 20 Q: Is that right?
- 21 A: Yes.
- 22 Q: And do you remember telling Deputy West that he was
- 23 bald?
- 24 A: No.
- 25 Q: Do you remember when you were talking with Ms. Simpson

GWYNETH F [REDACTED] - CROSS BY MS. GOODE

1 before that you were asked questions at the hospital about
2 what the man looked like?

3 A: Yes.

4 Q: And that you told them it was a bald black man?

5 A: Bald? Yeah.

6 Q: Do you remember that?

7 A: Yes.

8 Q: Okay. But you also told them that he had an orange and
9 white basketball jacket on; right?

10 A: Yes.

11 Q: And that he's pretty tall; right?

12 A: Right.

13 Q: And skinny?

14 A: Yes.

15 Q: Like a basketball player?

16 A: Yes.

17 Q: You even mentioned LeBron James. He reminded you of
18 LeBron James?

19 A: Yeah.

20 Q: Yep? And you mentioned that he didn't have a beard?

21 A: No. I said that I cannot remember if he had facial
22 hair or not.

23 Q: You don't remember telling Ms. Kristen that -- she
24 asked you if he had a beard or a mustache or anything and
25 you said he didn't have a beard and he didn't have any

GWYNETH P. [REDACTED] - CROSS BY MS. GOODE

- 1 facial hair except his eyebrows?
- 2 A: I remember saying that I couldn't remember.
- 3 Q: Okay. And you described that the basketball jacket
- 4 that he was wearing had a hoodie?
- 5 A: Yes.
- 6 Q: And that he had the hoodie on his head?
- 7 A: No. He did not.
- 8 Q: He did not? So you -- when she asked you if he had any
- 9 piercings or tattoos, you answered he had on a hoodie so I
- 10 couldn't really see? Do you remember that?
- 11 A: No. I don't remember saying that. He didn't wear --
- 12 he didn't wear the hoodie the entire time.
- 13 Q: Did he have it on at any time?
- 14 A: No.
- 15 Q: Okay.
- 16 A: But I couldn't see any piercings or anything.
- 17 Q: Or any tattoos?
- 18 A: I couldn't see any.
- 19 Q: Okay. And you described the -- the hoodie jacket as
- 20 orange and white?
- 21 A: Yes.
- 22 Q: And that it had -- it didn't have any writing on it
- 23 that you could see?
- 24 A: Not that I could see.
- 25 Q: But it had some stripes?

GWYNETH F [REDACTED] - CROSS BY MS. GOODE

- 1 A: Yes.
- 2 Q: It had some stripes and you described those as white
3 stripes?
- 4 A: Yeah. But I guess it could go either way.
- 5 Q: It could go either way?
- 6 A: Yeah.
- 7 Q: But the majority of it was orange and white?
- 8 A: Yes.
- 9 Q: Okay. And then it had some stripes kind of on the
10 front of the jacket?
- 11 A: On the side.
- 12 Q: On the side? On the arms or like right here?
- 13 A: Like right there.
- 14 Q: I can't -- I'm sorry. Like on this -- like on the side
15 right here?
- 16 A: Yes.
- 17 Q: Okay. Thank you. I appreciate that. And then you go
18 on and you described the gun a little bit for us; is that
19 right?
- 20 A: Right.
- 21 Q: And you said -- I believe today you said it was gold
22 and rusty?
- 23 A: Yes.
- 24 Q: Is that right? And you described it as a pistol?
- 25 A: Yes.

GWYNETH P [REDACTED] - CROSS BY MS. GOODE

- 1 Q: And you had it -- you said it had two spots for
2 bullets?
- 3 A: Yes.
- 4 Q: And do you remember telling Ms. Kristen that it had two
5 pistol spots? Is that what you meant?
- 6 A: Yes. Two spots where it shoots out.
- 7 Q: Okay. At the front of the gun, it would have two
8 spots?
- 9 A: Yes.
- 10 Q: Okay. And he put that on the table; is that correct?
- 11 A: Correct.
- 12 Q: Okay. But he didn't use it at any time?
- 13 A: No.
- 14 Q: Okay. And then you end up -- you tell Ms. Kristen and
15 you tell Inv. Clarke you end up in the closet; right?
- 16 A: Right.
- 17 Q: And you're tied up at this point?
- 18 A: No.
- 19 Q: Not at -- not -- that's right. You're not tied up in
20 the closet? You're taken back out of the closet. That's
21 right?
- 22 A: Right.
- 23 Q: Taken to a back bedroom?
- 24 A: Yes.
- 25 Q: That's where you're tied up?

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GWYNETH F [REDACTED] - CROSS BY MS. GOODE

- 1 A: Yes.
- 2 Q: And your hands were tied at first?
- 3 A: As far as I can remember.
- 4 Q: Okay. So you -- as far as you can remember, your hands
- 5 are tied up first and then your feet are tied up?
- 6 A: Yes.
- 7 Q: And then you're left there in the back bedroom?
- 8 A: Yes.
- 9 Q: Okay. And at that point, you don't see anything, but
- 10 you hear what you think is rummaging through the house?
- 11 A: Yes.
- 12 Q: Okay. And you're able to get back to the kitchen;
- 13 right? At some point?
- 14 A: Yes.
- 15 Q: And then that's when you called -- you're able to get
- 16 to the phone that's on the table?
- 17 A: Yes.
- 18 Q: And that's when you called 9-1-1?
- 19 A: Correct.
- 20 Q: And then from there, you make it outside?
- 21 A: Yes.
- 22 Q: And you're tied up really tight at this point?
- 23 A: Yes.
- 24 Q: Your arms -- your hands are tied up behind you; right?
- 25 A: Right.

GWYNETH F [REDACTED] - CROSS BY MS. GOODE

- 1 Q: And your feet are tied together?
- 2 A: Uh-huh.
- 3 Q: And it's really tight?
- 4 A: Extremely.
- 5 Q: And you can't feel your fingers?
- 6 A: I can feel them about one percent.
- 7 Q: About one percent you could feel them?
- 8 A: Yes.
- 9 Q: Okay. And then you do see the police finally; right?
- 10 A: Yes.
- 11 Q: And they rushed right up to you?
- 12 A: Yes.
- 13 Q: And they're able to get those -- get your feet and your
- 14 hands untied for you pretty quickly?
- 15 A: They cut the wires off my feet.
- 16 Q: Okay. And they were able to untie the hands?
- 17 A: Yes.
- 18 Q: Okay. And then you were pretty happy to see your mom
- 19 there, I'm sure; right?
- 20 A: Yes. Extremely happy.
- 21 Q: And then after that, you just get -- you just start
- 22 getting asked a lot of questions about all of this?
- 23 A: Yeah.
- 24 Q: Right? You're having to speak with officers at the
- 25 house; right?

GWYNETH F [REDACTED] - CROSS BY MS. GOODE

- 1 A: Right.
- 2 Q: All right. You're having to talk to the EMS people,
3 the paramedics; right?
- 4 A: Right.
- 5 Q: Then you have to speak to doctors at the hospital?
- 6 A: Yes.
- 7 Q: The next day -- well, I guess you get even more
8 investigators and more police at the hospital; right?
- 9 A: Right.
- 10 Q: And then the very next day, you have to speak with Ms.
11 Kristen?
- 12 A: Yes.
- 13 Q: And speak with Inv. Clarke again; right?
- 14 A: Right.
- 15 Q: And I'm sure you had to speak with the lady sitting
16 here at this table; right?
- 17 A: Right.
- 18 Q: So you've had to talk about this quite a bit?
- 19 A: Yes.
- 20 Q: Now, Inv. Clarke -- we -- we heard talk about how he
21 came in and he showed you a lineup; right?
- 22 A: Right.
- 23 Q: And out of the six, you wanted to pick the man that
24 looked the most like the man that came into your grandma's
25 house that night; right?

GWYNETH P [REDACTED] - CROSS BY MS. GOODE

1 A: Yes. I would altogether prefer to pick the exact man,
2 which I did.

3 Q: Okay. And so do you remember telling Inv. Clarke that
4 Number 3 kind of looks like the man?

5 A: No. I remember saying that Number 2 looks -- kind of
6 looks like my janitor.

7 Q: Right. You did say that Number 2 kind of looks like
8 your janitor, but do you remember telling him that Number 3
9 kind of looks like the man?

10 A: I remember saying that Number 3 looks like the man that
11 tied me up.

12 Q: Okay. And you remember telling Ms. Simpson just now
13 that you wanted to pick the man that looked the most like
14 the man?

15 A: Yes. But I would -- but I would prefer to pick the
16 actual man, which I did.

17 Q: Okay. And do you remember telling me yesterday you
18 were pretty sure that was the man?

19 A: Yep.

20 Q: Okay.

21 A: Yep.

22 Q: I'm sorry?

23 A: Yeah.

24 Q: Pretty sure?

25 A: Pretty sure.

GWYNETH F. [REDACTED] - REDIRECT BY MS. SIMPSON

1 Q: Pretty sure? And you wanted -- you wanted Inv. Clarke
2 to try to catch this person as quickly as possible; right?

3 A: Right.

4 Q: Right? Because he'd hurt your grandma?

5 A: Yes.

6 Q: Right? And he had tied you up? And you wanted to help
7 Inv. Clarke; right?

8 A: Right.

9 Q: And you picked the person that looked the most like the
10 man out of the six people provided to you in that picture?

11 A: Yes.

12 Q: Okay. And the one that -- by looking at out of those
13 six pictures scared you?

14 A: Yes.

15 Q: Is that right?

16 MS. GOODE: I beg the Court's indulgence.

17 THE COURT: Yes, ma'am.

18 MS. GOODE: I have no further questions.

19 THE COURT: Redirect?

20 MS. SIMPSON: Briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. SIMPSON:

23 Q: Gwyn, a little bit -- I want to talk to you about the
24 gun and him using it. He didn't use it to kill your
25 grandmother; right?

GWYNETH F [REDACTED] -REDIRECT BY MS. SIMPSON

- 1 A: Right.
- 2 Q: At what point did he put it on the table and bring it
3 out?
- 4 A: Right before he killed my grandmother.
- 5 Q: Okay. And when -- you said he killed her by choking
6 her; right?
- 7 A: Right.
- 8 Q: Did she just sit there or was she trying to stop him?
- 9 A: She was struggling to stop him.
- 10 Q: Okay.
- 11 A: I thought it was struggling.
- 12 Q: You were telling someone that she was actually kind of
13 clawing at him?
- 14 A: Yeah.
- 15 Q: On her neck?
- 16 A: Like a cat.
- 17 Q: Like a cat?
- 18 A: Yeah.
- 19 Q: And -- but you saw her face turn purple?
- 20 A: Yes.
- 21 Q: And now, she also talked to you a little bit about the
22 hair. Do you remember telling Ms. Kristen no hair was
23 coming off his head, but that it was just a buzz cut?
- 24 A: Yes.
- 25 Q: Okay. But it kind of had rows or dots in at?

GWYNETH F [REDACTED] -REDIRECT BY MS. SIMPSON

1 A: Yes.

2 Q: So it was very low?

3 A: Yes. Extremely.

4 Q: Extremely? And then towards the end there -- and let
5 me ask you this. When you saw the gun, did you think there
6 was a chance he could have used it?

7 A: Yes. A very, very good chance that he would. Yes, I
8 did.

9 Q: And, of course, you told -- I believe you just said she
10 asked you when Officer Clarke said pick the man that most
11 looks like the man who hurt you and your grandma?

12 A: Yes.

13 Q: Because you'd never -- or had you ever seen this man
14 before?

15 A: No.

16 Q: Did you know his name?

17 A: No.

18 Q: Okay. And -- but what did you tell her you really
19 wanted to do?

20 A: I really wanted to put him in jail.

21 Q: And get the exact man; right?

22 A: Yes.

23 Q: And is there any doubt in your mind that the man here
24 in the courtroom today is the one that killed your
25 grandmother and tied you up?

GWYNETH F [REDACTED] -REDIRECT BY MS. SIMPSON

1 A: No doubt.

2 MS. SIMPSON: Thank you, Gwyn. Nothing further, Your
3 Honor.

4 THE COURT: Recross?

5 MS. GOODE: No, Your Honor.

6 THE COURT: Thank you. Thank you very much. You may
7 step down.

8 MR. KRZYSTON: Judge, we would also ask --

9 MS. SIMPSON: Your Honor, may the witness be excused?

10 THE COURT: I'm sorry?

11 MS. SIMPSON: I'm sorry. May the witness be excused?

12 THE COURT: Just give me a minute. I think -- yes,
13 ma'am. The witness may be excused. Thank you. Thank you
14 very much. Anything further before we take our recess?

15 MS. SIMPSON: No, Your Honor.

16 THE COURT: Ladies and gentlemen, now would be a good
17 time to take about a 15-minute afternoon recess. Please do
18 not discuss the case during this period. Thank you very
19 much.

20 (WHEREUPON, the jury exited the courtroom at 3:58 p.m.)

21 THE COURT: I didn't mean to cut you off, Mr. Krzyston.

22 MR. KRZYSTON: That's totally fine, Judge.

23 THE COURT: Anything further?

24 MR. KRZYSTON: Yes. I would like to take up the matter
25 of the juror in the second row. He's wearing a purple Nike

TREVOR HOLT - DIRECT BY MS. CAMPBELL

1 A: Yes, ma'am.

2 Q: And what doorway is that?

3 A: This is the carport door showing the glass door or
4 storm door and the green house door itself.

5 Q: And is that how it appeared when you were there that
6 night?

7 A: Yes.

8 MS. CAMPBELL: Your Honor, at this time, we would offer
9 these into evidence.

10 MR. RUFFIN: No objection.

11 THE COURT: The numbers again, Solicitor?

12 MS. CAMPBELL: 55, 56, and 57.

13 THE COURT: 55, 56, 57, State's exhibits, in evidence
14 without objection.

15 (WHEREUPON, State's Exhibits Number 55, 56, and 57,
16 photographs, were admitted into evidence.)

17 MS. CAMPBELL: Thank you.

18 BY MS. CAMPBELL:

19 Q: Sir, if you can, you said that one of the first places
20 you were processing was this area we're talking about?

21 A: Yes.

22 Q: And I am going to show you State's Exhibit Number 55.
23 Where are you standing when that photograph would be taken?

24 A: I'm standing in the carport facing the door towards the
25 kitchen.

TREVOR HOLT - DIRECT BY MS. CAMPBELL

1 Q: What do you see inside the door?

2 A: The kitchen cabinets.

3 Q: The kitchen cabinets? I'm going to show you what's
4 been marked as State's Exhibits 56 and 57. What do those
5 show?

6 A: This is the -- the house door itself with a window
7 towards the upper middle and the -- the handle and deadbolt
8 lock.

9 Q: And, in fact, you can tell this is the kitchen because
10 what is this item right here?

11 A: It's a refrigerator.

12 Q: Right there? And based on the information you had that
13 night, was it important to process this area?

14 A: Yes, ma'am. I'm working my way into the scene. Yes,
15 ma'am.

16 Q: And which -- I noticed that there is a -- a screen door
17 -- or not screen door. Excuse me. A storm door and an
18 actual door there?

19 A: Yes.

20 Q: Did you process both or either or where?

21 A: Yes, ma'am. I processed the exterior glass door, which
22 would be the storm door and the handle, the interior of the
23 glass door or storm door and its handle, the exterior of the
24 door, which would be the green door and the door handle, and
25 the interior of the door, which was the green door and the

TREVOR HOLT - DIRECT BY MS. CAMPBELL

1 door handle.

2 Q: And were you able to lift any possible prints that may
3 have been left in those areas?

4 A: Yes. I collected two latent print cards from the
5 interior side of the glass door, which is the storm door.

6 Q: The storm door?

7 A: Yes.

8 Q: Okay. The inside?

9 A: Yes, the interior side.

10 Q: Okay. And did you also process the other door?

11 A: Yes. I collected a print card, a latent print card,
12 from the exterior of the house door, which is the green
13 door, and a latent print card from the interior door, which
14 is the green door of the house.

15 Q: And how do you -- once you find the print or locate it,
16 can you actually see it with the naked eye once the powder
17 is put on?

18 A: Once the powder, yes, has adhered to the surface. Yes,
19 ma'am.

20 Q: And you do anything in order to what we call lift or
21 preserve that print for further examination?

22 A: Yes, ma'am. Latent print tape. Fingerprint tape is
23 applied over the latent print. A print card is filled out
24 documenting the area on the surface. We do a little drawing
25 just for orientation purposes and a brief description as to

TREVOR HOLT - DIRECT BY MS. CAMPBELL

1 where the print was lifted from on the print card. The tape
2 is then lifted from that surface and it is applied to the
3 contrasting card.

4 Q: And that was done as far as the fingerprints you were
5 able to --

6 A: Yes, ma'am.

7 Q: And just because you were able to see a fingerprint and
8 lift it, is it necessarily of such quality that it can be
9 compared or can you tell that without further examination?

10 A: Sometimes you can look at a print and say this is of
11 quality right then and there. Sometimes, you know, there
12 may be a very small portion of friction ridge that is lifted
13 and you're not quite sure about it.

14 Q: But you go ahead and get it?

15 A: You go ahead and take it, yes.

16 Q: And in this, if you see something that's obviously
17 what's called a smudge or what would just be like a black
18 mark once you put the powder on it --

19 A: Correct. There's still -- the smudge was created by
20 the moisture left in the movement of the hand across the
21 surface. That area is still -- the powder will adhere to
22 it. Little to no friction ridge may be visible and, at that
23 point, a swab may be collected just for touch DNA purposes.

24 Q: Possibly?

25 A: Possibly.

TREVOR HOLT - DIRECT BY MS. CAMPBELL

1 Q: But not necessarily lifted on a print card?

2 A: Correct.

3 Q: And once you had processed the interior and exterior of
4 both of those doors at the point of entry, did you then
5 proceed to process additional areas in the kitchen?

6 A: Yes, ma'am. Right inside the green door on the wall
7 was an alarm keypad. That was processed and a latent print
8 card was collected from it. And a water bottle that was
9 located -- I believe it was on the dining room table. It
10 was marked as E. A latent print card was collected from it.

11 Q: Would that have been on the kitchen table?

12 A: Kitchen table, yes.

13 Q: Okay. Did -- those were all the latent print cards or
14 latent prints that you were able to dust for and find, but
15 did you also process other areas inside the home or other
16 items inside the home to look for any possible prints?

17 A: Yes, ma'am. I processed several of the items inside of
18 the home.

19 Q: Would that include the kitchen counter?

20 A: Yes, ma'am.

21 Q: Were you able to find any prints that would be liftable
22 or usable?

23 A: No, ma'am.

24 Q: Was there also a -- I believe it was a wallet found on
25 the kitchen table?

INV. FRANKLIN RAINSFORD - DIRECT BY MS. MCDUFFIE

1 A: It's a little side stand dresser with various items on
2 it, and you'll see Ms. Tollison's legs on the floor, again
3 with the medical interventions, sticky tabs on it, and
4 several items underneath her feet.

5 Q: And State's 21?

6 A: It's a view of, again, Ms. Tollison on the floor, more
7 just kind of a broader photograph of the floor itself, and
8 there appears to be some kind of wet -- wetness around her
9 neck, specifically in a bucket on the floor.

10 Q: And so this is how you observed Alice Tollison on
11 October the 11th of 2015?

12 A: Yes, ma'am.

13 Q: And those white and blue things on her body, what are
14 those again?

15 A: Those are the sticky tabs that EMS use to detect
16 heartbeat and whatnot.

17 Q: And EMS had already left once you arrived?

18 A: Correct.

19 Q: What is in State's 24 by Ms. Tollison's legs?

20 A: Bed Bath & Beyond bag or flyer, coupons, and there's
21 also the -- her cane walker was underneath her.

22 Q: And so she's lying on top of her cane walker?

23 A: Yes, ma'am.

24 Q: Medical device to assist in her walking?

25 A: Correct.

LOUISE JACOBS - DIRECT BY MS. CAMPBELL

1 THE WITNESS: I do.

2 THE CLERK: Thank you. Have a seat in the witness
3 stand, please. State your name for the record.

4 THE WITNESS: Louise A. Jacobs.

5 LOUISE JACOBS, being first
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. CAMPBELL:

9 Q: Ms. Jacobs, do you live here in Columbia?

10 A: Yes, ma'am.

11 Q: How long have you lived here in the Columbia area?

12 A: All my life.

13 Q: Where do you live?

14 A: I live in Newcastle.

15 Q: In Newcastle?

16 A: Uh-huh.

17 Q: Did you know the victim in this case, Ms. Tollison?

18 A: Yes.

19 Q: And how did you know Ms. Tollison?

20 A: From the church.

21 Q: And what was your relationship with Alice Tollison?

22 A: We was like sisters.

23 Q: You were like sisters?

24 A: Uh-huh.

25 Q: And generally, what kinds of things would you do with

LOUISE JACOBS - DIRECT BY MS. CAMPBELL

1 Alice Tollison?

2 A: We went to visit each other. We went and took the kids
3 out to the zoo, and we shared a little bit of everything and
4 we talked about how we were going by helping people and
5 whatnot. She -- she would call me every morning and check
6 on me. Every -- during the time my birthday was, she would
7 sing a birthday song for me. I just love her so much, and I
8 miss her. She was the sweetest, kind lady I have ever met
9 in my life.

10 Q: Would y'all go to church together?

11 A: Uh-huh.

12 Q: And would she typically give you a ride to church?

13 A: Uh-huh.

14 THE COURT REPORTER: Is that a yes?

15 Q: And why was that?

16 THE COURT REPORTER: Is that a yes?

17 A: Yes.

18 Q: I'm sorry. Why was -- why was that she would give you
19 a ride to church?

20 A: Because I can't drive and I don't have an automobile.

21 Q: I want to turn your attention -- well, let me ask you
22 this. Do you know a lady named Mattie?

23 A: Yes. I knew about -- moved down the street about two
24 doors from me.

25 Q: Okay. You know Mattie from living down the street?

LOUISE JACOBS - DIRECT BY MS. CAMPBELL

- 1 Q: And you can't say what Mattie said to you --
- 2 A: Yes, ma'am.
- 3 Q: But did y'all have a conversation?
- 4 A: Uh-huh.
- 5 Q: And then I want to turn your attention to that Sunday
- 6 morning.
- 7 A: Okay.
- 8 Q: Did Ms. Alice make contact with you that Sunday
- 9 morning?
- 10 A: Yes. She called to see if I was going to church.
- 11 Q: And is that what she did every Sunday?
- 12 A: Every Sunday.
- 13 Q: What did you tell her when she called you to see if you
- 14 were going to church that Sunday?
- 15 A: I told her I was sick and I wouldn't be able to go.
- 16 Can I say what she told me?
- 17 A: Yes. It's not offered for the matter of the truth.
- 18 Yes.
- 19 A: She said she had asked the name, which is from Mattie.
- 20 Q: You can't say that.
- 21 A: Okay.
- 22 Q: Did she say anything about what she was going to do for
- 23 you?
- 24 A: Oh, she said she'd come and see me after church.
- 25 Q: Okay. Do you know if she had anybody else with her

LOUISE JACOBS - DIRECT BY MS. CAMPBELL

1 that day?

2 A: Her little granddaughter.

3 Q: And was it unusual for you and Ms. Alice and her
4 granddaughter to go to church?

5 A: Oh, yeah. And my little granddaughter.

6 Q: And your little granddaughter?

7 A: Uh-huh.

8 Q: When you told her that you were sick that day, did she
9 say she would do something for you?

10 A: Oh, yeah.

11 Q: What did she say?

12 A: She said, honey, can I cook you something and bring it
13 to you or do I need to take you somewhere, and I said, no,
14 ma'am. She said, well, if you need me, just call me back.
15 I'm here for you.

16 Q: And is that the last time you talked to her?

17 A: (No verbal response.)

18 Q: Ms. Jacobs, when did you find out about what happened
19 to Ms. Tollison?

20 A: My pastor and his wife came to the house and they never
21 had came to the house together like that, and I just had a
22 feeling on me. And he said --

23 Q: You can't say what he said. I'm sorry.

24 A: Okay. Well --

25 Q: Did they come --

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 A: We have a company that we actually purchased the tests
2 from. It's a standardized test that a lot of accredited
3 labs use. Collaborative Testing Services is the one we use,
4 and they will send you known standards and latent prints,
5 and they already know the answers to them and you have to
6 provide the correct answers. I believe four or five of us
7 have to send our test actually back to Collaborative Testing
8 Services and those are then compiled, along with the other
9 analysts who are taking the same examination, to kind of see
10 where everyone else is too.

11 MS. MCDUFFIE: Your Honor, at this time, we would offer
12 Inv. Odom as an expert in latent print analysis.

13 THE COURT: Mr. Krzyston?

14 MR. KRZYSTON: I've got nothing on voir dire, Judge.

15 THE COURT: All right. Mr. Foreman, ladies and
16 gentlemen of the jury panel, normally a person cannot give
17 opinion testimony. Normally, when a person testifies, they
18 must testify to what they either saw, heard, or sensed by
19 smell or something of that nature.

20 However, there is an exception when someone is
21 qualified because of training and experience, education, or
22 the like. They are permitted to give their opinions and the
23 basis for those opinions in certain areas if the Court
24 qualifies them that way.

25 This witness, Inv. Trish Odom, will be qualified in the

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 area of latent print analysis to give opinion testimony in
2 that area and the basis of holding such opinions. That does
3 not mean that you must accept these opinions, but it is
4 evidence for you, the jury, to use in any ways you deem fit
5 and appropriate.

6 Thank you, Solicitor. You may continue.

7 MR. KRZYSTON: Judge, we'd just renew our prior
8 objection based on the foundation I've already laid.

9 THE COURT: All right. Yes, sir. And I would renew my
10 previous ruling.

11 MR. KRZYSTON: Thank you, Your Honor.

12 THE COURT: Thank you, Mr. Krzyston.

13 BY MS. MCDUFFIE:

14 Q: Inv. Odom, can you please explain to the jury what a
15 latent print is?

16 A: Well, latent is just a term that we use to -- it's kind
17 of an umbrella term that we use for any kind of fingerprint
18 evidence that is collected from a crime scene. We have
19 three basic types of crime scene prints.

20 You have the one that the others have been talking
21 about, the latent prints where you actually have to do
22 something to them, powders or chemicals, to make them
23 visible, and we call those latent.

24 Then you have a patent print, which is something that's
25 visible, like in blood or oil or any other -- any kind of

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 dust or something that you can actually see them.

2 And then you have a three-dimensional print that might
3 be in something like silly putty or Playdoh, and that three-
4 dimensional print is called a plastic print.

5 But any of these prints that are located from a crime
6 scene or from evidence collected from a crime scene, we just
7 put that under the umbrella term latent print.

8 Q: And what is a known print?

9 A: A known print is a -- it's just that. It's a set of --
10 full set of ten fingerprints that are taken from a known
11 source.

12 Q: And so that is a print that is known to a person?

13 A: Yes.

14 Q: And please describe for the ladies and gentlemen of the
15 jury how someone can leave a print on a surface?

16 A: Well, by touching it. So everybody has looked at their
17 hands before and you see all these little lines that are
18 covering your fingertips and the lower digits, your palm
19 surface, and also on the soles of your feet. And these
20 lines -- we call them ridges. They're called friction
21 ridges and what they are for is to help you grip things.

22 Well, it just so happens that these -- these friction
23 ridges are in unique formations on everyone. So these
24 ridges also have tiny pores on them. The pores are
25 secreting oil and sweat, and that, mixed along with other

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 things that you touch, when you touch a surface you leave
2 behind the impression -- possibly leave behind the
3 impression of your fingerprint.

4 I like to compare it to, like, a craft store stamp you
5 get. You put it in the ink and you leave it behind and it
6 leaves that same impression over and over and over again, as
7 long as you have ink on the stamp.

8 Q: And what happens if you keep touching the same area and
9 you don't re-ink the stamp, in your analogy?

10 A: Right. Either it runs out. Like, if you -- if your
11 fingers are dry, you know, right now we have a lot of --
12 we're all sweaty right now because it's hot. So sometimes
13 you'll have too much oil or too much sweat on your fingers
14 and so instead of leaving behind that perfect impression,
15 it's going to be smeared or the ink or the sweat in
16 fingerprints is going to get in between the ridges in those
17 areas called the furrows and so we're not going to be able
18 to see those ridges. Or alternately, your hands are very,
19 very dry and, because they don't have anything, it's like
20 that dry ink stamp. It's not going to leave anything behind
21 if you don't have a medium to deposit it.

22 Q: And if I touch this counter right now, am I necessarily
23 going to leave fingerprints?

24 A: No.

25 Q: What sort of conditions do you need or does it make it

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 more likely that you could get a print off a surface?

2 A: Well, it depends on the surface. It depends on the
3 state of the person's fingers. If you have very dry hands,
4 like I said, you're less likely to leave a fingerprint
5 behind because you don't have that source of the ink that
6 I'm describing, and I mean that in a fingerprint sense.

7 Or if the surface is very bumpy, like you have on your
8 refrigerator -- some refrigerators are very bumpy. They're
9 made not to show fingerprints. Or on the dashboard of your
10 car. That's exactly what they're made for, to not show
11 fingerprints.

12 And so it's less likely to get -- you're less likely to
13 get a fingerprint off of a surface that's textured or if you
14 have really rough fingers or you work with paper a lot. It
15 tends to flatten out the ridges. Or if you work with brick.
16 Brick masons -- they end up with little -- little scars on
17 their fingers from having touched brick so much. So the
18 state of the surface you're touching, whether or not you
19 have a transfer medium, or what the state of your actual
20 fingers is.

21 Q: And if a fingerprint is left on a surface, how long
22 will it stay there?

23 A: Until it's disturbed.

24 Q: And how is a fingerprint disturbed?

25 A: It can be wiped away. It can be touched again and

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 again, and so it obliterates the ridge detail. Rain. You
2 know, anything. And over time, the moisture will dry up,
3 but they could -- we've had research that shows that
4 fingerprints can stay on an item for over 20 years.

5 Q: Or as long as 20 seconds?

6 A: Right. Sure.

7 Q: Until it went away. So there's no way to date when a
8 fingerprint was left somewhere, is there?

9 A: There is not.

10 Q: And in this case in particular, were you given items of
11 evidence to analyze?

12 A: I was.

13 Q: And, in fact, did you generate multiple reports in this
14 case?

15 A: I did.

16 Q: And in preparation for trial, did you assist in
17 preparing a summary of your findings or results?

18 A: Yes, ma'am. I did.

19 Q: I'm showing you State's 214 and 215. Is that a summary
20 of your findings?

21 A: Yes.

22 MS. MCDUFFIE: Your Honor, at this time, we'd offer
23 State's 214 and 215 into evidence.

24 THE COURT REPORTER: What are they?

25 MS. MCDUFFIE: Summary of latent prints.

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 THE COURT REPORTER: So it's a blowup?

2 MS. MCDUFFIE: Yes, ma'am.

3 THE COURT REPORTER: Summary of latent prints? So
4 could you give me the order? Which one is 214 and which one
5 is 215?

6 MS. MCDUFFIE: 214 is Items 1 through 8, and 215 is
7 Items 9 through 14.

8 THE COURT REPORTER: Thank you.

9 MR. KRZYSTON: Judge, we have an objection and a matter
10 of law.

11 THE COURT: All right. Ladies and gentlemen, if you
12 would, step out momentarily. Do not discuss the case during
13 this brief recess. Thank you. Thank you very much.

14 (WHEREUPON, the jury exited the courtroom at 3:35 p.m.)

15 THE COURT: All right. Mr. Krzyston?

16 MR. KRZYSTON: Thank you, Judge. May it please the
17 Court.

18 Judge, we have an objection to a number of the
19 fingerprints that are contained in the summary that was
20 created for court. Specifically, we'd like to draw the
21 Court's attention to Item L-1 and then the subitems 1.1 and
22 1.2, which would be latent prints developed off the entire
23 -- excuse me -- interior side of the door at the point of
24 entry.

25 We would also enter objection as to Items 7, 8,

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 subitems 7.1, 8.1, 8.2. 7 is a side of small gold box with
2 sunshine pendant. 8 is a plastic card attached to a
3 multicolored canister.

4 We would also enter objections into the record on Item
5 12, which is the front lid sewing kit or the latent print
6 card developed therein.

7 Judge, the analysis on Items 1.1, 1.2, 7.1, and 8.1 was
8 conducted on October 12th, 2015, which would be approximately
9 anywhere from 12 to 24 hours prior to Mr. Heyward's arrest
10 on these counts.

11 Judge, the analysis and the evidence that they are
12 about to bring into the record is that the items analyzed on
13 the 12th were compared against a latent print card that
14 Richland County Sheriff's Department received from the AFIS
15 system. I believe it was something they got through their
16 system that would have been retained in the State of New
17 Jersey's AFIS database. Judge, at no point did the examiner
18 on the affected items analyze a known sample of Mr.
19 Heyward's prints.

20 Additionally, Judge, with regard to all the items --
21 and I think we can extend our objection to all of the
22 fingerprints because the examination that took place on the
23 16th does not indicate through any of the evidence that the
24 government has turned over to us that there was ever any
25 type of comparison between a known standard and the AFIS

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 card that Ms. Odom used for analysis on the 12th.

2 They did, I believe, obtain a known standard through
3 Richland County's LiveScan software that is a supplemental
4 program to AFIS on the 16th. That item was possessed by Ms.
5 Odom and it may have been utilized in the analysis on the
6 16th, but there is no indication through her bench notes or
7 her findings or her official report that that standard that
8 they obtained prior to the arrest on the 12th was ever
9 compared to the known standard that the officers obtained
10 from Mr. Heyward on October 16th.

11 And in moving for exclusion of this evidence, I would
12 kindly direct the Court's attention to the State of South
13 Carolina v. Richard P. Anderson, reported at 687 S.E.2d 35.
14 That is a Supreme Court of South Carolina case that was
15 decided in 2009.

16 Respectfully, Judge, Richard P. Anderson in that matter
17 was convicted of first-degree burglary in the circuit county
18 of Horry County in front of Judge Paula Thomas. He was
19 subsequently convicted obviously, sentenced to 20 years, and
20 appealed his conviction to the Court of Appeals, who
21 affirmed his conviction. He then sought cert and that cert
22 was granted on October 7th, 2009.

23 In that matter, Judge, the Court found that Anderson
24 met his hearsay argument. So our argument here is that not
25 only can they not properly authenticate this material, but

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1 by virtue of the failed authentication, this is also
2 inadmissible hearsay.

3 Judge, on -- excuse me. On August 15th, 2003, Priscilla
4 Ward returned home at around 11:10 a.m. to find that
5 somebody had broken into her home while she was at work.
6 The intruder had entered the home by breaking a bedroom
7 window.

8 Following the break-in, Ms. Ward and her husband
9 discovered several items missing. They reported it to the
10 Horry County Police Department and Stephen Hardy responded
11 to the scene and lifted two fingerprints from the broken
12 window, assumed to be the point of entry.

13 In an effort to identify the intruder's fingerprints,
14 the State offered the testimony of a latent examiner. The
15 examiner testified that he analyzed latents by checking
16 them through the state's AFIS database -- excuse me. The
17 State's examiner in that matter analyzed the questioned
18 samples when he obtained a card through the state's AFIS
19 database.

20 What the Court essentially said was that they don't
21 have to bring in the person that arrested the guy. What
22 they did in that case was bring in a SLED investigator, who
23 testified to the circumstances surrounding the collection.
24 They said on such and such a date, we obtained a print card
25 from this individual. We entered it into AFIS. And

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1 testified about how somebody gets into AFIS, how AFIS is
2 maintained.

3 Obviously, AFIS is a state-specific database. No
4 witness on the State's -- State's advised witness list hails
5 from the State of New Jersey, and thus no witness is able to
6 give testimony on the issue of how Mr. Heyward's alleged
7 prints were ever obtained in New Jersey, how the prints were
8 then uploaded allegedly to the database in New Jersey, and
9 how the prints again are maintained. And we believe based
10 on that, that the evidence that they seek to admit here is
11 inadmissible.

12 THE COURT: All right. Thank you. Thank you, Mr.
13 Krzyston. Solicitor?

14 MS. MCDUFFIE: Your Honor, first, just to give you a
15 little bit of background, when Trish Odom received this
16 print on the 12th, she uploaded it into AFIS. AFIS is not a
17 state system. It is a national system. Your Honor, there
18 are standards by which entry or inclusion into that system
19 must be met and standards that are universal for how those
20 items are uploaded into that system.

21 Your Honor, that returned the name of James Heyward.
22 It also returned a known print card from the FBI. Those
23 print cards are done -- have a unique identifying number no
24 matter how many times a person is arrested, and she was able
25 to obtain that number from there as well.

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1 She then provided that information to law enforcement.
2 Law enforcement put him in a lineup and Ms. F [REDACTED] picked
3 him from the lineup and then he was arrested, Your Honor.
4 Upon arrest, another fingerprint card was taken and then
5 Inv. Odom did use that, as well as the information card from
6 New Jersey from the FBI put into the AFIS by New Jersey, in
7 her comparison of the evidence in this case.

8 The fingerprint card that she used or was taken upon
9 his arrest was done by the LiveScan system. It identifies
10 that as the defendant.

11 Your Honor, I believe that you have held or the Court
12 has found that she is an expert in latent fingerprints.
13 She's testified regarding the methodology used to compare
14 known and unknown fingerprints and, Your Honor, we were
15 getting to her results and her conclusions.

16 I think under 901, we will satisfy it, Your Honor. I
17 was treading very lightly with the AFIS, since they made a
18 previous motion and Your Honor's ruling was that we were to
19 say that it was a law enforcement database, Your Honor, but,
20 Your Honor, based on this, I'm happy to go into it with her
21 how he was placed into the system where she was able to
22 identify -- obtain his prints from, the same unique number
23 on the FBI number, under which he was arrested, which is the
24 same FBI number that comes back to his CODIS hit and that
25 the fingerprints that were taken from the LiveScan system

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1 upon his arrest were the same as that from the New Jersey
2 10-print card.

3 Further, Your Honor, I don't know how they say that
4 they are not aware of this when it is clearly in her report
5 and also their expert met with Ms. Odom and she provided
6 both cards that she used for examination to their expert.

7 MR. KRZYSTON: And, Judge, just if you don't mind, I'd
8 like to clarify. Again, we're not saying and we're not
9 conceding that they can violate the bounds of your 404
10 order, but what we are saying is that, in this circumstance,
11 they are unable to establish even the basic authentication
12 requirements that the Court required in State v. Anderson.

13 And specifically, with regard to 901, this notes that
14 this situation differs factually from what they're pretty
15 much saying in Anderson in that the AFIS entry in Anderson
16 was collected out of a South Carolina state prison. It was
17 assigned a South Carolina identification number. It was
18 collected pursuant to a South Carolina standard, maintained
19 pursuant to SLED's requirements.

20 And in this case in particular, they don't even know
21 where the print came from in New Jersey. All they know is
22 that it was maintained in the New Jersey database. They're
23 not sure by what standards. They're not sure by what
24 standards it was collected. They're not sure by what
25 standards it was uploaded and, respectfully, while Ms. Odom

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1 is certainly an expert here in South Carolina, she's got no
2 connection to New Jersey. She's got no understanding of
3 what the state of New Jersey and the New Jersey State Police
4 do in terms of their fingerprint collection, lifts and
5 processing.

6 So we think they fail under 901 and fail under
7 Anderson, the Supreme Court's ruling in that case.

8 And to be clear of the factual scenario here, Richland
9 County absolutely complied with all of our requests to look
10 at their documentation, and we thank them for that and we
11 certainly thank the Prosecutor's Office for helping to
12 organize that, but what is at issue here is that the
13 analysis that was done in October -- on October 12th of 2015
14 only looked at the prints with a known standard from a
15 foreign database.

16 The prints that were analyzed on the 16th, she did have
17 a known standard which Richland County itself collected, but
18 there's no indication from her report or from her bench
19 notes that the known standard that they collected was ever
20 compared to the assumed standard, if you will, that they
21 obtained through the AFIS system here in South Carolina.

22 MS. MCDUFFIE: Your Honor, may I speak with the witness
23 briefly?

24 THE COURT: Ma'am?

25 MS. MCDUFFIE: May I speak with the witness briefly?

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1 THE COURT: No, ma'am.

2 MR. KRZYSTON: And, Judge, just so you're aware, the
3 seminal case on this matter on this issue is State v. Rich,
4 359 S.E.2d 281.

5 THE COURT: I was reading it while I was sitting here.

6 MR. KRZYSTON: Certainly, Judge.

7 THE COURT REPORTER: R-i-c-h?

8 MR. KRZYSTON: R-i-c-h, yes, ma'am.

9 THE COURT REPORTER: Thank you.

10 MR. KRZYSTON: The cite is 359 S.E.2d 281. It's a 1987
11 decision.

12 (WHEREUPON, there was a pause in the proceedings, after
13 which the proceedings resumed as follows.)

14 THE COURT: Tell me again very briefly your
15 interpretation of Anderson, Mr. Krzyston.

16 MR. KRZYSTON: Judge, we don't suggest that they have
17 to bring in the person from New Jersey who took the
18 fingerprint.

19 THE COURT: I understand that.

20 MR. KRZYSTON: What we assert is that they have to
21 bring in somebody from New Jersey who can explain when his
22 print was uploaded, by what means, under what circumstances,
23 how it was maintained in the New Jersey state index, and how
24 the New Jersey state index itself is maintained. Without
25 that evidence --

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1 THE COURT: My question is what appeals rule in Mr.
2 Anderson's case and what was the decision of the Court of
3 Appeals.

4 MR. KRZYSTON: The Court of Appeals affirmed the
5 conviction, Judge, but the Supreme Court granted cert to
6 address the issue of authentication.

7 THE COURT: Yes, sir. And they did not reverse the
8 Court of Appeals.

9 MR. KRZYSTON: Yes, sir. But I believe that was on
10 other grounds and noted -- or excuse me. I believe they
11 conducted a harmless error analysis, but what they said here
12 is that authentication fails.

13 THE COURT: Maybe I'm misreading this. I don't -- the
14 conclusion that you have recited to me, I can't find that
15 the Court of Appeals directly interpreted Rich as not
16 requiring strict authentication requirement. Thus, based on
17 that, it concludes the State presented sufficient evidence
18 to satisfy the authentication requirement pursuant to Rich
19 and more specifically Rule 9 of the warrant.

20 MR. KRZYSTON: Correct, Judge, but --

21 THE COURT: But is your entire argument authentication?

22 MR. KRZYSTON: It is --

23 THE COURT: That's the basis of your objection?

24 MR. KRZYSTON: It is hearsay and authentication, Judge,
25 and --

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1 THE COURT: When I look at -- when I look at the
2 footnote --

3 MS. MCDUFFIE: It's 3, Your Honor.

4 THE COURT: Footnote 3 in Anderson, if you assume that
5 Anderson raised a hearsay challenge, such an argument would
6 be without merit. In Rich, this court definitively held
7 that the re-fingerprint cards do not violate the prohibition
8 against hearsay given they fall within the business records
9 exception or the public record exception, citing Rich.

10 The other is the appellate courts have continued to
11 recognize and have emphasized that the fingerprint card is
12 not testimony and thus do not violate the rules in Crawford
13 v. Washington, 541 U.S. 36. See also United States v.
14 Thornton, relying on the decision of the Fifth, Sixth, and
15 Ninth Circuits and concluding that fingerprint cards are not
16 testimony and that the admission of such business or public
17 records does not violate the rules in Crawford or alleged to
18 be hearsay.

19 MR. KRZYSTON: Well, quickly, Judge, and just so we're
20 clear about how we're basing our argument, they only arrived
21 at that holding after authenticating testimony of where it
22 was collected, the South Carolina state prison system, when
23 it was collected, the date from which he was admitted to the
24 Department of Corrections on that offense, how it was
25 uploaded into South Carolina AFIS, how it was maintained in

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1 South Carolina AFIS, and how South Carolina AFIS is
2 maintained. We are absolutely devoid of any possibility
3 that the government can offer that testimony in this matter.

4 THE COURT: All right. Then based on the record before
5 me now, I do not think New Jersey has to properly
6 authenticate.

7 MS. MCDUFFIE: Your Honor?

8 THE COURT: Ma'am?

9 MS. MCDUFFIE: Your Honor, can I proffer the testimony
10 in camera?

11 THE COURT: Yes, ma'am. I'm going to let the jury go
12 because we have that -- that juror that has a doctor's
13 appointment, and then we will do that.

14 (WHEREUPON, the jury entered the courtroom at 4:00
15 p.m.)

16 THE BAILIFF: The jury is seated, Your Honor.

17 THE COURT: Welcome back, ladies and gentlemen. It
18 appears this is going to take more time than I initially
19 anticipated and it would probably without reviewing this
20 matter go beyond the time our juror needs to make his
21 appointment.

22 So I'm going to release you for the remainder of the
23 day and ask you to please be back promptly at 9:30 in the
24 morning. Do not discuss this case with anyone. Do not
25 read, watch, or listen to any news accounts about the case.

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1 Do not do any independent research or any research on the
2 Internet.

3 Thank you. Thank you very much. I hope you all have a
4 pleasant evening and I'll see you promptly at 9:30 in the
5 morning.

6 (WHEREUPON, the jury exited the courtroom at 4:01 p.m.)

7 THE COURT: All right. Solicitor, I'm going to take
8 about a 15-minute recess.

9 Inv. Odom, you may step down, but you may not discuss
10 your testimony with anyone. You're subject to continuing
11 direct and cross-examination.

12 Thank you. Thank you very much. We'll be in recess
13 for 15 minutes.

14 MR. KRZYSTON: Thank you, Judge.

15 (WHEREUPON, there was a break in the proceedings from
16 4:02 p.m. until 4:15 p.m., after which the proceedings
17 resumed as follows.)

18 THE COURT: Yes, sir?

19 MR. KRZYSTON: Oh, I'm just standing awaiting you.

20 THE COURT: All right. Solicitor, you may recall your
21 witness.

22 MS. MCDUFFIE: We're getting her.

23 (WHEREUPON, there was a pause in the proceedings until
24 the witness retook the stand, after which the
25 proceedings resumed as follows.)

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1 THE COURT: All right. Solicitor?

2 MS. MCDUFFIE: Thank you, Your Honor.

3 IN-CAMERA DIRECT EXAMINATION

4 BY MS. MCDUFFIE:

5 Q: Inv. Odom, when you received the first prints in this
6 case, please tell the Court what -- what was done with those
7 prints? Or latents to be exact.

8 THE COURT: You're talking about the latent prints?

9 MS. MCDUFFIE: Latent prints to be identified.

10 THE COURT: Oh, yes, ma'am.

11 BY MS. MCDUFFIE:

12 A: All right. Initially, I didn't receive them. Diane
13 Bodie received them. She's the one who submitted them into
14 both the AFIS and the I-AFIS systems.

15 THE COURT: Speak up for me just a little bit.

16 THE WITNESS: I'm sorry.

17 BY MS. MCDUFFIE:

18 Q: Diane Bodie initially received the latent prints, and
19 she's the one who also entered them into the AFIS system and
20 also submitted them to I-AFIS, which is the Integrated
21 Automated Fingerprint Identification System, and that is a
22 way to query the FBI's database.

23 Q: And in order to query the FBI's database, do certain
24 standards have to be met?

25 A: I'm not sure I understand your question.

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1 Q: I'm sorry. Does there have to be sufficient quality
2 and things of that nature in order to enter something into
3 AFIS or I-AFIS?

4 A: Are you talking about the 10-print cards or the latent
5 print card?

6 Q: The latent print card.

7 A: There are no standards. The best quality of your
8 latent print is the more likely you are to get a hit back on
9 it.

10 Q: And did you receive a hit in this case?

11 A: Diane did, yes.

12 Q: And Diane forwarded that on to you?

13 A: Yes, ma'am.

14 Q: And what information were you provided?

15 A: The print out has the FBI number and the name of James
16 Heyward.

17 Q: And did you, based on that, pull a 10-print card?

18 A: Diane actually printed it out and forwarded it along
19 with the latent prints.

20 Q: And did you then conduct an examination?

21 A: I did.

22 Q: An individual comparison as to say yes, it matches, or
23 no, it doesn't?

24 A: That's correct.

25 Q: And what were your results?

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1 A: I actually looked at that one and an additional one
2 that was on the same latent print card and I identified them
3 both to James Heyward.

4 Q: And you said that the computer generated a unique FBI
5 number?

6 A: Right. That's right. It's the main number of the
7 record that bears the fingerprints of James Heyward.

8 Q: So anytime a person is arrested, their fingerprints are
9 uploaded into a system and it corresponds to that unique
10 number?

11 A: Right. Yes. The FBI -- their fingerprint base. And
12 so anytime an additional charge is added along with
13 fingerprints, they are added based on the fingerprint
14 classification and the AFIS search essentially.

15 Q: So for a charge to show up on someone's rap sheet, the
16 fingerprints from that charge would match the other charges
17 on that rap sheet?

18 A: That's correct.

19 Q: Okay. And please tell the Court the FBI number that
20 was associated with the James Heyward card that you
21 obtained?

22 A: It was 220688, P as in papa, A as in alpha, 3.

23 Q: And that was --

24 THE COURT: What was the last one?

25 THE WITNESS: Three, sir. I'm sorry.

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1 THE COURT: Thank you. Yes, ma'am.

2 BY MS. MCDUFFIE:

3 Q: And subsequently, was Mr. Heyward arrested? Or did you
4 know whether he was arrested?

5 A: Yes.

6 Q: And were his prints upon booking obtained again?

7 A: Yes.

8 Q: And how was that done?

9 A: When someone is arrested at the jail, they are
10 fingerprinted on the LiveScan system, and the LiveScan
11 system that we have in our office -- as soon as a record is
12 created at the jail, we have access to it. So, I -- as soon
13 as they created the record, I had it. It's actually
14 submitted from the jail through a server that goes to SLED,
15 but also saves it for us in our database.

16 Q: And that's because SLED is the administrator of the
17 system?

18 A: For this state, that's correct.

19 Q: And each state has an administrator?

20 A: Yes.

21 Q: But certain standards have to be met to have something
22 uploaded? The state has to meet certain standards in order
23 for prints to be placed into the system?

24 A: Right. I think they call it a threshold.

25 Q: And every state has to maintain the same level or the

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1 same basic threshold level?

2 MR. KRZYSTON: Objection, Judge. I don't know that
3 she's in a position to answer that.

4 THE COURT: Explain your objection. You don't know if
5 she can answer that?

6 MR. KRZYSTON: Yes, sir. I'm sure she could answer it
7 as it concerns South Carolina, but in terms of her law
8 enforcement experience in New Jersey, Connecticut,
9 California, and the rest of the states, we did not make an
10 objection.

11 THE COURT: Excuse me. I didn't mean to interrupt. Go
12 ahead, Mr. Krzyston.

13 MR. KRZYSTON: I was done.

14 THE COURT: Restate your question, please, Solicitor.

15 BY MS. MCDUFFIE:

16 Q: Are there minimum threshold levels that -- the same
17 minimum threshold levels that every state must comply with?

18 A: Well, I don't know about every state, but I'm sure that
19 the FBI has a common threshold for everything that comes to
20 them. I've had 10-print cards that were inked that were
21 returned and wouldn't be added to the FBI's database because
22 they were insufficient.

23 Q: And then upon his arrest, you said that it was
24 automatically -- the new 10-print card was automatically
25 delivered to you?

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1 A: Well, it wasn't delivered to me. It was in the
2 database and I was able to go and pull it up based on his
3 name.

4 Q: And it was immediately accessible to you?

5 A: As soon as the record was created, yes.

6 Q: And once that record was created, was it also assigned
7 an FBI number?

8 A: Well, I think it has to be forwarded through SLED and
9 if there's no SID number, which is the state identification
10 number, a state identification number is generated and then
11 it's sent to the FBI for them to do their processes and add
12 it to whatever criminal record it needs to be added to.

13 Q: And the LiveScan card -- and I'm sorry. I don't know
14 when you pulled this for discovery purposes. In response to
15 Mr. Heyward -- I'm sorry -- Mr. Heyward's discovery request,
16 did you provide additional fingerprint documentation to the
17 State and the defense?

18 A: Right. I provided everything in all of my case
19 jackets.

20 Q: And part of that was a printout of the LiveScan card
21 that was obtained from Richland County upon his booking?

22 A: I don't remember if I gave everybody a photocopy or if
23 I actually printed it out because at the point that it was
24 added to SLED's database, I could then pull it up off of
25 SLED's database, and I don't recall which I did.

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1 Q: I'm showing you what's been marked for identification
2 purposes as State's 216. Is this a copy of the 10-print
3 card that was taken upon Mr. Heyward's South Carolina arrest
4 that you then provided to the State and the defense?

5 A: This is actually a printout of an AFIS printout, rather
6 than a LiveScan printout. The LiveScan printout that I had
7 didn't have the FBI number and the state identification
8 number on it. Can I see the back of the card?

9 Q: I might not have it.

10 A: You don't have it? Okay.

11 Q: So that -- okay. When you initially got it, it had not
12 been submitted to AFIS, nor had it been given an FBI or a
13 state number?

14 A: Right. Because I -- our server is kind of the hub and
15 so I get it essentially before it goes through SLED. So
16 when I pulled it the day that -- whatever day it was -- the
17 12th or 13th that I started looking at that one, then it
18 hadn't -- what I had had not gone through SLED yet, but when
19 I pulled this for discovery purposes, I actually pulled it
20 off of the AFIS system, which had the FBI number and the SID
21 number on it.

22 Q: And what is the FBI number on the same card that was
23 taken upon his booking at the Alvin S. Glenn Detention
24 Center on October 13th of 2015?

25 A: It's 220688, P as in papa, A as in alpha, 3.

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1 Q: And that's the same FBI number as the card that you
2 originally obtained from the AFIS or I-AFIS system? Or
3 Diane Bodie obtained and provided to you?

4 A: Right. That was the original FBI number that was
5 generated from the hit.

6 Q: And then once it was submitted to SLED and the FBI,
7 that's the same number that was generated upon his booking?

8 A: May I refer to my notes?

9 Q: Please.

10 A: Please? Okay. Can I answer?

11 Q: Sure.

12 A: Okay. So I'm able to tell because every time in
13 LiveScan a new card is generated, it has an independent
14 transaction control number, which is -- it's an event code.
15 And so the card that I used with the comparison is -- it has
16 the same transaction control number on it as this one that I
17 printed off of AFIS, which has the FBI number on it.

18 Q: And are those cards the same ones that have just been
19 submitted into additional databases?

20 A: Yes.

21 Q: The fingerprints don't change?

22 A: No, ma'am.

23 Q: But the FBI did not acknowledge that those prints are
24 the same ones that -- that correspond to number 220688PA3?

25 A: Yes, ma'am.

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1 Q: In doing your analysis, did you only rely on the card
2 originally that came from AFIS on the 12th or did you rely on
3 his booking prints as well?

4 A: The first three reports, which were all written on the
5 12th, I obviously used the only card we had, which is the one
6 that was generated through the FBI. When I did the kind of
7 shoring up of everything else and did the remainder of the
8 comparisons, I then had that card that have been rolled at
9 Alvin S. Glenn.

10 Q: And so when you did your final comparison on the -- I
11 believe it was the 16th, you used both the original card
12 obtained from AFIS and the South Carolina card obtained at
13 booking in Richland County?

14 A: Yes.

15 Q: And is there a difference between James Heyward's
16 prints in the first card and the second card or the original
17 AFIS card and the one that was taken upon booking?

18 A: I haven't done a one-to-one comparison. All of the
19 patterns are the same for each finger.

20 Q: And so you noticed no difference in the cards taken
21 from James Heyward at booking and the original card that was
22 given to you?

23 A: Not pattern wise, no.

24 Q: And you did not generate a report saying that they were
25 the same, but in your analysis, those prints are the same?

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1 A: Right. I mean I -- I would have noticed had I been
2 doing the comparison and they were two different cards.

3 Q: Any doubt that the prints that were obtained from James
4 Heyward upon booking are the same as the ones that you
5 received from the database that you initially did your
6 comparisons on?

7 A: No, ma'am.

8 Q: And the ones obtained upon booking, do you know who
9 those were taken by? Or can you tell from the card who --

10 A: P. Dickett. I'm sorry. Dee Pickett.

11 Q: Dee Pickett? And those were obtained when?

12 A: On October the 13th, 2015.

13 Q: Upon his arrest?

14 A: That would be my understanding of it.

15 Q: And those were put into LiveScan, which you then had
16 immediate access to?

17 A: That's right. They were collected in LiveScan, yes.

18 Q: And at that time, it hadn't been submitted to -- to
19 SLED and then ultimately to the FBI, so there was no FBI
20 number?

21 A: Well, it hadn't as far as sending me a response back.
22 As soon as they sent it, it went to SLED, but that --
23 because I'm the hub, it doesn't come back to me.

24 Q: But subsequently when the card was pulled for discovery
25 purposes, it had been associated with the same FBI number as

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1 what you originally obtained?

2 A: Yes, ma'am.

3 Q: And in doing your comparison on the 16th when you looked
4 at the prints taken from Mr. Heyward at booking, as well as
5 the prints obtained initially from the AFIS system, there
6 are no differences in those two sets of prints?

7 A: Pattern wise. I haven't done minutia comparisons.
8 Pattern wise, they're the same.

9 Q: Any doubt that those prints were made by the same
10 individual?

11 A: No.

12 THE COURT: May I see what you had marked?

13 BY MS. MCDUFFIE:

14 Q: For comparison, Investigator, for ID purposes State's
15 217, is that the initial card that was generated by the AFIS
16 system?

17 A: Right. By the -- yes, the FBI card.

18 MS. MCDUFFIE: Your Honor, 217 is the original FBI card
19 and then 216 is the Richland County booking card.

20 THE COURT REPORTER: 217 is the original FBI card? 216
21 is the --

22 MS. MCDUFFIE: Original card.

23 THE COURT REPORTER: -- AFIS printout is what I've got,
24 the 10-print. Do you want to call it something else?

25 MS. MCDUFFIE: From Richland County booking.

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1 THE COURT REPORTER: From Richland County booking.

2 (WHEREUPON, there was a pause in the proceedings, after
3 which the proceedings resumed as follows.)

4 THE COURT: 217 is what, Solicitor?

5 MS. MCDUFFIE: 217 is the original FBI card that she
6 made the initial comparison to the latent prints.

7 THE COURT: That's the one on the 12th?

8 MS. MCDUFFIE: Yes, Your Honor.

9 THE COURT: And 216 is the --

10 MS. MCDUFFIE: Was taken upon booking on the 13th. Your
11 Honor, however, 216 wasn't -- was printed sometime later
12 after it had been through the SLED and FBI system and the
13 FBI number was generated.

14 THE COURT: All right. I thought her testimony was it
15 was simultaneously downloaded from Alvin S. Glenn through
16 the computer system to the Sheriff's Office.

17 MS. MCDUFFIE: Correct, Your Honor. And when she
18 received it, the FBI hadn't processed it, nor had SLED given
19 it the SI -- I'm sorry.

20 THE WITNESS: The state identification number, SID.

21 MS. MCDUFFIE: The state identification number. So
22 when she originally did it, those numbers did not appear on
23 the top. When she re-pulled the card, it had been processed
24 by those agencies and reflects the same FBI number as the
25 original card that was pulled.

INV. TRISHA ODOM - IN-CAMERA CROSS BY MR. KRZYSTON

1 THE COURT: So an individual will get a state
2 identification number? Well, let me ask you about this.
3 When does an individual get a SC number? Where in the
4 process is that SC number generated?

5 THE WITNESS: May I answer?

6 THE COURT: Go ahead.

7 THE WITNESS: As soon as he's arrested. The first time
8 he's arrested and has a fingerprint card sent to SLED, at
9 that point they generate an SID number, which is based on a
10 person. And then each subsequent event is assigned a
11 transaction control number, which is that number in the top
12 left-hand corner.

13 THE COURT: That's this number 40 D Delta 200065404? I
14 know you may not have memorized that number, but you're
15 talking about that number?

16 THE WITNESS: Yes, sir. The 40 indicates it's from
17 Richland County.

18 THE COURT: All right. Mr. Krzyston, do you have any
19 questions?

20 MR. KRZYSTON: I actually have one question.

21 IN-CAMERA CROSS-EXAMINATION

22 BY MR. KRZYSTON:

23 Q: Within the state's AFIS system, there are civilians
24 listed as well; correct?

25 A: In the state database, it contains criminal cards, some

INV. TRISHA ODOM - IN-CAMERA CROSS BY MR. KRZYSTON

1 licensing cards that can be kept by statute, and then also
2 law enforcement employment cards is my understanding of it.

3 Q: Okay. So a barred lawyer, if he applied to the Bar and
4 was fingerprinted and the statute provides, then that
5 profile print card is within the state system?

6 A: If it's -- if it can be by law stored.

7 Q: Okay.

8 A: Now, lots of jobs have the requirement to have a
9 fingerprint criminal history done, but as soon as it's
10 cleared through and they don't find anything, that card is
11 then destroyed. It's not saved.

12 Q: And you noted that when an individual is either
13 initially arrested or entered into the system as just
14 described, SLED assigned a unique identifier; correct?

15 A: Right. That would be the state identification number.

16 Q: They forward it to the Federal Bureau of Investigation?

17 A: Yes.

18 Q: And then they then have their own unique identifier,
19 should they think it's relevant, by whatever process they do
20 it?

21 A: Right. If it meets their quality standards, yes.

22 MR. KRZYSTON: Nothing further, Judge. It would be our
23 (unintelligible).

24 THE COURT: All right. Anything further from this
25 witness, Solicitor?

INV. TRISHA ODOM - IN-CAMERA REDIRECT BY MS. MCDUFFIE

IN-CAMERA REDIRECT EXAMINATION

1 BY MS. MCDUFFIE:

2 Q: Inv. Odom, the card that was taken from Mr. Heyward
3 upon booking, when you analyzed it on the 16th, is the same
4 as what was compared initially on the 12th?
5

6 A: They have the same pattern types and I didn't notice
7 any differences. I didn't do a one-to-one comparison.

8 Q: Any doubt that the fingerprints taken on the 16th are
9 those of James Heyward and matched the items of evidence in
10 this case?

11 A: I actually identified a couple of prints additional
12 after I got that print card.

13 MS. MCDUFFIE: Thank you, Your Honor.

14 THE COURT: There was some testimony about Dee
15 Pritchett. Where did that -- what document did that come
16 from?

17 MS. MCDUFFIE: Your Honor, that's the name of the
18 individual that --

19 THE COURT: That held his hands?

20 MS. MCDUFFIE: -- put his hands in the LiveScan machine
21 at Alvin S. Glenn.

22 THE COURT: Where -- where did that come from? Is
23 there a document?

24 MS. MCDUFFIE: Yes, Your Honor. That's on State's 216.

25 MR. KRZYSTON: Judge, I actually have one recross, if

INV. TRISHA ODOM - IN-CAMERA REDIRECT BY MS. MCDUFFIE

1 you don't mind.

2 THE COURT: You're telling me there was a Dee Pritchett
3 on this?

4 THE WITNESS: Sir, it's on the back of the card. There
5 may not be a photocopy of the back of the card on that
6 document..

7 THE COURT: Oh, I got it.

8 THE WITNESS: I have this, if you'd like to see it.

9 THE COURT: Well, I don't think we have this in the
10 record. I just thought you were looking at the same thing I
11 was looking at.

12 MR. KRZYSTON: Judge, will you kindly grant one recross
13 question?

14 MS. MCDUFFIE: Your Honor --

15 THE COURT: Yes. I'm going to let you do that.

16 MR. KRZYSTON: Thank you, Judge.

17 THE COURT: I'm trying.

18 MR. KRZYSTON: Would you like me to proceed?

19 THE COURT: Just a minute.

20 MR. KRZYSTON: Certainly.

21 MS. MCDUFFIE: Your Honor, that's State's 218 is the
22 LiveScan card that was initially printed by Inv. Odom on the
23 16th.

24 THE COURT REPORTER: You're calling this what? State's
25 218? Do you have a sticker already on it?

INV. TRISHA ODOM - IN-CAMERA RECROSS BY MR. KRZYSTON

1 MS. MCDUFFIE: Yes, ma'am.

2 THE COURT REPORTER: Okay. And you're going to call it
3 the LiveScan card? Is that what you're calling it? Thank
4 you.

5 THE COURT: All right. Are you -- are you finished
6 with your redirect, Solicitor?

7 MS. MCDUFFIE: Yes, Your Honor.

8 THE COURT: Yes, you may ask questions.

9 MR. KRZYSTON: Thank you.

10 IN-CAMERA RECROSS-EXAMINATION

11 BY MR. KRZYSTON:

12 Q: Upon redirect, you just indicated that after you
13 obtained the standard from the -- excuse me -- the arrest on
14 the 13th, you then made additional calls?

15 A: The report that was written on the 16th included the
16 card that was printed upon his arrest in South Carolina.

17 Q: Okay.

18 A: And it was used. It should have been included in what
19 you were sent.

20 Q: Yes, it was. My question though is you began the
21 analysis on the materials and you finalized the report on
22 the 16th. You began that before the 16th; correct?

23 A: I believe I started the comparisons on the 13th.

24 Q: Okay. And after you received the known standard that
25 was taken at the jail, you made additional calls from that

INV. TRISHA ODOM - IN-CAMERA RECROSS BY MR. KRZYSTON

1 evidence?

2 A: I don't know what days I made the call on. So I -- I
3 am almost positive that I used the additional card because
4 I've included it in my paperwork. I wouldn't have included
5 it if I hadn't used it.

6 Q: Okay. So you would not have used a linear sequential
7 unmasking; correct?

8 A: I'm sorry. Say that again, please?

9 Q: You would not have used a linear sequential unmasking
10 scheme; correct?

11 A: I don't know what that is.

12 Q: Okay. That's fine.

13 MR. KRZYSTON: Nothing further, Judge.

14 THE COURT: All right. Do you have an argument?
15 Another argument, Mr. Krzyston?

16 MR. KRZYSTON: Judge, I do. Obviously, again, we are
17 saying that the prints that were analyzed on the 12th have no
18 way -- and she just testified that she hasn't done a one-to-
19 one comparison from the known standard that they obtained
20 from Mr. Heyward at the jail here in Richland County. The
21 argument, obviously is that authentication fails because they
22 can't provide the testimony that is required to authenticate
23 the New Jersey print card that was acquired through the FBI
24 database.

25 So what we really have is two levels that they can't

1 authenticate, both the FBI standards, as well as the state
2 of New Jersey's, and I think what they're trying to do is
3 say, well, I looked at the patterns on the 16th and that's
4 good enough to say that what I looked at on the 12th is what
5 it is. I don't think that's a sufficient basis for
6 authentication. I'd argue that all the prints that were
7 done prior to the 16th or the report issued on the 16th ought
8 to be excluded.

9 THE COURT: Solicitor?

10 MS. MCDUFFIE: Your Honor, I believe the testimony is
11 that she originally gets this card on the 12th from the FBI.
12 She makes a match to this individual, James Heyward. He is
13 subsequently arrested by law enforcement and he is
14 reprinted. She receives that card on the 13th.

15 On the 13th, she begins further analysis into additional
16 items of evidence. She uses both the New Jersey or the FBI
17 card, as well as the card that was obtained upon booking.
18 She has testified that she has no doubt that those are the
19 same, made by the same individual, those two cards, and that
20 is what she bases her -- bases her analysis on.

21 Your Honor, she testified that, in her opinion, the
22 card obtained from booking and the card that she used to
23 make the initial match are made by the same person and those
24 prints are the same. While she did not generate a report by
25 doing a one-to-one comparison, she said that during her

1 analysis she would have noticed if there were any
2 differences, and they weren't.

3 And, Your Honor, we believe that we have sufficiently
4 authenticated the fingerprints in this case. Further, she's
5 explained when they were obtained, who they were obtained
6 by, and how they were uploaded into LiveScan, and the unique
7 numbers associated with those cards and how they match.

8 THE COURT: Would you hand me the latent prints? Are
9 they in evidence?

10 THE WITNESS: Yes.

11 THE COURT: Are the latent prints in evidence?

12 MS. MCDUFFIE: Yes, Your Honor.

13 MR. KRZYSTON: They are.

14 THE COURT: Would you hand them to me?

15 (WHEREUPON, the solicitor complied.)

16 MS. MCDUFFIE: There's one more.

17 THE COURT: Thank you.

18 THE COURT REPORTER: Is that 207 and 208 that you gave
19 him?

20 MS. MCDUFFIE: No!

21 THE COURT REPORTER: No?

22 MS. MCDUFFIE: I don't know what those are.

23 THE COURT: Thank you, Solicitor. All right. Mr.
24 Krzyston?

25 MR. KRZYSTON: Judge, I don't know if you're inclined

1 to rule, but again the testimony when asked was she sure
2 that those prints on the two different cards are the same,
3 she indicated that she had done a comparison of the
4 patterns, but not a one-on-one match of the minutia.

5 As I'm sure you're aware from being in the criminal
6 justice system for as long as you have, the minutia is where
7 the details are. That is where the match is made, not just
8 a rudimentary look at the patterns on people's fingers.
9 That's essentially like you and I are looking at it.

10 I think they failed in that they cannot authenticate on
11 the FBI's level.. They cannot authenticate on New Jersey's
12 level. There's no witnesses regarding the FBI standards and
13 procedure that concerns this material that can authenticate
14 as it comes from the FBI or the state of New Jersey with
15 how, again, respective testimony there as well.

16 I mean I think State v. Anderson makes that pretty
17 clear. And again, it just kind of speaks for itself, Judge.

18 THE COURT: Anything further, Solicitor?

19 MS. MCDUFFIE: No, Your Honor.

20 THE COURT: Let me make sure I have the facts straight.
21 Officers respond and thereafter process the scene where the
22 homicide and the other crimes had occurred on the 11th and
23 they continued processing on the 12th. I think their
24 testimony was they ultimately released that scene I think on
25 the 12th or sometime on the 12th.

1 MS. MCDUFFIE: Yes, sir, Your Honor.

2 THE COURT: And as far as that processing, different
3 officers lift latent prints, some on the interior of the
4 door, some on the jewelry canister, box, various items. And
5 those prints go back, whatever number they are, and one of
6 whatever number there are that are put into the -- I'm going
7 to call it the FBI system. They upload it in the FBI system
8 and that's this national databank.

9 And so you get this hit or I believe the officer
10 testified there were actually two. They testified there
11 were two cards to check.

12 THE WITNESS: There was one hit.

13 THE COURT: One?

14 THE WITNESS: Yes, sir.

15 THE COURT: Well, one to check and that's -- that's
16 what comes back is State's Exhibit 217.

17 MS. MCDUFFIE: Yes, Your Honor.

18 THE COURT: Correct? And that comes on the 12th?

19 MS. MCDUFFIE: Yes, Your Honor.

20 THE COURT: And she makes a comparison. Well, she
21 makes a comparison of 217 with the latent prints from the
22 crime scene?

23 MS. MCDUFFIE: Yes, Your Honor.

24 THE COURT: Correct?

25 MS. MCDUFFIE: Yes, Your Honor. Initially, she made

1 the comparison to the Latent-1, which was lifted by Inv.
2 Holt from the in -- interior side door point of entry.

3 THE COURT: But she made that comparison and one of the
4 prints on 217, which is listed with this unique FBI
5 identifier, is identified. The latent print is identified
6 as Mr. Heyward's?

7 MS. MCDUFFIE: Yes, Your Honor.

8 THE COURT: And he's not under arrest?

9 MS. MCDUFFIE: Correct.

10 THE COURT: I believe on the 12th, Det. Clarke showed
11 Ms. F [REDACTED] the photo lineup because that's -- that's when
12 he becomes a suspect. His print is at the house. They
13 photograph a lineup. They show it to a witness who was at
14 the same scene. So the witness is saying -- y'all have all
15 heard the testimony. The State was saying identified and
16 the defendant was saying it was not an identification, but
17 that's a decision for the jury. And the officers get an
18 arrest warrant?

19 MS. MCDUFFIE: Correct, Your Honor.

20 THE COURT: The next day on the 13th, Mr. Heyward is
21 arrested and his prints were taken, and that's in the
22 LiveScan system at Alvin S. Glenn Detention Center, which is
23 linked into the Richland County Sheriff's Department. And
24 y'all can have access when it goes into that database. It
25 also goes to SLED.

1 THE WITNESS: Yes, sir.

2 THE COURT: And that would be -- the LiveScan would be
3 -- actually would be 218?

4 MS. MCDUFFIE: Correct, Your Honor.

5 THE COURT: And a version of 216, which is -- I'm going
6 to call it the discovery version.

7 MS. MCDUFFIE: Yes, Your Honor.

8 THE COURT: Is that right? And 218 would not yet have
9 had an SID number or the FBI number on it?

10 THE WITNESS: Yes, sir.

11 THE COURT: But when he goes through the SLED system,
12 it gets the unique state identification number and the FBI
13 number is the same on 216 as it is on 217.

14 She's also testified she has attempted to have him
15 placed in the FBI system and been rejected, and it's the FBI
16 that gives that unique identifying number. So the question
17 is does this disc meet the standards of 217, being the
18 standard of it as Rich and Anderson --

19 MR. KRZYSTON: I'm sorry. Anderson.

20 THE COURT: And Rule 901, which is, of course,
21 discussed in Anderson. And you also object to the
22 authentication of 216 and 218?

23 MR. KRZYSTON: I'm a little confused at this point.

24 THE COURT: 216 and 218 are the LiveScan at Alvin S.
25 Glenn.

1 MR. KRZYSTON: We can withdraw the objection to the
2 LiveScan. The material that was finalized in the report on
3 the 16th pursuant to the analysis by the known standard from
4 Richland County, which I believe is 216.or 218?

5 THE COURT: Yes, sir. One -- one is what I call the
6 discovery copy, which is 216. 218 would be an original.
7 Based on the testimony, I guess I'm not changing the
8 fingerprints on it.

9 MR. KRZYSTON: We don't -- I'm sorry, Judge.

10 THE COURT: No. Go right ahead.

11 MR. KRZYSTON: I would say the only remaining objection
12 that would be to the material analyzed and completed on the
13 12th, I believe Exhibit 217 of the State's.

14 THE COURT: Well, when I read Anderson, the question
15 really for -- for 217 is its authentication to prepare a
16 lineup because it's -- because it's purported to be.
17 Because you -- if you put a latent in that system and this
18 comes back, 217, and it's compared and, as I said, the
19 result of that is it's used to prepare a photographic
20 lineup. Because as I understand it, it's not used to
21 prepare a report. As I understand it, she used the one on
22 the 13th. Am I correct on that?

23 MS. MCDUFFIE: Your Honor, she -- she initially is
24 given some latents to analyze on the 12th and she uses that
25 card and matches those latents on the 12th. She is then

1 given additional latent prints and, after his arrest, they
2 were all collected, you know, prior, but she, I guess for
3 timing reasons, analyzes them after his arrest and, during
4 that analysis, uses both that card and the card taken upon
5 his arrest.

6 THE COURT: She hasn't testified she used this card to
7 do the report on the 16th. On her 16th report, unless I
8 missed that testimony.

9 MS. MCDUFFIE: Your Honor, I believe she did, but I can
10 ask her to clarify.

11 THE WITNESS: Which? The one that was obtained from
12 Alvin S. Glenn?

13 MS. MCDUFFIE: The FBI --

14 THE COURT: No. The one from New Jersey.

15 THE WITNESS: I put both of them in my case jacket and
16 so I probably did use it on some of the comparisons, but
17 there were 20 some odd comparisons that were enumerated in
18 the report finalized on the 16th.

19 THE COURT: As I rule -- as I read Anderson and Justice
20 Beatty's decision in talking about Anderson, it says here
21 through the testimony of Gause, G-a-u-s-e, and Means, the
22 State provided evidence that Anderson's known 10-print card
23 was taken at a correctional facility on April 7th, 2004. It
24 was submitted to SLED and maintained in the condition in
25 which it arrived and was stored in the AFIS.

1 Thus, we agree with the Court of Appeals that the State
2 satisfied its burden of authentication under Rich.
3 Additionally, they found that the Anderson case
4 distinguished from Rich given the State introduced into
5 evidence Anderson's known fingerprint card and provided
6 testimony which substantiated the process used in obtaining
7 and maintaining this fingerprint card.

8 And now, a motion has been withdrawn as to the LiveScan
9 card. Those have met the standard of authentication.

10 As to follow up on that, Rule 901(a) provides the
11 requirement of authentication or identification as a
12 condition precedent to admissibility is satisfied by
13 evidence sufficient to support the finding that the matter
14 in question is what it is purported to be.

15 Although not exhaustive, 901 further advised examples
16 of authentication or identification which conform with the
17 requirements of Rule 901(b). Of course, Rich was decided
18 prior to the adoption of our state rules of evidence.

19 In Anderson, Sgt. Gause was an expert in the field of
20 fingerprint analysis, analyzing the latent fingerprints
21 found at the Ward's home by checking them through AFIS.
22 Using this technology and comparing the characteristics of
23 the latent fingerprints with those of the known prints --
24 the known prints in my mind is talking about the AFIS
25 prints. Gause determined that Anderson's known prints

1 matched the latent prints. Gause further explained that the
2 prints on the master fingerprint card were taken at the
3 correctional facility on a specific date and assigned a
4 unique state identifying number.

5 Here, you have the unique identifying FBI number in
6 this case. You have an expert testifying that she compared
7 a latent print from the crime scene on the 12th or however
8 many she compared on the 12th to the known prints of James
9 Heyward from -- I've said the FBI, New Jersey. I keep
10 changing my terminology about that. I do that to make sure
11 I'm tracking right.

12 So I would deny the motion as to lack of authentication
13 in camera at this point. I will deny it as to 217, State's
14 217. And I note there is a gap. I take that into
15 consideration. There is a gap because there's no comparison
16 that I can actually track between the FBI prints on the 12th,
17 if they were directly or not compared to the LiveScan.

18 All right. Any other motions? And you're certainly
19 protected on the record, Mr. Krzyston. Any other motions?

20 MS. MCDUFFIE: Your Honor, if I could just get some
21 guidance based on presenting this information to the jury
22 based on your previous -- or the defense's previous motion
23 about not talking about what AFIS is and the system, and
24 which we agreed at that point that we would just say a law-
25 enforcement database. I don't --

1 THE COURT: Well, I think -- what's your position on
2 that, Mr. Krzyston?

3 MR. KRZYSTON: I believe that, you know, we're kind of
4 already in authentication right now, I would say over my
5 objection to, respectfully, Your Honor's ruling. We would
6 maintain our request in our earlier arguments.

7 (WHEREUPON, there was a pause in the proceedings, after
8 which the proceedings resumed as follows.)

9 THE COURT: What was the language that we were talking
10 about previously as to how to introduce that information,
11 Solicitor?

12 MS. MCDUFFIE: Your Honor, what -- what we agreed to is
13 -- law-enforcement database of known fingerprints is what we
14 had agreed to. And they had asked that we not go into
15 anything further, and we had agreed.

16 THE COURT: Mr. Krzyston?

17 MR. KRZYSTON: And, Judge, I mean I don't think -- and
18 again, what Anderson is asking that be introduced or what --
19 excuse me -- what Anderson requires for authentication is
20 that they be able to say the fingerprint came from this
21 place on this date --

22 THE COURT: You know, I --

23 MR. KRZYSTON: -- and --

24 THE COURT: -- can't cite a specific ruling.

25 MR. KRZYSTON: Pardon?

1 THE COURT: I can't cite a specific ruling, but I've
2 heard enough.

3 MR. KRZYSTON: Okay. And I -- what I'm just saying is
4 they don't --

5 THE COURT: I've ruled on it.

6 MR. KRZYSTON: And I'm not arguing, Judge, but the
7 information that they're wanting to go into is simply to
8 call it AFIS. There's nothing else to offer that would be
9 beyond the scope of what we've already discussed in the
10 known law-enforcement database.

11 If they want to say, look, we obtained this print from
12 a known law-enforcement database or a law-enforcement
13 database of known fingerprints, I think that's okay, but
14 there's just no more information to go into. So I don't
15 know that this disturbs your prior ruling. And I didn't
16 mean to kind of wade back into the grass on the other issue.
17 I was just speaking a little bit on that. So I apologize
18 for the extent that I went back.

19 THE COURT: In Anderson, actually, they talk about --
20 Sgt. Gause, an expert in the field, talked about the AFIS
21 system using this technology comparing the characteristics
22 of the latent prints with those of the known prints. Gause
23 determined that Anderson's known prints matched the latent
24 prints. Gause further explained that the prints on the
25 master fingerprint card were taken at a correctional

1 facility on a specific date and assigned a unique state
2 identifying number.

3 Now, it may not have been a rejection to that, of
4 course, and that's what's here. I don't think that was
5 discussed necessarily in the body.

6 You know, I guess under all three analyses, Solicitor,
7 she never said, well, I got it from the FBI databank or a
8 law enforcement databank. That indicates that the defendant
9 is in a -- is in a fingerprint databank for law enforcement
10 for some reason and it even indicates -- and the jury can
11 speculate. Yes, ma'am?

12 MS. MCDUFFIE: Your Honor, I would intend in front of
13 the jury to go into the same FBI numbers were generated and
14 the things of that nature. Just I don't want to go against
15 your previous ruling, but I don't have any other way to.

16 THE COURT: Well, obviously, you go into -- you know,
17 you can't just lead the jury under 403 either.

18 MS. MCDUFFIE: Right.

19 THE COURT: You can't -- you can't (unintelligible).
20 Kind of how Justice Pleicones testified what it is he did
21 for a living and he said I'm a (unintelligible), which I
22 think is a great answer.

23 You can certainly use the unique identifying number,
24 but why can't you redact the FBI? Why can't you just to say
25 we've got these unique numbers and not say they're FBI

1 numbers? I have learned -- I've tried to learn. It kind of
2 started from sometimes I do things and cut my fingers. But
3 why can't you just redact that number where it's not -- you
4 loaded it into the databank in this technology and you get
5 this back, it has that number on it, 220688 papa alpha 3.
6 How close was I?

7 THE WITNESS: Pretty close.

8 MS. MCDUFFIE: That's pretty close.

9 THE COURT: Why don't you just do it like that? Just
10 take the FBI number off?

11 MS. MCDUFFIE: That's fine, Your Honor.

12 THE COURT: And that -- that purges that where it's not
13 associated with it. And, of course, I thought -- did you
14 say -- did you testify the military is in the actual
15 databank? I thought it was. I don't know.

16 MS. MCDUFFIE: Is the military in AFIS?

17 THE WITNESS: There are currently some -- several
18 databases. There is a civil file. There is a criminal
19 file. They -- we didn't have access to them at this point,
20 but yes, there is -- anybody who is, you know, Department of
21 Defense, any of these licensing requirements.

22 THE COURT: Of course, you're probably going to have to
23 do it for identification purposes. Just redact the FBI part
24 at this stage. Of course, Mr. Krzyston, anytime you have an
25 objection to the question, I'll rule on it.

1 MR. KRZYSTON: Thank you very much, Judge.

2 THE COURT: Yes, sir. Thank you, Mr. Krzyston. Thank
3 you, Solicitor. Anything further before we take our recess?

4 MR. KRZYSTON: Judge, just -- we can take it up in the
5 morning. I do have an objection to State's 214 and 215 on a
6 hearsay basis. They've created this document out-of-court
7 and are entering it to prove the truth of the matter
8 asserted. We would, again, object based on hearsay. The
9 other thing is a housekeeping matter.

10 THE COURT: Yes, sir.

11 MR. KRZYSTON: Since Friday is transfer court and in
12 the interest of not having it next-door and disrupting the
13 case on Friday, I'm going to reach out to Jim Truitt and get
14 that held on the same floor. I'm just looking for it. I
15 don't know.

16 THE COURT: Solicitor, y'all could get somebody here.
17 Mr. Truitt can come. Madam Clerk, tell Mr. Truitt I said to
18 make sure. I'm sure he'll be delighted.

19 THE CLERK: Yes, sir.

20 MR. KRZYSTON: Thank you.

21 THE COURT: Find out what's going on with Judge
22 McFadden's case.

23 MR. KRZYSTON: Okay.

24 THE COURT: I know it was still going.

25 MS. MCDUFFIE: Your Honor, in terms of -- so we don't

1 have to take time in front of the jury while the jury is
2 here tomorrow, Your Honor, in terms of those two items of
3 evidence, we'd offer it under Rule 106 -- 1006. Your Honor,
4 it is a summary of her findings, and summaries are
5 admissible under 1006. She has a voluminous report. I
6 think in total it's probably 100+ pages, Your Honor, and
7 that is a summary of her findings that she will be
8 presenting to the jury.

9 THE COURT: And I never thought that was the basis of
10 your objection in any way, Mr. Krzyston. Your objection was
11 obtained when they were offering based on --

12 MR. KRZYSTON: That's a collateral objection, Judge.

13 THE COURT: Oh, you did object to that?

14 MR. KRZYSTON: Just now. My prior objection,
15 obviously, related to the hour rule. I just brought that up
16 so we could log it before I forgot it.

17 THE COURT: All right. Yes, sir. Do you want me to
18 hear it now?

19 MR. KRZYSTON: I think we can take it up in the
20 morning. It's a quick argument.

21 THE COURT: All right.

22 MR. KRZYSTON: Unless you want to decide it now.

23 THE COURT: We could do it in the morning. That's
24 fine.

25 MR. KRZYSTON: Thank you, Judge.

1 THE COURT: All right. Anything further, Solicitor?

2 MS. MCDUFFIE: No, Your Honor.

3 THE COURT: Mr. Krzyston?

4 MR. KRZYSTON: No, sir.

5 THE COURT: Thank you. All right. 9:30.

6 THE COURT REPORTER: Your Honor, did you want to
7 address the witness?

8 MS. MCDUFFIE: Thank you, Your Honor.

9 THE COURT REPORTER: I mean did you not want to say
10 anything to her about her testimony?

11 THE COURT: Do not discuss your testimony with anyone.

12 THE WITNESS: Okay.

13 (WHEREUPON, the proceedings adjourned for the day at
14 5:15 p.m.)

15 JUNE 29, 2017

16 (WHEREUPON, the proceedings resumed at 9:31 a.m.)

17 THE COURT: All right. There was a motion or
18 something; is that right?

19 MR. KRZYSTON: Yes, Judge. And the other thing I'd
20 like to take up just very quickly -- and I'm not trying to
21 reargue anything, but we did withdraw objection to all the
22 prints analyzed on 10/16/2015. I understand your ruling and
23 respect it. We would just reenter that objection such that
24 we object to all the fingerprints.

25 THE COURT REPORTER: Such that what?

1 MR. KRZYSTON: So that we object to all the
2 fingerprints.

3 THE COURT: Now, at one point, you -- you withdrew your
4 objections to the LiveScan. So the record will reflect what
5 the record will reflect.

6 MR. KRZYSTON: Correct. And I'm basically reentering
7 that.

8 THE COURT: Okay. Well, like I say, the record will
9 reflect what the record will reflect. What about your
10 argument on Rule 1006? I take it that's your argument on
11 that, the summaries?

12 MR. KRZYSTON: Yes, sir.

13 THE COURT: All right. Do you want to argue that?

14 MR. KRZYSTON: Judge, we would just ask that they be
15 excluded as inadmissible hearsay.

16 THE COURT: I'm sorry?

17 MR. KRZYSTON: Inadmissible hearsay. Developed out-of-
18 court. Designed to prove the truth of the matter asserted.

19 THE COURT: Well, let's make sure I know what you --
20 you were talking about the same thing. You're talking about
21 the charts and diagrams prepared from the reports of Officer
22 Odom?

23 MR. KRZYSTON: Yes, sir. I believe it's State's 214
24 and 215.

25 MS. MCDUFFIE: That's correct, Your Honor.

1 MR. KRZYSTON: Is that correct?

2 MS. MCDUFFIE: State's 214 and 215.

3 THE COURT: This is extracted from her reports?

4 MS. MCDUFFIE: Correct, Your Honor.

5 THE COURT: Well, I would find it's admissible under
6 Rule 1006. There is also a case -- I can't remember the
7 name of it. I'll find it shortly -- that Judge Young tried
8 in Charleston where a ballistics expert's report was
9 actually offered into evidence, not necessarily a summary.

10 I don't remember if the objection had to do with
11 hearsay. Maybe it had to do with public and maybe it had to
12 do with cumulative. I'm not sure about the objection, but
13 it's typically admitted. And under Rule 1006, I find it's
14 not hearsay and, if they have -- did you say over 100 pages
15 of reports?

16 MS. MCDUFFIE: Your Honor, there's -- I didn't count
17 them, but there's four different reports varying in length
18 from -- the first one is 22 pages, the next one is 8 pages,
19 the next one is 8 pages, the next one is 29 pages, and then
20 there is a sizable stack of proficiencies, protocols, and
21 things like that that were all turned over to the defense.

22 THE COURT: So all of that is pared down to these two
23 exhibits; correct?

24 MS. MCDUFFIE: Yes, Your Honor.

25 THE COURT: All right. I'll decline the objection.

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 Q: And that was done in this case with L-1?

2 A: Yes, ma'am.

3 Q: And what, if any, results did you receive?

4 A: There are actually two prints on L-1, on the latent
5 card L-1, and -- I'm sorry.

6 MR. KRZYSTON: Judge, previous objection.

7 THE COURT: All right. So noted.

8 BY MS. MCDUFFIE:

9 A: And the latent print sub numbered L-1.1 was entered.

10 Q: And what results did you receive on L-1.1?

11 A: I was notified that there was a hit on L-1.1.

12 Q: What does that mean?

13 A: That means that the information we received back
14 indicated that there were enough of these characteristics in
15 common that they warranted further investigation.

16 Q: And when you get a hit, does it give you a name of the
17 person and other identifying information of who those
18 fingerprints need to be compared to or who they may belong
19 to?

20 A: Yes.

21 Q: And what information did you receive in this case?

22 A: In this case, I received an identifying number and also
23 the name James Heyward.

24 Q: And what was the identifying number that you received?

25 A: 220688, P as in papa, A as in alpha, 3.

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 Q: And are you familiar with how those numbers are
2 assigned?

3 A: Yes.

4 Q: And please explain that to the jury?

5 A: As those -- as the records come in, they are assigned
6 an individual number, and that would be an individual number
7 that has been assigned to a record.

8 Q: And so when someone is entered into this database, they
9 are given a unique identifying number based on their
10 fingerprints?

11 A: That's correct.

12 Q: And then any further fingerprints that are submitted
13 that may match that number, it is returned to you? Or that
14 same number comes back and that's how you identify the
15 person?

16 A: I'm sorry. Would you say that again?

17 Q: When -- for example, in this case, when L-1.1 was
18 submitted into the database and it matched to that number
19 that you just recited and the name of James Heyward, that
20 was what was returned to you?

21 A: Right. That information came back. That's correct.

22 Q: And once you received that information, what, if
23 anything, did you do with that?

24 A: At that point, I took the documents that were given to
25 me and the latent prints and I made a comparison to

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 determine if that -- the information that the computer
2 system sent back was indeed correct.

3 Q: And part of the information that the computer system
4 gives you is access to a 10-print card?

5 A: That's correct.

6 Q: And please explain for the jury what a 10-print card
7 is?

8 A: It's just a known fingerprint standard from a known
9 source.

10 Q: And so in this case, you received the known
11 fingerprints of James Heyward with the specific identifying
12 number 220688, P like papa, A like alpha, 3?

13 A: Yes, ma'am.

14 Q: And is this a photocopy of State's 217?

15 A: Yes, ma'am.

16 MR. KRZYSTON: Judge, we do object to that.

17 THE COURT: So noted.

18 MS. MCDUFFIE: Your Honor, we'd offer 217.

19 THE COURT: All right. May I see it, Solicitor? All
20 right. State's 217 -- has she identified that yet?

21 MS. MCDUFFIE: She has.

22 THE COURT: All right. You're offering it into
23 evidence?

24 MS. MCDUFFIE: I am.

25 THE COURT: All right. 217 is in evidence subject to

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 previous objections.

2 (WHEREUPON, State's Exhibit Number 217, 10-print
3 fingerprint card, was admitted into evidence.)

4 BY MS. MCDUFFIE:

5 Q: And so this is the 10-print card of James Heyward that
6 you received?

7 A: Yes, ma'am.

8 Q: And once you received this, what did you do?

9 A: I then took the item that was on -- that was noted as
10 L-1.1 and I actually did a one-to-one comparison.

11 Q: And explain to the jury how you do a fingerprint one-
12 to-one comparison?

13 A: Well, we look for the minutia points that I mentioned
14 earlier, and you try to determine whether or not those same
15 minutia points are in the same -- in the same areas, in the
16 same patterns, on both of those fingerprints.

17 Q: And what exactly are you looking for? What are minutia
18 points?

19 A: Those are, like I was referring to, the small details.
20 Some of the most common are if you have a ridge that is
21 flowing and then it stops. We call that an ending ridge and
22 alternately on the other end you might have a ridge that, as
23 it's flowing, it forks off into two -- two different ridges
24 and we call that a bifurcation.

25 THE COURT REPORTER: I'm sorry? Bifurcation?

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 THE WITNESS: Yes, ma'am.

2 BY MS. MCDUFFIE:

3 A: And then you also have super small ridges that are only
4 a ridge, you know, or two wide, and we call those dots
5 because they look like dots. And those are the ones that we
6 most commonly look for.

7 Q: And you also received -- well, in this case, you
8 received 14 latent cards that you examined; is that correct?

9 A: Yes.

10 Q: And those were unknown prints that you were trying to
11 determine who -- who could have potentially left those
12 prints?

13 A: Yes, ma'am.

14 Q: If they were suitable for identification?

15 A: Yes, ma'am.

16 Q: And in your analysis, did you create what's been marked
17 as State's 316?

18 A: Yes, I did.

19 MS. MCDUFFIE: Your Honor, at this time, we'd offer 316
20 into evidence.

21 THE COURT: Tell me the number again.

22 MS. MCDUFFIE: 316.

23 MR. KRZYSTON: Subject to prior objection.

24 THE COURT: Tell me the number again.

25 MS. MCDUFFIE: 316.

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 THE COURT: 316. All right. 316 is in evidence
2 subject to previous objections.

3 (WHEREUPON, State's Exhibit Number 316, fingerprint
4 chart, was admitted into evidence.)

5 MS. MCDUFFIE: Your Honor, if I may have the witness
6 step down, please?

7 THE COURT: Yes, ma'am.

8 (WHEREUPON, the witness complied.)

9 MS. MCDUFFIE: If we could switch sides so the court
10 reporter can hear?

11 BY MS. MCDUFFIE:

12 Q: Inv. Odom, using State's 316, explain to the jury what
13 you're looking at when you do a comparison?

14 A: Okay. So, what you see right here is on the left-hand
15 side -- or your left-hand side and my right-hand side. This
16 is actually a photograph that I took, put it on a comparator
17 that I have on my computer of the latent print. This is
18 actually not the one L-1.1. This is L-1.2.

19 And then this is the known print from the known
20 standard. You can kind of tell because it's got the lines
21 around it where it has the fingerprint boxes.

22 Q: And so this is James Heyward's known print?

23 A: Yes, ma'am.

24 Q: And this is the print taken by Inv. Holt, L-1.2?

25 A: Yes.

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 Q: Explain to the jury what you're looking for when you
2 make a comparison?

3 A: So again, we're looking for those small details that
4 you might see, but the first thing that we're going to look
5 for is we're going to try to determine if the two
6 fingerprints even have the same basic pattern type.

7 Fingerprints come in three basic patterns.

8 You have, like what you see here, this is the ridges
9 come in from one side of the print, go up, and then exit
10 back out the same side. We call that a loop and you can
11 have one either slanting to the left or to the right.

12 We also have the type of print that it looks like
13 concentric circles going around and around, and we call
14 those in a whorl.

15 And then we have another type of fingerprint that you
16 have ridges that are -- they start flowing from one side of
17 the print, rise a little bit, and then exit out the other
18 side of the print. We call that an arch.

19 So the first thing that we want to look for is to see
20 if we can determine the pattern type. And in this -- in
21 this particular latent, it appears to be a left-slant loop.
22 So the first thing you want -- you want to ask yourself is
23 does this person have a left-slant loop, and he does.

24 So what you then want to look for -- you kind of pick
25 out a starting point. And I try to pick out the things that

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 kind of stand out to my eye, and a really good place to
2 start is the approximate center of the print, which is what
3 we call the core.

4 So then from then, you want to see if you can find
5 those kind of minutia points. And so the first thing that I
6 notice as I'm looking at this print is a couple of ridges up
7 from the approximate center is you have this ridge that
8 flows and then it splits and then it actually comes back
9 together. So it makes a tiny little enclosure.

10 And so I look over here and I see can I see that -- I'm
11 sorry -- see that same feature, and I do. And from that,
12 you go from ridge to ridge, seeing if you can find the same
13 minutia points. Like, for example, from our starting point
14 right here, you go one ridge up and you see a bifurcation.
15 You move over to this side and, again, one ridge up you find
16 that bifurcation.

17 The next ridge up, you move down just a little bit and
18 you have another bifurcation. The same thing on this side.
19 Then you go one ridge up and there's another bifurcation.
20 And you go this ridge for ridge as far as you can to see if
21 these prints have any unexplainable dissimilarities.

22 Q: Let me stop you right there. So you're not only
23 looking for similarities, you're looking for
24 dissimilarities?

25 A: Right.

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 Q: And why is that?

2 A: Well, because if there is an unexplainable
3 dissimilarity, then there's no way that the two prints could
4 be made by the same source.

5 Q: And in this case, did you find any unexplainable
6 dissimilarities?

7 A: I did not.

8 Q: And please continue on as to the similarities you
9 found.

10 A: Okay. Something else that really stood out to me too
11 is in addition to this little cluster of bifurcations and
12 then you go one -- two -- three -- four -- five -- six --
13 seven ridges up and you have this bifurcation here and this
14 one's kind of flat. So you go another seven ridges up over
15 here and this one is the same and it has the same shape. So
16 we're not just looking for the presence of that particular
17 minutia point, we're also looking for the shape of those
18 ridges that form the minutia point.

19 So then that's all that I could see. This is actually
20 what I did during my comparison. This is a printout of my
21 actual work.

22 So after I got that, that part right there, you kind of
23 notice that there is a section right here that there's not a
24 lot going on here. You just have all these -- these
25 intervening ridges and there aren't really any -- there are

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 no really visible minutia points for all of these ridges.

2 But if you follow this ridge down right here and one --
3 two -- three -- four -- five, then you have this -- this
4 little ending ridge right here. And the same thing. You
5 follow this one down here and then one -- two -- three --
6 four -- five, and then you have the connection.

7 But in between these, you have all of these intervening
8 ridges and there's nothing on those. So that was an
9 opportunity when this fingerprint was developing on the
10 person for something to happen and it did not. Just like on
11 this print right here. So that's what we're looking for
12 too.

13 So even though I can't say, well, here's an ending
14 ridge or here's a bifurcation in this area right here, I can
15 also point out that this same print has that same group of
16 intervening ridges without any additional characteristics.

17 Q: So he also has the same lack of bifurcations or ridges
18 in the exact same areas as the print --

19 A: Right.

20 Q: -- does?

21 A: Right. And then you continue to follow along and this
22 is -- this is one of those characteristics that would kind
23 of stand out to me. So if I didn't have the approximate
24 center, I still have this ridge that flows and then there's
25 a tiny space and then another ridge picks back up right

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 there, and you have that same characteristic right there.

2 And then one ridge over, there's an ending ridge. One
3 ridge over, an ending ridge. And then that one goes one --
4 two -- three up and one -- two -- three up. And then you
5 have this intervening ridge right here and a bifurcation.
6 This intervening ridge right here and a bifurcation. And
7 then that one counts back down to that little void area
8 right there.

9 And then you have one -- two down and you have this
10 right here and then this -- I'm sorry. This is an ending
11 ridge and then one -- two down and another ending ridge.
12 And then you have this little short ridge that shows up
13 right there, which is also right there.

14 Q: And when a latent print is left -- or I'm sorry. When
15 known prints are taken, those fingerprints are typically
16 rolled; correct?

17 A: Correct.

18 Q: And so you get both the center of the finger and
19 presumably the sides as well?

20 A: Mostly. The instruction is typically to roll from nail
21 to nail because that's where the area of the friction ridges
22 are.

23 Q: When someone leaves a fingerprint on a surface, do they
24 typically roll from nail to nail on a surface?

25 A: No. Usually, it's more of a direct touch.

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 Q: And so do you get, you know, the entirety of the print?

2 A: No.

3 Q: How do you determine if it's suitable -- if a print is
4 suitable for comparison or not suitable for comparison?

5 A: Well, for comparison, it's based on the amount of
6 information that you can see, both the quantity of
7 information and the quality of that information, how clear
8 it is.

9 Q: And so in this case, did you have any problems using
10 this print for comparison?

11 A: No, ma'am.

12 Q: And there were other prints that were collected that
13 were not suitable for comparison in this case?

14 A: Yes, ma'am.

15 Q: Thank you. You can have a seat.

16 (WHEREUPON, the witness complied.)

17 Q: Inv. Odom, when you are comparing a print or analyzing
18 a print, do you -- do you plot every single point of
19 similarity on the charts?

20 A: If I am doing a comparison, I try to plot as many as I
21 can see. If I'm doing a chart for report purposes, usually
22 not.

23 Q: And in this -- or in fingerprint comparison, is there a
24 standard number of points you have to get to call it a
25 match? Or how is -- how do you determine what a match is?

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 A: It's mostly based on my experience and my training.

2 There is no standard for the number of minutia points, you
3 know, that you can enumerate, that you can say that, okay,
4 that's an identification. It's based on experience and
5 training.

6 Q: What if you find an area of dissimilarity?

7 A: If I can't explain what happened, if I can't come up
8 with a logical explanation for what happened -- I can see
9 maybe there's pressure, there's distortion and then because,
10 you know, fingers -- even though I described them like that
11 ink stamp yesterday, you know, the ink stamp is -- it's
12 solid. It's not going to move. But, you know, we know our
13 skin does and so from time to time, it will roll.

14 So if you see a -- an area in there that looks like
15 it's going to have some distortion or some excess pressure
16 on it, something like that, if there is none of that and you
17 see a dissimilarity, then you would have to determine that
18 it was not an identification.

19 Q: So if there's some smudging or things of that nature,
20 you can still potentially look and see if you can match the
21 print? What if there's a ridge on the latent print that
22 doesn't appear on the known print?

23 A: Then, like I said, if I couldn't explain why, then I
24 would have to say it was not an identification.

25 Q: So if you find one area of dissimilarity without

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 explanation, then you would automatically say that it's not
2 a match?

3 A: That's correct.

4 Q: And in this case, on L-1.1 and 1.2, did you find any of
5 those areas of dissimilarity?

6 A: No.

7 Q: So on the 12th of October, you received or your lab
8 received from Inv. Holt L -- latent card 1, and that was
9 from where? Taken -- the latent was taken from where?

10 A: That was from the anterior side of the door and he has
11 it noted as POE, which is an abbreviation for point of
12 entry.

13 Q: And you said that on the 12th you analyzed L-1 and from
14 that you've got two fingerprints?

15 A: Yes, ma'am.

16 Q: There were two fingerprints on that card?

17 A: Yes, ma'am.

18 Q: And please tell the jury what your conclusions were on
19 L-1.1 and 1.2?

20 A: L-1.1 was made by James Heyward -- James Heyward's left
21 ring finger, and L-1.2 was made by Mr. Heyward's left middle
22 finger.

23 Q: When you identify them as L-1.1 and 1.2, when you
24 assigned those numbers, is that in any order or any -- is
25 there any significance to the way you assigned those

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 numbers?

2 A: No. Typically, when we start looking at them, we'll
3 take what we perceive to be the best latent prints and we'll
4 start with that one, and that would be L-1. And then we
5 sub-number any latent prints that we -- or any individual
6 latents that we see on that card.

7 Q: So contained in State's 205, latent card L-1, if you
8 could, please -- it's hard to see -- describe for the jury
9 where L-1.1 and 1.2 are?

10 A: Okay. It's hard for me to see too. It's dark in here.
11 Where my index finger is, that's L-1.1. And where my middle
12 finger is, that's where L-1.2 is.

13 MS. MCDUFFIE: Your Honor, permission to publish to the
14 jury?

15 THE COURT: Ma'am?

16 MS. MCDUFFIE: Permission to publish to the jury?

17 THE COURT: Yes, ma'am.

18 BY MS. MCDUFFIE:

19 Q: Also on October the 12th, did you receive a latent card
20 L-7, lifted by Inv. Polis and contained in State's 208?

21 A: Did you say 7? This is 8 and 9.

22 Q: I'm sorry. Did -- I'm sorry. Contained in State's
23 207?

24 A: Yes.

25 Q: And then also on that date, you received or you

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 examined L-8 received by Inv. Polis? I'm sorry. Lifted by
2 Inv. Polis?

3 A: Yes.

4 Q: And then on October the -- the 15th, did you further
5 examine latent print 2 through 14?

6 A: Yes.

7 Q: And in between those on October the 13th, Mr. Heyward
8 was arrested?

9 A: That's my understanding.

10 Q: And was a new set of known prints taken from Mr.
11 Heyward at that time?

12 A: Yes.

13 Q: And did you also then get access to the new set or the
14 new 10-print card from Mr. Heyward?

15 A: I did. And if I can just correct myself? My analysis
16 on the fourth report actually began on October the 13th.

17 Q: I'm sorry. And then the report was issued on the 16th?

18 A: Yes, ma'am.

19 Q: All right.

20 A: I'm not sure what day I got all of them, all of the
21 prints all together.

22 Q: So you began your final analysis on October the 13th and
23 you completed it on the 16th?

24 A: On the 15th, yes. The report was written on the 16th.

25 Q: And during that time, you also received a new -- a new

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 set of Mr. Heyward's known prints?

2 A: Yes.

3 Q: I'm showing you what's been marked as State's 216. Is
4 this a photocopy of the new set that you received?

5 MR. KRZYSTON: Renew objection, Judge.

6 A: This is the same card. It's not the one that I
7 received.

8 MS. MCDUFFIE: Your Honor, at this time, we'd offer 216
9 into evidence.

10 THE COURT: State's 216 is into evidence subject to
11 previous objections.

12 (WHEREUPON, State's Exhibit Number 216, AFIS printout
13 of 10-print card of the defendant, was admitted into
14 evidence.)

15 BY MS. MCDUFFIE:

16 Q: Inv. Odom, in doing your analysis on the rest of the
17 prints, you used both the initial card that you had received
18 that belonged to James Heyward with the identification
19 number of 220688PA3, as well as the new card that was taken
20 upon his arrest?

21 A: Yes, ma'am.

22 Q: And how did you receive that card taken upon his
23 arrest?

24 A: We have access to a computer system which, when the
25 prints are taken at the detention center, we actually have

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 access to them. And I printed them off of that system.

2 Q: And did you also receive the postmortem prints of Ms.
3 Alice Tollison that were taken at her autopsy?

4 A: Yes, ma'am.

5 Q: And explain for the jury -- are those prints taken in
6 the same way any other persons' prints would be taken?

7 A: For the most part. Just the fingers are inked and
8 rolled on a card or a strip, and it was both the fingers and
9 the palms.

10 Q: And did you also use the known prints of Ms. Alice
11 Tollison in your comparisons?

12 A: I did.

13 Q: I'm showing you State's 227. Are these the known
14 prints of Alice Tollison?

15 THE COURT REPORTER: 227?

16 MS. MCDUFFIE: 227.

17 A: Yes, ma'am.

18 MS. MCDUFFIE: Your Honor, at this time, we'd offer 227
19 into evidence.

20 MR. KRZYSTON: Renew objection.

21 THE COURT: State's 227 is in evidence without
22 objection.

23 (WHEREUPON, State's Exhibit Number 227, fingerprint
24 card of the victim, was admitted into evidence.)

25 MR. KRZYSTON: That was renew objection, not without

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 objection.

2 THE COURT: I apologize.

3 MR. KRZYSTON: That's okay.

4 THE COURT: The closer I am to you, the less I can
5 hear. Subject to previous objections, 227.

6 BY MS. MCDUFFIE:

7 Q: If we could just take the prints one by one, we already
8 went over L-1. If you could, explain to the jury your
9 findings on L-2, where it was collected and what your
10 findings were?

11 A: Okay. L-2 was developed by Inv. Holt from the interior
12 side of the glass door, again with the notation POE, point
13 of entry. And I found that the latent on that was not made
14 by either Mr. Heyward or Mrs. Tollison.

15 Q: It was made by an unknown individual?

16 A: That's right.

17 Q: And was any further analysis conducted on that print?

18 A: No, ma'am.

19 Q: Please tell the jury about L-3, where those were lifted
20 and what your conclusions were?

21 A: L-3 was lifted by -- again by Inv. Holt from a water
22 bottle that he has listed as marker E and we sub-numbered on
23 that latent print card three individual latents. L-3.1 was
24 inconclusive to both Mr. Heyward and Mrs. Tollison due to
25 the lack of those individual characteristics that we talked

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 about a little while ago. L-3.2 --

2 Q: Can I stop you right there? Explain what inconclusive
3 means?

4 MR. KRZYSTON: We would renew objection, Judge.

5 THE COURT: So noted.

6 THE COURT REPORTER: Did you say renewed? Is that what
7 you said? You're going to have to speak up over there.
8 There's no microphones.

9 MR. KRZYSTON: Renew. I'm sorry.

10 THE COURT REPORTER: Thank you.

11 BY MS. MCDUFFIE:

12 A: Inconclusive just means that I can't come to a decision
13 of either an identification or an exclusion.

14 Q: Okay. And why is that?

15 A: There's not enough information.

16 Q: And so that was the same conclusion you had for L-3.1,
17 3.2, and 3.3?

18 A: Yes, ma'am.

19 Q: And L-4, the latent print lifted by Holt from the
20 interior side of the glass door point of entry?

21 A: Yes, ma'am. We sub-numbered one latent print on that
22 and we determined that it was of no value for comparison.

23 Q: And how is that different from inconclusive?

24 A: That typically means there's almost no ridge detail
25 present. I can't say one way or the other what it is.

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 Q: And then L-5, latent prints lifted by Holt from alarm
2 keypad?

3 A: We sub-numbered three latents on that one. .1 and .2
4 were of no value and .3 was inconclusive to both Mr. Heyward
5 and Mrs. Tollison due to lack of individual characteristics.

6 MR. KRZYSTON: Renew objection.

7 THE COURT: So noted.

8 BY MS. MCDUFFIE:

9 Q: Inv. Odom, L-6, the latent print lifted by Inv. Holt
10 from exterior of door point of entry?

11 A: L-6, we had one sub-number and it was of no value.

12 Q: L-7, the partial latent print, seven point -- or seven,
13 lifted by Polis from the side of small gold box, sunshine
14 design pendant?

15 MR. KRZYSTON: Renew objection.

16 THE COURT: So noted.

17 BY MS. MCDUFFIE:

18 A: We sub-numbered one -- one latent on that one and it
19 was made by Mr. Heyward's left thumb.

20 Q: And there were no areas of dissimilarity in that print?

21 A: That's correct.

22 Q: And please tell the jury your conclusions for L-8?

23 MR. KRZYSTON: Renew objection.

24 THE COURT: So noted.

25 BY MS. MCDUFFIE:

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 A: L-8 was lifted by Inv. Polis from a plastic card
2 attached with a magnet to a multicolored canister, and L-8.1
3 was made by Mr. Heyward's left thumb and 8.2 was of no
4 value.

5 Q: And State's 215. Please tell the jury your conclusions
6 for L-9, four partial latent prints lifted by Inv. Polis
7 from a small red jewelry box containing an angel pendant?

8 MR. KRZYSTON: Renew objection.

9 THE COURT: So noted.

10 BY MS. MCDUFFIE:

11 A: All four of those latents were of no value.

12 Q: And L-10, two partial latent prints lifted by Inv.
13 Richards from side of WaterPik box?

14 MR. KRZYSTON: Renew objection.

15 THE COURT: So noted.

16 BY MS. MCDUFFIE:

17 A: We sub-numbered with two latents, and L-10.1 was made
18 by Mr. Heyward's left thumb.

19 Q: And 10.2?

20 A: Was inconclusive to both Mr. Heyward and Mrs. Tollison.

21 Q: And then L-11 was also lifted by Mr. Richards from the
22 side of the WaterPik box?

23 MR. KRZYSTON: Renew objection.

24 A: Yes, ma'am.

25 THE COURT: So noted.

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 BY MS. MCDUFFIE:

2 A: And it was -- we had three that were sub-numbered on --
3 I'm sorry. Four that were some numbered on L-11, and .1 was
4 inconclusive to Mr. Heyward and Mrs. Tollison. L-2 -- I'm
5 sorry. L-11.2 and 11.3 were of no value and L-11.4 was
6 inconclusive to Mr. Heyward and Mrs. Tollison due to the
7 lack of characteristics.

8 Q: And the L-12, the partial latent lifted by Inv.
9 Richards from the front of the lid to sewing kit?

10 MR. KRZYSTON: Renew objection.

11 THE COURT: So noted.

12 BY MS. MCDUFFIE:

13 A: Was sub-numbered with one latent and it was made by Mr.
14 Heyward's left ring finger.

15 Q: And then L-13, two partial latent prints lifted by Inv.
16 Richards from the interior sun -- or sunroom door?

17 MR. KRZYSTON: Renew objection.

18 THE COURT: So noted.

19 BY MS. MCDUFFIE:

20 A: Sub-numbered with two latents. L-13.1 was not made by
21 Mr. Heyward and it was inconclusive to Mrs. Tollison due to
22 incomplete -- her incomplete known fingerprints. L-13.2 was
23 inconclusive to Mr. Heyward and Mrs. Tollison, Mr. Heyward
24 due to the lack of individual characteristics and Mrs.
25 Tollison due to the lack of individual characteristics and.

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 incomplete known prints.

2 Q: And those are the -- that's the extent of the items of
3 evidence that were submitted to you for examination in this
4 case?

5 A: We did have L-14.

6 Q: Oh, I'm sorry. I apologize. L-14, lifted by Inv.
7 Richards from side of wood jewelry box?

8 A: And it was sub-numbered --

9 MR. KRZYSTON: Renew objection.

10 THE COURT: So noted.

11 BY MS. MCDUFFIE:

12 A: Sub-numbered with one latent, and it was of no value.

13 Q: Inv. Odom, in your expert opinion, the prints taken or
14 lifted from Inv. Holt on the inside of door at the point of
15 entry, L-1.1 and 1.2, who made those prints?

16 A: Mr. Heyward did.

17 Q: And L-7 lifted by Inv. Polis from the side of small
18 gold box with the sunshine pendant design?

19 A: Mr. Heyward.

20 Q: L-8 lifted by Inv. Polis from the plastic card attached
21 to the multicolored canister?

22 A: .1 was made by Mr. Heyward.

23 Q: And then L-10 lifted by Inv. Richards from the side of
24 the WaterPik box?

25 A: .1 was made by Mr. Heyward.

INV. TRISHA ODOM - DIRECT BY MS. MCDUFFIE

1 Q: And L -2 lifted by Inv. Richards from the sewing kit?

2 A: Was Mr. Heyward.

3 Q: And in all of those prints that we just discussed,
4 there were no areas of dissimilarity?

5 A: No, ma'am.

6 MR. KRZYSTON: Object to the line of questioning.

7 THE COURT: Overruled.

8 BY MS. MCDUFFIE:

9 Q: Inv. Odom, an individual's fingerprints -- are those
10 unique to the individual?

11 A: Yes.

12 Q: Does any -- do any two individuals have the same
13 fingerprints?

14 A: No two individuals have ever been found to have the
15 same fingerprints. No two individuals have ever been found
16 to have the same fingerprints on any of their fingers.

17 Q: So not only is every person's -- or every person's
18 fingerprints different, but every person -- every finger on
19 your hand is different from the others?

20 A: Correct.

21 MS. MCDUFFIE: I beg the Court's indulgence.

22 THE COURT: Yes, ma'am.

23 BY MS. MCDUFFIE:

24 Q: And when -- your lab at Richland County is accredited?

25 A: Yes, ma'am.

INV. KERRI MCCLARY - DIRECT BY MS. SIMPSON

1 Q: Okay. And you stated that you collected swabs and,
2 specifically with the neck region, you were actually
3 directed to collect that first; correct?

4 A: Yes.

5 Q: Before any -- any of the autopsy was actually
6 performed?

7 A: Yes. That is correct.

8 Q: I am going to show you what's been marked as State's
9 Exhibit 226. Do you recognize these items?

10 A: Yes. The package is marked with my initials, my
11 handwriting.

12 Q: Okay. And what's contained in that package?

13 A: One buccal swab from the victim, Alice Tollison, one
14 swab from the victim's neck region, one swab from the
15 victim's chin and abraded area. There was an abrasion up
16 under the area of her chin that was swabbed.

17 Q: Okay.

18 MS. SIMPSON: Your Honor, at this time, I would offer
19 into evidence State's Exhibit 226.

20 MR. RUFFIN: No objection, Judge.

21 THE COURT: State's 226 in evidence without objection.

22 (WHEREUPON, State's Exhibit Number 226, swabs, was
23 admitted into evidence.)

24 MS. SIMPSON: Okay.

25 BY MS. SIMPSON:

INV. KERRI MCCLARY - DIRECT BY MS. SIMPSON

1 Q: And I want to talk to you first on -- because you said
2 buccal or buccal swab. What is that? Can you describe that
3 for the jury and how that's done?

4 A: It's where we swab the inner lining of the cheek area,
5 which is allowing us to pick up skin cells that we slough
6 off daily. It picks those up, collects them on the tip of
7 the swab, and then we submit those for analysis to our DNA
8 department.

9 Q: Okay. And with respect to a swab from the victim, that
10 is her DNA; right?

11 A: Yes.

12 Q: That would be her DNA?

13 A: Yes.

14 Q: And the swabs located in here from the neck region and
15 the chin area -- are those collected in the same way as far
16 as the process?

17 A: The neck and the chin area -- you're still swabbing the
18 skin area, but we actually add sterile water to moisten,
19 just a very small amount of sterile water to moisten the tip
20 of the swab so that we can make sure and pick up as much of
21 the DNA that's there, if there's -- if there's any there.

22 Q: Okay. And in addition to the swabs -- and let me ask
23 you were the hands bagged upon her arrival --

24 A: Yes, they were...

25 Q: -- in the body bag? And what's the purpose of bagging

INV. KERRI MCCLARY - DIRECT BY MS. SIMPSON

1 a person's hands?

2 A: For protection of any evidence that might be on the
3 subject's hands or underneath their fingernails. We want to
4 preserve it.

5 Q: I'm going to show you what's been marked as State's
6 Exhibits 318, 321, and 322. Tell me if you recognize these
7 photographs?

8 A: Yes. I took these at autopsy.

9 Q: And do they fairly and accurately depict what you
10 observed?

11 A: Yes.

12 MS. SIMPSON: Your Honor, at this time, I would offer
13 State's 318, 322, and 321 into evidence.

14 MR. RUFFIN: No objection, Your Honor.

15 MS. SIMPSON: Okay. I'm going to direct your attention
16 --

17 THE COURT: All right. State's 318, 321, and 322 into
18 evidence without objection.

19 (WHEREUPON, State's Exhibits Number 318, 321, and 322,
20 photographs, were admitted into evidence.)

21 MS. SIMPSON: Thank you, Your Honor.

22 BY MS. SIMPSON:

23 Q: With respect to 318, what do we see here?

24 A: It is the victim's hand, and it is depicting that there
25 is a black and silver in color metal bangle bracelet-type

INV. KERRI MCCLARY - DIRECT BY MS. SIMPSON

1 piece of jewelry on her wrist.

2 Q: And then in State's 321, what do we see here?

3 A: It is a photograph depicting the back side of the
4 victim's right hand.

5 Q: You said the victim's right hand?

6 A: That one is, yes.

7 Q: And then finally, with respect to State's 322, what do
8 we see here?

9 A: That is another photograph of the back area of the
10 hand, the victim's hand. It appears to be the right.

11 Q: It's just a closer up --

12 A: Right.

13 Q: -- photograph? Were any rings -- we noted in State's
14 318 she's wearing a bracelet, but on either of the victim's
15 hands were there any rings collected or noticed or
16 photographed?

17 A: There were no victim -- or no rings on either of the
18 victim's hands, no.

19 Q: Okay. With respect to other things that you collected,
20 what did you collect?

21 A: I also -- excuse me -- collected the buccal swab from
22 the inside of the cheek, a swab from the neck, a swab from
23 the apparent abraded area -- abraded area on the chin. I
24 collected both the paper bags that were covering the right
25 and left hands of the victim. I collected a possible hair

INV. KERRI MCCLARY - DIRECT BY MS. SIMPSON

1 from the decedent's left hand, which I observed and
2 photographed upon opening the bag to remove it for
3 collection.

4 Q: Okay.

5 A: And I collected fingernail scrapings from both the
6 right and left hand. I collected pulled head hair samples
7 and inked postmortem finger and palm prints.

8 Q: I'm going to show you what's marked is State's 224. Do
9 you recognize these items?

10 A: Yes.

11 Q: Okay. And what -- what's contained in State's 224?

12 A: The label is marked nail scrapings, left hand, nail
13 scrapings, right hand, from victim, Alice Tollison.

14 Q: Okay.

15 MS. SIMPSON: Your Honor, at this time, I would offer
16 State's 224 into evidence.

17 MR. RUFFIN: No objection, Judge.

18 THE COURT: State's 224 is into evidence without
19 objection.

20 (WHEREUPON, State's Exhibit Number 224, fingernail
21 scrapings from victim, was admitted into evidence.)

22 BY MS. SIMPSON:

23 Q: And how are nail scrapings collected and what's the
24 purpose of that?

25 A: We collect nail scrapings by using a clean, sterile

DR. AMY DURSO - DIRECT BY MS. MCDUFFIE

1 objection.

2 (WHEREUPON, State's Exhibits Number 314 and 315,
3 diagrams, were admitted into evidence.)

4 BY MS. MCDUFFIE:

5 Q: Dr. Durso, if you could, again tell the jury how --
6 when you started Ms. Tollison's autopsy, what's the first
7 thing that you did?

8 A: I did the external exam. So I weighed her, measured
9 the length, and noted any external findings on her.

10 Q: And what external findings did you find?

11 A: So the things that really stood out to me were the
12 findings mostly around her neck. She had a little furrow
13 where it looked like she had been strangled with some kind
14 of -- something wrapped around her neck. She had bruises
15 and abrasions around her neck. She had what we call
16 petechial hemorrhages around her face and her eyes, and she
17 had other bruises and injuries primarily involving her left
18 arm.

19 MS. MCDUFFIE: Your Honor, if I may have the witness
20 step down, please?

21 THE COURT: Yes. Yes, you may step down, Doctor, but
22 please keep your voice up.

23 THE WITNESS: Yes, sir.

24 BY MS. MCDUFFIE:

25 Q: Dr. Durso, using State's 314, you mentioned petechiae?

DR. AMY DURSO - DIRECT BY MS. MCDUFFIE

1 A: Right.

2 Q: And please explain to the jury what petechiae is?

3 A: So petechial hemorrhages are the breaking of tiny blood
4 vessels that's usually below the skin surface or within the
5 sclera of the eyes, the white parts of your eyes. We see
6 these often in strangulation, which actually has to do less
7 with the blockage of the airflow in the neck, but the
8 blockage of the major vessels in the neck which actually
9 prevent, you know, the blood from actually flowing. So the
10 pressure rises and those tiny vessels actually burst, which
11 we see on the outside as these petechial hemorrhages.

12 Q: In State's Exhibit 1, could you please describe for the
13 jury what's depicted in this photo?

14 A: Yes. So this is Ms. Tollison's -- it appears to be her
15 left eye and, as you can see, there's multiple petechial
16 hemorrhages. You can see the spot on the top part, as well
17 as hemorrhages within the sclera, which is the white of the
18 eye, which is consistent with strangulation.

19 Q: And State's Exhibits 2 and 3?

20 A: Again, show more of the petechial hemorrhages,
21 especially this one. You can see the actual individual
22 hemorrhages and in some areas they're a little bit larger,
23 but again, both of the eyes had these petechial hemorrhages
24 in them.

25 Q: And these are caused again -- or how are -- how are

DR. AMY DURSO - DIRECT BY MS. MCDUFFIE

1 these caused?

2 A: By bursting of the tiny vessels by blockage of the
3 blood flow from strangulation. That's where we see these.

4 Q: You also said that you observed some injury to her neck
5 area?

6 A: Yes.

7 Q: And what was that?

8 A: So there was what we call a ligature furrow; which a
9 ligature is anything that's wrapped around the neck. It
10 usually leaves an indentation or a mark, and sometimes
11 abrasions from that. She also had some bruising in the
12 neck, which again goes towards pressure in the neck.

13 Typically, bruising is often from hands to the neck or
14 a chokehold sort of thing. And there are also scratches to
15 her neck. So typically, if someone is being strangled with
16 something, they're going to try to pull whatever is around
17 their neck off; so they actually are scratching their own
18 neck often in trying to save themselves.

19 Q: State's Exhibit 16. Is that a picture of Ms.
20 Tollison's face?

21 A: Yes, it is.

22 Q: And it's -- there's purple discoloration?

23 A: There's purple discoloration. There's actually
24 petechial hemorrhages within the skin of her face. It's a
25 little bit of a dark photo.

DR. AMY DURSO' - DIRECT BY MS. MCDUFFIE

1 Q: And again, the petechial hemorrhages not only can be in
2 the eyes, but also the skin of your face?

3 A: Yes. More often in the more violent strangulations, I
4 tend to see more petechial hemorrhages in the skin on the
5 face, not just the eyes.

6 Q: And did you note any lacerations or bruising or marks
7 on the diagram to her neck area?

8 A: There were some scratch marks. I actually did a
9 separate -- the other diagram would actually be more
10 helpful. Since there was so many findings to the neck, I
11 used a separate generic diagram showing specifically the
12 neck area. That would show more of the findings.

13 Q: State's 315?

14 A: Yes.

15 Q: And using 315, please tell the jury about your findings
16 in the neck area?

17 A: Right. So these lines here represent the ligature mark
18 that I saw in her neck. So these red furrows or lines or
19 indentations in the skin indicate that something was wrapped
20 around her neck.

21 Q: Let me pause you. State's 11 and 12?

22 A: Yes.

23 Q: And please describe for the jury what you're referring
24 to in State's 11 and 12?

25 A: So this is more the front of her neck here. Here's her

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DR. AMY DURSO - DIRECT BY MS. MCDUFFIE

1 chin. So you can see this red line, kind of purplish red
2 line going around her neck here, as well as a little bit in
3 here, but it goes primarily around the front of the neck.
4 It squirts almost directly backwards, which means someone
5 was standing behind her pulling this tightly around her
6 neck. She does have some scratches here, a bruise here as
7 well and a few faint scratches here, and the scratches are
8 most likely from her trying to pull the ligature out from
9 around her neck.

10 Q: And State's 13?

11 A: And this is more of the left side of her neck where you
12 can see there's even more bruising and abrasions here in
13 this area, as well as here and here.

14 Q: And again, when you are examining a body, you're also
15 -- you're looking not only for the injury, but what could
16 have caused the injury and the extent of the injury?

17 A: Yes.

18 Q: And in your opinion, what caused the injuries to her
19 neck and the petechiae in her face and eyes?

20 A: Strangulation. Primarily, it looks like from a
21 ligature furrow, something having been wrapped around her
22 neck from behind and pulled tightly, but also there are -- I
23 don't know if the one of her chin is in here.

24 So the chin is also significant. You can see this
25 bruise on the underside of her chin. So this is a very

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1 common finding in strangulations because if you're being
2 strangled, the other thing you're going to do other than try
3 to pull the ligature or whatever, the hands, out from on
4 your neck is you're going to put your chin down towards your
5 chest in order to prevent access to that area. So it's a
6 very common finding in strangulations to have bruising or
7 abrasions to the underside of the chin and that goes back
8 to, again, prevent the assailant from strangling.

9 Q: And you said -- and I'm sorry. The bruise is depicted
10 in State's 11?

11 A: The abrasion to her chin, yes.

12 Q: Okay. The abrasion to her chin? And you said earlier
13 that the -- the petechiae and some of the marks that you saw
14 are consistent both with maybe an arm around the neck as
15 well as the ligature?

16 A: Yes.

17 Q: And what are you basing those findings on?

18 A: The addition of the bruising in the neck and also -- so
19 after, you know, documenting these external findings, there
20 are multiple injuries on the inner part of the neck that
21 kind of for me go beyond just a ligature. There are
22 fractures of bones and hemorrhage buried deep within the
23 neck that are typical of someone using a hand or an arm,
24 something stronger than just the ligature to cause that deep
25 of an injury.

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1 Q: And turning to State's 314, what other external
2 findings of significance did you make?

3 A: Right. So she also had bruising primarily on her left
4 arm. So there was a bruise on the back of her left
5 shoulder. There's a bruise on the back of her left upper
6 arm in this area, and there were also areas of petechial
7 hemorrhages within this area called the crook of the arm
8 here. And so, again, we see petechial hemorrhages when we
9 block the blood flow, and one way to block blood flow is to
10 have your arm bent in an awkward position or pulled behind
11 you in some way.

12 Q: And those are the external findings that you noted?

13 A: Also, on the left hand. There was also a bruise on the
14 back of her left hand and those were all the significant
15 findings.

16 Q: You also note in your diagram that her hands were
17 bagged

18 A: Yes. I always document that, yes.

19 Q: And what are these marks?

20 A: Those are EKG leads. So when EMS responses, it's their
21 protocol, even if someone is clearly not alive anymore, to
22 do EKG leads and verify that. Yes.

23 Q: And you can have a seat.

24 (WHEREUPON, the witness complied.)

25 Q: And, Dr. Durso, after you completed your external

DR. AMY DURSO - DIRECT BY MS. MCDUFFIE

1 findings in this case, what did you then do?

2 A: So then, again, we began the autopsy. We did things a
3 little differently in this case in only that we saved the
4 neck dissection for last to make sure we didn't present any
5 artifactual extra hemorrhage or anything in the neck. So we
6 did the entire torso downwards, removed the brain, and then
7 I went back and carefully dissected each layer of the neck
8 myself.

9 Q: What is -- I think you said artifactual damage or --

10 A: Right. So that's not real. So, you know, we could cut
11 things by accident or cause congestion of vessels if we
12 don't remove the other organs first. So we make sure that
13 we see exactly the findings we want by doing that last.

14 Q: So you're very careful to try and preserve whatever
15 physical injury existed at the time and not to disturb or
16 manipulate that in any way during the performance of your
17 autopsy?

18 A: That's correct.

19 Q: And so you said that you started with the torso?

20 A: Yes.

21 Q: And describe for the jury what that entailed?

22 A: So, again, like I described before, we removed the rib
23 cage and examined that part of the body. There weren't that
24 many significant findings as far as the torso is concerned.
25 She had some mild natural disease, heart disease, but

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1 nothing that would have been enough to kill her or
2 contribute to her death in any way.

3 Q: And the medical conditions that she suffered from, were
4 they atypical for a 76-year-old?

5 A: Very typical for a 70-year-old. Some coronary artery
6 disease and a little bit of hypertensive changes in the
7 areas of her kidneys.

8 Q: And did those findings contribute in any way to her
9 death?

10 A: No.

11 Q: After you completed your autopsy of the torso, you said
12 you then went to -- to the head?

13 A: Yes. So again, we begin by making the incision on the
14 back of the head and reflecting the scalp forward. At that
15 point, we realized that she had multiple bruises around her
16 head, not just to one surface, but I think to at least four
17 different planes, which is not -- it can't just be from a
18 fall. You know, there had to be some kind of multiple blunt
19 force injuries. So a blunt force injury is anything that,
20 you know, presses forcefully up against the skin in order to
21 break those blood vessels within the skin and subcutaneous
22 tissues.

23 Q: And when you did the external exam, were you able to
24 see those injuries or do they only manifest internally?

25 A: Sometimes you can see them externally, but the head is

DR. AMY DURSO - DIRECT BY MS. MCDUFFIE

1 covered with her and we don't want to have to shave because
2 we know we could see those injuries when we reflect the
3 scalp.

4 Q: In State's Exhibits 14 and 15, are these photographs of
5 the internal injuries you observed to Ms. Tollison's head?

6 A: Yes.

7 Q: And would those photographs assist you in explaining
8 the extent and location of the injuries that you observed on
9 Ms. Tollison?

10 A: Yes, they would.

11 MS. MCDUFFIE: Your Honor, at this time, we would offer
12 State's 14 and 15.

13 MR. KRZYSTON: Objection under 403.

14 THE COURT: All right. Step out momentarily, ladies
15 and gentlemen. Do not discuss the case during this brief
16 recess.

17 (WHEREUPON, the jury exited the courtroom at 11:36
18 a.m.)

19 THE COURT: All right. May I see the photographs,
20 please, Solicitor?

21 (WHEREUPON, there was a pause in the proceedings, after
22 which the proceedings resumed as follows.)

23 THE COURT: All right. And the basis of your
24 objection, please, Mr. Krzyston?

25 MR. KRZYSTON: Judge, our objection is based on 403

DR. AMY DURSO - IN-CAMERA DIRECT BY MS. MCDUFFIE

1 analysis. Cause of death listed on the end under diagnosis
2 completed by Dr. Durso indicates strangulation in this case.
3 The hemorrhages, if you will, are completely superfluous to
4 the cause of death. They do not contribute to the cause of
5 death. They are simply injuries that she could have
6 sustained during the encounter that unfortunately ended her
7 life or at any time prior to that in the preceding days.

8 We would ask that, based on the gruesome nature of the
9 photographs, the relative lack of probative value, and the
10 risk of undue prejudice that those photographs be excluded.

11 THE COURT: Solicitor, please question the doctor
12 concerning the relevancy of these findings in these
13 photographs in this specific case.

14 MS. MCDUFFIE: Yes, Your Honor.

15 IN-CAMERA DIRECT EXAMINATION

16 BY MS. MCDUFFIE:

17 Q: Dr. Durso, when you reflected the scalp back and
18 noticed these injuries, please tell the Court what
19 significance they had in your ultimate conclusions and in
20 the performance of this autopsy?

21 A: So it demonstrates that there was a struggle and that
22 there -- it was a violent death, the fact that her head had
23 to have been struck on multiple different planes, not just
24 one from a terminal fall, but it actually demonstrates that
25 there was more than just a strangulation, that her head had

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1 been struck on multiple different areas.

2 Q: And are these injuries part of the basis of your
3 conclusion of the cause of death in this case?

4 A: It contributes to it, yes.

5 Q: And are these two photographs, State's -- I believe it
6 was 14 and 15, the best examples that were gathered at
7 autopsy to demonstrate that injury to the jury?

8 A: Yes.

9 Q: And do you have or know of any other way that we could
10 adequately demonstrate this to the jury?

11 A: It's easiest with a picture..

12 Q: And so those would be necessary to assist you in
13 explaining these injuries to the jury and the cause of
14 death?

15 A: Yes.

16 THE COURT: And as to each photograph, State's 14 and
17 15, what -- what areas is she referring to in these
18 photographs?

19 THE WITNESS: I believe one is the front of the scalp
20 and the other is the back of the scalp pulled down.

21 BY MS. MCDUFFIE:

22 Q: Dr. Durso, State's 14, can you please tell the judge
23 the relevant findings in that photograph?

24 A: Right.. So this is the back of the scalp pulled down,
25 and you can see there's a bruise here and also a bruise

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1 there, these dark red areas.

2 Q: And the two bruises in those two locations, what does
3 that signify to you?

4 A: Again, that she was struck in the head both here and on
5 the top of the head as well because if you put the scalp
6 back, it would be up towards the back top of the head.

7 Q: And State's 15?

8 A: So this is the front of the scalp turned down and,
9 again, these are two more bruises in two different areas.
10 This is kind of the right forehead area and this would be
11 kind of the right top of the head in this area.

12 THE COURT: Thank you. Anything further, Solicitor?

13 MS. MCDUFFIE: No, Your Honor.

14 THE COURT: Any questions for the doctor in camera, Mr.
15 Krzyston?

16 MR. KRZYSTON: No, sir.

17 THE COURT: All right. May I see the photographs,
18 please? All right. I'll be glad to hear from you, Mr.
19 Krzyston.

20 MR. KRZYSTON: Thank you, Judge. Again, this is just
21 rabid speculation. There's no indication -- excuse me, not
22 no indication. There is no proof that those injuries
23 happened during the course of the struggle which, again,
24 unfortunately ended Ms. Tollison's life. She was a 76-year-
25 old woman, a woman with coronary artery disease. She had

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1 several ailments. She could have fallen. She walked with a
2 walker. These things could have happened at any time.

3 Furthermore, they could have happened directly after
4 her death and thus would not have contributed to her death.
5 It's basic speculation. Very prejudicial, given the subject
6 matter of the photographs and what they -- what they depict.

7 Again, the anatomical diagnosis is that the
8 strangulation is the cause of death. These don't
9 contribute.

10 THE COURT: Thank you. Anything, Solicitor?

11 MS. MCDUFFIE: Your Honor, we would just rely on State
12 v. Collins and its progeny. Your Honor, we think that these
13 are necessary for full presentation. They do depict the
14 internal wounds to the body. The doctor has testified that
15 they are necessary for a full presentation to the jury, and
16 they show the injuries suffered by Ms. Tollison in this
17 case.

18 THE COURT: All right. Thank you. Thank you,
19 Solicitor.

20 Well, beginning the Rule 403 analysis, it's very fact
21 specific, and I actually looked at -- again, I'm looking at
22 State v. Collins, the Court of Appeals case that was
23 reversed by the South Carolina Supreme Court.

24 But in looking at the law, although relevant evidence
25 may be excluded if its probative value is substantially

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1 outweighed by the danger of unfair prejudice. Probative
2 means tending to prove or disprove. Probative value is the
3 measure of the importance of that tendency to the outcome of
4 a cause or case. It is the weight that a piece of relevant
5 evidence would carry in helping the trier of fact decide the
6 issues. The more essential the evidence, the greater its
7 probative value.

8 Thus, a Court analyzing probative value considers the
9 importance of the evidence and the significance of the
10 issues to which the evidence relates. The evaluation of
11 probative value cannot be measured in abstract, but should
12 be measured in the practical context of the issues at stake
13 in the trial in each case. In balancing the danger of
14 unfair prejudice against the probative value, the
15 determination must be placed on the entire record in
16 determining the facts of each case.

17 The probative value of the photos must be balanced
18 against the danger of unfair prejudice. Whether it is
19 unfair is distinguished from the general impact all evidence
20 has on the outcome of a case. Unfair prejudice does not
21 mean the damage to the defendant's case that results from
22 the legitimate probative force of the evidence. Rather, it
23 refers to evidence which tends to suggest a decision on an
24 improper basis.

25 Rule 403 only requires the suppression of evidence that

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1 results in unfair prejudice, prejudice that damages the
2 components of reason and otherwise damages its probative
3 value. For example, an appeal to emotion.

4 As I stated initially, the cases were very fact
5 specific and they also direct the Court to begin with the
6 elements of the offense. One offense charged among many in
7 this case is the offense of murder. The State has the
8 burden of proving its case beyond a reasonable doubt. The
9 State has the burden of proving malice aforethought, and the
10 burden of proving a heart devoid of social justice and such.

11 Given the doctor's testimony, that it indicates a
12 struggle, a violent death, multiple injuries, and multiple
13 findings, more than just a strangulation, and it is taken
14 into account on the part of the basis of her conclusions and
15 causes. This evidence is, in my mind, corroborative of the
16 testimony that has been previously presented through the
17 record by the observations of the eyewitness. It is also
18 corroborative of the testimony of Dr. Durso, and she further
19 indicates this would assist the jury and assist her in
20 explaining her findings to the jury.

21 Although not pleasant to look at, if you then go to
22 State v. Collins, the Supreme Court case --

23 THE COURT REPORTER: State v. Collins, Your Honor?

24 THE COURT: Yes. Yes, ma'am. The Supreme Court case
25 that reversed the Court of Appeals decision.

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1 Our Supreme Court stated Courts must often grapple with
2 discovery in unpleasant cases, but that does not justify
3 preventing essential evidence from being considered by the
4 jury, which is charged with the solemn duty of acting as the
5 factfinder. As one Court has astutely observed, it is the
6 duty of courts and juries to examine the evidence in even
7 the most unpleasant of circumstances. Courts and juries
8 cannot be too squeamish about looking at unpleasant things,
9 objects, or circumstances and then proceeding to enforce the
10 law, essentially or especially when the truth is on trial.

11 The mere fact that an item of evidence is gruesome or
12 revolting, which I find that these are not, is for
13 individual observation. If it sheds light on, strengthens,
14 or gives character to other evidence and sustains the issues
15 in the case, it should not be excluded.

16 Even the most gruesome photographs -- and I find these
17 are not -- may be admissible if they tend to shed light on
18 any issue or corroborate the testimony or if they are
19 essential in proving the necessary element such as malice or
20 used to enable a witness to testify more effectively or
21 enable a jury to better understand the testimony. Other
22 acceptable purposes are to show the condition of the
23 victim's full body, the probable type or location of the
24 injuries, and others.

25 So in balancing that probative value versus undue

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1 prejudice, I find the probative value is high. There is no
2 unfair prejudice in the case. They do not suggest a
3 decision based on emotion or any other improper motive in
4 this case. State's 14 and 15 are into evidence subject to
5 defense objection.

6 THE COURT: All right. Anything further before we
7 bring in our jury?

8 MS. MCDUFFIE: Not from the State, Your Honor.

9 MR. KRZYSTON: No, sir, Judge.

10 THE COURT: Thank you.

11 (WHEREUPON, the jury entered the courtroom at 11:51
12 a.m.)

13 THE BAILIFF: The jury is seated, Your Honor.

14 THE COURT: Thank you, Mr. Bailiff. Thank you very
15 much, ladies and gentlemen, for your patience with the
16 Court. Please continue to give the parties your complete
17 and undivided attention.

18 Solicitor, you may ask your next question. You may
19 proceed.

20 DIRECT EXAMINATION

21 BY MS. MCDUFFIE:

22 Q: Dr. Durso, I think we left off -- you said that you
23 first internally examined the torso?

24 A: Yes.

25 Q: And then you next moved to the head?

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1 A: Yes.

2 Q: And describe again for the jury how you proceeded to
3 perform your autopsy on Ms. Tollison's head?

4 A: Right. So again, we made the incision on the back of
5 the head and pulled the scalp forward and backwards on the
6 back, and we observed several contusions or bruises to her
7 scalp. So we stopped at that point to take photographs.

8 Q: And is that what's depicted in State's 14 and 15?

9 A: Yes.

10 MS. MCDUFFIE: Your Honor, we would offer State's 14
11 and 15 into evidence.

12 MR. KRZYSTON: Renew objection.

13 THE COURT: State's 14 and 15 are in evidence subject
14 to defense's previous objection. I renew my previous
15 ruling.

16 (WHEREUPON, State's Exhibits Number 14 and 15,
17 photographs, were admitted into evidence.)

18 BY MS. MCDUFFIE:

19 Q: Dr. Durso, when you reflect a scalp, what are -- what
20 are you looking for?

21 A: Anything abnormal, but the thing we most commonly do
22 see are bruises or contusions.

23 Q: And State's 14 -- can you please explain for the jury
24 what's depicted in this photograph?

25 A: All right. So this is the back of her scalp pulled

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1 back off of the actual skull there, and you can see there's
2 at least two different dark purple contusions, which means
3 these are recent contusions that happened prior to death.
4 You don't get bruises after death.

5 And there's one kind of right on the back of her scalp
6 and one that's further down in the skin, which means it's
7 kind of more at the top of her scalp. So there's two
8 different planes. So that couldn't have been just from a
9 fall. That's more typical of someone being hit in the head
10 or thrown into a wall or the floor or something along those
11 lines.

12 Q: And again, the dark purple area you're speaking about,
13 the first one being here?

14 A: Yes.

15 Q: And the scalp is reflected back. So where exactly
16 would this bruise or contusion or this injury take place?

17 A: The back of the head, the lower back of the head.

18 Q: And the second one you were mentioning?

19 A: It's smaller, but it's right here at the tip, and so if
20 you push that back up, it's more towards the back of the
21 head, up higher.

22 Q: And the fact that the contusion is to the back of the
23 head or in two different areas, why is that significant to
24 you?

25 A: Because if you fall, you'd expect only a contusion on

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1 one side of the head. The fact that we found them on at
2 least four different planes of the head means that isn't
3 inconsistent with her just falling after she'd been
4 strangled and thrown to the ground. This indicates that she
5 was struck multiple times about the head or thrown into a
6 wall. Like, there's no specific pattern to know whether she
7 was hit or whether she was thrown into the wall or the
8 floor.

9 Q: State's 15. What's depicted in this photograph?

10 A: So this is actually the top of the scalp peeled down so
11 it's kind of covering her face, and there's two different
12 bruises here as well. There's one kind of that would be on
13 the right side of the forehead here and the other one is
14 further down. So if you push that back up over her scalp,
15 that's kind of on the right side of her scalp.

16 Q: And again, why were these significant to you?

17 A: Again, it's just there were multiple contusions,
18 multiple bruises to her head, which indicates a struggle and
19 a violent death that goes along with the strangulation.

20 Q: You said that these injuries were recent. Can you date
21 them exactly?

22 A: No. After about 18 hours, they start to get a yellow
23 discoloration, which is breakdown of the blood. These
24 didn't have any yellow discoloration that I can see, but you
25 can -- you can look at any forensic textbook. You can't

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1 date a contusion.

2 Q: And so your -- your -- your opinion, you know, to a
3 reasonable degree of medical certainty is that they occurred
4 within 18 hours?

5 A: Yes.

6 Q: Is that 18 hours of death or autopsy?

7 A: Prior to death.

8 Q: So it could have been one minute before death?

9 A: Correct.

10 Q: You just have no way of knowing?

11 A: No. There's no way for me to determine the exact
12 timing of it.

13 Q: The fact that there were the four different areas, how
14 did that factor into your findings in this case?

15 A: Again, that it was a violent death. I mean there were
16 horrible bruising to the inner parts of her neck, fractures
17 of some of the bones and cartilage in her neck, contusions
18 deep within the neck, along with the multiple bruises to her
19 head.

20 The reasonable degree of medical certainty, with the
21 other violent findings, most likely those bruises happened
22 also around that time that she was being attacked. Just
23 again, the violent nature of her death.

24 Q: And after you reflected back the scalp and noticed
25 those areas of contusion, what did you then do?

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1 A: So after we documented the bruising to her scalp, we
2 then proceeded to use a saw to remove the top of the skull
3 and examine the brain. And with contusions, we're concerned
4 about finding bleeding inside of the -- around the brain or
5 within the brain, but we did not find any of that in this
6 case.

7 Q: And in terms of Ms. Tollison's head, did you have any
8 other findings that were significant or contributed to her
9 death other than the four areas that you just spoke about?

10 A: No.

11 Q: After you finished examining Ms. Tollison's head,
12 please tell the ladies and gentlemen of the jury what you
13 then did?

14 A: So then I went to the neck. So I peeled back -- you
15 know, we have the incision here that actually peeled back up
16 to expose all the muscles in her neck here. Again, there
17 were multiple bruises, contusions to the muscles in the neck
18 overlying the area where the ligature was and where the
19 contusions were that you could even see on the skin.

20 Q: Let me stop you right there. So the external
21 contusions that the jury was shown on the photographs, as
22 well as your diagrams, those also -- are you able to see the
23 manifestation of those internally as well?

24 A: Yes.

25 Q: Please continue.

DR. AMY DURSO - DIRECT BY MS. MCDUFFIE

1 A: So -- and then after I document, I peel back the
2 muscles on the front of the neck one by one, again
3 documenting any injuries there. She did have bruising, like
4 I stated before.

5 And then I actually remove the neck contents. So from
6 the tip of the tongue all the way to include the upper
7 airways extending to about the level of the clavicles here I
8 took out as one piece, and then I tipped over and again
9 dissected that back. And the things we look for there -- so
10 there's a lot of cartilage in your neck and, as you get
11 older, it kind of calcifies. So it's kind of rubbery when
12 you're young, difficult to break, but as you're older -- and
13 Ms. Tollison was 76. So we'd expect hers to be calcified
14 quite well. So it's like a bone at that point.

15 And when it gets squeezed really tightly, things break.
16 And so she had actual fractures of her cartilage on both
17 sides. And there's also something called her hyoid bone,
18 which is this little U-shaped bone that sits at the top of
19 your neck. It's a free-floating bone and that as well was
20 fractured and there was hemorrhage in all of these areas of
21 these fractures as well.

22 Q: I'm showing you what's already in evidence as State's
23 5, 8, and 10, specifically State's 8. What does State's 8
24 depict?

25 A: So this is the upper airway. This is actually showing

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1 kind of the back of the airway.. So you have the epiglottis
2 sticking up and there are too little horns we call the
3 superior horns of the thyroid cartilage. So these are two
4 little pieces of cartilage that kind of stick up and they're
5 both fractured. You can see there's some dark red
6 discoloration. Those are actually underlying those where
7 those bones are actually broken.

8 Q: Using State's 8, can you point out to the ladies and
9 gentlemen of the jury where those fractures were?

10 A: Right. So this one specifically trying to point
11 towards the one on the right side. So again, if I put this
12 on my own neck, it would kind of be sitting like this. So
13 this is on the right side. This is the little tip of the
14 bone right here. You can actually see the fracture point
15 right here on the right side of that hyoid or that
16 cartilage.

17 Q: And then State's 5?

18 A: So this is showing the other side. So again, if I put
19 it on my neck, it would be like that. So this is going to
20 be on her left side of her neck, and I'm using -- to kind of
21 pull this bone back so you can actually see the fracture
22 site right here and, again, all of that dark discoloration
23 is hemorrhage where that fracture occurred.

24 Q: So you have skin and then you said that there was a
25 layer of muscle?

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1 A: Yeah. Multiple layers of muscle and then -- and then
2 you have cartilage back there. Again, these little parts
3 that kind of stick up a little bit, and that was the part
4 that was fractured as far as the cartilage goes.

5 Q: And then State's 10?

6 A: Again, this shows some hemorrhage coming further down.
7 So the fractures are up here, but there's also hemorrhage
8 coming down around both sides of the neck in this area as
9 well.

10 Q: So it would be in this area?

11 A: Yes.

12 Q: And what significance did these findings have to your
13 ultimate conclusions in this case?

14 A: So again, this is -- this is a violent death. So, you
15 know, we -- I do many autopsies of people that hang
16 themselves, and those I pretty much never find any
17 hemorrhages in the muscles. I find the ligature furrow and
18 that's it, and that ligature furrow would be coursing
19 upwards when you hang yourself.

20 Again, her ligature furrow was going straight back. So
21 someone was behind her pulling that ligature around her
22 neck. Not only that, but it appears that some hand or
23 chokehold was used because of the degree of fractures that
24 were also seen. So this was a violent strangulation.

25 Q: And then behind this airway once it was removed,

DR. AMY DURSO - DIRECT BY MS. MCDUFFIE

1 there's a hyoid bone?

2 A: Actually, in front. It sits up kind of just above
3 where that cartilage is. There's a little -- that U-shaped
4 bone and, again, when it's squeezed, it's broken, and her
5 neck was squeezed and strangled. So there is a fracture of
6 the hyoid bone as well.

7 Q: State's Exhibit 6?

8 A: So this is her hyoid bone, and you can see the left tip
9 of the bone is completely fractured and separated.

10 Q: Is fracture of a hyoid bone common in strangulation
11 cases?

12 A: Yes.

13 Q: And typically, in strangulation cases, do you see the
14 external bruising, the bruising of the muscle, the fracture
15 of the hyoid bone, and then also the fracture of the thyroid
16 cartilage?

17 A: In some cases, yes.

18 Q: And those four findings that you made in the neck, why
19 were those significant to you?

20 A: It's just the degree of pressure and what was done to
21 her neck to strangle her. It's quite violent to have
22 multiple broken bones and bruises in that way.

23 Q: Did you also make any findings dealing with her tongue?

24 A: Yes. So she had some hemorrhages within her tongue.

25 So when you're strangled, your tongue actually gets pushed

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1 forward. Everything is kind of attached to your tongue
2 actually at the base. It kind of almost goes down to the
3 back of your throat. And so her tongue -- and so, again,
4 she had -- it appeared that she had bitten down on her
5 tongue at some point and there were bruises within her
6 tongue.

7 Q: And does State's Exhibit 16 illustrate the pushing
8 forward of the tongue that you described?

9 A: Yes, it does.

10 Q: Did you have any findings in regards to -- to the back
11 of her neck or the anterior neck?

12 A: Right. So once we removed the entire neck contents, we
13 can actually see the front of the cervical vertebrae. So,
14 you know, the backbone going up. So in the front of that,
15 we can actually see the rounded parts and there was actually
16 hemorrhage extending down, covering that area which, again,
17 we see more typical in, like, chokeholds where the neck is
18 thrust violently backwards.

19 Q: And that was significant to you as well?

20 A: Yes.

21 Q: And the cervical vertebrae -- were there any injuries
22 to those?

23 A: The vertebrae themselves, no.

24 Q: So just the muscles that surrounded the vertebrae?

25 A: Right. And the soft tissue overlying it. There was

DR. AMY DURSO - DIRECT BY MS. MCDUFFIE

1 hemorrhage in that area.

2 Q: And after you did the autopsy of the neck, please
3 describe for the jury what, if anything, you did after that?

4 A: The neck was the last part of the autopsy and, after
5 that, I think the Coroner's Office and Sheriff's Department
6 took their closing photos and sealed the body bag.

7 Q: And as part of any autopsy, do you also obtain or take
8 blood and submit it for toxicology as well?

9 A: Yes. So in all of the forensic autopsies, we collect
10 blood, fluids, and send them -- it's sent by the Coroner's
11 Office to the state lab for a general toxicology screen.

12 Q: And then do you receive those results back?

13 A: I do.

14 Q: And do you review those results in making your final
15 conclusion and cause of death?

16 A: I do.

17 Q: And in this case, were there any significant or any
18 toxicology findings whatsoever in terms of Ms. Tollison?

19 A: No substances at all were found on her screen.

20 Q: So she had no substances in her system?

21 A: Right. No medications or drugs that is covered in the
22 screen were in her system. No alcohol, nothing like that.

23 Q: And so the toxicology or things of that nature didn't
24 contribute to her death in any way?

25 A: No, it did not.

DR. AMY DURSO - DIRECT BY MS. MCDUFFIE

1 Q: If we could just take your findings and go back through
2 them? Exterior findings to her neck were what?

3 A: So the ligature furrow, again mostly coursing
4 horizontally backwards. There wasn't a ligature furrow on
5 the back of her neck, which goes along with someone pulling
6 something from behind. There were abrasions, which goes
7 along with her trying to pull the ligature off of her neck
8 or whatever was going around her neck. There was bruising
9 or abrasions underneath her chin, which is typical of trying
10 to protect your neck.

11 There were some bruises we could see on the outside of
12 the neck that, again, were seen when we reflected back the
13 skin within the musculature of the neck. There were
14 fractures of the two tips of the cartilage, fracture of the
15 hyoid bone, evidence that she had been biting down on her
16 tongue, and also the hemorrhages that went as deep as the
17 cervical spine.

18 Q: And then in terms of the head?

19 A: And also, multiple bruises on different planes of the
20 head.

21 Q: And then, again, you stated that while you did find
22 some evidence of natural disease, did that contribute to her
23 death in any way?

24 A: No, it did not. It was not that severe.

25 Q: Please tell the ladies and gentlemen of the jury your

DR. AMY DURSO - DIRECT BY MS. MCDUFFIE

1 opinion as to the cause of Ms. Tollison's death?

2 A: Her cause of death is strangulation.

3 Q: And again, what, if anything, contributed to your
4 findings in that regard?

5 A: All of the findings of violence, including all of the
6 bruising and contusions, fractures, not only to her neck,
7 but also her head and her left arm as well.

8 MS. MCDUFFIE: I beg the Court's indulgence. No
9 further questions at this time.

10 THE COURT: Thank you, Solicitor. Mr. Krzyston?

11 MR. KRZYSTON: No questions, Judge.

12 THE COURT: Thank you. Thank you very much, Doctor.
13 You may step down. Thank you for being --

14 THE WITNESS: Thank you.

15 THE COURT: -- with us today. Any objections to the
16 doctor being excused?

17 MS. MCDUFFIE: We do not, Judge.

18 MR. KRZYSTON: No objection, Judge.

19 THE COURT: All right. You may be excused. Step up
20 here a minute, Solicitor and Mr. Krzyston.

21 (WHEREUPON, a bench conference was held in the presence
22 of the jury but out of the hearing of the jury off the
23 record, after which the proceedings resumed as
24 follows.)

25 THE COURT: Thank you. All right. Solicitor, you may

CHIEF STAN SMITH - DIRECT BY MS. CAMPBELL

1 was transported to headquarters for an interview as well.

2 Q: Prior to leaving the scene, did Ms. Canzater and Ms.
3 Heyward make contact with each other?

4 A: Yes. There was a --

5 Q: The property at [REDACTED] when I said the scene.

6 A: I witnessed sort of a verbal spat between the two of
7 them prior to both of them going to headquarters.

8 Q: And you can't say who -- what they said, but who was
9 kind of the aggressor in that verbal confrontation?

10 A: Latasha Heyward was extremely upset.

11 Q: Did y'all get a search warrant that day, as well as the
12 consent to search?

13 A: Yes.

14 Q: And after that was secured, did crime scene respond
15 there?

16 A: Crime scene, as well as another number of other
17 investigators responded per my request to assist with the
18 search.

19 Q: And did other investigators other than yourself, as
20 well as crime scene, search that residence and find --
21 looking for certain items?

22 A: We did.

23 Q: Were they able to secure a gun that day?

24 A: They were.

25 Q: Was that significant -- that gun significant in your --

CHIEF STAN SMITH - DIRECT BY MS. CAMPBELL

1 A: It was, because it had been described actually involved
2 in the crime itself. We had a physical description of the
3 gun.

4 Q: And did it match?

5 A: It did.

6 Q: Did you stay there and participate in the search or
7 what did you do?

8 A: I responded to headquarters to assist with the
9 interviews at some point in time.

10 Q: Who did you interview that afternoon?

11 A: Latasha Heyward.

12 Q: And what kind of -- why were you interviewing Ms.
13 Heyward? What were you trying to discern?

14 A: If she had any knowledge of this murder.

15 Q: Specifically, were you looking into a specific time
16 period?

17 A: Yeah. Specifically, we were trying to determine if she
18 could provide her husband with an alibi.

19 Q: And could she?

20 A: No.

21 Q: Were you also aware that Ms. Canzater was being
22 interviewed?

23 A: Yes.

24 Q: And those two people were kept separately?

25 A: Yes. Yes.

MATTIE CANZATER - DIRECT BY MS. CAMPBELL

- 1 Q: And what was his brother's name?
- 2 A: Stanley Edwards.
- 3 Q: At some point in the fall of 2015, did you become aware
- 4 that James Heyward had moved to the Columbia area?
- 5 A: Yes, I did.
- 6 Q: Where was he originally from? Do you know?
- 7 A: New Jersey.
- 8 Q: New Jersey?
- 9 A: Yes.
- 10 Q: And did you know where he was initially staying when he
- 11 moved here to the Columbia area? Who he was staying with?
- 12 A: Yes. My niece.
- 13 Q: And what's your niece's name?
- 14 A: Marquita Edwards.
- 15 Q: Marquita Edwards?
- 16 A: Yes.
- 17 Q: And what's her mother's name?
- 18 A: Janice Edwards.
- 19 Q: And do you know what Janice Edwards' relationship is to
- 20 Mr. Heyward?
- 21 A: He's her brother.
- 22 Q: Okay. Did you ever go see Mr. -- and who was Mr.
- 23 Heyward living with in addition to your niece and her
- 24 mother? Who was he living with there at Lattimore Manor?
- 25 A: I don't know.

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1 Q: Was he married?

2 A: Yes.

3 Q: And do you remember his wife's name?

4 A: I think it's Tanya.

5 Q: Tanya?

6 A: Uh-huh.

7 Q: Or Latanya maybe?

8 A: Yes.

9 Q: And did they have any children or did she have any

10 children?

11 A: She had two children.

12 Q: Those were her children?

13 A: Uh-huh.

14 Q: And at any point prior to -- and I'm going to get to

15 when he moved in with you. Did you ever go see him over at

16 Lattimore Manor or anything?

17 A: Yes, I did.

18 Q: Sometime and at some point, did you get approached

19 about the possibility of them moving in with you?

20 A: Yes.

21 Q: And tell the jury how that happened?

22 A: James Heyward was working for me, helping me to clean

23 out the house. They had to move out of my niece's apartment

24 because she was living up under government housing. And

25 during the course of the flood that was coming, they were to

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1 be there 30 days. Their 30 days was up. They didn't have
2 anywhere to go. Being that I had just moved into a four-
3 bedroom house, I had pretty much two big empty bedrooms.

4 So I took in Mr. Heyward and his family, and they
5 stayed there and we figured when the flood is over we'll
6 figure out where they would go from then until they get
7 their finances together. So I rented them two rooms.

8 Q: Okay. And the flood had occurred I believe about a
9 week before all this happened?

10 A: Afterwards.

11 Q: Afterwards? But sometime around this time, the flood
12 occurred? But he moved in with you with his family; is that
13 right?

14 A: Say that again, please?

15 Q: And that was before the flood occurred that he moved
16 in; right?

17 A: Correct.

18 Q: Okay. So you mentioned that they had -- you rented two
19 rooms to them; two bedrooms?

20 A: Yes, I did.

21 Q: And as you go into your house, what room do you
22 actually go through the front door and you actually walk
23 into?

24 A: On your right there is a dining room. On the left,
25 there's your dining room. On the right, there's your living

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1 room, where I slept in the living room.

2 Q: You slept in the living room?

3 A: Yes, I did.

4 Q: Okay. So that served as your bedroom?

5 A: Right.

6 Q: And then where were the bedrooms located that he and

7 his family stayed in?

8 A: When you walked through the living room, that's where I

9 sleep -- I slept, you would go down the hallway. The first

10 bedroom on the right is where their kids slept.

11 Q: Uh-huh.

12 A: The first bedroom on the left is where James and his

13 wife slept. And the last bedroom is where my grandfather

14 slept.

15 Q: When you mentioned that you kind of became aware of

16 this because he was doing some work for you?

17 A: Correct.

18 Q: Helping you clean out the house and deal with some

19 other --

20 A: Correct.

21 Q: -- jobs as well?

22 A: Uh-huh.

23 Q: And I want to turn your attention to October the 9th,

24 that Friday before all this happened.

25 A: Uh-huh.

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1 Q: Did you have an occasion to go over to Ms. Tollison's
2 house?

3 A: Yes, ma'am.

4 Q: And can you tell the jury how you knew Ms. Tollison?

5 A: How did I know her?

6 Q: Yes.

7 A: I knew Ms. Alice for a period of maybe two-and-a-half
8 years because her and my godmother, Louise Jacobs, were best
9 friend and god sisters. And they were very close, and I --
10 I had yard sales and my godmother, Louise Jacobs, introduced
11 me to her. That's how I knew her, and she would come past
12 my house almost every day when I lived at 324 Charwood Drive
13 in Newcastle. And then once I moved closer to her, my
14 godmother, Louise Jacobs, informed her that I had moved
15 close to her and to check on me. That's how I knew her.

16 Q: And she would do that?

17 A: (No verbal response.)

18 Q: And you mentioned that you do yard sales sometimes?

19 A: Yes, ma'am.

20 Q: Would Ms. Alice like to go to yard sales?

21 A: Yes.

22 Q: That week before, specifically leading up to that
23 Friday, did you make contact with Ms. Alice about some
24 tables?

25 A: Yes, ma'am.

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- 1 Q: Can you tell the jury a little bit about that?
- 2 A: Earlier that week, Ms. Alice had came by my house and,
3 left some signs for me to use to post for the yard sale.
4 She had left them there with James. I wasn't there, but she
5 also told me that she had some tables that I could use. So
6 I called her that Friday morning and I went to her house,
7 James and myself, to pick the two tables up for the yard
8 sale.
- 9 Q: And when you got there that Friday, who all was there
10 at that house?
- 11 A: There was a gentleman there doing some yard work --
- 12 Q: Okay.
- 13 A: -- due to the flood, and Ms. Alice was there.
- 14 Q: And Ms. Alice was there?
- 15 A: Yes.
- 16 Q: Was her -- were you familiar with her great-
17 granddaughter?
- 18 A: No, ma'am.
- 19 Q: But were any young children there?
- 20 A: No, ma'am.
- 21 Q: And when you got there, was James with you?
- 22 A: Yes, ma'am.
- 23 Q: And do you know James by the name James Heyward?
- 24 A: I know him by Rasheed.
- 25 Q: Do you know him by any other names?

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1 A: Abdul.

2 Q: Abdul?

3 A: Uh-huh.

4 Q: Rasheed? Or James?

5 A: Yes, ma'am.

6 Q: And when we're talking about that person, it's the same

7 person?

8 A: It's the same person.

9 Q: Okay. When you got there that morning, did you walk or

10 drive or how did you get there?

11 A: I drove.

12 Q: And what kind of vehicle did you drive?

13 A: I had a black 2002, I think, Tahoe.

14 Q: Did James have a car?

15 A: No, ma'am.

16 Q: But James was riding with you that day?

17 A: Excuse me?

18 Q: He was riding with you that day?

19 A: Yes, ma'am.

20 Q: And when you got over to Ms. Tollison's house, Ms.

21 Alice's house, what happened?

22 A: At first, we passed the house and I called her and I

23 said, Ms. Alice, which house is yours. So she told me she

24 would be standing outside in the yard, and we turned around

25 and I went back. And she was standing outside and there was

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1 a gardener there and we pulled into the yard and she was
2 standing there and we -- James and I got out of the truck
3 and we met her up under the garage.

4 Q: Had you ever been there before?

5 A: I've never been there.

6 Q: Had James ever been there before with you?

7 A: No.

8 Q: And how long had James been living with you at this
9 point?

10 A: About a week and a half.

11 Q: About a week and half?

12 A: Uh-huh.

13 Q: So he moved in around the 1st of October?

14 A: Correct.

15 Q: Okay. Keep going. Sorry to interrupt.

16 A: Ms. Alice greeted us and introduced us to the gentleman.
17 that was there in the yard, and we proceeded to go into the
18 garage to get the tables. And she asked James if he could
19 get past the van to get the tables so she wouldn't have to
20 move the van, and he told her he could. So he squeezed past
21 the van and he got the two tables and she said, well, I want
22 to put my name on them because her tables and my tables
23 looked just alike.

24 And she went into the house and got a marker, and James
25 was standing right at the foot of the steps when she walked

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1 into the house. I stood right there by him up under the
2 garage. She came back out and James held the tables for her
3 to write her names on them and she did, her name and her
4 address. After she did that, James took the tables and put
5 them in the back of my truck.

6 Q: Okay. Did you or James ever go inside the house?

7 A: Never.

8 Q: I want to show you State's Exhibit Number 39 and first
9 ask do you recognize that?

10 A: (No verbal response.)

11 Q: Let me show you this one. This is easier to tell. How
12 about State's Exhibit 34? Excuse me.

13 A: Yes. This one I do.

14 Q: Okay. And is that the carport area you were talking
15 about?

16 A: Yes, ma'am.

17 Q: And was the automobile -- her automobile pulled in like
18 that? Or do you recall?

19 A: I don't recall.

20 Q: I'm going to show you State's Exhibit Number 39. Do
21 you see the door right there?

22 A: Yes, I do.

23 Q: And is that the door y'all went to?

24 A: Yes, it is.

25 Q: But there's no doubt that the tables were in the

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1 carport area when you got there and that's where y'all got
2 them from?

3 A: Yes, ma'am.

4 Q: And James is the one that actually got them out from
5 behind the van?

6 A: Yes, ma'am.

7 Q: Did either of you ever go inside the house?

8 A: No, ma'am.

9 Q: Once y'all had loaded up the tables, what happened?
10 What did y'all do?

11 A: 'Ms. Alice and I were talking about her coming up later.
12 She didn't know what time she would come up to the sale, the
13 yard sale we was having that day, because the flood had done
14 some damage to the back of her house. So she was waiting on
15 FEMA to come. So she didn't know if she would be able to
16 come.

17 As James put the tables in the back of the truck, he
18 came back over where me and Ms. Alice were talking up under
19 the garage, and she wanted to show me a stitch, a piece of
20 fabric, like some handkerchiefs or something that she had
21 been sewing, and she was looking for a certain type of
22 sewing machine that did a certain stitch.

23 And she opened up the van, and James and I were right
24 there. She showed me the stitch. She picked up a piece of
25 one of the handkerchiefs and she showed me the stitch. So I

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1 go to auctions and if I found the sewing machine and it did
2 the stitch, she had me to look out for her for that type of
3 sewing machine.

4 So then she proceeded to show me the jewelry. She had
5 a couple of boxes of jewelry that I think her and her sister
6 had made and she was going to have them in a sale or
7 something, an event that was coming up, and she was showing
8 them to me. And I also came across pieces of jewelry, old
9 jewelry, so she told me if I got stuff like that to let her
10 know, to hold them her. Yes, ma'am.

11 Q: And this was all taking place right there at the van?

12 A: Yes, ma'am.

13 Q: After you had that conversation with her, what did you
14 and James do?

15 A: We talked about -- we talked about fishing because I
16 like to fish and my godmother, Ms. Jacobs, she loves to
17 fish. So Ms. Alice was telling us about the damage where
18 the back of the lake where the flood had taken the dock. It
19 pretty much took away the fence and everything out of the
20 back; so you really couldn't go in the backyard. So we kind
21 of looked around the side and saw that it was really nothing
22 back there. It was just damaged real bad. And --

23 Q: So the dock had been -- there was no more dock?

24 A: It was gone.

25 Q: And she was waiting on the FEMA people to come back?

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1 A: Yes, ma'am.

2 Q: And after you had the conversation about that, did she

3 say whether or not y'all could go fishing there?

4 A: Yes, ma'am.

5 Q: After that conversation, did y'all talk anymore that

6 day?

7 A: No, ma'am.

8 Q: And then did you leave?

9 A: Yes, ma'am. James and I left.

10 Q: And James? Okay. He was with you.

11 A: Uh-huh.

12 Q: Once y'all left, did you then go -- I believe you were

13 having a yard sale that day?

14 A: Yes.

15 Q: And what time of day was this that you were over there

16 that Friday?

17 A: Give or take, maybe 8 -- 8:30.

18 Q: That morning?

19 A: That morning. Uh-huh.

20 Q: That weekend, later that Friday into Saturday, did

21 anything unusual happen on either of those two days?

22 A: We had the yard sale.. The yard sale went smooth.

23 Q: Okay.

24 A: I need to back up. Before I left Ms. Alice's house, we

25 talked about her picking the tables up, and she said she

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1 would come up Sunday after church and we would get together
2 and I would follow her back home with the tables, but she --
3 she never came."

4 Q: Okay. That Friday afternoon, the sale went okay?

5 A: Yes, ma'am.

6 Q: And then that Saturday into that Saturday evening, did
7 anything -- I don't want to say unusual, but did anything --
8 what happened?

9 A: James and I got into an altercation. My daughter had
10 come over to wash clothes for her and my grandson. I kept
11 my grandson while my daughter worked. His name is Kingston.
12 At the time, he was two.

13 THE COURT REPORTER: Excuse me. Kingston?

14 THE WITNESS: Kingston.

15 BY MS. CAMPBELL:

16 A: At the time, he was two. So I watched him while my
17 daughter worked, and she came over and washed their clothes.
18 She -- my grandfather -- he wet the bed a lot. So pretty
19 much every day I had to wash his linen. So I asked my
20 daughter would she leave me a cup of bleach so I could wash
21 his linen and, before she left, she said, mama, I left you
22 some bleach in an orange cup on top of the machine and it
23 says bleach on the cup.

24 Maybe 20 minutes later, James and his wife and my
25 sister-in-law, Janice, which is James' sister, Janice

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1 Edwards, we went to the grocery store. We came back from
2 the grocery store. James had used the bleach. We got into
3 an altercation about respect to other people's property,
4 other people's things, and it was kind of heated.

5 Q: And were any arrangements made as far as where they
6 were going to be staying from then on?

7 A: James was mad and said I wanted to be paid about the
8 bleach, about a cup of bleach. He asked me what I wanted
9 for it. It was two dollars. I said it's not about the
10 money for the bleach. It's about the respect of other
11 people's property. You know, you knew what I had to do with
12 it. And he was just a very nonchalant, not caring about
13 what I was trying to say to him. So he stormed out of the
14 kitchen because that's where we were.

15 He stormed out of the kitchen and went down the hallway
16 and then he came back and he told me he wanted to talk to
17 me, and I said I don't want to talk about it because when
18 you're talking to someone and they walk away from you, it
19 doesn't matter what you're saying. They don't care. That's
20 my perspective. They don't want to hear what you're saying.
21 It doesn't matter anymore. It's uncaring.

22 He came back and he said, well, just give me a week and
23 me and my family will be out of your house, and he said I'm
24 going to fix this. And he left and went back down the
25 hallway and his wife, Tanya, was telling him not to argue

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1 with me because they didn't want to run up my blood
2 pressure.

3 Q: When did that conversation or altercation take place?

4 A: It took place between 9:30 and 10:00 Saturday night.

5 Q: And what were you thinking when he told you he was
6 going to be able to move out in a week?

7 A: I was wondering where they was going to go. I wasn't
8 trying to put them out. I just wanted him to understand
9 about the respect of other people's things. I have given
10 you permission of the whole house. There wasn't no limit to
11 nothing in the house where you could go or what you could
12 do, you know, because they were really going through a lot.

13 So I just gave them the run of the house as if it was
14 theirs. They did whatever they wanted to do when they
15 wanted to do it. There was no stipulations upon nothing,
16 but he knew I didn't have any bleach and I needed to wash my
17 father's linen and you heard me ask my daughter to leave it
18 and what the purpose of it was for. And then when you use
19 it, you just was very rude about it. You didn't care.

20 So I'm, like, where are they going to go? You know,
21 family would take him in, but just him and two more mouths,
22 it was -- everybody had limited space of living and then
23 that the flood had came. Everything was kind of, you know,
24 a big chaos, you know, so they could have stayed as long as
25 they liked within the respect of someone giving you a place

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1 to stay.

2 Q: Again, you weren't putting them out; he was the one
3 that announced they would be leaving?

4 A: Yes.

5 Q: That next day, that Sunday, what did you do that day?

6 A: I got up that morning and I went to church. I didn't
7 see them. I didn't see James or none of the family that
8 morning.

9 Q: Okay.

10 A: I peeked in on grandfather and he was asleep. So I
11 went on to church and I was in church probably about three
12 hours.

13 Q: What -- and after church, what did you do?

14 A: We got out of church maybe after three or so.

15 Q: After three in the afternoon?

16 A: Yes. I went to Krispy Kreme. Grandfather like Krispy
17 Kreme doughnuts, the glazed. So I stopped and got him a
18 dozen of doughnuts, and then I went home.

19 Q: And when you got home, who all was there?

20 A: James' wife and the children.

21 Q: Was James there?

22 A: No, he wasn't.

23 Q: Was your grandfather or godfather there?

24 A: Yes, he was there.

25 Q: Okay. And when did you -- or how did you next see

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1 James that evening?

2 A: When I got home, I put the key in the door and the door
3 just popped open. The key never intercepted into the lock.
4 James' wife was standing in the kitchen and, when you walk
5 into the house, you can directly see who is coming in from
6 the kitchen. And she turned around and she was startled to
7 see me. She said, oh, it's you. We thought you were at the
8 flea market because on the flea market on Sunday sometimes I
9 go sell at the flea market.

10 MR. KRZYSTON: Objection. Hearsay.

11 MS. CAMPBELL: She's saying that she usually goes to
12 the flea market.

13 MR. KRZYSTON: She's saying what Latasha said.

14 THE COURT: All right. Rephrase your question,
15 Solicitor.

16 BY MS. CAMPBELL:

17 Q: What do you -- what do you typically do on a Sunday?

18 A: I go to the flea market.

19 Q: And that's the day though you didn't go to the flea
20 market?

21 A: No, I didn't.

22 MR. KRZYSTON: Objection. Leading.

23 THE COURT: I'll overrule that objection.

24 BY MS. CAMPBELL:

25 Q: And don't say what, but did you have a conversation?

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1 You can't say what she said to you,² but did you have a
2 conversation with --

3 A: I had a conversation with --

4 Q: -- James' wife?

5 A: James' wife. I had a conversation with her.

6 Q: And after that, at some point, did James show up?

7 A: Yes, he did. My doorbell rang. Nobody answered the
8 door but me. That day, I turned out of the kitchen to go to
9 the door, and James' wife answered the door and she told me
10 it was James at the door. I heard his voice, but I couldn't
11 physically see his face or his body. I just saw his legs.
12 I couldn't tell you what they were talking about because,
13 again, I couldn't see their faces.

14 The door is a heavy door and it makes a noise when you
15 open or close it. That day, I didn't hear the door close
16 and I was -- like, when James entered the house, he's a
17 cheerful person. He's always joking and laughing and asking
18 me about my day. And that day, he didn't, and I was, like,
19 I didn't hear -- I didn't hear her. I didn't hear him. I
20 didn't even hear the door close.

21 So I kind of looked over my shoulder and I saw that the
22 door was closed already, but then I saw James walking
23 through the room that I slept in, which was the living room.
24 I saw his pants leg and I saw him carrying, you know, a big
25 black trash bag. And they proceeded to the bedroom.

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1 Q: Do you know about what time of day this was?

2 A: To give and take, maybe between -- any time after four,
3 between five and six. It was late evening.

4 Q: You said he was walking through the living room area
5 and you could see him walking through the living room?

6 A: Uh-huh. I saw the end of him.

7 Q: And did you see what he was wearing?

8 A: Yes, I did. I saw -- I saw his pants leg and I pretty
9 much know from seeing the pants, like, because the clothes
10 that he had on -- my ex-husband gave them to him.

11 Q: And what was he wearing that day?

12 A: It was a -- it was a sports suit, like the jogging
13 suits with the top and bottom, jacket that matches, and it
14 was, like, brown with multi-colors of orange and yellow and
15 maybe red. It had multi-colors in it.

16 Q: Okay. And when James was walking through your room,
17 could you tell where he went with the bag over his shoulder?

18 A: I assume he went to the bedroom because when I went to
19 grandfather's room to take him his food, that's where they
20 were.

21 Q: And what else do you remember about that evening after
22 he got home?

23 A: Maybe a couple of minutes after he got there, he came
24 into the kitchen where I was, his normal cheerful self.

25 Q: What was he wearing at that point?

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1 A: He had on a -- guys call them white tees, T-shirt. He
2 had on a T-shirt and he had these, I think, blue sweatpants,
3 like sports pants, pretty much like the suit he had on, but
4 he just had a different color pants on.

5 Q: So he had changed?

6 A: He had changed clothes, yes.

7 Q: And then he was his normal self?

8 A: He was his normal self. It was -- there was nothing
9 different about him, nothing.

10 Q: That evening -- just describe kind of how the evening
11 went?

12 A: James' wife was real nervous later that night.

13 Q: At some point later that night, did James do something
14 that caught your attention?

15 A: About 12:45, maybe 1:00 early Monday morning --

16 Q: So this would have been the Sunday night?

17 A: Going into Monday morning.

18 Q: Going into Monday morning.

19 A: I was -- I didn't have a bed. I had a mattress and box
20 spring on the floor in the living room, and I was laying on
21 the floor on the phone. I heard someone walking and I
22 looked and it was James and I said, baby, where you going at
23 this time of morning. He said I'm going to take the trash
24 out. I didn't want him to take the trash out because I
25 didn't want the dogs to tear the trash all over the

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1 neighborhood. And he said I'm going to go ahead and take it
2 out. If the dogs pull it out, I'll clean it up.

3 So he went out the door with a black trash bag. He
4 went to the trashcan. And he stayed outside for a few
5 minutes because I was still up. He came back in the house.
6 He told me good night. That was that.

7 Q: What were you doing? Why were you still up?

8 A: I was on the phone.

9 Q: Did James usually take out the trash?

10 A: He takes the trash out, but he doesn't take the
11 trashcan to the road, the Herby Curby, the green Herby
12 Curby. He takes the trash from the kitchen out on the side
13 of the house and put it in the trashcan, but not to the
14 street.

15 Q: And were you kind of picky about having your trash
16 taken out of the kitchen every day?

17 A: Excuse me?

18 Q: You like to have the trash out of the kitchen every
19 day?

20 A: Correct. I don't like trash in the kitchen overnight.

21 Q: And that night though, he took the trash out?

22 A: I just assumed -- because I had already taken the trash
23 out of the kitchen. So the trash bag that he had I just
24 assumed because they ate and had snacks and stuff in their
25 room that he was taking the trash out from their bedroom.

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1 That's what I assumed that that was the trash that he was
2 taking out because he's done it before, but not that late.

3 Q: And you don't know what was in the trash bag?

4 A: No, I don't.

5 Q: That night, that evening, did you ever find out before
6 you went to sleep what had happened to Ms. Alice?

7 A: I was on the phone.

8 Q: Was this that night or the next morning?

9 A: It was that night, that Sunday night. I was on the
10 phone. I had a beep. I looked at the phone. It said
11 godmother, which is Louise Jacobs. I said I'm not answering
12 the phone. I'll call mama back in the morning. She
13 probably want to see if I want to go fish.

14 I carry people to work. That morning I leave home
15 about 6:30, quarter to 7. My phone kept beeping me, beeping
16 because I had a message on the phone. I checked my message
17 that morning about 6, a little after 6. It was my
18 godmother, Louise Jacobs, on the phone. She left a message
19 telling me that someone had murdered her sister, Ms. Alice.
20 I instantly hung up the phone.

21 I then called her. I said, mama, you called me? She
22 said, baby, are you okay? I said, mama, you left a message
23 on my phone. She says, did you know somebody killed my
24 sister, Ms. Alice? I said, mama, what are you talking
25 about? Our Ms. Alice? She said, yes, my sister. I said,

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1 mama, when? She said, yesterday after church.

2 I said, mama, did they catch the person? She said, no,
3 baby, that's why mama call you because you just moved over
4 there and I want y'all to be safe. I said, mama, what did
5 they look like? She gave me a description.

6 Q: Okay. Don't say so much what she said.

7 A: I told her that I was afraid and I would call her back
8 and I hung up the phone.

9 Q: What did you do after that?

10 A: I got my phone and went to my truck.

11 Q: You got what? I'm sorry.

12 A: I took my phone and went and locked myself in my truck.

13 Q: Where were you when you made the phone call to, your
14 godmother originally?

15 A: I was in the house on the floor on the mattress.

16 Q: And you said that you took your phone and you went and
17 locked yourself in the truck?

18 A: In my truck.

19 Q: In the driveway?

20 A: Yes, ma'am.

21 Q: Why did you do that?

22 A: Because the description that my godmother gave me. It
23 was the clothes that James had on when he came home Sunday.

24 Q: Once you got into the truck, what did you do?

25 A: I called James's sister, Janice Edwards. She's my best

MATTIE CANZATER - DIRECT BY MS. CAMPBELL

1 friend.

2 Q: And you can't say what she said. What did you talk to
3 her about?

4 A: That someone had murdered Ms. Alice, the lady who was
5 waiting for Sunday to come to get her tables.

6 Q: How long did you stay in the truck?

7 A: I never got back out. I went and got Janice.

8 Q: Once you went and got Janice, what did you do?

9 A: We talked. We came back to the house. I told her I
10 was going to confront James, but I didn't want him to know
11 that I suspected him. I just needed her there, I guess, for
12 safety reasons or a witness, and I had asked her if she
13 would just watch his -- his composure, if he would change.

14 Q: And did y'all go back to your house?

15 A: Yes, ma'am.

16 Q: And was James there?

17 A: Yes, ma'am. Janice and I went into the house. It was
18 about 7, a little after 7 that morning. I went -- Janice
19 sat in the living room where I slept. I went into James'
20 room and I opened the door. I didn't knock. I just walked
21 straight in, and they were all fully dressed, the kids, him,
22 and his wife. The kids were sitting on suitcases.

23 Q: They were sitting on suitcases?

24 A: Their bookbags. They had a pull suitcase that's like a
25 bookbag with wheels. And when I walked in, they were

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1 startled to see me, you know, just barging into the room.

2 And I told James I wanted to talk to him and him only. He

3 came out of the room. We walked to the living room where

4 Janice was sitting, and I told him that someone had murdered
5 my friend, Ms. Alice.

6 Q: Did you tell him anything else?

7 A: I told James that he and I -- the gardener had told
8 police that he and I were -- they was trying to find out the
9 last people who had been to her house and that he had -- the
10 gardener had -- I said the gardener had told the police that
11 a black woman and a black man in a black Tahoe was at Ms.
12 Alice's house and he didn't know them. He had never seen
13 them. I told him that -- I told him that Ms. Alice's
14 granddaughter -- Ms. Alice's granddaughter was tied up. Ms.
15 Alice's granddaughter was tied up and put in the closet, and
16 she had called the police and the description she gave match
17 you. What he said to me --

18 Q: Let me stop you right there.

19 MS. CAMPBELL: Your Honor, may I approach?

20 THE COURT: Yes, ma'am.

21 (WHEREUPON, a bench conference was held in the presence
22 of the jury but out of the hearing of the jury off the
23 record, after which the proceedings resumed as
24 follows.)

25 THE COURT: Step out momentarily, ladies and gentlemen.

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1 Do not discuss the case during this brief recess.

2 (WHEREUPON, the jury exited the courtroom at 3:31 p.m.)

3 THE COURT: All right. Solicitor, will you -- will you
4 explain on the record what the substance of our bench
5 conference was with me, you, and Mr. Krzyston.

6 MS. CAMPBELL: Yes, Your Honor. Just we were getting
7 to the point and I just -- to be fair to Ms. Canzater, we
8 had instructed her and she understands not to mention his
9 prior record or the fact that she knew he was in prison
10 before or anything in New Jersey, but when she talks to him
11 -- and she's getting ready to get to the last part --

12 THE DEFENDANT: (Unintelligible.)

13 THE COURT: Mr. Heyward?

14 THE DEFENDANT: Yes?

15 THE COURT: You need to maintain your composure. You
16 understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Thank you. Thank you, Mr. Heyward. Go
19 right ahead, Solicitor.

20 MS. CAMPBELL: The last thing she was going to say that
21 she said to him was I said you -- she said to the defendant,
22 Mr. Heyward, I said you weren't even home Sunday. You
23 weren't around the time Ms. Alice was killed, and that's
24 when he said, why would I kill her? I don't even know her.
25 She's never done anything to me. She's a nice lady. That's

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1 F'ed up that someone would do that to her.

2 And then the next line is I moved here to change my
3 life and my old ways. Y'all are trying to pin this shit on
4 me. You aren't going to.

5 Something to that effect, and I just think that last
6 part -- and I just need to tell her she probably doesn't
7 need to go into that last part because I think that would be
8 prejudicial about changing his ways, that part.

9 So I was just worried, Your Honor, that I had to be
10 clear and, to be fair to Ms. Canzater, I had not included
11 all that.

12 THE COURT: All right. Thank you, Solicitor. Mr.
13 Krzyston?

14 MR. KRZYSTON: I mean I agree with that. If she's
15 going to do that, we fully support that.

16 THE COURT: All right. So, Ms. Canzater, you know
17 you're not to respond -- regardless of what the question, no
18 response should include any prior record.

19 THE WITNESS: I understand.

20 THE COURT: Nor should any response include the fact
21 that Mr. Heyward may have been in prison.

22 THE WITNESS: Correct.

23 THE COURT: Do you understand? No response should
24 include -- and I paraphrase -- I moved here to change my
25 life. Do you understand?

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1 THE DEFENDANT: (Unintelligible.)

2 THE WITNESS: Correct.

3 THE DEFENDANT: (Unintelligible.)

4 THE COURT: Sheriff, how about take him away out in the

5 hallway? Make him quit interrupting. Thank you.

6 What else, Solicitor?

7 MS. CAMPBELL: I was just going to have her stop after

8 that's F'ed up someone would do that to her, and then say he

9 went to his bedroom.

10 THE COURT: Say what?

11 MS. CAMPBELL: Just leave off the rest of that because

12 I think that could be prejudicial unless you -- or if you

13 want to end it, I can --

14 THE COURT: Did you intend to offer why would I kill

15 her, she was a nice lady?

16 MS. CAMPBELL: It would be F'ed up someone did that to

17 her.

18 THE COURT: Do you intend to offer that?

19 MS. CAMPBELL: That much, and then stop there. And

20 then just go on to -- he then exits the room.

21 THE COURT: What about that, Mr. Krzyston?

22 MR. KRZYSTON: I'm good with that.

23 MS. CAMPBELL: You're good with that?

24 MR. KRZYSTON: Yes, sir.

25 THE COURT: All right. What about -- do you intend to

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1 offer pin this shit on me?

2 MS. CAMPBELL: Whatever the defense wants. I'm good
3 with it if he wants it.

4 MR. KRZYSTON: I think before, the first time.

5 THE COURT: I'm sorry. I didn't quite hear you, Mr.
6 Krzyston.

7 MR. KRZYSTON: I'm sorry, Judge. I think we'll just
8 stop after she's a nice lady, that's fucked up someone would
9 do that to her.

10 THE COURT: All right. Ms. Canzater, you understand
11 the boundaries as far as your responses? Do you understand
12 what you're not to say?

13 THE WITNESS: Yes, sir.

14 THE COURT: And if -- if you're asked a question by the
15 solicitor or by Mr. Krzyston or whoever cross-examines you
16 and you're not sure about what you should respond, in other
17 words, you think, well, that's what that judge told me I
18 couldn't go into, you let me know. I'll send the jury out
19 and we'll get it straight if you have any question in your
20 mind whatsoever about it.

21 THE WITNESS: Okay. I'm fine.

22 THE COURT: You just -- you let me know.

23 THE WITNESS: Yes, sir.

24 THE COURT: All right.

25 MS. CAMPBELL: Thank you, Your Honor. I appreciate it.

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1 THE COURT: All right. If you'll bring the jury back
2 in.

3 (WHEREUPON, the jury entered the courtroom at 3:38
4 p.m.)

5 THE BAILIFF: The jury is seated, Your Honor.

6 THE COURT: Thank you. Thank you, Mr. Bailiff. Thank
7 you, Solicitor and Mr. Krzyston. Solicitor, you may ask
8 your next question.

9 MS. CAMPBELL: Thank you, Your Honor.

10 BY MS. CAMPBELL:

11 Q: I'm sorry, Ms. Canzater. Are you okay? The last thing
12 you were telling the jury is what you said. Basically, you
13 told him that the description fit him? What else did you
14 say to him?

15 A: Um --

16 THE COURT: Speak up for me a little bit, Ms. Canzater.

17 BY MS. CAMPBELL:

18 A: I had told James that the description fitted him and he
19 said that --

20 Q: Did you tell him anything about the time period when
21 Ms. Alice got killed?

22 A: I told him he wasn't home when I got home from church.
23 I said, when I got home, you wasn't here. Where were you?

24 Q: What did he say to you?

25 A: He told me he had went for a walk to clear his head. I

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1 said a walk where? He smoked these cigarettes in a blue
2 pouch where you roll them yourself, and he was out and he
3 had walked to the store across the street from the house,
4 but they didn't have any. So the Shell station on Parklane
5 that's down by the library -- he said he had walked to that
6 one. I had no reason to question him as if he did or didn't
7 because I didn't have any proof as to where he was.

8 Q: Do you remember giving that statement to the police
9 back on the 13th?

10 A: I'm pretty sure I probably did.

11 Q: Okay. And do you remember when the police were asking
12 you about this what his response was, his first response?

13 A: I can't even see that.

14 THE COURT: Speak up a little bit for me, Ms. Canzater.

15 BY MS. CAMPBELL:

16 Q: Just that first part.

17 A: Yes. Yes. When I told James that the description
18 fitted him, he said why would I kill -- why would I kill
19 her? He said, she a nice lady.

20 Q: That's what he said?

21 A: (No verbal response.)

22 Q: After that, did he then leave the room?

23 THE COURT: Did she respond to that?

24 A: Yes. That's what he said.

25 MS. CAMPBELL: I'm sorry.

MATTIE CANZATER - DIRECT BY MS. CAMPBELL

1 THE COURT: That's all right.

2 BY MS. CAMPBELL:

3 A: And then he left the room immediately. No. Let me
4 back up. I was crying. He was upset. I was upset. His
5 sister was crying. We all were crying, and he hold me and
6 told me, sis, just calm down. You know how your blood
7 pressure is.

8 And then he left and went to -- down the hall to the
9 bedroom. A few seconds later, he came back up and he had
10 shaving cream all over his head and all over his face and
11 whatever his hair he shaved immediately. Again, I had no
12 reason to suspect anything because I had no proof. I just
13 had feelings.

14 Q: So when he came back out, he had shaving cream on his
15 head and on his face? And you mentioned wherever there was
16 hair, there wasn't any?

17 A: There wasn't any.

18 Q: What kind of haircut did he have before he went back to
19 the room that day?

20 A: Say that again?

21 Q: What kind of haircut did he have before he shaved his
22 said?

23 A: He had a very low smooth haircut where he had waves.

24 Q: Waves?

25 A: Uh-huh.

INV. MICHAEL BEELER - DIRECT BY MS. MCDUFFIE

1 and documented it?

2 A: Yes, ma'am.

3 Q: And that's State's 269 and 270?

4 A: (No verbal response.)

5 Q: And did you also photograph and document the garage of

6 the home?

7 A: Yes, ma'am.

8 Q: And were you aware that Inv. Crane had already located

9 some tables in the garage?

10 A: I photographed initially and then I was advised later

11 that Inv. Crane had collected two tables, but they were

12 initially photographed before any particular relevant items

13 were located.

14 Q: And then once he collected the tables that are already

15 in evidence, what, if anything, happened with those?

16 A: I photographed them again because they had a name and

17 address on them, and then they were taken to headquarters

18 and I believe turned over to another investigator, but I

19 don't have documentation of that on my particular --

20 Q: But he --

21 A: But once it left the scene, I wasn't involved with the

22 tables.

23 Q: State's 273. Is that a photograph of the garage?

24 A: Yes, ma'am.

25 Q: And then were you also made aware that there was a

INV. MICHAEL BEELER - DIRECT BY MS. MCDUFFIE

1 bedroom that potentially belonged to Mr. Heyward in the
2 home?

3 A: I'm not sure who it belonged to, but they were directed
4 -- they directed me to the back right bedroom and numerous
5 items were photographed and collected.

6 Q: State's 283 and 284. Please tell the ladies and
7 gentlemen of the jury what's depicted in these photographs?

8 A: That would be the back right bedroom, bed, red chair,
9 two televisions, ironing board, and numerous other items.

10 Q: And so this is the back right bedroom?

11 A: Yes, ma'am.

12 Q: And you photographed all aspects of this bedroom?

13 A: Yes, ma'am.

14 Q: State's 285 and 286?

15 A: Yes, ma'am.

16 Q: And what is depicted in these photographs?

17 A: It's an ashtray with -- it could be hand-rolled
18 cigarettes. Cigarette butts.

19 Q: And 286?

20 A: That was an orientation of the bedroom door and then
21 the bathroom door in the back right bedroom.

22 Q: And then the restroom off of that bedroom -- is that in
23 State's 288?

24 A: Correct, ma'am.

25 Q: And then 287?

INV. MICHAEL BEELER - DIRECT BY MS. MCDUFFIE

1 A: That would -- that would be the bedroom as well, with
2 one of the televisions and I believe the door to the
3 bathroom.

4 Q: And so there were two televisions in that bedroom?

5 A: Yes, ma'am.

6 Q: And then was a search also done of the closet in that
7 bedroom?

8 A: Yes, ma'am.

9 Q: State's 275?

10 A: Yes, ma'am.

11 Q: And does that closet kind of go back that way some?

12 A: Yes, ma'am.

13 Q: State's 276 and 277 and 278. Is this a white shelving
14 unit in that closet?

15 A: Yes, ma'am. Plastic organizer with multiple shelves.

16 Q: And that was in that corner of that closet?

17 A: Yes, ma'am.

18 Q: And was a search conducted on this white shelving unit?

19 A: Yes, ma'am.

20 Q: State's 277. Is that the -- one of the drawers that
21 was open?

22 A: Yes, ma'am.

23 Q: And 279, the contents of that drawer?

24 A: Yes, ma'am.

25 Q: And what was located in that drawer in the bedroom?

INV. MICHAEL BEELER - DIRECT BY MS. MCDUFFIE

1 A: A small handgun, Smith & Wesson revolver.

2 Q: And can you actually see it in State's 279?

3 A: Yes, ma'am.

4 Q: And then 280. Is that a closer-up photograph?

5 A: Yes, ma'am.

6 Q: And can you point out to the jury where the weapon is?

7 A: It's right here. This is the handle. You can see the
8 cylinder, the hammer, the cylinder release, and then the --
9 a little bit of the barrel. It's silver and black and
10 rusty.

11 Q: And that's in 279 and 280?

12 A: Yes, ma'am.

13 Q: And did you collect this handgun?

14 A: Yes, ma'am.

15 Q: State's 297. Is this the handgun you collected?

16 A: It's possibly the handgun. Yes, ma'am.

17 MS. MCDUFFIE: Your Honor, we intend to introduce 297.
18 The weapon is secured.

19 THE COURT: All right. Would you show it to the
20 officer and also, without pointing it at anyone, will you
21 tell me its condition and whether it's loaded or unloaded?

22 THE WITNESS: Certainly.

23 THE COURT: Or if there is a -- a gun lock on it.

24 THE WITNESS: There are zip ties securing the cylinder,
25 but this is the silver .32 caliber Smith & Wesson handgun

INV. MICHAEL BEELER - DIRECT BY MS. MCDUFFIE

1 that was in there.

2 THE COURT: And it is unloaded?

3 THE WITNESS: Correct, sir.

4 THE COURT: All right. And it shall remain unloaded at
5 all times. I don't know if ammunition would also be offered
6 or not.

7 MS. MCDUFFIE: Your Honor, also --

8 THE COURT: Only the weapon or the ammunition in the
9 weapon at the same time are going to the jury at the same
10 time, and I would further direct that it always be handled
11 by the barrel unless I order otherwise. That no firearm
12 will be pointed at the jury, court personnel, spectators.
13 It will always be pointed either at the ceiling or the floor
14 unless deemed valuable and the solicitors and/or defense
15 attorneys must obtain permission from the judge prior to
16 such use for evidentiary purposes.

17 All right. Thank you. Thank you very much. You may
18 proceed, Solicitor.

19 MS. MCDUFFIE: Your Honor, at this time, we'd offer
20 State's 297, which contains the handgun that Inv. Beeler is
21 holding, as well as six unfired cartridges.

22 THE COURT: All right.

23 MR. RUFFIN: No objection, Your Honor.

24 THE COURT: All right. State's 297 in evidence without
25 objection.

INV. MICHAEL BEELER - DIRECT BY MS. MCDUFFIE

1 (WHEREUPON, State's Exhibit Number 297, handgun with
2 unfired ammunition, was admitted into evidence.)

3 THE COURT: That's the weapon and unfired cartridges.
4 How many cartridges?

5 MS. MCDUFFIE: Six, Your Honor.

6 THE COURT: All right.

7 MS. MCDUFFIE: If I can get you to keep that out,
8 Investigator?

9 BY MS. MCDUFFIE:

10 Q: And, Inv. Beeler, that is the weapon you collected from
11 [REDACTED] Road?

12 A: Yes, ma'am.

13 Q: And are you aware of the make and model of that weapon?

14 A: This is a Smith & Wesson .32 caliber long six-shot
15 revolver, and there's a partial serial number on it.

16 Q: Thank you. You can put that away, please.

17 A: Okay.

18 Q: Also located in that white plastic chest of drawers
19 located inside the weapon, were their projectiles or were
20 there unfired cartridge cases?

21 A: Yes, ma'am. Six unfired cartridges. A casing would be
22 if it was fired.

23 Q: I'm sorry.

24 A: Six unfired .32 caliber long cartridges.

25 Q: And if you could, hold them up so that the jury could

MAJ. ROCKY SENN - DIRECT BY MS. CAMPBELL

1 A: Yes, ma'am.

2 Q: And what item was that?

3 A: It was, like, a jogging suit kind of thing, brown with
4 orange stripes and highlights on it.

5 Q: I'm going to show you what's been marked as State's
6 Exhibits 232 through 235 and first ask you if you recognize
7 those?

8 A: Yes, ma'am.

9 Q: And are those photographs of the area and the items
10 we're talking about?

11 A: Yes, ma'am.

12 MS. CAMPBELL: Your Honor, at this time, we would offer
13 these into evidence.

14 MR. RUFFIN: No objection.

15 THE COURT: All right. And that's State's 232 through
16 235?

17 MS. CAMPBELL: Yes, sir.

18 THE COURT: State's 232 through 235 is in evidence
19 without objection.

20 (WHEREUPON, State's Exhibits Number 232 through 235,
21 photographs, were admitted into evidence.)

22 BY MS. CAMPBELL:

23 Q: Major, State's 232 -- what does that show?

24 A: That's the trashcan from outside the garage.

25 Q: Outside the garage area?

LEE WRIGHT - DIRECT BY MS. SIMPSON

1 MR. KRZYSTON: Thank you.

2 THE COURT: All right. Solicitor, you may ask your
3 next question.

4 BY MS. SIMPSON:

5 Q: Ms. Wright, I believe I asked you about Ms. Tollison.
6 How do you know her? Or did you know her?

7 A: I first met her when I started working at Project Hope,
8 and that was July 2014. She was one of the senior citizens
9 assigned to me to go visit.

10 Q: Okay. And what types of things would you do when you
11 went to visit with her?

12 A: Generally, you check and see, you know, that they're
13 doing okay. You visit with them. It's a way of letting
14 them know that there's someone else out there that cares.
15 There's a lot of seniors that don't have family that could
16 check on them, and we go to do that.

17 With Ms. Alice, she was a crafty person. She liked to
18 crochet and knit and do different things. So she would show
19 me the different things that she was doing. She also
20 donated some of her work to the senior citizens, like walker
21 bags that go on the front of the walker so that they can put
22 their stuff in the bags while they're -- they're
23 maneuvering. We had Bible study at her house.

24 MR. KRZYSTON: Objection. Relevance, Judge.

25 THE COURT: I'm sorry?

1 MR. KRZYSTON: No, sir.

2 THE COURT REPORTER: One thing. I told her it would be
3 Court's 9, but it's actually Court's 8.

4 THE COURT: Thank you.

5 THE COURT REPORTER: Ms. Campbell, it's actually
6 Court's 8. Sorry.

7 MS. CAMPBELL: Okay.

8 THE COURT REPORTER: I got ahead of myself.

9 (WHEREUPON, there was a pause in the proceedings, after
10 which the proceedings resumed as follows.)

11 (WHEREUPON, the jury entered the courtroom at 9:46
12 a.m.)

13 THE BAILIFF: The jury is present, Judge.

14 THE COURT: Thank you. Thank you, Madam Bailiff. Good
15 morning.

16 THE JURY: Good morning.

17 THE COURT: Welcome back. I hope y'all had a pleasant
18 evening. As you know, we're continuing the trial of the
19 case by the presentation of evidence and testimony by the
20 State in its case in chief. If you will, please continue to
21 give the parties your complete and undivided attention, as
22 you have done throughout the trial of the case.

23 Solicitor, you may call your first witness.

24 MS. SIMPSON: Thank you, Your Honor. May it please the
25 Court. The State calls David Collins.

1 THE COURT: All right. Inv. Collins, if you would,
2 come around to be sworn, please.

3 MR. KRZYSTON: Judge, can we approach?

4 THE COURT: Yes, sir.

5 (WHEREUPON, a bench conference was held in the presence
6 of the jury but out of the hearing of the jury off the
7 record, after which the proceedings resumed as
8 follows.)

9 THE CLERK: Do you swear or affirm the testimony you're
10 about to give in this case will be the truth, the whole
11 truth, and nothing but the truth, so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Thank you. Have a seat in the witness
14 stand, please. Please state your name for the record.

15 THE WITNESS: David Collins.

16 MR. KRZYSTON: I'm sorry. Object. Relevance.

17 THE COURT: Thank you. Thank you, Mr. Krzyston.

18 Ladies and gentlemen, you're going to get your exercise
19 today. Please step to your jury room. Do not discuss the
20 case. Thank you.

21 (WHEREUPON, the jury exited the courtroom at 9:49 a.m.)

22 THE COURT: All right. Mr. Krzyston?

23 MR. KRZYSTON: Judge, we're just objecting to the
24 witness based on relevance. It's my understanding that he
25 will be testifying to the fact that the gun recovered from

1 [REDACTED] was, in fact, operational. Whether or not
2 the weapon was operational goes to prove no element of any
3 of the substantive offenses with which Mr. Heyward is
4 charged and, at this point, is just clearly superfluous
5 testimony in what looks to be a more than week-long trial.

6 THE COURT: All right. Solicitor?

7 MS. SIMPSON: Yes, Your Honor. With respect to
8 relevance, one of the charges is pointing and presenting. I
9 believe we do need to prove that it was a firearm, in fact,
10 and not a BB gun or anything of that nature.

11 Additionally, as part of malice, I mean the fact that
12 he -- it is the State's position he had this gun in his
13 possession when he was arrested, as well as at the time of
14 the murder. Although it was not used to kill Alice
15 Tollison, it was used, in fact, to -- it was operational.
16 It could have been used and I think it definitely is more
17 probative in that aspect.

18 MR. KRZYSTON: And respectfully, Judge, again, the
19 pointing and presenting count requires the government to
20 prove that he presented a weapon. It does not include any
21 inquiry over whether that weapon is, in fact, operated and,
22 in addition to that, Judge, the mere presence, as they
23 allege, of the firearm in his possession at the time of the
24 burglary, they are, again, able to connect the ultimate
25 dots. They have everything they need to do to establish

1 what they want to argue. This is unnecessary time they're
2 taking here.

3 MS. SIMPSON: With respect to it being a firearm, I
4 think it's just as important as the fact that it is
5 operational.

6 MR. KRZYSTON: And, Judge, the firearm is already in
7 evidence.

8 MS. SIMPSON: And with respect to this, Your Honor, one
9 thing I did, I did speak with defense counsel about going --
10 not going into it because it was actually compared with an
11 unrelated case, which we are not going to discuss, and this
12 witness has been advised regarding that issue.

13 MR. KRZYSTON: Yeah. We had agreed to that.

14 THE COURT REPORTER: You said we did agree to that?

15 MR. KRZYSTON: Yeah. We had agreed to that.

16 (WHEREUPON, there was a pause in the proceedings, after
17 which the proceedings resumed as follows.)

18 THE COURT: All right. As to the charge I will give as
19 to armed robbery, if -- if I were to charge the jury,
20 depending on what my rulings are between now and then.

21 I find the State must prove beyond a reasonable doubt
22 that the defendant was armed with a deadly weapon during the
23 robbery. A deadly weapon is any article, instrument, or
24 substance which is likely to cause death or great bodily
25 harm. Whether an instrument has been used as a deadly

1 weapon depends on the facts and circumstances of each case.

2 That has not been testified to as far as whether or not
3 it is an instrument that can cause death or great bodily
4 harm.

5 As to the indictment for pointing a firearm at another
6 person, it is unlawful for a person to present and point at
7 another person a loaded or unloaded firearm. The preceding
8 statutes, 14-23-410 and 14-23-405, except under the
9 provisions relating to rifles and shotguns in Section
10 16-23-460, as used in this chapter.

11 A weapon means firearms, parenthetically rifle,
12 shotgun, pistol, or other similar device that propels a
13 projectile through the energy of an explosion, which may be
14 used in great bodily injury or death.

15 That has not been testified to as far as before this
16 jury. It's obviously been testified to by Det. Beeler or
17 Crime Scene Inv. Beeler, who recovered the weapon, that it
18 was a firearm, but there's no testimony in the record that
19 it is capable of expelling a projectile through explosion.

20 So with that being said, I would respectfully deny the
21 motion. I think it is an essential element of pointing and
22 presenting. In 401, relevant evidence means evidence having
23 any tendency to make the existence of any fact that is
24 consummate to a determination of the action more probable or
25 less probable than it would be without the evidence.

INV. DAVID COLLINS - DIRECT BY MS. SIMPSON

1 Anything further, Mr. Krzyston?

2 MR. KRZYSTON: No, sir, Judge. Thank you.

3 THE COURT: Solicitor?

4 MS. SIMPSON: Thank you, Your Honor.

5 (WHEREUPON, the jury entered the courtroom at 10:01
6 a.m.)

7 THE BAILIFF: The jury is seated, Your Honor.

8 THE COURT: Thank you. Thank you, Mr. Krzyston. Thank
9 you, Solicitor.

10 Solicitor, you may ask your next question or your first
11 question.

12 MS. SIMPSON: Thank you. My first one.

13 INV: DAVID COLLINS, being
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. SIMPSON:

17 Q: What is your name?

18 A: My name is David Collins.

19 Q: And where are you employed?

20 A: I'm employed at the Richland County Sheriff's
21 Department.

22 Q: What's your current position there?

23 A: I'm a fire and tool marks examiner in the forensic
24 sciences laboratory.

25 Q: What exactly is a firearms and tool marks examiner?

INV. DAVID COLLINS - DIRECT BY MS. SIMPSON

1 A: A firearms and tool marks examiner is an expert who
2 examines firearms and certain tools with the intention of
3 determining whether they function correctly and whether or
4 not they have left marks on evidence items, such as fired
5 bullets and fired cartridge cases, that may be unique to
6 that particular tool or firearm.

7 Essentially, any type of firearm-related specialized
8 examination may be requested of our section, depending on
9 whether or not we have a procedure in place to perform that
10 examination. Such examinations may go beyond the
11 identification of bullets and cartridge cases to a specific
12 firearm to simple function testing of a firearm to determine
13 whether it functions properly, ejection pattern testing,
14 muzzle to target distance testing to determine how far a gun
15 was from somebody when they were shot, to serial number
16 restorations and other specialized examinations.

17 Q: And how long have you been with the Sheriff's
18 Department?

19 A: I've been with the Richland County Sheriff's Department
20 since 2002.

21 Q: Okay. And can you give the jury a little bit of
22 information regarding your educational background and
23 training?

24 A: I received a bachelor's degree from The Citadel in
25 1984. I was employed by SLED in 1990 and began a training

INV. DAVID COLLINS - DIRECT BY MS. SIMPSON

1 program there in the field of firearms and tool marks
2 examination. I completed that training process after
3 approximately two-and-a-half years of training, which is
4 standard and normal for this type of -- this type of work.

5 After becoming certified by SLED as a firearms and tool
6 marks examiner, I worked in their laboratory in that role
7 until 2002, doing casework and receiving continuing
8 education along the way from our professional association
9 and from specialized schools, such as armorer's schools or
10 other firearms-related instruction.

11 Q: And with respect to the lab at the Sheriff's
12 Department, is it accredited?

13 A: Yes. We are a -- we are accredited, yes.

14 Q: Okay. And is your work peer-reviewed in some way?

15 A: All of our work is reviewed by other qualified
16 examiners in the laboratory before a report is issued.

17 Q: Okay. And do you actually continue to participate in
18 training and educational courses related to your field?

19 A: Yes. In fact, I just attended a week-long training
20 course in Denver in May of this year.

21 Q: And have you ever testified as an expert before in the
22 field of firearms and tool marks examinations?

23 A: Yes. I have testified in the General Sessions Court
24 and state courts of South Carolina in excess of 200 times.
25 I've also been qualified as an expert and testified in the

INV. DAVID COLLINS - DIRECT BY MS. SIMPSON

1 state courts of Georgia and North Carolina, the federal,
2 court system, and the military court system.

3 Q: Okay.

4 MS. SIMPSON: Your Honor, at this time, I would offer
5 David Collins as an expert in firearms and tool marks
6 examination.

7 MR. RUFFIN: No objection, Judge.

8 THE COURT: Again, ladies and gentlemen, y'all have
9 heard the expert charge. This witness, Inv. David Collins,
10 will be qualified by the Court as an expert in the field of
11 firearms and tool marks examination and identification.
12 Thank you.

13 Thank you, Solicitor. You may continue.

14 BY MS. SIMPSON:

15 Q: Now, you indicated earlier you all do a number of
16 different things depending upon whatever type of case or
17 evidence that you are requested to analyze; correct?

18 A: Yes. We can perform a wide variety of examinations
19 depending on the nature of the case.

20 Q: Okay. And did you have occasion to, I guess, examine
21 some of the evidence in this case?

22 A: I did.

23 Q: And what were those items?

24 A: I received a Smith & Wesson model Hand Ejector revolver
25 chambered in .32 Smith & Wesson long ammunition with serial

INV. DAVID COLLINS - DIRECT BY MS. SIMPSON

1 number 124650. I also received six unfired .32 Smith &
2 Wesson long caliber cartridges.

3 Q: I'm going to show you what's been entered into evidence
4 as State's Exhibit 297. Do you recognize the items
5 contained in that?

6 A: Yes. These are the six unfired .32 Smith & Wesson long
7 caliber cartridges that I examined. There are markings that
8 I placed on them in the laboratory and also I placed
9 markings on that -- on the container itself.

10 Yes. This is the .32 Smith & Wesson long caliber
11 revolver that I examined in the case. It also bears my
12 markings that I placed on it in the laboratory.

13 Q: And with respect to these items, what is your purpose
14 or what type of examination were you requested to conduct?

15 A: I was requested to determine whether the firearm
16 functions properly.

17 Q: And how does that process work? Can you explain what
18 you actually did in this case?

19 A: The first thing that we do when we receive any evidence
20 in the laboratory is we take notes as to its general
21 condition. We will do any type of research that would have
22 been required to determine exactly what type of firearm it
23 is, if it's one that doesn't bear markings that readily
24 identify it.

25 We will then take ammunition and test fire the gun,

INV. DAVID COLLINS - DIRECT BY MS. SIMPSON

1 which can serve multiple purposes. The first purpose,
2 obviously, is to determine whether the gun functions. Does
3 it actually go bang when you pull the trigger?

4 The second function of that is to obtain test
5 standards, test bullets and test cartridge cases that may be
6 used for identification in some cases. The primary purpose
7 here for this examination was to determine simply whether
8 the gun functions or not.

9 Q: And the condition of this gun is -- I don't know if I
10 can get the box open.

11 THE COURT: Investigator, is that weapon safe?

12 THE WITNESS: Yes, it is.

13 THE COURT: All right. It's cleared? It's cleared,
14 Mr. Collins?

15 THE WITNESS: There's no -- there is no ammunition in
16 the cylinder. The ammunition is separate in this box.

17 THE COURT: Thank you. Thank you very much.

18 BY MS. SIMPSON:

19 Q: And with respect to this gun, the condition of it --
20 even though it looks -- or just describe the condition of
21 it?

22 A: From the standpoint of an examiner, from an examiner's
23 perspective, this is a rather interesting firearm. This is
24 an older firearm. This firearm was manufactured between
25 1910 and 1917, based on information gathered from the serial

INV. DAVID COLLINS - DIRECT BY MS. SIMPSON

1 number and manufacturer's records.

2 This is a Smith and -- more precisely, it's a Smith &
3 Wesson Hand Ejector Fifth Change revolver with an I-frame
4 design, which means it has a very small grip. This firearm
5 is designed to fire .32 Smith & Wesson long caliber
6 ammunition. There are six chambers in the cylinder, which
7 means it has a maximum capacity of six rounds that can be
8 placed in it and fired at any one time.

9 The firearm is, as one would expect for a firearm of
10 that age, somewhat worn and the finish is in bad condition,
11 but it does function.

12 Q: So you did determine that it functions properly?

13 A: Yes. I test-fired the firearm three times, as per our
14 standard protocols, and it did fire each time I attempted to
15 fire it.

16 Q: With respect to -- how many unfired cartridge casings
17 did you receive?

18 A: There were six unfired cartridges received with the
19 firearm.

20 Q: Okay. And that weapon holds how many?

21 A: Six.

22 Q: Six? And can you tell me the color of the actual
23 cartridges or bullets?

24 A: Each cartridge has a brass-colored cartridge casing and
25 the bullet itself is plain lead, solid lead; so, therefore,

INV. DAVID COLLINS - CROSS BY MR. RUFFIN

1 it is a dullish silver-gray color.

2 Q: Okay. And again, based on your analysis, this weapon
3 was functioning and operational?

4 A: As I received it, yes, it was.

5 Q: So basically, does that mean that it could propel a
6 projectile through explosion or pulling the trigger?

7 A: Yes. And it did so three times during testing.

8 Q: Okay. And a bullet of that caliber, if fired at
9 someone, could that cause great bodily injury or death?

10 A: Yes, it could.

11 MS. SIMPSON: Thank you.

12 THE COURT: Thank you, Solicitor. Mr. Ruffin?

13 MR. RUFFIN: I beg the Court's indulgence for a second?

14 THE COURT: Yes, sir.

15 (WHEREUPON, there was a pause in the proceedings, after
16 which the proceedings resumed as follows.)

17 MR. RUFFIN: Thank you, Judge.

18 CROSS-EXAMINATION

19 BY MR. RUFFIN:

20 Q: Inv. Collins, I just have one question, I think. If
21 that firearm was loaded with those cartridges, would you be
22 able to see the cartridge if it was loaded and the cylinder
23 was closed?

24 A: Someone who was conversant with firearms would be able
25 to see the bullets in the chambers if it was pointed at

SGT. JOE CLARKE - DIRECT BY MS. MCDUFFIE

- 1 brownish in color tracksuit with some sort of accents on it.
- 2 Q: And that was the description that you were working
- 3 under at that point?
- 4 A: Correct.
- 5 Q: Had you talked to Gwyn F [REDACTED] at all?
- 6 A: I had not..
- 7 Q: Had you received a description of a suspect from any
- 8 other source at that time that Ms. Clarke was spoken to?
- 9 A: At that time, no.
- 10 Q: So you, personally, this was the first description of
- 11 an individual that you received?
- 12 A: That was the first description that I was made aware
- 13 of.
- 14 Q: After the -- excuse me -- the neighborhood was
- 15 canvassed, what did you then do?
- 16 A: At that point, I went back over to the scene and again
- 17 noticed that everything was running smoothly. At that
- 18 point, I decided it would probably be prudent -- that we had
- 19 a witness that was alive. I decided let's go see -- let's
- 20 go talk to her and see what, if anything, she could tell us
- 21 or just check mainly your condition.
- 22 Q: And so did you respond to the hospital?
- 23 A: I did. I went to the hospital and made contact with
- 24 Gwyn and her mother, who was with her at the time.
- 25 Q: And did you have occasion to speak with Gwyn?

SGT. JOE CLARKE - DIRECT BY MS. MCDUFFIE

1 A: I did.

2 Q: And again, without saying what she said, did the
3 description of the individual that you were looking for
4 change?

5 A: No. Not at all really.

6 Q: The next morning on October the 12th, did you attend a
7 morning briefing in this case?

8 A: I did.

9 Q: And during that briefing, what, if anything, occurred?

10 A: During this briefing, this is where we -- as now the
11 named primary homicide investigator, my job is to sit down
12 with folks that were coming on. Keep in mind this happened
13 on a Sunday; so we've got folks coming in on Monday morning.

14 We're having a meeting and we discuss what we know and
15 then what we need to work on. During that meeting, I was
16 given information that we were already receiving a
17 fingerprint hit on -- from an interior door at the house.

18 Q: And that fingerprint belonged to whom?

19 A: James Heyward.

20 Q: And were you given a date of birth as well?

21 A: I was.

22 Q: And what was that?

23 A: I don't have that in front of me. I apologize.

24 Q: Do you have a copy of your report?

25 A: I do. [REDACTED].

SGT. JOE CLARKE - DIRECT BY MS. MCDUFFIE

1 Q: And that was done in this case as well?

2 A: It was.

3 Q: And did you then respond to the Assessment Resource
4 Center to make contact with Ms. F[REDACTED]?

5 A: I did.

6 Q: And during that, did you actually show Ms. F[REDACTED] a
7 photo lineup?

8 A: I did.

9 Q: When you showed her the photo lineup, did you give her
10 any instructions?

11 A: No. I mean, well, the instructions other than the
12 basic explanation I give to anyone where I show a photo
13 lineup to. It's in my experience that most people I
14 encounter have not looked at a photo lineup before and, in
15 that case, I usually just speak of the things that don't
16 change, the shape of the face, the shape of the nose, eye
17 color, things like that. I usually joke with people and say
18 you may be able to change your hair, I can't. It's over
19 now. You know, I can't do that. So I explain to them that
20 the facial structure stays the way it is. I asked Ms.
21 F[REDACTED] to take her time. In fact, Ms. F[REDACTED] said let me
22 close my eyes and think about this for a second, that type
23 of thing.

24 Q: Without going into what Ms. F[REDACTED] said, did you tell
25 her the man that did this is in the lineup?

SGT. JOE CLARKE - DIRECT BY MS. MCDUFFIE

- 1 A: No.
- 2 Q: What did you -- what instructions did you give her when
- 3 she was actually viewing the lineup?
- 4 A: I told her I am going to show you a series of
- 5 photographs and I want you to see if you can see the man
- 6 that did this to your grandmother and to you.
- 7 Q: So you didn't say he's in here?
- 8 A: No.
- 9 Q: You said if you can see him, let me know?
- 10 A: If you can see him, you can pick her -- pick him.
- 11 Q: And did Ms. F [REDACTED] -- did you observe her do anything
- 12 prior to viewing the lineup?
- 13 A: Yes. She closed her eyes and thought about it and then
- 14 viewed the lineup.
- 15 Q: And when she viewed the lineup, did she identify any
- 16 individual?
- 17 A: She did.
- 18 Q: And I'm showing you what's already in evidence as -- I
- 19 believe it's State's 30.
- 20 A: Yes, ma'am.
- 21 Q: Is that the lineup that you showed Ms. F [REDACTED]?
- 22 A: It is.
- 23 Q: And Ms. F [REDACTED] picked which picture?
- 24 A: She picked this picture here.
- 25 Q: And how did to Ms. -- and I'm sorry. What number is

SGT. JOE CLARKE - DIRECT BY MS. MCDUFFIE

1 that?

2 A: Number 3.

3 Q: And how did she indicate or acknowledge that Number 3

4 was the one that she picked?

5 A: She pointed to it and, as is my custom, in my

6 investigations is I ask for them to circle that number that

7 corresponds with the photograph and, in this case, I asked

8 for her to put her initials. And her being eight years old,

9 she didn't know what that meant; so she just wrote her first

10 name.

11 Q: At any point in time, did you suggest to Ms. F [REDACTED]

12 who to pick out of the lineup?

13 A: No.

14 Q: Did you tell her that he was definitely in the lineup?

15 A: No.

16 Q: Did you tell her that she had to pick someone out?

17 A: No.

18 Q: Did you do anything to suggest or to try and manipulate

19 Ms. F [REDACTED], into picking out Photo Number 3?

20 A: No, ma'am.

21 Q: And who is Photo Number 3?

22 A: James Heyward.

23 Q: And do you see him in the courtroom today?

24 A: I do.

25 Q: And please identify him for the jury?

JOHN BARRON - DIRECT BY MS. CAMPBELL

1 THE CLERK: Thank you. Have a seat in the witness
2 stand, please. State your name for the record.

3 THE WITNESS: John Barron, B-a-r-r-o-n.

4 JOHN BARRON, being first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. CAMPBELL:

8 Q: Sir, where are you employed?

9 A: Richland County Sheriff's Department.

10 Q: And what do you do there?

11 A: I'm in the DNA laboratory as a DNA analyst, and I also
12 administer the DNA database.

13 Q: The DNA database?

14 A: Correct.

15 Q: And that DNA database that you're referring to, is that
16 a national database or how is that maintained by y'all? Or
17 how does it work?

18 A: It's both local and national. It begins locally with
19 DNA results from evidence from crime scenes that can be
20 associated with a perpetrator at a crime scene.

21 MR. KRZYSTON: Objection. May we approach?

22 THE COURT: Yes, sir.

23 (WHEREUPON, a bench conference was held in the presence
24 of the jury but out of the hearing of the jury off the
25 record, after which the proceedings resumed as

JOHN BARRON - DIRECT BY MS. CAMPBELL

1 follows.)

2 THE COURT: Thank you. Thank you, Mr. Krzyston. Thank
3 you, Solicitor.

4 BY MS. CAMPBELL:

5 Q: Let me back up for a minute. This database -- items
6 are inputted by your office?

7 A: It is inputted by the DNA analysts in our office.

8 Q: And in addition to that, this database on the national
9 level, does it contain known DNA from people in general?

10 A: It does.

11 Q: And it's standard protocol in your office for an
12 analyst to upload, say, a piece of evidence into that
13 database, what would be the results from a piece of
14 evidence?

15 A: The analyst inserts the results into the database. I
16 review the results and ascertain if it's been --
17 everything's been correctly entered, and then I upload it to
18 the database.

19 Q: And that's the same database that has known DNA samples
20 from people?

21 A: That is correct.

22 Q: I want to turn your attention to this case. Did you
23 receive a DNA match data response in this case?

24 A: I did.

25 Q: And I'm going to show you what's been marked as State's

JOHN BARRON - DIRECT BY MS. CAMPBELL

1 Exhibit 324. Do you recognize that?

2 A: Yes.

3 Q: And is that the response that you received as far as a
4 piece of evidence in this case?

5 A: It is.

6 Q: And what piece of evidence was this in response to that
7 had been uploaded and approved by you into the system from
8 this case? What was the item number?

9 A: The item number was 1510031311-69 major.

10 Q: And in the part that says dash 69, would that denote
11 the evidence number that had been assigned by your office to
12 that piece of evidence?

13 A: Yes, it would.

14 Q: And the response came from where?

15 A: New Jersey.

16 MS. CAMPBELL: Your Honor, at this time, we would offer
17 State's Exhibit 324, which just got wet.

18 MR. KRZYSTON: I would object on hearsay grounds.

19 THE COURT: May I see it, Solicitor?

20 MR. KRZYSTON: And I would also add 403 analysis there,
21 Judge.

22 THE COURT REPORTER: I'm sorry? 403 and what?

23 MR. KRZYSTON: Analysis basis.

24 MS. CAMPBELL: If I may, Your Honor?

25 THE COURT: Was that a pretrial issue that I previously

JOHN BARRON - DIRECT BY MS. CAMPBELL

1 ruled on?

2 MR. KRZYSTON: I believe so.

3 THE COURT: All right. Subject to previous objection.

4 MR. KRZYSTON: The hearsay objection, Judge, is new
5 though.

6 THE COURT: Say again?

7 MR. KRZYSTON: I said the hearsay objection is new.

8 THE COURT: Yes, sir.

9 MS. CAMPBELL: And, Your Honor, for the record, it's
10 been redacted.

11 THE COURT: All right. And I would overrule the
12 hearsay objection based on the ruling I think in Anderson
13 and based on an 803 exception to the rule. I'll get the
14 sub-numbers. I think it's 5 and 6.

15 All right. 324 is in evidence subject to objection.

16 (WHEREUPON, State's Exhibit Number 324, DNA match data
17 response document, was admitted into evidence.)

18 MS. CAMPBELL: Thank you, Your Honor.

19 THE COURT REPORTER: What is that? I don't have it on
20 y'all's list; so I don't know what it is. All right.

21 MS. CAMPBELL: It's the DNA match data response.

22 THE COURT REPORTER: Okay.

23 MS. CAMPBELL: Is that good?

24 THE COURT REPORTER: Uh-huh.

25 MS. CAMPBELL: Thank you.

JOHN BARRON - DIRECT BY MS. CAMPBELL

1 BY MS. CAMPBELL:

2 Q: And if you can refer to State's Exhibit Number 324,
3 which is labeled, I believe, DNA match data response?

4 A: Yes.

5 Q: Whose attention was that sent to?

6 A: To myself and my assistant, Rachel Grant.

7 Q: And from him did you receive it?

8 A: From Joseph McKnown [ph.] from the Office of Forensic
9 Science in New Jersey.

10 Q: And the information that's in there, if you proceed
11 down, does it indicate that there was a match or not a match
12 to a certain piece of -- to a certain person?

13 A: The box marked match is -- has an X in it.

14 Q: And under that, is there some identifying information
15 as far as who that matched to?

16 A: Yes.

17 Q: And what name did it match to?

18 A: Abdul Muslim.

19 Q: And under that, are there certain identifying -- or
20 date of birth? Excuse me.

21 A: There's a date of birth of [REDACTED].

22 Q: And is there an identifying number associated, a state
23 ID number from New Jersey, associated with that name?

24 A: Yes. State ID 804678B, the letter B..

25 THE COURT REPORTER: B, like boy?

JOHN BARRON - DIRECT BY MS. CAMPBELL

1 THE WITNESS: B, like boy.

2 BY MS. CAMPBELL:

3 Q: And is there an additional number, national number,
4 associated with that?

5 A: Yes.

6 Q: In that box?

7 A: There's a national identification number 220688, the
8 letter P as in Peter, the letter A as in apple, and then the
9 number 3.

10 MS. CAMPBELL: Permission to publish? Permission to
11 publish?

12 THE COURT: Yes, ma'am.

13 BY MS. CAMPBELL:

14 Q: Once you got that information, did you take any steps
15 to verify the information that was sent to you?

16 A: Yes. The match information detail report is in my
17 possession at the forensic science laboratory at Richland
18 County, and the known sample of Mr. Abdul Muslim, along with
19 our evidence sample, 69 major --

20 Q: Okay.

21 A: -- indeed does match.

22 Q: It's a match?

23 A: Yes.

24 Q: And you actually do DNA analysis yourself?

25 A: I do.

JOHN BARRON - CROSS BY MR. KRZYSTON

1 Q: Okay. And this was verified by you?

2 A: It was.

3 MS. CAMPBELL: Thank you, sir. I have nothing further.

4 THE COURT: Solicitor -- or Mr. Krzyston?

5 MR. KRZYSTON: Thank you, Judge.

6 CROSS-EXAMINATION

7 BY MR. KRZYSTON:

8 Q: You've never worked in New Jersey?

9 A: No.

10 Q: In any capacity whatsoever?

11 A: No.

12 MR. KRZYSTON: Thank you. No further questions.

13 THE COURT: Redirect?

14 MS. CAMPBELL: No, sir.

15 THE COURT: Thank you. Thank you very much, Inv.

16 Barron. Thank you for being with us today. May the officer
17 be excused? Do you object, Solicitor?

18 MS. CAMPBELL: Thank you.

19 MR. KRZYSTON: No, sir, Judge.

20 THE COURT: All right. You may -- you may call your
21 next witness. Keep in mind I need to break right at 12:30
22 to let our juror make a phone call.

23 MS. CAMPBELL: This next witness is Dr. Amick. It's
24 probably lengthy.

25 THE COURT: I'm going to allow them to step out there

1 briefly, let her make a phone call, and then they can come
2 right back in and we'll press on until lunch.

3 Step out, please, ladies and gentlemen. Ms. Bailiff,
4 let that juror make her phone call and just let me know when
5 she's finished. I'm going to step out a moment also.

6 (WHEREUPON, the jury exited the courtroom at 12:18
7 p.m.)

8 (WHEREUPON, there was a break in the proceedings from
9 12:18 p.m. until 12:27 p.m., after which the
10 proceedings resumed as follows.)

11 THE COURT: Anything before we bring in our jury,
12 Solicitor?

13 MS. CAMPBELL: No, sir.

14 THE COURT: Mr. Krzyston?

15 MR. KRZYSTON: No, sir, Judge.

16 THE COURT REPORTER: I took that juror note, Your
17 Honor. I took it. I made it Court's 10.

18 (WHEREUPON, the jury entered the courtroom at 12:30
19 p.m.)

20 THE COURT: Are you good? Did you make your call?

21 JUROR NUMBER 296: Yes, sir. Thank you.

22 THE COURT: Yes, ma'am.

23 THE BAILIFF: The jury is present, Judge.

24 THE COURT: All right. Thank you. Solicitor, you may
25 call your next witness.

DR. GRAY AMICK - DIRECT BY MS. CAMPBELL

1 MS. CAMPBELL: Thank you, Your Honor. The State calls
2 Dr. Gray Amick.

3 THE CLERK: Do you swear or affirm the testimony you're
4 about to give in this case will be the truth, the whole
5 truth, and nothing but the truth, so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Thank you. Have a seat in the witness
8 stand, please.

9 THE WITNESS: Thank you.

10 THE CLERK: State your name for the record.

11 THE WITNESS: My name is Gray Amick, A-m-i-c-k.

12 THE COURT REPORTER: Would you spell your first name?

13 THE WITNESS: G-r-a-y.

14 THE COURT REPORTER: Thank you.

15 DR. GRAY AMICK, being first
16 duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. CAMPBELL:

19 Q: Dr. Amick, where are you employed?

20 A: The Richland County Sheriff's Department.

21 Q: What do you do there, sir?

22 A: I'm currently the laboratory director.

23 Q: Okay. If you could, speak up in here. For some
24 reason, I don't know why, we can't hear this week. You're
25 currently the lab director?

DR. GRAY AMICK - DIRECT BY MS. CAMPBELL

1 Alice Tollison couldn't be excluded and there were other
2 unknown contributors.

3 Q: Now, we're referring to State's Exhibit Number 326.
4 Item Number 68?

5 A: 68 were fingernail scrapings.

6 Q: Uh-huh.

7 A: This is from the victim. We got DNA from the finger --
8 68, the fingernail scrapings. We got no Y-STR profile from
9 68 and the DNA profile we got matched Alice Tollison.

10 Q: Item Number 69, the other hand?

11 A: The other fingernail scrapings, 69?

12 Q: Uh-huh.

13 A: Again, we got a DNA profile from that. We did get a Y-
14 STR profile from that that matched James Heyward, and then
15 the DNA profile we got was a mixture, and James Heyward is
16 the major contributor. Alice Tollison couldn't be excluded
17 as the minor contributor.

18 Q: So in your opinion, were you able to in some instances
19 put a numeric value on the quality of your match?

20 A: Yes. So when we have a probative match, we'll give it
21 a statistical weight, and that's what that number is. And
22 just from the report, it might be clearer to read.

23 The DNA result from Item 69 is a mixture. The major
24 contributor matches James Heyward and, based on the genetic
25 results obtained, the frequency of seeing this profile in

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1 the Caucasian population is one in 2.3 decillion and the
2 African-American population of approximately one in 21
3 octillion. And then Alice Tollison cannot be excluded from
4 the minor contributor.

5 Q: And an octillion is how many zeros?

6 A: An octillion is 18 zeros.

7 Q: And how many people are even on earth?

8 A: About 7 billion.

9 Q: How many zeros does that have?

10 A: That would be nine zeros.

11 Q: So in your opinion, can you say whose DNA this was?

12 A: Yeah. In my opinion, James Heyward is the source of
13 that DNA.

14 Q: Under the fingernails? And fingernail scrapings -- are
15 you familiar with how those are collected?

16 A: Yeah. They're usually collected with a stick or a
17 plastic stick, and they're -- whether at autopsy or during a
18 criminal sexual conduct collection, they're actually -- the
19 underneath of the fingernails -- it's like you would be
20 cleaning your fingernails with that stick. That's how
21 they're collected.

22 Q: Item Number 70?

23 A: 70 was a gold necklace with a charm. We got DNA from
24 that. The profile was too weak for match purposes on the Y
25 testing here and the DNA testing matched Alice Tollison.

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1 Q: Item Number 71?

2 A: 71 was another piece of jewelry, silver watch bracelet.

3 We did get DNA from that. No Y profile was developed and

4 the DNA matched Alice Tollison.

5 Q: Item Number 73?

6 A: 73? 73 was a swab from the victim's neck region.

7 Q: Uh-huh.

8 A: We received a -- we received DNA on that. The Y-STR

9 profile was inconclusive. The regular DNA profile indicated

10 a mixture, and the major contributor matched Alice Tollison

11 and the minor contributor matched James Heyward.

12 Q: So the swab that was taken at autopsy from her neck

13 area, the major contributor was Alice Tollison. Is that

14 unusual to find the major contributor to be the victim?

15 A: No, not at all. When you swab yourself somewhere or

16 you swab an individual, you would expect to find that

17 individual's DNA.

18 Q: But the minor contributor is whom?

19 A: The minor contributor matched James Heyward.

20 Q: And were you able to put a numeric number to that one?

21 A: Yeah. So based on the genetic results obtained, the

22 frequency of seeing this profile in the Caucasian population

23 is approximately one in 2.6 billion and in the African-

24 American population, approximately one in 64 million.

25 Q: Item Number 74?

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1 A: That would be --

2 Q: Swabs from the chin abrasion?

3 A: Swab from the chin abrasion, yes. We got DNA extracted
4 from that. James Heyward was not included in that Y profile
5 and it matched Alice Tollison.

6 Q: Item 77 is broken down into two subsections; is that
7 correct?

8 A: That's correct.

9 Q: 77.1 and 77.2?

10 A: That's correct.

11 Q: And was testing done on those two?

12 A: Yes, it was.

13 Q: And what were the results?

14 A: 77.1, a section of the stopper.

15 Q: When we're talking about the stopper, that's the door
16 stopper thing?

17 A: Correct.

18 Q: Okay.

19 A: There was DNA extracted from that. James Heyward was
20 not included in the Y-STR of that. It was a mixture in the
21 DNA testing. The major matched Alice Tollison and the minor
22 was an unknown contributor.

23 Q: And then 77.2?

24 A: 77.2, section of the stopper with a cat face. Again,
25 DNA was -- was extracted from that. The major contributor

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1 of the DNA testing matched Alice Tollison. The minor
2 contributor matched James Heyward. And the Y-STR -- in the
3 Y-STR profile, we eliminated James Heyward.

4 Q: Why?

5 A: Though many of his alleles were present, but in my
6 expert opinion, what we like to do unless we're 100 percent
7 certain --

8 Q: Uh-huh.

9 A: -- we would take a conservative approach and say I'm
10 going to exclude him. I didn't have enough DNA material
11 there to make that call.

12 Q: Inclusion? Okay. But in your DNA testing, you were
13 able to make a conclusion?

14 A: Correct. But these are two separate tests happening in
15 two separate test tubes, so to speak, at two separate times.
16 We're testing for two separate things. So yeah, in this
17 test, in this DNA test, he was found as the minor, but this
18 test, I didn't have enough information to make that call.

19 Q: To make the call, but his alleles were present?

20 A: There were many of his alleles present that were
21 consistent with him.

22 Q: And for the jury to understand, when you're doing
23 comparisons, you're looking at alleles?

24 A: Right. So alleles would be the actual numerical value
25 that makes up your genetic or your DNA profile.

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- 1 Q: Kind of like markers.
- 2 A: Kind of like it.
- 3 Q: I'm simplistic. I know.
- 4 A: Kind of like markers. It's broken down into the
- 5 numbers basically.
- 6 Q: And on the Y-STR, because of the limited amount of
- 7 information you had, you didn't call it?
- 8 A: Correct.
- 9 Q: But that does not in any way invalidate your findings
- 10 as far as this?
- 11 A: No. It's a separate test.
- 12 Q: Were you able to put a numeric value to the section of
- 13 the stopper with cat face when you did your DNA as far as
- 14 him being the minor contributor there?
- 15 A: Yes. 77.2, the minor contributor matched James
- 16 Heyward. The major was Alice Tollison. Based on the
- 17 genetic results obtained, the frequency of seeing this
- 18 profile in the Caucasian population was one in 81 billion.
- 19 And in the African-American population, approximately one in
- 20 9.1 billion.
- 21 Q: And again, how many people on earth?
- 22 A: I think about 7 billion.
- 23 Q: So in your opinion, whose DNA is that?
- 24 A: In my opinion, that minor contributor matched James
- 25 Heyward.

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1 THE BAILIFF: The jury is present, Your Honor.

2 THE COURT: Thank you. Thank you very much. Welcome
3 back, ladies and gentlemen. I hope you had a pleasant
4 lunch.

5 I'm going to address my fan mail. You know, let's
6 finish with our witness and see where we go with the
7 testimony, but I'll address these. I can deal with these,
8 and so we are going to continue the trial of the case by the
9 cross-examination of Dr. Amick by Mr. Krzyston.

10 MR. KRZYSTON: Thank you, Judge. May it please the
11 Court.

12 THE COURT: Yes, sir. Thank you.

13 CROSS-EXAMINATION

14 BY MR. KRZYSTON:

15 Q: Dr. Amick, can you see the surface of that board all
16 right?

17 A: Yes.

18 Q: Okay. If you need to step down for any reason, just
19 let me know. All right. So you are the laboratory director
20 for the Richland County Sheriff's Department; correct?

21 A: That's correct.

22 Q: And again, we had a little break, so just tell the jury
23 how long you've been lab director?

24 A: Since last January.

25 Q: And -- but you've been involved in the analysis of DNA

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1 for going on some 20 years; correct?

2 A: Approximately, yes.

3 Q: Okay. And you've seen all different types of changes
4 when dealing with DNA; correct?

5 A: I've seen several, yes.

6 Q: And when you started, you were doing something called
7 RFLD analysis?

8 A: That's right.

9 Q: And that is a less sensitive technology than the
10 analysis you're using today?

11 A: That's correct.

12 Q: And as a -- as a result of that, when using the new
13 analysis, the PCR analysis; right?

14 A: That's correct.

15 Q: You have to take additional safeguards to prevent from
16 contamination; correct?

17 A: Yes, we do.

18 Q: And that's kind of what the FBI's quality assurance
19 standards are?

20 A: That's one thing that's addressed.

21 Q: And that's what ASCLD/LAD's standards hope to or help
22 -- one of the things they help to address?

23 A: One of the things, correct.

24 Q: And in addition to the actual quality assurance
25 standards that the FBI puts out, there are -- there are

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1 scientific working groups that, I guess, the FBI condones
2 them?

3 A: I don't know what their official stance on that -- on
4 them are.

5 Q: But they put out additional guidelines to help prevent
6 contamination?

7 A: Who does?

8 Q: SWG, Scientific Working Group?

9 A: Yeah. There are working groups in each of the forensic
10 fields that do issue guidelines on certain aspects of the
11 analysis.

12 Q: And what is the working group within the DNA fields?

13 A: It stands for -- it's called SWGDAM, Scientific Working
14 Group in DNA Analysis Methods.

15 Q: And you're aware that, again, they put out guidelines
16 to help DNA analysts and laboratory directors, like
17 yourself, prevent contamination of evidence?

18 A: That is part of what they have addressed.

19 Q: Now, I wanted to talk a little bit about how and what
20 you actually do with a DNA sample. Okay? So just
21 completely to show the jury, when Mr. Heyward willingly gave
22 his DNA to Inv. Clarke, what would he have done with it
23 next?

24 A: What would Inv. Clark have done with it?

25 Q: Yes.

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- 1 A: He would have walked it in to the evidence room.
- 2 Q: Okay. And then how would you have come in contact with
- 3 Mr. Heyward's willingly given sample?
- 4 A: It would have been brought upstairs to the laboratory
- 5 and I would have been part of the analysis about halfway
- 6 through after it gets processed by a technician.
- 7 Q: Okay. Now, I want to -- I want to take a step back and
- 8 I want to talk about what -- what happens when you process
- 9 it. Okay? So the first step that you do is called
- 10 extraction; correct?
- 11 A: That's one of the steps, yes.
- 12 Q: Okay. And extraction is when you take, let's say, this
- 13 buccal swab, the swab that's inside of this thing, and you
- 14 turn it into a consistency that you can use to test?
- 15 A: I wouldn't put it that way.
- 16 Q: Okay.
- 17 A: You don't turn it into anything.
- 18 Q: Okay. I don't mean change anything about it, but
- 19 explain what -- how do you get a sample from a dry swab?
- 20 A: So you just take a pair of scissors and you make a
- 21 cutting of the cotton part of the swab and you put it in a
- 22 small tube.
- 23 Q: Okay. And that's the extraction?
- 24 A: No. Then to extract it, you add some reagents in an E
- 25 block formula.

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1 Q: Okay.

2 A: And then there's a series of other reagents that are
3 used to extract the DNA.

4 Q: Okay. So once you extract it, you have to figure out
5 how much actual DNA is in the sample; correct?

6 A: That is correct.

7 Q: Because if it's too small of an amount of DNA, it's not
8 a good sample?

9 A: I wouldn't say that. It gives us an idea for the next
10 step of the analysis how much we have there. It's required
11 to know how much for the next step. But too small -- I
12 wouldn't use the word you used to describe it, when it's too
13 small, I guess.

14 Q: Okay. If it's a low copy number, there's not enough
15 there?

16 A: Okay. Well, let me just kind of try to clarify.

17 Q: Okay.

18 A: So we quantitate after the extraction and then, if it's
19 too much DNA there, we've got to dilute it for the next
20 step.

21 Q: Okay.

22 A: If it's a very small amount, we just use it straight
23 up. We don't dilute it.

24 Q: Okay. So you go from figuring out how much is there
25 and there are basically two avenues; right?

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1 A: That's correct.

2 Q: You can either run it through the amplification stage
3 or you can send it basically to the machine?

4 A: No. It would be either you amplify it or you don't
5 amplify it.

6 Q: Okay. And if you don't amplify it, what happens with
7 the sample?

8 A: If you don't amplify it, that means you got no DNA from
9 it.

10 Q: Okay. So if you don't amplify it, you can't use it?

11 A: You're done.

12 Q: And now, once you amplify it, you get something called
13 post-amplification product; correct?

14 A: You can call it that, yes.

15 Q: And once -- I'm sorry. Once you get this post-
16 amplification product, you begin to prepare it for testing
17 through the electropherogram machine; correct?

18 A: I probably wouldn't use those words either, but yeah,
19 part of the amplification process is basically you have a
20 mixture of DNA fragments and you need to separate those and
21 visualize them. So you use a technique called
22 electrophoresis to do that, and your result is an
23 electropherogram.

24 Q: Okay. I'm sorry. But when you put it through the
25 electrophoresis machine, in between getting this product and

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1 putting it through the machine, you have to load it onto
2 something; correct?
3 A: Yes.
4 Q: And what you're loading it onto is something called a
5 well tray; correct?
6 A: You can use that, yes.
7 Q: Okay. And that's, in fact, what you used in this
8 sample right here?
9 A: We call it --
10 Q: Or in this plate?
11 A: -- a plate, yes.
12 Q: Yes. Okay.
13 THE COURT REPORTER: What do you call it?
14 THE WITNESS: A plate.
15 BY MR. KRZYSTON:
16 Q: Now, in this case, you used STR testing; correct?
17 A: Correct.
18 Q: And Y-STR testing; correct?
19 A: Yes. But that is not in the correct place on your
20 chart.
21 Q: Okay. Where would it go?
22 A: That Y test is -- go up a level. It's a midterm
23 amplification.
24 Q: Okay.
25 A: So --

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- 1 Q: The Y-STR test is for the male DNA; correct?
- 2 A: Correct.
- 3 Q: And the STR test is for just generalized profiles?
- 4 A: It's for autosome DNA, the non-sex DNA.
- 5 Q: Okay.
- 6 A: But again, your chart is wrong.
- 7 Q: Right. So again, you're up here at amplification?
- 8 A: Correct.
- 9 Q: All right. I want to talk to you about how, again, you
- 10 came in contact with Mr. Heyward's DNA. This homicide
- 11 happened on October 11th, 2015; correct?
- 12 A: Yes. 10/11/15 is the incident date.
- 13 Q: And Mr. Heyward, as well as you are aware, was arrested
- 14 on October 13th?
- 15 A: I have no idea.
- 16 Q: Okay. You encountered a -- when did you start analysis
- 17 -- excuse me -- analyzing all of the DNA material in this --
- 18 in this case?
- 19 A: I initiated analysis on 10/13/15.
- 20 Q: Okay.
- 21 A: October 13th.
- 22 Q: And that's two days after the homicide?
- 23 A: I think so, yes.
- 24 Q: Okay. So you had done the extraction on 10/13?
- 25 A: No. I initiated it on 10/13. That means the samples

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1 were cut for the extraction. Some of them were extracted on
2 the 13th. In fact, most of them were extracted on the 14th
3 -- on the 13th. I have one on the 14th. I have two on the
4 15th. So they were all done, extracted, on that date.

5 Q: Okay. But by the 15th, you had completed doing
6 everything you needed to do to run it through the machine?

7 A: No. I initiated the extraction, but I didn't have it
8 extracted, quantitated, amplified, and separated. So I
9 guess you need to specify what machine.

10 Q: Okay. The electrophoresis machine?

11 A: Yes. So that -- that particular component of the
12 analysis took place on the 15th and the 16th and then also on
13 the 23rd and the 20th, the actual electrophoresis.

14 Q: So inside of two weeks from the homicide, you had --
15 you had performed all the analysis that you needed to?

16 A: It looks pretty much -- that's pretty accurate.

17 Q: And that's not a typical state of affairs in the
18 Richland Sheriff's Department lab, is it?

19 A: No. But two weeks --

20 Q: Two-week turnaround time?

21 A: We have plenty of cases that can turn around in two
22 weeks.

23 Q: I want to talk a little bit about the items of DNA that
24 you tested. Okay? Item 73. Now, that's a swab from Ms.
25 Tollison's neck; correct?

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- 1 A: That's correct.
- 2 Q: And in terms of your quantification -- excuse me --
- 3 your quantification step, how much actual DNA was present in
- 4 the sample?
- 5 A: Item 73?
- 6 Q: Yes, sir.
- 7 A: Give me one minute.
- 8 Q: Take your time.
- 9 A: .10 nanograms per microliter.
- 10 Q: Okay. So that's one nanogram?
- 11 A: No. .1 nanograms per microliter.
- 12 Q: Okay. How many -- what is a nanogram?
- 13 A: It's about a billionth of a gram.
- 14 Q: Okay. So we're talking about a pretty small amount of
- 15 material?
- 16 A: That's correct.
- 17 Q: Okay. And in this analysis, you didn't do something
- 18 called a duo quant analysis, did you?
- 19 A: No.
- 20 Q: Okay. And had you done duo quant analysis, you would
- 21 be able to determine the actual percentages that the major
- 22 contributor contributed versus the minor contributor;
- 23 correct?
- 24 A: No. That is not correct.
- 25 Q: That's not correct? Okay. Are you sure about that?

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- 1 A: Yeah, I'm sure. It tells you how much total DNA and
2 how much male DNA. It doesn't tell you major/minor
3 contributor.
- 4 Q: Okay. And in this sample, we had two contributors?
- 5 A: In Item 70?
- 6 Q: Three.
- 7 A: Three? 73 was a mixture.
- 8 Q: And the major again is?
- 9 A: The major was Alice Tollison and the minor matched
10 James Heyward.
- 11 Q: Okay. So that's two people?
- 12 A: That's correct.
- 13 Q: And Ms. Tollison is a female?
- 14 A: Yes.
- 15 Q: And Mr. Heyward you assume is a male?
- 16 A: Yes.
- 17 Q: So again, by the powers of deduction, you would have
18 been able to determine the percentages of DNA there?
- 19 A: It's not quite that easy, not from the quantitation
20 method you're talking about.
- 21 Q: Now, the STR testing on Item 73, that's where you said
22 Mr. Heyward's alleles were present?
- 23 A: He matched the minor contributor, yes.
- 24 Q: Okay. But when you did the Y-STR testing, you said
25 that those results were inconclusive; correct?

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1 A: On 73?

2 Q: Yes, sir.

3 A: That's correct. 73 was inconclusive.

4 Q: Okay. And again, the Y-STR sample isolates -- or the
5 test isolates the male DNA sample on the item?

6 A: It attempts to do that, yes.

7 Q: Okay. I want to talk about Item 77.2, which is a piece
8 of the murder weapon, the draft stopper, if you will.

9 That's the item that the State alleges strangled Ms.
10 Tollison; correct?

11 A: I don't -- I don't -- I don't recall.

12 Q: Okay.

13 A: I don't know.

14 Q: You may not be privy to that information. And again,
15 there's no actual way of determining what percentage the
16 major versus minor contributor gave to the sample?

17 A: There's a way to do it, yes, but --

18 Q: Not in this analysis?

19 A: I beg your pardon?

20 Q: Not the way that we did this --

21 A: Not in what we used this -- not in the analysis that we
22 used in 2015; correct.

23 Q: Okay. Now, the STR typing on this individual item,
24 again, said Mr. Heyward was possibly there?

25 A: What item number?

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- 1 Q: 77.2. It's the murder weapon.
- 2 A: 77.2, major matched to Alice Tollison and the minor
- 3 contributor matched James Heyward.
- 4 Q: Okay. But when you ran the Y-STR testing, he was
- 5 excluded as being a possible contributor?
- 6 A: That's correct. It didn't have enough information to
- 7 include him.
- 8 Q: Okay. Now, I want to talk about Item 15. That is the
- 9 door handle at the exterior point of entry. So the point
- 10 where somebody would have come in the house. You found
- 11 eleven male alleles here; correct?
- 12 A: Item 15?
- 13 Q: Yes, sir.
- 14 A: I did not -- that's not a result that I would have
- 15 recorded. Eleven male alleles?
- 16 Q: Well, did you find unknown male DNA there?
- 17 A: Yes.
- 18 Q: Okay. Do you know how many alleles were present in
- 19 that sample?
- 20 A: I mean I don't have it off the top of my head. I
- 21 didn't count how many alleles in the sample, no.
- 22 Q: Would you believe --
- 23 A: Item 15?
- 24 Q: Yes, sir.
- 25 A: The total number of alleles in the entire sample?

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1 Q: Yes.

2 A: Fifty.

3 Q: Fifty? All right. Did you upload that into CODIS?

4 A: Item 15? I don't believe that was done. Let me see.

5 No, I did not put Item 15 into CODIS.

6 Q: Okay. Did you -- are you familiar with something
7 called a keyboard search?

8 A: Yes.

9 Q: Can you explain for the jury what a keyboard search is
10 of the CODIS system?

11 A: A keyboard search is when you just enter the profile
12 via your keyboard and search or request a search from the
13 state in the same manner --

14 Q: Right.

15 A: -- versus inputting it and letting it go through the
16 normal upload and search method.

17 Q: So theoretically, if you had unknown DNA found, you
18 could run a keyboard search and potentially find who put
19 that DNA there?

20 A: I could, if it's -- if it meets eligibility. There's
21 eligibility rules to be able to put stuff in the CODIS
22 database. So if it doesn't meet eligibility, I can't put it
23 in either way, whether it's keyboard or through the regular
24 upload.

25 Q: Right. So there are eligibility requirements to upload

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1 a sample to CODIS; correct?

2 A: That's right.

3 Q: And the reason that that is there is so that they don't
4 get a bunch of partial junk profiles in CODIS; correct?

5 A: That's one reason. The other reason is if you put a
6 profile in that's too weak, it will return a bunch of
7 frivolous candidate matches, so to speak.

8 Q: Okay.

9 A: You have to have enough information to put in to give
10 you back good information.

11 Q: And a keyboard search would allow you to query those
12 results to see if you got back one or two people or maybe 50
13 people?

14 A: Again, it's all based on eligibility. I haven't -- not
15 looking at the sample. You asked me total alleles. So
16 that's what I gave you. I haven't looked at the sample to
17 determine how many of those are from an unknown male and if
18 those would be eligible for a keyboard search.

19 Q: Now, you determine the criteria for a keyboard search?
20 It's basically in your discretion?

21 A: We have some guidelines and, based on our experience,
22 yes.

23 Q: Okay. So again, the standards come from you?

24 A: No, I didn't say it that way.

25 Q: Okay. Item 16. That's an interior door handle at the

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1 point of entry, and you found unknown DNA on that sample;
2 correct?

3 A: Correct. The same as 15.

4 Q: Okay. And you didn't upload those to CODIS?

5 A: No. Again, I'm only going to upload something to CODIS
6 that is eligible.

7 Q: Okay.

8 A: I mean if it wasn't an eligible profile -- and the only
9 two eligible profiles that I put in CODIS were I think 51
10 and 69.

11 Q: Okay.

12 A: The other ones -- if it didn't say I uploaded them into
13 CODIS, I didn't. They either weren't -- they weren't
14 eligible or there wasn't enough DNA there, which means they
15 weren't eligible.

16 Q: Okay. And you didn't perform a keyboard search on this
17 one either?

18 A: That's not how we usually handle those.

19 Q: Okay. So we'll never know, very likely, who that DNA
20 came from?

21 A: No. We didn't -- we didn't have anybody submitted as a
22 standard to be compared and included or excluded.

23 Q: Right. If you went back to the case?

24 A: Right. So to say we would never know is not accurate.
25 We would know if provided a standard.

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1 Q: Right. But are you likely to ever run or look at this
2 case again?

3 A: I don't know.

4 Q: Okay. Item 47. That's a jewelry box; correct?

5 A: 47? Yes, swab from a jewelry box.

6 Q: And are there 16 unknown male alleles on that item?

7 A: Again --

8 Q: You hadn't counted the alleles?

9 A: That's not something we -- the total number of alleles
10 is an irrelevant thing for us and, again, so I don't have
11 that. I can count them for you, but I don't know the answer
12 to that question about how many.

13 Q: Okay. But an unknown male to be sure has his DNA on
14 this item?

15 A: On 47?

16 A: Correct.

17 A: Yes.

18 Q: Okay.

19 A: There is an unknown male, and it doesn't match any
20 standards in the case.

21 Q: Okay. No CODIS on -- no CODIS upload?

22 A: And it says there this case -- item -- contributor from
23 this unknown male doesn't match any standard submitted, but
24 it's not eligible for the CODIS -- for the Combined DNA
25 Index System. So the same there. There was no CODIS upload

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1 of this item.

2 Q: Okay. And you never conducted a keyboard search on
3 that either?

4 A: No.

5 Q: And again, we'll probably never know who put that
6 there. Item 50 is a jewelry box from the guest bedroom, and
7 that's a weak sample; correct?

8 A: A weak sample?

9 Q: Yes.

10 A: I don't record it as a weak sample.

11 Q: Is it a -- is there a lot of genetic material there?

12 A: Define a lot.

13 Q: I think you would have to do that. Relative to what
14 you would have seen in your experience?

15 A: We don't use the terms weak or partial. We report the
16 results as we get them. So it was a DNA result.

17 Q: Okay. And there's a Y chromosome there?

18 A: Yes, there is.

19 Q: Okay. So that's an unknown male as well?

20 A: There is -- Item 50 was a mixture, correct. And Alice
21 -- Alice Tollison couldn't be excluded, and the other
22 contributor is an unknown male. It doesn't match. It's not
23 eligible for CODIS is how it's reported.

24 Q: All right. No keyboard search? No CODIS upload
25 obviously?

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- 1 A: No.
- 2 Q: Item 51, another jewelry box. Male DNA found; correct?
- 3 A: Item 51 is reported the following way. The DNA result,
- 4 from 51 is a mixture. Alice Tollison can't be excluded.
- 5 The other contributors do not match any standards and it
- 6 will -- 51 will be entered into CODIS. It doesn't say that
- 7 it's a male. There's no type of Y chromosome showing up on
- 8 51, the Y indicating locus.
- 9 Q: Okay. And you performed Y-STR testing on that item?
- 10 A: Yes, I believe I did.
- 11 Q: And that testing excluded Mr. Heyward as a potential
- 12 contributor to that mixture?
- 13 A: That's correct.
- 14 Q: Okay. Item 74. That is a swab from Ms. Tollison's
- 15 chin; correct?
- 16 A: Correct.
- 17 Q: And the STR test showed Ms. Tollison?
- 18 A: You said 74?
- 19 Q: Yes, sir.
- 20 A: That's correct. No DNA profile other than that of the
- 21 victim was found on item 74.
- 22 Q: And you conducted Y-STR testing on that item as well?
- 23 A: Yes.
- 24 Q: It showed unknown male DNA?
- 25 A: It's reported results from 74 do not match James

DR. GRAY AMICK - CROSS BY MR. KRZYSTON

1 Heyward.

2 Q: Okay. So he's excluded as a potential contributor to
3 that item?

4 A: On 74. Correct.

5 Q: And no CODIS upload on that?

6 A: That's correct.

7 Q: And no keyboard search?

8 A: That's correct.

9 Q: Okay. Item 71. That's another piece of the murder
10 weapon; correct?

11 A: 71 is --

12 Q: I'm sorry. You might know it as the draft stopper.

13 A: 71?

14 Q: Yes, sir.

15 A: Silver watch and bracelet.

16 Q: I'm sorry. You're correct. I'm wrong there. You
17 looked at the STR results on the gold watch or the silver
18 watch? I'm sorry.

19 A: Yes.

20 Q: And that showed Ms. Tollison?

21 A: That's correct.

22 Q: And the Y-STR test showed the mix -- showed unknown
23 male DNA?

24 A: No. In 71, no Y-STR result was developed on 71.

25 Q: Okay. But Mr. Heyward was excluded from being the

DR. GRAY AMICK - CROSS BY MR. KRZYSTON

1 source of that DNA?

2 A: No. There was no profile developed on the Y-STR test
3 for that. So I can't make that conclusion. We got no Y-
4 STR.

5 Q: I must've gotten my notes mixed up here. Let's move on
6 to Item 80, which is the yellow phone cord.

7 THE COURT REPORTER: 80?

8 MR. KRZYSTON: Yes, ma'am.

9 BY MR. KRZYSTON:

10 Q: The yellow phone cord?

11 A: Yeah.

12 Q: And that was the phone cord used to tie Gwyn F [REDACTED]'s
13 feet; correct?

14 A: I don't know.

15 Q: Okay. Here, the Y-STR results show the DNA of an
16 unknown male; correct?

17 A: That's correct. The Y-STR result did not match James
18 Heyward.

19 Q: Okay. And no CODIS upload on that profile?

20 A: That's correct.

21 Q: And no keyboard search?

22 A: That's correct.

23 Q: So we'll probably never know the male on that either?

24 A: Again, if you submitted additional standards, we may
25 find that out. So I'm not going to agree to that statement.

DR. GRAY AMICK - CROSS BY MR. KRZYSTON

1 Q: Okay. So we might find out who was on the cord that
2 tied the victim up. Item 14. That's another swab from a
3 door handle. I believe the sunroom door, if I'm not
4 mistaken?

5 A: Swab from interior glass door handle.

6 Q: Okay. And you found foreign alleles there?

7 A: Item 14 didn't match any standard submitted in this
8 case.

9 Q: Okay.

10 A: And it's not eligible for CODIS.

11 Q: So there was an unknown DNA profile on that result?

12 A: That's right.

13 Q: And like you said, not eligible; so you didn't upload
14 it to CODIS?

15 A: That's correct.

16 Q: And you didn't do a keyboard search?

17 A: Correct.

18 Q: Is it fair to say that we probably will never know who
19 was there either?

20 A: Okay.

21 MR. KRZYSTON: Court's indulgence, Your Honor.

22 Actually, I do have one more question.

23 BY MR. KRZYSTON:

24 Q: Ms. Campbell came up here and kind of touched the
25 podium in front of you and asked would she leave DNA on that

DR. GRAY AMICK - CROSS BY MR. KRZYSTON

- 1 podium; correct?
- 2 A: She did ask that, yes.
- 3 Q: And you said basically that it depends?
- 4 A: I said you may or you may not.
- 5 Q: Okay. Now, in your experience, if somebody uses a
- 6 ligature with their bare hands, wrapped it around somebody's
- 7 neck, and engages in a violent struggle that ends the
- 8 victim's life, do you think there would be DNA on the
- 9 ligature?
- 10 A: There may or there may not.
- 11 Q: And the things that determine whether or not there is
- 12 DNA on there and how much is on there are friction; correct?
- 13 A: That's one thing, yes.
- 14 Q: What are some other things?
- 15 A: The state of the person sweating or not sweating, the
- 16 ligature, the room, whether they shed DNA or not, the item
- 17 itself, stuff like that.
- 18 Q: But a 2- to 3-minute struggle with bare hands that
- 19 strangled somebody to death, you would expect to see
- 20 somebody's DNA on there?
- 21 A: Again, you may or may not.
- 22 Q: And Item 77.1 and 77.2 have the presence of an unknown
- 23 male?
- 24 A: 77.2 was Alice Tollison and James Heyward.
- 25 Q: Oh, I'm sorry. 77.1?

DR. GRAY AMICK - REDIRECT BY MS. CAMPBELL

1 A: 77.1 was Alice Tollison and an unknown minor
2 contributor.

3 Q: Remind the jury what that Y-STR results on 77.2 were?

4 A: 77.2 was a mixture from the Y-STR test, and James
5 Heyward was excluded.

6 MR. KRYZSTON: Thank you. No further questions.

7 THE COURT: Redirect, Solicitor?

8 MS. CAMPBELL: Yes, sir.

9 REDIRECT EXAMINATION

10 BY MS. CAMPBELL:

11 Q: 77.2, as you testified earlier, when you did the Y-STR,
12 whose alleles were present and you just couldn't report it
13 pursuant to being conservative?

14 A: Well, 77.2 was a mixture and what I haven't been asked
15 is to produce statistics on the mixture. So we do not do
16 statistics on a mixture on a Y profile. So if we have a Y
17 profile that's a mixture and I can't exclude somebody, it
18 either reports as inconclusive or possibly excluded because
19 I cannot do a statistic on that type of a sample.

20 So in this sample, I excluded him because his profile
21 at some points was very weak and I excluded him based on
22 that.

23 Q: To benefit him? In his benefit?

24 A: Well, based on the parameters that we use to report
25 those. His alleles were present pretty much throughout the

LT. KEVIN ISENHOWARD - DIRECT BY MS. CAMPBELL

1 Q: Okay. And in reviewing this video, were you able to
2 find Mr. Heyward anywhere on it?

3 A: No.

4 Q: But y'all went and got it because of what he said?

5 A: Yes.

6 Q: There's also been reference to a CrimeStoppers tip?

7 A: Yes, ma'am.

8 Q: What day did that come in?

9 A: That was on the 19th of October. So several days after
10 the arrest, we got a CrimeStoppers tip.

11 Q: And were you able to review a jail call?

12 A: I was.

13 Q: And who was that jail call between?

14 A: It was between Mr. Heyward and his wife, Latasha, and
15 essentially the content of the call is that she tells him
16 that --

17 MS. GOODE: Objection, Your Honor.

18 THE COURT: Solicitor?

19 MS. CAMPBELL: Your Honor, in argument, they brought up
20 the CrimeStoppers tip and in this, Ms. Heyward is -- that
21 they're implying third-party guilt. Ms. Heyward talks about
22 why she made the call, the CrimeStoppers tip, to accuse
23 someone else to divert attention.

24 THE COURT: Overruled.

25 BY MS. CAMPBELL:

LT. KEVIN ISENHOWARD - DIRECT BY MS. CAMPBELL

1 Q: Go ahead.

2 A: The call was she was telling him that she's got him,
3 she's got him, don't worry, that she'd called CrimeStoppers
4 and tried to blame a man named Derek, that he's the one that
5 committed the murder, and she knew that because he had
6 bruises and scratches on his hands and that if we didn't
7 investigate based on that, she was going to call Sheriff
8 Lott and tell him, and if he didn't do anything, she was
9 going to go to the State paper and tell them to put pressure
10 on the sheriff to make this investigation. We did go and
11 talk to him. It was obvious that they were in collusion to
12 try and throw us off, but we did interview him and he's
13 never been to the victim's home.

14 Q: And --

15 A: Very nice man.

16 Q: She basically said she's got his back?

17 A: Yes.

18 Q: Trying to divert to someone else?

19 A: Correct.

20 Q: Is that unusual?

21 A: Happens all the time. We get them in daily.

22 Q: I also want to show you what's been marked as State's
23 Exhibit 328. One of the charges that you've charged him
24 with was possession of a weapon by a person convicted of a
25 crime of violence?

DR. MICHAEL SPENCE - DIRECT BY MR. KRZYSTON

1 I communicate with who either work in these labs where they
2 do outsource testing or there are people who are researching
3 forensic biology DNA, and I send papers to them. They send
4 papers to me.

5 Q: And do you have -- besides this one, do you have any
6 other open forensic files or DNA cases pending?

7 A: Right now, I have 30 or 35 of them.

8 Q: And as part of your work and all that, how many times
9 have you testified and been qualified to testify as an
10 expert in DNA?

11 A: With the Indiana State Police, I testified on 16
12 occasions. Since I've become a forensic consultant, I've
13 testified an additional 72 times. So that's 88, and this is
14 my 89th time on the witness stand.

15 Q: Your one shot at Dr. Amick?

16 MR. KRZYSTON: At this point, we would offer the
17 defense expert or we would offer Dr. Spence as an expert.

18 THE COURT: Solicitor?

19 MS. CAMPBELL: Nothing at this time.

20 THE COURT: All right. Thank you. Again, ladies and
21 gentlemen, y'all have heard my charge on an expert witness,
22 and he's been qualified by the Court as an expert in
23 forensic DNA analysis. Is that correct?

24 MR. KRZYSTON: I believe so, Judge.

25 THE COURT: All right. Is that what you're offering

DR. MICHAEL SPENCE - DIRECT BY MR. KRZYSTON.

1 This is improper and it's -- it's introducing an
2 enormous risk, unnecessary risk, of cross-contamination from
3 defendant or victim into any of these evidence samples, and
4 this is not proper procedure. These should not be on the
5 same plate with the evidence.

6 Q: And are you saying that that set up is what's caused or
7 did it cause contamination events from Mr. Heyward's DNA
8 sample there in what is, I think, F-4 of the well?

9 A: I have no idea if there's been any cause of
10 contamination from doing this, but it is an enormous risk of
11 that and that can happen. What I'm saying is is that if you
12 then find mixtures on certain -- certain evidence samples,
13 there's no way of telling whether that mixture came from the
14 original sample and from that place on that item or if the
15 mixture came from a cross-contamination event.

16 If you don't put the reference samples on the same
17 plate, well, that removes all the mystery. If you see a
18 mixture then, you can be fairly certain that that's a
19 genuine mixture, but not when you're pipetting these samples
20 from known reference samples at the same time in the same
21 place only about an inch apart.

22 Q: Explain for the jury what is pipetting?

23 A: Pipetting is what you have to do to transfer not just
24 the DNA into each one of these wells, but you also have to
25 transfer little liquid portions of the machinery that makes

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1 a real possibility that he's not guilty, you must give him
2 the benefit of the doubt and find him not guilty. Proof
3 that leaves you firmly convinced.

4 Now there are a number of charges, so bear with me
5 because they each have their own elements, and the first
6 one I'll start with is murder because to be probably the
7 most serious charge in our state it has perhaps one of the
8 shortest definitions. Murder is the killing of any person
9 with malice aforethought, either express or inferred. Now
10 "malice" and "aforethought" these terms have very technical
11 legal definitions and certain things regarding them. I'm
12 gonna go through several which the judge will charge you
13 with.

14 Malice may not exist for any appreciable period of
15 time before the commission of the act of the killing
16 occurs. Malice may be conceived at the very moment the
17 fatal blow is given. It is sufficient in the law if the
18 combination of the evil intent and the act produced the
19 fatal result. But when he choked her out, grabbed her arm,
20 turned purple, and, I submit, then came back to finish her
21 off with the draft-stopper, the ligature, that's malice.
22 It reeks of malice.

23 Now it says that malice may be express or inferred.
24 These terms "express" and "inferred" do mean not different
25 kinds of malice, but merely the manner in which malice may

1 be shown to exist; that is either by direct evidence or
2 from an inference of the facts and the circumstances which
3 are proved. Express malice is shown when a person speaks
4 words which express hatred or ill will for another or the
5 person has prepared beforehand to do the act which was
6 later accomplished, for example, lying in wait for a
7 person, or any other acts of preparation going to show that
8 the deed was within the Defendant's mind would be express
9 malice. Malice may be inferred from showing a conduct of
10 total -- from conduct showing a total disregard for human
11 life. And I emphasize that last sentence. Malice may be
12 inferred from conduct showing a total disregard for human
13 life. I don't believe there's any doubt that there was
14 malice in this case. Malice does not necessarily impart
15 ill will towards the individual injured; although here I
16 submit that it does, but it signifies where there's a
17 general malignant recklessness of the lives and safety of
18 others, a condition of the mind and the heart regardless of
19 social duty and fatal events or mischief.

20 So as I said, maybe he didn't come there to kill her,
21 I submit he was prepared to. He didn't have to use a gun
22 because he preyed on someone he knew he could, someone
23 elderly, who used a walker, someone who he could easily
24 overpower, and I submit that gun was just in case if he
25 encountered something that he couldn't overcome. But

1 little girl. She wasn't there before. She wasn't supposed
2 to be there. She said saw a man carrying a duffle bag and
3 he told me to sit. What else was she gonna do? It's clear
4 that she's scared, it's clear that this -- somebody's after
5 her grandmother because he's demanding money and jewelry
6 from Grandma Alice. She said she didn't have any. He took
7 out the pistol, it was gold and rusty with two pistol
8 shots, pointed it and put it on the table. You know,
9 because they made a big deal about the gun and the pistol
10 shots, I thought I had a better picture here, you know,
11 oh, back to the untrained eye, and you have the actual gun
12 before you, you'll have it back there with you, but the
13 pistol shots she was referring to, you can see the gold
14 cartridges that she describes that would be facing her
15 from the revolver. Maybe this is them. This is the
16 part that would be facing her. That's what she saw outside
17 the revolver. And she got it pretty right. You heard
18 testimony from David Collins. It's kind of a unique
19 firearm. It's old and rusty, but it's operable. And it's
20 pretty distinct. It's not like your nine millimeter Glock
21 or a handgun, just a black handgun that she saw on that
22 table, but she's able to see it. And where's that gun
23 found? In his room in his drawers.

24 He rolled up his sleeve and he put his arm around her
25 neck and he strangled her. Now they're gonna make a big

1 **THE CLERK:** Yes, Your Honor.

2 In the Court of General Sessions of the Fifth Judicial
3 Circuit in the matter of the State of South Carolina versus
4 James Heywood, a/k/a Abdoul Muslim, as to the Indictment
5 2015-GS-40-6020, murder, victim Alice Tollison, we, the
6 jury, unanimously find the Defendant guilty.

7 As to the Indictment 2015-GS-40-6017, burglary in the
8 first degree, victim Alice Tollison, we, the jury,
9 unanimously find the Defendant guilty.

10 As to the Indictment 2015-GS-40-6014, armed robbery,
11 victim Alice Tollison, we, the jury, unanimously find the
12 Defendant guilty.

13 As to the Indictment 2015-GS-40-6018, kidnapping,
14 victim Alice Tollison, we, the jury, unanimously find the
15 Defendant guilty.

16 As to the Indictment 2015-GS-40-6019, kidnapping,
17 victim Gwyneth F [REDACTED], we, the jury, unanimously find the
18 Defendant guilty.

19 As to the Indictment 2015-GS-40-6016, assault and
20 battery first degree, victim Gwyneth F [REDACTED], we, the jury,
21 unanimously find the Defendant guilty.

22 As to the Indictment 2015-GS-40-6012, pointing and
23 presenting a firearm, victim Gwyneth F [REDACTED], we, the jury,
24 unanimously find the Defendant guilty.

25 As to the Indictment 2015-GS-40-6022, unlawful

1 possession of a firearm by a person convicted of a crime
2 of violence, we, the jury, unanimously find the Defendant
3 guilty, and it is signed by the foreman and dated 7-3-17.

4 Mr. Foreman, is this your verdict and the verdict of
5 the entire jury?

6 **FOREPERSON:** Yes.

7 **THE CLERK:** Thank you.

8 **THE COURT:** Thank you, Madam Clerk. Any motions for
9 the jury in regards to the State?

10 **MS. McDUFFIE:** No, Your Honor.

11 **THE COURT:** The defense?

12 **MR. KRZYSTON:** Request polling.

13 **THE COURT:** All right. Madam clerk, will you, please,
14 explain the polling procedure to the jury panel and poll
15 the jury?

16 **THE CLERK:** Yes, Your Honor.

17 Ladies and gentlemen of the jury panel, Mr. Foreman,
18 I'm gonna ask each of you two questions and I need you to
19 answer yes or no to each question. Juror Number 5 --

20 **THE COURT:** And if you would raise your right hand for
21 me when your number's called. Thank you.

22 **THE CLERK:** Juror Number 5, were these your verdicts?

23 **JUROR:** Yes.

24 **THE CLERK:** Are they still your verdicts?

25 **JUROR:** Yes.

1 believe the mother said, she'd said he stole her heart,
2 her happiness and others, and in the future, her innocence.

3 All right. 2015-GS-40-06020, James Heyward, as to
4 the charge of murder, having been convicted by the jury,
5 the Defendant is committed to the State Department of
6 Corrections for a determinate term -- an indeterminate term
7 of life without parole.

8 As to the 2015-GS-40-06017, James Heyward, as to
9 burglary in the first degree, the Defendant is committed
10 to the State Department of Corrections for a term of life
11 without parole. That is consecutive.

12 As to 2015-GS-40-06014, attempted armed robbery,
13 the Defendant's committed to the State Department of
14 Corrections for a determinate term of thirty years. That
15 is consecutive.

16 2015-GS-40-06018, James Heyward, kidnapping as to
17 Victim Alice Tollison, having been also convicted of murder
18 in this proceeding, no sentence is imposed.

19 As to 2015-GS-40-06019, James Heyward, kidnapping as
20 to Victim Gwyneth F [REDACTED], the Defendant is committed to
21 the State Department of Corrections for the determinate
22 term of thirty years consecutive.

23 2015-GS-40-06016, James Heyward, assault and battery
24 in the first degree, the Defendant is committed to the
25 State Department of Corrections for a determinate term of

1 ten years. That is consecutive.

2 2015-GS-40-06021, James Heyward, pointing and
3 presenting a firearm at a person, the Defendant is
4 committed to the State Department of Corrections for
5 determinant term of five years. That is concurrent.

6 And 2015-GS-40-06022, James Heyward, possession by a
7 person of an unlawful weapon having been convicted of a
8 crime of violence, the Defendant is committed to the State
9 Department of Corrections for a determinant term of
10 five years.

11 I have also indicated on the kidnappings that neither
12 involved a sexual offense.

13 Thank you. Thank you very much. The last charge is
14 concurrent.

15 Thank you. Thank you very much. Sheriff, Mr. Heyward
16 is in the custody of the Alvin S. Glenn Detention Center.
17 Thank you.

18 **MS. McDUFFIE:** Thank you, Your Honor.

19 **MS. SIMPSON:** Thank you, Your Honor.

20 **THE COURT:** Thank you, Solicitors. And thank you,
21 Mr. Krzyston and Mr. Ruffin and Ms. Goode, for all you do.

22 (Whereupon, the proceedings were concluded at
23 6:16 PM.)
24
25

1 State of South Carolina) In the Court
2 County of Richland) Of General Sessions

3 Indictment No.: 2015-GS-40-6020
4
5

6 State of South Carolina,)
7 Plaintiff.)
8 vs.) Transcript of Record
9)
10 James Heyward,)
Defendant.)

11
12
13 June 5, 2017
14 Columbia, South Carolina
15

16 B E F O R E:

17 The Honorable R. Knox McMahon, Judge.
18

19 A P P E A R A N C E S:

20 K. Luck Campbell, Assistant Solicitor
21 Joanna McDuffie, Assistant Solicitor
Attorneys for the State

22 Stephen Krzyston, Esquire
23 Alicia Dyar Good, Esquire
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24 Brenda J. Sigwald, Circuit Court Reporter
25 P.O. Box 206, Jackson, South Carolina 29831

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E X H I B I T S

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MOTION HEARING

1 THE COURT: All right. What's next, Solicitor.

2 MS. MCDUFFIE: Yes, Your Honor, if it please the
3 Court. We're here today on the State of South Carolina
4 versus James Heyward. The defense counsel, Mr. Steven
5 Krzyston has filed a motion in this case to strike the -- a
6 portion of the indictment, Your Honor. This defendant is
7 charged with multiple charges to include murder, kidnapping
8 -- two counts of kidnapping, assault and battery in the
9 first degree, burglary in the first degree, armed robbery,
10 pointing and presenting, and weapons charges.
11

12 Your Honor, he is indicted as James Heyward, a/k/a
13 Abdul Muslim. Mr. Krzyston has filed a motion to strike
14 the a/k/a from the indictments.

15 THE COURT: All right. Yes, sir, Mr. Krzyston.

16 MR. KRZYSTON: Thank you, Your Honor. May it
17 please the Court.

18 Your Honor, the first thing I would ask, in the
19 packet of information that I gave to you just this morning,
20 the first two pages would be the motion to amend the
21 indictment as well as a copy of the indictments. I would
22 move to make those -- mark those as Defense 1 for Court's
23 Exhibit purposes.

24 (Defense Exhibit Number 1 was marked for
25 identification.)

1 THE COURT: Yes, sir.

2 MR. KRZYSTON: Judge, I think the best place to
3 start is a discussion on the law which kind of gives us the
4 framework for deciding these sorts of things. While
5 admittedly, this is a novel issue within the State courts
6 of South Carolina, the federal courts have been addressing
7 the issue pervasively. Judge, I think the case that best
8 describes the ideal time to include an alias is State -- is
9 called Petrilli versus United States.

10 By way of factual recitation, in the Joseph
11 Petrilli was convicted in the Eastern District of Missouri
12 for transporting stolen property in inner city commerce.
13 On the morning of February 7th, 1940, a jewelry salesman
14 was robbed of about 12 and a half thousand dollars in
15 jewelry near Texas, Dallas Texas. He was forced off the
16 road by another automobile, wherein two men emerged and
17 held him at gunpoint, forced him into the trunk of the car
18 that he was driving and took the jewels out of his car.

19 The next morning -- excuse me, forced him into the
20 trunk and drove him off. The next morning, they let the
21 jeweler go and sometime later in St. Louis, a couple of
22 police officers located a car that was traveling in excess
23 speed and attempted a stop. The car eventually crashed.
24 Mr. Petrilli was eventually located about 75 yards away.
25 There were two codefendants in the car that were charged

1 along with him that were unconscious after the wreck. And
2 in the vehicle, the briefcase of the jeweler was found with
3 the jewels.

4 At trial in the district court, the assistant
5 United States attorney read the indictment to the jury,
6 which included approximately twelve aliases. Thereafter,
7 Petrilli's counsel objected to the mention of those
8 indictments and indicated to the trial court, not that the
9 indictments were prejudicial but that the indictments --
10 that, that he would move for a dismissal if the government
11 failed to prove the existence of the aliases. The
12 government did not offer any evidence to prove the
13 existence of the aliases. He was, again, convicted in
14 court and this appeal followed.

15 Judge, if you look to headnote 8 of the Petrilli
16 case, you will note that the Court specifically said the
17 injection of the alias into the trial proceeding could only
18 have significance here as a matter of misconduct or general
19 prejudice. And here, the issue arises as a matter of
20 general prejudice, which I will talk about after we get
21 done with kind of the legal framework of things.

22 But the Court goes onto note that the preliminary
23 reading of the analysis in the indictment is not a practice
24 which should be in court in ordinary criminal prosecution,
25 but rather when, you know, that should occur.

1 Where the trial court permits the indictment to be
2 read to the jury, it would probably require that all
3 reference to the alias be omitted until their relevance in
4 the indictment and their competency in the trial have been
5 properly developed in the proceeding. Further, it notes
6 that the accused on his part may seek to protect himself by
7 such a direct request of the Court, which is obviously what
8 we're doing today.

9 Judge, there are a number of cases that are again
10 persuasive instructive. I will not go into as much detail
11 as I did about Petrilli, but I think Petrilli advocates a
12 very clear framework for when it is appropriate to use an
13 indictment -- excuse me, an alias in an indictment and when
14 it's not appropriate. Specifically in the 4th Circuit
15 United States v. Clark cited by the 4th Circuit Court of
16 Appeals, kind of mirrors the same logic that Petrilli, I
17 would say promulgated back in the 40's. And there are a
18 number of cases in the 70's as well that addressed this
19 issue.

20 But every time the federal courts address this
21 issue they do so within the context of asking whether
22 there's a factual nexus between the alias as charged in the
23 indictment and the factual allegations. And every time the
24 Court looks at it, the Court says it's proper when the
25 alias is necessary for the government to prove its case.

1 In this matter, there is no factual discovery which
2 requires the government to prove the alias. The alias is
3 completely extraneous, unnecessary for them to prove their
4 case. The only way the government becomes aware of the
5 alias in this matter is subsequently after his arrest in
6 September of 2016 they're referring to some information
7 related to a CODIS hit that was developed out of New
8 Jersey. The CODIS hit is alleged to be a match between
9 Mr. Heyward and some of the evidence that was on scene,
10 which is kind of what gave rise to some of the probable
11 cause things.

12 But the way that they developed Mr. Heyward as a
13 suspect, if you look at investigator Clark's report on page
14 5, which is contained in the disclosures I gave to the
15 Court, you will note specifically that investigator Clark
16 indicates on the morning --

17
18 MS. MCDUFFIE: Your Honor, I'm sorry to interrupt.
19 Could we have a copy of whatever you passed up to
20 the Court.

21 MR. KRZYSTON: Sure.

22 THE COURT: Page 5?

23 MR. KRZYSTON: Yes, sir. And if you will note,
24 Judge, again, on page 5 of Investigator Joe Clark's report,
25 who's the lead investigator on this matter, it notes during

1 a meeting on the case, we were informed that a partial
2 fingerprint had come back to the James Heyward with the
3 date of birth, 06/06/73. A records check on Heyward found
4 another name of Abdul Muslim and multiple prior arrests and
5 convictions in New Jersey. RCSD analyst Linda Huff, then
6 proceeded to get as much information on Heyward that was
7 possible.

8 Looking to what they developed, and it's my
9 understanding -- you can correct me if I'm wrong -- but
10 it's my understanding that the government is alleging that
11 they located Mr. Heyward originally -- they originally
12 thought the suspect was Abdul Muslim, but Investigator
13 Clark's report, obviously, indicates otherwise.

14 And if you specifically look at the AFIS worksheet
15 that was disclosed to defense by the government, you'll
16 note that Diane Bodie completed her analysis of the AFIS
17 hit on October 12th, 2015. You'll note that the result A
18 means that there has been a latent hit and that the SID
19 number or the FBI number related to the hit is 220688PA3,
20 reference to the card which was disclosed by the federal
21 bureau, I believe, with the number 220688PA3, is a 10-print
22 fingerprint card bearing the name James Heyward.

23 Going a little bit further into the information
24 that the government disclosed in discovery, you will note
25 that there is a printout from the New Jersey Department of

1 Corrections contained in the material that I gave you that
2 has a picture of Mr. Heyward. And if you look in the upper
3 right-hand corner, you see that the sheriff's office
4 printed this document on October 12th 2015. Now, the
5 Department of Corrections in New Jersey has him listed and
6 filed under James Heyward. He -- you can see right there
7 that he was released at the time that they searched this.
8 But if you go to the bottom of the page, right above, if
9 you will, the small print, you can see -- there's a little
10 section called criteria chosen. Directly under there it
11 says aliases, equals selected; sex equals M; first name
12 equals James; last name equals Heyward.

13 Now, the Department of Corrections in New Jersey
14 runs this site and runs it within a search program. And if
15 you are either incarcerated in New Jersey or within a year
16 from your release date of incarceration in New Jersey, you
17 will appear on this website and anybody, including you and
18 I, can right now go onto that website and search people
19 who's specific criteria that you select. In fact, Judge,
20 if you look a little bit deeper into the materials, you
21 will notice a search completed for one Mark Jones. They
22 just gave random names that I generated. And I selected
23 aliases so that you can see that you can manipulate the
24 criteria.

25 And the reason that I highlight this is because I

1 think when you look at search criteria, utilized by the
2 Richland County Sheriff's Department, it indicates that
3 they are not only looking for additional aliases of
4 Mr. Heyward's, but they -- the information that they were
5 working with was that his name was James Heyward.

6 Further, on the Department of Corrections website,
7 you can see that there are one, two, three, four, five,
8 six, seven, eight total aliases. They did not include on
9 the indictment any of those other aliases. So I think that
10 the argument that the government found Mr. Heyward with
11 this name initially really does not hold water. I mean, I
12 think from what we have seen, the sheriff's department was
13 operating under the presumption that their suspect was
14 James Heyward. They only later found the information that
15 he had the alias, Abdul Muslim. And again, no discovery
16 related to the actual factual allegations reference
17 anything having to do with any Abdul Muslim. The only way
18 he is referenced in the discovery is by his name James
19 Heyward. And I believe his wife calls him Rasheed.

20 So I would indicate that, again, there is no
21 factual nexus between the alias and its use in the
22 indictment. Further, Judge, there is the matter of the way
23 that the CODIS hit itself was developed. The CODIS hit --
24 he was entered into CODIS in 2002 after an arrest and
25 conviction on eluding police charge. Up near the front

1 packet of your disclosure, you'll see that I printed out
2 New Jersey Penal Code 2C:29-2, which is a resisting arrest
3 or eluding an officer. And that is the criminal statute
4 for the crime with which Mr. Heyward is charged and
5 convicted. Your Honor will note that pursuant to each one
6 of these different sections, the crime can be either a
7 disorderly person's offense, which is our equivalent of a
8 magistrate charge; it could be a crime of third degree, it
9 could be a crime of fourth degree.

10 Now, a crime in the third degree in New Jersey is
11 punishable by 3 to 5 years and a crime in the fourth degree
12 is punishable by 18 months. But I've been furnished no
13 certified conviction that is he was even convicted of a
14 felony count in the first place. And even if it was, it is
15 outside 609, it's a 10 day -- excuse me, 10-year
16 requirement or looked at period for criminal convictions.
17 So the conviction itself is inadmissible under 609. And we
18 can certainly argue about the admissibility of their
19 mentioning CODIS at a later date, but I think when you look
20 at the totality of the circumstances and even in the
21 evidence most favorable to the State it is not mentioned by
22 any of the witnesses as Abdul Muslim.

23 The information that the sheriff's department
24 originally developed and used to identify Mr. Heyward as a
25 suspect listed him as James Heyward. You can see that

1 they're searching the New Jersey State Department of
2 Corrections website for James Heyward, and I just fail to
3 think that there is any factual support for including the
4 alias in the indictment.

5 In terms of prejudicing Mr. Heyward, there's some
6 relatively significant ramifications. Judge, in
7 preparation for this hearing, I reviewed a couple of public
8 opinion polls and talked to an individual by the name of
9 Dr. Brian Levine, who actually appears on CNN and Fox News
10 quite a bit. Interesting guy. But the gist of what the
11 gallop poll in 2011 accounts for on Islamic relations in
12 2004 and 2006, it's a two year, two different public
13 opinion polls. I'm going to give you about thirteen facts.

14 The gallop poll indicated that one in four in
15 developed countries believes that Muslims are not treated
16 fairly.

17 More than half of the Muslims sited in the sample
18 do not believe that Muslims in the West are treated
19 equally.

20 About half of Americans from major religious groups
21 believe most Americans are prejudiced against Muslims.

22 At 48 percent, Muslims are more likely than any
23 other major religious group to say that have been
24 discriminated against in the past year.

25 Even though -- even among Americans who said they

1 have no prejudice towards Muslims, one-third say they have
2 unfavorable opinions about Muslims.

3 And if you go to the Counsel on American Islamic
4 relations, the 2004, 2006 poll, there is some even more
5 incendiary things that we find out. Approximately one in
6 four Americans believe that Islam is a religion of hatred
7 and violence.

8 Nearly one-fifth admits to intolerant feelings
9 toward Muslims. And when prompted -- when the sample was
10 prompted, when you hear the word Muslim, what is the first
11 thought that comes to your mind; 28 -- excuse me, 26
12 percent had negative comments along the vein of violence,
13 hatred, terrorist, war, guns, Talibans and rag heads.

14 Further, one-fourth of Americans agree with one or
15 more of the following statements: Muslims teach their
16 children to hate unbelievers; Muslims value life less than
17 other people; the Muslim religion teaches violence and
18 hatred.

19 Judge, even more is in here. About one-fifth of
20 respondents agree that the civil liberties of Muslims
21 should be restricted because of security reasons. 17
22 percent further agree that it's okay to lock up Muslims
23 just in case their plans are to commit a terrorist act.

24 So I think what we see through these public opinion
25 polls is that while maybe the people in here don't express

1 this, that a significant portion of the population at large
2 are shown to have very detrimental feelings towards
3 Muslims. And when we include that in the indictment, I
4 think we take an unnecessary risk in prejudice -- excuse me
5 prejudicing Mr. Heyward. And there's just no factual basis
6 for it. There's no need for it. So we would ask this
7 court to strike the government -- to strike the aliases
8 from the indictment.

9 Alternatively, Judge, we would be okay with you
10 ordering them not to mention it during the proceedings, not
11 to mention it during the process at all if you're not
12 inclined to have them actually amend the indictment. But
13 frankly, I think the two alternatives are really the same
14 thing.

15 THE COURT: Thank you. Thank you very much.
16 Mr. Krzyston.

17 Solicitor.

18 MS. MCDUFFIE: Thank you, Your Honor. May it
19 please the Court. Your Honor, I think that it is important
20 for you to know a little bit of background about this.
21 Your Honor, a female victim was killed in her home. Her
22 minor child, granddaughter was in the home as well. And
23 Your Honor, ultimately, it was fingerprints and then DNA
24 that led -- or fingerprints that led to this defendant and
25 then ultimately DNA as well.

1 Your Honor, significantly, and I think what he
2 fails to mention is what we're talking about here and what
3 the CODIS hit comes back to is DNA that was taken from the
4 fingernail scrapings of the victim in this case. And
5 that's what was matched through the CODIS hit. And I know
6 that Your Honor is aware that when a person is arrested,
7 they can give multiple aliases or different names and they
8 are booked in under those and ultimately their rap sheet is
9 done by fingerprints, Your Honor.

10 And so when this defendant was arrested for eluding
11 police and failing to stop, he gave the name of Abdul
12 Muslim. And that's how he was booked in and that's when
13 his DNA sample was taken. And that was what was placed
14 into CODIS and then came back as a match to the DNA that
15 was taken under the fingernail scrapings of this victim,
16 Your Honor.

17 It doesn't come back as James Heyward, a/k/a Abdul
18 or any other name. It comes back solely as Abdul Muslim.
19 And I believe that the Mr. Krzyston has handed up a copy of
20 the CODIS hit, Your Honor, but I'm happy to hand one up if
21 he hasn't.

22 THE COURT: I think I have it.

23 MS. MCDUFFIE: Your Honor, we have no problem with
24 amending the indictment if Mr. Krzyston is not going to be
25 challenging the DNA in this case, but the DNA is absolutely

1 relevant and there's a factual basis for this. This
2 defendant, as Mr. Krzyston has pointed out has, I believe,
3 eight other aliases. And we did not choose to list all
4 eight aliases in the indictment, Your Honor, we chose the
5 one that had a factual bearing to this case. And while he
6 has spoken of prejudice, Your Honor, he has not been
7 attributed any actual prejudice. I believe that anything
8 that he is concerned about could be handled through voir
9 dire, Your Honor, and at this point, it's merely
10 speculative.

11 Your Honor, under Rule 402, all relevant evidence
12 is admissible; and then 403, unless it's, you know,
13 substantially outweighed by the danger of unfair prejudice.
14 And I don't believe that Mr. Krzyston has met that burden,
15 Your Honor. I think it's absolutely relevant. Should he
16 inform us that he doesn't intend to challenge the DNA in
17 this case, then we will consent. We have no objection
18 whatsoever, Your Honor. But we think that that's a crucial
19 piece of evidence. We believe that he is going to
20 challenge the DNA expert, or Dr. Greg Amick's findings in
21 this case; and we believe that, Your Honor, the CODIS hit,
22 which confirms Dr. Amick's findings is absolutely relevant.
23 And Your Honor, it came back to the name Abdul Muslim. It
24 didn't come back to any other name, Your Honor. And we
25 believe that that is a factual basis and the reason why he.

1 is indicted under James Heyward, a/k/a Abdul Muslim.

2 THE COURT: And let me make sure I'm tracking.
3 Joseph McDuncan with the New Jersey State Police Office of
4 Forensic Services, correct.

5 MS. MCDUFFIE: Correct.

6 THE COURT: They get a -- Richland County sheriff
7 get's a CODIS hit and it was determined that it was a match
8 to the name Abdul Muslim.

9 MS. MCDUFFIE: Correct. Abdul --

10 THE COURT: Right?

11 MS. MCDUFFIE: Abdul Muslim and then they -- with
12 that -- so Your Honor, at the time he was arrested on this
13 failure to stop, that's the name that he gave when the DNA
14 sample was taken.

15 THE COURT: And then Abdul Muslim's fingerprints
16 match James Heyward's.

17 MS. MCDUFFIE: Correct.

18 THE COURT: All right. Thank you. Anything
19 further, Solicitor.

20 MS. MCDUFFIE: No, Your Honor. And again, if he
21 agrees not to challenge the DNA findings then we have no
22 issue with removing this from the indictments.

23 THE COURT: And -- and is that -- all right. Thank
24 you, thank you very much, Solicitor.

25 Yes, sir, Mr. Krzyston?

1 MR. KRZYSTON: Thank you, Judge. And let me be
2 clear because I think the DNA issue and this issue are
3 quite separate issues, frankly. And I don't think that
4 amending the indictments to exclude the alias it prevents
5 me from challenging it or -- I can't see any legal reason
6 why I would be constrained from challenging it because they
7 are forced to remove the amendment.

8 THE COURT: You don't have to waive any challenge.

9 MR. KRZYSTON: Correct.

10 THE COURT: I understand.

11 MR. KRZYSTON: So if -- and in terms of actual
12 prejudice, none of the cases in the federal circuits
13 discuss a requirement that the defendant show actual
14 prejudice. And again, the burden is on them to establish
15 the factual connection between the alias and the factual
16 allegation that was charged. And if you look further, U.S.
17 v Scholack-- excuse me -- this was a appeal from a
18 conviction in the district of Colorado in the United
19 State's District Court. Their special agents with the
20 Bureau of Narcotics and Dangerous Drugs conducted a
21 controlled buy for 8 ounces of cocaine on February the 2nd,
22 1972, at approximately 7 p.m. Agents arranged to meet
23 Randal Caldwell and during the buy Caldwell stated that he
24 had recently arrived from California with his connection
25 and the connection was en route to Caldwell's residence on

1 Chase Street in Denver.

2 Agents complete the buy in Denver and Caldwell and
3 an additional accomplice are actually arrested. From there
4 agents go back to their bureau headquarters, pick up
5 another agent and head out to the Chase Street address to
6 followup with this quote, unquote, connection. When they
7 arrived, the agents were greeted by an individual named
8 Robert Montoya, who was known to the agents through prior
9 dealings they were performing in an undercover capacity.

10 Montoya, upon approach, when asked by the agents,
11 we need to talk with Carl Stone. They had known that the
12 connection was going by Carl Stone. Montoya took them to
13 Mr. Scholack. Mr. Scholack, posing as Carl Stone began to
14 discuss the intricacies of the drug deal. The agents asked
15 why the two men that he had sent brought them 6 ounces of
16 cocaine instead of 8 and kind of as this conversation's
17 developing, Mr. Scholack becomes wise and invokes his 5th
18 and 6th Amendment Right to remain silent and to counsel.

19 And in reviewing the situation, the Court noted at
20 headnote 13 and 14 that the use of an alias was permissible
21 where there was testimony that Scholack had such a name.
22 In both Petrilli and Scholack, you can see the alias is
23 part and parcel to what the government must prove. If the
24 Court had allowed Mr. Scholack in U.S. v. Scholack to
25 exclude the alias at trial, they would be left to prove who

1 Carl Stone was without being able to show any connection to
2 Mr. Scholack. They'd be trying Mr. Stone with Mr. Scholack
3 in the room. Here that case doesn't present itself. He is
4 known to people in the community as James Heyward. None of
5 the witnesses know anything having anything to do with
6 Abdul Muslim. The only time that we hear Abdul Muslim is a
7 year later when he is -- excuse me -- is later in the
8 afternoon when the Richland County Sheriff's Department has
9 already developed evidence that James Heyward is their
10 suspect, is their guy.

11 They only find this information out later on the
12 12th once they get the AFIS hit back; once they get the
13 fingerprint card bearing James Heyward back; once they go
14 to the New Jersey Department of Corrections website and
15 look for James Heyward and notice Abdul Muslim is on there.
16 But, again, I don't think we're required to show any actual
17 prejudice. What they are required to show is, again,
18 actual connection to the alias that they are seeking to
19 include in the indictment. And they haven't done that.

20 THE COURT: All right. Thank you. Thank you,
21 Mr. Krzyston.

22 As far as the social science research that you
23 referred to, I think that could be a matter addressed by
24 the voir dire. It's the determination of whether or not
25 the whole purpose in voir dire and the questions that are

1 being asked is whether or not members of the jury panel can
2 be fair and impartial jurors in the trial of the case both
3 as to Mr. Heyward and Mr. -- and the State.

4 MR. KRZYSTON: And, Judge, specifically, again, we
5 may request either individualized or expanded voir dire at
6 a later date. I certainly do not disagree with you that
7 voir dire can address the issue of prejudice. But here
8 where the facts aren't connected, and the risk of prejudice
9 is clearly established as high, I think it's, again, worthy
10 of the strike.

11 THE COURT: Well, I -- you know, I'm just making
12 that statement. That's not actually before me now. It may
13 never be before me, it may be before whoever the trial
14 judge may be, but I think that's how you address those
15 matters and then determine if you can select a fair and
16 impartial jury in this or any other trial, whoever the
17 defendant may be.

18 This is -- this is akin to me as an evidentiary
19 issue, which should be addressed by -- in my opinion, not
20 only the rule of relevance 401 and 402, but also 403. And
21 looking at that standard of substantial prejudice could
22 outweigh probative value. If a connection to the
23 fingernail scrapings under the victim's fingernails, if it
24 -- as I track it, if it goes from a CODIS hit -- the CODIS
25 hit goes to an individual named Abdul Muslim, his

1 fingerprints go to an individual James Heyward and James
2 Heyward and Abdul Muslim are one and the same fingerprints,
3 it may be prejudicial, but it is necessary. You can't --
4 you can't lie to a jury. I mean if that's part of it and
5 it's prejudicial, it's still necessary and I kind of took
6 -- I was going to ask the question, but I kind of held back
7 because the solicitor waives challenging the DNA -- well,
8 certainly, you don't waive challenging the DNA and I
9 wouldn't expect you to.

10 Under most circumstances, I would not expect you
11 to. But it's still -- it's like a homicide that's
12 committed in prison by another prisoner. That -- you can't
13 extract that out if that's the facts. And it doesn't
14 matter when the county was notified if they were already
15 looking for James Heyward or had already developed James
16 Heyward as their suspect, if later on the DNA hits on Abdul
17 Muslim, you know, DNA could have been exculpatory to
18 whoever the James Heyward was as well as inculpatory. I
19 mean it just happens to be one and the same.

20 Okay. I would deny the motion.

21 I see the nexus between it -- between the State's
22 use of it and -- and the elements that they have to prove
23 that the crime was committed beyond a reasonable doubt and
24 that the defendant committed that crime beyond a reasonable
25 doubt.

1 MS. MCDUFFIE: Thank you, Your Honor.

2 THE COURT: And I also charge -- well, I also
3 instruct the jury, of course, that the indictment is just
4 the formal charging document. It's not evidence. It's not
5 evidence of any of the allegations contained therein.

6 Yes, sir, Mr. Krzyston?

7 MR. KRZYSTON: Your Honor, I certainly seem to
8 understand where you are leading in terms of ruling and
9 probable have ruled, but, again, I don't disagree with your
10 analysis and I think that's what you've highlighted here is
11 really a question that is to be addressed during trial
12 whether that's properly admissible within the bounds of 401
13 through 403. But I think here there is no evidentiary
14 purpose for the indictment -- for the alias appearing in
15 the indictment. Certainly we can argue to the hills about
16 it's relevance and whether it should come in and what we
17 can do to shield the jury.

18 I -- again, we certainly understand your ruling,
19 but we continue to object on the basis that there appears
20 to be no reason for the alias to appear in the indictment.

21 THE COURT: And -- and yes, sir. Well taken,
22 Mr. Krzyston, but -- I mean under the law, there's no
23 evidentiary weight or value that should be given to an
24 indictment in and of itself. Like a buddy of mine used to
25 say, well it ain't a pat on the back. I mean I understand

1 that, but it's no evidentiary weight or value to be given
2 to it whatsoever. It is the formal charging document and
3 there -- there's a nexus between Mr. Muslim and
4 Mr. Heyward.

5 If they prove it, they're one and the same. And
6 they still have to prove it, of course. But anyway, your
7 point is well taken.

8 MR. KRZYSTON: And, Judge, actually, that specific
9 issue that situation has been addressed in, I believe, U.S.
10 v. Miller, where it said the Court was properly within its
11 bounds to preclude the State from mentioning it in the
12 process until such time as they have proved it in the
13 proceedings. So if you were inclined to -- and again, if
14 you don't want to amend the indictments, we could just
15 preclude the usage of the name and avoid any risk of unfair
16 prejudice.

17 THE COURT: Well, then how am I going to do both?
18 How -- if I'm the one doing it -- I'm making an assumption
19 on that. But, how am I going to qualify the jury as to if
20 they can be fair and impartial, however you want to ask the
21 question, as to Muslim or a person of the Muslim faith or
22 what have you and they don't get the context of that. I
23 mean, I don't see how I -- those seem somewhat mutually
24 exclusive to me. Even if you kind of flip the scenario
25 where say the victim was Muslim and perhaps there would be

1 some social science reference out there that says that
2 people are less likely to be sympathetic or empathetic of a
3 victim of the Muslim faith. I don't know if there is or
4 not. But, I don't know how you flip it and not put it in
5 the full context during voir dire. Again, as I stressed, I
6 don't know.

7 All right. Thank you. Thank you very much,
8 Mr. Krzyston.

9 Anything further, Mr. Krzyston?
10 Solicitor?

11 MS. MCDUFFIE: Beg the Court's indulgence.
12 (There was a pause in the proceedings.)

13 MS. MCDUFFIE: Your Honor, may we approach?

14 THE COURT: Sure.

15 (There was a bench conference out of the hearing of
16 the jury and the Court Reporter.)

17 THE COURT: Anything further?

18 MS. MCDUFFIE: No, Your Honor.

19 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina) In the Court
2 County of Richland) Of General Sessions

3 Indictment No.: 2015-GS-40-6020
4

5
6 State of South Carolina,)
Plaintiff.)
7)

8 vs.)

Transcript of Record
9)

10 James Heyward,)
Defendant.)

11
12
13 June 22, 2017
Columbia, South Carolina
14

15
16 B E F O R E:

17 The Honorable R. Knox McMahon, Judge.
18

19 A P P E A R A N C E S:

20 K. Luck Campbell, Assistant Solicitor
Joanna McDuffie, Assistant Solicitor
21 Attorneys for the State

22 Stephen Krzyston, Esquire
Alicia Dyar Good, Esquire
23 Attorneys for the Defendant

24 Brenda J. Sigwald, Circuit Court Reporter
25 P.O. Box 206, Jackson, South Carolina 29831

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EXHIBITS

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S-8	Photograph.....	13
S-9	Photograph.....	14
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1	<u>Number</u>	<u>Description</u>	<u>ID</u>
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PRETRIAL MOTIONS HEARING

MR. KRZYSTON: All right. Judge, first of all, good morning. May it please the Court. We've taken a few things up today. We objected to the service of LWOP upon Mr. Heyward. I don't know where he is.

THE OFFICER: He went to the bathroom.

MS. CAMPBELL: Your Honor, if I may approach, these are the motions that we're going to deal with today.

THE COURT: All right.

MS. CAMPBELL: It just might be easier.

(There was a pause waiting for the defendant to come in the courtroom.)

(The defendant entered the courtroom.)

MR. KRZYSTON: All right. As I was saying, Judge, the matters that we wish to take up before you today when he -- when Ms. Campbell served him with their intention to seek life without parole, we did voice an objection. We are objecting to their service and their notice based on the fact that we believe that they haven't, A, proven that he has the necessary predicate convictions upon which to base a life without enhancement; and even if they were capable of proving the predicate conviction, we believe the text and the statute cited from New Jersey is insufficient again to base the enhancement on.

With regard to the remaining motions, we have a

1 motion to close discovery; motion to prevent shackling; we
2 wish to renew Riddle and Brady at this time; settle the
3 record on all the State's witnesses. We've discussed a
4 motion to exclude autopsy photos and photos of the
5 decedent; as well as a 404(b) motion. We are just going to
6 kind of enter kind of more of a general 404(b) notification
7 and kind of pare down what we agree that they won't go into
8 and if we have a further objection they're looking to go
9 into some stuff that we disagree with, have them bring it
10 to the Court's attention Monday morning or as they call
11 there witnesses.

12 With that, Judge, we did indicate that we were
13 going to move to the exclude a .32 caliber weapon that was
14 found at [REDACTED]. We are withdrawing that motion
15 at this time as well as the motion to exclude jewelry that
16 was located at [REDACTED].

17 THE COURT: Those are withdrawn at this time?

18 MR. KRZYSTON: Yes, Your Honor.

19 THE COURT: Let -- anything further?

20 MR. KRZYSTON: No, sir.

21 THE COURT: Let me ask you a question. I wasn't
22 tracking on your life without parole notice or served as a
23 notice. Help me see the dots so I can try to connect them.

24 MR. KRZYSTON: Certainly, Judge. The State has
25 noticed Mr. Heyward on the basis of two -- what they allege

1 are two predicate convictions. One they allege in 1995 for
2 attempted robbery out of Essex County Superior Court in New
3 Jersey.

4 THE COURT: All right.

5 MR. KRZYSTON: The other one is a 1992 aggravated
6 assault conviction. It's our contention that the
7 government has not proven that the 1995 was a first-degree
8 robbery. There's certainly some dispute. The criminal
9 comprehensive criminal index passed to us by the State with
10 discovery indicates a second-degree robbery conviction. In
11 addition to that, a conviction upon which the State is
12 relying their -- the first-degree robbery is upon Rachel
13 Walker. We have no indication other than what they've
14 given us that Mr. Heyward's ever used that alias.

15 THE COURT: Wouldn't that -- I guess the reason I'm
16 asking the question, I just wanted to make sure you didn't
17 have a constitutional issue, is that --

18 MR. KRZYSTON: We are not --

19 THE COURT: That's not ripe at this time is what
20 I'm trying to say. That whether they served a life without
21 parole notice on him, A, he might not be convicted; B, if
22 he were would he not have to then -- wouldn't it be then
23 that I would determine if the '95 or if the '92 were valid
24 convictions that would apply under our recidivist statute?

25 That's all I'm asking. That it's really not ripe

1 at this time. That you can make the motion on the record.
2 You're certainly protected, but it doesn't affect the
3 trial.

4 MR. KRZYSTON: Correct.

5 THE COURT: Okay.

6 MR. KRZYSTON: Correct. If you wish to take that
7 up post-disposition, we have no objection to that. But
8 figured out of an abundance of caution we would raise it
9 this morning.

10 THE COURT: Well, I'm not like this, many judges,
11 being judges, they don't like making decisions. And that's
12 -- none that I know of, none of my colleagues, of course,
13 but I don't have to address it, then I never have addressed
14 it at all, but you're certainly protected on the record as
15 to that and if there is an impediment to the imposition of
16 a recidivist sentence as to your client or any client, a
17 judge has to determine -- just like when someone presents a
18 plea third or subsequent property crime offense, I've got
19 to hear that to make sure I can -- to make sure they're
20 subject to be sentenced under that act.

21 MR. KRZYSTON: Yes, sir.

22 THE COURT: But you're protected on the record on
23 that.

24 MR. KRZYSTON: Okay. Thank you.

25 THE COURT: I just wanted to make sure of that.

1 Now, the motion to close discovery, Solicitor?

2 MS. CAMPBELL: Your Honor, I'm somewhat at a loss
3 on a motion to close discovery. Discovery is always
4 ongoing. Does he not want any exculpatory information that
5 we get?

6 MR. KRZYSTON: I --

7 MS. CAMPBELL: I mean we have turned over -- we've
8 responded to the Brady and the Riddle issues as far as what
9 we've turned over, which I think may eliminate the need to
10 actually -- I don't know how we don't have a continuing
11 duty to turn over anything inculpatory or exculpatory,
12 should we find it and we've addressed what we've done as
13 far as making sure that he has been made available to --
14 everything we've got, the file, we've met with him, and
15 we've turned over Riddle information that's come up and the
16 victims, Your Honor, so I know we are current on discovery.
17 We are not aware of anything that's out there, but I do
18 think that if we should find out anything between now and
19 the trial that would be exculpatory or inculpatory, we
20 would turn that over regardless and I don't know -- I just
21 don't understand the motion to close discovery.

22 MR. KRZYSTON: And Judge, I'm not suggesting that
23 the motion, whether it be decided in our favor or not would
24 relieve them of their duty under Brady to disclose
25 inculpatory and exculpatory information, but at current, we

1 are at less than 120 hours from trial and to the extent
2 that they find any additional new evidence, which sometimes
3 does occur and has occurred in my cases in the past, we
4 would like for the Court to close any new discovery that
5 they find that has, up until now, not been mentioned.

6 So more of a prophylactic if anything else.

7 THE COURT: Well, I understand -- I thought I
8 understood your motion. But I understand it now with your
9 information. I'm certainly not going to do that. I'm not
10 going to make the ruling prospectively -- prospectively --
11 I think I know what that word means. I'm not going to make
12 a ruling that may affect something in the future that may
13 or may not exist.

14 I'll take it up at the time under Rule 5, both B --
15 excuse me, C, continuing duty to disclose; and D,
16 regulations of discovery both 1 and 2; 2 being failure to
17 comply and then later on, I mean, gives me discretion to do
18 what I should do. You don't want to be surprised.

19 MR. KRZYSTON: Correct.

20 THE COURT: Some surprises can be self-inflicted
21 wounds. Not by the lawyer, but by other parties. So I
22 would have to take that up at the time, but I certainly
23 understand your objection. So I don't think it would be
24 prudent for me to just rule now on, again, on something
25 that I don't know would ever be before me or if it were

1 before me what I would do -- I would certainly listen and I
2 have excluded items in the past and have not, have not. So
3 the solicitor's aware and you're obviously aware of the
4 solicitor's duty to disclose, not only as a rule, but also
5 in Brady. Okay?

6 MR. KRZYSTON: Yes, sir, Judge. Thank you. With
7 respect to Riddle and Brady, the State continued to produce
8 information regarding the testimony of witnesses in the
9 case. I thank them for that and ask that they continue
10 that and would honestly remove those motions under Riddle
11 and Brady at this time.

12 THE COURT: All right. Solicitor?

13 MS. MCDUFFIE: Your Honor, as we have become aware
14 of information, we have turned it over and as anything
15 comes up it would be immediately handed over.

16 THE COURT: All right. And Number 6, settle the
17 record?

18 MR. KRZYSTON: Correct.

19 THE COURT: And you're talking about witness --

20 MR. KRZYSTON: Correct. Any -- assuming that
21 police witnesses have no criminal convictions, so any lay
22 witnesses that they would have, and to the extent really
23 any police officers have any convictions, we'd just move to
24 have that disclosed, the convictions of the witnesses.

25 THE COURT: Will you do that, Solicitor, please?

1 MS. MCDUFFIE: Your Honor, we'll get the rap sheets
2 to them as soon as we get all the dates of birth and we
3 will have that Monday morning.

4 THE COURT: Good enough?

5 MR. KRZYSTON: Sufficient, Judge.

6 THE COURT: Autopsy photographs?

7 MS. MCDUFFIE: Your Honor, we showed Mr. Krzyston
8 the photographs that we intend to introduce as relating to
9 the autopsy. I believe that his only objections at this
10 point, Your Honor, are to -- if I may approach?

11 THE COURT: Yes, ma'am.

12 MS. MCDUFFIE: Your Honor, he does not object to
13 these photos at this time. He is objecting to this stack
14 of photos and, if Your Honor wants to look through them and
15 respond.

16 THE COURT: And none of these have been marked by
17 our court reporter?

18 MS. MCDUFFIE: Correct. I spoke with the court
19 reporter and she's not going to be here on Monday and we
20 are not exactly sure what would happen with the marked
21 evidence. I can mark it and then --

22 THE COURT: Well, how are we going to -- well I
23 trust y'all. I'll keep them separated and we'll get them
24 marked on Monday.

25 Well, you want -- I would rather rule after they're

1. marked.

2. MS. MCDUFFIE: I'll go ahead --

3. THE COURT: Just so I can keep the record straight.

4. MR. KRZYSTON: Could we mark them for purposes of
5. the hearing and then kind of adopt that.

6. THE COURT: That's fine with me if you want to do
7. that if you would have those marked. Those that you now
8. have indicated to me you have no objections to.

9. MR. KRZYSTON: I was just confirming that.

10. (Exhibits were marked.)

11. MS. MCDUFFIE: Your Honor, for the record, they're
12. not objecting to State's 1, 2, 3, 8, 10, 11, 12, and 13.

13. THE COURT: All right. And for purposes of this
14. motion, Mr. Krzyston, I preface it by saying foundation
15. must be laid for the photographs also.

16. MR. KRZYSTON: Thank you, Judge, certainly.

17. THE COURT: All right. Yes, sir.

18. MR. KRZYSTON: With regard to the objections, we
19. may withdraw some of these objections subject to Dr.
20. Durso's pretrial testimony, but we would object to State's
21. Exhibit 4 on the basis of cumulativeness; State's Exhibit 5
22. on the basis of cumulativeness; State's Exhibit 6 and 7,
23. 7's a close up of 6, a fracture in the hyoid bone. We
24. would like to hear or have Dr. Durso articulate why she
25. needs 7 to explain State's 6, so pretty much

1 cumulativeness.

2 State's 9 based on cumulativeness; State's 14 is a
3 reflex and State's 15 is a reflex of the scalp, showing the
4 skull. We would object to those based on the gruesome
5 nature of the photos. Don't know that that's necessary.
6 Cause of death here is strangulation. There's no
7 contributing factors in the death, completely irrelevant as
8 far as defense is concerned what the underside of her scalp
9 looks like.

10 Judge, we're objecting to State's 16 on the basis
11 of cumulativeness. It's a picture of the decedent kind of
12 from above her face. They have several pictures that we
13 did not object to in front of you which cover their view.

14 Objecting to State's 17, it is cumulative. We are
15 not objecting to three specific photos that showed the neck
16 or the thoracic region of the decedent in this matter.
17 We've con -- well, not consented, but we've held objection
18 to the -- to a picture of the left, right, and middle of
19 the neck.

20 We're also objecting to 18 -- State's 18 on the
21 basis that it's also cumulative of the decedent's neck.
22 Again subject to pretrial testimony, we may withdraw one or
23 two of those, but as it stands now, those are our
24 objections.

25 THE COURT: All right. Solicitor?

1 MS. MCDUFFIE: Your Honor, we would ask that the
2 Court defer ruling on 4, 5, 6, 7, 9, 14, and 15 until it
3 hears from Dr. Durso. When we met with Dr. Durso, these
4 are the pictures that she identified that she would say are
5 necessary for her in order for her to present the extent of
6 the injuries of the victim and these are actually -- out of
7 the 300 photos from the autopsy, these are the ones she
8 chose, so we would ask for the Court to defer ruling on
9 those.

10 Your Honor, in terms of 16, 17, and 18, if I could
11 hand those up, Your Honor. We would ask that the Court
12 rule that defense's objection on 16 -- while there are
13 other photos of the victim at the scene, Your Honor, that
14 photo clearly shows the victim's face after the incident.
15 The minor child in this case who was 8 years old at the
16 time, she's 10 now, described to law enforcement that she
17 saw her grandmother, she saw her Mamie killed. She
18 described her face as being purple and her tongue sticking
19 out in that picture; it clearly corroborates the testimony
20 of the minor child. I believe that's 16.

21 Your Honor, 17 and 18, show the neck area and I'll
22 look and if those are cumulative to the others, then we can
23 withdraw those, but I believe that 16 is probative to
24 corroborate --

25 THE COURT: Your going the withdraw 17 and 18?

1 MS. MCDUFFIE: Yes, we can, Your Honor:

2 THE COURT: And then 16, subject to testimony, if
3 it -- well, if it's corroborating; and I believe you also
4 used cumulative?

5 MR. KRZYSTON: I did, Your Honor.

6 THE COURT: Do you know what -- well, you don't
7 have a copy of them down there. Let me look up here.

8 I don't see the cumulative aspect of it if you want
9 to look at those you have not objected to, unless it was in
10 one of the others you did object to. Does that make sense?
11 In other words, these are the ones you haven't. Those are
12 others that you have.

13 MS. MCDUFFIE: Your Honor, they're all internal.

14 THE COURT: Okay. All right.

15 MR. KRZYSTON: I did not object to State's 1, 2, or
16 3.

17 THE COURT: Right.

18 MR. KRZYSTON: And she didn't pass up anymore
19 pictures of the hyoid and the cartilage?

20 THE COURT: No, she's referring now to this
21 photograph of 16. She's asking to now rule on 16. Of
22 course, it would be subject to the testimony of the witness
23 about how her grandmother's, I guess if that is her
24 grandmother, and that her tongue was sticking out and that
25 would be corroborative, corroboration. But I don't see

1 another photograph that's been handed up to me that would
2 be cumulative.

3 MR. KRZYSTON: Judge, there are going to be
4 additional pictures from the scene that we believe they're
5 going to introduce. But the decedent is on here -- the
6 decedent was on the floor. There are several close ups of
7 her as she lay --

8 THE COURT: So --

9 MR. KRZYSTON: -- when the deputies responded, so
10 you do not have the pictures in front of you. They have
11 not been marked as exhibits --

12 THE COURT: No, I don't.

13 MR. KRZYSTON: Currently. So that would be why
14 you're confused on that.

15 THE COURT: You think I'm confused?

16 MR. KRZYSTON: I just --

17 THE COURT: You think I'm confused?

18 MR. KRZYSTON: Not now.

19 THE COURT: I was. No, I just hadn't looked at it.
20 You're correct. I'll take this under advisement too and
21 when I see the others, you can make your objection. But
22 you're protected on it.

23 Okay. Somebody come get straight with me the ones
24 I haven't ruled on and have been deferred. And 17 and 18
25 have been withdrawn?

1 MS. MCDUFFIE: Correct.

2 THE COURT: All right.

3 MS. MCDUFFIE: All right. So, Your Honor, just to
4 clarify the record, there's no defense objection to 1, 2,
5 3, 8, 10, 11, 12, and 13.

6 THE COURT: Okay. No objection?

7 MR. KRZYSTON: Correct, Judge.

8 MS. MCDUFFIE: 17 and 18 have been withdrawn.

9 THE COURT: All right.

10 MS. MCDUFFIE: Number 4, 5, 6, 7, 9, 14, and 15, we
11 ask that you defer ruling until you can hear Dr. Durso
12 regarding the necessity of those photographs as it relates
13 to her testimony.

14 THE COURT: And 16 --

15 MS. MCDUFFIE: 16 corroborates the victim.

16 THE COURT: Okay.

17 MS. MCDUFFIE: And this's what we've asked for
18 admittance.

19 The photographs at the scene that show the body,
20 Your Honor, he is not objecting to 19, 20, 21, 22, 23, 24,
21 25, 26, and 27. My understanding is there is no objection
22 to 28 and 29.

23 MR. KRZYSTON: Yes.

24 THE COURT: All right.

25 MS. MCDUFFIE: So these are what he's not objecting

1 to, Your Honor.

2 THE COURT: All right.

3 MS. MCDUFFIE: Your Honor, there's no close up of
4 the victim's face in those that would be cumulative.

5 THE COURT: Well, let me look at these and show me
6 the ones that -- show me what you think would be cumulative
7 to State's 16. And then where's 28 and 29, Solicitor?

8 MS. MCDUFFIE: Mr. Krzyston has them, Your Honor.

9 THE COURT: All right.

10 (The photographs were handed up to the Court.)

11 MR. KRZYSTON: Your Honor, our contention that 16
12 is cumulative to 20 and 29. I don't know if there's any
13 medical reason that the face be shown or necessarily that
14 the child's testimony and/or statement to this point
15 necessarily corroborate that picture right there. She
16 certainly strangled. Strangulation is certainly the cause
17 of death. Hypoxia -- I don't know what's at issue there,
18 or why that's necessary. We've got pictures of the scene.

19 THE COURT: Well, I'll reserve my ruling on those
20 also until the testimony of the child.

21 MR. KRZYSTON: Thank you, Your Honor.

22 THE COURT: That 's 16 --

23 MS. MCDUFFIE: And 28 and 29.

24 THE COURT: And 28 and 29.

25 MS. MCDUFFIE: Your Honor, we believe that 28 and

1 29 are relevant for additional reasons too. But we can put
2 testimony in and I think we can argue that then.

3 THE COURT: Well, if proper foundation is laid, I
4 will rule.

5 MR. KRZYSTON: And with 28, 29, and 16, if we can
6 settle on one of the other, then I would probably withdraw
7 my objection to one.

8 THE COURT: Well, I'll reserve until I hear the
9 testimony.

10 MS. MCDUFFIE: Thank you, Your Honor.

11 MR. KRZYSTON: Thank you.

12 THE COURT: It's hard for me rule in a vacuum like
13 that. For me at least.

14 All right, What next? Is that all with the
15 photographs right now until there's certain testimony in
16 the record.

17 MR. KRZYSTON: With the photographs that's all
18 we're taking up with the photographs today. I don't know
19 if they have any additional --

20 MS. MCDUFFIE: Your Honor, we intend to offer
21 numerous other photographs. When I spoke to Mr. Krzyston
22 about it a while ago, he said he didn't know he would have
23 any objections other than the ones with the body at the
24 autopsy. These are the ones that we're entering in that
25 was provided from the autopsy.