

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

—————
Certiorari to Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge
—————

RECEIVED

Apr 05 2021
S.C. SUPREME COURT

ANDRES ANTONIO TORRES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000842

—————
APPENDIX
—————

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U.S. 808 (1991), in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Cruel and Unusual Punishment Clause of the Eighth Amendment to the United States Constitution.

27. Counsel failed to object to inflammatory, irrelevant and improper statements made by the prosecution in closing argument. Such statements included, but are not limited to, arguments designed to arouse the passion and prejudice of jurors, assertions substituting personal opinions as law, statements diminishing the jury's sense of responsibility for their verdict, statements misrepresenting the proper scope of mitigating evidence, arguments that were not reasonable inferences from the record, and misrepresentations of the nature of alternative punishments.

28. The State suppressed evidence that was both favorable to Applicant and material to Applicant's guilt or punishment. See *Banks v. Dretke*, 540 U.S. 668 (2004); *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Simpson v. Moore*, 627 S.E.2d 701 (S.C. 2006).

29. Counsel were deficient to the prejudice of the Applicant by failing to present evidence of Applicant's genetic conditions and to argue that Applicant was not eligible for death under a logical extension of *Daryl Renard Atkins v Commonwealth of Virginia*, 536 US 304 (2002), *Donald Roper v Christopher Simmons*, 543 US 551 (2005), *State of South Carolina v James William Wilson*, 306 SC 498 (1992) and their progeny, and the Constitutions of the United States of America Eighth Amendment and Article I, Section 15 of the Constitution of the State of South Carolina.

10(d): Applicant's conviction and death sentence were obtained in violation of the Fifth, Sixth, Eighth Amendments and the Due Process Clause of the Fourteenth Amendment to the United States Constitution and South Carolina law.

11(d): Supporting facts: Errors at trial violated the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution and South Carolina law. Those errors include, but are not necessarily limited to, the following:

1. Using the word "recommendation" and its variants, as the title to the sentencing forms, and specifically charging the jury, orally and in writing, that their only function in sentencing was to make a "recommendation" to the court as to the sentence the court should impose, and thereafter repeating approximately 60 times in the course of a few minutes that the jury's role in sentencing was to make a "recommendation" without clarifying that the court was required to impose the sentence the jury returned, impermissibly led the jury to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere.

2. Using the word “recommendation” and its variants, as the title to the sentencing forms, and specifically charging the jury, orally and in writing, that their only function in sentencing was to make a “recommendation” to the court as to the sentence the court should impose, and thereafter repeating approximately 60 times in the course of a few minutes that the jury’s role in sentencing was to make a “recommendation” without clarifying that the court was required to impose the sentence the jury returned, so impugned the jury’s understanding of its function as the ultimate sentence that confidence in the jury’s deliberation upon the mitigation case is undermined.

3. Applicant's death sentence was obtained in part as a result of the State's inflammatory, irrelevant, arbitrary and improper statements in closing argument. *See, e.g., Darden v. Wainwright*, 477 U.S. 168 (1986); *Donnelly v. DeChristoforo*, 416 U.S. 637 (1974); *State v. Copeland*, 468 S.E.2d 620 (S.C. 1996); *Thompson v. Aiken*, 315 S.E.2d 110 (S.C. 1984); *see also Weaver v. Bowersox*, 438 F.3d 832 (8th Cir. 2006), *cert. dismissed*, 127 S. Ct. 2022 (2007). Such statements included, but are not limited to, arguments designed to arouse the passion and prejudice of jurors, assertions substituting his personal opinions as law, statements diminishing the jury’s sense of responsibility for their verdict, misrepresenting the proper scope of mitigating evidence, arguments that were not reasonable inferences from the record, and misrepresentations of the nature of alternative punishments.

4. Victim impact testimony elicited during the sentencing proceeding exceeded the scope permitted by *Payne v. Tennessee*, 501 U.S. 808 (1991), in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Cruel and Unusual Punishment Clause of the Eighth Amendment to the United States Constitution.

5. The cumulative prejudicial impact of all errors during the guilt-innocence and sentencing trials resulted in a fundamentally unfair sentencing proceeding, in violation of the Due Process Clause of the Fourteenth Amendment. *See Taylor v. Kentucky*, 436 U.S. 478, 487 n.15 (1978) (concluding that “the cumulative effect” of “damaging circumstances” of case “violated the due process guarantee of fundamental fairness”).

10(e): The trial court’s erroneous qualification of jurors resulted in a jury uncommonly willing to impose death and deprived Mr. Torres of his right to trial by an impartial jury under the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law.

11(e): Supporting facts: The Sixth Amendment guarantees a capital defendant the right to a fair trial before a panel of impartial and indifferent jurors. *See Morgan v. Illinois*, 504 U.S. 719, 728 (1992); *Ross v. Oklahoma*, 487 U.S. 81, 85 (1988); *Duncan v. Louisiana*, 391 U.S. 145, 147-58 (1968); *Turner v. Louisiana*, 379 U.S. 466, 471-73 (1965); *Irwin v. Dowd*, 366 U.S. 717, 722-23 (1961). A “juror who will automatically vote for the death penalty in every case will fail in good faith to

consider the evidence of aggravating and mitigating circumstances as the instructions require him to do.” *Morgan*, 504 U.S. at 729. Further, “[a]ny juror to whom mitigating factors are . . . irrelevant should be disqualified for cause, for [they have] formed an opinion concerning the merits of the case without basis in the evidence developed at trial.” *Morgan*, 504 U.S. at 738-39. Therefore any juror whose predispositions about the propriety of the death penalty – either generally or related to the specific case – are such that the juror’s ability to follow the trial court’s instruction that he or she consider the defendant’s mitigating evidence is substantially impaired, is not qualified. Several jurors expressed such impairments during *voir dire* in this case. See 9(a) and 10(a), *supra*.

10(f): Applicant’s death sentence was obtained in violation of the First, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and South Carolina law by unsubstantiated and irrelevant testimony that other mentally ill persons had not committed the crimes Mr. Torres had committed. And by advancing in evidence and argument the post-conviction video improperly suggesting future dangerousness.

11(f): Supporting facts: Evidence of a defendant’s future dangerousness must be properly noticed and not result in speculation.

10(g) Applicant was denied the effective assistance of counsel during the sentencing phase of his trial in violation of South Carolina law and the Sixth and Fourteenth Amendments to the United States Constitution.

11(g) During the trial and sentencing phases, Applicant’s counsel failed to adequately preserve various issues for appellate review, as more particularly set forth in the First Amended Application.

10(h): Applicant was denied the right to effective assistance of appellate counsel during the sentencing phase of his capital trial, in violation of the Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution.

11(h): Supporting facts: Despite having a number of meritorious grounds for eligible to be raised on appeal, appellate counsel failed to raise grounds which could have entitled the Applicant to relief from his conviction and/or sentence of death. These issues include, but are not necessarily limited to, the following:

(A) The trial court erroneously informed the jury that the first trial was “to determine the guilt of the [Applicant]” when that marginalized the Applicant’s right to the presumption of innocence.

(B) The trial court erroneously informed the jury that the State would go first “followed by whatever evidence or defense the defense wishes to present at the time” when a caution to the jury was required at this exact point that there was no burden upon the Applicant to produce any evidence at any time and no inference

- of guilt could be drawn from that fact. Without such a timely caution the Applicant's right to the presumption of innocence was demeaned and diminished.
- (C) The trial court erroneously allowed the State's opening remark that the semen Dr. Wren found on Ann Emery's body "matched the [Applicant] one hundred and ten quadrillion to one" and that "it matched the Defendant," which is not consistent with standard DNA protocols or the testimony as it was later presented.
- (D) The trial court erroneously charged the jury that the pathologist had been qualified as an expert and for that reason could give opinions without a contemporaneous statement that the expert is no different from any other witness and the jury could believe part of the expert's testimony, all or none.
- (E) The trial court erroneously published the indictment without first conforming the indictment to the evidence of record when such indictment included entirely irrelevant listings of provocative weapons and modes of death.
- (F) The trial court erroneously charged the jury that it could only find the Applicant not guilty if it found "a real possibility that the [Applicant] is not guilty."
- (G) The trial court erroneously charged the jury concerning circumstantial evidence which was in violation of *State v. Gippon*, 327 S.C. 79 (1997) and *State v. Cherry*, 361 S.C. 588 (2004).
- (H) The trial court erroneously charged the jury on criminal sexual conduct in that no instruction concerning lack of consent was provided.
- (I) The trial court erroneously told potential jurors during *voir dire* that they could be required to give a "recommendation" to the court regarding whether or not to sentence Mr. Torres to death.
- (J) The trial court erroneously allowed the State to argue to the jury that the application had failed to satisfy all terms and conditions of his probationary sentences for minor offenses since probation was not relevant to the sentencing in this case and violated the statutory constraint against irrelevant sentencing information.
- (K) The trial court erroneously admitted the post-conviction custodial video offered by the State as evidence of future dangerousness in violation of S.C. Code Ann. § 16-3-20(B).
- (L) The trial court erroneously charged the jury at the beginning of the sentencing proceeding that they would "be asked to make a recommendation to the court whether it should sentence the [Applicant], Andres Antonio Torres, to death or life imprisonment. Should you recommend a sentence of life imprisonment or should you recommend a sentence of death, that's the only issue that's involved in, in (sic) this phase of the trial." This charge erroneously conveyed to the jury that its sentence was advisory, in violation of S.C. Code Ann. § 16-3-20(C) that requires the judge to impose whatever sentence is returned by the jury.
- (M) The trial court erroneously charged the jury at the beginning of the sentencing proceeding that they would "be asked to make a recommendation to the court whether it should sentence the [Applicant], Andres Antonio Torres, to death or life imprisonment. Should you recommend a sentence of life imprisonment or should you recommend a sentence of death, that's the only issue that's involved in, in (sic) this phase of the trial" without informing the jury that

the sentencing statute required that the court impose whatever sentence the jury returned.

(N) The trial court erroneously charged the jury at the beginning of the sentencing proceeding that they would “be asked to make a recommendation to the court whether it should sentence the [Applicant], Andres Antonio Torres, to death or life imprisonment. Should you recommend a sentence of life imprisonment or should you recommend a sentence of death, that’s the only issue that’s involved in, in (sic) this phase of the trial” without informing the jury that a sentence of life meant a sentence of life without the possibility of parole.

(O) The trial court erroneously and consistently referenced the jury’s role being to make a “recommendation,” with only a minimal gratuitous suggestion to the jury that the sentence it returned is the sentence the statute required the court to impose upon the Applicant and that a life sentence meant life without the possibility of parole.

(P) The sentencing statute in question, S.C. Code Ann. § 16-3-20(C), is unconstitutional under both the United States and South Carolina constitutions.

(Q) The trial court erroneously ruled that Mr. Torres could not introduce evidence that another person or person(s) was involved in the planning and/or commission of the crime, even though he was entitled to introduce such evidence in the mitigation phase and such evidence could have resulted in a determination that Mr. Torres was not death-eligible under the U.S. Constitution.

10(i) Applicant was denied the effective assistance of counsel during the sentencing phase of his trial in violation of South Carolina law and the Sixth and Fourteenth Amendments to the United States Constitution in that counsel failed to adequately present evidence of Applicant’s mental state.

11(i) During the trial and sentencing phase, Applicant’s counsel failed to provide effective assistance of counsel in numerous ways as more particularly stated herein. Counsel’s omissions were both unreasonable and prejudicial in sentencing. *Wiggins v. Smith*, 539 U.S. 510 (2003); *Strickland v. Washington*, 466 U.S. 668 (1984).

10(j) Applicant’s death sentence violates the Eighth Amendment’s prohibition of cruel and unusual punishment [and the Fourteenth Amendment’s guarantee of equal protection] because Applicant has one or more genetic conditions that cause Applicant to periodically have intense outbursts during which he is unable to control his behavior, and Applicant has consistently suffered from these conditions from the time of his birth.

11(j) Applicant suffers from numerous, previously undiagnosed genetic conditions, including Prader-Willi Syndrome and 22-Q-11 Deletion Syndrome, which cause Applicant to periodically have intense outbursts during which he is unable to control his behavior. These outbursts occurred consistently throughout Applicant’s life, and he was institutionalized for them beginning at 18 months-old. The genetic cause(s) of Applicant’s condition coupled with the fact the fact that it that it manifested itself at an extremely young age and continued throughout the course of

his life indicates that defendant's conduct is the product of a disorder he was born with, not merely choices that he made. In this way Applicant is less culpable than the average person convicted of murder. As the Supreme Court explained in *Atkins v. Virginia*, "[i]f the culpability of the average murderer is insufficient to justify the most extreme sanction available to the State, the lesser culpability of the mentally retarded offender surely does not merit that form of retribution." Like the mentally retarded, Mr. Torres has a substantially diminished ability to engage in the type of reasoning and self-regulation that form the psychological underpinnings of culpability. Consequently the retribution and deterrence rationales that support the death penalty are undermined, and the application of "the most extreme sanction available to the State" is cruel and unusual within the meaning of the Eighth Amendment.

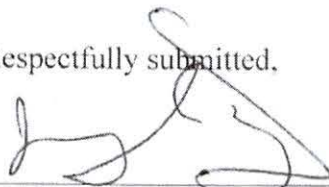
12. Prior to this application have you filed with respect to this conviction:
- a. Any petition in a State Court under South Carolina Law? None other than mandatory appeal to the Supreme Court of South Carolina.
 - b. Any petition in State or Federal Courts for habeas corpus or post-conviction relief? No
 - c. Any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in question 8? No.
 - d. Any other petitions, motions, or applications in this or any other Court? No.
13. If you answered "yes" to any part of question 12, list with respect to each petition, motion or application:
- a. The specific nature thereof: none
 - b. The name and location of the Court in which each was filed: none.
 - c. The disposition thereof: none
 - d. The date of such disposition: none
 - e. If known, citations of any written opinions or orders entered pursuant to each such disposition: none.
14. Has any ground set forth in question 10 been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? None.
15. If you answered "yes" to question 14 identify:

- a. Which grounds have been presented? None
 - b. The proceedings in which each ground was raised: None
16. If any ground set forth in question 10 has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented: This is the initial Post Conviction Relief Application.
17. Where you represented by an attorney at any time during the course of:
- a. Your arraignment and plea? Yes
 - b. Your trial, if any? Yes
 - c. Your sentencing? Yes
 - d. Your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - e. Preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered "yes" to one or more parts of question 17, list:
- a. The name and address of each attorney who represented you:
 - i. Clay T. Allen, Esq. 7th Circuit Public Defender 366 North Church Street, Spartanburg, South Carolina 29303; Kathleen Hodges, Esq. 7th Circuit Public Defender's Office 366 North Church Street, Spartanburg, South Carolina 29303; John G. Reckenbeil, Esq. Post Office Box 1633, Spartanburg, South Carolina 29304; Joseph L. Savitz, III, Esq. Chief Appellate Defender, Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589
 - b. The proceedings at which each attorney represented you:
 - i. Messrs. Allen, Reckenbeil and Ms. Hodges represented the Applicant at trial and Mr. Savitz represented the Applicant on direct appeal.
19. State clearly the relief you seek in filing this application:
- A new jury trial *de novo*.

20. Are you under any sentence from any other court that you have not challenged?

No.

Respectfully submitted,



WILLIAM H. EHLIES, II
TROY A. TESSIER

ATTORNEYS FOR THE APPLICANT
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February 10, 2014

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 APR -7 PM 1:29
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
ANDRES ANTONIO TORRES,

IN THE COURT OF COMMON PLEAS

Applicant,

C.A. No. 11-CP-42-1851

-vs-

STATE OF SOUTH CAROLINA

Defendant.

CERTIFICATE OF MAILING

This is to certify that the undersigned did cause the following documents to be served upon the person designated herein by depositing same in a United States Mailbox, postage pre-paid, return address on envelope, addressed to the following:

Donald J. Zelenka and Melody Jane Brown
S.C. Attorney General
Post Office Box 11549
Columbia South Carolina 29211

- DOCUMENT(S) SERVED:
- (1) Applicant's Motion to Amend the Application for Post-Conviction Relief;
 - (2) Applicant's Memorandum in Support of his Motion For Amended Application for Post-Conviction Relief;
 - (3) Second Amended Application for Post-Conviction Relief.

DATE SERVED: April 7, 2014


 WILLIAM H. EHLIES
 ATTORNEY FOR THE PLAINTIFF
 310 Mills Avenue
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 Greenville, South Carolina, 29605
 (864) 232-3503

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2014 APR -7 PM 1:28
 M. HOPE BLACKLER

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
 3
 4 Andres Antonio Torres,)
 5 Applicant,) TRANSCRIPT OF RECORD
 6 -vs-) 2011-CP-42-1851
 7 The State.) March 10, 2011
) Spartanburg, South Carolina

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B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE

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

WILLIAM HARRY EHLIES, II, ESQUIRE
 DIANA L. HOLT, ESQUIRE

DONALD J. ZELENKA, ESQUIRE
 Attorney for the State

Linda D. Moffitt
 Circuit Court Reporter

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Motion -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 THE COURT: You are Andres Antonio Torres.

2 THE APPLICANT: Yes, Your Honor.

3 THE COURT: Mr. Torres, do you know why you are here
4 today?

5 THE APPLICANT: Appoint P.C.R. lawyers.

6 THE COURT: Yeah. You indicated in filing an
7 application for post conviction relief.

8 THE APPLICANT: Yes, sir.

9 THE COURT: Do you wish to have a lawyer assist you in
10 that application?

11 THE APPLICANT: Yes, sir.

12 THE COURT: Have you talked to one?

13 THE APPLICANT: I have talked to these.

14 THE COURT: Mr. Ehlies.

15 THE APPLICANT: Yes, sir.

16 THE COURT: Do you want him to represent you in the
17 application?

18 THE APPLICANT: I don't know. We really ain't talked
19 about anything, about strategies or stuff.

20 THE COURT: No. I said do you want him to assist you
21 in the filing of that application. It hasn't been filed
22 yet.

23 THE APPLICANT: Yes, sir.

24 THE COURT: Do you want him to assist you in filing of
25 the application?

1 THE APPLICANT: Yes, sir.

2 THE COURT: Mr. Ehlied, are you willing to accept that
3 appointment?

4 MR. EHLIES: Judge, I am -- I talked about that a lot,
5 and thanks to you I was able to dig out a copy of the order
6 appointing you to handle this case, which was very unusual.

7 And, you know, even though it does have a specific
8 timeline and reservation of jurisdiction on the Supreme
9 Court on lifting that or expanding that timeline of one
10 year -- and I have revisited all of these issues in light
11 of that and can tell you that I qualified to handle it.

12 But with what I have on my docket -- this case has got
13 ten file boxes. It took us four months to get Frederick
14 Evans' ten file boxes copied. Without the file we can't
15 possibly know the issues, or/and we don't know the
16 resources with the funding crisis right now to put on a
17 bunch of staff.

18 I cannot possibly prove also that I can keep that
19 timeline. I have two cases in 2011. One may go off if an
20 appeal is filed. The other is definite for the
21 merits-hearing trial -- two capital cases. I have other
22 cases as well. But if you're looking to adhere to that one
23 year for certain, then I cannot tell you not knowing more
24 about the case that I can do that.

25 THE COURT: well, I mean I don't have any choice but

1 to adhere to a court order that's assigned to me the case.

2 Of course the Supreme Court has indicated that an
3 extension could be granted, but they would have to be the
4 ones granting the extension. So I don't have any
5 discretion in that matter.

6 It is not I would be held to a timeline other than the
7 fact that I am obligated to do that by the order of the
8 Supreme Court, but that doesn't mean that an extension
9 could not be granted if it was warranted but I --

10 MR. EHLIES: Your Honor, I think in light of that, and
11 I don't know that you can do any more, but I had better
12 pass on this case with that timeline.

13 THE COURT: Okay.

14 MR. EHLIES: And this is brand new. I have not seen
15 that before. I pulled other orders appointing me in cases
16 as recent as last year and that was not in there. And I
17 think the attorney general suggested that it is maybe in
18 four total cases.

19 MR. ZELENKA: At least three, I think. There may be
20 four.

21 MR. EHLIES: So this is something very new to us. We
22 are accustomed to dealing with a trial judge who can manage
23 the case and not having to deal the Supreme Court.

24 As I said, it is a funding issue, a resource issue.
25 And I don't know this man's case -- I know he has got a lot

1 of psychiatric history from 19 months of age, and so that
2 would complicate the case tremendously. So I had better --
3 better not do that.

4 THE COURT: well, is that based upon your assessment
5 that you are not going to have the time to be able to
6 devote to Mr. Torres' case if you had a one-year
7 limitation?

8 MR. EHLIES: If that, there is no enlargement of the
9 one year, I am almost certain I could not have this case
10 ready.

11 THE COURT: Okay.

12 MR. EHLIES: If you presumed it will not enlarge it, I
13 couldn't do it.

14 THE COURT: I am not going to presume anything about
15 that, but I just know. You know, what I will go on, that's
16 what the order says.

17 MR. EHLIES: Yes, sir. It is very unusual. You know,
18 I appreciate you calling my attention to it a couple of
19 days ago, and sure enough it is in there. And I don't know
20 what to tell you.

21 THE COURT: Okay.

22 MR. EHLIES: All right, sir. I have Diana Holt with
23 me I asked to be here as counsel also. So I don't know if
24 you want to ask her any questions.

25 THE COURT: well, Ms. Holt, are you in any better

1 position than Mr. Ehlies?

2 MS. HOLT: Obviously not, Your Honor. I could try my
3 hardest, but I got an old pretrial pending that's coming up
4 in Spartanburg County. That would take priority. After
5 that I can have time to work, but I cannot promise the
6 Court a year either.

7 THE COURT: Okay. All right. Mr. Zelenka, do you
8 want to be heard on anything?

9 MR. ZELENKA: No, sir, Your Honor. I think the
10 defendant indicated a desire for counsel and a desire to
11 proceed on post conviction relief. I can't speak to the
12 order any more than you can, Your Honor.

13 THE COURT: Sure. Mr. Torres, I will issue an order
14 appointing you counsel to represent you in the case and
15 that counsel will be in touch with you. Okay.

16 THE APPLICANT: Can I say something, Your Honor?

17 THE COURT: Yes.

18 THE APPLICANT: I've talked to some of the guys on the
19 row about some other lawyers, and if I give you a name or
20 whatever would you be able?

21 THE COURT: Do you have somebody that you want to
22 assist you?

23 THE APPLICANT: Yes, sir.

24 THE COURT: All right. Who do you have in mind?

25 THE APPLICANT: The guy's name is Stuart Axelrod. He

1 is out of Myrtle Beach.

2 THE COURT: Have you talked to him?

3 THE APPLICANT: I submitted papers, not talked to him.
4 But I just heard good things about him and other guys. I
5 thought maybe get him if we couldn't get anybody else.

6 THE COURT: We will see. I will look into that for
7 you.

8 THE APPLICANT: All right, Your Honor.

9 THE COURT: All right. Anything else? Okay. Thank
10 you.

11 END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas for Spartanburg County, South Carolina, on the 10th day of March 2011.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 6, 2020

Linda D. Moffitt
Circuit Court Reporter

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STATE OF SOUTH CAROLINA)	
COUNTY OF SPARTANBURG)	IN THE COMMON PLEAS COURT
Andres Antonio Torres,)	
Applicant,)	TRANSCRIPT OF RECORD
v.)	2011-CP-42-1851
The State.)	April 14, 2014 - June 30, 2015
)	Spartanburg, South Carolina

B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE

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

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Linda D. Moffitt
Circuit Court Reporter

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1 (Proceedings April 14, 2014)

2 THE COURT: All right. Ladies and gentlemen, I
3 apologize for the delay. Are we ready to begin, or do we
4 have some matters we need to address first?

5 MR. EHLIES: Good morning, Judge.

6 THE COURT: Good morning.

7 MR. EHLIES: I hope you're feeling well.

8 THE COURT: I'm doing good. I hope you are too.

9 MR. EHLIES: I'm working on it.

10 We had a motion that we had filed concerning the first
11 basic issue in this case. And the issues as we have
12 presented them in the merits-hearing brief are generally
13 three. Everything in the application, the final amended
14 application, derives and relates to one of those three
15 overt categories.

16 The first one is the jury charge itself which we
17 characterize as a records-based exception. And so we had
18 filed a motion and memoranda with supporting exhibits on
19 that as a matter of law.

20 Our question is whether you want to hear that argument
21 or if you want to do something else. And to give you a
22 little bit of insight into what our planning was, we
23 thought that a conference with you in these matters would
24 be helpful. And so we do have a witness present to proceed
25 before lunch. But we really hadn't anticipated jumping

1 into witnesses until after the lunch.

2 THE COURT: Okay. Well, what do you want to do now?

3 MR. EHLIES: If you would hear this legal argument --

4 THE COURT: Oh, sure, absolutely.

5 MR. EHLIES: -- on the summary judgment matter.

6 THE COURT: Okay.

7 MR. EHLIES: Basically, Judge, what is happening is
8 that -- and I attached it as certain exhibits. And do you
9 have it? I'm sorry. Do you have it?

10 THE COURT: It's on the computer I'm certain, but I
11 don't -- my computer's shut down and starting back up.

12 MR. EHLIES: I can give you a hard copy, Judge.

13 THE COURT: Yes. Thank you.

14 MR. EHLIES: Yes, sir.

15 To give you a little bit of the factual flavor of this
16 thing, when the trial reached the stage that they were
17 going into the sentencing phase Judge Couch gave a jury
18 charge, and it appears as Exhibit D -- the transcript
19 itself. And it's at page 2214 in the transcript. And he
20 gives the charge to the jury.

21 THE COURT: Excuse me. Page what?

22 MR. EHLIES: It would be under your Tab D, and the
23 page number where it starts is 2214. At the bottom of the
24 page you'll see 200. That's going to be a confusion
25 throughout this matter. But when they prepared the

1 transcript for filing, and the page numbers got different
2 as to which volume they were in. So I'm referencing the
3 trial transcript as it was filed on direct appeal with the
4 South Carolina Supreme Court.

5 At 2214 he starts to talk to the jury and their
6 responsibilities towards what remained to be done. And it
7 starts off. He says that -- "And I'm reading now South
8 Carolina Code Section 16-30 -- 16-3-20 provides in part
9 that a person who is convicted of murder must be punished
10 by death or by imprisonment for life."

11 That section is further amended and also provides in
12 part that, "Upon conviction of the defendant of murder the
13 Court shall conduct a separate sentencing proceeding to
14 determine whether the defendant should be sentenced to
15 death or life. So for purposes in conducting the
16 proceeding in which we are now engaged, is to determine
17 whether the defendant, Andres Antonio Torres, should be
18 sentenced by the Court," a very provocative suggestion as
19 far as the jury is concerned. Not sentenced by the jury,
20 not to actually impose and struggle with which sentence is
21 most appropriate given the circumstances of the case and
22 any characteristics of the defendant and the loss of the
23 life of the victim, but that the Court would sentence him
24 to death or life.

25 "With respect to your particular role in this

1 proceeding you will be asked to recommend to the Court
2 whether it should sentence the defendant, Andres Antonio
3 Torres, to death or life. Should you recommend a sentence
4 of life imprisonment or should you recommend a sentence of
5 death, that's the only issue that's involved in this phase
6 of the trial. You'll be hearing testimony of aggravating
7 circumstances surrounding the murders; testimony in
8 mitigation or extenuation. When that testimony has been
9 completed each side will present arguments for or against
10 death penalty. And I will give you a certain instructions
11 of the law, and then you'll retire and decide whether to
12 return a sentence of death or imprisonment."

13 That is the entirety of the charge that he gave them,
14 and nowhere in that charge did he suggest to them that they
15 were, in fact, going to be the sentencing authority in the
16 courtroom.

17 Now, when we look at this charge we know from certain
18 case law in South Carolina that that is reversible error to
19 give a charge on capital sentencing and not to let the jury
20 know that they were, in fact, sentencing and that the
21 responsibility did not rest elsewhere.

22 And when we take a look at this charge, the first rule
23 would be in Mr. Bell's case where we have a jury charge --
24 if we can get it on the screen here. In assessing a jury
25 charge the Court then -- this is Southern Bell, 305 SC 11.

1 It's a 1991 case. And the significance of this case I
2 think you'll see here in a second.

3 (Pause.)

4 MR. EHLIES: In assessing -- the rule is what is
5 the -- what is the reasonable understanding, what the
6 jury -- how they would interpret the charge that is given
7 to them.

8 And in this case there can't be any doubt but that the
9 jury's going to interpret that charge as understanding that
10 their role was to recommend death.

11 The second thing that's really important is in the
12 Peterman case, South Carolina vs. Peterman. And in that
13 case the Court said you cannot lay a jury charge that is
14 correct over the top of a jury charge that's inaccurate and
15 avoid reversal, because you've only complicated the
16 ambiguity and the prejudice.

17 Now, I point that out because in the very end of the
18 jury charge -- and I've given that to you. In the very end
19 of the jury charge after they had heard two days of
20 mitigation evidence the judge did offer in passing twice a
21 remark that the Court would follow the recommendation.

22 That was way little, way late. And that is in a
23 supplemental charge to the primary defective charge that
24 was given in the very beginning when he described their
25 role. And in Peterman we see that that unique problem of

1 trying to correct an error -- and I don't think he was
2 trying to correct an error. I just think that the overall
3 jury charge that he read at the end of the case
4 bootstrapped in a remark that he would follow their
5 recommendation.

6 That is not sufficient even in of itself because we
7 know in Davis, State vs. Davis, that the duty -- in
8 Plemmons the duty, which is cited in the memoranda that the
9 Court has, is to clearly convey -- is the word they use --
10 to the jury that they are the sentencing authority.

11 And in Plemmons he did it -- the trial judge -- in the
12 qualifying voir dire up front. And he was very elaborate
13 about it. It's quoted in Plemmons that you will be
14 sentencing this man, you will have the sentencing
15 authority, it will be in your hands to do that. So he
16 clearly conveyed. And that's what the South Carolina
17 Supreme Court was saying, is what you want to hear.

18 State vs. Davis was very specific where the charge
19 itself did not reference that the judge would follow the
20 recommendation. And the Supreme Court reached out and
21 pointed out to the bench and bar that that's reversible
22 error, that the trial judge never said and conveyed that
23 they were, in fact, the sentencing authority in the
24 courtroom and not the Court, that the Court would be
25 imposing the sentence that they returned.

1 Now, the exhibits to the memoranda also include the
2 jury form that the judge used. And you'll see under Tab A,
3 Exhibit 1, that the actual jury sentencing, the form,
4 verdict form, is captioned in terms of a recommendation of
5 sentence.

6 And so they hear the initial charge; they hear the
7 closing charge, which, by the way, 61 times he said your
8 recommendation or recommend, the variant to the word
9 recommend. Over and over in his charge, twice in the very
10 end as a collateral matter in passing, he said the Court
11 will follow your recommendation as though it might be
12 something he had discretion about.

13 The next form that he gave to the jury that they did
14 not use is under B, Tab B, when they're reviewing the jury
15 forms given to them. And it, again, underscores
16 recommendation. It doesn't say anything else but
17 recommendation.

18 And then in C we have the statutory instructions that
19 they had in the jury room while they were deliberating.
20 And the statutory instructions start off, "In determining
21 whether to recommend that the defendant, Andre Torres, be
22 sentenced, again, there's no reference to anything other
23 than your sole role is to recommend to this Court," what I
24 should do.

25 Now, I gratuitously added what I should do. It is the

1 clear indication -- and now I'm talking about Peterman --
2 but what the jury would have taken away in Bell from the
3 charge is that we're recommending to the judge whether he
4 should sentence to death or he should sentence to life, not
5 we are actually sentencing this man to life or to death.

6 So, we think that under the Caldwell standard, as well
7 as state law -- Davis, Plemmons, all of the cases that came
8 up after Caldwell -- and I might also suggest that the
9 Bellamy case, which is in my brief, also supports the idea
10 that, "It's more than just saying that you're going to
11 recommend a sentence and I'll follow it. It is clearly
12 conveying to the jury that you must follow it."

13 And the specification of ineffective assistance of
14 counsel on this is, No. 1, not suggesting to the judge.
15 No. 1 was not getting the charge in writing before all of
16 this happened, before voir dire, so that we'd have been
17 fully informed at voir dire what the judge was going to be
18 telling them -- and that is a standard in the A.B.A.
19 guidelines that I'll be giving to you later in the case --
20 to get those jury charges and what the judge is saying to
21 the jury in print ahead of the case. But they allowed that
22 error to occur and then did nothing to alert the judge when
23 he said your sole role is to recommend to me, the Court,
24 whether to sentence -- did nothing then.

25 I've gotten an affidavit from counsel, submitted it to

1 you in association with this motion for summary judgment
2 that there was no strategic reason for them to remain
3 silent when Judge Couch gave that charge to the jury, that
4 they just did not object. They did nothing to cure it.
5 And it was from that point that the jury heard all of the
6 mitigation and aggravating case with that framework.

7 So, it's -- it's a lot more than just using
8 recommendation.

9 One of the suggestions we made in the brief and that
10 we've made in a lot of our training sessions, which are
11 numerous, is that if the Court is going to rely on
12 recommendation as a word in its charges, in its voir dire,
13 when it's talking to the jurors or perspective jurors, then
14 at a minimum if you can't dissuade the judge from doing
15 that you should ask the judge to read the next sentence.

16 At the same time he lifts from the statute 16-3-20 the
17 word recommendation. He should lift the next sentence,
18 which is, "And the Court shall impose that sentence on the
19 defendant." And that would have been minimum.

20 We don't like the fact that recommendation is used at
21 all because we believe that Caldwell vs. Mississippi,
22 Supreme Court of the United States, clearly establishes
23 that you can say nothing to a jury, nothing that would
24 suggest that the ultimate responsibility for sentencing
25 resides somewhere else. And that's pretty much a quote

1 from Caldwell.

2 And so we believe that right up front in this case
3 summary judgment should be granted that counsel was
4 ineffective in failing to object and that the prejudice is
5 manifest because clearly recommending a sentence is not the
6 same as imposing and determining the sentence. And that's
7 the end of the inquiry.

8 And, once again, in summation on this I know that the
9 state has briefed this and they will say, well, he did say
10 that in the end of the secondary charge after all of the
11 evidence was in before they retired. He said twice, "We'll
12 follow your recommendation."

13 But the South Carolina Supreme Court in addressing
14 that clearly said it doesn't help to try and undo 61
15 references to recommendation. A specific charge up front
16 that all you're doing is recommending to me to stick in at
17 the end something that might be correct -- might be -- and
18 I say even that was inadequate and doesn't meet the
19 Caldwell standard.

20 It was defective from the start. It was manifest
21 throughout the entire case in mitigation and sentencing.
22 It was aggravated towards the end by 61 references to
23 recommendation. It was aggravated in the end by the jury
24 verdict forms that are a recommendation. It was aggravated
25 in the end by the written charge that when determining what

1 sentence to recommend nowhere in those documents is it made
2 clear to them that they're doing more than recommending a
3 sentence.

4 Now, we as practitioners tend to disregard what's
5 going on in the courtroom while it's actually happening.
6 And I know their plate's full. But when the judge is
7 talking to a jury there are certain things that happen.

8 No. 1, the doors are locked. Witnesses don't -- or
9 people don't come and go. The judge commands the attention
10 of everybody in the courtroom -- everybody including
11 lawyers. And if anyone who is a lawyer charged with the
12 responsibility of defending a man for his life is going to
13 be paying attention it would be at that time when the judge
14 is looking directly at the jury and telling them what is
15 going to happen and your role is to recommend to me, the
16 Court, what I should do, and that has to have gone home, a
17 clear understanding by the jury that that was indeed their
18 role, to make a recommendation, which under our statute is
19 exactly wrong, because the sole sentencing authority under
20 our statute is the jury.

21 There's one exception. If something happened really
22 bad and you saw that the verdict was tainted, in the end of
23 the statute it says you have to certify that that didn't
24 happen but if you saw something that was juror misconduct
25 or some prejudice or arbitrary feature or something

1 happened, then the recommendation that is the actual
2 sentence would not be imposed because you would not be able
3 to sign off your certification which is required by statute
4 that the verdict is clean.

5 And in this case it shouldn't have been signed off
6 because the verdict wasn't clean because it was a
7 recommendation and not a sentencing factor. And that is
8 the nature of this error.

9 It is pervasive. It is throughout the entire
10 sentencing proceeding from the very first of the start of
11 the case. That's their framework for reviewing everything
12 that came onto the witness stand, and it was wrong.

13 It wasn't cured by the two remarks in the end. And at
14 this moment a man is sentenced to death. And we believe
15 the prejudice is manifest as the Supreme Court of the
16 United States said it was and as the Supreme Court of South
17 Carolina said it is in Davis and every case where it wasn't
18 strongly conveyed that they are the sentencing authority.

19 And that's our position on summary judgment. Thank
20 you, Judge.

21 Do you have any questions of me?

22 THE COURT: No, sir.

23 MS. BROWN: Good morning, sir.

24 THE COURT: Good morning.

25 MS. BROWN: The state did file a response to the

1 motion for summary judgment on Friday, and we'll rely in
2 good part on that. But I do want to point out a few
3 things.

4 The first thing is that it sounds like we have a bit
5 of a concession here because, as we understand the summary
6 judgment motion, one was a freestanding claim and one was
7 an ineffective assistance-of-counsel claim.

8 I think Mr. Ehlied said multiple times in his
9 presentation this morning that there was no objection to
10 this particular charge, nothing done to preserve the issue
11 for appeal; and therefore the freestanding claim should be
12 summarily dismissed as barred by the Simmons doctrine. It
13 could not be reached on appeal. It has to be reached here
14 through some allegation of ineffective assistance.

15 So, where we are is what about this language that the
16 judge used in the first part of the sentencing proceeding.
17 It was an introduction. It was not a charge on the law.
18 That's putting the cart before the horse here.

19 We didn't have a full charge on the law. We had
20 nothing about statutory aggravating circumstances, nothing
21 about statutory mitigating circumstances or nonstatutory
22 mitigating circumstances.

23 What he's telling the jurors, it would appear from the
24 plain reading of the transcript, is we're going into the
25 second phase. And as Your Honor knows, nothing happens in

1 a vacuum. All of these jurors had already gone through
2 voir dire with the parties and with the judge and said if
3 we go to the second proceeding this is what's going to
4 happen, we've got to qualify you, this is the first and
5 only opportunity we have to qualify you.

6 They were acutely aware just simply by that process
7 alone that they were the ones who were going to be deciding
8 the sentence.

9 Now, Caldwell. The purpose of Caldwell is not to
10 select words. The purpose of Caldwell is to ensure that
11 the jury's responsibility is not diluted by the charge, and
12 it wasn't here because when this charge was actually given
13 at the conclusion of the proceeding the judge said -- and I
14 quote from page 2754 of the record -- "Your sentence,
15 sentencing recommendation, will be followed by this Court."
16 Period.

17 That's why this is not a Davis issue. This is a State
18 vs. Simmons issue where the court held that the
19 instruction, whatever you recommend, will be the sentence
20 that will be given and informed the jury correctly of their
21 duty and their responsibility. State vs. Middleton, the
22 same thing; State vs. London, the same thing.

23 We have recommendation, that word, in the statute. It
24 is not incorrect for a judge to charge the language of the
25 statute. And in this case he went further to make sure

1 that the jurors understood that what you put in that
2 recommendation will be followed. And it's simply
3 inescapable that he told them that directly and clearly.

4 And for everything else we would rely on that. But I
5 really do believe that's dispositive under the cases,
6 especially sentence in Middleton and London that we have
7 cited in our response.

8 And I'll be glad to answer any questions the judge may
9 have.

10 THE COURT: In your response did you e-mail that to
11 me, or did you send me a hard copy?

12 MS. BROWN: My understanding is we sent a hard copy to
13 you. I can get a copy from here and hand it to you.

14 THE COURT: Have you concluded your argument?

15 MS. BROWN: Yes, sir, Your Honor. Thank you.

16 MR. EHLIES: We do have freestanding claim because we
17 believe the charge is in itself facially unconstitutional.

18 we also have an ineffective assistance of counsel
19 claim.

20 On the point of voir dire on an issue of
21 qualification, it was pretty standard. It was argue an A,
22 B or C, argue death eligible and qualified, can you if you
23 were asked make a recommendation.

24 we don't believe recommendation appeared then and we
25 don't believe it was ever like Plemmons where the judge in

1 voir dire told them the sentencing in this case is going to
2 be in your hands. It was nothing like that in the
3 qualifying, death qualification, of jurors in voir dire.

4 So, the error wasn't covered in deciding the verdict,
5 isn't curing the charge that you're making a
6 recommendation.

7 And the charge is in the front end, not in the back
8 end. Whether it's a full and complete charge doesn't
9 involve the jurors' impressions of what they're being told,
10 because they don't know what a full and complete charge is.
11 They're being charged by the judge. He's speaking or
12 listening, and we're going to do what he says, oh, whether
13 we should recommend to the Court whether he should be
14 sentenced to life or death. And that's our position on it,
15 Judge.

16 THE COURT: All right. Well, based upon my review of
17 the record, which includes the judge's jury instructions, I
18 find that no reasonable juror would not understand the fact
19 that they were fully responsible for the sentencing
20 decision in this case, and therefore your motion for
21 summary judgment is denied.

22 MR. EHLIES: Yes, sir.

23 THE COURT: All right. What's next?

24 MR. EHLIES: We would go, and I suspect, Judge, we
25 would start with -- is Rusty Clevenger here or Officer --

Reid Lindsey
Direct examination by Mr. Ehliès

1 (Pause.)

2 MR. EHLIES: Judge, if you would like we will take a
3 witness or two.

4 THE COURT: Let's do.

5 MR. EHLIES: Okay, sir. Officer Lindsey.

6 REID LINDSEY, having been
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. EHLIES

9 Q Officer Lindsey, you and I have met earlier I believe.
10 And I understand that currently you are employed by
11 Nationwide Insurance, is that correct?

12 A That is correct.

13 Q And what is your role with Nationwide Insurance?

14 A I am an investigator with Nationwide Insurance. I
15 investigate various claims for the company.

16 Q And prior to that what was your vocation?

17 A For 12 and a half years I worked for the sheriff's
18 office here in Spartanburg. For nine of that, that was in
19 investigations.

20 Q And on May the 11th of 2007 what was your employment?

21 A I was assigned to the violent crime homicide division
22 of the sheriff's office, in C.I.D. criminal investigation
23 division.

24 Q In that context did you have an opportunity to work a
25 murder case at Montgomery and Drayton community?

Reid Lindsey
Direct examination by Mr. Ehliès

1 A I did.

2 Q And I believe that the occupants of the house were Ray
3 and his wife, Ann Emery.

4 A That's correct.

5 Q E-M-E-R-Y?

6 A That's correct.

7 Q Okay. And what was your role in that investigation?

8 A I was the lead detective.

9 Q Okay. And as lead detective can you give us a general
10 idea what your job was?

11 A It'd be a variety of things. Initially, when you --
12 obviously, I responded to the scene. I would be
13 coordinating the efforts at the scene dealing with
14 assigning detectives to take statements from potential
15 witnesses, getting the canvass set up, working with the
16 forensic techs that were processing the house for
17 fingerprints.

18 In this particular case there was actually two crime
19 scenes going. When I first responded to the house there
20 was the house where I was at, and there was a crime scene
21 towards Union County. I can't remember exactly where, but
22 that's where the car that had been taken from the
23 residence -- I think it was actually a van -- had been
24 recovered. So I was coordinating with that.

25 So it's basically directing the investigation. And at

Reid Lindsey
Direct examination by Mr. Ehliès

1 some point, you know, if we were to obtain a suspect I
2 would be doing the interviewing most likely.

3 Q All right, sir. And can you give us from -- do you
4 have an independent recollection of working that case?

5 A Yes, but it has been, what, seven years ago I think.

6 Q And have you made some effort to locate your notes and
7 that sort of thing pertaining to the investigation?

8 A I read over them just a little bit ago. So, I've
9 tried to familiarize myself. But I don't have access to
10 that any more the way I used to.

11 Q And do you have an independent recollection of the
12 crime scene itself?

13 A Yes.

14 Q Do you have any idea how it is that Spartanburg County
15 came to be on the scene?

16 A They obviously received a call. I received a call
17 from the uniform officers, and I don't remember right off
18 who called -- called us in. I'm sure that would be on the
19 first page of the incident report though.

20 Q Okay.

21 A which I don't have that, so I didn't read that.

22 Q Do you know what time of day it was?

23 A It was in the morning towards afternoon, towards
24 lunch, daytime. I was at work already.

25 Q All right. And what time was your shift?

Reid Lindsey
Direct examination by Mr. Ehliens

1 A I would come in about 8:30 in the morning.

2 Q 8:30 in the morning?

3 A Yes.

4 Q If I suggested to you that what the record reflects is
5 that the van was in a crash in Union and that the Union
6 County Sheriff's Department made a welfare request by a
7 phone call to Spartanburg County would that jog your memory
8 in --

9 A That makes sense, yes.

10 Q -- how it is? Does that help you in framing a time of
11 day?

12 A I remember being outside walking around in the yard
13 with the sunlight. I remember it being not extremely warm
14 but warm, wearing short sleeves. I remember the people on
15 the scene were wearing short sleeves. But as far as
16 whether at 2:00 o'clock, 1:00 o'clock, I don't -- I don't
17 remember. I imagine -- let me see if I have it in my
18 notes. I don't. I just have the date.

19 Q Okay. You don't have the time on that?

20 A I don't see the time on here, no.

21 Q Okay. All right, sir. Did you --

22 A I was going to say if there's -- the incident report
23 that would show the response time of that deputy. My
24 response time would be within 30 minutes of that window, I
25 would think, or less.

Reid Lindsey
Direct examination by Mr. Ehliès

1 Q Do you have a recollection of what the crime scene
2 looked like on your arrival?

3 A Yes.

4 Q Okay. Can you relate to the Court what you recall of
5 that?

6 A Well, first thing I would note is there -- when I
7 arrived there was still a strong smell of accelerants
8 consistent with gasoline products or something.

9 There was footprints, bloody footprints, through the
10 house.

11 Like I say, the gas was everywhere. The bodies were
12 in a back bedroom. The house had been looked through,
13 obviously, ransacked a little bit. It was obvious there
14 had been to me a burglary, an attempted arson, because it
15 didn't catch fire. And of course the murders. And of
16 course the positioning of Mrs. Emery led me to believe some
17 other things may have happened which would be consistent
18 with a sexual assault.

19 Q All right, sir. And the -- can you relate to us what
20 the inside of the house was like as far as whether it was
21 in order or whether there were suggestions that other
22 things were happening in the house? For instance --

23 A I remember specifically the bedroom where the bodies
24 were more than any part of the house, and the kitchen,
25 because that's where I came in first to make sure the

Reid Lindsey
Direct examination by Mr. Ehliès

1 burners were off because you had such a strong smell of gas
2 or accelerants. And of course I remember more about the
3 bedroom, and that was obviously disorganized because there
4 had been a struggle in there.

5 As far as the other part of the house, I'd have to
6 look at some pictures.

7 Q I'm going to show you some at this point. This is
8 marked from Spartanburg County crime scene, and it's
9 C-G02703. And see if you recognize that.

10 A Yeah. It looks like the markers we had out for, in
11 particular, the accelerants, notating where they, you
12 know -- I can't tell if there's footprints on some of these
13 pictures without taking them out.

14 Q Okay. All right. And let me show you another set of
15 photographs that's Spartanburg County crime scene
16 photographs from the county. And they're marked 02704.

17 A Uh-huh.

18 Q And, particularly, if you will look at the top of
19 them, the top left-hand side.

20 A Yeah. That's a chair knocked over, that one. The
21 top?

22 Q Yeah. The state of the interior of the house on the
23 bottom right-hand side of that page directly below the
24 chair and disarranged, did you know whether that's in the
25 living room?

Reid Lindsey
Direct examination by Mr. Ehlied

- 1 A That looks like the living room.
- 2 Q Okay.
- 3 A I think that's the bedroom there, yes.
- 4 Q And then Spartanburg County crime scene
5 investigations. Were these photographs made by forensics
6 in your --
- 7 A Yes.
- 8 Q And do you recall having seen photos like this?
- 9 A I remember direct -- me looking at photos after it,
10 yes.
- 11 Q And this is marked 02710. You'll notice that the
12 shelving and the drawers are all out.
- 13 A Yes, sir.
- 14 Q Okay. Is that the condition of the house as you saw
15 it when you originally entered?
- 16 A These, the photos, are fairly consistent with what I
17 remember, yes.
- 18 Q And then again 02728.
- 19 A Okay.
- 20 Q Do you recognize those photographs?
- 21 A They're photos of the house. I'm not sure. It's so
22 dark I can't tell what that is.
- 23 Q They're marked Spartanburg County crime scene with
24 county designated page numbers.
- 25 A Sure.

Reid Lindsey
Direct examination by Mr. Ehliens

1 Q Do you have any reason to believe that's not part
2 of --

3 A I have no reason to believe that's not from there.

4 Q Okay. And 02730. And on the bottom right-hand side
5 of that, what is that?

6 A The gasoline can?

7 Q Correct.

8 A Yes.

9 Q And is that the position it was in when you arrived at
10 the scene?

11 A I believe so. There were people walking around there,
12 so things do get moved. But I remember it being there.

13 Q Okay. All right. And you remember the odor of the
14 accelerants?

15 A Very much so.

16 Q Was it strong enough to discern the odor of
17 accelerants from outside the house at the back door?

18 A I smelled it as I walked up, yes.

19 Q Okay. Can you quantify that for us a little bit? Did
20 you walk up to the front of the house?

21 A No. I came in through the back, through the -- I
22 think there was a sliding door on the back. I went in
23 through there.

24 Q Correct.

25 A And as I got on -- I think there's like a little porch

Reid Lindsey
Direct examination by Mr. Ehliès

1 or deck area. You could spell it. But they had the door
2 open, so it was coming out.

3 Q Okay. So as you entered from the side of the house to
4 go to the rear of the house you could detect the odor of
5 accelerants.

6 A I detected it as I got onto that little porch area
7 where the door was opened. The front door was not open
8 when I got there.

9 Q All right. So if a witness were to testify that
10 someone was standing at that area of the house would you
11 have expected them to be able to smell the accelerants?

12 A At the time I was there?

13 Q Yeah.

14 A I would think so, yes.

15 Q Let me show you 02791 and ask you if you've seen
16 those.

17 A Yes. I remember looking at these, yes.

18 Q Okay. And can you identify that for the Court, what
19 that is?

20 A These are pictures of the van, of the Emerys' van,
21 that was recovered. Union County. I don't know exactly
22 where.

23 Q Okay. And --

24 MS. BROWN: Your Honor, may I object for just a
25 moment?

Reid Lindsey
Direct examination by Mr. Ehliès

1 It looks like the photographs that are being shown are
2 photographs similar to the ones that are already in
3 evidence from the trial. But I have not seen what's being
4 presented to the witness. I'm having just a little bit of
5 trouble following. My objection would be the procedure, if
6 I could just view all of the photographs really quickly.

7 THE COURT: Well, sure.

8 MR. EHLIES: I'll be happy to.

9 (Pause.)

10 MS. BROWN: I apologize for the interruption, Your
11 Honor.

12 THE COURT: That's all right.

13 MS. BROWN: I've viewed the evidence.

14 BY MR. EHLIES

15 Q All right. I'm back now on Spartanburg County crime
16 scene that's marked 02874. And you were looking at this
17 for us. And I ask you if that's the condition of the van
18 that was retrieved from Union County.

19 A I actually didn't go to Union County, but my
20 understanding from talking to the detective that was there
21 and the photos I saw after, yes.

22 Q Okay. And I notice, for instance, there's a
23 pocketbook --

24 A Yes.

25 Q -- in the bottom left-hand side, I think. I'm sorry

Reid Lindsey
Direct examination by Mr. Ehliès

1 to stand so close. But in the bottom left-hand side
2 there's a pocketbook and other personal items. And the
3 collision apparently was significant enough to deploy the
4 air bag. Is that the air bag that's in the upper-right
5 hand --

6 A Yes.

7 Q Okay. All right. And I'm going to show you 02791
8 which reflects the additional shots of the car and the
9 state of the car and the personal items. And I think in
10 that one the computer.

11 A Yes.

12 Q There's a computer on the bottom right, and discs, a
13 collection of discs, that sort of thing.

14 A Yes, sir.

15 Q Okay. All right, sir. Now, we have here 02833 which
16 are photographs of the stove. There was some question in
17 the trial transcript with the jury whether the stove was
18 gas or electric. And is that a photograph of the stove that
19 was involved?

20 A Yes.

21 Q And is that -- do you know enough -- is it challenging
22 your expertise to tell us whether it's gas or electric?

23 A I remember it being electric.

24 Q There it is. Thank you.

25 We -- we had in the trial transcript some issues about

Reid Lindsey
Direct examination by Mr. Ehliès

1 what was going on in the shed to the rear of the house and
2 that sort of thing.

3 I'm going to show you what's marked 02834 and ask you
4 if that is a photograph that shows in general proximity to
5 the back of the house the shed that might be referenced.
6 Is that photograph of a shed on the property associated
7 with the murder scene?

8 A Yes.

9 Q Okay. what are the paint cans?

10 A Those are cans that are used to collect samples for
11 accelerants. They're tested by a technician.

12 I think one of them has got a boot or a shoe or
13 something in there on this photo.

14 Q All right, sir. And I'm going to show you the inside
15 of that shed, I believe, 02835, and ask you if you
16 recognize that.

17 A This is the shed. I'm sorry. what did you ask me
18 about?

19 Q Is that the inside of the shed?

20 A Yes.

21 Q Yes. Okay. And then 02816, I think, again, is a
22 disarrayed -- a photograph of certain drawers, chairs and
23 things in the kitchen that were somewhat disarrayed. Was
24 that the condition of the scene when y'all arrived or when
25 you were there?

Reid Lindsey
Direct examination by Mr. Ehlied

1 A Yes.

2 Q would law enforcement have pulled out the drawers and
3 dropped them on the floor and things like that?

4 A No.

5 Q One more, 02792 -- I'm sorry -- of the -- dealing with
6 the van. At some point y'all inventoried the contents of
7 the van, is that correct?

8 A Yes.

9 Q Poorly worded question. And is that a photograph of
10 the process?

11 A Yes.

12 Q Okay. Some of the items that were removed?

13 A Yes.

14 Q And is 02793 a computer?

15 A Yes. It looks like the items that we set out to make
16 sure they weren't the victims.

17 Q Okay. And did it turn out that they were indeed,
18 those items belonged to the victim?

19 A I think we actually did a list, but to my
20 recollection, yes, they were all those items.

21 Q And, in fact, the car license plate was registered to
22 Mr. Emery.

23 A That's correct.

24 Q Ray Emery. Was his car or his van.

25 A That's correct.

Reid Lindsey
Direct examination by Mr. Ehliès

1 Q Is that correct?

2 MR. EHLIES: Judge, we offer this package as we've
3 identified them as we go as Applicant's Exhibit No. 1 as a
4 package. If it suits you, as package and not individually.

5 MS. BROWN: No objection, Your Honor.

6 THE COURT: They're admitted.

7 How many separate sheets of multiple photographs on
8 each sheet do you have?

9 MR. EHLIES: Thirteen.

10 THE COURT: Thirteen.

11 MR. EHLIES: I believe so, yes, sir.

12 THE COURT: Thank you.

13 (Photographs marked Applicant's Exhibit No. 1.)

14 Q Officer Lindsey, in furtherance of your duties as the
15 lead investigator did you encounter witnesses in the area
16 in and about the house?

17 A I did.

18 Q And was one of those witnesses a fellow by the name of
19 Chuck Emery?

20 A Yes, sir. That was the victim's son.

21 Q And that would have been Ray Emery's son?

22 A Yes.

23 Q Do you know whether or not he was the stepson of Ann
24 Emery, the deceased victim in the house?

25 A I believe so, yes.

Reid Lindsey
Direct examination by Mr. Ehliès

1 Q Okay. Did you do an interview of Mr. Chuck Emery?

2 A I spoke with him, yes. I don't believe I took the
3 statement. From reading my notes I think I asked
4 Mr. Clevenger who was with the sheriff's office at the time
5 and now is the coroner.

6 Q And that would be Rusty Clevenger?

7 A That's correct.

8 Q And did he, in fact, to your knowledge spend time with
9 Mr. Chuck Emery --

10 A Yes.

11 Q -- and obtain a statement?

12 A Yes.

13 Q And did you have access to that statement, and review
14 it?

15 A I did, yes.

16 Q Had you in -- in the context of your obligations as an
17 officer with the Spartanburg County Sheriff's Department --
18 were you aware of who Chuck Emery was?

19 A Yes.

20 Q And how were you aware of who Chuck Emery -- other
21 than -- and I don't mean to suggest the son of the
22 deceased -- how was it that you became and you are aware of
23 who he was?

24 A He came to the scene. And, obviously, one of the
25 things you want to do with a -- in a murder investigation

Reid Lindsey
Direct examination by Mr. Ehliès

1 is interview the family, and he's part of the family. So I
2 got to know Chuck through the investigation by talking with
3 him. Of course he talked to other detectives, and they
4 told me what he had to say.

5 Q Did you know him or of him prior to the murder scene?

6 A No.

7 Q Did you have any association with investigating drug
8 activities in Spartanburg County?

9 A You have to repeat that, how you said that. What did
10 you say?

11 Q Were you involved at all in investigating drug-related
12 activities in Spartanburg County in and about 2007?

13 A I would not have any capacity investigating it
14 directly unless it was involved with some case I was
15 working with. Quite often murders do involve drugs. But I
16 was not assigned to investigate drugs like a narcotics
17 officer or anything.

18 Q Did you ever obtain any information that this murder
19 may have involved drugs?

20 A Yes.

21 Q Okay. And did that also involve Mr. Chuck Emery?

22 A Yes.

23 Q Okay. Will you tell us what you came to understand in
24 the course of your investigation of this murder?

25 A To the best of my recollection my understanding was

Reid Lindsey
Direct examination by Mr. Ehliès

1 that there was a dispute between Tony and Chuck about
2 some --

3 Q Let me stop you there. When you say Tony, you mean
4 the applicant, convicted defendant, Tony Torres?

5 A That's correct.

6 Q Okay. You can call him Tony as long as the record
7 reflects that's who you're talking about.

8 A Okay. There was a dispute between Chuck Emery and
9 Mr. Torres about some methamphetamine.

10 Now, the exact -- what happened with that, I don't
11 know. But it's my understanding that I believe Tony -- I
12 felt like through what I had talked to Chuck about, and the
13 other folks that were involved with this, that Tony may
14 have felt cheated about some -- some drugs.

15 Q And would it have been at the hands of Chuck Emery
16 that he -- Tony -- may have felt cheated?

17 A Yes.

18 Q Okay. And based on the statements that you obtained
19 from Chuck Emery were you aware that there had been
20 occasions where Mrs. Ann Emery had had to remove Chuck and
21 his associates from the house for drug activities?

22 A I think they removed them earlier that day or the day
23 before or the morning before, but yes.

24 Q Hours before the murder?

25 A Yes.

Reid Lindsey
Direct examination by Mr. Ehliens

1 Q Is that your understanding in the course of your
2 investigation that Ann Emery became involved in removing
3 Chuck and associates from that particular house because of
4 drug activities?

5 A Yes. It was very clear that Chuck had caused problems
6 at the house.

7 Q And was it your impression then that actually the
8 problems that Mrs. Emery was having concerning drugs in and
9 about the house involved more than just one night?

10 A Yes.

11 Q Okay. Do you know how long Chuck -- I'm sorry -- how
12 long Ray Emery and Mrs. Ann Emery had been married?

13 A I don't remember. I may have known at the time, but I
14 can't tell you right now.

15 Q One of the exhibits that was offered at trial but not
16 before the jury was the probate file for Mr. Ray Emery. Do
17 you remember a probate file and inheritance issues being
18 part of the investigation?

19 A I remember that coming up after the investigation.
20 well, let me change that. I remember that coming up after
21 Mr. Torres had been arrested.

22 Q Okay. well, how long was it before they arrested
23 Mr. Torres?

24 A Oh, that day. We found him at his grandparents that
25 day.

Reid Lindsey
Direct examination by Mr. Ehliès

1 Q Okay. So after that day did you become aware that
2 the -- of who the sole heir was of the estate of Ray Emery?

3 A To my recollection it was Chuck.

4 Q And did you ever do interviews of -- did you do an
5 interview of Tammy Hughey?

6 A I did several interviews. Over the course I ran into
7 her. I remember going to her house. But, now, if you're
8 asking about a specific statement, yes, I did do that as
9 well, I think.

10 Q And where did Tammy Hughey live in relation to Ray and
11 Ann's house?

12 A Next door. If you're looking at the house, it would
13 be to the left.

14 Q Okay. And in between the two houses an old tree fell
15 in and left a hole in the ground. Do you recall that?

16 A I don't but that -- that is very possible.

17 Q It was referred to as the fire hole.

18 A Yes. There was a fire hole.

19 Q Okay. And there will be witnesses in this case that
20 referred to the fire hole. And did you happen to notice a
21 hole where it was a hole in the ground between the two
22 properties?

23 A Right now I don't remember it, but I do know that I
24 see in my notes I read something about the fire hole. So
25 that sounds consistent.

Reid Lindsey
Direct examination by Mr. Ehliès

1 Q Do you have an independent recollection of studying
2 what had been burned inside the fire hole?

3 A No.

4 Q Okay. Did you know whether or not forensics was
5 called to investigate residuals of any fires in that fire
6 hole?

7 A No. But I wouldn't think they would have been.

8 Q Okay. Now, were you aware or did you from the course
9 of questioning other witnesses -- Tammy Hughey -- did you
10 speak to her daughter Jessica Hughey?

11 A I may have. I don't remember if I did in my notes. I
12 talked to a lot of people. But I do remember she was on
13 the scene that day of, you know, when we were actively at
14 the scene when we first arrived.

15 Q And do you recall whether or not you spoke to an
16 elderly woman by the name of Phyllis white?

17 A I don't remember. It's very possible. It might -- I
18 would say that if my notes reflect that I did, I did.

19 Q To give you a little frame of reference, she would
20 have been the confidant and personal best friend of the
21 deceased Ann Emery.

22 A I can't remember talking to her.

23 Q She testified at the trial. That doesn't jog your
24 memory?

25 A No. I was out of the courtroom.

Reid Lindsey
Direct examination by Mr. Ehliès

1 Q Okay. All right. Did you speak with the daughter of
2 Ann Emery, who was Ms. Crystal Williamson now? And pardon.

3 A I did.

4 Q Did you? And is she in the courtroom?

5 A She's sitting right back there.

6 Q Okay. And you can identify her as the person on the
7 first row to your right?

8 A The young, blonde-headed lady right there.

9 Q In the course of your debriefing her and your
10 investigation of the murder did you talk to her about her
11 mother's relationship with Chuck Emery?

12 A Yes.

13 Q And did you gain an impression as to whether that
14 relationship was good or bad?

15 A Bad. There wasn't much going on good with Chuck at
16 the time. And I don't remember.

17 Q Did you come to find that out from more than one
18 source?

19 A Yes.

20 Q Okay. Do you know or do you recall whether Ann Emery,
21 the deceased Ann Emery, actually expressed fear for her
22 well-being?

23 A Fear.

24 Q Fear for her personal safety.

25 A That who expressed that?

Reid Lindsey
Direct examination by Mr. Ehli

1 Q Ann Emery, the deceased.

2 A I don't remember ever finding any evidence to that. I
3 don't remember finding anything, or that very well may be
4 the case, but I don't remember finding any specifically.

5 Q All right. And do you recall -- you never talked to
6 Phyllis White, so you wouldn't have known it from there, is
7 that correct?

8 A I don't remember talking to Phyllis White.

9 Q And do you recall whether or not in your conversations
10 with Ann Emery's daughter Crystal Williamson, whether there
11 was any reference about her mother's fear for her personal
12 safety?

13 A I don't remember specifically asking about her
14 mother's fear. I do remember perhaps Crystal expressing
15 that, yeah, there was some concern with Chuck with her. I
16 don't remember that, specially asking that question.

17 Q Okay. All right. Do you know whether or not Chuck
18 Emery was -- let me back up. Excuse me. I'm sorry.

19 Dr. Wren was the medical examiner in this case. Do
20 you remember that?

21 A That's correct.

22 Q And did you work with Dr. -- as the lead investigator
23 in this case did you work with Dr. Wren in doing the
24 forensic evaluation?

25 A That's correct.

Reid Lindsey
Direct examination by Mr. Ehliens

1 Q The autopsy.

2 A He did. I was there. I observed and I talked with
3 Dr. Wren.

4 Q Now, he offered a time of death in his written report
5 but not in his testimony. Do you recall what that was?

6 A I do not.

7 Q All right. If I suggested to you it was the early
8 morning hours extending all the way up to -- I think he
9 said 9:00 in his written report -- 9:30 -- can I have just
10 a second? We need to be accurate. I'm sorry.

11 (Pause.)

12 Q Was the coroner present when you and Dr. Wren and all
13 were doing the autopsy?

14 A I believe so.

15 Q I'm going to show you what's the coroner's note on
16 these two cases. I shared this with counsel. And it is
17 marked 00461. And I believe that the time of injury, time
18 of death, is between the hours of 12:00 a.m. all the way up
19 to 9:30 p.m. -- 9:30 a.m.

20 A That's correct.

21 Q Is that correct?

22 A Yes.

23 Q Did your investigation reveal that Chuck Emery had
24 been on that property in and about that house all of that
25 night on three different occasions?

Reid Lindsey
Direct examination by Mr. Ehli

1 A what I remember is what we discussed. I remember
2 Chuck left the house at some point, and he went to hang out
3 with his girlfriend and Kevin Biggerstaff. And through the
4 course of my investigation what I remember was that he was
5 alibied when he believed the murders had occurred. But,
6 now, what time he was there and what time he left, I don't
7 think I can tell you. I don't know.

8 Q well, for instance, you remember interviewing Tammy
9 Hughey.

10 A I do.

11 Q And did Tammy Hughey not tell you that Chris -- that
12 Chuck Emery was there at the house at 6:30 in the morning?

13 A If that's what's in her statement that's what she told
14 me, yes.

15 Q And --

16 A He came back.

17 Q He was in and out of the house several days.

18 A Okay.

19 Q what I'm offering from you is did your investigation
20 reveal that Chuck Emery was, in fact, within the time of
21 death as specified by the coroner's report -- and I'll have
22 Dr. Wren on the stand -- that Chuck Emery was in and about
23 that house a number of times during that time period.

24 A I don't remember catching that fact that Chuck had
25 been into the house at any point in time when there would

Reid Lindsey
Direct examination by Mr. Ehlied

1 have been several things -- the known crime -- No. 1, it
2 would have had to have been accelerant where the bodies
3 were. I don't remember catching that in my investigation.
4 If there are statements that reflect during the timeframe
5 that he was there and during the timeframe Dr. Wren gave,
6 then the answer is yes. But I don't remember catching it.

7 Q Megan McKinney, Mackin -- McKinney --

8 M-A-C-K-I-N-S-U -- Mackinsu. Is that somebody that you
9 interviewed?

10 A Who?

11 Q Mackinsu. Megan from across the street. I'm sorry.

12 A I interviewed several neighbors. I don't know if she
13 was among them. It wouldn't surprise me.

14 Q Okay. And Ms. Brice.

15 A Seems like I do remember a name Ms. Brice. I don't
16 know.

17 Q She worked --

18 A I did a canvass. I did a canvass of all of the houses
19 there and whoever was living there.

20 Q In fact, there were three different neighbors that saw
21 Chuck and an associate standing in the yard at about
22 6:30 in the morning. Is that --

23 A That does ring a bell.

24 MS. BROWN: Objection, Your Honor. I don't --

25 THE COURT: Sustained.

Reid Lindsey
Direct examination by Mr. Ehliès

1 MS. BROWN: There's not identification.

2 THE COURT: Sustained.

3 Q All right, sir. Let's move on in your investigation
4 then.

5 Did you later come to understand that Chuck Emery was,
6 in fact, involved in making methamphetamine?

7 A I don't remember anything that he was making it. I
8 certainly remember evidence that he was using it.

9 Q All right, sir. And, in fact, did he not say that in
10 his statements that he gave to you and your agents?

11 A He did say something. I can't -- there's a
12 handwritten that I can barely even read. But there's a
13 written one, and he does mention something about
14 methamphetamine.

15 Q Well, we'll blame the handwriting on Mr. Clevenger. I
16 think he offered you a written statement, a typed
17 statement.

18 A Yes.

19 Q Is that true?

20 A Yes. He did.

21 Q Now, I think you identified earlier that as far as the
22 crime scene itself -- did it present a challenge to you?

23 A It did. You have an officer safety issue with the
24 strong presence of the accelerants, which we were very
25 fortunate the house probably didn't catch afire. And then

Reid Lindsey
Direct examination by Mr. Ehliès

1 you have another crime scene going on at the same time and
2 at the same -- while all of that's going on you're trying
3 to find a person who did it.

4 You also coordinate with another agency, because Union
5 County was involved. You have to recover all of these
6 items. You have to send -- there's people going in a lot
7 of different directions.

8 Q And was the crime itself complicated?

9 A Yes, sir. Pretty much every felony that you could
10 think of in it.

11 Q And somebody had to go get gasoline, is that correct?

12 A That's correct.

13 Q An accelerant.

14 A Yes.

15 Q Had to have it in a container and bring it into the
16 house.

17 A Yes.

18 Q Had to intercept and kill two people.

19 A That's correct.

20 Q Separately.

21 A Yes.

22 Q The theory in the case --

23 MS. BROWN: Objection, Your Honor. I'm not hearing
24 testimony from the stand. And so far the questions have
25 incorporated answers. And I don't have any idea whether

Reid Lindsey
Direct examination by Mr. Ehliès

- 1 this is from personal knowledge or not.
- 2 THE COURT: Sustained.
- 3 Q You did the investigation.
- 4 A That's correct.
- 5 Q Did you find gasoline?
- 6 A I did.
- 7 Q Did you find a gasoline can?
- 8 A I did.
- 9 Q Did you find the house in disarray?
- 10 A I did.
- 11 Q Did you find drawers pulled out and upended?
- 12 A I did.
- 13 Q Did you find furniture upended?
- 14 A Yes, yes.
- 15 Q And did you find two people deceased?
- 16 A I did.
- 17 Q And was the theory that they were killed with a
- 18 hammer?
- 19 A They were clearly killed with a hammer.
- 20 Q And did you find the hammer?
- 21 A I did.
- 22 Q And did you find one --
- 23 A We did.
- 24 Q -- body on the bed?
- 25 A Yes. we did.

Reid Lindsey
Direct examination by Mr. Ehliès

- 1 Q And did you find another body somewhere else?
- 2 A We did. It was in the floor.
- 3 Q And it was partially nude?
- 4 A Yes. She was.
- 5 Q Okay. And then you found the vehicle.
- 6 A Yes. We did.
- 7 Q Mr. Ray Emery's, registered to Mr. Ray Emery?
- 8 A That they had, yes.
- 9 Q And you found the vehicle that contained pocketbooks?
- 10 A Yes. That's correct.
- 11 Q Clothing?
- 12 A That's correct.
- 13 Q Computers?
- 14 A That's correct.
- 15 Q Jewelry?
- 16 A I believe so.
- 17 Q All items escaping --
- 18 A I think there was a jewelry box.
- 19 Q And did that suggest to you the possibility that more
- 20 than one person was involved in this crime?
- 21 A At no point in my investigation did I find anything
- 22 that led me to believe that the sole proprietor of the
- 23 crime was Tony Torres.
- 24 You -- as you mentioned earlier, you brought up some
- 25 issues with the statement. Like I testified earlier, I

Reid Lindsey
Direct examination by Mr. Ehliès

- 1 didn't catch that if that is the case. I don't have the
2 documents here to compare them, and I don't have access.
3 But what I found was the person who committed the crime is
4 sitting right over there.
- 5 Q All right, sir. And that -- I don't challenge that at
6 this point. Okay. But my point is whether he's the only
7 person involved in this crime.
- 8 A I understand.
- 9 Q Okay. That was the point of my -- my questions. Have
10 we identified then the various things that you found to be
11 going on in that house?
- 12 A Yes.
- 13 Q I specified certain characteristics of the crime.
- 14 A The -- there was evidence to suggest there was a
15 burglary; there was evidence to suggest there was an
16 attempted arson possibly to cover up for the murders that
17 had occurred; and there was evidence to suggest there was a
18 sexual assault.
- 19 Q All right, sir. Now, on the burglary, are you saying
20 that there was forcible entry?
- 21 A No. I don't necessarily remember actually forced
22 entry, but regardless of -- and the attorneys -- but my
23 recollection of case law is if you sneak your way into a
24 house and do something wrong and then commit a crime it
25 still constitutes burglary. The judge, obviously, would

Reid Lindsey
Direct examination by Mr. Ehliès

1 know better than me but --

2 Q Obviously.

3 A Yes. I'll say the burglary.

4 Q Okay. I'm not challenging your understanding of the
5 burglary. The point I'm wanting to make is whether there
6 was evidence of a forced entry.

7 A I don't remember there being evidence of forced entry.

8 Q Do you know whether or not Chuck Emery had keys to
9 that house?

10 A As being a resident there I would think he did.

11 Q And you know he did things like shower, spent time
12 showering in the house.

13 A He lived there actually.

14 Q In fact, just prior to this -- this crime I think you
15 had a statement from him that he spent 30 minutes in the
16 shower.

17 A That's correct, yes.

18 Q When you worked the case up did you talk to Mr. Rusty
19 Clevenger about his role in the investigation?

20 A I know I did at some point, yes. He was involved. I
21 talked to everybody that was involved at some point.

22 Q Were you able to discern whether as an outgrowth of
23 that case any investigation was initiated about Chuck
24 Emery's use of a credit card?

25 A After the arrest had been made of Mr. Torres there

Reid Lindsey
Direct examination by Mr. Ehliens

1 some -- and I can't remember the specifics. But there's
2 something did come up about him using a credit card after
3 the Emerys' death.

4 Q Of his father?

5 A Yes.

6 Q And it had to do -- do you know what it had -- what
7 the purchase -- what the use of the credit card was?

8 A Bought something, but I don't know.

9 Q Did you ever find a safe under the bed of Mr. Ray
10 Emery when you --

11 A I don't remember finding a safe.

12 Q Do you remember ever finding information from any
13 witness about a safe that was under the bed of Mr. Ray
14 Emery -- a safe or lock box? Nothing -- a lock box type.

15 A I want to say that may have been mentioned but I --
16 there's not a great deal of certainty with that response.

17 Q Okay. Do you recall whether or not the Spartanburg
18 County agency ran down the lead of Chuck Emery and a credit
19 card by securing the data from the credit card companies?

20 A I don't know. I would not -- I would not have
21 investigated that one at the time. That would have been
22 another -- another division of the -- of our office would
23 have handled that in the same -- in the detectives in
24 criminal investigation division. But the white color folks
25 would have gotten that.

Reid Lindsey
Direct examination by Mr. Ehliès

1 Q Okay. All right.

2 A And they may have come and talked to me about it.

3 Like I say, I don't remember the specifics of that, just
4 that there was an issue of the credit card after.

5 Q Was the issue the use of the credit card or the
6 ownership of the credit card?

7 A Both.

8 Q Okay. Do you have any recollection as to what was
9 being purchased with the credit card?

10 A I can't remember.

11 Q Do you have any recollection where it was being used?

12 A For some reason I want to say Wal-Mart, but that may
13 be wrong.

14 Q Okay.

15 MR. EHLIES: Could I have a second, Judge?

16 (Pause.)

17 Q In the course of doing the investigation and speaking
18 with Mr. Chuck Emery the name of Kevin Biggerstaff came up.

19 A That's correct.

20 Q Do you know who Kevin Biggerstaff is?

21 A A friend of his. I don't know if -- as a broader
22 sense of who he is other than Kevin Biggerstaff, no. I
23 believe I talked to him on the phone though and asked him
24 about, you know, the alibiing Chuck for the night. I do
25 remember that conversation.

Reid Lindsey
Direct examination by Mr. Ehliès

1 Q Do you know where Mr. Kevin Biggerstaff is right now?

2 A I don't. He was one of Chuck's friends so there --
3 could be a lot of places.

4 Q If I told you he's in prison for methamphetamine would
5 you have any reason to dispute that?

6 A That would have been my first guess.

7 Q And, in fact, the whole association of Chuck and group
8 wouldn't happened to have surprised you, would it?

9 A That'd be fairly consistent with Chuck's friends.

10 Q And another one -- Roger Kirby. Is that a name that
11 came up in the course of your investigation?

12 A Yes. I'm having a hard time remembering why.

13 Q Did you interview any witnesses that suggested Roger
14 Kirby was there that night within the time of death as set
15 forth by the coroner's report?

16 A I don't remember that.

17 Q Do you know where Roger Kirby is today?

18 A I guess prison.

19 Q Is indeed.

20 MR. EHLIES: Judge, thank you for your patience.

21 That's all.

22 THE COURT: Okay. Thank you.

23 MS. BROWN: Your Honor, would you like to press
24 forward on cross-examination?

25 THE COURT: Yes, ma'am. Sure.

Reid Lindsey
Cross-examination by Ms. Brown

1 CROSS-EXAMINATION

2 BY MS. BROWN

3 Q Officer Lindsey, you were asked just a few minutes ago
4 if your investigation found that Chuck Emery was a resident
5 of the Emery house.

6 A Yes.

7 Q Where did Mr. Torres live?

8 A Right next door.

9 Q Right next door to them. And you were asked about
10 some of Mr. Emery's associates and drug use.

11 A That's correct.

12 Q Did you make that connection with Mr. Torres as well?

13 A Yes.

14 Q And you said that you had investigated the
15 neighborhood when you arrived. Do you remember talking to
16 a lady by the name of Tammy Hughey?

17 A Yes. She lived next door. I think that would be his
18 -- Mr. Torres' aunt -- I believe.

19 Q And do you remember a Jessica Hughey as well?

20 A Yes, yes.

21 Q And she is in what relation to Tammy Hughey?

22 A I believe that's her daughter.

23 Q Okay. When you -- well, let me ask you this, if I
24 could ask you to review a document and see if it looks
25 familiar to you and you can identify it.

Reid Lindsey
Cross-examination by Ms. Brown

1 MS. BROWN: Your Honor, may I approach?

2 THE COURT: You may.

3 A It's a statement of Ms. Tammy Hughey.

4 Q would that be something that you would normally
5 review?

6 A Yes.

7 Q Okay. Do you recall reviewing that particular
8 statement?

9 A when would I be reviewing? Are you talking about
10 reviewing for this proceeding?

11 Q During -- during the investigation. I'm sorry.

12 A Oh, yes.

13 Q I could have asked a better question there.

14 A Yes. I would have reviewed it, yes.

15 Q Okay. And does this particular statement reflect some
16 timeframe of when Mr. Torres was last seen around Mr. --
17 I'm sorry -- around Ms. Hughey's home?

18 A Yes. Give me a second to skim through it though.

19 Q Sure.

20 (Pause.)

21 A It's placing Tony walking down the road at 2:10 a.m.
22 At 2:50 a.m. they saw -- Tammy saw Tony go down the street
23 again. So I guess it was like a 40-minute window in there
24 for two sightings.

25 Q okay. so the last time that, according to that

Reid Lindsey
Cross-examination by Ms. Brown

1 statement, that Ms. Hughey saw Mr. Torres was at around
2 3:00 a.m.

3 A Correct.

4 Q And he's walking down the road.

5 A That's correct.

6 Q And that road would have been right in front of the
7 Emerys' home as well.

8 A Just a couple of -- maybe a hundred yards. Maybe not
9 that much. A few hundred feet maybe.

10 Q Okay. Now, you mentioned a prior time. There's
11 something in this statement too about Chuck Emery and
12 Mr. Torres, correct?

13 A Yes.

14 Q Okay. And there's also a threat reflected in this
15 statement, correct?

16 A Can you direct me to the part where you see it?

17 Q Absolutely. About midway down the paragraph. "There
18 was a lot of arguing back and forth."

19 A Yes. I can just read that part. I walked -- let's
20 see. "There was a lot of arguing back and forth about the
21 phone being taken. As Chuck walked off Tony told me, and I
22 quote, 'Fuck you and your family. Fuck my family. I'll
23 kill you all.' Tony walked around the circle."

24 Q Okay.

25 A Yeah.

Reid Lindsey
Cross-examination by Ms. Brown

1 Q So that was Mr. Torres making a direct threat to
2 Mr. Emery that he was going to kill his family.

3 A That's correct.

4 Q And Mr. Emery's family would be Ray Emery right down
5 the road, just a few yards from where Mr. Torres was last
6 seen at 3:00 a.m.

7 A That's correct.

8 Q Also, in this particular statement, Mr. Lindsey, is
9 there anything about fear from Ms. Hughey? And that would
10 be immediately after that, I believe, statement you just
11 read.

12 A Yes. It says, "wasn't going to let him in. I didn't
13 know what he was capable of doing."

14 Q And you said that Ms. Hughey is Mr. Torres' aunt.

15 A That's correct.

16 MS. BROWN: Your Honor, we would move to have the
17 voluntary statement of Ms. Tammy Hughey submitted into
18 evidence.

19 MR. EHLIES: Without objection.

20 THE COURT: It's admitted. Respondent's No. 1?

21 (Voluntary statement of Tammy Bell Hughey dated May
22 11, 2007, marked State's Exhibit 1.)

23 Q I want to talk a little bit more about the
24 investigation.

25 Did you end up taking a statement from Mr. Torres?

Reid Lindsey
Cross-examination by Ms. Brown

1 A I did not. He invoked his right to counsel.

2 Q Okay. And I believe you told us before that you were
3 called and you went to Mr. Torres' grandmother's house.

4 A That's correct.

5 Q And do you remember going there and knocking on the
6 door?

7 A I do.

8 Q Okay. And was Mr. Torres there?

9 A He was sitting on the couch. The back door was open.
10 The screen door was what was there.

11 Q Okay. Do you recall when you first went into the home
12 whether Mr. Torres said anything to you when you said you
13 were there to see him?

14 A Said something to the effect that we probably needed
15 to talk to him I believe if I remember correct. I
16 mentioned it in my notes at some point.

17 Q So that was without prompting from you.

18 A That's correct. That's just as we were walking in.

19 Q Okay. And do you remember obtaining some clothes at
20 that time?

21 A Shoes, I believe, were in the washing machine.

22 Q Okay. And what about khaki pants and a yellow shirt?

23 A I think they were there too.

24 Q Okay.

25 A I specifically remember shoes because I was thinking

Reid Lindsey
Cross-examination by Ms. Brown

1 about footprints.

2 Q And Mr. Torres said those were his clothes.

3 A That's correct. So did his grandmother.

4 Q Okay. And when those clothes were tested did you find
5 any of the Emerys' blood on those clothes?

6 A I believe there was a mixture of both.

7 Q Okay. And those shoes that you obtained at that time,
8 they were tested and compared to the prints at the scene,
9 correct?

10 A They were.

11 Q And you said that there were a lot of prints at that
12 scene.

13 A There were.

14 Q And it was a bloody screen, is that correct?

15 A Very much.

16 Q And that blood was contained in the bedroom?

17 A No. There was -- there was blood in the bedroom, but
18 there was footprints through the house.

19 Q Footprints throughout the house.

20 A To my recollection. I specifically remember
21 footprints in the hall.

22 Q Do you remember footprints in the kitchen?

23 A Very possible, yes. I believe we took some samples.

24 I think we actually took the flooring from a couple of the
25 prints. I think there was some wood flooring, and there

Reid Lindsey
Cross-examination by Ms. Brown

1 may have been some laminate as well.

2 Q And the prints that you recovered throughout the
3 house, were you able to match those to the type of tread
4 and the wear?

5 A We submitted. We submitted them to SLED -- South
6 Carolina Law Enforcement Division. And they did testing.
7 And they were a match to the shoes that were recovered that
8 were identified to Mr. Torres.

9 Q Okay. And do you recall whether there was another
10 print that was obtained?

11 A I don't. But we were walking through there. There
12 would have been bootprints from the sheriff's office. Very
13 possibly could have been more in there.

14 Q Okay.

15 A There could have been a stain from in the house. I
16 don't know. But I do know it is -- the shoes we recovered
17 made prints in that house with blood on them. And they
18 were Mr. Torres.

19 Q And they were around the bedroom and they were around
20 the kitchen and they were throughout the house.

21 A That's correct.

22 Q Let me ask you going back to the conversation you had
23 with Mr. Torres at his grandmother's house. You asked him
24 to go with you to the detention center, correct?

25 A From his grandmother's house we actually asked him to

Reid Lindsey
Cross-examination by Ms. Brown

1 go to the sheriff's office.

2 Q The sheriff's office.

3 A Correct.

4 Q And you gave him his Miranda rights.

5 A My recollection, we gave them to him on the scene and
6 then we read and had him waiver to be completed at the
7 sheriff's office as well.

8 Q Okay. And he told you. He admitted that he had an
9 argument with Chuck Emery that night, didn't he?

10 A That's correct.

11 Q And he also admitted that he knew that the death was
12 by beating, correct?

13 A At the time we were doing the interview there was only
14 a very select few people who knew the cause of death.

15 Dr. Wren obviously would give you specifics about it,
16 but in general they were beaten to death. So only the
17 people involved in the investigation would know that, or
18 the suspect. And he knew.

19 Q And he used that term, a beating death, specifically?

20 A Beaten is what I think he said.

21 Q Beaten. Okay. And you mentioned already that there
22 was some other evidence in the case that your investigation
23 recovered. And I'm going to focus your attention on the
24 van.

25 A That's correct.

Reid Lindsey
Cross-examination by Ms. Brown

1 Q Recovered in Buffalo.

2 A Yes. Union County.

3 Q Now, the accident occurred somewhere around 7:00 a.m.,
4 is that correct?

5 A To my recollection it was early morning, yes.

6 Q Okay. So the last time that you could place
7 Mr. Torres around the Emery house was around 3:00 a.m.

8 A According to Ms. Hughey's statement, correct.

9 Q And then by 7:00 a.m. he had wrecked a van in Buffalo.

10 A That's correct.

11 Q And how long does it take approximately to get from
12 the Montgomery area, that drive in Drayton, to Buffalo?

13 A It's at the bottom. It's all the way at the bottom
14 end of the county into Union County. I would think 40
15 minutes, maybe 45, depending.

16 It was at that time 7:00 a.m. Traffic would not be
17 that heavy.

18 Q Okay.

19 A So there's more considered than that. The van was
20 full of items. They didn't get there by theirself.

21 Q Full of items. And did you get any prints from those
22 items?

23 A Yes. And if my memory serves correctly, there was
24 actually a flower urn I think or something that we obtained
25 a print off that matched Mr. Torres, or some kind of

Reid Lindsey
Cross-examination by Ms. Brown

1 ceramic piece. I remember it being white.

2 Q And did you find some blood samples on a lot of the
3 different items as well?

4 A Yes.

5 Q And they were from the Emerys.

6 A Yes.

7 Q Were there any other bits of evidence -- either a
8 blood sample or fingerprint or shoe print -- anywhere
9 within that van that would indicate anyone other than
10 Mr. Torres and the victims?

11 A There was nothing in the van. There was nothing I
12 found in my investigation that suggested there was anybody
13 but Mr. Torres.

14 Q Mr. Lindsey, you were asked just a few minutes ago
15 about a lock box, if you recall anything about a lock box.
16 I would like to show you what was State's Exhibit 366
17 during the trial. It was marked at trial. It is a copy of
18 a photograph in the clerk's records. And see if you
19 recognize this.

20 A It looks like a lock -- lock box to me.

21 Q And that designation would be that you -- and if you
22 would, describe it for us a little bit. There's a number
23 there.

24 A Yeah. It's No. 38. It's identifying it both areas,
25 you know, but it's a metal box and it's got a lock

Reid Lindsey
Cross-examination by Ms. Brown

1 obviously on the front of it. I mean, I've seen these
2 before. It's not a safe as such.

3 Q Yes, sir.

4 A It's a lock box.

5 Q would that have been in the home? Is that why it was
6 photographed?

7 A It looks like it was in the home. It doesn't appear
8 to have been in the van or anything. It's a lot of stuff.
9 So, yes, it looks like it was in the home.

10 MS. BROWN: Your Honor, may I approach to let Your
11 Honor review the evidence?

12 THE COURT: Sure. Have they seen it?

13 MR. EHLIES: Without objection.

14 MS. BROWN: Yes, sir. And that's, of course, marked
15 from the original trial, so we're trying to keep all of the
16 exhibits from the original trial together. We wouldn't be
17 introducing that.

18 THE COURT: You say this is not going to be
19 introduced?

20 MS. BROWN: Well, Your Honor, I can reintroduce it and
21 I can substitute a copy for that so I can make reference to
22 it.

23 The original photograph there is a part of the
24 clerk's-office records now for the trial. So if I could
25 introduce a copy, I'll be happy to do that.

Reid Lindsey
Cross-examination by Ms. Brown

1 THE COURT: I think that will be good. Introduce a
2 copy.

3 MS. BROWN: Yes, sir.

4 Q So you have the wrecked van in Buffalo, and you've got
5 some statements from law enforcement. You've got the
6 defendant admitting that he knew about the beating death.
7 So I think you summed it up probably better than I could.
8 There was nothing else for you to look at for another
9 person involved at that time, correct?

10 A That's correct. And as the investigation progressed,
11 it just got better. You had a D.N.A. sample that came back
12 from inside one of the victims that matched Mr. Torres.
13 You had -- you also -- remember there were some lineups
14 shown from the scene down with the van, and where
15 Mr. Torres was identified.

16 Q And you were asked about your interview with Chuck
17 Emery at the scene. Did he ever fail to cooperate with
18 you?

19 A No.

20 Q Okay. You were also asked about the probate file. Is
21 that something that you recall specifics on or just that it
22 was introduced?

23 A I remember it was introduced. I do believe being
24 aware that Chuck was maybe the recipient of a will or
25 whatever may be left over from the deaths, specifics of

Reid Lindsey
Cross-examination by Ms. Brown

1 the --

2 Q I'm sorry.

3 A I'm sorry. I'm try to use -- I don't remember
4 investigating it as to the potential motive. I never -- I
5 felt like during the investigation at every point up until
6 Mr. Ehlies called me that there was never any evidence to
7 suggest it was anybody but Mr. Torres. And I thought we
8 had Chuck alibied.

9 Q Okay. So when you were asked about the coroner's
10 report and this estimated time of death being between
11 12:00 a.m. and 9:30 a.m., your evidence showed a much more
12 compressed timeframe, didn't it?

13 A Yes. And that's -- they give you a range. Dr. Wren
14 certainly is very knowledgeable, and I wouldn't want to go
15 against him, but it's a range. It's not a specific time.

16 Q Let me ask you about a statement that you made in your
17 direct about the state of the house. I believe you said it
18 was in some disarray.

19 A That's correct.

20 Q And we saw some pictures of the bedroom where the
21 bodies were located.

22 A That's correct.

23 Q Do you recall that? And the bedroom itself had a lot
24 of overturned items, drawers out and that sort of thing.

25 A That's correct.

Reid Lindsey
Cross-examination by Ms. Brown

1 Q But that wasn't consistent through the house, was it?

2 A Not every room, no, not to that level. Certainly no.

3 Q You found footprints walking through.

4 A That's correct.

5 Q And you found gasoline that was poured around.

6 A That's correct. You've gone into a house that's a
7 crime scene, a very complex crime scene because you have
8 this element of accelerants.

9 You're trying to preserve evidence. You can't exactly
10 take a family member through there and walk and say is this
11 out of place. You've got to use your own experiences in
12 dealing with burglaries in this nature to kind of identify
13 what is unusually out of place and what is not unusually
14 out of place.

15 Obviously, their bedroom was out of place. As far as
16 other things being knocked over, maybe not. A gas can in
17 the floor is not something you see in a house.

18 So, different people live at different levels of mess
19 in their house. It didn't seem a whole lot disturbed. It
20 wasn't greatly disturbed outside the bedroom, didn't
21 appear. I mean, there may have been some things. But it
22 was not terribly destroyed the way the bedroom was to my
23 recollection and looking at the pictures.

24 Q I would like to ask you about one more statement, and
25 this is another statement of Tammy Hughey dated 5/11/2007.

Reid Lindsey
Cross-examination by Ms. Brown

1 MS. BROWN: Your Honor, may I approach the witness?

2 THE COURT: You may.

3 Q I'd like to ask you to look at this one and see if you
4 can identify that as well, if that would have been
5 something you would have reviewed during your
6 investigation.

7 A Yes.

8 Q Okay. And this is a rather short statement, but at
9 the very last three lines -- do you recall reading the last
10 three lines of that statement? And I'll let you read there
11 and refresh your memory.

12 (Pause.)

13 A Yes. Okay. The last three lines say, "At about
14 7:00 a.m. I came out to look and saw Mr. Emery's son and
15 his girlfriend out in the middle of the yard looking for
16 sunglasses. Talked to them briefly. They got into a Ford
17 Escort wagon and left."

18 Q Okay. So the information from Ms. Hughey on May the
19 11th of 2007 is that at 7:00 a.m. -- and that would have
20 been the time that you had found out about the van wreck or
21 the van wreck occurred --

22 A Correct.

23 Q That at 7:00 a.m. she came out and saw Mr. Emery's son
24 and girlfriend Holly in the yard looking for sunglasses.
25 Doesn't say anything about in the house --

Reid Lindsey
Cross-examination by Ms. Brown

1 A Correct.

2 Q -- or coming out of the house.

3 A It's my recollection that when either by me talking to
4 Chuck or by another investigator talking that he didn't go
5 back in the house that morning.

6 Q And do you recall the significance of May the 11th?

7 A It's the morning of the murders, I believe.

8 Q Morning.

9 MS. BROWN: Your Honor, we'd like to submit the
10 voluntary statement Tammy Hughey, 5/11/2007.

11 MR. EHLIES: Without objection.

12 THE COURT: They're admitted.

13 (Voluntary statement of Tammy Hughey marked State's
14 Exhibit No. 2.)

15 MS. BROWN: Your Honor, I believe I've just about
16 finished. May I have one moment to confer?

17 THE COURT: Sure.

18 (Pause.)

19 MS. BROWN: Your Honor, I believe with the
20 understanding that we will be also introducing a copy of
21 State's Exhibit 366 from the original trial into this
22 proceeding as well, I believe I have no --

23 THE COURT: Hand that to the clerk and she'll copy it
24 for us.

25 MS. BROWN: Thank you very much. Thank you, Your

Reid Lindsey
Redirect examination by Mr. Ehliès

1 Honor.

2 THE COURT: Mr. Ehliès.

3 REDIRECT EXAMINATION

4 BY MR. EHLIES

5 Q officer Lindsey -- excuse me -- Mr. Lindsey, a little
6 bit like Marines. Once you're a Marine, always a Marine.

7 A Kept it.

8 Q So you're stuck. How many murder cases had you worked
9 prior to this one?

10 A This is one of the last ones I did. Not the last but
11 one of the last ones. I would say as a lead investigator I
12 probably worked I would guess somewhere between 10 and 15.
13 As working on a murder, there's no telling.

14 Q All right, sir.

15 A A hundred.

16 Q And do you know how many unsolved murders there are in
17 Spartanburg County presently?

18 A A lot. Don't know.

19 Q Do you know how many there were in May of 2007?

20 A I don't. We solved 70 percent, so.

21 Q Do you know Officer Allen wood?

22 A I do.

23 Q And is he in charge of that?

24 A He is now. He was my supervisor at the time.

25 Q All right, sir. And as far as this investigation is

Reid Lindsey
Redirect examination by Mr. Ehliès

1 concerned, it came together very quickly.

2 A It did, yes.

3 Q In fact, you had your suspect and had him arrested and
4 put him away on the day of the murder.

5 A That's correct. That's what makes it so complex, one
6 of the things that contributed to being difficult to deal
7 with.

8 Q And so you really never looked at anybody else.

9 A That's --

10 Q As an example, did you take an impression from Chuck
11 Emery's shoes?

12 A No.

13 Q And did you find impressions through the blood that
14 did not match Tony Torres?

15 A I don't believe so.

16 Q In fact, don't you recall at trial a big issue about
17 an unmatched impression?

18 A Once again, I was not in the courtroom, so I don't
19 know.

20 Q Well, let's see what you did when -- you never asked
21 Chuck for any samples off his shoes for blood.

22 A No.

23 Q In fact, you never asked anyone for any shoe examples,
24 any of Chuck's friends or group.

25 A No. I remember specifically when we found the shoes.

Reid Lindsey
Recross-examination by Ms. Brown

1 I'm no expert by any stretch of the imagination, but it
2 seemed pretty obvious the shoes I was looking at were the
3 ones I saw the prints in the house.

4 Q But there were prints in that house that did not match
5 that shoe.

6 A Sure. And that's to be expected. If you're going to
7 have a crime scene you have to get back there. You do your
8 best.

9 You know, the deputies come in. They don't know
10 what's back there. They walk through it. They have to.
11 Later on the techs will put on little footies and stuff,
12 and that will help alleviate that, but you're going to find
13 some of that. Of course it could be, you know, from other
14 sources as well. You do your best.

15 Q All right. And do you recall that Mr. Chuck Emery's
16 alibis were his friends?

17 A That's correct.

18 Q And where did you say his friends were?

19 A Most of them are in prison, I believe.

20 Q Thank you so much.

21 RECROSS-EXAMINATION

22 BY MS. BROWN

23 Q Officer Lindsey, when you're investigating and all of
24 your leads point to one person do you continue to try to
25 develop suspects outside of that information you already

Reid Lindsey
Recross-examination by Ms. Brown

1 have?

2 A You always do what I call kiss it. You keep it
3 simple.

4 If everything points to one person -- that's who did
5 it -- you can always what-if a case to death. And when you
6 have a D.N.A. sample, when you have eye witnesses, when you
7 have matched fingerprints, you have matched shoe
8 impressions, the case doesn't get much better.

9 Q And you had mentioned earlier about a D.N.A. sample
10 from the crime scene from one of the victims and also a
11 positioning of the body. Tell us a little bit about the
12 way you found Ms. Emory and the evidence you collected.

13 MR. EHLIES: Your Honor, are you going to allow me to
14 respond --

15 THE COURT: Well, yeah.

16 MR. EHLIES: -- or do you want me to object to
17 being --

18 THE COURT: I understand. I usually -- I'm fairly
19 relaxed in that regard. But I don't want to spend all day
20 just taking turns with this witness.

21 I mean, ordinarily, we need to do direct, cross and
22 redirect. And then we quit unless he brings out something
23 new. If there's something that you think relates to what
24 he's brought back up --

25 MS. BROWN: Yes, sir. This will be very --

Reid Lindsey
Recross-examination by Ms. Brown

1 THE COURT: -- on redirect, that's fine. But I do
2 want y'all to confine it as well as you can to those three
3 methods of interrogation or examination.

4 MR. EHLIES: And, Your Honor, I am objecting to all of
5 this being outside of redirect, and so there is a question
6 already that I would have. If you're not going to allow
7 that, then I stand on my objection.

8 THE COURT: All right. Well, I'm going to let her
9 finish. Then I'm going to let you redirect. And we're
10 going -- the next witness that comes up we're going to try
11 to follow the traditional rules.

12 MR. EHLIES: Thank you, sir.

13 Q And you had talked about your investigation. I had
14 asked you just a few minutes ago about Mrs. Emery and the
15 position and the D.N.A.

16 A That's correct.

17 Q And that suggested to you the sexual assault from the
18 beginning.

19 A That's correct.

20 Q And you had that D.N.A. tested.

21 A That's correct.

22 Q And whose D.N.A. was that?

23 A Mr. Torres.

24 Q Any other D.N.A. from semen at that scene matching
25 anybody else?

Reid Lindsey
Recross-examination by Ms. Brown

1 A No.

2 MS. BROWN: And, Your Honor -- and this I will ask you
3 if I can ask this particular question because I wanted to
4 clarify the photograph that he had mentioned.

5 THE COURT: Just go ahead and ask it -- just got ahead
6 and ask it.

7 MS. BROWN: Okay.

8 Q Okay. The photograph that you had looked at with the
9 box, we've been a bit imprecise when we're talking about
10 the box before. And there was a safe and lockbox, what
11 have you.

12 A Yes.

13 Q I asked you where you found that box. If -- if I
14 would suggest that perhaps that was taken from a computer
15 area would that refresh -- reflect -- I'm sorry -- refresh
16 your recollection where you found that, not in the bedroom
17 but a computer area?

18 A No. I mean, I wouldn't dispute that. I just -- I
19 can't remember everything in that house that long ago.

20 Q Okay. But at the scene.

21 A Yes.

22 Q That you are sure.

23 MS. BROWN: Thank you for your indulgence, Your Honor.
24 I appreciate it. No further questions.

25 THE COURT: Mr. Ehli.

Reid Lindsey
Redirect examination by Mr. Ehliès

1 REDIRECT EXAMINATION

2 BY MR. EHLIES

3 Q Officer, Mr. Lindsey --

4 A Yes, sir.

5 Q -- how many D.N.A. samples did you collect to compare
6 against evidence samples besides Mr. Torres?

7 A I don't know if we took any other samples.

8 Q No other Schmerber requests.

9 A I don't believe so.

10 Q You were involved in a Schmerber request on
11 Mr. Torres.

12 A I believe I did testify in that hearing as well.

13 Q So nobody else was ever looked at.

14 A I don't remember taking other samples.

15 Now, you wouldn't necessarily need a Schmerber request
16 if you're wanting to get a sample from a family member
17 that's cooperative. I don't remember taking any other
18 samples.

19 Q And, in fact, there were a lot of other matches to
20 people known. For instance, wasn't there D.N.A. on
21 Mrs. Ann Emery?

22 A You have to clarify what you mean by what D.N.A.

23 Q No. Didn't they identify samples of the -- from Ann
24 Emery's evidence sample that belonged to her?

25 A Yes.

Charles Russell Clevenger
Direct examination by Mr. Ehliès

1 Q And didn't they find that didn't belong to Ray?

2 A Yes.

3 Q And didn't they find some that was unaccounted?

4 A They may have. I don't know.

5 Q Okay.

6 A There's a report, I'm sure. And there was a mixture,
7 I know, in some parts of blood and issues separating,
8 identified.

9 Q And isn't it true that some murder cases involve more
10 than one murder?

11 A Sure.

12 Q Thank you.

13 THE COURT: You may step down.

14 We'll take lunch. We'll resume at 2:30.

15 (Whereupon, a recess was taken.)

16 (Copy of photograph S-366 marked State's Exhibit No.
17 3.)

18 MR. EHLIES: Thank you, Judge. I hope you had a good
19 lunch. Are we ready to proceed?

20 THE COURT: We are.

21 MR. EHLIES: Mr. Rusty Clevenger.

22 CHARLES RUSSELL CLEVINGER,
23 having been first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. EHLIES

25 Q You are Mr. Rusty Clevenger.

Charles Russell Clevenger
Direct examination by Mr. Ehliens

1 A Yes, sir. Everyone calls me Rusty. My Christian name
2 or regular name is Charles Russell Clevenger.

3 Q And I believe you're currently the coroner for
4 Spartanburg County.

5 A Yes, sir, I am.

6 Q And that's an elected office here?

7 A That's correct.

8 Q And prior to that where did you work?

9 A I began my career almost 29 years ago as a deputy
10 sheriff, then to investigations at the sheriff's office,
11 from there an investigator with the solicitor's office,
12 from there the forensic coordinator for Spartanburg. And
13 then I sought this office in 2008.

14 Q All right, sir. And are you a trained and authorized
15 officer according to SLED regulations and licensed to carry
16 a weapon and that sort of thing?

17 A Yes, sir. I am currently under the provisions for a
18 coroner to carry a weapon. I'm no longer considered a
19 Class 1 officer because the way the constitution is
20 written. But I am permitted to carry a gun, yes, sir.

21 Q All right, sir. And hopefully you don't need to do
22 that any more, but, nonetheless, can you tell us a little
23 bit about your training and position at the Spartanburg
24 County Sheriff's Office in and about May of 2007?

25 A Up until then it had been homicide investigations or

Charles Russell Clevenger
Direct examination by Mr. Ehli

1 homicide prosecution and violent crime prosecution, a
2 number of schools in death-penalty related areas, as well
3 as homicide, equivocal death, stuff like that.

4 Q All right, sir. And I think in May of 2007 you were
5 serving in the -- some sort of a forensics capacity with
6 the sheriff's department in Spartanburg County, is that
7 correct?

8 A I was the forensic coordinator for Spartanburg County.

9 Q what does that mean?

10 A Essentially, I was heading up the effort for the
11 entire county through the solicitor's office to try and
12 assure -- or make sure that all agencies were getting the
13 appropriate training in collection of forensic evidence and
14 being able to testify to it in court.

15 Q And what do you mean by forensic evidence?

16 A Forensic. Basically, the basic meaning of forensic is
17 of the court. So it would be evidence that could be
18 presented to the court.

19 Q Did that include crime scene?

20 A Yes.

21 Q And were you, in fact, called to a crime scene on May
22 the 11th of 2007?

23 A If that was the correct date for this particular case,
24 yes, sir.

25 Q It was the case of Ann and Ray Emery, deceased.

Charles Russell Clevenger
Direct examination by Mr. Ehliès

1 A Yes.

2 Q Okay. And their daughter Crystal --

3 A Sorry for your loss.

4 Q -- is with us here in the courtroom.

5 A Yes, sir.

6 Q Okay. So what was your role in the forensics capacity
7 on May the 11th of 2007 at Montgomery Street in Drayton
8 community?

9 A When I arrived I was asked by the lead detective or
10 other detectives at the sheriff's homicide investigative
11 unit to help them with an interview of a witness, the son
12 of the decedents.

13 Q And would that have been Chuck Emery?

14 A Charles Donald Emery, yes, sir.

15 Q Okay. I'm going to show you.

16 MR. EHLIES: Judge, if I might retrieve this.

17 THE COURT: Okay.

18 Q I'm going to show you what's been previously marked
19 and put together now as a package from the applicant No. 1.
20 And I don't know if you've seen those before or not, but we
21 obtained those out of the record from Spartanburg County.

22 A Crime scene, yes, sir.

23 Q And would that have been within your division?

24 A Yes, sir.

25 Q Okay. And ask you if those photographs are normal and

Charles Russell Clevenger
Direct examination by Mr. Ehliès

1 ordinary for the types of photographs that your units would
2 have been taking of crime scenes.

3 A Yes, sir.

4 Q Okay. And did you actually take those photographs, or
5 were they done under your supervision?

6 A Neither. I didn't take them and they weren't under my
7 direct supervision.

8 Q All right, sir. But you recognize those as conforming
9 to the standards and practices of Spartanburg County
10 Forensics Division.

11 A Yes. I can tell you that given our normal method of
12 operation I don't believe this would be all of the photos.
13 But they do accurately depict the way we took photographs.

14 Q We did select out for the purpose of this hearing some
15 photos. I'm just asking you whether you can identify those
16 and recognize those as consistent with the practices of
17 Spartanburg County at the time.

18 A Yes.

19 Q Okay. Now, I'll get those out of your way.

20 A Okay.

21 Q I sent you a subpoena, did I not?

22 A Yes, sir, you did.

23 Q And attached to that subpoena I believe I had a couple
24 of statements.

25 A That's correct.

Charles Russell Clevenger
Direct examination by Mr. Ehliès

1 Q And I want to know if you have those in front of you
2 now.

3 A I do, yes, sir.

4 MR. EHLIES: I have given copies to counsel. And I
5 want to mark this one, the typewritten one, three pages, as
6 Plaintiff's -- as Applicant's Exhibit 2.

7 (Voluntary statement of Charles Donald Emery dated May
8 11, 2007, marked Applicant's Exhibit No. 2 for
9 Identification.)

10 MR. EHLIES: I'm going to ask the court reporter to
11 mark this for identification purposes at present as
12 Applicant's No. 3, which is a handwritten statement.

13 (Handwritten voluntary statement of Charles Donald
14 Emery dated May 11, 2007, marked Applicant's Exhibit No. 3
15 for Identification.)

16 Q All right, sir. Before I mark this one I ask you --
17 I'm going to show you some handwriting notes and ask you if
18 you recognize those at all.

19 A No, sir.

20 Q It certainly isn't your writing.

21 A That's correct.

22 Q And you don't recognize it as the officer's writing
23 that you were with at the time?

24 A No, sir. I wouldn't want to without some type of
25 signature or identification on it.

Charles Russell Clevenger
Direct examination by Mr. Ehliens

- 1 Q Very good.
- 2 Okay. Now, I want to ask you to take a look at what's
- 3 been marked as Applicant's No. 2.
- 4 A Okay.
- 5 Q And if you've made notes on your own copies, you can
- 6 compare them.
- 7 A I have not made any notes.
- 8 Q Okay.
- 9 A I read through it.
- 10 Q Okay.
- 11 A Yes, sir. Previously.
- 12 Q Is that a fair and complete copy of the statement that
- 13 you took?
- 14 A There was a written version initially and then this
- 15 version afterwards, yes, sir.
- 16 Q So because that's marked as two and this is three, I
- 17 was just asking you No. 2 --
- 18 A Correct.
- 19 Q -- is a document that you recognized and authored.
- 20 A Yes, sir.
- 21 Q And is it full and complete? I think it has two and a
- 22 half pages -- three or four -- paper.
- 23 A Yes, sir.
- 24 Q And has your signature on it.
- 25 A It does.

Charles Russell Clevenger
Direct examination by Mr. Ehliès

1 MR. EHLIES: We move into evidence Applicant's No. 2
2 which is the typed version.

3 MS. BROWN: No objection, Your Honor.

4 (Voluntary statement of Charles Donald Emery dated May
5 11, 2007, marked Applicant's Exhibit No. 2.)

6 Q I'm going to show you what's been marked for
7 identification purposes as Applicant's No. 3 and ask you if
8 you recognize the handwriting on that document.

9 A I do.

10 Q And do you need to compare it to your other one?

11 A No, sir.

12 Q I think that's five pages.

13 A Yes, sir.

14 Q Okay. And is that the -- to the best of your
15 recollection is that the full and complete statement that
16 you wrote in longhand?

17 A Yes.

18 Q Okay.

19 MR. EHLIES: We would move Applicant's No. 3 into
20 evidence.

21 MS. BROWN: No objection, Your Honor.

22 THE COURT: It's admitted.

23 (Handwritten Voluntary statement of Charles Donald
24 Emery dated May 11, 2007, marked Applicant's Exhibit No.
25 3.)

Charles Russell Clevenger
Direct examination by Mr. Ehliès

1 Q Okay. Now, let's go through those.

2 All right. If you would, tell the court please when
3 you -- do you recall when you arrived at the crime scene?

4 A I do not.

5 Q And do you have any notes at all that you've been able
6 to look at to refresh your recollection?

7 A None that I could find.

8 Q Okay. And you made some search.

9 A Yes, sir. I did.

10 Q But not a complete search.

11 A I made some search, yes, sir.

12 Q Do you have current independent recollection of this
13 particular case?

14 A A very faint recollection.

15 Q All right, sir. Can you state for us what your role
16 was at the scene at the time?

17 A Primarily and just about solely was to interview this
18 particular witness you're asking me about and run down a
19 timeline and a statement for him.

20 Q Okay. Now, in that regard can we refer to the
21 individual as Chuck Emery?

22 A Yes, sir, if you would like.

23 Q Would that be all right?

24 A Yes, sir.

25 Q So if we say Chuck, we're talking about the person you

Charles Russell Clevenger
Direct examination by Mr. Ehli

1 interviewed.

2 A Yes, sir.

3 Q Okay. Where did you conduct the interview?

4 A It would have been in my vehicle, which was a
5 county-issued vehicle, on the side of the road.

6 Q All right, sir. And did you have some special
7 capabilities on board in that vehicle for transcribing
8 statements and that sort of thing?

9 A Yes, sir. I had a computer in there, as well as a
10 printer that hooked to that computer that could print in
11 the field.

12 Q All right. So on the handwriting sample at the top of
13 the voluntary interview statement it has the date and it
14 has a case number, is that correct?

15 A Yes, sir.

16 Q And it does not reflect the time, at least in this
17 portion. Can you see anywhere a time of day? It does say
18 a date 5/11/07. But can you see anywhere time of day?

19 A Regarding when I began the statement?

20 Q When you began to take the statement.

21 A Not that I can see, no, sir.

22 Q And I would invite you to look through, including the
23 last page, because we were unable to identify the author of
24 the statement or the time. And we now have identified you
25 as the author, is that correct? This is your handwriting.

Charles Russell Clevenger
Direct examination by Mr. Ehliens

1 A It is, yes, sir.

2 Q So I'm anxious to know if on Exhibit No. 2 -- Exhibit
3 No. 3, Applicant's Exhibit No. 3, you can locate a time of
4 day that that was done.

5 A No, sir, not that I see.

6 Q Okay. Do you have an independent recollection of
7 about when in the day you would have done that?

8 A I do not.

9 Q All right. I'd ask you and invite you to take a look
10 then at Exhibit No. 2.

11 A Okay.

12 Q And see if that will help you answer the question of
13 what time of day, drawing your attention now to the bottom
14 of page one of Exhibit 2, which I think there indicates
15 2:09 p.m.

16 A Correct.

17 Q Okay. Now, how would that have gotten on there?

18 A That would have been when the statement was finalized,
19 and he would have reviewed the statement and signed it, it
20 being true and correct.

21 Q Okay. And is, in fact, that his signature on the
22 bottom right-hand side?

23 A Yes, sir.

24 Q And I think he signed every page and I think -- is
25 that your signature on the bottom left-hand side?

Charles Russell Clevenger
Direct examination by Mr. Ehli

1 A Yes, sir, it is.

2 Q Now, before we get into the actual details of the
3 statement just give us a summary of how procedurally you
4 went through the process of interviewing this client --
5 interviewing this person.

6 A Okay. Essentially, when I sat down to talk with him
7 the reason that a written statement was started and ended
8 and a typed statement started, there were things that
9 started coming back to his memory.

10 And you'll notice in here there are a number of places
11 where things were scratched out. And so to make it more
12 correct as far as the timeline I asked him could we convert
13 to a typed statement, which he agreed to. And therein
14 lies, you know, the reason we came about a typed statement
15 instead of a written statement.

16 In the typed statement we wouldn't have to go through
17 and scribble everything out. We could add it as his memory
18 came back to him about that evening.

19 Q Okay. So other than to the extent Applicant's 2 does
20 not contain what's in Applicant's 3, do we have any other
21 mechanism for understanding why certain statements were
22 included in one and excluded in the other?

23 A I just asked him to tell the truth, and I recorded
24 what he told me.

25 Q Okay. And was there a recording?

Charles Russell Clevenger
Direct examination by Mr. Ehliens

1 A Via the typed statement. Not an audio.

2 Q Not an audio.

3 A No, sir.

4 Q You didn't have that capacity. You weren't video
5 camera-ed in the car.

6 A No, sir.

7 Q All right. So is that a true statement then, that we
8 really have no way of knowing why one of the statements
9 would contain certain representations and not the other?

10 A I can tell you whatever is either handwritten or typed
11 came from the individual you referred to as Chuck.

12 Q Okay. Well, let's take a look at the handwritten
13 first. Was that the one that came up first?

14 A Yes, sir.

15 Q Okay. On the first page is an example where there is
16 a sentence after the phone number. It's called -- called
17 Holly's something and father. Can you help me with that --
18 house? The phone number is [REDACTED]61.

19 A Yes, sir. "Tammy talked to my girlfriend Holly on the
20 phone and Holly" -- it's a bad -- "talked to my girlfriend
21 Holly on the phone and Holly" -- I can't -- can't read.
22 It's not that -- that good of a copy. "I tried to calm her
23 down. I put on a shirt, and we left and came to my dad's
24 house."

25 Q Okay. And what is next there where we're having

Charles Russell Clevenger
Direct examination by Mr. Ehli

1 trouble is, "It looks to us like" -- I don't have a
2 pointer, but on the third line it's highlighted. It looks
3 like that he's saying that Holly panicked. And the word
4 that's in there if you'll look we're reading as panicked
5 when she received the phone call. And I'll show you my
6 hard copy.

7 A "When we got to my dad's I panicked because I --"

8 Q Yeah.

9 A Yeah. "I panicked. when we got to my dad's I
10 panicked because I saw the yellow tape."

11 Q Okay. We need to go up a line under my thumb right
12 there.

13 A Where you've got highlighted?

14 Q Yes, which is right up on, "Holly called -- Holly --
15 phone -- phone No. [REDACTED] 61. Tammy called to my girlfriend
16 Holly on the phone and Holly," and then word next to that
17 is panicked.

18 A I'm not going to deny it, but I can't say that's what
19 it is. I don't -- I mean, it's not clear enough for me to
20 say that I would have panicked.

21 Q Okay. It is your writing.

22 A Yes, sir, it is.

23 Q Okay. And from my copy you can't tell if that's -- if
24 that's there.

25 A I'm not going to deny it. It's possible. But I'm not

Charles Russell Clevenger
Direct examination by Mr. Ehli

1 going to sit up here and testify to something I'm not sure
2 of.

3 Q okay. well, it will become significant. Holly's
4 reaction on learning on this phone call will become
5 significant later in the case. So if you can't interpret
6 that as the word panic and it's your writing, I'll move on.

7 Does that statement appear in the typed-written
8 version? "Called my girlfriend Holly," and the phone
9 number and Holly blanked.

10 A In the first paragraph it says, "Holly and I traveled
11 to my dad's house." But before that -- of course he asked
12 me to read it. "I found out something happened to my
13 father Charles Ray Emery and my step-mom and (inaudible) my
14 telephone call from Tammy Hughey to my girlfriend Holly
15 Nicole Melton about 8:55 a.m. Holly and I traveled to my
16 dad's house, and I saw yellow tape around the house. I
17 knew then something bad had happened."

18 Q And that's where he makes the reference of panicking
19 in the handwritten search.

20 A It's possible in the handwritten search. Again, I
21 can't tell you, you know, on the handwritten where that
22 says panic. It's possible, but it's not good enough for me
23 to interpret to say positively.

24 Q Okay. But does the word panic then appear in
25 Applicant's No. 2?

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Direct examination by Mr. Ehli

1 A Not in that first paragraph, no, sir, not that I see.

2 Q That's the lead-in historic paragraph --

3 A Yes.

4 Q -- for his arrival, is that correct?

5 A Uh-huh.

6 Q And that's the paragraph that suggests how he came to
7 find out that something bad had happened.

8 A Yes.

9 Q Okay. So the portions referring to panic twice -- if
10 that's the word -- twice in the handwritten are not in the
11 typed, is that correct?

12 A That's correct.

13 Q Do you have any explanation for why that would have
14 been?

15 A No, sir.

16 Q All right. We know that the typed-up version occurred
17 after the handwritten version.

18 A Yes, sir.

19 Q And we know the typed occurred after 2:00 p.m.

20 A That would have been when it was completed. I'm sure
21 it took a lot longer than nine minutes, but, yes, sir.

22 Q Okay. So would the written statements that he was
23 giving you initially earlier in the interview have been
24 earlier even than that?

25 A Oh, yes.

Charles Russell Clevenger
Direct examination by Mr. Ehli

1 Q Okay. How much earlier would you have suggested?

2 A I would say at least an hour or an hour and a half
3 before this was concluded.

4 Q And that would put it somewhere around lunch, noon.

5 A It could even be earlier than that. I just can't say
6 because I don't have a notation or a recollection of when
7 it was started.

8 Q In the statement, the handwritten statement in
9 particular, there are a number of references to Chuck
10 Emery's relationship to Tony Torres, are there not?

11 A When you refer to a relationship, are you talking
12 about what they were doing the evening before?

13 Q Correct, correct.

14 A Yes.

15 Q And what are those references?

16 A He refers to the 10th of May in '07 about Jonathan
17 Howard and Andrew Antonio Torres arriving at his dad's
18 before he went and took a shower, how they arrived, even
19 knew possibly that there wasn't insurance on the vehicle.
20 There's a reference in here of an amount of crank or
21 methamphetamine in exchange for speakers.

22 Q And there's also a statement that he had consumed
23 methamphetamine, this being Chuck.

24 A I believe later, yes, sir, but I can't recall exactly
25 when.

Charles Russell Clevenger
Direct examination by Mr. Ehliens

1 Q All right. And so he was by way of his statement
2 trading speakers for methamphetamine.

3 A Yes, sir.

4 Q out of his car?

5 A Yes, sir.

6 Q And I believe --

7 A well, from somewhere. I don't know from where. I
8 don't know if it was his car or in the house or where.

9 Q Okay, sir. Then he expresses to you in this statement
10 that his dad and mom were not home at the time.

11 A That's correct.

12 Q Thursday. And that the murder was discovered on May
13 11th. I represent to you that that's Friday.

14 A Yes.

15 Q May 11th. So on Thursday he is -- he's saying that
16 his parents aren't home while this is going on.

17 A Correct.

18 Q And that he was on the lookout for them to come back,
19 is that correct?

20 A Yes, sir. That would be fair.

21 Q And did he express to you, in fact, why he was looking
22 out for his stepmother to come back to the house? And I'll
23 draw your attention to page three in the lower portion --

24 A Okay.

25 Q -- when he's getting out of the shower. He was in the

Charles Russell Clevenger
Direct examination by Mr. Ehliès

1 house taking a shower, and then he got out of the shower.

2 A And mom and stepmom -- or dad and stepmom are on the
3 porch coming in.

4 Q Okay. And what was the remark that Chuck related to
5 you about their reaction upon arrival?

6 A His dad said, "why do you have all the hoodlums in
7 front of the house?"

8 Q Did Chuck ever express to you what Ann Emery said when
9 she arrived and found everybody there at the house?

10 A If it's in this handwritten statement, if you can
11 refer me to where it is, I'd be glad to read it.

12 Q Well, I would ask you on your independent recollection
13 first.

14 A No, sir. I don't -- I don't remember.

15 Q Okay. Do you have any independent recollection of
16 interviewing him? would you recognize him if he walked in
17 the room?

18 A Probably not.

19 Q Do you have any independent recollection of
20 interviewing him?

21 A Just barely, yes, sir.

22 Q Did you do any followup investigation after having
23 interviewed him concerning his statements of where he was
24 during this timeframe?

25 A I did not.

Charles Russell Clevenger
Direct examination by Mr. Ehli

1 Q Okay. Did you follow up in any other witnesses
2 concerning what Chuck Emery was saying about his parents'
3 return to the house and what was going on at the house at
4 the time?

5 A Not that I'm aware of, no, sir.

6 Q All right. On page four he makes, Chuck makes, a
7 reference to being in and out concerning a dog that had
8 been hit and they ran out to a hospital, veterinarian's
9 hospital.

10 A Yes, sir.

11 Q Okay. Do you remember talking to him about that
12 beyond what you were writing down in the statement?

13 A Only to ask him to clarify some things and record it.

14 Q All right. At the bottom of that page he's talking
15 about talking to customer service for two hours. But as
16 regards the timeline, which is very important in this case,
17 we can't put that into a time of the night Thursday.

18 Can you tell us whether any of your statements, notes
19 or recollection would assist us in understanding when Chuck
20 was doing these things?

21 A No, sir.

22 Q All right. The only timeframe that we are able to get
23 really is the 8:45 p.m. in the handwritten statement and
24 8:30 p.m. on the typed statement of May the 10th, the
25 evening of May the 10th.

Charles Russell Clevenger
Direct examination by Mr. Ehli

1 A Yes.

2 Q When you referenced that you were responsible for
3 establishing a timeline you made reference, for instance in
4 the typed version, to two hours on line five. "We left
5 Holly's grandparents' house. We stayed there for around
6 two hours."

7 A Which copy are we referring to -- the written?

8 Q The typed copy.

9 A Which page are we on?

10 Q Two.

11 A Yes, sir. "We stayed there around two hours."

12 Q Two hours from when?

13 A I don't believe we referenced from when. It was just
14 the fact he said they stayed there two hours.

15 Q Okay. So as regards the timeline, I want you to take
16 a look at these two documents and tell me whether you can
17 account by reason of these statements for where Chuck was
18 after 8:30, 5/10/07, until the time you encountered him a
19 few hours before 2:00 on May the 11th.

20 MS. BROWN: Objection. Lack of personal knowledge
21 asking about Mr. Emery as if -- if it's part of the
22 investigation, I will withdraw my objection. But as I
23 understood the question it was where he was.

24 Q My question is from your work on Applicant's 2 and
25 Applicant's 3 -- because you have no independent

Charles Russell Clevenger
Cross-examination by Ms. Brown

1 recollection, is that correct?

2 A That's correct.

3 Q From your work in those two documents can you tell me,
4 for instance, at 5:00 a.m. May the 11th from these
5 statements where was Chuck Emery's alibi? Can you put a
6 timeframe on any of these statements?

7 A I cannot.

8 Q Like, for instance, the two hours is in there, but we
9 don't know what two hours.

10 A We don't know what time of day or night you're
11 referring to know.

12 Q Correct. So we start at 8:30 or so the evening before
13 the murder on Thursday, and we get to when you actually had
14 eyes on. And as far as the accounting for him through
15 these statements and these alibis, there's nothing more
16 that we can do.

17 A That's correct.

18 Q Thank you. That's all. Thank you.

19 CROSS-EXAMINATION

20 BY MS. BROWN

21 Q Sir, you were asked a little bit earlier about why you
22 had basically two statements.

23 A Yes.

24 Q Isn't it true that you converted to typing so you
25 could accurately record what was being told to you?

Charles Russell Clevenger
Cross-examination by Ms. Brown

1 A Yes, ma'am.

2 Q And isn't it true that Mr. Emery was just telling you?
3 You weren't investigating at that time to somehow vouch for
4 what he was saying, is that correct?

5 A That's correct.

6 Q Okay. And this was part of the investigation,
7 correct?

8 A Yes, ma'am.

9 Q This was not the end of the investigation.

10 A No, ma'am. Just the beginning.

11 Q And we talked a little bit about the part of the
12 statement if you would look at Applicant's 2 that I believe
13 you still have.

14 A Yes, ma'am.

15 Q Part of that typed statement in the very beginning
16 about coming to the house and seeing the yellow tape.

17 Well, isn't it true that both statements, the one that
18 started out in handwriting and the typed statement, first
19 they start out with saying he found out something happened
20 to father and step-mother?

21 A That's correct.

22 Q So anything after that has to be understood. He's
23 already found out about something happening. So if, in
24 fact, there is some emotion that he's trying to convey
25 here, that would not be in your experience unusual for him

Charles Russell Clevenger
Cross-examination by Ms. Brown

1 to say I was upset when I came and saw the tape, is that
2 correct?

3 A That would not be unusual.

4 Q And when you talked to Mr. Emery isn't it true that he
5 told you he was using drugs?

6 A Yes, ma'am.

7 Q Isn't it true that he told you he had friends over
8 there using drugs?

9 A Yes, ma'am.

10 Q Isn't it true that he admitted being at that residence
11 that May the 10th and May the 11th?

12 A Yes, ma'am.

13 Q But he didn't tell you if he did anything, did he?

14 A No, ma'am, not to the decedents.

15 Q Not to the decedents. Thank you.

16 MS. BROWN: No further questions, Your Honor.

17 THE COURT: You may step down.

18 THE WITNESS: Can I be excused from my subpoena?

19 THE COURT: You may be.

20 THE WITNESS: Thank you.

21 MR. EHLIES: Can I claim a credit for redirect on --

22 THE COURT: Do you need to redirect?

23 MR. EHLIES: No, no. I really don't -- I really
24 don't. And he can be -- he is subpoenaed, but I have no
25 objection to releasing him.

Crystal williamson
Direct examination by Mr. Ehliès

1 MS. BROWN: None from us.

2 (Whereupon, the witness was excused.)

3 MR. EHLIES: Crystal williamson.

4 CRYSTAL WILLIAMSON, having
5 been first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. EHLIES

7 Q You are Crystal williamson.

8 A Yes.

9 Q And I believe that you are Crystal Harling.

10 A Yes.

11 Q williams. H-A-R-L-I-N?

12 A G.

13 Q G. Harling. Okay. And I believe that you are the
14 natural daughter of Mrs. Ann -- who we know as Ann Emery.

15 A Yes.

16 THE COURT: Can I clear one thing up or try to clear?

17 MR. EHLIES: Yes.

18 THE COURT: Is it williams or williamson?

19 MR. EHLIES: williamson.

20 THE WITNESS: williamson.

21 THE COURT: williamson. Okay.

22 MR. EHLIES: I am sorry.

23 Q I know that you've been through a lot and asked a lot,
24 and I'm going to have to plow the same ground to some
25 extent. For that, I'm sorry.

Crystal Williamson
Direct examination by Mr. Ehliès

1 A It's okay.

2 Q All right. I want to start with you on probably the
3 end instead of the beginning.

4 At any time during this case prior to the sentence had
5 you been contacted by defense counsel or anyone on their
6 behalf?

7 A No.

8 Q Did you ever receive any phone calls and requests by
9 anyone in the defense group to talk or interview you to
10 discuss the case?

11 A No.

12 Q Did you ever receive from them what we call an
13 outreach letter? Did you ever receive from them a letter
14 explaining their role and giving you contact information
15 for them or anything of that nature?

16 A No.

17 Q Did they ever attempt through third parties to help or
18 assist in your grief over the loss of your mother?

19 A No.

20 Q And you had about a year and a half or so before the
21 trial from the date, from May 11th of 2007, until the fall
22 of 2008 when the case was tried, is that correct?

23 A Right.

24 Q During that time did you have a number of meetings
25 with the solicitor's office?

Crystal Williamson
Direct examination by Mr. Ehli

1 A Yes.

2 Q And did you have a number of meetings with the police
3 departments and investigators?

4 A A few.

5 Q And did you have family meetings with other folks from
6 Ann Emery's family?

7 A Yes.

8 Q Okay. And I believe you lived very close to Ann. Did
9 you live very close to Ann?

10 A Looking at her house, I lived to the right.

11 Q Okay. And how far would that be from [REDACTED] Montgomery
12 Street?

13 A It's closer than from here to that door.

14 Q Okay. So you and your mom lived in very close
15 proximity to Ray Emery, is that correct?

16 A Yes.

17 Q I'm sorry. You do have to answer out loud so everyone
18 can get it on the record.

19 A Okay. I'm sorry.

20 Q During the 18 months or so that this case was
21 progressing through the trial process did you have an
22 opportunity to come to grips with what had actually
23 happened to your mom?

24 A I believe so, yes.

25 Q And did you have an opportunity through the

Crystal Williamson
Direct examination by Mr. Ehliès

1 solicitor's office and victim's assistance program to
2 understand pretty much the lay of the land and the facts of
3 the case?

4 A Yeah.

5 Q And did you have a particular desire to -- for the
6 government to seek a death penalty against Tony Torres?

7 A That was not something that I had thought about having
8 never been through this before, life or death. Life in
9 prison or death, that didn't really cross my mind.

10 I have always believed that if you kill someone you
11 deserve to be killed. I believe in the death penalty.

12 But do you want me to wait until you ask me?

13 Q No.

14 A Do you want me to just go ahead?

15 Q No. I know it's troublesome for you.

16 A Having said that, I never have thought. I never
17 thought that Tony Torres did this by himself.

18 Q Okay. Did that influence your opinion about whether
19 Tony should receive the death penalty?

20 A If they could have -- my family and I, we've always
21 thought that my stepbrother -- I don't really call -- I've
22 never really called him that.

23 Q What do you mean when you say your stepbrother?

24 A Charles Donald Emery, Ray's adopted son.

25 Q And we've been calling him Chuck.

Crystal Williamson
Direct examination by Mr. Ehliès

1 A His name, yeah, Chuck.

2 As soon as I realized what happened that morning I
3 told Reid Lindsey -- by Chuck -- I'm sure he had something
4 to do with it.

5 Q And that's the lead investigator that was here earlier
6 this morning?

7 A Right.

8 Q Okay.

9 A It's just he had given them so much -- so many
10 problems, and it was on and on and on -- that I just -- I
11 just knew, find him, where he's he at.

12 Q All right. We'll get there and the points that made
13 you think that. But right now I'm asking you whether you
14 had formulated an opinion concerning whether Tony Torres
15 should have received the death penalty.

16 A I had no opinion on that.

17 Q And had you been approached by defense counsel and
18 asked whether a sentence of life in prison without parole
19 would satisfy the needs of you as the immediate beneficiary
20 and closest relative to Ann, what would you have told them?

21 A If they had just asked me if life?

22 Q Yes.

23 A That's fine.

24 Q Your answer would have been --

25 A I would have said fine, I mean.

Crystal Williamson
Direct examination by Mr. Ehliès

1 Q Okay. So had they come to you with a request
2 concerning a sentence for Tony in exchange for a plea to
3 life without parole, you would have been acceptable.

4 A Yeah.

5 Q Okay. In fact, the reason -- let me back up and ask
6 it a little more direct.

7 why was it that you were uncomfortable, specifically
8 why were you uncomfortable, with the death penalty for
9 Tony?

10 A I didn't believe he did it by himself.

11 Q Okay. Now, there's no question though that -- did you
12 ever convey that feeling to the police and/or to Trey
13 Gowdy?

14 A Trey Gowdy and his -- Trey Gowdy and his staff. I
15 told them numerous times that if they could -- if Tony
16 Torres would implicate or if they could or if they would
17 investigate Chuck, you know, life in prison would be fine
18 with me.

19 Q Okay. And did they have a reaction on the suggestion
20 that they should look at Chuck's whereabouts and
21 involvement on this crime?

22 A They didn't want to hear anything about it.

23 Q In fact, did they say that?

24 A Yes.

25 Q And did they -- were they even more expressive about

Crystal Williamson
Direct examination by Mr. Ehliès

1 what they thought of the idea of looking into Chuck and his
2 potential role in these events?

3 A They told us not to mess with Chuck, not to talk about
4 him, don't bring him into -- they didn't want to bring him
5 into anything. They wanted the death penalty for Tony
6 Torres.

7 Q And if Chuck was involved did they express an opinion
8 of the possibility of getting death on Tony?

9 A With Chuck?

10 Q What would that have done to the strengthen of their
11 case for death on Tony?

12 MS. BROWN: Objection, Your Honor. That does call for
13 a legal conclusion.

14 MR. EHLIES: Well, the context is the conversation.

15 THE COURT: Well, he's asking her if they -- if
16 either -- if someone on the staff told her.

17 If somebody told you, you can respond to it. But you
18 can't speculate about it.

19 A I'm not even sure what you're asking.

20 Q Okay. When you were talking to them about the death
21 penalty and that you weren't particularly anxious for that
22 on Tony's case and the reason was that you wanted them to
23 look at Chuck Emery's involvement --

24 A If they would have looked at Chuck Emery's involvement
25 I would have not even thought twice about death penalty or

Crystal Williamson
Direct examination by Mr. Ehliès

1 life in prison. If it took just life in prison to
2 implicate Chuck, that would have been great with me.

3 Q Okay. And-but when they were responding to you about
4 why they did not want to look at Chuck --

5 A Uh-huh.

6 Q -- what did they tell you?

7 A He was helping them.

8 Q Okay.

9 A So they did want him messed with.

10 Q Okay. And did they express to you whether or not
11 investigating Chuck in connection with this crime would
12 have weakened their case against Tony for death?

13 A That's exactly right.

14 Q Can you recall exactly how they said that to you?

15 A We want the death penalty here and bringing Chuck into
16 it, that wouldn't happen. Something to that effect.

17 Q Okay.

18 A And it was more than once.

19 Q Okay. More than one meeting --

20 A Uh-huh.

21 Q -- over a period of time.

22 A Yes.

23 Q Okay. Was it with more than one representative of the
24 solicitor's office?

25 A It was always Trey and --

Crystal Williamson
Direct examination by Mr. Ehliès

1 Q Trey Gowdy.

2 A Barry. Trey Gowdy and Barry Burdette.

3 Q Barnette?

4 A Barnette. And there was a lady -- I cannot remember
5 her name -- that it was always those three.

6 Q All right. Now, how long had you known Chuck Emery?

7 A Since 1991 when he and my -- when Ray and my mother
8 started seeing each other.

9 Q Okay. And they were next door, virtually neighbors,
10 Ray and your mother.

11 A They was in the -- sometime in the 90's she moved into
12 the house next door to him. I'm not exactly sure what
13 year. But most of their relationship she lived next door
14 to him.

15 Q Did you ever live in that house next door?

16 A Yes.

17 Q And was your mother living there at the time?

18 A Yes.

19 Q So you and your mom lived together in that house.

20 A Right. And then she got married and I stayed and she
21 left.

22 Q Okay. So when she was married to Ray and living at [REDACTED]
23 Montgomery you were still living by yourself in the house
24 at the other end of the street.

25 A Right.

Crystal Williamson
Direct examination by Mr. Ehli

- 1 Q Okay. How long was she married to Ray Emery?
- 2 A Five years.
- 3 Q During the five years did you continue to have contact
- 4 with your mother?
- 5 A Oh, yeah.
- 6 Q How often?
- 7 A All of the time, I mean.
- 8 Q Daily?
- 9 A Every day, yeah.
- 10 Q And were you a close confidant with your mom?
- 11 A Oh, yeah.
- 12 Q Did she speak to you a lot?
- 13 A Uh-huh, yes.
- 14 Q And I believe that your mom was right strong in faith,
- 15 is that correct?
- 16 A Definitely.
- 17 Q And that she had a very close connection to her
- 18 church.
- 19 A Yes.
- 20 Q There is a woman there at the church. Her name is
- 21 Phyllis white.
- 22 A Phyllis white, yes.
- 23 Q And what is the relationship between Phyllis white and
- 24 your mom, Ann Emery?
- 25 A Very close friends since they were kids.

Crystal Williamson
Direct examination by Mr. Ehliens

1 Q Okay. Would you characterize Phyllis White as a
2 confidant of your mom?

3 A Oh, yeah, because she could trust Phyllis with
4 anything. So could I.

5 Q And did she, in fact, trust Phyllis with anything?

6 A Yes. Phyllis was one of the people that she would
7 tell things to.

8 Q Okay. And were you one of those people?

9 A Yeah.

10 Q Did you ever have a conversation with your mother
11 about her concerns for her personal safety?

12 A She said on many occasions that she was very worried
13 about Ray -- Chuck doing something to Ray or hurting Ray,
14 because Chuck was very hateful to Ray. And she'd always
15 say I just wish he wouldn't be so mean to -- he's just so
16 mean to Ray, especially if Ray wouldn't do -- wouldn't loan
17 him money or something like that.

18 Q Okay. Did the concern -- did she ever express the
19 concern that it involved Chuck Emery and his friends
20 dealings in drugs?

21 A Yeah. She didn't want them doing stuff like that in
22 their house -- in -- it's their house.

23 Q Did she ever express to you that she, in fact, found
24 them doing that?

25 A Yeah. She walked in on them. She ran them out of the

Crystal Williamson
Direct examination by Mr. Ehliès

1 house one night. I can't remember what night it was, maybe
2 might have been one night that week. She came in and they
3 were smoking or something. And she told them to get out of
4 her house doing that. Something to that effect. I can't
5 remember the exact words.

6 Q Okay. Do you know who wound up inheriting that house?

7 A Chuck Emery.

8 Q Okay. And, in fact, did he take up residence in that
9 house after these events?

10 A He did.

11 Q Did your mother ever express to you the concern of
12 violence including her own personal safety?

13 A Oh, yeah. She was -- especially towards the end there
14 she was concerned. She would say for all of us. And I
15 never said, well, is that including me, because, I mean,
16 she included me I guess. But she would say all of us. She
17 was very much worried about it, because Chuck was very
18 capable of --

19 Q When she expressed these concerns for her personal
20 safety did you have an understanding or impression as to
21 who would be the aggressor against her?

22 A Chuck.

23 Q Okay. Now, let me take you. Those things occurred
24 over many occasions, I think you --

25 A Yes.

Crystal Williamson
Direct examination by Mr. Ehliès

1 Q Let me take you right up to the evening of the murder.
2 She would have been in church on Wednesday night, is that
3 right?

4 A Every Wednesday night, yes.

5 Q Okay. That would have been on the 9th of May.

6 A Yes.

7 Q Were you in church with her at that time?

8 A I'm sure I was.

9 Q Did you come to find out that she had had an encounter
10 with Chuck Emery over drugs in that house on that night, on
11 that day before the night?

12 A I was thinking it was like a day or two -- like maybe
13 the day before. I don't remember. I don't remember it
14 being that day. I just can't remember that.

15 Q Okay. And would Phyllis White have been in her
16 confidence on things like that?

17 A Oh, I'm sure she told Phyllis.

18 Q Okay.

19 A Because they would have seen each other that Wednesday
20 night and she -- yeah. They talked.

21 Q Now, how did you learn of the problems on May the
22 11th?

23 A I woke up about 7:00 o'clock, piddled around, got --
24 put clothes on, walked out of my house a few minutes till
25 8:00, a little before 8:00. And there were cars

Crystal Williamson
Direct examination by Mr. Ehliès

1 everywhere. So I kept walking, looking still at the yellow
2 tape. And Reed -- and people started coming, started
3 running towards me.

4 Reid Lindsey, whom I didn't know at the time, got me
5 and took me to his car and asked me some questions -- who
6 lived there, had me describe my mother and my stepfather
7 and told me that there were two deceased persons in the
8 house.

9 And I may have said this before -- I'm not sure -- but
10 the first thing I said, well, find Chuck because he
11 probably had something to do with it.

12 Q Let me interrupt you right there.

13 A Okay.

14 Q when they told you that there were two deceased
15 people -- you may have been the first person to know that
16 outside of law enforcement. Did you relate that
17 information to any bystanders?

18 A No.

19 Q Did you relate it to Chuck?

20 A No.

21 Q Were you present when Chuck arrived at the scene about
22 8:30?

23 A when I got out of the car?

24 Q The police car?

25 A Right. Reid and I were walking up the sidewalk. And

Crystal Williamson
Direct examination by Mr. Ehli

1 the police car right in front of him, I heard somebody
2 banging on the window, and I turned around, and it was
3 Chuck. And he was like what happened, what happened out
4 the window. And Reid told him to -- Reid Lindsey told him
5 to be quiet or something like that, told me to ignore him.

6 So I just went on up the sidewalk and went and stood
7 by myself. But all of that was done by -- let's see,
8 because I was on the phone calling somebody by 8:30.

9 Q Okay.

10 A So all of that happened before 8:30.

11 Q Okay. In fact, it happened before 8:00 because you
12 came out of --

13 A I came out of the house a little before 8:00.

14 Q Okay. Were you at Zaxby's the week before all of this
15 happened?

16 A The night before.

17 Q The night before. I'm sorry. And I'm sorry. With
18 you I may have confused that a little bit. You were at
19 Zaxby's restaurant the night before. That would have been
20 Thursday night, May 10th.

21 A Right.

22 Q Who else was there?

23 A My mother and I.

24 Q And was Phyllis there?

25 A No.

Crystal Williamson
Direct examination by Mr. Ehliès

1 Q were any small children there?

2 A No.

3 Q Okay. It's just you and your mom.

4 A Just me and my mom.

5 Q And did you have conversations then with your mother
6 about these problems?

7 A We didn't talk about anything negative that night.

8 Q Okay. Did she express to you at that time any concern
9 for her personal safety the night before the killings?

10 A She did not express anything to me while we were out.
11 We were probably sitting at Zaxby's eating dinner around
12 6:30 to 7:00, probably closer to 7:00. After that we went
13 to Wal-Mart. We got home about -- I'm going to say
14 9:00-ish. But, no, we didn't have any negative
15 conversation --

16 Q Okay.

17 A -- that night.

18 Q All right.

19 A Up until then.

20 Q After the events of May the 11th did you encounter
21 Chuck at the funeral?

22 A Yeah. Well, at the funeral, no. I didn't really
23 speak to him at the funeral.

24 Q Did you get an opportunity to see him and determine
25 his demeanor?

Crystal Williamson
Direct examination by Mr. Ehliès

1 A He was acting very -- when we were viewing the bodies
2 he acted -- I was crazy, and I still noticed how he was
3 acting. It was almost like he was looking for injuries.

4 A couple of other people said something to me about
5 what's he looking for. It was odd. It was really odd. It
6 was like, you know, Ray was injured on the back of the
7 head, and he was kind of -- of course his head was laying
8 on the pillow. It was like he was trying to look down
9 between his head and the pillow. It was really odd.

10 And then he went over to my mother. And I just stood
11 there and stared at him because he was just -- well, I
12 don't know what else to say about it. But he was just --
13 he was just acting odd. And I'm not the only one that
14 noticed.

15 Q Did you later come to find out that he was using a
16 credit card that did not belong to him?

17 A He had used his -- he had been using Ray's credit
18 card.

19 Q His deceased father's credit card.

20 A Right.

21 Q And that was after May the 11th.

22 A Right.

23 Q Did you report that to the authorities or have any
24 conversations with them or Trey Gowdy's office about it?

25 A Well, I was told about it. And I'm wanting to say --

Crystal Williamson
Direct examination by Mr. Ehliès

1 sorry if I'm wrong -- but I'm wanting to say Reid Lindsey
2 is the one that told me about the credit card being used.

3 Q Okay.

4 A Then I -- next time I saw Trey Gowdy and those folks I
5 told them what Reid had told me. Nobody cared.

6 Q All right. Who were the heirs of Ann Emery besides
7 you? Who was the immediate family?

8 A Me.

9 Q Okay. You were her sole child?

10 A Right.

11 Q And so you were a primary spokesperson for the family
12 of the deceased Ann Emery.

13 A Right.

14 Q And Chuck Emery was adopted by Ray Emery, is that
15 correct?

16 A Right.

17 Q And was the stepchild of Ann Emery.

18 A Right.

19 Q And was there any other person on Ray Emery's side of
20 the family that was with you in the meetings with the
21 solicitor's office?

22 A The only person that came from Ray's side of the
23 family was his brother, James Emery.

24 Q Okay. And to your knowledge did anybody express a
25 desire for the death penalty?

Crystal Williamson
Cross-examination by Ms. Brown

1 A No.

2 Q And do you know whether anybody contacted James Emery
3 about that issue?

4 A I don't know.

5 MR. EHLIES: Could I have a second, please?

6 (Pause.)

7 MR. EHLIES: Thank you so much, Judge, for your
8 patience and the witness' patience as well. I don't have
9 anything further.

10 CROSS-EXAMINATION

11 BY MS. BROWN

12 Q Ms. Williamson, I just need to ask you a few
13 questions.

14 You kind of went over a few things in your direct
15 about sentencing and what you thought about death penalty
16 or life or anything. Isn't it fair to say that you wanted
17 whoever did this punished?

18 A Oh, yes.

19 Q You want justice.

20 A Yes, definitely.

21 Q And if it is simply all of the evidence shows that
22 Mr. Torres committed this crime alone, then this sentence
23 in your mind would be fair, correct?

24 A If he did this by himself he deserves to die, but I
25 don't think he did.

Crystal Williamson
Cross-examination by Ms. Brown

1 Q And I think you mentioned that you talked to solicitor
2 Gowdy and Barry Barnette and maybe some other people in the
3 solicitor's office and getting closer to trial and talking
4 about what could happen.

5 A Uh-huh.

6 Q And you were at trial too, weren't you?

7 A Right.

8 Q This was a continuing process for you.

9 A Right.

10 Q And do you remember the third-party-guilt proffer just
11 before trial started when the defense counsel would have
12 said we have some information we would like the Court to
13 consider to admit regarding Chuck Emery?

14 A I'm not going to swear to it, but I believe, yes.

15 Q Okay. Let me just go back a little bit to the family
16 dynamics.

17 A Okay.

18 Q Now, I believe you said that your mother was a little
19 upset because almost constantly -- actually if I understood
20 your testimony -- because Chuck mistreated Mr. Ray Emery.

21 A Right.

22 Q Is that fair?

23 A Okay.

24 Q But Mr. Ray kept giving Chuck money, didn't he?

25 A Yeah, to keep the peace sort of.

Crystal Williamson
Cross-examination by Ms. Brown

1 Q And it was kind of an ongoing matter.

2 A Yeah, yeah.

3 Q Supporting him to -- and did you happen to see any of
4 the probate papers from Mr. Ray's estate?

5 A Actually, Ms. Glass sent those to me, sent the probate
6 information to me. I don't remember when.

7 Q That's fair enough.

8 Do you recall if there was a personal representative
9 separate and apart from the heirs? I don't know if you
10 reviewed them that much. But were you aware that Gwen
11 Kirby handled the estate?

12 A Gwen. Gwen Kirby, Chuck's mother. She went in there
13 and she took over, so.

14 Q And Chuck had a sister that was also named in probate.

15 A Chuck -- Ray was married the first time, and he had a
16 daughter Tammy.

17 I had been with Ray since 19 -- or my mother and I had
18 been with Ray since 1991. And she's never stepped foot in
19 his yard, never. She just didn't want to have anything to
20 do with him. So I believe she may have been named
21 somewhere somehow.

22 Q I think you said the night before your mother died
23 when you were with her at Zaxby's and went on to Wal-Mart
24 she didn't express a fear at that particular time.

25 A I honestly don't remember us talking about anything

Crystal Williamson
Cross-examination by Ms. Brown

1 negative that night until we got home.

2 Q And you were at your mother's house a good bit, the
3 one that she shared with Mr. Ray.

4 A Yes.

5 Q And you saw Chuck over there a good bit?

6 A A good bit.

7 Q Did you see Mr. Torres over there?

8 A I've seen him around. They were usually walking up
9 and down the street or stuff like that.

10 Q Did your mother ever mention that she was afraid of
11 Chuck's friends?

12 A No. She never really said his -- she never did really
13 say anything about his friends that I can remember.

14 Q was she uncomfortable?

15 A She -- they made her uncomfortable. They did. They
16 made her uncomfortable. She didn't want them in her yard;
17 she didn't want them in her house. They made her very
18 uncomfortable.

19 Q would that have included specifically Mr. Torres?

20 A Oh, yeah. He was one of the gang of the group.

21 Q what were your feelings about Mr. Torres?

22 A I had none. I didn't even know his name until all of
23 this happened. All I knew was he lived on the other side
24 of my mother and Ray.

25 Q Let's see.

Crystal Williamson
Cross-examination by Ms. Brown

1 MS. BROWN: Your Honor, may I have just a moment?

2 THE COURT: Sure.

3 (Pause.)

4 Q If we could go back to your testimony about meeting
5 with solicitor Gowdy and Barry Barnette, was it Cindy crick
6 that was also with them?

7 A Yes, yes.

8 Q Did you have a representative there from the victim's
9 support group here in Spartanburg?

10 A No. No victim's advocate -- advocate was ever at one
11 of our meetings as far as I remember.

12 Q Okay.

13 A The only time I saw her was when I went to the
14 sheriff's office for a couple of things. But I don't
15 remember anybody being there. They may have been. I don't
16 remember.

17 Q And you were -- you were there throughout the trial.

18 A Right.

19 Q Both phases, correct?

20 A Right.

21 Q Do you remember solicitor Gowdy's closing argument
22 right before the jury got the case for sentencing?

23 A They -- I've got a copy of it. He gave me his copy.

24 Q He gave you his copy. And he talked to you throughout
25 the trial, isn't that correct?

Crystal Williamson
Redirect examination by Mr. Ehliès

1 A Right.

2 Q And it was his argument that if the death penalty at
3 all it would have to be in a case like this.

4 A Right.

5 Q Do you remember that?

6 A Right.

7 Q Do you agree with that?

8 A If this case doesn't deserve a death penalty, I'm not
9 sure what does. And I'm not just saying that because --
10 because they were my parents.

11 Q Yes, ma'am. And I am very sorry that you have to come
12 back and talk about that again.

13 A Thank you.

14 Q But I thank you for your time.

15 MS. BROWN: No further questions, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. EHLIES

18 Q You were asked about your meeting with your mom at
19 Zaxby's on the night before the murder.

20 A Yeah.

21 Q And I think you were asked whether there was any talk
22 of fear on behalf of your mother, expressing fear for her
23 physical safety. And I believe that your answer was that
24 we didn't talk about anything negative while we were at
25 Zaxby's until we got home.

Crystal Williamson
Redirect examination by Mr. Ehliis

1 A Until we got home.

2 Q What happened then? Excuse me. Where was home? Were
3 you living together or --

4 A Well, she was -- she -- Ray's house. And I was next
5 door.

6 Q Correct.

7 A So we were in her van. We had gone to wal-Mart and
8 bought a few things. Coming by -- let's see. Her
9 window -- she was -- her window was down some, and we
10 looked over and saw Chuck, Tony. I'm wanting to say there
11 was two or three other fellows coming out of the house with
12 him -- with Chuck and Tony.

13 And then there was a car parked in front of the house,
14 and there was a short guy standing at the car with the car
15 door open. And we were just looking at them. And mom
16 said, "Oh, no. Look at those boys coming out of my house."

17 Q About what time was that?

18 A I don't want to tell you a story. In the trial I had
19 the times right. Now I'd have to think about it -- 9:00,
20 9:00-ish.

21 Q Was it dark?

22 A Well, no, it wasn't. So that might have been a little
23 late.

24 Q But it was May, which is transition time for us on
25 clocks.

Crystal Williamson
Redirect examination by Mr. Ehliès

1 A Well, I'd say about 8:30 or somewhere around in there.
2 It was -- it wasn't long before it was dark.

3 Anyway, they were coming out of the house. And all of
4 a sudden they were laughing and carrying on. And all of a
5 sudden Chuck looked up and saw us and said, "Oh, no, never
6 mind," because he was fixing to tell that little guy at the
7 car to -- that's what he was doing. He was pulling -- he
8 was telling that little guy to pull his car around to the
9 back. It was obvious that's what he was saying. And then
10 he looked up and saw us and said -- started giggling.
11 Never mind.

12 Q Did you get a good look at Chuck Emery at that time?

13 A Yes.

14 Q And do you know his demeanor when he is sober?

15 A He's -- Chuck is kind of a -- he giggles a lot.

16 Q Do you know his demeanor when he is sober?

17 A And he -- when he's sober he still giggles a lot. But
18 he's also kind of -- he's hateful -- he's hateful. I don't
19 know what else to say about him. He's just a hateful
20 person.

21 Q Do you know his demeanor when he's sober?

22 A Hateful.

23 Q Okay. Do you know his demeanor when he's under the
24 influence of intoxicants and drugs?

25 A Crazy and hateful.

Crystal Williamson
Redirect examination by Mr. Ehliès

1 Q Thank you.

2 what happened then with you and your mother in the
3 car?

4 A She pulled me down. She drove me down to my house and
5 let me out. I threw my stuff in the house and then went
6 straight back to her house.

7 well, by the time I got up there they were gone. They
8 didn't come back in. They left.

9 She was standing at the refrigerator putting her
10 stuff, putting her things, away. So I started -- I came in
11 and started helping her. And I said, well, they left. She
12 said, yeah, they went on. And I'll never forget. I said
13 if y'all don't something about that boy I'm going to wake
14 up one morning and y'all are going to be dead. And I swear
15 the very next morning that's what happened.

16 MR. EHLIES: Thank you, Judge.

17 THE COURT: You may step down.

18 MR. EHLIES: She's under subpoena too. And if you
19 have no objection we'll release her.

20 THE COURT: Okay. She may be excused.

21 (Whereupon, the witness was excused.)

22 THE COURT: we'll take a short break. we'll take ten
23 minutes and then resume.

24 (Whereupon, a recess was taken.)

25 THE COURT: All right. Who is the next witness?

Phyllis white
Direct examination by Mr. Schoen

1 MR. EHLIES: Judge, can I introduce my co-counsel,
2 Mr. Schoen? And he has a witness or two to call.

3 THE COURT: Okay.

4 MR. EHLIES: Thank you. Christopher Schoen.

5 MR. SCHOEN: Last name is spelled S-C-H-O-E-N.

6 The applicant calls Ms. Phyllis white to the stand.

7 PHYLLIS WHITE, having been
8 first duly sworn, testified as follows:

9 MR. SCHOEN: May it please the Court.

10 DIRECT EXAMINATION BY MR. SCHOEN

11 Q would you please introduce yourself to the Court?

12 A My name is Phyllis white.

13 Q Ms. white, where do you live?

14 A At [REDACTED] Woodcreek Drive, Spartanburg.

15 Q what's your occupation?

16 A I'm a retired nurse.

17 Q I want to draw your attention to your friendship with
18 Ann Emery. How did you know Ann Emery?

19 A I've known her since I was either eight or nine years
20 old. My father was a pastor, and he took a pastorate in
21 the neighborhood where Ann was living at the time. And we
22 became friends through church. She was, I guess, ten. So
23 we've known each other. We just -- our lives just kind of
24 paralleled after that.

25 Q could you tell us whether you continued to stay in

Phyllis white
Direct examination by Mr. Schoen

1 touch with Ann Emery afterwards?

2 A Yes, all -- all my life since then.

3 Q When would you see Ann Emery?

4 A I saw her every Wednesday and every Sunday.

5 Q Why could you see her at those times?

6 A And every -- in church functions also. For the church
7 services, Sunday morning, Sunday night, Wednesday night.
8 She was so faithful she never missed any service.

9 Q Can you tell us whether Ann Emery ever talked to you
10 about her relationship with her husband Ray?

11 A Yeah, she did. She confided in me, you know, during
12 her -- the course of their courtship and marriage.

13 Q If you recall, when did Ann Emery start courting Ray
14 Emery?

15 A They were -- they saw each other a good while before
16 they were actually married back in 2002.

17 Q Why -- why did they see each other if you know? Why
18 did they see each other for a while? Why didn't they go
19 ahead and get married?

20 A Well, she had some reservations about she didn't want
21 to harm her daughter, and she had some reservations about
22 his relationships then with his exwife or -- and the son.

23 Q Who was the son?

24 A Chuck.

25 Q Can you tell us whether she ever talked to you about

Phyllis White
Direct examination by Mr. Schoen

1 the reservations she had about the son?

2 A She just basically would mention that, you know,
3 conflicts in -- that would potentially be there. That's
4 before the marriage. Is that what you're asking me?

5 Q Yes. Can you describe those conversations?

6 A They would be after church when we were standing -- we
7 always stand around and talk after church. That's just
8 what we do. And she would just mention that, you know, she
9 was in love with Ray and that they were seeing each other
10 but that she just didn't want to have any problems between
11 Crystal and between Chuck and introducing -- she didn't
12 know how that marriage was going to correlate or how it
13 would go together.

14 Q After they got married can you tell us whether she
15 talked to you about Chuck at that point?

16 A Yeah. She would mention once in a while about
17 problems between her and Ray, just it was mostly about her
18 and Ray, because she thought Ray was more lenient than she
19 would be.

20 Q And I want to specifically draw your attention to the
21 week before Ann Emery died, specifically to the Sunday
22 before May 11th. May 11th was that Friday. The Sunday
23 before.

24 A Right, right. That's like burned in my brain.

25 The Sunday before we were going out of church Sunday

Phyllis white
Direct examination by Mr. Schoen

1 night, and she started talking to me about that there was a
2 lot of conflict going on between Ray and in the family.
3 And she asked me to -- specifically, to pray for Crystal,
4 because we always, you know, we bonded over our kids. And
5 so we -- we kind of were like prayer warriors together.
6 And she asked me to pray for her and to pray for her
7 safety. And she told me that the neighborhood was really
8 bad and that she was afraid. So we just had that common
9 prayer right there at church. That was Sunday night.

10 Q And when you say that she was concerned about -- you
11 said the relationships in the family. Did she go into any
12 details about that?

13 A See, I -- I'm trying to remember exactly what she said
14 that Sunday night. I just remember her saying that there
15 was a conflict going on between Chuck and Ray. But I don't
16 know specifically what it was.

17 Q Can you tell us whether you saw Ann Emery again
18 between Sunday and the time she passed away?

19 A Yeah. She came to church Wednesday night. The
20 following Wednesday night she was there.

21 Q And?

22 A And as we were going out, again, we always stopped and
23 talked. You know, that's what we do.

24 But she said that she really wanted me to pray because
25 she had come into her house that day -- and I think -- I

Phyllis white
Direct examination by Mr. Schoen

1 think she said there were three people there. And she had
2 gotten real upset. And she said she ran them out. She
3 didn't tell me the names, or if she did I don't know who
4 they were. But I know she said she was really upset with
5 Chuck and that Chuck was mad at her and that there had been
6 a big altercation and that she was still real upset that
7 night.

8 And she -- she insinuated to me. I can't remember her
9 exact words, whether she said they were doing dope or
10 smoking or something was going on, that she would just
11 would not tolerate in her house. And she said, "I made
12 them get out of my house," and that they were all mad. And
13 she said I'm just afraid.

14 Then she said a statement to me that's just like
15 burned in me. She said, "I'm afraid that there's going to
16 be trouble." She said, "I'm afraid that between Chuck and
17 Ray that there's" -- she said that Ray did not understand
18 how Chuck was, that he saw him, you know, as his son rather
19 than as he actually was, so anyway.

20 Q what was she afraid was going to happen?

21 A She told me specifically she was afraid that they were
22 going to be hurt, they were going to be harmed.

23 Now, whether she ever said the word -- I've tried to
24 think about it -- whether she ever said the words kill.
25 She didn't say anything that she -- but she said something

Phyllis white
Direct examination by Mr. Schoen

1 was bad, something bad is going to happen. I can remember
2 that phraseology in my mind. "Something bad is going to
3 happen."

4 Q Did you have a sense of who she was afraid of?

5 A Yeah. She was afraid of Chuck and those people that
6 were in her house that day.

7 Q I want to direct your attention to the trial that came
8 later. How were you involved in the trial?

9 A I was a victim's witness, or I gave a character. I
10 don't know what you call it exactly.

11 Q Did you testify about your relationship with Ann
12 Emery?

13 A Yes, yes, yeah.

14 Q And told them about who she was and the person?

15 A Who she was and what kind of person she was.

16 Q And in doing that did you meet with the prosecution
17 before they brought you in to testify?

18 A Yeah, briefly.

19 Q And when you had those meetings with the prosecution
20 did you ever tell them that -- did you ever tell them about
21 the conversations that you had had with Ann Emery and your
22 fears?

23 A I think I did -- I think I did. I'm not sure.

24 Q And did you ever meet with anyone from any of the
25 lawyers from Tony Torres' defense team?

Phyllis white
Cross-examination by Ms. Brown

1 A No.

2 Q Did they ever contact you?

3 A No.

4 Q Did they ever reach out to you in any way?

5 A No.

6 MR. SCHOEN: Court's indulgence just a moment.

7 (Pause.)

8 Q If members of Mr. Torres' defense team had contacted
9 you and asked you for information of any type, what would
10 you have told them?

11 A I would just have told them what Ann had said to me on
12 wednesday night. What else can I say?

13 Q So you would have told them about her fears about
14 Chuck.

15 A Oh, yeah, yeah.

16 Q No further questions. Thank you, Ms. White.

17 CROSS-EXAMINATION

18 BY MS. BROWN

19 Q Ms. White, I believe that you -- you told us that you
20 had known Mrs. Ann Emery since she was ten years old.

21 A Well, it was either -- she was either ten or eleven.
22 Very young.

23 Q And y'all --

24 A We grew up riding bikes and everything together.

25 Q Y'all were lifelong friends. And she would confide in

Phyllis white
Cross-examination by Ms. Brown

1 you pretty consistently over your friendship.

2 A Our -- when you say confide, this was more like we
3 shared prayer requests, because Ann was deeply religious,
4 as I am. And we took our prayer requests to the Lord
5 together. You know, that's -- that was our -- when we
6 confided, because Ann was not the kind of person who went
7 around complaining. She never was a complainer or one who
8 just spouted off, you know, her problems. She was not that
9 histrionic kind of person whatsoever.

10 Q Yes, ma'am. Okay. And you said that the Emerys were
11 married in 2002, is that correct?

12 A I'm thinking it was around that time.

13 Q And am I correct in understanding that before they
14 were married Mrs. Ann had some reservations about the
15 children?

16 A She did, yes.

17 Q And that would include Chuck and how Chuck was going
18 to react.

19 A Yes. She did.

20 Q Okay. And she had confided in you during the
21 marriage, and I am going to say until May of 2007, that
22 Chuck had drug issues.

23 A Yeah. I knew that.

24 Q So from 2002 until 2007 would you say that was a
25 pretty consistent concern?

Phyllis white
Cross-examination by Ms. Brown

1 A Yeah. I think it was more like anger issues more
2 than -- because the drugs started coming later towards her
3 life, not early in the marriage, not to me.

4 MS. BROWN: Court's indulgence just a moment.

5 (Pause.)

6 Q Ms. White, you were asked on direct about a meeting
7 with solicitor Gowdy or with somebody in the prosecution
8 team. I mean, did you have just one meeting? Can you tell
9 us a little bit about your interaction with the
10 prosecution?

11 A I remember that they talked to me about presenting her
12 character and that that was all I would have to do and just
13 talk about my relationship with her.

14 And I honestly tried to stay away from all of the
15 sordid details because it was just too painful. And it
16 still is so painful to me losing a friend my whole
17 lifetime, you know, my childhood, because that was a
18 connection with my childhood, and it still is. And when I
19 think of her I cannot -- I cannot divorce, you know, my
20 childhood from her. And so that has always been extremely
21 painful for me. And I just could not -- even during that
22 trial I couldn't -- I couldn't deal with it. It's just she
23 didn't deserve to die the way she did. I'm sorry. It's
24 still painful, very painful.

25 Q Can I get you some water or anything? Are you okay?

Phyllis white
Redirect examination by Mr. Schoen

1 A I'm okay.

2 Q I just wondered if perhaps you could recall who you
3 met with.

4 A I think I met with Trey Gowdy. And -- and he said,
5 you know, what we would -- what I would be presenting.

6 Q Yes, ma'am.

7 A But nothing else.

8 Q Thank you very much for your time.

9 MS. BROWN: I have no further questions, Your Honor.

10 MR. SCHOEN: Brief redirect.

11 THE COURT: Just a minute.

12 THE WITNESS: I'm sorry.

13 REDIRECT EXAMINATION

14 BY MR. SCHOEN

15 Q Just a second. I'm sorry. Just one last question.

16 If -- if you said that Ann Emery -- or previously you
17 testified that Ann Emery would talk about people. She
18 didn't complain.

19 A Oh, no. She -- that wasn't her.

20 Q So she was telling you about something.

21 A She was very upset that Wednesday night. She was very
22 distraught, untypical, not typical, of her, not at all.

23 Q Thank you, Ms. White.

24 THE COURT: Thank you. You may step down.

25 MR. EHLIES: And be released, I suppose.

Megan Williamson
Direct examination by Mr. Tessier

1 THE COURT: She may be.

2 (Whereupon, the witness was excused.)

3 MR. TESSIER: Your Honor, we would call Megan
4 Williamson.

5 MEGAN WILLIAMSON, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. TESSIER

8 Q Good afternoon. Can you tell the court who you are?

9 A Megan Williamson.

10 Q And where do you currently live?

11 A [REDACTED] Woodcreek.

12 Q Is that here in Spartanburg?

13 A Yes.

14 Q How long have you lived at that address approximately?

15 A About 15 years.

16 Q And who owns the house there?

17 A My grandmother that was just in here -- Phyllis White.

18 Q So Phyllis White is your grandmother.

19 A Uh-huh.

20 Q Do you know Ann Emery, the deceased?

21 A Yeah.

22 Q How is it that you knew Ann Emery?

23 A She's always been in our church. They've kept me
24 since I was a baby. She was like my aunt.

25 Q While you weren't actually related to her, but you

Megan Williamson
Direct examination by Mr. Tessier

1 called her your aunt?

2 A Yeah.

3 Q And what about Chuck Emery, her stepson? Did you know
4 him?

5 A I mean, when I was little he was around, but I didn't
6 really meet him until after they were dead.

7 Q Okay. How is it that you came to me Chuck Emery after
8 the deaths of Ray and Ann Emery?

9 A He sent me a message on My Space asking how our family
10 was doing and how, you know, bless his heart, he was so
11 pitiful.

12 Q And did anything come of that message that he sent to
13 you on My Space? Did you have further interaction with him
14 as a result of that?

15 A Yeah. He, I guess, tried to make us all feel bad for
16 him. And I even went to Crystal and was like, you know,
17 maybe it wasn't Chuck, maybe they're -- maybe he did get
18 kind of screwed over in this deal. And he's just a master
19 manipulator.

20 Q Had you learned anything about Chuck Emery from your
21 conversations with Ann Emery?

22 A She was scared of him. She was scared to death of
23 him.

24 Q So you had -- how much interaction would you have with
25 Ann Emery prior to her death? Was it pretty frequent?

Megan Williamson
Direct examination by Mr. Tessier

1 A About two -- two weeks ago before -- I mean, two weeks
2 before she died me and Crystal and my mom and Ann and my
3 little boy went to Zaxby's. And then I saw her the Sunday
4 before she died and the Wednesday before she died at
5 church.

6 Q And did you have an opportunity to talk with her or
7 hear conversations between her and your mother?

8 A At Zaxby's all she said was my little -- my
9 two-year-old called her Am. And they were sitting there
10 talking, and all she said -- I mean, we didn't think about
11 it at that time when she would say stuff like this. But
12 all she said was, "I wish you would come and stay with --
13 you need to come and spend the day with Am," something, but
14 we're not going to stay at my house. There's too much
15 going on.

16 Q Did you have any understanding as to the relationship
17 between Ann Emery and Chuck Emery based on your
18 communications with Ann?

19 A I mean, all she used to say was that he hated her and
20 that he hated that she was with Ann, I mean, that she was
21 with Ray.

22 Q And did you have any sense from your conversations
23 with Ann Emery that she was afraid of Chuck?

24 A The Wednesday before they got killed she was at church
25 and she was talking to my grandmother Phyllis, the one that

Megan Williamson
Direct examination by Mr. Tessier

1 just testified. And she had said that she had came home
2 from work. I don't know if she came home from work early
3 or the same time she always did. I don't know, because, I
4 mean, nobody was really thinking about it when she was
5 saying it. But that she had came home early and there was
6 three people in her house, three guys in her house, and
7 they were smoking or doing some kind of drug and that she
8 ran them out and that she was -- she was scared that Chuck
9 was going to do something to Ray because he was so mad at
10 him and she was scared of him.

11 Q And where did you live in relation to the Emerys'
12 house back in '07?

13 A At the time -- at the time of their death I lived
14 probably three streets over with my exhusband.

15 Q Did you have any understanding as to what Chuck had
16 going on in the garage that was on the Emery property back
17 then?

18 A Not at the time, not at that time. I just know that
19 he had told my exhusband that that's where he -- that's
20 where they cooked their meth.

21 Q Did Chuck Emery come to live with you and -- or come
22 to --

23 A He never lived, no.

24 Q Did he come to hang out with you and your exhusband,
25 now?

Megan Williamson
Direct examination by Mr. Tessier

- 1 A My exhusband, yeah.
- 2 Q After the deaths of the Emerys?
- 3 A Yeah.
- 4 Q And what happened then?
- 5 A One night my -- he's almost six now. But he was sick.
- 6 He was a baby. And we went to C.V.S. to get him something,
- 7 some Tylenol or -- I don't remember. And Chuck asked me to
- 8 go in and get him Sudafed. And he said you have to take
- 9 your I.D. in there. And I said no. And he -- you know, he
- 10 got mad and started showing his butt and told me that
- 11 nobody's going to know. And I knew what he was doing with
- 12 it. And I wouldn't do it. And so he jerked me out of the
- 13 car, and my exhusband came around from the other side of
- 14 the door and tried to kind of calm Chuck down and pull him
- 15 off. And when he did that Chuck hit him several times.
- 16 And Chuck's a whole lot bigger than Phillip was, so.
- 17 Q And what did you know that he was doing with the
- 18 Sudafed, or what did you expect he was going to do the
- 19 Sudafed if you bought it?
- 20 A He -- Chuck would never say, look, I cook meth, but he
- 21 would always say I'm going to work, or/and, I mean,
- 22 everybody knew what he was doing. He would try to get you
- 23 to go buy stuff for him and stuff that you had to have an
- 24 I.D. for.
- 25 Q To your knowledge did Chuck ever cook meth in your

Megan Williamson
Direct examination by Mr. Tessier

1 house?

2 A Yes.

3 Q what happened when you discovered that?

4 A He -- Phillip had went to work. I worked third shift.
5 I came home and there was -- we had a white microwave. And
6 there was like crystals on the top of it. I don't know
7 if -- I don't know what it was. And I -- I asked him about
8 it. And he said he was cooking pancakes in the microwave.
9 And then whenever Phillip came home and he looked at what I
10 had wiped off he said that's a lie. He said that's how you
11 cook meth. And he was cooking it in my microwave at an
12 apartment.

13 Q Did that end your relationship --

14 A Yeah.

15 Q -- or the time that you hung out at all with Chuck
16 Emery?

17 A Oh, yeah.

18 Q Have you talked to him since then?

19 A No. He messaged me on facebook about two months ago
20 and wanted to know if the lady named Drucy Glass had
21 contacted me. And I said no.

22 Q Were you concerned that he was asking about that?

23 A Yeah.

24 Q Were you concerned for yourself?

25 A Yes.

Megan Williamson
Direct examination by Mr. Tessier

1 Q Howso?

2 A Because Chuck scared me.

3 Q Did you attend the viewing and the funeral for the
4 Emerys?

5 A Not the viewing but the receiving of friends and the
6 funeral.

7 Q Okay. And were you there in the presence of Chuck
8 Emery? Did you see Chuck Emery at those events?

9 A Yeah.

10 Q How would you describe his demeanor?

11 A He had no emotion at all, like he could care less at
12 all.

13 Q Did that seem unusual to you?

14 A Yeah. I mean, if my parents had just gotten brutally
15 murdered, yeah, I would not have composure the way he did.

16 Q Did you have any occasion to be around Chuck Emery at
17 the scene of the Emerys' murders on the day they were
18 discovered?

19 A When I -- when I got there that morning Chuck was in
20 the back of the cop car giving a statement. And his
21 girlfriend Holly was in a different car talking to a
22 different person. And whenever I saw him get out he just
23 kind of walked back and forth up and down the street. Like
24 he wasn't crying. He wasn't upset. He just was there
25 trying, I guess trying, to see what was going on.

Megan Williamson
Direct examination by Mr. Tessier

1 Q Did you have a chance to talk with him on that
2 morning?

3 A No.

4 Q Do you have any idea whether Chuck Emery received any
5 monetary benefit as a result of Ray Emery's death?

6 A I know he did.

7 Q How do you know that?

8 A Everything was -- everything he got was on My Space at
9 one point. Of course he's deleted all of his social stuff
10 now. But he had a -- he had bought a 4-wheeler, a jet ski,
11 a car and a motorcycle, a blue motorcycle. And that -- and
12 he sold everything, I guess, because at one point he was
13 trying to sell my exhusband the blue motorcycle because he
14 had ran out of money.

15 Q Did you have interaction with or did you have an
16 ability to see postings by Chuck Emery on My Space?

17 A Oh, yeah.

18 Q And did he say --

19 A It would say stuff like, you know, my new toy, just
20 bought my new toy, just bought this, just bought that.

21 Q Did he make it clear on My Space that the source of
22 funds for those purchases was from Ray Emery's death?

23 A Well, he got a tattoo on his back -- or it might have
24 been his arm -- I don't remember -- of his dad. And it was
25 a cross with a nail through it or something. And he said,

Megan Williamson
Cross-examination by Ms. Brown

1 "Dad, this one's for you because you paid for it." And
2 that was one of the posts that kind of freaked me out.

3 Q Did anyone from the trial defense team defending Tony
4 Torres ever contact you prior to his murder trial back in
5 2008?

6 A No. I mean, I was with the whole family but --

7 Q Back in 2007, May of 2007, when Ann and Ray Emery were
8 killed, did you know where Chuck Emery was living at that
9 time?

10 A You know, from what Ann said he was kind of just back
11 and forth between Gwen and Ray and the girl -- the Holly
12 girl. I don't think he really had like a permanent
13 anything. I think he was just wherever he ended up.

14 Q Did he have free -- did Chuck Emery have free access
15 to the Emerys' house?

16 A I'm assuming. He was --

17 Q Do you know, for example, if he had a key to their
18 house?

19 A I mean, I'm assuming that he did.

20 Q Thank you very much.

21 MR. TESSIER: I have no further questions at this
22 point, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. BROWN

25 Q Ms. Williamson, you said that you knew Mrs. Ann from a

Megan Williamson
Cross-examination by Ms. Brown

1 long time. And we heard earlier today that the marriage
2 occurred in 2002. Was it your impression that she always
3 had concerns about Chuck Emery?

4 A I mean, I never really -- Ann wasn't the type of
5 person to sit around and talk about people, so, I mean, she
6 never really did other than -- I mean, I wasn't taking
7 notes every time I talked to her, but I know now the time
8 when we sat at Zaxby's and the Wednesday before they got
9 killed that she was concerned about what he would do.

10 Q But you had heard her speak of fear --

11 A Yeah.

12 Q -- over all the years that she knew Chuck.

13 A Yeah.

14 Q And you said that you lived a couple of streets over
15 in May of 2007.

16 A They lived in Drayton. We lived in Beaumont, which is
17 kind of right there together.

18 Q Okay. And you were married at the time.

19 A Uh-huh.

20 Q And you had a child.

21 A Uh-huh.

22 Q And you said your husband was Phillip.

23 A Uh-huh.

24 Q What was his last name?

25 A Koon.

Megan Williamson
Cross-examination by Ms. Brown

1 Q Pardon?

2 A Koon, K-O-O-N.

3 Q And how did he know Chuck?

4 A Just through me. I mean, just -- he didn't know him
5 prior to us being together at all.

6 Q Okay. And had you met Mr. Torres?

7 A No.

8 Q Had you seen Mr. Torres before?

9 A No.

10 Q And you said that, if I got it right, "Chuck scares
11 me."

12 A Yeah.

13 Q Is that right? And that's from things that you've
14 seen recently, postings that you've seen recently?

15 A I mean, I know what he's capable of. I mean, I think
16 we all know what he's capable of. And I seen just from not
17 buying a box of Sudafed how mad he got. I mean, I think if
18 my husband wasn't there he would have hit me. I mean, and
19 I saw -- his exgirlfriend used to be one of my really good
20 friends, and it was multiple occasions that he would hit
21 her.

22 Q And you're talking about hitting her with his fist?

23 A Yeah.

24 Q And hitting you with his fist?

25 A Yeah.

Megan Williamson
Redirect examination by Mr. Tessier

1 Q Or hitting -- I'm sorry. Your husband with a fist?

2 A Yeah. He hit him. He hit Phillip several times in
3 the face.

4 Q But never with a weapon that you saw.

5 A No. He didn't have one.

6 Q Do you have any information where Chuck Emery was any
7 time on May the 11th of 2007?

8 A Do I have what?

9 Q Any information on where Mr. Chuck Emery was May
10 11th of 2007.

11 A Not -- not concrete, no, because I just know what he
12 told me.

13 Q Thank you, ma'am.

14 MS. BROWN: No further questions.

15 REDIRECT EXAMINATION

16 BY MR. TESSIER

17 Q One last issue, Megan. At the time Chuck Emery beat
18 up your husband, how violent would you describe that
19 encounter?

20 A It scared me. I mean, he -- it was just like -- like
21 that. He just flipped out.

22 Q And were you afraid for your husband's --

23 A Yeah. And I tried to get him off him, but it was just
24 like there was nothing.

25 There was two other guys there from C.V.S. And the

Megan Williamson
Redirect examination by Mr. Tessier

1 only reason that Chuck kind of calmed down was because they
2 came out and were like call the cops, call the cops. And
3 that's the only reason why Chuck kinda chilled out. And he
4 left walking. And, I mean, he was just couldn't -- you
5 know, like he couldn't breathe because he was so mad over a
6 box of Sudafed.

7 Q Is it safe to say you have avoided Chuck Emery since
8 that time?

9 A Oh, yeah.

10 Q Thank you.

11 THE COURT: You may step down.

12 MR. TESSIER: Your Honor we have no objection to her
13 being excused from the subpoena.

14 THE COURT: She may be excused.

15 (Whereupon, the witness was excused.)

16 MR. TESSIER: She had asked, Your Honor, since her
17 grandmother is here whether she could stay now that she
18 has --

19 THE COURT: She can stay if she wants to.

20 MR. EHLIES: The next two are very involved -- Tammy
21 Hughey who has a number of statements. And I'll expect an
22 hour or more on her. And then one other one who may not be
23 quite that long. In light of where they have to go I'm
24 wondering what you want to do.

25 THE COURT: In light of where who has to go?

Jessica Hinson
Direct examination by Mr. Schoen

1 MR. EHLIES: The S.C.D.C. folks.

2 THE COURT: They're going to Pelzer.

3 MR. EHLIES: Yeah. You're right.

4 THE COURT: Not far from here.

5 MR. EHLIES: We would call our next witness.

6 THE COURT: If we have to break it up, we can.

7 MR. EHLIES: Okay.

8 THE COURT: Let's do the shortest one in length of
9 testimony, not in stature.

10 MR. SCHOEN: The applicant calls Jessica Hughey to the
11 stand.

12 JESSICA HINSON, having been
13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MR. SCHOEN

15 Q Good afternoon.

16 A Hello.

17 Q Can you introduce yourself to the Court? And spell
18 your last name.

19 A Sorry?

20 Q Can you introduce yourself to the Court? And spell
21 your last name.

22 A Jessica Hinson, H-I-N-S-O-N.

23 Q Is Hughey a part of your name as well?

24 A That was my midden name. I'm married.

25 Q Where do you live, Mrs. Hinson?

Jessica Hinson
Direct examination by Mr. Schoen

1 A [REDACTED] Montgomery Street.

2 Q I want to take you back to May 10th of 2007. Where
3 did you live on that date?

4 A I lived at [REDACTED] Floyd street.

5 Q And how old were you at that time?

6 A Eighteen.

7 Q When you lived at [REDACTED] Floyd Street who were your
8 neighbors?

9 A Ray and Ann Emery lived -- well, it was sort of like
10 behind my house.

11 Q And how well did you know Ray and Ann Emery?

12 A I knew Mr. Emery pretty well. I didn't really know
13 Ann that well, but I knew Mr. Emery pretty well.

14 Q Can you tell us whether you knew their son Chuck?

15 A Yeah. I knew him pretty well.

16 Q How did you know him?

17 A He was friends with my cousin Tony.

18 Q Where did Chuck live?

19 A I'm not sure where he lived at the time.

20 Q Can you tell us whether he lived with Ann Emery and
21 Ray Emery?

22 A To my knowledge, no.

23 Q Did he have access to the Emerys' house?

24 A Yes.

25 Q How do you know that?

Jessica Hinson
Direct examination by Mr. Schoen

- 1 A He had a key to Ray's house.
- 2 Q How do you know he had a key to Ray's house?
- 3 A He wore it on a chain around his check.
- 4 Q Do you know -- how would you describe the relationship
5 between Chuck Emery and Ann Emery?
- 6 A He didn't -- he didn't like Ann at all.
- 7 Q How do you know he didn't like Ann?
- 8 A I heard him say it several times. He was not pleased
9 with the fact that Ray married her, because he had always
10 said if anything ever happened to his father that he
11 wouldn't get anything.
- 12 Q what did you take that to mean?
- 13 A I mean, the only way you can take it. I mean, he --
14 he did not like her. He despised her for the fact that he
15 married -- her and Ray were married.
- 16 Q what did you understand him to mean when he said if
17 something happened to him -- Ray -- he wouldn't get
18 anything, Chuck wouldn't get anything?
- 19 A I mean, from the way I took it if Ray ever died he
20 wouldn't get any money from it.
- 21 Q what did Chuck Emery call Ann Emery?
- 22 A I mean -- Ann.
- 23 Q Did he have a derogatory name for her?
- 24 A He used to always call her Martha Stewart.
- 25 Q Is that all he called her?

Jessica Hinson
Direct examination by Mr. Schoen

1 A That I heard.

2 Q I'm going to direct your attention to the night of May
3 10th of 2007. What happened between 8:00 and 9:00 on that
4 evening?

5 A I was outside at my fire pit, fire hole. And as far
6 as I can remember Chuck and Holly and Tony were at Ray and
7 Ann's house. And Ann had come home that evening and told
8 him they were all going to have to leave, that she was at
9 home, she wanted to be at home, she wanted to relax, she
10 wasn't going to have anybody at her house. And they left
11 and come down to the fire pit where I was at between my
12 house at the time and Ray and Ann's house.

13 Q How did you know that Ann Emery had asked them to
14 leave, that she wasn't going to have them at her house?

15 A Oh, I could hear her on the porch telling them they
16 had to leave.

17 Q Was it loud?

18 A I mean, it wasn't loud, but, like I said, you know,
19 where I was at in the yard, you know, you could hear them
20 talking on the porch.

21 Q What -- what, if anything, did -- did they say back to
22 her?

23 A Nothing that I can remember. They just left.

24 Q What, if anything, did -- did Chuck say or any of
25 these folks say when they came back to the fire pit?

Jessica Hinson
Direct examination by Mr. Schoen

1 A Chuck was complaining that he had to leave. You know,
2 he didn't like the fact that he was told that he had to
3 leave from his father's house.

4 Q Did he use any derogatory language about Ann Emery?

5 A Not that I can remember.

6 Q Now, I'd like to talk about what happened after that.

7 Were the police ever called out to the home on the
8 night of May 10th of 2007?

9 A My mother had to call the police because Chuck and
10 Holly had got into an argument. And he punched her and
11 busted her nose.

12 Q Who is Holly?

13 A Holly was his girlfriend at the time.

14 Q Did you see Chuck punch Holly?

15 A Yes.

16 Q How would you describe that?

17 A They were arguing. I'm not quite sure what the
18 argument was about. She started crying, and, I mean, he
19 punched her in the face like she was another man, busted
20 her nose. And she had blood everywhere.

21 Q What happened when the cops got there?

22 A My mom -- like I said, my mom was the one that called
23 the cops. Holly being the person that she was, she didn't
24 want to press charges or have anything done. Cops said
25 that, you know, since they didn't see anything, she didn't

Jessica Hinson
Direct examination by Mr. Schoen

1 want to press charges, they couldn't do anything about it.

2 Q Let me direct you to the morning of May 11th. That's
3 the next -- the next morning after all of this happened.
4 what's the first thing you remember?

5 A My dad came in and woke me up and told me to come
6 outside, that there was something going on.

7 When I stepped outside it was like nothing else I had
8 ever seen. There were cops from one end of the street to
9 the next. There was crime scene tape up everywhere. And I
10 just -- my head was spinning. It was like nothing I had
11 ever seen before.

12 Q Can you tell us whether you saw Chuck at that time?

13 A Not at first, not when I first went out, no. He --
14 someone called him at some point, and he got there. I'm
15 not sure how much longer after I come outside. It was that
16 he got there, but I did see him that morning.

17 Q What, if anything, did he say when he got there?

18 A When he pulled up -- I can't even remember who it was
19 that he pulled up with. But when he pulled up the first
20 thing he said when he jumped out of the car is, "I know who
21 did this shit. It was Tony."

22 Q And at that time can you tell us whether the police
23 had said anything publicly about what had happened?

24 A No.

25 Q Did you know what had happened?

Jessica Hinson
Direct examination by Mr. Schoen

1 A No, other than there was crime scene tape up.

2 Q Who is Jennifer King?

3 A Jennifer King is -- it's a girl that everybody -- she
4 hung out with everybody else. It's just a -- a friend of
5 Chuck's.

6 Q And can you tell us whether Jennifer King was there on
7 the morning of May 11?

8 A I believe she was there, yes.

9 Q And did you hear Jennifer King talking with the police
10 at any point?

11 A At one point they -- they questioned. She -- they
12 were talking to her about she had called Ray's house early
13 that morning at some point, and she was talking to them
14 about she had called Ray's house that night, or early that
15 morning rather.

16 Q What time did she say if she said?

17 A I think she said it was around 3:30 or so.

18 Q 3:30 a.m.?

19 A Yes.

20 Q On the morning of May 11th.

21 A I believe so.

22 Q And what else did she say about that?

23 A That's all that I can remember. She just made the
24 comment that she had called trying to find Chuck.

25 Q Do you know if anyone answered the phone? Did she --

Jessica Hinson
Direct examination by Mr. Schoen

1 did she make that clear from the conversation?

2 A I believe she said that Ray answered the phone.

3 Q And was Chuck present when this conversation was
4 occurring?

5 A Yeah, he was there.

6 Q What, if anything, did he say?

7 A He said if I had known it was you I would've come in
8 and answered the phone.

9 Q Now, it's 3:30 in the morning.

10 A I believe so.

11 Q Can you tell us whether you ever talked to any of the
12 defense lawyers for Mr. Torres?

13 A I don't think so.

14 Q No one ever called you or asked to talk to you?

15 A I don't believe so.

16 Q Ask you any questions? But you did give a statement
17 to the police.

18 A Yes.

19 Q But not to any of his defense lawyers.

20 A No, sir. Not that I can remember.

21 MR. SCHOEN: Court's indulgence for just one moment.

22 (Pause.)

23 Q One more set of questions.

24 MR. SCHOEN: Permission to approach the witness.

25 Q Can you identify this for me, this document?

Jessica Hinson
Direct examination by Mr. Schoen

1 (Pause.)

2 THE COURT: He's just asking you if you recognize the
3 document.

4 THE WITNESS: Oh.

5 A Yes, sir.

6 Q You recognize the document.

7 MR. SCHOEN: I'd like to have this marked as
8 Applicant's Exhibit 5 for identification purposes only.

9 A I want to talk to you about giving the statements in
10 this document. Particularly I'd like to ask you --

11 THE COURT: Do you want to have it marked first? Has
12 it been marked?

13 MR. SCHOEN: Requested that it be marked.

14 MS. BROWN: Your Honor, may I have a moment to look at
15 the exhibit?

16 THE COURT: Well, sure, yes.

17 (Affidavit of Jessica Hughey dated August 15, 2008,
18 marked Applicant's Exhibit No. 4 for Identification.)

19 Q I'd like to ask you about an altercation that you
20 described between Chuck Emery and Tony Torres. Can you
21 tell us a little bit about that?

22 A They had got into an argument. I don't know what the
23 argument was about. I had been in my house. I just -- I
24 heard a commotion outside. I went to our laundry room at
25 the time, and it had a little window. My mom and I were

Jessica Hinson
Direct examination by Mr. Schoen

1 watching out the window, and they were standing there
2 arguing, you know, yelling back and forth to each other.
3 But, I mean, it was nothing. It never got physical or
4 anything like that.

5 Q What -- if you reviewed your statement would it help
6 you to perhaps reflect -- refresh your recollection of what
7 happened?

8 A I mean, like I said, they were just -- they were
9 arguing. They were hollering and fighting at each other,
10 fighting with each other. I don't remember. I don't know
11 what the argument was about because I wasn't outside. I
12 don't know what had gone on before that, so.

13 Q This statement is dated August 15th of 2008, which was
14 much closer to the time of the events. If I -- if I gave
15 this to you and had you read some of it do you think it
16 might help to refresh your remembrance of -- of that
17 particular altercation? I'm going to hand this over to
18 you. And so you don't have to read the entire thing, you
19 want to start on this page where it says, "Around
20 midnight." Just read it again.

21 A Where at? Where did you say start?

22 THE COURT: Just read it to yourself.

23 Q Yeah. You don't have to read it out loud.

24 (Pause.)

25 Q Just let me know whenever you're done reading that.

Jessica Hinson
Direct examination by Mr. Schoen

1 (Pause.)

2 A Okay.

3 Q Does that statement help to refresh your recollection
4 of what happened?

5 I'll ask you again. What happened? What do you
6 recall happening in the altercation between Chuck and Tony?

7 A They were arguing. Apparently Chuck was accusing Tony
8 of messing with Holly, and, you know, Tony told him it
9 wasn't like that, you know, it's -- you got that wrong,
10 that's not how it is.

11 And Chuck pulled out a knife and was swinging it at
12 Tony. And, you know, Tony was telling him we've been --
13 we've been like brothers for way too long, it shouldn't
14 even be like this, you know.

15 Q What, if any, threats did Tony make towards Chuck?

16 A You know, Tony -- Tony said, "If it's like this, you
17 know, fuck you and your family. I'll kill them all."

18 Q What did Chuck say back to Tony?

19 A He said the exact same thing to him, "If it's like
20 that, fuck you and fuck your family. I will kill them
21 all."

22 Q Who was the aggressor in the confrontation?

23 A Well, Chuck was the one that pulled out a knife
24 swinging it around.

25 MR. SCHOEN: No further questions.

Jessica Hinson
Cross-examination by Ms. Brown

1 CROSS-EXAMINATION

2 BY MS. BROWN

3 Q Mrs. Hinson --

4 A Yes, ma'am.

5 Q -- I believe you told us in your direct on May 10th of
6 2007 about 8:00 or 9:00 o'clock is when Mrs. Ann Emery
7 threw Chuck out, is that correct? Around 8:00 or
8 9:00 o'clock.

9 A Yes, ma'am.

10 Q At that time did Chuck make any threats against
11 Mrs. Ann Emery?

12 A Not that I can remember.

13 Q Did he make any threats against his father, Mr. Ray
14 Emery?

15 A Not that I can remember.

16 Q And later that same night Mr. Torres made a threat
17 against the Emerys, is that correct?

18 A Yes, ma'am.

19 Q Okay. Do you have a recollection? When was the last
20 time that you saw Mr. Torres that night?

21 A Then. When him and Chuck were arguing. After that I
22 went to bed.

23 Q Do you have any recollection of him coming and trying
24 to get into Ms. Hughey's home a little later?

25 A No, ma'am. I went to bed.

Jessica Hinson
Cross-examination by Ms. Brown

1 Q Okay. Do you recall giving a statement to police
2 officers on May 11th of 2007?

3 A I believe I did.

4 Q Okay. would it refresh your memory to see the
5 statement that you gave?

6 A Yes, ma'am.

7 MS. BROWN: May I approach, Your Honor?

8 THE COURT: You may.

9 Q Does that look like a statement you might have
10 reviewed before?

11 A No, ma'am. I don't ever remember saying anything
12 about anybody having a gun.

13 Q Okay. what about anything about seeing Mr. Torres
14 after the threat?

15 A No, ma'am. Like I said, after that I went to bed.

16 Q Okay. And on the first page of that statement --
17 that's typed, correct?

18 A Uh-huh.

19 Q But there is a second page to that statement. Do you
20 see that?

21 A Barely.

22 Q Okay. would that be your handwriting?

23 A I can barely see it, but to tell you the truth from
24 what I've seen, no, ma'am, it does not look like my
25 handwriting.

Jessica Hinson
Cross-examination by Ms. Brown

1 Q Okay. Would that be your signature at the bottom?

2 A I can't even see the signature. I can't even really
3 make it out.

4 Q Okay. On the first page, the typed page, there's an
5 indication that, "My cousin was out around my house trying
6 to get in hitting our cars yelling. Soon after I guess he
7 gave up because he left and walked up the street. And that
8 was between 2:30 and 3:00 a.m." If correct, where would
9 that information have come from?

10 A I don't know, ma'am. Like I said, after they were
11 arguing in the road it wasn't five or ten minutes after
12 that I went to bed.

13 Q Okay.

14 A So I don't --

15 Q Well, let me ask you. Compared to the affidavit that
16 you do recall there's nothing in this statement about a
17 Jennifer or any statement that she would have given at the
18 time, correct?

19 A I don't understand what you're asking.

20 Q There's no reference to a Jennifer in that statement.

21 A Well, because when I seen Jennifer that was the next
22 morning when the police officers were questioning her. I
23 did not see Jennifer that night.

24 Q Well, if this statement was on May 11th of 2007 that
25 would be the exact same day, correct?

Jessica Hinson
Cross-examination by Ms. Brown

1 A Yes, ma'am.

2 Q And there's no mention of Jennifer in the statement.

3 A Well, when I got in the cop car and was talking to the
4 police officer that was maybe five minutes after I had been
5 woken up. And I did not see Jennifer until about an hour
6 or an hour and a half later once she got over there.

7 Q Okay. And your testimony was that Jennifer had said
8 something to police officers about a call and somebody
9 answering in the home.

10 A Yes, ma'am.

11 Q Do you have any personal knowledge of that at all?

12 A Nothing other than what I heard her say.

13 Q So it would base -- it would be based on her
14 recollection. And you haven't talked to her or you don't
15 have any affidavit from her or anything like that.

16 A No, ma'am.

17 Q Can you tell us a little bit if you would, Ms. Hinson?

18 A Yes, ma'am.

19 Q That morning when police officers approached you --

20 A Yes, ma'am.

21 Q -- did they ask you to give a statement?

22 A To tell you the truth, I can't remember. Like I said,
23 when my father came in and woke me up and I came outside,
24 it had not been maybe ten -- five or ten -- minutes after I
25 had came out that the police officer pulled me into the car

Jessica Hinson
Redirect examination by Mr. Schoen

1 and was asking me questions.

2 Q Okay. So where were you seated in the car?

3 A In the back.

4 Q Okay. Did you -- did you have a pen and paper that
5 you were writing on or how -- how did this statement occur?

6 A I don't know. I just -- I remember the police officer
7 asking me questions.

8 Q And who was the police officer?

9 A I could not tell you.

10 Q Okay.

11 A I do believe it was a female officer.

12 Q And you were in the car?

13 A Yes, ma'am.

14 Q Car doors closed?

15 A Yes, ma'am.

16 Q So you don't really know who was coming in and out of
17 the scene while you were talking to the police officer,
18 correct?

19 A No, ma'am.

20 Q Thank you, Mrs. Hinson. I appreciate it.

21 MS. BROWN: No further questions, Your Honor.

22 MR. SCHOEN: Brief redirect.

23 REDIRECT EXAMINATION

24 BY MR. SCHOEN

25 Q Can I see that document?

Jessica Hinson
Redirect examination by Mr. Schoen

1 A This one? You sure can.

2 MR. SCHOEN: Your Honor, applicant would like to mark
3 this as Applicant's Exhibit 6 and move it into evidence,
4 just proffer it to the Court to demonstrate the level of
5 legibility.

6 THE COURT: I think she's already testified she
7 couldn't identify it. I know y'all talked about it. But
8 she said she couldn't read it and she couldn't make out the
9 signature.

10 MR. SCHOEN: I think what we would like to demonstrate
11 is that this particular copy is bad.

12 THE COURT: well, I think everybody will agree with
13 that apparently. But why do we need to prove that? Do we
14 have -- we don't have a more legible copy?

15 MR. EHLIES: Not that we know of, Judge.

16 THE COURT: what is the point of putting an illegible
17 copy into evidence?

18 MR. EHLIES: And I hate to trespass on counsel's
19 rights, but you're the credibility -- the finder of the
20 credibility of the witness. And her credibility has been
21 attacked by the state pretty much. And I wanted you to see
22 the quality of the document they're charging her as having
23 written so that you might understand that it is of very
24 poor quality and it isn't that she is attempting to
25 minimize her recollection or anything of that nature.

Jessica Hinson
Redirect examination by Mr. Schoen

1 THE COURT: Oh, okay.

2 MR. SCHOEN: As Mr. Ehlies said.

3 (Voluntary statement of Jessica Hughey dated May 11,
4 2007, marked Applicant's Exhibit No. 5.)

5 MR. SCHOEN: No further questions, Your Honor.

6 THE COURT: You may step down.

7 We'll recess until 9:30 in the morning.

8 END OF PROCEEDINGS APRIL 14, 2014

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1 (Proceedings April 15, 2014)

2 MR. EHLIES: Good morning.

3 Judge, I think it's fallen to me to review a couple of
4 things that have gone overnight and earlier this morning
5 about procedural matters as well as scheduling.

6 We're getting into a position where we can finish up
7 with some fact witnesses. There are four that were by
8 depositions, including one in Fayette [sic], North Carolina,
9 400 and something miles from here -- a physician.

10 And I believe that we have reached an agreement that
11 what we'll do is the state will contact the Department of
12 Corrections and move Roger Kirby into a position to testify
13 live -- he's at Kershaw -- tomorrow.

14 And along with that we'll have another inmate by the
15 name of Kevin Biggerstaff here tomorrow live.

16 And then we'll have an officer with the sheriff's
17 department in Spartanburg -- Allen Wood -- who will be here
18 live.

19 And somewhere along the way I think that they will
20 reconnect, the state will reconnect, with Dr. H. Wayne
21 Tobin -- T-O-B-I-N -- and submit some form of supplement to
22 his deposition.

23 And then we will adjourn. And I'm going to release
24 tentatively Mr. Allen who's in the courtroom and
25 Mr. Reckenbeil and Ms. Hodges until next week so that we

1 should finish up with everyone except the medical experts
2 and the trial lawyers for the week of the 21st. And I
3 understand there is another scheduling issue, but I
4 don't -- we don't need to go there at this time.

5 So am I correct -- and I'm asking on the record if I'm
6 correct -- in stating so with the state.

7 MS. BROWN: I believe that's correct, and we'll just
8 have written questions to Dr. Tobin. And we can supplement
9 that and present it as an exhibit in one of the other
10 sessions that we have in this case.

11 THE COURT: And y'all wanted to recall Mrs. Hinson?
12 She is here, so.

13 MS. BROWN: Yes, sir. We have obtained a clear --

14 THE COURT: Okay. Anything else?

15 MR. EHLIES: I think for general purposes that if we
16 would proceed with the rest of the witnesses and testimony
17 starting with this lady with the statement issue --

18 THE COURT: Okay.

19 MR. EHLIES: -- if that suits you --

20 THE COURT: Yeah. She was the last witness anyway.

21 All right. Mrs. Hinson, you've previously been placed
22 under oath. You're still under oath for the purpose of
23 these questions.

24 THE WITNESS: Thank you.

25 MS. BROWN: May it please the Court.

Jessica Hinson
Recross-examination by Ms. Brown

1 THE COURT: Yes, ma'am.

2 JESSICA HINSON, having been
3 previously duly sworn, testified as follows:

4 RECROSS-EXAMINATION

5 BY MS. BROWN

6 Q Mrs. Hinson, yesterday I had showed you what appeared
7 to be a handwritten statement and asked if you could
8 identify it.

9 A Yes, ma'am.

10 Q Do you recall that? And at the time you had said that
11 part of the statement -- or you felt that the statement was
12 not legible.

13 A Yes, ma'am.

14 Q And we have that in as Applicant's 5. Nobody else had
15 a copy in the courtroom. But I'd like to ask you to look
16 at this copy that we've obtained today and see if that
17 refreshes your memory.

18 A Yes, ma'am. I can read this.

19 Q Okay. You can read it. And does it refresh your
20 memory? Do you remember making that statement?

21 A It is my handwriting, yes, ma'am.

22 Q That's your handwriting. And is that your signature?

23 A Yes, ma'am.

24 Q Okay. And does that statement have a date and time
25 when the statement was made perhaps somewhere near your

Jessica Hinson
Recross-examination by Ms. Brown

1 signature?

2 A Yes. That's not my handwriting, but yes.

3 Q And what is that date and time?

4 A 10:32 a.m., May 11th, 2007.

5 Q Okay. Do you remember when you made that statement?

6 A As I told you yesterday, I don't remember writing this
7 statement, but apparently I did because this is my
8 handwriting.

9 Q Okay. Would that have been the statement that you
10 would have given in the car that you were talking about?

11 A I assume so.

12 Q Okay. And in that statement you have it that the last
13 time that you saw Mr. Torres, correct --

14 A Yes, ma'am.

15 Q Okay. And that would have been the early morning
16 hours of May the 11th of 2007, is that correct?

17 A Yes, ma'am.

18 Q And, in fact, what does that statement reflect that
19 you told the officers?

20 A It said the last time I seen him was between 2:30 and
21 3:00 a.m.

22 Q Do you recall the circumstance in the last time that
23 you saw him at 2:30 or 3:00 a.m.?

24 A No, ma'am. I don't remember seeing him that late.

25 Q Okay. And this was after you had seen him earlier,

Jessica Hinson
Recross-examination by Ms. Brown

1 about two hours earlier, with Chuck Emery, is that correct?

2 A Yes, ma'am.

3 Q Tell us a little bit about that.

4 A That was when they were in the road arguing. That was
5 the last time that I seen him.

6 Q They were in the road arguing. And who made a threat
7 against the Emerys at that time?

8 A Tony.

9 Q And what did he say?

10 A He said that he would kill them. But Chuck also said
11 the same thing.

12 Q Okay. And did Mr. Torres have any kind of a weapon at
13 that time?

14 A No, not that I seen. He had his cell phone.

15 Q His cell phone. In your statement does it reference a
16 weapon?

17 A Yes, it does, but I don't remember saying that.

18 Q Okay. What does your statement reflect about the
19 weapon?

20 A It says that he had a gun, but nobody had a gun.
21 Chuck had a knife.

22 Q Okay. And you say he had a gun. Who is he?

23 A Tony.

24 Q Okay. So at that time you wrote that statement at
25 10:00 o'clock in the morning of May 11th of 2007 you were

Jessica Hinson
Recross-examination by Ms. Brown

1 saying that Mr. Torres had a gun and he had threatened the
2 Emerys.

3 A Apparently so.

4 Q But you don't have independent recollection of that
5 now.

6 A No, ma'am.

7 Q Do you have any independent recollection of Mr. Torres
8 being around the house just prior -- and around your house
9 just prior -- to the last time you saw him around
10 3:00 a.m.?

11 A Yes, when they were in the road arguing.

12 Q What about trying to get back into your house after
13 the argument?

14 A He -- I mean, he might have. I don't -- I don't
15 really remember.

16 Q Now, Mr. Torres was living with you at the time,
17 correct?

18 A Yes, ma'am.

19 Q Okay. So why would you not let him back in the house?

20 A That wasn't my house to let him into in the first
21 place. I lived with my parents, as did he.

22 Q And it was normal to lock him out?

23 A I mean, it was late. My son was in the bed, you know.
24 And he knew if he was going to be in the house he had to be
25 in by a certain time. Same thing for me. If you weren't

Jessica Hinson
Recross-examination by Ms. Brown

1 in by a certain time you got locked out.

2 Q would the fact that he had just threatened to kill
3 somebody and had a weapon cause you --

4 A He didn't have a weapon.

5 Q So you were wrong when you wrote that?

6 A Yes, ma'am, I was.

7 Q Okay. How long had Mr. Torres lived in the house with
8 you?

9 A Around five or six months if I'm correct. Yeah.

10 Around five or six months.

11 Q Had he ever been locked out before?

12 A Yes, actually he had.

13 Q Were you scared of him?

14 A No.

15 Q Never scared of him?

16 A No.

17 Q So he would just be locked out because it was after
18 hours.

19 A Yes. Same thing for me. Like I said, if you weren't
20 back by a certain time you got locked out.

21 Q why would you say that he had a gun? Is that
22 something that he would normally do, carry a weapon?

23 A No. Like I said, that's the first thing I said
24 yesterday. I don't ever remember saying that.

25 Q But you do recall that this is your statement.

Jessica Hinson
Recross-examination by Ms. Brown

1 A Yes, ma'am. I told you awhile ago that is my
2 handwriting. That is my signature.

3 MS. BROWN: Your Honor, we'd like to move this in as
4 an exhibit.

5 THE COURT: Okay. No objection?

6 MR. SCHOEN: No objection, Your Honor.

7 THE COURT: It's admitted.

8 (Voluntary statement of Jessica Hughey dated May 11,
9 2007, marked State's Exhibit No. 4.)

10 MS. BROWN: Your Honor, just one more question.

11 Q What time was the last time that you were in the
12 house? What was that time curfew or whatever you would
13 call that?

14 A About 12:00 o'clock.

15 Q About 12:00 o'clock.

16 A Yes, ma'am.

17 Q But this altercation occurred after 12:00, didn't it?

18 A I believe so.

19 Q And you were outside and you witnessed it.

20 A No, ma'am. I was inside my house.

21 Q You were inside the house?

22 A I've already told you all of that yesterday. I was
23 inside my laundry room watching out the window with my
24 mother. I was not outside.

25 Q Your mother was with you during the altercation.

Jessica Hinson
Redirect examination by Mr. Schoen

1 A Yes, ma'am.

2 Q Okay. And your mother would have locked him out.

3 A The door was already locked.

4 Q Thank you very much.

5 A Yes, ma'am.

6 MS. BROWN: No further questions, Your Honor.

7 MR. SCHOEN: Recross-examination -- redirect.

8 REDIRECT EXAMINATION

9 BY MR. SCHOEN

10 Q Since opposing counsel asked you some questions about
11 your statement that Mr. Torres had a gun --

12 A Uh-huh.

13 Q -- can you tell us whether you ever saw him use a gun?

14 A No, never.

15 Q Can you tell us whether you ever saw him harm Chuck
16 Emery?

17 A Never.

18 Q Did he try to hit Chuck Emery?

19 A No.

20 Q Can you tell us whether you -- based on your knowledge
21 whether a gun was involved in any way in harming the
22 Emerys?

23 A No. It was not.

24 Q Who was it who was aggressive actually using a weapon
25 on the night of May 10th?

Jessica Hinson
Recross-examination by Ms. Brown

1 A Chuck.

2 Q Can you tell us whether Mr. Torres hit anyone on the
3 night of May 11th?

4 A No.

5 Q Can you tell us whether Mr. Emery, Chuck Emery, hit
6 anyone on the night of May 11?

7 A He had already punched his girlfriend in the face and
8 pulled a knife on Tony.

9 Q Now, and at the time that Mr. Torres was now being
10 allowed back in the house, can you tell us whether he was
11 drinking alcohol?

12 A Yes.

13 Q How much alcohol?

14 A From what I remember he had a whole case of beer.

15 MR. SCHOEN: No further questions.

16 MS. BROWN: Your Honor, I would not normally ask this.
17 I know it'd be out of the procedure that you had asked us
18 to adhere to, but I would like to have one question based
19 on that testimony.

20 THE COURT: Okay.

21 RECROSS-EXAMINATION

22 BY MS. BROWN

23 Q Mrs. Henson, how do you know that a gun wasn't used in
24 either entering the house or used on the Emerys?

25 A Well, from what I've heard in the trial they were

Mary Darlene Price
Direct examination by Mr. Tessier

1 murdered with a hammer, not a gun.

2 Q So you don't have any idea of whether a gun was used
3 to --

4 A Well, no. I suppose --

5 Q -- get --

6 A Well, no. I suppose not.

7 MS. BROWN: Thank you, Your Honor. I appreciate your
8 indulgence.

9 THE COURT: All right. You may step down.

10 MR. TESSIER: Are you ready for the next witness, Your
11 Honor?

12 THE COURT: Yes.

13 MR. TESSIER: We will call Darlene Price, Your Honor.

14 MARY DARLENE PRICE, having
15 been first duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. TESSIER

17 Q Good morning, Ms. Price. Would you tell us your full
18 name for the record, please?

19 A My name is Mary Darlene Price.

20 Q Where do you currently reside?

21 A [REDACTED] Montgomery Street, Drayton.

22 Q Have you lived there for several years?

23 A I have.

24 Q Were you living there back in May of 2007?

25 A I was.

Mary Darlene Price
Direct examination by Mr. Tessier

1 Q Do you know -- is your home in close proximity with
2 the home that the Emerys lived in?

3 A It is.

4 Q How close would you say your home is to theirs?

5 A Very close.

6 Q Are they almost neighbors to you?

7 A They are.

8 Q Did you know Ray and Ann Emery prior to their death?

9 A Yes, I did.

10 Q Did you know Chuck Emery?

11 A I did.

12 Q And would you recognize him by sight?

13 A I would.

14 Q And would you recognize Chuck Emery by sight back in
15 2007?

16 A Yes.

17 Q What about Tony Torres? Did you know him?

18 A I knew of him, yes.

19 Q And did you recognize him by sight back then?

20 A I would, yes.

21 Q So these are gentlemen -- Tony Torres and Chuck
22 Emery -- that you saw around the neighborhood, is that
23 fair?

24 A Correct.

25 Q And where are you currently employed?

Mary Darlene Price
Direct examination by Mr. Tessier

1 A I'm currently employed at T & A Parts Center.

2 Q Where is that located?

3 A That's on South Pine.

4 Q And were you working there back in 2007 as well?

5 A No.

6 Q Okay. Back in 2007 where were you working?

7 A I worked at ServiceMaster.

8 Q Did you go to work every day at about the same time
9 back in 2007?

10 A I did.

11 Q About what time in the morning did you go to work back
12 in 2007?

13 A I think it was around 6:45.

14 Q Okay. And do you remember May 11th of 2007, which is
15 the day that Ray and Ann Emerys' bodies were discovered in
16 their house? Were you going to work that particular day as
17 well?

18 A Yes, sir.

19 Q And were you going to work about the same time that
20 you normally did -- 6:45 a.m.?

21 A Yes, sir.

22 Q Can you tell us what, if anything, you saw that
23 morning as you left your house to go to work?

24 A As I come out my back door I heard people talking.
25 And as I looked out I saw Jessie coming out her back door

Mary Darlene Price
Direct examination by Mr. Tessier

1 walking across her yard. And as I got in my car and was
2 backing out I was looking in my rear-view mirror to see if
3 I could tell who all was there. But they were several
4 people gathered around their fire that they had built on
5 the back side of the Emerys' and the Hills' house.

6 Q Do you know from living near there that there was a
7 burn pit or a fire pit area between the Emery house and the
8 Hughey house?

9 A Well, I hadn't ever seen anybody burning anything
10 there, and that's why I found it strange that morning that
11 they were burning something there that early in the morning
12 but...

13 Q And what you saw was something burning between those
14 two houses, is that right?

15 A Correct.

16 Q And there were several people standing around this
17 burning area?

18 A Correct.

19 Q And did you recognize any of the people that were
20 standing around that morning?

21 A Well, I -- I couldn't positively identify any of them
22 that were standing around the fire because they had their
23 backs kind of towards the Hugheys' house.

24 Q And do you know -- you said you knew what Chuck Emery
25 looked like.

Mary Darlene Price
Direct examination by Mr. Tessier

1 A Uh-huh.

2 Q How would you describe him generally speaking -- size,
3 weight, height and that sort of thing?

4 A Short, stocky.

5 Q And would you give a similar description to Tony
6 Torres?

7 A I would.

8 Q Did you -- was it daylight by the time you saw these
9 folks standing by the fire?

10 A It was.

11 Q And did you have -- did you form an opinion or belief
12 that one of the people you saw was of the same size and
13 description you just provided for Tony or Chuck?

14 A I did.

15 Q So did you believe one of the people standing around
16 the fire was Chuck or Tony?

17 A One of them could have been, yes, sir.

18 Q And is that -- I mean, given the location where they
19 were, is that what you believed you saw?

20 A Yes.

21 Q And do you remember identifying in your own mind any
22 of the other people standing around?

23 A One of the gentlemen was taller and slimmer, and I
24 assumed that was Ben Henson.

25 Q And does he live near the area?

Mary Darlene Price
Direct examination by Mr. Tessier

1 A He lived two houses down below me.

2 Q Anyone else that you thought you recognized from
3 standing around that morning at 6:45?

4 A No. They was somebody else about there, but I
5 couldn't say who it was.

6 Q And after you saw these folks standing around did you
7 proceed on to work?

8 A I did.

9 Q Did you talk to any of them or try to talk to any of
10 them?

11 A No.

12 Q Were you called to testify at all during the trial of
13 Tony Torres back in 2008?

14 A No, sir.

15 Q Did anyone from Tony Torres' trial defense team ever
16 contact you to talk to you about what they saw that
17 morning?

18 A They called me, yes, sir.

19 Q And did -- if you had been called to testify in the
20 sentencing phase of Tony Torres' trial would you have
21 testified in a similar fashion to what you just provided to
22 us here today?

23 A I would have.

24 Q Thank you.

25 MR. TESSIER: That's all the questions I have.

Mary Darlene Price
Cross-examination by Ms. Brown

1 MS. BROWN: May it please the court.

2 CROSS-EXAMINATION

3 BY MS. BROWN

4 Q Ms. Price, as I understand your testimony, you were
5 going to work around 6:45 a.m.

6 A Correct.

7 Q And you saw something. Is this from a mirror, or did
8 you actually pass by it? Because I'm not really clear on
9 what you said.

10 A It's from -- it was from my mirror. Now, I saw
11 Mrs. Hen -- Mrs. Hughey coming out her back door as I was
12 getting in my car. But as I was backing out the way I
13 backed outta of my driveway I had to go at an angle this
14 way. I was just looking in my rear-view mirror and my side
15 mirror.

16 Q Yes, ma'am. And just looking in the mirror you
17 weren't sure who you saw there except for Mrs. Henson, is
18 that correct?

19 A Correct.

20 Q Mrs. Hinson. Okay. And you don't know what they were
21 doing around this area?

22 A No, ma'am.

23 Q Did you see any active fire or anything like that?

24 A Yeah. There was a fire.

25 Q There was a fire. You would call it built up or --

Darlene Price
Redirect examination by Mr. Tessier

1 A It's a low-burning fire but...

2 Q Okay. And there was somebody tall and slim out there.
3 Had you seen that person around the neighborhood before?

4 A Well, I assumed it was Ben Henson. And yes. He lives
5 two houses down below me.

6 Q Okay. And do you recall meeting with a Mr. Skip --
7 Pete Skidmore in October of 2008? That would have been --

8 A Yes.

9 Q You do recall that. Did you actually receive a
10 subpoena for trial?

11 A I did.

12 Q And who did you talk to about your testimony?

13 A I'm not sure.

14 Q Okay.

15 A They never called me to appear.

16 Q Okay.

17 MS. BROWN: Court's indulgence.

18 (Pause.)

19 Q Thank you, Ms. Price. I appreciate.

20 MS. BROWN: No further questions, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. TESSIER

23 Q Do you know if trial counsel at the Torres' trial
24 where you received a subpoena -- did the trial counsel ever
25 contact you to release you from a subpoena?

Megan McKinnish
Direct examination by Mr. Schoen

1 A He told me that he would call me if he wanted me to
2 appear.

3 Q And then he never -- no one ever called you to appear.

4 A No, sir.

5 Q And you do specifically remember not being asked to
6 testify in the sentencing phase of the trial either, is
7 that right?

8 A Right.

9 MR. TESSIER: Thank you, Your Honor.

10 THE COURT: You may step down.

11 MR. TESSIER: Your Honor, we have no trouble releasing
12 this witness from the subpoena.

13 MS. BROWN: No objection, Your Honor.

14 THE COURT: She may be excused.

15 (Whereupon, the witness was excused.)

16 MR. SCHOEN: The applicant calls Megan McKinnish.

17 MEGAN MCKINNISH, having been
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. SCHOEN

20 Q Good morning.

21 A Hey.

22 Q would you please introduce yourself to the court?

23 A I am Megan McKinnish.

24 Q How do you spell your last name?

25 A M-C-K-I-N-N-I-S-H.

Megan McKinnish
Direct examination by Mr. Schoen

1 Q And what's your address, Ms. McKinnish?

2 A My current address [REDACTED] Brimfield Drive, Cowpens 29330.

3 Q And what's your occupation?

4 A Dental assistant.

5 Q I want to take you back to May 11th of 2011. At that
6 time where did you live?

7 A [REDACTED] Montgomery Street in Drayton.

8 Q What was your occupation at that time?

9 A Dental assistant.

10 Q And can you tell us whether you knew the Emerys?

11 A As neighbors. We didn't have any cookouts together or
12 anything like that but waved as you passed by and stuff.

13 Q Where was your home in relation to the Emerys' home?

14 A We lived across the street and like one house down.

15 Q Would you recognize members of the Emery family?

16 A Uh-huh.

17 Q Specifically, would you recognize Chuck Emery?

18 A I would.

19 Q And I want to take you specifically to the morning of
20 May 11th of 2007. What did you observe on the morning of
21 May 11th of 2007?

22 A May 11th was a Friday. On Fridays I go to work at
23 7:00. So I had left the house a little bit earlier to take
24 my children to daycare. So it was probably about 6:40.

25 And as we were leaving I noticed Chuck and a girl

Megan McKinnish
Direct examination by Mr. Schoen

1 standing outside kinda on the front-side yard of the
2 Emerys' house. And I slowed down and rolled down my
3 window. And I was like what are you guys doing out here so
4 early, because it was really weird for them to be out
5 there. That's what I saw. Then I went on to the daycare
6 and work.

7 Q You said it was really weird for them to be out there.

8 A Oh, yeah, before 7:00 o'clock.

9 Q Why is -- why is it weird for them to be out there?

10 A Well, I didn't think they lived there. First of all,
11 I'm pretty sure that they weren't living at that residence.
12 So it would be weird that they would be there for that
13 reason. And they just seemed more of a night owl, you
14 know, partier at night, not up in the morning getting ready
15 to go to work.

16 Q Had you ever seen them before at that time of the
17 morning?

18 A No, no.

19 Q And at the time that you saw them was there police
20 tape around the house?

21 A No.

22 Q Were there police cars?

23 A No.

24 Q Was there any indication that something was wrong
25 inside the house?

Megan McKinnish
Cross-examination by Ms. Brown

1 A Absolutely not.

2 Q Now, I want to talk to you a little bit about the
3 trial of Tony Torres. Can you tell us whether you were at
4 all involved in the trial?

5 A I was subpoenaed to come for the trial, but I think it
6 was like a pretrial hearing.

7 Q So would it be accurate to say you talked to a judge
8 but you never talked to the jury?

9 A Correct.

10 Q And if you had been asked to talk to the jury would
11 you have told the jury the same thing you've told us today?

12 A Oh, yeah.

13 Q Would you have told the jury the same thing that you
14 told the judge at that preliminary hearing?

15 A Yes.

16 Q If you'd been asked to talk to the jury after Tony
17 Torres had been found guilty would you have told the jury
18 the same thing you've told us today?

19 A Yes.

20 MR. SCHOEN: Nothing else, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. BROWN

23 Q Ms. McKinnish, you were asked about what you would
24 have told the jury. And I want to go back to those facts a
25 little bit.

Megan McKinnish
Cross-examination by Ms. Brown

1 It is my understanding, is this correct, that you went
2 by and you saw Chuck and a girl in the yard?

3 A Right.

4 Q But there was nothing to indicate anything was wrong.

5 A Well, I didn't mention this a minute ago, but when I
6 asked them what are you guys doing out here he stated some
7 shit happened last night and we're looking for something.
8 And I said okay. And I rolled up the window and left.

9 Q Did he tell you he had an altercation?

10 A No.

11 Q Did you see an altercation?

12 A I did not. I saw two very -- people who normally
13 wouldn't be out there at that time frantically acting,
14 looking for something.

15 Q Like on the ground looking?

16 A I honestly can't remember.

17 Q Okay.

18 A I mean, I can't. I have small children, so it would
19 concern me enough to stop and ask why they were there.

20 Q But definitely in the yard.

21 A Yes.

22 Q Okay.

23 A And more of the side-front yard.

24 Q Okay. And did you smell any gas or anything like that
25 when you stopped?

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 A I was in my car.

2 Q You had no indication that anything was wrong with the
3 house from just being in the car and in the yard area?

4 A I didn't, no, ma'am. I was in the road.

5 MS. BROWN: No further questions, Your Honor.

6 Q Thank very much.

7 A You're welcome.

8 MR. SCHOEN: Nothing further.

9 THE COURT: You may step down.

10 MR. SCHOEN: We would ask that the witness be excused.

11 THE COURT: She may be.

12 THE WITNESS: Thank you.

13 (whereupon, the witness was excused.)

14 MR. TESSIER: Your Honor, our final witness at this
15 point -- Tammy Hughey.

16 TAMMY BULL HUGHEY, having been
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. TESSIER

19 Q Good morning, Ms. Hughey. Would you please state your
20 full name for the record? And spell your last name for us.

21 A Tammy Bull Hughey. It's H-U-G-H-E-Y.

22 Q And where do you live?

23 A I currently reside at [REDACTED] Montgomery Street.

24 Q About how long have you lived at that address?

25 A Right at two years.

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 Q And where did you live prior to that?

2 A Prior to that I lived at [REDACTED] Floyd Street. Well, no.

3 [REDACTED] Cleveland. Excuse me. It's on the street behind.

4 And then before that it was [REDACTED] Floyd.

5 Q And [REDACTED] Floyd Street, is that in Drayton?

6 A Uh-huh.

7 Q And were you a neighbor of Ann and Ray Emery?

8 A I was.

9 Q How would you describe the location of your house on
10 Floyd Street with the location of the Emerys' house?

11 THE COURT: Let me ask you to hold up just a minute.

12 You're going to have to take that gum out so the court
13 reporter can understand.

14 (Pause.)

15 A Where my house sat in comparison to theirs?

16 Q Yeah. I'm going to have you just orient us to where
17 was your house located compared to Ray and Ann Emerys'
18 house.

19 A Okay. The front of mine faced Floyd. The rear of my
20 house faced the side of the Emerys' house. And the front
21 of theirs faced Montgomery.

22 Q Okay. So you -- your house was on a corner of Floyd
23 and Montgomery.

24 A Yes.

25 Q And effectively around the corner from your house on

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 Montgomery was the Emery residence.

2 A Yes, sir.

3 Q So if you're looking out your back door how far would
4 you estimate it is to the yard of the Emery house? This
5 would be the side yard.

6 A Yeah. Well, actually it was -- they didn't really
7 have much of a side yard. It was actually like their
8 driveway that had a wall. Probably between 225 to
9 250 feet. We have a very large back yard.

10 Q Okay. So your back yard ended with their side yard to
11 the extent they had one.

12 A Uh-huh, probably, maybe a couple of feet of side yard
13 is all they had.

14 Q And it's about 225 to 250 feet between the two?

15 A Uh-huh.

16 Q Did you -- when you can for the court reporter, try to
17 answer yes or no.

18 A Oh, I'm sorry.

19 Q Rather than uh-huh or uh-uh.

20 A Okay.

21 Q So was there anything -- when you're looking out your
22 back window or door does it empty onto a porch or deck or
23 anything?

24 A A small deck with a lamp.

25 Q Okay. And is there anything that would obstruct your

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 view out your back porch or deck --

2 A No.

3 Q -- to the side of the Emery house?

4 A No.

5 Q Did you know the Emerys?

6 A I knew Ray quite well. I didn't know Ann that well.

7 She was kind of a quiet, reserved person.

8 Q Okay. And how long had you known at least Ray Emery?

9 A I have known him since 1999.

10 Q And were you neighbors of Ray for a long time?

11 A Probably three or four years, and then we moved away,
12 and then we came back into the area.

13 Q And Ann Emery you knew ever since you were neighbors.

14 A Just mainly from passing. She -- she at one time
15 actually lived beside Mr. Emery, in the house next to him.
16 And, you know, I didn't know, you know, that they were
17 involved at the time. But they were -- you know, in a
18 relationship. But passing hello, you know. That's about
19 it.

20 Q who -- we're talking now about the [REDACTED] Floyd Street
21 address where you lived in '07.

22 A Uh-huh.

23 Q who lived with you at that address back in May of '07?

24 A It was me, my husband Joe, my mother Glenda, my
25 daughter Jessica, my grandson Jadon and my nephew Tony.

Tammy Bull Hughey
Direct examination by Mr. Tessier

- 1 Q Okay. And Jadon was about how old back then?
- 2 A About two.
- 3 Q Tony Torres, the applicant here.
- 4 A Uh-huh.
- 5 Q He is actually your nephew, is that right?
- 6 A Yes.
- 7 Q And so his mother is your older sister.
- 8 A Yes.
- 9 Q And so have you known Tony all of your life?
- 10 A Yes.
- 11 Q Do you also know -- well, let me ask this first. How
12 did it come to be that Tony Torres was living with you on
13 Floyd Street back in '07?
- 14 A when he was released in December of '06 I was really
15 the only viable option. His mother wasn't in a place where
16 he could -- he could, you know, live with her. So I was
17 the next viable option.
- 18 Q Okay. So he had just come out of a period of
19 incarceration?
- 20 A Uh-huh.
- 21 Q Is that a yes?
- 22 A Oh, yes. I'm sorry.
- 23 Q Was he -- was he still on a probationary status?
- 24 A Yes.
- 25 Q So he had to remain living in South Carolina.

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 A Yes.

2 Q And his mother was not available to --

3 A No. At that time she resided in North Carolina.

4 Q Did Tony to your knowledge have a driver's license
5 back in '07?

6 A No.

7 Q Did Tony ever have a driver's license that you know
8 of?

9 A No.

10 Q So how did Tony get around when he was living with
11 you?

12 A My husband or I.

13 Q Do you know who Chuck Emery is?

14 A Yes.

15 Q And how is it that you know Chuck Emery?

16 A I met Chuck the first time. He was probably about 17.
17 I met him actually in 1997 when I worked at Li'L Cricket.

18 Q Okay. And so did you work together with Chuck or
19 something?

20 A No. He was just a customer, because in comparison to
21 where he lived, you know, probably 200 feet, those kids
22 were in and out of the store all of the time.

23 Q Okay. When you say those kids, you mean Chuck Emery
24 and who else?

25 A Chuck Emery, Jonathan Howard, a lot of them that hung

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 around.

2 Q Did Tony Torres hang around with Chuck Emery as well?

3 A At that time he actually was a stocker at the store
4 when I worked there.

5 Q Tony was.

6 A Tony was, uh-huh.

7 Q How would you describe the relationship between Tony
8 Torres and Chuck Emery?

9 A It was like instant brothers from the time they met.
10 They were really close.

11 Q How long of a timeframe would you say that Tony and
12 Chuck were like brothers? Several years or --

13 A A long time. I'd say a good eight years.

14 Q So as far as you could tell from your observance they
15 always seemed to get along together prior to --

16 A Yes.

17 Q -- the night we're going to talk about in a minute,
18 the night of May 20th of 2007.

19 A Yes.

20 Q But, generally speaking, Tony and Chuck got along
21 well. Is that fair?

22 A Yes.

23 Q And they were like brothers, you said.

24 A Yes.

25 Q Was Chuck Emery -- did you know whether or not Chuck

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 Emery stayed with the Emerys on occasion during the
2 timeframe around May of '07?

3 A Not to my knowledge. Most of the time he was with his
4 girlfriend Holly.

5 Q Did you know his girlfriend as well, who she was?

6 A Yes.

7 Q And was Chuck Emery known to cook meth at the Emery
8 residence sometimes?

9 A Not at that time, not while his father was still
10 alive. That wouldn't have happened.

11 Q It's not something that his father would approve of?

12 A No.

13 Q Did you ever know Chuck Emery to cook meth anywhere?

14 A In recent years, in the past years.

15 Q And did you know Chuck Emery to be a violent person?

16 A He could be at times, very.

17 Q Did you actually observe him being violent with
18 different people in his life?

19 A You know, getting very verbal with them. I did see
20 him have a fight with his girlfriend at the time in '03 --
21 Tiffany Jolly. He got so mad he body slammed her in my
22 living room.

23 Q Okay. We're going to talk about another incident on
24 the night of May 10th in a moment.

25 A Okay.

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 Q But did you have an understanding of the relationship
2 between Chuck Emery and his stepmother, Ann Emery?

3 A That -- I didn't call that a relationship because he
4 did not -- he didn't care for her at all.

5 Q How did you know that Chuck Emery did not care for his
6 stepmother Ann?

7 A He made that well known to everyone. He didn't -- he
8 didn't hide it. He -- he would tell anyone, you know, that
9 he didn't care for her, he didn't like her.

10 Q Had he told you that as well before May of 2007?

11 A Yes.

12 Q Now, let's talk about the evening of May 10th of 2007.
13 And so the night of May 10th and into May 11th --

14 A Uh-huh.

15 Q -- is the night that we now know Ray and Ann Emery
16 were murdered in their house. On May 10th of 2007 -- which
17 is Thursday night -- I want to talk to you a little bit
18 about what happened that evening.

19 Did you come into contact with Chuck Emery and Tony
20 Torres on the night of May 10th?

21 A Well, of course Tony lived with me.

22 Q Okay.

23 A And Chuck hung around. They were in and out of the
24 house. They had been outside, you know, at certain points.
25 Tony had actually come in to shower and then left.

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 Q Tammy, can I just try to get you -- tell me if you
2 remember. Roughly, what time was it that Tony Torres came
3 back by to take a shower at your house?

4 A I'd say 10:00 or 10:15.

5 Q Okay. 10:00 or 10:14 a.m.

6 A Uh-huh.

7 Q And is Tony the one you saw first, or had you already
8 seen Chuck a little bit earlier?

9 A I actually saw both of them earlier.

10 Q Okay. When you saw them earlier, what were they
11 doing?

12 A They were just outside. We had like a mosquito tent
13 or dome tent. And they were all out in the back yard, you
14 know, between there and -- there's a brick wall that
15 borders the property. And they would go out there and sit.

16 Q So on the evening of May 10th you remember seeing both
17 Chuck and Tony out in your yard --

18 A Yes.

19 Q -- sometime late afternoon perhaps, early evening?

20 A Yes. Early evening.

21 Q And before I forget to ask you this, Chuck Emery -- do
22 you know that Chuck Emery had a key to the Emery house?

23 A I know he did at one time, because actually when I
24 lived at [REDACTED] Montgomery or [REDACTED] Montgomery years ago -- my
25 husband has kidney disease. We didn't have a phone at the

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 time, and he give me the key to walk up and use his dad's
2 phone.

3 Q And do you remember whether he kept that key around
4 his neck?

5 A On a chain around his neck. And it broke. And then
6 he put it on a shoe lace.

7 Q So on the evening of the 10th, now, I know you're
8 seeing Tony and Chuck in the yard at your house sometime in
9 the early evening perhaps. And at some point you said Tony
10 came and took a shower in your house.

11 A Yes.

12 Q That's not unusual since he lived there.

13 A No.

14 Q what happened after that?

15 A He actually went to the back of the house. We had
16 like a storage area where our laundry room was. And he was
17 looking for a particular cell phone charger, because he
18 came out and asked me. He said, "who's been rummaging
19 through my stuff?" I said, "well, Chuck asked to borrow
20 one and I told him it was okay to go back in there and get
21 one." And that was about the extent of that.

22 Q Was that unusual that Chuck might borrow Tony's
23 things?

24 A Yeah. But he would normally ask Tony first. But Tony
25 was -- I think he was gone to ride to the store with

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 someone at that time.

2 Q So it didn't strike you as odd that he would borrow a
3 tool.

4 A No, sir. I told him, you know, to go on in there and
5 you can get what you need.

6 Q And what happened after you told Tony that you thought
7 Chuck might have borrowed his phone charger?

8 A He said well. He said he shouldn't have been messing
9 in my stuff, he should have at least asked me first.

10 Q And what happened after that with respect to Chuck and
11 Tony? Do you remember anything else after that?

12 A It's a long time ago. Not at that time. I mean, you
13 know, Tony went on outside after, you know, I told him that
14 he had got the phone charger. He went on outside. And I
15 wasn't sure at that point, you know, if someone had already
16 picked him up.

17 Q Okay.

18 A But, you know, it was a short period later when Chuck
19 and Holly showed up. So I'd say 30 or 45 minutes.

20 Q Okay. And this puts us about what time, would you
21 say, roughly?

22 A Probably about 11:00 or 11:15.

23 Q Okay. So by 11:00 or 11:15 p.m. Chuck and Holly are
24 now at your house?

25 A Uh-huh.

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 Q Yes?

2 A Yes. Sorry.

3 Q And where were they?

4 A They were on the porch.

5 Q okay. On the back porch?

6 A On the front porch. We had like a big broad front
7 porch.

8 Q okay. So this would be facing the street.

9 A Facing Floyd.

10 Q okay. And what were they doing?

11 A Holly was talking to my daughter, and my daughter come
12 in.

13 And where my front door was, my recliner actually sat
14 right there beside the door. And when she came in I heard
15 him getting louder and louder. And we already had the baby
16 asleep. So I just stepped to the door and said, "Look.
17 You need to hold it down. I don't know what you're out
18 here raising Cain about. But if you can't hold it down, go
19 out into the road."

20 Q And what -- he was being louder and louder. Was he
21 talking to someone? Was he on the phone?

22 A well, I asked Holly. I said, "who is he talking to?"
23 He said, "He's talking to -- to Tony."

24 Q So he was talking to Tony, what, on the phone?

25 A On the phone.

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 Q Okay. What happened after you heard him getting
2 louder and louder on the phone?

3 A Actually, it got to the point where they were -- you
4 know, he was just yah, yah, yah. And I couldn't really
5 understand what he was saying. I had actually went, and I
6 sat back down.

7 And then he got loud at one point and screamed and
8 called him a son of a bitch. That's when I got up and went
9 back to the door. And he had hung up with him.

10 And then he was rambling, "If he thinks I'm going to
11 do anything for him, he's crazy. I'll never, ever help him
12 again."

13 He actually shoved me, came on in the door, because he
14 knew where Tony kept his clothes on a shelf in our room.
15 And grabbed everything he could and two pairs of shoes and
16 took back out the door. And he dropped a leather coat.
17 And he kicked it. He said, "Here. You can have this piece
18 of shit. I don't want it." Proceeded to Ms. Melton's car
19 and threw it in the back.

20 Q Took a bunch of clothing articles out of the house and
21 put them in the car.

22 A Uh-huh.

23 Q And those were what, clothing articles that he had
24 previously given to Tony?

25 A Some of them but not all of them.

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 Q And later on -- did he leave at that point, or do you
2 know?

3 A Pulled down in front of -- we had like a big stump
4 where a tree had been struck my lightning. They pulled
5 the car down a little further right there.

6 Q Is that stump between your house and the Emerys?

7 A Probably about 25 feet maybe from the Emerys' line but
8 up on our property.

9 Q Okay. And at some point after this had occurred when
10 Chuck took these clothes from your house did you observe a
11 fight between Chuck and Holly?

12 A Yes.

13 Q About what time was that?

14 A I'd say that was probably about 11:45 or 11:50.

15 Q And was Tony around during this fight between Chuck
16 and Holly?

17 A No.

18 Q What happened between Chuck and Holly? Did you
19 actually observe an altercation?

20 A I saw what happened. I didn't hear what they were
21 discussing. I mean, it just got verbal. To me it looked
22 like he straight hit her. And then when I called the
23 police after that she claimed it was an accident. You hit
24 somebody like that, that's not an accident.

25 Q Did you actually see Chuck Emery strike Holly that

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 night?

2 A Yes.

3 Q Where did he strike her?

4 A In the face.

5 Q Punch her, slap here?

6 A He punched her.

7 Q Did it cause any damage to Holly?

8 A And it bloodied her nose and busted her mouth.

9 Q Was that the reason you called the police?

10 A Yes.

11 Q What happened? Did the police show up?

12 A When they did show up I explained to them. I said,
13 "You know, they claimed it was an accident, you know, I
14 don't think it was."

15 And he went over and he talked with Ms. Melton, and
16 then he talked with Chuck, and then he came back and told
17 me. He said, "Look. She says it was an accident." He
18 said, "I didn't witness it, so I can't really do anything."
19 He said, "You know, I did try to encourage Ms. Melton if
20 she continues along with him if he is a violent person
21 she's going to get hurt."

22 Q And then I assume the police officer left.

23 A Yes.

24 Q Was your phone call to the police, was that a 9-1-1
25 call?

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 A I -- you know, I don't actually recollect if I dialed
2 9-1-1 or if I called a nonemergency number.

3 Q Okay. Was that phone call to the authorities -- did
4 it have anything to do with Tony and Chuck?

5 A No.

6 Q Did an altercation occur at some point in time between
7 Chuck and Tony?

8 A A verbal argument, yes.

9 Q Okay. So Tony at some point then after this
10 altercation between Chuck and Holly -- Tony showed up.

11 A Yes.

12 Q About what time was that?

13 A I watched T.V. for a while. I'm thinking it was
14 around 1:30, 1:45. I could be off on the time, because I
15 was just irritated with what went on with them earlier.
16 And I knew that he was still outside.

17 Q So now we're into the early morning hours of May 11th.

18 A Yes.

19 Q And what happened? Did you -- how did you know Tony
20 was even back?

21 A I heard a car to pull up, and I got up. I mean, I
22 have a front window that faces Floyd and a side window that
23 faces Montgomery. So I got up to look out the side window,
24 and I saw a car and I saw Tony get out. He came around,
25 and he talked to the driver for probably ten or fifteen

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 minutes. And then I heard Chuck yell from his dad's house.

2 I could hear him yelling at Tony.

3 Q Some -- so that they were starting to talk to each
4 other?

5 A Yes.

6 Q Were you in a position that you could hear them?

7 A Not well. When they would get loud I could hear, but
8 when they were just generally talking I couldn't hear.

9 Q So where were you positioned that you could see Tony?

10 A I actually left. I left the living room window and I
11 went to the laundry room. And there's a big double window
12 there, and I could stand. And it's actually right at the
13 driveway of my house or the house I was living in. And
14 that's where they were standing.

15 Q Okay. So you're looking at the side of the Emery
16 house from there?

17 A No, not from there. I'm looking at Montgomery. I'm
18 actually looking at the side of Drayton Baptist Church.

19 Q Okay. And so you're able to see the street?

20 A Yes.

21 Q And is Tony in the street?

22 A Yes.

23 Q And you're hearing Chuck yelling at Tony from the
24 Emery house.

25 A Yes.

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 Q Or the location of the Emery house.

2 A Well, he had done started walking up through there.

3 Q What happened next?

4 A At first I couldn't -- I couldn't make out anything
5 they were saying. It was just, you know, general talking
6 back and forth. They probably stood 5 to 6 feet apart.

7 And then Holly walked up, and she had evidently -- was
8 telling Tony that Chuck had hit her or either he asked her
9 what happened. I'm not sure. But she was pointing to her
10 face. And then Tony -- I heard him yell and call Chuck a
11 pussy. He said, you know, "If you're going to do something
12 like that, you know, why are you even going to hit your
13 girl." He said, "You know you don't treat a person like
14 that."

15 And then it kind of escalated. And Chuck said, "well,
16 that's none of your business," and then yay, yay, yay.
17 Then it got quite again. And then I couldn't -- I couldn't
18 distinguish that conversation.

19 Q Did you continue to watch them?

20 A Yeah.

21 Q And what happened next?

22 A They just kind of walked around talking. It got
23 somewhat loud that I still, you know, couldn't understand
24 everything. And then Chuck said, "You know, we used to be,
25 you know, family. What's happened to you? You've

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 changed." And then it escalated that he started yelling at
2 him. They were yelling obscenities back and forth, you
3 know. Is it okay to say it?

4 Q Yes, ma'am.

5 A Fuck you, fuck you, fuck your family. Back and forth.
6 And Tony's like, you know, if you don't want to be family
7 any more, squash it, kill it, you know, just drop it,
8 forget about it.

9 And then Chuck got really, really agitated. Tony
10 reached into his back pocket and pulled his cell phone out,
11 and he dropped it in the process of opening it. And at
12 that time Chuck swiped him with a knife because Holly
13 yelled no. And Tony kind of jumped up and jumped back.

14 Q Did you see Chuck actually pull a knife at some point
15 during this altercation?

16 A Yes.

17 Q And did Chuck at some point try to swing the knife at
18 Tony?

19 A Yeah. He -- he swung at him when he was bending over.
20 And when Holly yelled no, Tony stood back up and kind of
21 jumped back.

22 Q Did each of these two -- Tony and Chuck -- threaten
23 each other during this altercation?

24 A Not -- not physically.

25 Q I mean verbally.

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 A Verbally, they did until, you know, the point when he
2 pulled the knife out.

3 Q Did -- as far as you could tell did you ever seen any
4 weapon in Tony's possession?

5 A No.

6 Q Was there ever any gun involved that you saw?

7 A No.

8 Q Did Tony ever own a gun that you know of?

9 A No.

10 Q Would you have allowed Tony to have a gun in your
11 house?

12 A No.

13 Q You had a little grand --

14 A I have a two-year-old grandchild.

15 Q And so it would have been unusual and surprising to
16 you if you ever saw Tony with a gun.

17 A Yes.

18 Q Who would you say was the aggressor in that
19 altercation?

20 A At that point in time it would have been Chuck because
21 he approached him and was getting very loud with him.

22 Q What happened after the knife was drawn and swung at
23 Tony?

24 A Tony started laughing at him. I mean, he just stood
25 there laughing. He said, "Man," he said, "what is wrong

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 with you?"

2 Q How would you describe Chuck's demeanor leading up to
3 that altercation?

4 A Very jumpy and antsy. He -- he couldn't be still. He
5 was just really, really irritated.

6 Q Have you ever seen Chuck Emery high?

7 A Yes.

8 Q And did he appear to you to be high that night?

9 A To an extent, yes.

10 Q What about Tony? Did he appear to be high or under
11 the influence of any kind of drugs or alcohol?

12 A He seemed a little bit tipsy like he had -- he had
13 been drinking quite a bit.

14 Q And what happened? Did Tony and Chuck stay there?
15 what happened after the altercation was over?

16 A They just -- they continued to say a few more things.
17 And I don't know what it was that Chuck said. He did say
18 something that trigged him, because Tony pulled his shirt
19 off and threw it down. He said, "well, whenever you're
20 ready to square off come to me face to face." And Chuck
21 just stood there. Tony walked on around to the front of my
22 house -- this was on the side -- and sat down in the swing.

23 Q Okay. And then what happened next? Did you see Chuck
24 at some point after that?

25 A I saw him walk back towards his father's house.

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 Q Did he call you at some point -- Chuck -- later on
2 that evening?

3 A Probably maybe 20 minutes after that he called. I
4 don't know where he called me from. And all's I could hear
5 in the background was Holly, and she was crying, and, oh,
6 but Chuck I love you. And I told him at that point I'm not
7 going to listen to it. And then he started texting. I'm
8 not positive if I told him on the phone or through a text
9 if you've got a problem now with that situation, then you
10 need to call the police. I tried to earlier to try to
11 resolve this situation, you know, you deal with it now.

12 Q So you do recall that Chuck called you at some point
13 after the altercation and you told him.

14 A Yes.

15 Q And he also texted you after that altercation.

16 A Yes.

17 Q Do you recall approximately what time that was?

18 A It was within -- you know, they argued for while. So
19 I would say probably maybe 2:30.

20 Q This is now about 2:30 in the morning?

21 A Yeah, somewhere along there, 2:30, 2:45.

22 Q When you saw -- do you know where Chuck was calling
23 from?

24 A No, I do not.

25 Q When you saw Tony there on the swing, what was he

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1 doing? This is the swing in your yard?

2 A Yes, sir. It's a -- like a porch swing, but we had it
3 in the yard. And he was just swinging and drinking a beer.

4 Q Did you see how much beer that Tony drank that night?

5 A Not until the next morning when I went out and I
6 picked all of the cans up. I believe it was either an
7 18-pack or a case.

8 Q Do you remember what kind of beer it was?

9 A Bud Light, I believe.

10 Q As far as you could Tony had drank all of that beer?

11 A Yeah, because they were all sitting around the swing.

12 Q What did Tony do after you saw him at the swing?

13 A Well, the swing made a distinct bumping sound. So as
14 long as he was swinging, I knew where he was at. And when
15 the bumping sound stopped I waited a few seconds. And I'm
16 like, okay, let me go see what he's doing.

17 He had walked up to the corner of the yard. And, like
18 I said, the side and the front all had like a brick
19 barrier. And some of those were loose, and he was standing
20 there just kind of kicking the bricks not -- you know, just
21 meandering around.

22 And then he turned heading up Montgomery towards
23 Haywood. And he was quite intoxicated because he stumbled
24 a lot. And it took him a good while to get to the end of
25 the road, not -- a normal walk from any -- you know, any

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1 other person from that point to the end of the road,
2 probably three minutes. It took him at least ten, if not
3 15 minutes.

4 Q Was there ever a time when you were concerned at all
5 for your own safety concerning Tony and the altercation he
6 had just had with Chuck?

7 A No.

8 Q Have you ever been afraid of Tony Torres?

9 A No.

10 Q Would you ever -- can you ever imagine a scenario
11 where you would be afraid of Tony?

12 A Never.

13 Q Did you try to lock him out of your house that night?

14 A No. The door was locked. He did come to the door at
15 one time to open the door. I didn't get up and let him in.
16 It's hard to get a toddler back to sleep once they've been
17 woke up. That was the only reason I didn't let him in. I
18 didn't want Jayden woke up.

19 Q So did you try to lock him out because you were afraid
20 of him?

21 A No.

22 Q Did you lock out your own children -- Jessica, for
23 example -- if she didn't come home early enough?

24 A If she wasn't home when she was told to be home she'd
25 be locked out and she'd sleep on the swing too.

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1 Q Okay. So that was not just for Tony.

2 A No.

3 Q When you -- is the last time you saw Tony was when he
4 was staggering up the street --

5 A Yes.

6 Q -- after he was on the swing set?

7 A Yes.

8 Q Do you know approximately what time of the morning
9 that was?

10 A It was around 3:00 to 3:15. Like I say, it was hard
11 to keep up with all of these, you know, events going on. I
12 was trying to keep up to make sure. If I heard something,
13 look out and make sure they're not going to fight and start
14 beating the hell out of each other. So I was, you know,
15 just watching T.V. in between, didn't keep up with some
16 points. But I'd say 3:00 to 3:15.

17 Q And after you saw Tony staggering away from your house
18 that night about 3:00 or 3:15 a.m. did you end up seeing
19 Chuck Emery one more time?

20 A I did. It was probably 30 to 45 minutes later. I had
21 actually started to doze, and I heard my mother call. She
22 said, "I hear a noise out back." I told her, I said,
23 "Don't worry about it. It's probably those stray dogs."
24 She said, "No. I hear somebody." She said, "You need to
25 go look." So, now, my window in comparison gets a whole

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1 straight shot of the side of the Emerys' house.

2 Q Okay. This is your back?

3 A My back yard. But that was right where my husband had
4 put that tent. And when I opened the blind and looked,
5 there sat Chat -- Chuck under the tent. I know it was him
6 because we had a light rigged up in it, and I could plainly
7 see that it was him.

8 Q This is now about --

9 A I'd say 3:45 or 4:00 o'clock.

10 Q Okay. And did you spend any time watching what Chuck
11 was doing?

12 A No.

13 Q Did you know where he went after that?

14 A No.

15 Q what time did you ultimately doze off again, I assume?

16 A Just here and there up until my grandson, just more or
17 less shaking me, at about 6:30.

18 Q Okay. what happened when you got up about 6:30 a.m.?

19 A I was rousing up then, and I noticed that a car went
20 by. So when I leaned over to glance out -- now, the car
21 that went by may not have been her. But when I glanced out
22 Ms. Melton's mother's car was sitting there, you know,
23 along the edge of my property and the Emerys' property
24 right at the upper driveway.

25 Q This is Holly Melton?

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1 A Uh-huh, yes.

2 Q So this is now about 6:30 or 6:45 a.m.

3 A It was 6:30 when I saw the car pass, like I said. I'm
4 not sure the car that passed was hers. But when I did look
5 out hers was sitting there at 6:30.

6 Q This is the morning of May 11th, 2007.

7 A Yes.

8 Q This is the day that we will learn is the day that the
9 Emerys were discovered.

10 A Yes.

11 Q What did you do when you saw Holly Melton out in the
12 yard? This is the yard between your house and the Emerys?

13 A Yes.

14 Q What was she doing?

15 A She said -- well, I walked out, and she was not
16 completely crouched but leaning down looking. And I asked
17 her, I said, "what are you doing?" She said, "Looking for
18 a pair of sunglasses that's quite expensive. I need to
19 find them." And I said, "what do you need sunglasses for
20 this early in the morning?" She said, "well, I just need
21 to find them." I said, "well, I think you left them on the
22 porch." well, she still continued to look. And I said,
23 "well, where's Chuck?" She said, "He's at his dad's
24 looking for them."

25 Q Now, how did Holly Melton appear when you saw her that

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1 morning in the yard between your house and the Emerys?

2 A She looked like she had just stepped out of the
3 shower. Her hair was pulled back, and it was wet. And
4 she -- she appeared really nervous that she could not find
5 those glasses.

6 Q And she -- you asked where Chuck was?

7 A Yes.

8 Q And she said he was in his dad's house?

9 A Yes.

10 Q Did you end up seeing Chuck?

11 A Probably about two to three minutes later I heard the
12 door open. There's a breezeway between the garage and the
13 house. And when I heard the door open -- it's distinct
14 because it has the -- the like the slant glass that you
15 roll out. And when I heard it I looked up and he was
16 coming out from there.

17 Q So he was coming out of the Emerys' house?

18 A Yes.

19 Q Any doubt in your mind it was Chuck Emery?

20 A No. No doubt whatsoever.

21 Q Any doubt in your mind that he was coming out of the
22 Emerys' house at that time?

23 A No doubt.

24 Q And did you -- how did he appear?

25 A Really antsy, shaky. Kept telling her hurry up, hurry

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1 up. He was also head-ringing wet. Actually, the top
2 shoulders of his shirt I noticed were wet because the color
3 shirt he had on, it made it look a lot darker.

4 Q How far away would you estimate you were from Chuck
5 Emery when you saw him coming out of the Emerys' house?

6 A Probably maybe 10 feet.

7 Q So he was very close.

8 A Uh-huh, yes.

9 Q Did you end up talking with Chuck at -- when you were
10 there between the two houses when he came out?

11 A I had to ask him at one point because of the way he
12 was shuffling around and acting, you know, what was wrong.
13 But he never answered me. I spoke mainly with Holly. And
14 probably within two or three minutes our neighbor, Ms.
15 McKinnish, came out and she got in her car. And when she
16 pulled up the road she pulled over to the edge. And Chuck
17 stepped over and was talking to her.

18 Q Okay. And you observed that as well?

19 A I -- I observed them talking, but I didn't hear what
20 was said.

21 Q And what -- I mean, what -- how did you conclude your
22 interaction with Holly and Chuck that morning? Did you
23 stick around? Did they stick around?

24 A I told Holly. I said, "The glasses are in my house."
25 She walked around with me. He stopped at the corner of the

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1 house. And I gave her the glasses. And then when she
2 walked around they disappeared back towards the Emery
3 house, and I didn't see them after that.

4 Q What did you do after that, after they disappeared
5 around your corner of your house with the sunglasses?

6 A I went back in and I watched a few minutes of the
7 news. And I actually dozed back off until a neighbor
8 knocked on the door.

9 Q And do you remember who the neighbor was?

10 A And it was my husband's aunt, Audry Lindley --
11 Lindsey. I'm sorry.

12 Q Do you remember what, if anything, she said?

13 A She said, "Do you have any idea what's going on next
14 door?" And I'm like, well, no. And she said, "well,
15 there's several, you know, police officers down there." I
16 said, "I can try to find out." I said, "And when I do I'll
17 let you know."

18 Q Did you do anything as a result of that?

19 A I got up and put my shoes on and walked outside. It
20 was just like, boom, police officers everywhere.

21 A female officer approached me. And really from --
22 from that point on I was so tired, and it was just like
23 everything was spinning. I have these people asking
24 questions. And it just started moving really quick. But
25 it was just -- just crazy.

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1 Q So you had seen Chuck and Holly in your yard around
2 6:45 a.m.

3 A Yes.

4 Q About what time would you say it was that you'd been
5 interacting this female police officer?

6 A I'm thinking the neighbor knocked on the door at about
7 8:30, 8:40. So I would say it took me five to ten minutes
8 to get out there. I'm thinking 8:45, 8:50.

9 Q And did you talk with this police officer?

10 A She had asked me. She said, "Do know where the
11 Mexican boy is that lives here?" And I'm like Mexican boy.
12 And I said -- you know, I said here or here.

13 Q When you say here or here, what are you referring to?

14 A I pointed at the Emerys' house and then at my house.

15 Q And why did you do that?

16 A Because they both look very similar, and a lot of
17 people think that both of them are Mexican, which they're
18 not.

19 Q Now, when you say both of them, who are you talking
20 about?

21 A Chuck and Tony.

22 Q So would you describe Chuck Emery as appearing
23 Hispanic, at least?

24 A More, yeah. He -- he appears more Hispanic than Tony
25 does.

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1 Q So when this police officer asked you about this
2 Hispanic boy you didn't know if they were talking about
3 Chuck or Tony?

4 A No. And I told her that. I said, "My nephew left on
5 foot last night." well, I said or several hours ago. I
6 said, "He was quite intoxicated." I said, "And I'm very
7 worried about him."

8 Q And were you actually worried about Tony?

9 A Yes. I was scared he was going to get on the road and
10 get hit by a car.

11 Q Okay. And he hadn't returned home as far as you could
12 tell.

13 A No.

14 Q What did you do at that point when they asked about
15 the Mexican boy?

16 A She asked me. She said I -- I asked her. I said,
17 "well, you may mean Chuck Emery." I said Mr. Emery's son,
18 I said, that lives here. She said yes. I said, "I don't
19 know where he's at." I said, "But the last time he called
20 me, I could hit redial on the phone and see if I can get
21 ahold of him." She said, "would you please do that?" I
22 said, "Yes, ma'am."

23 Q So because he had just communicated with you by phone
24 and text --

25 A Yes.

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1 Q -- a few hours earlier. And did you do that or did
2 you --

3 A Yeah. I hit redial on it, and he answered. And I
4 told him. I said, "The police need you at your dad's
5 house." I said, "I don't know what's going on, but
6 something's happened."

7 Q At this point in time when you called Chuck did you
8 have any idea what had occurred in the Emery residence?

9 A No.

10 Q And did you tell Chuck anything about what might have
11 occurred at the Emery residence other than that there was a
12 lot of police cars or something?

13 A No. Nothing else.

14 Q What happened? Did Chuck show up?

15 A Probably five to seven minutes. I'm assuming, you
16 know, like I see. But I think they were at Holly's house
17 because he got there very quickly. And I thought that it
18 was odd. When she pulled up the car was just coming to a
19 stop. He jumps out and said, "I know who done this shit.
20 It was Tony." And I thought that was odd. Why would you
21 say something like that and you don't even know what's
22 happened?

23 Q And at that point did you know what he was talking
24 about?

25 A No.

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1 Q At that point did you know that two people had been
2 murdered in the Emery residence?

3 A No.

4 Q And there were quite a lot of law enforcement
5 personnel at the scene at that point?

6 A Yes.

7 Q Did you observe at any point Chuck being questioned by
8 police?

9 A Several different times. There were several officers,
10 you know, that talked with him. I don't remember exactly
11 which one talked with him first.

12 Q Did you ever see him in a truck sitting with a police
13 officer --

14 A Yes.

15 Q -- during that morning?

16 A Yes.

17 Q How did he appear to you?

18 A Kind of matter of fact, nonchalant, eating a whopper.
19 Actually, I think it was a whopper that Tony had went to
20 Burger King and got him the night before because that's
21 where Tony worked.

22 Q Tony worked at Burger King?

23 A Yes.

24 Q Did you at some point in time that morning have an
25 opportunity to give a statement of any investigator?

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1 A I gave one briefly to a female officer. I'm not sure
2 if it was the first female officer that I spoke with when I
3 come out. And then Detective Lindsey wanted a little more
4 details as to what happened. And I think that was maybe
5 around 10:30 or 10:40. We sat in his car. And I actually
6 was down to the point I was shaking by then. And he said,
7 "well, you know, I'll write everything up for you, and you
8 can sign it." I said, "I want to know. Tell me are the
9 Emerys okay. I'll find out after we finish this."

10 So I talked to him, you know. He writes everything
11 down. I really didn't even read it. I just -- when he
12 handed it to me I signed it. Handed it back to me. And at
13 that point he looked at me and told me the Emerys were
14 dead.

15 Q So at the time you gave statements to the two
16 different law enforcement officers did you know the Emerys
17 were dead?

18 A No.

19 Q And did you actually handwrite any statement for the
20 officers that morning?

21 A Not to my knowledge.

22 Q At that --

23 MR. TESSIER: Your Honor, I hate to ask the Court's
24 indulgence, but could we take a short recess, maybe five
25 minutes, and I'll finish. I'm almost through with the

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1 questioning.

2 THE COURT: Okay. All right. We'll take ten minutes.

3 You can step down, but you can't talk about your
4 testimony during the break because you're still on the
5 witness stand.

6 THE WITNESS: Okay. Well, if it's fine, I'll just sit
7 here.

8 THE COURT: Okay. Sit right there. That's good.

9 THE WITNESS: Or if I need --

10 THE COURT: All right. Take ten minutes.

11 (Whereupon, a recess was taken.)

12 THE COURT: All right. You may continue.

13 MR. TESSIER: Thank you very much, Your Honor.

14 Your Honor, may I approach?

15 THE COURT: Yes.

16 BY MR. TESSIER

17 Q Ms. Hughey, I would like to show you what's been
18 marked as State's Exhibits 1 and 2 in this case. And I'll
19 give you a second to orient yourself to what they are. But
20 I will represent to you that these are two statements that
21 you gave to the authorities on the morning of May 11th of
22 2007. One of them -- they're actually out of order.
23 Exhibit No. 2 is on your left there.

24 A Yes.

25 Q It's the statement that appears that you gave first.

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1 And then Exhibit No. 1 is the statement that you later
2 gave, I guess, to Detective Lindsey.

3 A Yes.

4 Q Is that right?

5 A Yes.

6 Q Now, at the time you gave the first statement it
7 appears on the statement itself if you look there's a time
8 entry of about 8:55 a.m. It's on the very bottom if you
9 see it typed in.

10 A Yes.

11 Q Does that strike you as correct in terms of what you
12 recall, approximately what time you were in the vehicle
13 talking to this officer?

14 A I wasn't actually in a vehicle when I talked with this
15 officer.

16 Q Okay.

17 A But that -- that would be about right. That was
18 actually the second officer. The first officer, you know,
19 when we spoke about Chuck and where he was. But this --
20 this was the second officer I spoke with and when I gave a
21 statement, yes.

22 Q And if you look at the second page of that exhibit it
23 is a handwritten version of a statement that appears to be
24 signed by you. Is that your signature on the bottom?

25 A I honestly can't see anything.

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1 Q Let me just take a look if I may. You have an awfully
2 faded version, don't you?

3 A Yeah.

4 Q Let me see one second.

5 A Okay.

6 Q This one is not bates numbered if I may. Let me just
7 show you this if you don't mind me showing you a version of
8 it.

9 MS. BROWN: I don't.

10 Q Showing you the same document.

11 MR. TESSIER: I actually have a copy which I'll go
12 ahead and mark in a minute.

13 Q Just take a quick look if you would, Ms. Hughey, and
14 tell me if you agree that the document I just handed you
15 which is marked C.A. 278 to 279 on the bottom right-hand
16 side, is that a copy of the same thing that is marked as
17 State's Exhibit No. 2 but in legible form?

18 A Yes.

19 Q Okay. So let me just talk with you if I may about
20 this one for a second.

21 A Okay.

22 Q Is that your signature on the second page at the
23 bottom of that document?

24 A That is my signature.

25 Q This is a handwritten statement. Do you see that?

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1 A Yes.

2 Q And is this your handwriting?

3 A It doesn't look like my handwriting.

4 Q And you think that the police officer may have written
5 the statement out while you talked to the officer?

6 A It's possible, because I don't actually even remember
7 writing anything at any time. I do remember signing it.

8 Q And then on the front page of this exhibit is a
9 typed-written version of what appears to be the same
10 statement.

11 A Yes.

12 Q And this is a statement you were giving pretty early
13 in the morning, now, about 9:00 o'clock in the morning on
14 the 11th.

15 A Yes.

16 Q Were you tired at the time you gave that statement?

17 A I was running on maybe a total of an hour's sleep.

18 Q And at this point in time did you have any
19 understanding of the significance of the events that had
20 occurred in the Emery residence?

21 A No.

22 Q In other words, you didn't know a murderer was on the
23 loose.

24 A No.

25 Q And no officer advised you that there was a murder

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1 investigation, did they?

2 A No.

3 Q And were you trying to relay what you thought was
4 important at that time in the context?

5 A I thought so.

6 Q And in this statement if you look at the typed-written
7 version, the third sentence --

8 A Uh-huh.

9 Q -- starts with the words, "I became concerned."

10 A Yes.

11 Q It says, "I became concerned when he did not come back
12 to the door to let himself back inside." Do you see that?

13 A Yes.

14 Q So you were concerned about who?

15 A Tony.

16 Q And you were concerned about him coming back inside
17 your house?

18 A Yes.

19 Q So you wanted him back inside your house, correct?

20 A Yes.

21 Q In your second statement that day -- and if you look
22 at Exhibit 1, which I'm not sure. Is that a legible copy
23 of the second page?

24 A No.

25 Q Let me go ahead.

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1 MR. TESSIER: Your Honor, may I just mark these two
2 exhibits before I forget?

3 THE COURT: Are those copies of the same exhibits?

4 MR. EHLIES: Yes, Your Honor.

5 THE COURT: Let's just substitute those. There's no
6 point in having two of the same thing.

7 MR. TESSIER: Okay. Yeah. That's fine.

8 MS. BROWN: Your Honor, we have additional copies we
9 got this morning to substitute. I can see that the copy I
10 got in discovery is not very clear. And I do not mind
11 substituting that page.

12 THE COURT: Okay.

13 (Voluntary statement of Tammy Bell Hughey dated May
14 11, 2007, changed for State's Exhibit 1; voluntary
15 statement of Tammy Hughey dated May 11, 2007, changed for
16 State's Exhibit No. 2.)

17 Q Okay. Ms. Hughey, sorry about that.

18 what we have done, as you know and just for the
19 record, say what we have done is substitute out legible
20 copies of State's Exhibit 1 and State's Exhibit 2.

21 So would you now agree just for the record's sake
22 State's Exhibit 2 is a statement that you gave on the
23 morning of May 11th at about 8:55 a.m.?

24 A Yes.

25 Q And then State's Exhibit 1 is a statement you gave to

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1 officer Lindsey around 10:44 a.m. on the morning of May
2 11th, is that right?

3 A Yes.

4 Q So in State's Exhibit 1, which is the later statement,
5 do you remember how it came to be that you gave a second
6 statement that same morning?

7 A I had at some point -- was asking when I knew how
8 crowded the area was getting with the police officers,
9 something was wrong inside. And I had asked several
10 officers were the Emerys okay. And Detective Lindsey said,
11 well, who are you. And I told him. He said, "well, you
12 know, let's go to my car and you can give me a statement."
13 I said, "I've already given one." He said, "You know, I'd
14 like to get another one from you."

15 I asked him several times, you know, can you find out
16 what's wrong. Well, let's take care of this and then, you
17 know, I can find out for you. And this appears, you
18 know -- well, there's -- that looks awful short compared
19 to -- something's missing here evidently.

20 Q If you look now there's -- if you look at the last two
21 pages of Exhibit No. 1 that you have in your hand, the last
22 two pages are handwritten, correct?

23 A Yes. But there only appears to be -- unless the pages
24 are stuck together and very well stuck -- yeah, they are.
25 Okay. Yeah. Those are handwritten.

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1 Q Okay. Did you write that? Is that your handwriting?

2 A No.

3 Q So it appears, what, Officer Lindsey wrote it up for
4 you?

5 A He did.

6 Q And then you signed it.

7 A Yes.

8 Q And then there's a typed-written version of the same
9 statement on the very first page.

10 A Yes.

11 Q At the time -- this is now about 10:44 a.m.

12 A Yes.

13 Q You still did not know that a murder -- that two
14 murders had occurred?

15 A No.

16 Q So did you realize the significance of this
17 investigation at this point?

18 A No.

19 Q And were you now even more tired from having been up
20 that much longer?

21 A Yes.

22 Q And when you gave your statement were you trying to
23 provide accurate information?

24 A I was trying to, but I was trying to kind of speed him
25 along because I wanted to know if they were okay. You

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1 know, I didn't know if there had been a robbery or what had
2 taken place.

3 Q At this point in time did you have any idea where Tony
4 was?

5 A No.

6 Q Were you still concerned about Tony?

7 A Yes. I had asked several officers.

8 Q In this second statement you indicate, among other
9 things, near the end that Chuck walked off. You're talking
10 about the argument or confrontation between Chuck and Tony?

11 A Uh-huh.

12 Q You said, "As Chuck walked off, Tony told him fuck you
13 and your family, fuck my family. I kill you all. Tony
14 walked around in circle."

15 Do you remember there being verbal threats made by
16 both Tony and Chuck to each other in the altercation the
17 night before?

18 A Yes. Well, the wording of this is not exactly the way
19 it was worded, but in general, because I see it was left
20 outta this. Chuck actually threatened, specifically, in
21 the argument me, my husband and my grandson.

22 Q Okay. So in the statement argument on the night
23 before Chuck had threatened you, your husband and your
24 grandson.

25 A Yes.

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1 Q All relatives of Tony.

2 A Yes.

3 Q And you also say right after that, "I wasn't going to
4 let him in." I'm sorry. You say, "He tried to come to my
5 door, but it was locked."

6 A Yes.

7 Q "I wasn't going to let him in because I didn't know
8 what he was capable of doing."

9 A That's not my wording.

10 Q Okay. And you had already said in your earlier
11 statement, which is also in front of you, from 8:00 o'clock
12 in the morning that you were concerned because Tony had not
13 come back in.

14 A Yeah.

15 Q Okay. So were you actually at all concerned about
16 your safety with respect to Tony on the night, early
17 morning hours, of May 11th?

18 A I wasn't concerned at all. When he came to the door
19 the first time, like I said, I'm not going to let him in.
20 And, you know, they'd been rousing at each other, arguing
21 back and forth, to wake no two-year-old up and then me have
22 to get him back to sleep.

23 I thought he'll sit out on the porch. You know, when
24 he cools down he'll come on in the house. And then when he
25 walked up the road I thought he's cooling off and taking a

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 walk. But by the next morning when he had not come back I
2 was very concerned.

3 Q Okay. And let me ask you. During the course of
4 preparing for Tony Torres' murder trial in 2008 --

5 A Uh-huh.

6 Q -- did you have an opportunity to work with Tony's
7 trial defense lawyers?

8 A Yes.

9 Q Did you provide affidavits in connection with the
10 preparation for Tony's murder trial in 2008?

11 A I did.

12 MR. TESSIER: If I may, Your Honor, I'll just show
13 these two.

14 (Affidavit of Tammy Hughey dated August 13, 2008
15 marked Applicant's Exhibit No. 6 for Identification;
16 supplemental affidavit of Tammy Hughey dated August 15,
17 2008, marked Applicant's Exhibit No. 7 for Identification.)

18 Q Ms. Hughey, I'm going to show you what's marked as
19 Applicant's Exhibits 6 and 7. A copy has already been
20 provided to the government.

21 A Okay.

22 Q And just see -- tell me if you can identify
23 Applicant's Exhibit 6 as an affidavit you provided in
24 August of 2008.

25 A Yes.

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 Q And then Exhibit No. 7, is that a supplemental
2 affidavit you also provided in August of 2008?

3 A Yes, because I believe at the end of the first one --
4 this was part of it. But it -- it kind of ran together.
5 This actually happened later. That's why I needed this
6 one.

7 Q And were -- is the information provided in these two
8 affidavits, Exhibits 6 and 7, is it accurate?

9 A Yeah, all except for on the last page of No. 6 where
10 it goes from adding that on the end about speaking with
11 Jennifer King.

12 Q Okay.

13 A Because she -- she didn't show up in the area until
14 about 12:00 o'clock.

15 Q On the 11th?

16 A Yeah.

17 Q Okay. So you corrected that when you did your
18 supplemental affidavit?

19 A Yes.

20 Q So taking it as a whole, the affidavit and
21 supplemental affidavit are true.

22 A Yes.

23 Q And you stand by those statements today?

24 A I do.

25 Q Those statements were statements you made available to

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 Tony Torres' trial defense team before the trial in this
2 case.

3 A Yes.

4 Q Were you ever asked by trial defense counsel to
5 testify in the sentencing phase of Tony's trial?

6 A I don't know if it was the sentencing phase, but I was
7 asked to testify.

8 Q Do you recall when you testified that it was in a
9 pretrial phase when they were asking you what you had been
10 doing on the morning of the 11th?

11 A Yes.

12 Q Is that the only portion of testimony you recall
13 giving in Tony's trial?

14 A Yes.

15 Q If you had been called to testify in the sentencing
16 phase of Tony's trial would you have provided testimony
17 along the same lines as what you provided to the courtroom
18 here today?

19 A Yes.

20 Q One last area to ask you about, Ms. Hughey.

21 In the trial of this case, just to put this in
22 context, there is evidence that a pair of blue jeans were
23 found in the van that Tony was driving that were size 52
24 waist and 32 length and later discovered to have some blood
25 on them.

Tammy Bull Hughey
Direct examination by Mr. Tessier

1 Having Tony living with you during the time of May of
2 2007 did you come to know what size pants Tony happened to
3 wear?

4 A On average a 40-42, sometimes 44, depending on what
5 the pants were.

6 Q And the blue jeans that were discovered at the -- in
7 the van, did Tony ever have in his possession a size 52
8 waist pair of blue jeans?

9 A He did. My brother-in-law actually gave him a pair.
10 But when he tried them on he didn't even have to unbutton
11 them or unzip. He just stepped in them and pulled them up
12 and let them go and they hit the floor.

13 Q Okay. And do you know what happened to that size 52
14 waist pair of blue jeans that Tony had in his possession at
15 one point?

16 A The night before they were in the stack of clothing
17 that Chuck took.

18 Q The last you ever saw of that pair of blue jeans, size
19 52 in the waist, 32-length blue jeans that were Tony's
20 through your brother-in-law --

21 A Uh-huh.

22 Q -- Chuck Emery had taken them from the house.

23 A Yes.

24 Q What was Tony wearing when you last saw him on the
25 early morning hours of May 11th of 2007 when he was on the

Tammy Bull Hughey
Cross-examination by Ms. Brown

1 swing set?

2 A Blue jean shorts and a white t-shirt.

3 Q Thank you very much for your time. That's all I have.

4 Answer any questions the government has.

5 A Okay.

6 CROSS-EXAMINATION

7 BY MS. BROWN

8 Q Ms. Hughey, good morning.

9 A Good morning.

10 Q I understand that you are Mr. Torres' aunt, correct?

11 A Yes, ma'am.

12 Q Okay. And you knew him growing up.

13 A Yes.

14 Q You would see him growing up.

15 A Yes.

16 Q Okay. And were you aware that he had rages growing
17 up?

18 A Temper tantrums. I called them temper tantrums. My
19 daughter had them. His was, you know, sometimes worse than
20 others.

21 Q And when you say sometimes worse, like what? Can you
22 give us an example?

23 A Just last a little longer, pitch a bigger fit. I
24 remember one time he held his breath so long he almost
25 passed out.

Tammy Bull Hughey
Cross-examination by Ms. Brown

1 Q Okay. Did you ever see any destruction from these
2 temper tantrums?

3 A I didn't.

4 Q No. Did you ever hear about them?

5 A I heard an incident of my sister's door and windows
6 getting broken.

7 Q You're close to your sister?

8 A Fairly close, yes.

9 Q Did you talk about Mr. Torres' mental health issues as
10 we was growing up?

11 A I was a lot younger. His mother -- there's a 10-year
12 age span. I was actually 12, almost 13, when he was born,
13 somewhere around in there.

14 So, I mean, that's not something you just -- you know,
15 for her age and me growing up over the next year, that's
16 not something I guess you would actually discuss with
17 somebody that's that much younger than you. I mean, I -- I
18 heard talks before.

19 Q Did she confide in you that she was scared of her own
20 son?

21 A Later on that, you know, she had had some issues with,
22 you know, whether -- you know, what he was capable of, but
23 not nothing. She didn't express great concern to me at
24 that time. Like I said, I was a lot younger.

25 Q Yes, ma'am. And you said that you knew Chuck Emery.

Tammy Bull Hughey
Cross-examination by Ms. Brown

1 A Yes, ma'am.

2 Q And you knew Chuck Emery before Mr. Torres came to
3 live with you?

4 A No. It was after. Well, after, in between, kind of
5 like along in the same -- in the same timeframe probably of
6 about four to six months.

7 Q And you said that they got along very well together.

8 A Yes.

9 Q They were friends.

10 A Yes.

11 Q What did they do when they were together?

12 A When they would take off, I have no idea. When they
13 were at my house, they would sit and they would watch
14 movies, cut up, you know. And if there was any type of
15 drug use -- I know that went on. It wasn't done in my
16 house. But, I mean, you know, for the most part, you know,
17 sit around and watch movies.

18 They would go outside with a basketball, you know, and
19 play around. They were -- they were very close. They were
20 like brothers.

21 Q And you mentioned in your direct testimony that
22 Mr. Emery, Chuck Emery, would come into your house.

23 A Yes.

24 Q And bring Holly.

25 A Yes.

Tammy Bull Hughey
Cross-examination by Ms. Brown

1 Q And I believe you mentioned another lady by the name
2 of Tiffany.

3 A Yes.

4 Q Did you often witness confrontation between Chuck and
5 a girlfriend?

6 A With tiffany, I did. The first time I ever seen a
7 confrontation with him and Holly was that night.

8 Q Okay. And you called the police.

9 A Yes, ma'am.

10 Q Had you ever called the police any other time?

11 A For on -- for Chuck or them?

12 Q For Chuck or anybody in Chuck's group that would have
13 been around your home.

14 A No.

15 Q Never had to do that.

16 A No.

17 Q Had you seen any arguments or disagreements between
18 Chuck and Mr. Torres before?

19 A In the prior two weeks -- I'm not sure exactly what
20 was going on, but I know Chuck and Holly at some point were
21 going in Wal-Mart and Lowe's, and they were stealing things
22 and taking it back and getting them a gift card.

23 And I think the Sunday -- it was the Sunday before. I
24 remember he come in, and he was talking to Tony. I didn't
25 hear the direct conversation, but Tony -- I know he said,

Tammy Bull Hughey
Cross-examination by Ms. Brown

1 "I don't have time for that. I'm not getting mixed up in
2 it. I've got to go to work." And then I found out later
3 because I asked Holly. I said, "what was he wanting him to
4 do?" He said he's still wanting him to hunt cell phone
5 numbers so that he could get into the accounts to get air
6 time. He said, "And he's wanting him to take some things
7 back to Wal-Mart." He said Tony didn't want to do it.

8 Q And did Tony not want to do it -- give you a reason
9 why he didn't want to do that, why he didn't want to help
10 his friend?

11 A I mean, he -- he hadn't been out of jail long. He was
12 trying to work every day and do what he was supposed to do.

13 Q And he was on probation at that time, correct?

14 A Yes, ma'am.

15 Q Okay. Let me ask you a little bit about the -- the
16 altercation where you heard some threats going back and
17 forth between Mr. Chuck Emery and Mr. Torres.

18 A Okay.

19 Q You said in your direct, if I understood correctly,
20 that they were disrespectful to the families essentially.

21 A Uh-huh.

22 Q Correct?

23 A Yes, ma'am.

24 Q And it was a little bit more than that, wasn't it?
25 Mr. Torres said he would actually kill the family member.

Tammy Bull Hughey
Cross-examination by Ms. Brown

1 A The wording, the way it come out, was not what he
2 meant. He was talking about the relationship between them.
3 He was meaning just kill this between us, you know.

4 Q But he said he would kill the family members.

5 A He said kill the family. He didn't -- he didn't
6 direct any person's name, not like Mr. Emery did.

7 Q Okay. And the Emerys were murdered a few hours after
8 that, correct?

9 A Yes, ma'am.

10 Q Okay. And you said that you had received a text, I
11 believe, or text message from Chuck Emery later on.

12 A We had texted and spoke on the phone.

13 Q Okay. And what was the substance of that text?

14 A When we had talked I hung up on him, and he asked why
15 I hung up. And I believe that it was in the text that I
16 told him, you know, if you have a problem, you know, call
17 the police. I can't -- I can't remember if I told him in
18 the conversation or whatever.

19 Q Why was he calling you for help?

20 A Why was who calling me for help?

21 Q Why was Chuck calling you for help with Holly?

22 A I have -- I have no idea why he called. I mean, I
23 really don't.

24 Q Could you tell what kind of conversation started was
25 going on? I mean, as I understand you picked up the

Tammy Bull Hughey
Cross-examination by Ms. Brown

1 telephone at one point. You knew it was Chuck.

2 A Uh-huh.

3 Q So you must have heard him, correct?

4 A Yes, ma'am.

5 Q Well, what did he say to you?

6 A I honestly don't remember the conversation because she
7 was wailing in the background, and I got aggravated trying
8 to listen to the conversation. So I simply hung up.

9 Q Okay. Now, you had mentioned, I believe, that the
10 last time you saw Mr. Torres was around 3:00 a.m.

11 A Yes, ma'am.

12 Q Around your swing area in your home.

13 A Yes, ma'am.

14 Q And you said at that time he was wearing jean shorts.

15 A Yes, ma'am.

16 Q Correct? And what was his shirt?

17 A A white t-shirt.

18 Q A white t-shirt. Okay. And that swing is how close
19 to the Emerys' home?

20 A It's in the front of my yard. So compared to that
21 three to three hundred fifty feet.

22 Q Okay. Did you know of any time when Mr. Torres was
23 invited into the Emery home?

24 A Years before when Ray and Ann were not married he was
25 always welcome in the home. She didn't care for Chuck's

Tammy Bull Hughey
Cross-examination by Ms. Brown

1 friends or anybody in the home really. She -- she had a
2 few issues with Chuck.

3 Q Okay. Did Mr. Torres have permission to drive
4 Mrs. Emery's van?

5 A Not that I'm aware of.

6 Q Did he have permission to take anything from that
7 house?

8 A Not that I'm aware of.

9 Q Are you aware that he crashed Mrs. Emery's van?

10 A I was told that.

11 Q Are you aware that his fingerprints were on the items
12 from Mrs. Emery's home?

13 A That's what I've been told.

14 Q Ms. Hughey, where was Mr. Torres at about 3:00 a.m. on
15 early morning hours of May 11th of 2007?

16 A He was in my yard on the swing.

17 Q He was in your yard. Okay. Where was Mr. Torres at
18 3:30 a.m.?

19 A I'm not sure. I couldn't tell you that. He was
20 done -- had already walked up the road and was out of my
21 sight.

22 Q Where was Mr. Torres at 4:00 a.m.?

23 A I'm not sure.

24 Q Where was Mr. Torres at 5:00?

25 A I'm not sure.

Tammy Bull Hughey
Cross-examination by Ms. Brown

1 Q Where was Mr. Torres at 6:00?

2 A I'm not sure.

3 Q Where was Mr. Torres at 7:00?

4 A I'm not sure.

5 Q Let me ask you a little bit about the statements.

6 Do you still have the statements in front of you,

7 Ms. Hughey?

8 A Yes, ma'am.

9 Q Okay. On this -- the shorter statement.

10 A Uh-huh, yes, ma'am.

11 Q I believe you told us that the third line down, "You

12 became concerned when Mr. Torres did not let himself back

13 in."

14 A Yeah. It had been several hours since I'd seen him,

15 and I figured he would have been back by then, and I was

16 concerned.

17 Q And were you concerned because he was in a rage, a

18 rage like he had been in as a child and couldn't control

19 himself?

20 A No, ma'am. I was concerned because he was extremely

21 intoxicated.

22 Q And you didn't think the intoxication was a concern in

23 and of itself?

24 A To the point that I was afraid that he might get out

25 on the road and get hit, because, I mean, it took him a

Tammy Bull Hughey
Cross-examination by Ms. Brown

1 while to walk up the road. And he -- he was so intoxicated
2 he was bobbling and having to catch himself from falling.

3 Q Isn't it true that when he drank he could go into a
4 rage?

5 A I have been around him many times when he drank, and I
6 never seen him get into a rage. I seen him get upset with
7 my husband one time.

8 Q Let me ask you. On that same statement, Ms. Hughey,
9 "About 7:00 a.m. I came out to look and saw Mr. Emery's son
10 and his girlfriend in the yard looking for glasses."

11 A That's what they had told me. And -- and when I told
12 the officer that, I mean, I was off somewhat on the time,
13 because, like I said, I had dozed a little bit. I was up.
14 I was tired. So it was a little earlier than that.

15 Q Okay. You just said they told you that. Who hold you
16 that?

17 A What do you mean, they told me?

18 Q You said they told you that. What did you mean by it?

19 A Okay. You're not -- the question's not clear. They
20 told. You need to go back a little bit because I don't
21 know who you mean.

22 Q Okay. When I was asking you about, "7:00 a.m. I came
23 out to look and I saw Mr. Emery's son and girlfriend in the
24 yard looking for glasses, they told me that."

25 A Yeah. That's what -- that's what Holly told me at

Tammy Bull Hughey
Cross-examination by Ms. Brown

1 first. She was the only one out there when I walked out
2 first.

3 Q And she was actually looking in the yard on the ground
4 for these glasses?

5 A Yeah. She was crouched down pretty far, a little
6 further. I mean, sunglasses were laying on the ground. I
7 could stand up and see them.

8 Q Yes, ma'am.

9 A But she was kind of leaned down and looking.

10 Q And I believe you said -- and perhaps it was your
11 proffered testimony at trial, the pretrial hearing.

12 A Yes, ma'am.

13 Q That you went inside and actually got the sunglasses.

14 A I -- I did at the end after we had talked and
15 everything.

16 I had told her initially. I said, "I believe that may
17 be the glasses we found on the porch last night. They're
18 in my house." And at the end of all of that conversation
19 we did walk around. I stepped aside and got the glasses
20 and gave them to her.

21 Q So based on your knowledge at that moment looking for
22 the sunglasses when -- if she told you I was looking for
23 sunglasses, that would appear to be true.

24 A Yes.

25 Q Because the sunglasses were in your home.

Tammy Bull Hughey
Cross-examination by Ms. Brown

1 A But I had already told her we found a pair of glasses
2 on the porch. And she still continued to look. When he
3 came out he still was looking on the ground.

4 Q But you were kind enough to retrieve those glasses.

5 A Yes.

6 Q And when she received the glasses from you, they left,
7 right?

8 A I assume they did.

9 Q Okay. And you have the handwritten statement attached
10 to this shorter statement, correct?

11 A Yes, ma'am.

12 Q All right. And when does it say that the statement
13 was completed? This should be close to your signature.

14 A 8:55 a.m.

15 Q 8:55. And who witnessed that statement for you?

16 A I believe it says Lynn Hayes.

17 Q Would that that have been the female officer you
18 talked to, or do you recall?

19 A I remember talking to a female officer. Now, if, you
20 know, she did this and witnessed it -- I don't know if it
21 was the same female officer that I spoke with the first
22 time. But, yes, I do remember speaking with a female
23 officer.

24 Q Okay. And in that, the second statement, the longer
25 statement, that you have --

Tammy Bull Hughey
Cross-examination by Ms. Brown

1 A Yes, ma'am.

2 Q -- when was that statement given?

3 A It says 10:44 a.m.

4 Q And can you read the witness, or do you recall who
5 witnessed the statement?

6 A I can't make out the handwriting, but it was Detective
7 Lindsey.

8 Q Okay. And this statement was given before you knew
9 that the Emerys had been murdered in their own home.

10 A Yes, ma'am.

11 Q Okay. And at that time you indicated that the threat
12 from Mr. Torres to Mr. Emery was I will kill you and your
13 family.

14 A It wasn't exact. This is not my wording. It's not.
15 I mean, I can tell you that.

16 Q What about, "I wasn't going to let him in because I
17 didn't know what he was capable of"?

18 A No, ma'am. I've never been afraid of him a day in my
19 life and never will be.

20 Q But you also mentioned at some point, "I heard someone
21 going through my cars."

22 A I could not be sure who that was honestly, because
23 when you get up to where my back door is -- we had two
24 vehicles sitting there, and it was dark. One of them was
25 under a covering. So I couldn't -- I couldn't actually see

Tammy Bull Hughey
Cross-examination by Ms. Brown

1 anybody if they were in the car. If they were in the car
2 from where I was at looking out that door, I couldn't see.

3 Q According to your testimony you were very concerned
4 about Mr. Torres. Why didn't you go out and check to see
5 who was there?

6 A I'm not going to walk out anywhere at that time of the
7 morning by myself in the dark.

8 Q So you were concerned to go outside. You were
9 concerned for your safety to go outside.

10 A For my safety against anyone, not him, not Chuck.

11 Q When you gave both of these statements -- both of
12 these statements -- you didn't know about the murders. I
13 think you said you didn't know how serious.

14 A I didn't know how serious the situation was, if there
15 had been a robbery or if anyone had been hurt, because I
16 was actually told by one officer at some point that there
17 were three people in that house, two in the house and one
18 in back. And when you look through the breezeway at that
19 time there was a sheet covering the patio, which later
20 found out that was just something laying there, I guess,
21 that they were, you know, using to keep their feet clean
22 when they were going in the sliding glass doors. But I did
23 not know the condition or anything of the people inside.

24 Q Okay. And what you didn't know that it was -- so I
25 believe you said significant or serious in your testimony.

Tammy Bull Hughey
Cross-examination by Ms. Brown

1 A Uh-huh.

2 Q You didn't mention anything about Chuck around 3:00
3 o'clock in the morning, is that correct?

4 A What do you mean about Chuck around 3:00 o'clock in
5 the morning?

6 Q Well, I believe that we heard -- and I'll let you
7 correct me if I've written this down wrong -- but I thought
8 you said, "No. It was Chuck Emery around 3:45 a.m. around
9 the Emerys' house on the side of the house."

10 A No. He was in my back yard.

11 Q He was actually in --

12 A That wasn't 3:00 o'clock. That was 3:45, closer to
13 4:00.

14 Q 3:45. Okay. Closer to 4:00. But not at the side of
15 the Emerys' house.

16 A It's the side -- the side of their house and the back
17 of my house facing each other. The tent is in the middle
18 of the yard. He's in the tent sitting in a chair with a
19 light on.

20 Q Okay.

21 A So I considered that the side of their house, the back
22 of my house.

23 Q And you worked with defense counsel a good bit in
24 preparation for the trial, correct?

25 A A fair amount. I mean, I honestly don't remember back

Tammy Bull Hughey
Cross-examination by Ms. Brown

1 then. I was actually ill and going to the doctor.

2 Q Okay. So when was the first time you told anybody
3 about Mr. Chuck Emery being in the tent around 3:45 a.m.?

4 A I told Detective Lindsey that.

5 Q And when would that have been?

6 A I believe maybe the first or second visit to my home.
7 He was very diligent on coming to my home every day.

8 Q Yes, ma'am. Why wouldn't you tell defense counsel?

9 A Because no one asked. No one had even spoken to me.
10 That was within days of this happening.

11 Q But at any time when you were talking to them in
12 preparation for the offer of third-party-guilt evidence at
13 trial or giving these affidavits or giving a supplemental
14 affidavit, why didn't you tell them about Chuck Emery?

15 A Because that was, you know -- actually I think a
16 year -- you know, about a year and a half later.

17 Q Yes, ma'am.

18 A And it just didn't enter my mind. I have
19 fibromyalgia. I have trouble even sometimes remembering my
20 own name. I have what's called fibro fog where you just
21 kinda -- you know, you can ask my daughter about it. She's
22 seen it before and asked me a question and I'd just look at
23 her like she's stupid because I don't know what she's
24 talking about.

25 I mean, it could have been from that, but, I mean, I

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1 do remember actually telling Detective Lindsey, like I
2 said, within a few days, because he asked me. He said, "Do
3 you know where he went?" He said, "Can we get into more
4 detail?" I'm like, you know, I saw the car, where it was
5 at. And from that morning when I was inside I did not see
6 them pull off. I don't know who left. I don't know who
7 come when the car left and when it came back.

8 Q Yes, ma'am. And you mentioned that when -- I believe
9 you called Chuck Emery -- Chuck Emery came over to the
10 Emery home and said something along the lines I know who
11 did this.

12 A Yes, ma'am.

13 Q Is that correct?

14 A That's when I hit redial from the last number he had
15 called from.

16 Q Okay. He didn't say I know who murdered my father,
17 did he?

18 A No. He said, "I know who done this shit."

19 Q I don't -- don't know who would have broken into the
20 house. He didn't say that, did he?

21 A No.

22 Q I don't know who would have taken all of my father's
23 things. He didn't say that, did he?

24 A No.

25 Q And I don't know who would have taken my mother's van

Tammy Bull Hughey
Cross-examination by Ms. Brown

1 or stepmother's van but, I think it's Tony Torres. He
2 didn't say that, did he?

3 A No.

4 Q Let me ask you something again about the scene itself.
5 When he's coming up there's -- if I understand
6 correctly, the police cars are already out there, right?

7 A Yes, ma'am.

8 Q Multiple police cars.

9 A Yes, ma'am.

10 Q I'm assuming the lights were going.

11 A No, ma'am.

12 Q No.

13 A I don't remember any lights going.

14 Q Okay. Activity. You have officers going in and
15 around the house.

16 A Yeah.

17 Q Okay. And you have some crime scene tape.

18 A Yes, ma'am.

19 Q Is that correct? So when he comes up and he sees all
20 of this activity in the tape around his father's home, it's
21 fair to say something's going on, isn't it?

22 A Yes, ma'am.

23 Q He would know that. Okay. And that would have been
24 unusual for something to be occurring at that house because
25 the Emerys were kind of easygoing, religious, quiet

Tammy Bull Hughey
Cross-examination by Ms. Brown

1 neighbors, is that correct?

2 A Yes, ma'am.

3 Q So it would have to be something fairly significant --

4 A Yes, ma'am.

5 Q -- for those officers to be out there.

6 A Yes, ma'am.

7 Q And, in fact, I think you said neighbor, Mrs. Lindsay,
8 came to you and said what has happened.

9 A Yes, ma'am.

10 Q Everybody wanted to know what was happening.

11 A Yes, ma'am.

12 Q So it wasn't -- it wouldn't be unusual, would it, for
13 Chuck Emery to assume something very bad had happened with
14 all of those officers there and that crime scene tape
15 there?

16 A Yeah. It would be, you know, very reasonable for him
17 to assume that. But to assume one particular person, why
18 shout that person's name out, I mean?

19 Q This was a couple of hours after Mr. Torres said he
20 was going to kill the Emerys.

21 A It's also a couple of hours after Chuck said he would
22 kill me, my husband and my grandson.

23 Q And thankfully you weren't hurt, were you?

24 A No, no, I was not, nor anyone in my family. But I
25 just don't understand why he would jump out and

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Cross-examination by Ms. Brown

1 automatically think that.

2 Q Ms. Hughey, I have to ask you something, and it's a
3 little indelicate, so please forgive me for having to ask
4 this. But how long was Mr. Torres in your house?

5 A What do you mean, that night or --

6 Q Just when he came to live with you.

7 A From I believe it was either December the 19th,
8 20th or 21st, somewhere along in there.

9 Q Were you aware that he had a girlfriend at any point
10 during that time?

11 A No. He was friends with a girl, you know, that used
12 to come and pick him up. They used to go out and hang out
13 just like he hung out with Holly.

14 Q Would you have any reason, any reason at all, to
15 suspect some type of inappropriate relationship with
16 Mrs. Emery, that Mr. Torres would have had some kind of
17 sexual relationship with Mrs. Emery?

18 A No.

19 Q So you would have no explanation why his semen would
20 have been around Mrs. Emery's body at that crime scene.

21 A No.

22 Q Ms. Hughey, do you know a Mr. Roger Kirby?

23 A Yes, ma'am.

24 Q How do you know Mr. Kirby?

25 A He dated my daughter for a while.

Tammy Bull Hughey
Cross-examination by Ms. Brown

1 Q Okay. And was he friends with Mr. Emery and
2 Mr. Torres?

3 A I don't know how close he was with Tony. I know he
4 hung around a good bit with Chuck.

5 Q And hanging around, what type of activity did they do
6 if you know?

7 A Drug activity, I'm sure.

8 Q And why are you sure there would be drug activity?

9 A Because I, now, being told, I was told Mr. Kirby at
10 one point was a really bad crack addict. I mean, I know
11 Chuck used drugs. I saw Chuck use drugs before.

12 Q Ms. Hughey, you were telling us about the -- the
13 people in your house that night and the altercation. Was
14 Mr. Kirby ever there?

15 A That night?

16 Q Yes, ma'am.

17 A No, ma'am.

18 Q Did you ever see him earlier that evening around --

19 A Yes.

20 Q You did. What time?

21 A It had already gotten dark. I'm not sure what time it
22 was, but I know he actually -- Mr. Howard was sitting in
23 the car. He actually walked up and punched Mr. Howard in
24 the face, I mean, and then walked off. So, I mean, I
25 didn't think it was a big deal.

Tammy Bull Hughey
Cross-examination by Ms. Brown

1 Q Okay. And Mr. Howard was with Mr. Torres. Mr. Howard
2 gave Mr. Torres the ride to your home, is that correct?

3 A I'm not actually sure who Mr. Howard was with at the
4 time. It was -- I know it was a black car, but I don't
5 know who was driving.

6 Q Okay. At that time -- and I'm talking about
7 specifically late May 10th of 2007, early morning hours,
8 May 11th of 2007, what did Mr. Kirby look like, just
9 general build?

10 A I think probably maybe 6', 6'2". He kept his head
11 shaved. He had several tattoos. I couldn't actually
12 recall, you know, what he would have been wearing, because
13 when I looked out the side window compared to where the car
14 was setting, I was on the opposite side of the car. I just
15 seen him reach in, you know, tag him a little bit and just
16 walk off. So I don't -- I'm not sure what he even had on.

17 Q Did you see him any other time that night?

18 A No.

19 Q When was the next time that you saw him?

20 A You know, I can't actually tell you if it was close
21 within that time. The next time I saw him was when he was
22 living with Mr. Emery in Mr. Emery's home.

23 Q And when did that happen if you recall?

24 A 2010.

25 Q 2010?

Tammy Bull Hughey
Redirect examination by Mr. Tessier

1 A Yes, ma'am.

2 Q So from May of 2007 to sometime in 2010 who lived in
3 the Emery home?

4 A For several months no one, and then Chuck and his
5 girlfriend moved in in -- I think it was late 2009. And
6 they lived there briefly, and then she moved out. Then he
7 moved out, and then he moved back in in 2010 with
8 Mr. Kirby.

9 MS. BROWN: Court's indulgence, please.

10 (Pause.)

11 Q Ms. Hughey, thank you for your patience. I appreciate
12 that.

13 A Yes, ma'am.

14 MS. BROWN: No further questions, Your Honor.

15 MR. TESSIER: Just a few on redirect.

16 REDIRECT EXAMINATION

17 BY MR. TESSIER

18 Q Ms. Hughey, you worked with defense counsel, as the
19 government's lawyer asked you, in advance of the trial of
20 Mr. Torres in 2008.

21 A Yes, sir.

22 Q Fair enough? At any point in time while you were
23 working with trial defense counsel did anyone on the trial
24 defense team ever explore with you the possibility that the
25 murders of Ann and Ray Emery were committed by more than

Tammy Bull Hughey
Redirect examination by Mr. Tessier

1 one person?

2 A I think I actually brought it up.

3 Q And how did you bring it up to them?

4 A Just things I had heard. Like I told them, I can't be
5 sure. You know, there's always that she-said, he-said.
6 You hear things.

7 But from actually thinking back to all of the events,
8 not seeing him after 3:00 or 3:15 and then seeing Chuck on
9 the property, seeing the car come back, them being out
10 there that early, and then later finding out what had
11 happened, how are you going to come out of a house, not
12 smell an accelerant, whether it be gas or kerosene, not see
13 the furniture turned over in disarray, that doesn't make
14 any sense to me.

15 Q So when you mentioned that possibility effectively
16 that Chuck Emery might have been involved in the murders as
17 well --

18 A Yes.

19 Q -- did the trial defense counsel run with that or
20 explore that further?

21 A I mean, I believe so. That's what --

22 MS. BROWN: Objection. That calls for speculation --

23 A I'm sorry.

24 MS. BROWN: -- of that individual.

25 Q Did the trial defense counsel explore with you any

Tammy Bull Hughey
Redirect examination by Mr. Tessier

1 further after you mentioned that possibility of a second or
2 more person being involved in the murders?

3 A I believe so. Like I said, that was kind of getting
4 in a time where my health was getting iffy, and/but that's
5 the way I remember because that's why I brought it up.

6 Q And what I'm asking is did they follow up and ask you
7 for any additional information to explore that further.

8 A Honestly, I can't remember, but I believe they did.

9 Q And did they actually -- we already mentioned this.
10 You didn't actually -- you were not called to testify in
11 the sentencing phase of Tony's trial.

12 A No, sir.

13 Q Let me just direct your attention now, because you
14 were asked some questions about whether you ever mentioned
15 to defense counsel that you saw Chuck on your property
16 early in the morning of the 11th after you saw Tony sitting
17 on the swing.

18 If you will look -- if I may approach for one
19 second -- if you will look at your affidavit which is
20 marked as Exhibit 6 --

21 A Uh-huh.

22 Q -- I'm going to ask you to look at page -- well, I
23 guess it's the third page of the document. At the very
24 bottom -- I'm going to put it up on the wall so I can see
25 what you're talking about maybe -- very bottom of that page

Tammy Bull Hughey
Redirect examination by Mr. Tessier

1 the last sentence. Do you see the last sentence? It says
2 at approximately 2:50 a.m.

3 A Uh-huh.

4 Q Do you see that sentence? So that's where you were
5 sawing you saw -- that's the sentence where you're saying
6 you saw Tony on the swing in your yard.

7 A Uh-huh.

8 Q That's about 2:50 a.m.

9 A Yes.

10 Q And then if you flip the page, at the very top of the
11 next page you say you saw Tony shuffling and taping the
12 brick wall. And then he wanders up the street, correct?

13 A Yes.

14 Q So that puts Tony in your yard somewhere around
15 3:00 a.m.

16 A Yes.

17 Q That's something you told the defense counsel.

18 A Yes.

19 Q Then if you keep going down the paragraph a little bit
20 further you say at about 3:05 or 3:10 a.m. Do you see
21 that?

22 A Yes.

23 Q And you talk about an interaction with Jennifer King.

24 A Yes.

25 Q Then keep going if you would. Down the page at the

Tammy Bull Hughey
Redirect examination by Mr. Tessier

1 left-hand side there's a sentence that starts, "About 30
2 minutes later." Do you see that sentence? I can point it
3 to you. Right here.

4 A Okay. Yeah.

5 Q Okay.

6 A The 15 to 20 minutes caught my eye, but I see that.

7 Q Okay. So now you've talked about what happened around
8 3:00 a.m., and you're saying about 30 minutes later is when
9 your mother yelled to you what's the racket. And that's
10 when you said you noticed Chuck sitting in your husband's
11 mosquito canopy.

12 A Yes.

13 Q Is that the same thing as the tent you were talking
14 about?

15 A Yes.

16 Q So now you've placed Chuck in your yard 30 minutes or
17 so after 3:00 a.m.

18 A Yes.

19 Q And that's something that you told the trial defense
20 counsel in this affidavit.

21 A Yes.

22 Q And at that point in time you had already seen Tony
23 leave your premises.

24 A Yes.

25 Q Now, you see Chuck on your property about 200 feet

Tammy Bull Hughey
Redirect examination by Mr. Tessier

1 away from the Emerys' house.

2 A Yes.

3 Q And do you know where Chuck Emery was at 4:00 o'clock
4 a.m., half an hour after you saw him in the mosquito net?

5 A Not sure. My mother kept saying, you know, she said,
6 "I still hear coughing and noise out there."

7 I got up and looked one more time, but it was within
8 like ten or fifteen minutes but not so far as to that late
9 up.

10 No. I never got back up and looked.

11 Q Okay. Do you know where Chuck Emery was at 4:30 a.m.
12 on May 11th?

13 A No.

14 Q Do you know where he was at 5:00 a.m.?

15 A No.

16 Q And do you know where he was at 6:00 a.m.?

17 A No.

18 Q The next time you saw Chuck Emery was 6:45 a.m. when
19 he was coming out of the Emerys' house, is that correct?

20 A Yes, sir.

21 Q Thank you very much.

22 MR. TESSIER: I don't have anything further, Your
23 Honor.

24 MS. BROWN: Your Honor, may I have one question?

25 THE COURT: Yes, ma'am.

Tammy Bull Hughey
Recross-examination by Ms. Brown

1 RECROSS-EXAMINATION

2 BY MS. BROWN

3 Q Ms. Hughey, you're close to Mr. Torres, right?

4 A Yes.

5 Q Did you visit him in jail?

6 A Some until I couldn't go any longer because my car had
7 got stolen.

8 Q Did he tell you that Chuck Emery did this?

9 A No.

10 Q Did he tell you where Chuck Emery was?

11 A No.

12 Q Did he ever say anything about any involvement at all
13 with Chuck Emery and this murder and burglary?

14 A No.

15 Q Never tell you why his fingerprints are on all of the
16 things in the Emerys' van?

17 A He had told me at one point that he was actually given
18 those keys and asked to get rid of the van. That was the
19 only thing that was ever said.

20 Q Did he tell you about being in the house?

21 A No.

22 Q So all of this theory about Chuck Emery you've
23 developed on your own.

24 A No. I know he was in the house. I saw him come out
25 of the house.

Tammy Bull Hughey
Recross-examination by Ms. Brown

1 Q But it's not in your first statements.

2 A Because it wasn't relevant then. I didn't know what
3 was going on. I had no idea what was going on. I didn't
4 know that would be important to tell anyone because I had
5 no idea what was going on.

6 MS. BROWN: Thank you for your indulgence, Your Honor.

7 MR. TESSIER: Will it be okay to excuse this witness,
8 Your Honor?

9 THE COURT: You may step down. You may also be
10 excused.

11 (Whereupon, the witness was excused.)

12 MR. EHLIES: Judge, that's our showing for the day I
13 think we outlined.

14 THE COURT: All right. Court is in recess until
15 9:30 in the morning.

16 END OF PROCEEDINGS APRIL 15, 2014

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Roger Kirby
Direct examination by Mr. Tessier

1 (Proceedings April 16, 2014)

2 MR. EHLIES: Good morning, Judge.

3 THE COURT: Good morning.

4 MR. EHLIES: I think we're going to do three
5 witnesses, and I believe we'll be starting with Mr. Roger
6 Kirby.

7 These are in custody, so it will take us just a minute
8 or two to shuffle that around.

9 THE COURT: Okay.

10 MR. EHLIES: Judge, I have some administrative witness
11 duties to do, so would it be okay if I went out of the
12 courtroom while counsel, my associate, handles that?

13 THE COURT: Sure.

14 MR. EHLIES: Thank you, sir.

15 THE COURT: Have we got Mr. Kirby coming in?

16 (Pause.)

17 ROGER KIRBY, having been first
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. TESSIER

20 Q Mr. Kirby, good morning. My name is Troy Tessier. I
21 represent Tony Torres, along with Hank Ehliès and Chris
22 Schoen. We all represent Mr. Torres.

23 We're here to ask you some questions about your
24 knowledge of certain events that relate to the murders of
25 Ray and Ann Emery. And I want to jump to one question

Roger Kirby
Direct examination by Mr. Tessier

1 early.

2 I know you had some concerns. You're here, and you're
3 incarcerated obviously. And you're here to talk about some
4 areas that -- obviously, you're not a lawyer. And you were
5 concerned that I might ask you some questions that could
6 incriminate you. And did you have an opportunity to talk
7 to a lawyer, at least briefly, this morning about some
8 areas of concern that you had?

9 A Yes, sir.

10 Q Okay. And so I'm going to jump to a couple of
11 questions real quick that I think were the ones that you
12 were worried about and make sure you're still able to
13 answer them.

14 One of the things that we're asking you to talk about
15 in this case is your knowledge, if any, of the involvement
16 of Chuck Emery in the murders of Ray and Ann Emery, and so
17 I want to ask you about some statements that you either
18 heard from Chuck or overheard from Chuck's girlfriend Holly
19 about anything to do with the murders of Ray and Ann Emery.

20 So do you remember on the night of the murders, which
21 would have been the early morning hours of May 11th of
22 2007? Did you have an opportunity to hear either Chuck or
23 Holly make any comments that you thought were -- or that
24 you now think might be important even if you didn't
25 recognize them as important at the time?

Roger Kirby
Direct examination by Mr. Tessier

1 A Yes, sir.

2 Q What do you remember hearing, and from whom?

3 A It was from -- from Chuck and Holly.

4 Q Okay. And what did you hear?

5 A It was -- it was the night that -- that I guess it
6 happened. But Chuck had called me up there. I can't
7 remember what time it was. It was dark. He called me to
8 come up there and bring some stuff up there. And I came.

9 He was coming out of the house drying his head with a
10 towel. And Holly walked up to me and put her hands in my
11 face and said, "Do I smell like gas?" I'd like nah, why do
12 you say that, which at the time I didn't know what was
13 going on. You know what I'm saying?

14 Q This was the -- this, it turns out, was the same
15 morning that later on in the day you found out --

16 A Yes.

17 Q -- that the Emerys had been killed.

18 A Uh-huh.

19 Q You didn't know anything about that at the time, did
20 you?

21 A Nah. I was going -- at the time, like I told you at
22 the time, my girlfriend was his cousin Jessie. And I was
23 going up there to see her, and they was all standing out
24 there crying, and it scared me. I didn't know what was
25 going on. I called her. I said what happened. She say

Roger Kirby
Direct examination by Mr. Tessier

1 Mr. Ray and Ann. She said they dead. I ain't -- I ain't
2 know what was going on. I got on through.

3 Q Okay. And that was the morning of May 11th of 2007,
4 is that right?

5 A Uh-huh.

6 Q And you heard Holly say, or ask you. She asked you if
7 her hand smelled like gas.

8 A Uh-huh.

9 Q Is that a yes?

10 A Yeah, yes, sir.

11 Q Then you saw Chuck Emery coming out of the Emerys'
12 house.

13 A Yes, sir.

14 Q And he was drying his hair?

15 A Uh-huh.

16 Q Is that a yes?

17 A Yes, sir.

18 Q I want to ask you that so the court reporter can take
19 down what you and I say.

20 Did you actually hear anything from Chuck that
21 particular morning?

22 A Not that morning, no.

23 Q Had he called you earlier or something?

24 A Yeah. That was -- it was the night. Really I don't
25 know what time it was, but it was dark. That's all I know.

Roger Kirby
Direct examination by Mr. Tessier

- 1 Q Okay. He wanted you to bring him some stuff?
- 2 A Uh-huh.
- 3 Q Was that drugs or something?
- 4 A Yeah.
- 5 Q He was a known drug user?
- 6 A Yeah.
- 7 Q Is that fair to say?
- 8 A Yeah.
- 9 Q Okay. And then after later that morning is when you
10 learned that Chuck -- and/or Ann and Ray Emery had been
11 killed.
- 12 A Yes, sir.
- 13 Q And you heard that from your girlfriend.
- 14 A Yes, sir.
- 15 Q Let me now back up if I may and just ask you. How do
16 you know Chuck Emery?
- 17 A I grew up with him.
- 18 Q And when do you think -- how old were you when you
19 first came to know Chuck roughly?
- 20 A Young. I was a baby.
- 21 Q Young child, pretty young. And did you spend a lot of
22 time with Chuck growing up?
- 23 A Yes, sir.
- 24 Q And did you spend a lot of time with Chuck's dad Ray
25 Emery?

Roger Kirby
Direct examination by Mr. Tessier

- 1 A Yes, sir.
- 2 Q Well, how could you describe your relationship with
3 Chuck first?
- 4 A He was like my brother.
- 5 Q Did you do a lot of things together with Chuck?
- 6 A Every day.
- 7 Q Did you go to school, same school, with Chuck?
- 8 A No. He was -- he was a little bit older. So I was in
9 school under him.
- 10 Q So you were in school behind him.
- 11 A Uh-huh.
- 12 Q And did you spend a lot of time with Ray Emery growing
13 up?
- 14 A When he was around.
- 15 Q How would you describe your relationship with Ray
16 Emery?
- 17 A Good.
- 18 Q Good?
- 19 A Yeah.
- 20 Q Would you think of him almost like a father figure?
- 21 A Yeah.
- 22 Q Did you like Ray Emery?
- 23 A Yes, sir.
- 24 Q And did you like Chuck?
- 25 A Yeah.

Roger Kirby
Direct examination by Mr. Tessier

1 Q what about -- when you first met Chuck Emery were Ray
2 Emery and Chuck's mother still living together?

3 A Nah, they wasn't living together then. They was just
4 dating.

5 Q Okay. So when you talk about Chuck's mom -- we all
6 know this, and I'm sure you're going to agree -- Chuck was
7 adopted by Ray Emery.

8 A Yes.

9 Q And Chuck -- when you think of Chuck's mom are you
10 thinking Ann Emery, his stepmother?

11 A Yes, sir.

12 Q Okay. So when you first knew them Ann and Ray were
13 not yet married?

14 A Nah.

15 Q Is that fair? At some point later on they got married
16 and started living together.

17 A Yes, sir.

18 Q Did Chuck ever express to you any concerns about the
19 marriage of Ann and Ray and whether that would affect his
20 ability to do things or get things from his father?

21 A He -- yeah.

22 Q How did he express that? Was he concerned?

23 A He always said she stayed in his business, she was a
24 nosy bitch.

25 Q So would it be fair to say from your dealings with

Roger Kirby
Direct examination by Mr. Tessier

- 1 Chuck he didn't like Ann Emery too much?
- 2 A Nah.
- 3 Q Is that fair?
- 4 A Nah.
- 5 Q And is that fair to say?
- 6 A Yeah.
- 7 Q Okay. And what about Tony Torres? Do you know Tony?
- 8 A Yes, sir.
- 9 Q How long have you known Tony would you say?
- 10 A Since I was a kid.
- 11 Q would you say you knew Tony as well as you knew Chuck,
- 12 or did you know Chuck better?
- 13 A I probably knew Chuck better.
- 14 Q Were you friends with Tony?
- 15 A Yeah.
- 16 Q And would you agree that you knew both Chuck and Tony
- 17 pretty well?
- 18 A Yes, sir.
- 19 Q would you say that Tony was an aggressive person?
- 20 A Nah.
- 21 Q No?
- 22 A No, sir.
- 23 Q was he -- did you ever observe him to be violent to
- 24 people?
- 25 A I ain't never seen the man raise his voice.

Roger Kirby
Direct examination by Mr. Tessier

1 Q And what about Chuck? would you say Chuck was an
2 aggressive person?

3 A Yes, sir.

4 Q Was he -- had you seen him be violent with people?

5 A Yes, sir.

6 Q The night before the murders you saw Chuck and his
7 girlfriend Holly at a party, is that right?

8 A Uh-huh.

9 Q And they were at -- I guess they call it the Trestle.

10 A Yeah.

11 Q Was that in Beaumont?

12 A Yeah, yeah, right behind Beaumont.

13 Q Okay. Did you know about what time that was -- the
14 party?

15 A I ain't --

16 Q It was in the dark?

17 A Yeah.

18 Q Nighttime?

19 A Yeah.

20 Q And what -- what happened at the party just generally?

21 A The last thing I remember hearing Holly cussing on the
22 phone.

23 Q Okay. Holly was cussing on the phone?

24 A No. Chuck was. And he told Holly, "Come on bitch."

25 And that was the last time I saw him.

Roger Kirby
Direct examination by Mr. Tessier

1 Q Okay. Do you have any idea roughly what time that
2 was? It was still the night --

3 A It was dark.

4 Q -- of May 10th?

5 A It was dark.

6 Q And they left.

7 A Yeah.

8 Q And the next time you saw them was then in the
9 morning, which you just described earlier, is that right?

10 A Yes, sir.

11 Q And do you remember what time in the morning that was
12 approximately? It was really early hours?

13 A Yeah. It was -- it was barely daylight.

14 Q Okay. After -- after you found out the murders had
15 occurred -- which was sometime when you talked to your
16 girlfriend that morning of May 11th you found out that Ray
17 and Ann Emery were dead -- when is the next time you saw
18 Chuck? Was it about a week later?

19 A Yeah.

20 MR. ZELENKA: Object.

21 MR. TESSIER: I'm sorry. Let me ask it a different
22 way.

23 Q When is the next time you saw Chuck after the morning
24 that you learned that the Emerys had been killed?

25 A It was about -- it was about a week.

Roger Kirby
Direct examination by Mr. Tessier

1 Q And where were you when you saw --

2 A At my house.

3 Q And your house was located where?

4 A In Drayton. It was a trailer park, Riverside Trailer
5 Park.

6 Q And did Chuck have anything with him when he came to
7 see you?

8 MR. ZELENKA: Object.

9 THE COURT: What's the basis of the objection?

10 MR. ZELENKA: A leading question.

11 THE COURT: Overruled.

12 Q Do you recall whether or not Chuck had anything with
13 him?

14 A Yes, sir.

15 Q What did he have with him when he came to see you at
16 your trailer?

17 A A green, some kind of green, lock box.

18 Q How would you describe that lock box? How big was it?
19 What color was it?

20 A It was about -- it was about two foot long and maybe a
21 foot and a half wide, and it was heavy and it had some kind
22 of eagle on the front of it.

23 Q Okay. Did it look like -- the eagle. Did it look
24 like anything that you recognized?

25 A It looked like something military.

Roger Kirby
Direct examination by Mr. Tessier

- 1 Q Okay.
- 2 A I mean, some kind of military something.
- 3 Q You say about two feet. If you look at this podium
- 4 would you say the box was --
- 5 A About that long.
- 6 Q About the same as this?
- 7 A Yeah.
- 8 Q And then about the same deep, or not quite as deep?
- 9 A It was -- it was about a foot and a half.
- 10 Q Okay. So it was a little less --
- 11 A Yeah.
- 12 Q -- wide than it was long.
- 13 A Yeah.
- 14 Q And it was green?
- 15 A Yes, sir.
- 16 Q How heavy was it, do you know?
- 17 A It was pretty heavy.
- 18 Q Did Chuck say anything about where he got that box?
- 19 A Nah. And he had some kind of ring, Masonic ring I
- 20 guess it was, with the little "A" on it.
- 21 Q Yeah.
- 22 A I guess that's what it was. He asked me did we want
- 23 to buy it. And we knew what it was.
- 24 Q How did you know what that ring was?
- 25 A His daddy had it on every day.

Roger Kirby
Direct examination by Mr. Tessier

- 1 Q So that was Ray Emery's ring?
- 2 A Yeah. That was his daddy's ring.
- 3 Q And you had seen that on Ray many times.
- 4 A Yes, sir.
- 5 Q And Chuck asked if you wanted to buy the ring.
- 6 A Yes, sir.
- 7 Q You didn't want anything to do with it?
- 8 A No, sir.
- 9 Q Were you concerned about maybe how he got ahold of it?
- 10 A I just didn't have no use for it.
- 11 Q And did Chuck ask you, or did you talk anything more
- 12 about the lock box or what to do with it or anything like
- 13 that?
- 14 A No. He just -- he just said he was going to -- he
- 15 wanted to know if I'd go use some credit cards to go get
- 16 something, some kind of something for a welder. That's all
- 17 I knew, something for a welder. And I told him no.
- 18 Q Did you have a sense for why he wanted a welder?
- 19 A Nah.
- 20 Q Did you know whether or not he wanted a welder --
- 21 A He said he was going to get it to get in that box. He
- 22 was going to cut it open.
- 23 Q Do you know if -- if Chuck ever got into that lock
- 24 box?
- 25 A He said he did.

Roger Kirby
Direct examination by Mr. Tessier

1 Q Do you know -- he told you that later?

2 A Yes, sir.

3 Q Do you know whether or not he found anything in it of
4 any value?

5 A He was trying to sell some bullets, trying to sell us
6 a bunch of bullets.

7 Q Do you know what happened to the lock box after you --
8 after Chuck brought it to your house that day?

9 A He said he threw it off a bridge.

10 Q Okay. Do you know anything? I mean, were you
11 actually there to see him do it, or he just told you?

12 A Nah. That's what he told me.

13 Q Do you know one way or another if Chuck Emery
14 benefited financially from the death of Ray Emery?

15 A He said he did. He bought a brand new 4-wheeler. I
16 don't know what he did with the rest of it.

17 Q Did you know whether or not Chuck was having financial
18 problems at around the time of May of 2007 when Ray Emery
19 was killed?

20 A I know -- I know he owed somebody a bunch of money and
21 was calling me and other people to come, saying they was
22 people around his house, and some Mexicans, is all I know.

23 Q Did you -- was Chuck someone who seemed pretty much
24 always to have financial problems or needed money?

25 A Nah.

Roger Kirby
Direct examination by Mr. Tessier

1 Q Not always?

2 A Uh-uh.

3 Q But around the time of May of '07 he did?

4 A Yes, sir.

5 Q That's something he told you?

6 A Yes, sir.

7 Q Let me show you if I may.

8 MR. TESSIER: Your Honor, may I approach?

9 Q Mr. Kirby, I'm going to show you -- let me mark it
10 first.

11 (Photographs marked Applicant's Exhibit No. 8 for
12 Identification.)

13 Q Mr. Kirby, I'm just going to show you six photographs
14 that are on a page. And what I'm going to ask you to do --
15 and you can hold it in your hand if you want, or you can
16 just look at it up here.

17 There are -- a few of these photographs are of a brown
18 lock box. I'm pointing them out to you -- one, two, three
19 of them at least.

20 This is a picture of the crime scene at the Emery
21 house. And I just want to ask you. When you were talking
22 about the green lock box you were talking about, is that a
23 different lock box than the one you see in that picture?

24 A Yeah. That -- that ain't the same one.

25 Q At some point in time did you come to be living in the

Roger Kirby
Direct examination by Mr. Tessier

1 house where Ray and Ann Emery were killed for some period
2 of time?

3 A Yes, sir.

4 Q About -- do you remember about when that was?

5 A No. Right before I got locked up.

6 Q When did you get locked up?

7 A April 11th of 2011.

8 Q Sometime between the time of their murders, which was
9 back in 2007, and the time you got locked up in 2011,
10 sometime in there you lived at the Emery house.

11 A Yes, sir.

12 Q Who lived there with you?

13 A Just me and Chuck.

14 Q Okay. And about how long did you live there?

15 A A pretty good while.

16 Q Several months maybe?

17 A Yes, sir.

18 Q Did Chuck's girlfriend Holly stay there for some
19 period of that time?

20 A Nah.

21 Q Were they together back then?

22 A Yeah, they was. I'm saying they was talking. They
23 wasn't together. They didn't stay together or nothing.

24 Q Okay. Now, did you have an occasion while you were
25 incarcerated -- and you're currently still in jail, right?

Roger Kirby
Direct examination by Mr. Tessier

1 A Uh-huh.

2 Q Did you have an occasion during your incarceration to
3 talk with a lady named Ms. Drucy Glass?

4 A Yes, sir.

5 Q And did you voluntarily talk to her?

6 A Yes, sir.

7 Q And did you know that you were talking to her about
8 the Tony Torres case and the murders of the Emerys?

9 A Yes, sir.

10 Q why did you agree to talk to her?

11 A Because even if that man did have something to do with
12 it, I don't -- I don't see that man. He -- he ain't never
13 been the type person to do nothing like that.

14 Now, Chuck is a whole different -- I've seen Chuck in
15 action. But him, I ain't never seen that man raise his
16 voice. I ain't never seen him yell. Ain't never seen him
17 lose his composure. None of that, never.

18 Q And that man you're talking about is Tony.

19 A Tony Torres. Never.

20 Q And did you think that you had some information about
21 things that Chuck Emery had said that you thought might be
22 helpful to Tony?

23 A Yes, sir.

24 Q And did you tell Ms. Drucy Glass what you knew that
25 you thought might be helpful to Chuck -- I'm sorry -- might

Roger Kirby
Direct examination by Mr. Tessier

1 be helpful to Tony that you had heard from Chuck?

2 A Yes, sir.

3 Q Tell us if you would. What do you remember during the
4 time that you were living with Chuck at the Emery house?

5 What do you remember Chuck saying that caused you to think
6 that maybe Chuck was involved in the murder of his parents?

7 A Just things he said like after -- after dark he
8 wouldn't go in the house by himself. He wouldn't never go
9 in the bedroom they was killed in my himself. And then
10 during the day when we would go in the bedroom he would get
11 Clorox wipes and be wanting to clean, talking about there's
12 blood everywhere, they stains everywhere, clean it. So I
13 would -- I helped him clean.

14 Q Even though there was nothing there.

15 A There wasn't nothing there.

16 Q That you could see.

17 A Nothing I saw. I never seen nothing.

18 Q And do you recall any occasions where Chuck said
19 anything to you that made you think perhaps he had been
20 involved in those murders?

21 A Yeah.

22 Q What did he say?

23 A Crying to Holly talking about he can't take it, he's
24 got to talk to somebody about it, it's eating his
25 conscience up. And he'll be crying and stuff to me. He'd

Roger Kirby
Direct examination by Mr. Tessier

1 be like mama and daddy, my mama and daddy. He's like I
2 can't take it, I gotta tell somebody. I always tried to
3 get him to tell me what he was talking about, but he would
4 never come out and say what he was talking about.

5 Q Did he ever talk about having blood on his hands?

6 A Yes, sir.

7 Q How did that come about? What do you remember?

8 A We's sitting -- we's sitting in the back yard in the
9 car, had the car backed up to the fence, because, again, he
10 thought somebody was coming to do something to him.

11 We was sitting there. We done been up for days. He
12 started crying. I was like what's wrong, man. He's like I
13 can't take it, I can't take it. He's like, man, I got
14 blood all over me. He smells blood. He sees blood. And,
15 man, Chuck what you talking about, man, there ain't no --
16 you ain't got blood on you nowhere, what're you talking
17 about. He'd start punching the dash, punching -- punching
18 the dash, the steering wheel, the car.

19 Q Did he -- did he ask you to look at his hands to see
20 if there was blood on his hands?

21 A Yeah, yeah.

22 Q Did you see any blood on his hands?

23 A No.

24 Q Did you get a sense for what -- what he was talking
25 about, what kind of -- whose blood that was?

Roger Kirby
Direct examination by Mr. Tessier

1 A I mean, nah, not then. But now -- now that I've had
2 time to sit and think and put things together, I mean,
3 it -- it's obvious.

4 MR. ZELENKA: Object. That calls for speculation.

5 THE COURT: Overruled.

6 Go ahead.

7 Q You -- you think it's obvious now what he was talking
8 about?

9 A Yeah. I mean, then it didn't dawn on me, but now that
10 I sat and thought about it and the reason Holly came to me
11 and asked me did I smell gas on her. I mean, then I wasn't
12 thinking. I wasn't thinking nobody did nothing like that.
13 You know what I'm saying?

14 Q And this -- this murder investigation and trial were
15 something you -- you learned about or heard about, right?

16 A Yes, sir.

17 Q So you were aware about some of the facts and
18 circumstances that they discovered at the scene of the
19 crime, weren't you?

20 A Not really, not -- I learned more talking with
21 Ms. Drucy than I have -- than I knew then.

22 Q Okay. Did any -- did any law enforcement officers
23 interview you about the murders of the Emerys?

24 A Nah.

25 Q Is the first person that talked to you about the

Roger Kirby
Direct examination by Mr. Tessier

1 murders of the Emerys Drucy Glass?

2 A Yes, sir.

3 Q And that was several years afterwards.

4 A Yes, sir.

5 Q Did you come to learn at some point that they found
6 accelerants or gas or kerosene at the scene?

7 A Yes, sir, yeah. Ms. Drucy told me that.

8 Q And so that -- and when you learned that fact that
9 started to make you wonder about what actually Holly was
10 talking about, is that fair?

11 A Yes, sir. There was another thing that morning. I
12 went -- I told you I went up there, that I knew something
13 wasn't -- well, then I didn't really pay it no attention.
14 But now that I think about it something wasn't right
15 because his daddy used to always keep the van parked in
16 front of the -- the portrait studio. Well, the van wasn't
17 parked in front of the portrait studio. The van was backed
18 up to like near that little dogwood tree. Like when you
19 walk out on the front porch they's a little tree to your
20 left where the steps go up to the front door. The van was
21 sitting right there backed up to the door. And now that I
22 think about it I -- it -- I should've thought something
23 then. But I -- I wasn't really thinking. You know what
24 I'm saying?

25 Q Right. So, in other words, what you're saying is

Roger Kirby
Direct examination by Mr. Tessier

1 every time you had seen the van at the Emery house it was
2 typically pulled up straight into the portrait studio,
3 right?

4 A Yes, sir.

5 Q But this time -- you didn't think about it at the
6 time, but this time you saw it backed up to the house.

7 A Yes, sir.

8 Q And you happen to know now based on talking to Drucy
9 and otherwise that the van was later found full of the
10 Emerys' stuff.

11 A Yes, sir.

12 Q Did you remember hearing anything else that Chuck ever
13 said while you were living with him that made you think
14 that he was involved in the murders of his parents?

15 A Just when him and Holly would be talking.

16 Q What did they say?

17 A She'd come by. I mean, he would be sitting there
18 crying to her, telling her he needs to tell somebody.
19 She'd just tell him to be strong and keep his head up.

20 Q And did he ever tell -- did he ever tell Holly in your
21 presence that he had -- he took his mom and dad?

22 A Yeah.

23 Q And did you take that to mean he had killed them?

24 A Yes, sir.

25 Q Has Chuck Emery ever visited you since you've been

Roger Kirby
Direct examination by Mr. Tessier

1 incarcerated since 2011?

2 A No, sir.

3 Q Has he ever tried to telephone you in the prison?

4 A Nah.

5 Q Has he ever tried to communicate with you in any way?

6 A Nah.

7 Q Now, Mr. Kirby, I want to ask you a little bit about
8 Chuck Emery and some other information you knew from
9 talking to him.

10 Did Chuck Emery ever discuss with you or implicate
11 himself in any other murders?

12 A Yeah. But I ain't going to say nothing. I don't want
13 to say nothing that's going to incriminate myself. But
14 yeah.

15 Q He talked about some other murders that he said he was
16 involved in?

17 A Yes, sir.

18 Q Let me ask you this. I notice you have a lot of
19 tattoos. I can't help but notice that. Are you a tattoo
20 artist yourself?

21 A Yes, sir.

22 Q Can you tell us whether or not you ever did a tattoo
23 for Chuck Emery?

24 A Yes, sir.

25 Q Tell us about what you were asked to do by Chuck in

Roger Kirby
Direct examination by Mr. Tessier

1 the form of a tattoo.

2 A Well, at first I put some prayer hands with his
3 daddy's name. Said, "Rest in peace, Ray Emery."

4 And then half way through it he was like, well, could
5 you put a hammer behind it, like a hammer. He was like,
6 yeah, a hammer. I was like, nah, man, that -- that
7 wouldn't -- that'd be out of place with praying hands. You
8 know what I'm saying? And I told him no. I didn't do it.

9 Q So, again, did you put a hammer on his tattoo?

10 A Nah, no, sir.

11 Q Did you ever put any claw marks of a hammer on the
12 praying hands?

13 A No. He wanted like a -- like right there where I
14 guess the stake was supposed to go through Jesus' hands or
15 whatever. He wanted it to look like a -- I was going to
16 put like a hole, but he wanted it to look like the end of
17 a, you know, like a thing you pull the nail, pull a nail
18 out with.

19 Q Yeah. The claw part of a hammer?

20 A Yeah, yeah.

21 Q And is that what you ended up doing?

22 A Yeah. well, kinda. But if you didn't know it you
23 would think it was just a hole that -- you know what I'm
24 saying -- a nail went through.

25 Q Now, I don't want to confuse you with this question,

Roger Kirby
Direct examination by Mr. Tessier

1 Mr. Kirby. But did anyone from Tony's trial defense
2 team -- okay. So I'm not talking about Drucy Glass any
3 more. I'm talking about the lawyers that represented Tony
4 at his murder trial.

5 Okay. Did anyone from Tony's trial defense team that
6 represented him at his murder trial ever come and talk to
7 you about what you knew concerning Chuck Emery? Is that a
8 no?

9 A No.

10 Q And if anyone had -- well, let me ask this. Did
11 anyone ever ask you to testify at any part of Tony Torres'
12 murder trial back in 2008?

13 A No, sir.

14 Q If anyone had asked you to testify about what you knew
15 concerning Chuck Emery and Holly and what they said to you
16 about the Emerys, would you have testified in the same way
17 that you just testified before the judge here today?

18 A Yes, sir.

19 Q And that would have been at Tony's trial back in '08,
20 correct?

21 A Yes, sir.

22 MR. TESSIER: Your Honor, at this point I don't have
23 any further questions for Mr. Kirby on direct, but we do
24 ask for completeness and for the record because we believe
25 the rules provide for the admission of his deposition

Roger Kirby
Direct examination by Mr. Tessier

1 testimony as well. We would like to offer in evidence his
2 deposition testimony from earlier in this case.

3 MR. ZELENKA: Your Honor, we would oppose that. He's
4 here and can --

5 THE COURT: Sustained.

6 MR. TESSIER: Just as a matter of proffer, Your Honor.
7 We think it would be appropriate for you to at least take
8 it in as a matter of proffer.

9 THE COURT: You can make it a court's exhibit.

10 MR. TESSIER: Okay.

11 THE COURT: But he's right here. You can ask him
12 anything you want to that you've asked him before in that
13 deposition. That's why he's here.

14 MR. TESSIER: Yes, sir. We already asked, and I don't
15 want to belabor it. We can make it a point in posttrial
16 brief if you'd like, but we -- we believe the statute
17 provides for us to put depositions in, that that's a proper
18 method of evidence. We believe the rules of evidence are
19 relaxed in this context. And that's part of the premise
20 for why we think it's admissible on its -- on its own
21 merit.

22 THE COURT: All right. Mark it as a Court's exhibit.

23 MR. TESSIER: Thank you, Your Honor.

24 THE COURT: But do I understand you don't want to ask
25 him any other questions?

Roger Kirby
Cross-examination by Mr. Zelenka

1 MR. TESSIER: That's correct.

2 THE COURT: Okay.

3 (Deposition of Roger Kirby dated February 20, 2014,
4 marked Court's Exhibit No. 1.)

5 MR. TESSIER: Just for the record, Your Honor, I'll
6 state that the deposition transcript of Roger Kirby taken
7 February 20th of 2014 in its original envelope is now
8 marked as Court's Exhibit No. 1.

9 And I'm going to mark the notice as well, Your Honor,
10 if I may.

11 (Notice of deposition of Roger Kirby dated February 4,
12 2014, marked Court's Exhibit No. 2.)

13 MR. TESSIER: Your Honor, the notice of deposition for
14 Mr. Kirby's deposition is marked as Court's Exhibit No. 2.

15 THE COURT: Mr. Zelenka.

16 MR. ZELENKA: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. ZELENKA

19 Q Mr. Kirby, do you remember me?

20 A Yes, sir.

21 Q I was at the deposition, wasn't I?

22 A Yes, sir.

23 Q And some of the information you're giving today is not
24 the information you gave at the deposition, isn't that
25 correct?

Roger Kirby
Cross-examination by Mr. Zelenka

1 A Yes, sir.

2 Q In fact, it's directly contrary to that information,
3 is that not also correct?

4 A Yes, sir.

5 Q Well, at the time of the deposition you swore to tell
6 the truth, correct?

7 A Yes, sir. But at the same time I told you that I
8 don't want to say anything that would incriminate myself.
9 And I had a chance to speak with an attorney since I was
10 here today. So I didn't lie to you about nothing. I just
11 didn't tell you everything.

12 Q You didn't lie to me about anything?

13 A No, sir.

14 Q Okay. Now, I didn't ask you the questions during that
15 deposition, did I?

16 A Yeah.

17 Q No. Mr. Brendan McDonald from our office was the one
18 asking you the questions, isn't that correct?

19 A Yeah.

20 Q And at the time you didn't assert any Fifth Amendment
21 privilege over anything, did you?

22 A I don't even know what that means, man.

23 Q Okay. Well, you do now, is that correct?

24 A Yeah.

25 Q You don't know what it means to incriminate yourself?

Roger Kirby
Cross-examination by Mr. Zelenka

1 A Oh, yeah, yeah.

2 Q Okay. Now, at the time of the deposition you stated
3 you saw Chuck Emery the night before the incident at the
4 Trestle, correct?

5 A Yes, sir.

6 Q And you spoke with him briefly, and then he left,
7 correct?

8 A Yes, sir.

9 Q And you testified under oath that the next time you
10 saw him were a number of weeks after that, isn't that
11 correct?

12 A Yes, sir.

13 Q You said you never saw him when you showed up at the
14 scene the day before -- the day after, correct?

15 A Yes, sir. But I didn't --

16 Q And you had not seen him for another two weeks.

17 A After that I didn't see him. I seen him about a week
18 later when he brought that box. But after that I ain't
19 seen him for at least -- it was months.

20 Q Okay. But you never said you saw him that morning
21 when you apparently went over there at an earlier time.

22 A Yeah. Because, like I said -- I'm going so say it
23 again. I didn't want to say nothing that would incriminate
24 myself. That's why I didn't say that. I didn't want -- I
25 didn't want me to be put nowhere around the whole

Roger Kirby
Cross-examination by Mr. Zelenka

1 situation. That's why I said that -- that's why I didn't
2 say that.

3 Q So you lied.

4 A Nah, I didn't lie. I just didn't tell you.

5 Q No. You specifically said, "The next time I saw him
6 were a couple of weeks later." Is that not true?

7 A Just like I told you. Even before anything was took
8 that day I told you I would not say nothing that I felt
9 would incriminate myself. That's what I did. I did not
10 lie to you. But I -- I felt it would -- I didn't know. I
11 didn't speak with a lawyer to know if it -- if it would
12 involve me with the situation. So I didn't say nothing, I
13 mean. I didn't lie to you. I -- I didn't know if that
14 would incrim -- that would put me in some kind of trouble.
15 So I'm about to go home. I wasn't trying to be -- just
16 like I told you, I wasn't trying to get no other charges on
17 me.

18 Q Now, you say you spoke with Drucy Glass before the
19 deposition, correct?

20 A Yeah.

21 Q And Ms. Glass was present during the deposition,
22 correct?

23 A Right.

24 Q And Ms. Glass heard you testify under oath that, in
25 fact, you did not see Chuck Emery after he left the

Roger Kirby
Cross-examination by Mr. Zelenka

1 Trestle, for a period of one to two weeks after that,
2 correct?

3 A Yes, sir.

4 Q Now, prior to the time you made your testimony did you
5 tell Ms. Glass that you had seen the defendant earlier that
6 morning with Holly?

7 A No. Just because I told her, just like I told you,
8 no, because I thought -- I said I wasn't going to say
9 nothing that would incriminate myself. And I didn't know
10 whether that would incriminate me or not, so I didn't.

11 Q So prior to today you never told Ms. Glass that you
12 had seen Chuck Emery.

13 A No, sir.

14 Q Even though you're aware that that could have an
15 impact on Mr. Torres.

16 A No, sir.

17 Q Who had you told that before you hit the witness stand
18 today?

19 A Nobody.

20 Q Because this is the first time you ever told anybody
21 that?

22 A Yes, sir.

23 Q Today from this witness stand?

24 A Today. Besides that attorney I spoke with before I
25 came in here to make sure that it wouldn't incriminate me

Roger Kirby
Cross-examination by Mr. Zelenka

1 by saying what I said.

2 Q Because you're saying you never told Mr. Tessier about
3 it.

4 A No.

5 Q Until you said it on the witness stand?

6 A Yes, sir.

7 Q Now, you testified previously that Chuck Emery said
8 his dad was alive when he left, correct?

9 A Yes, sir.

10 Q And that Chuck Emery never said that he killed his
11 father, correct?

12 A He never come out and said it, but he said he took his
13 mama and daddy. I mean, that's the way I took it.

14 Q But he specifically told you he was alive when he
15 left.

16 A Yeah.

17 Q Okay.

18 A I mean, I know -- I know Ray as good as I do anybody
19 in my family, that if Ray -- if Ray was in there now that I
20 think about it, alive, Ray wouldn't have let them front
21 doors been swinging open and closing while he's in there
22 sleeping. Chuck wouldn't have did that.

23 Q Okay. What you're saying now for the first time today
24 from this witness stand is that you saw him there earlier
25 that morning after he called you.

Roger Kirby
Cross-examination by Mr. Zelenka

- 1 A Uh-huh.
- 2 Q You said you saw him drying his hair?
- 3 A Yeah. Coming out the front door when I pulled up.
- 4 Q where did you pull up? How close to the house?
- 5 A On the sidewalk where everybody always parked at.
- 6 Q okay. Did you ever go in the house that day?
- 7 A No.
- 8 Q why didn't you go in the house?
- 9 A It was 3:00 or 4:00 o'clock in the morning.
- 10 Q Had you ever been in the house?
- 11 A Yes, sir.
- 12 Q Had you ever been in the bedroom?
- 13 A Not while they was alive, I never been.
- 14 Q Not while he was alive. Did you ever see any other
- 15 lock boxes in the house?
- 16 A Nah.
- 17 Q Never went back to the bedroom?
- 18 A No, not to his dad's bedroom. I never been in there
- 19 until after they had done been killed, a year or so later.
- 20 Q So you never saw a box sitting on a podium like this?
- 21 A Uh-uh, no, sir.
- 22 Q Okay. Now, were you in jail with Mr. Torres --
- 23 A Yes, sir.
- 24 Q -- after his arrest?
- 25 A Yes, sir.

Roger Kirby
Cross-examination by Mr. Zelenka

1 Q Did you ever speak with Mr. Torres about the crime?

2 A Yes, sir.

3 Q You did?

4 A Yes, sir.

5 Q And what did Mr. Torres tell you?

6 A No. I asked him. I was like, "Man, what's up. Tell
7 me what's up. Did you do it?"

8 He shook his head no, and I was trying to get him to
9 tell me what's up. He just shook his head and wouldn't say
10 nothing. So I just went on. I didn't figure the man
11 wanted to talk about it, so I didn't say nothing else about
12 it.

13 Q Did you ever ask him how he ended up in the vehicle --

14 A Nah.

15 Q -- that crashed?

16 A Uh-uh.

17 Q Did you ever ask him how semen got on Ann Emery's
18 body?

19 A Nah. But I know -- I know -- I know of Holly doing
20 some dirty shit before with dealing semen before of the
21 same situation to bribe a man outta some money. So I don't
22 put nothing past her -- a married man. So I don't -- I
23 don't put nothing past what she would do.

24 Q Did Tony ever tell you that that's what he did that
25 night, that he was in some conspiracy with Holly?

Roger Kirby
Cross-examination by Mr. Zelenka

1 A Holly -- everybody had a conspiracy with her. You
2 just called her when you could. If Chuck wasn't around,
3 get it when you can.

4 Q When you met with Ms. Glass did you write any
5 statements for her?

6 A No, sir.

7 Q Did you do anything in handwriting?

8 A No, sir.

9 Q Did you ever write her any letters or did you ever
10 write the lawyers any letters?

11 A I wrote her letters.

12 Q You wrote who letters?

13 A Ms. Glass.

14 Q And in those letters did you make a statement about
15 that you saw Chuck Emery the morning of the murder --

16 A No, sir.

17 Q -- at the crime scene?

18 A Like I said, again, I'm not -- I didn't say it to
19 nobody until after I spoke with that lawyer today and I
20 found out it wouldn't incriminate me. I spoke -- I spoke
21 that to nobody.

22 Q You found out it wouldn't incriminate you?

23 A Yes, sir.

24 Q Okay. Even after you testified in your deposition
25 exactly contrary to that under oath, sworn to tell the

Roger Kirby
Cross-examination by Mr. Zelenka

1 truth in front of a court reporter?

2 A Yes, sir.

3 Q who is the lawyer you spoke with?

4 A I'm not sure of his name. I just -- they brought him
5 in there right before I came in here.

6 Q who is they?

7 A Mr. Ehlies and Tony's attorney.

8 Q Okay. Before the deposition or before you testified
9 today, other than these photographs that were just shown to
10 you, did anybody show you pictures of the crime scene?

11 A No, sir.

12 Q Now, I understood from your testimony that you didn't
13 know about the accelerant at the crime scene until
14 Ms. Glass told you, is that correct?

15 A I mean, I heard rumors but I -- that's Drayton. Man,
16 people talk. I mean, they make stuff up. They talk.

17 Q Okay.

18 A I mean, I didn't -- I didn't know nothing was for
19 sure, but I heard more from her than I did anybody.

20 Q Okay. So when you were at the crime scene did you
21 smell any accelerant?

22 A Not when Holly walked up and put her hands up to my
23 face. I didn't -- I mean, I didn't smell no gas.

24 Q Okay. Before the deposition how many times did you
25 meet with Ms. Glass or Ms. Ehlies -- Mr. Ehlies? Excuse

Roger Kirby
Cross-examination by Mr. Zelenka

1 me.

2 A One time.

3 Q One time?

4 A Uh-huh.

5 Q And where did that meeting occur?

6 A Kershaw.

7 Q Okay. I thought in your deposition you said you first
8 met with Ms. Glass while you were at Lee Correctional.

9 A At Lee. That was with Ms. Glass. The first time I
10 met with him, with Mr. Ehlies, was at Kershaw Correctional
11 Institution.

12 Q Okay. So there are two meetings.

13 A Yes, sir.

14 Q Were there any more meetings than the two meetings?

15 A No.

16 Q Were there any telephone calls?

17 A No, sir.

18 Q Okay. Did you talk to any other individuals while you
19 were in custody about the fact of you seeing Mr. Chuck
20 Emery the morning of the murder?

21 A Did I tell anybody else that?

22 Q Yes.

23 A No, sir.

24 Q You didn't tell --

25 A This is the first time I've spoke with -- spoke that

Roger Kirby
Cross-examination by Mr. Zelenka

1 to anybody, period. To anybody.

2 Q You didn't talk to Jessica Hughey?

3 A Yeah, I talked to her, but, at the same time, I didn't
4 tell her nothing. That's something I wouldn't -- until I
5 found out it wasn't going to incriminate me, I wasn't going
6 to say nothing about it. I just didn't say nothing to
7 nobody. That's the first time I spoke of it to anybody,
8 period, is today.

9 Q Okay. So when you testified you arrived at the scene
10 between 9:00 and 10:00 that morning and Jessica told you
11 that something happened to Ray, that was the first you knew
12 anything --

13 A Yes, sir.

14 Q -- about it?

15 A Uh-huh.

16 Q And you knew your friend Tony Torres was then charged
17 with the crime, correct?

18 A I mean, she said they got Tony, but I didn't know at
19 the time that he was being charged with the murders. She
20 just said they came and got Tony off the couch. That's all
21 she said to me.

22 Q Okay. But you knew from that point forward that
23 Mr. Torres was charged with the crime of murder of the
24 Emerys, right?

25 A Pretty much, yeah.

Roger Kirby
Cross-examination by Mr. Zelenka

1 Q And did you see Tony Torres there that morning when
2 you went over --

3 A No, sir.

4 Q -- and asserted that you saw Chuck Emery there with
5 Holly?

6 A No, sir. I didn't see him.

7 Q You didn't see him.

8 A No, sir.

9 Q But you saw the van that Mr. Torres ended up crashing
10 a couple of hours later, correct?

11 A Yes, sir.

12 Q And you don't know if Mr. Torres was there or not, do
13 you? Is that what you're saying?

14 A No, sir.

15 Q And did Mr. Torres tell you he was there?

16 A No.

17 Q At any time?

18 A No, sir.

19 Q Had any involvement in the case?

20 A The only thing -- like I said, the only thing was we
21 was in the holding cell right here in this old jail. He
22 was on his last day of trial, and I was in lockup in -- in
23 pod five. So they put us, lockup, together. We was the
24 only two in lockup.

25 We went in there and sat down, and I was talking to

Roger Kirby
Cross-examination by Mr. Zelenka

1 him. And I'd like, I say, man, what happened man, just
2 like what, tell me what happened. He was just shaking his
3 head. I was like did you do it. He just dropped his head
4 and shook his head. I was like what's up, tell me what
5 happened. Just -- he just shook his head no. So I didn't
6 mess with him no more about it.

7 Q Did you ever tell him that you saw Chuck Emery there
8 that morning?

9 A No, sir.

10 Q Mr. Torres was your friend, wasn't he?

11 A He -- we was associates. We wasn't friends.

12 Q You weren't friends?

13 A I mean, we knew each other since I -- he's older than
14 me, so I was -- he always hung with my brother. But when
15 him and my brother was together, they hung together. But
16 we wasn't like me and Chuck. Me and Chuck was together
17 every day. Me and him -- we just bumped into each other
18 when I'd be going there to see Jessie or, you know, when we
19 was locked up together.

20 Q Okay. So you deny in your deposition -- said you are
21 good friends with Tony and good friends with Chuck.

22 A I'm -- I am friends with him, but I'm -- Chuck was
23 more like a brother to me. He was -- he was an associate.

24 I would consider Chuck a good friend. Me and Chuck
25 was together every day all day long. Me and him -- we just

Roger Kirby
Cross-examination by Mr. Zelenka

1 bumped into each other when I went to see Jessie or going
2 up through that way where they lived at. That's the only
3 time. I mean, we never hung out like that. We never
4 chilled together. None of that.

5 Last time I seen him before that happened is he was --
6 he was coming to that house, and I spoke to him. I was
7 going up there to see Jessie. And that's when -- yeah. I
8 seen him. He was going in the house to do whatever he was
9 doing. I was up there to see Jessie. He got back in the
10 car and left. And I ain't seen him since then besides the
11 county.

12 Q You saw Tony on the day at the Trestle, correct?

13 A No. Chuck.

14 Q You didn't see Tony at the Trestle?

15 A No.

16 Q You didn't see -- have any discussion with Tony at the
17 Trestle that day?

18 A No.

19 Q You were dating Jessica Hughey at the time.

20 A Yes, sir.

21 Q Correct?

22 A Yes, sir.

23 Q And Jessica is Tony's cousin, correct?

24 A Yeah.

25 Q And Jessica was living in the same house as Tony,

Roger Kirby
Cross-examination by Mr. Zelenka

1 correct?

2 A Uh-huh.

3 Q And how long was Jessica your girlfriend?

4 A I don't know. Probably -- I don't know -- five or six
5 months, something like that. We dated longer while I was
6 locked up than we did when I got out.

7 Q Okay. So during that time period when Jessica's
8 cousin had been locked up you never told Jessica about
9 seeing Chuck Emery that morning.

10 A Like I said, I wouldn't have told nobody. That was
11 something I'd have took to the grave with me until I found
12 out I couldn't go to jail for it.

13 Q Okay. And you didn't see Jessica that morning.

14 A Yes. I seen her that afternoon after I went -- was
15 going up there to see her and the police had the whole
16 block surrounded. And I called her. I said, "what's going
17 on -- what's going on?" She was screaming and crying and
18 said the Emerys, Mr. Ray and Mrs. Ann, is dead.

19 Q Okay. But you didn't -- you didn't see Jessica out in
20 the yard that morning?

21 A Nah, no.

22 Q You didn't see Tammy Hughey that morning?

23 A No. Them people was in the bed that time of the
24 morning.

25 Q Did you see anyone else drive by that morning?

Roger Kirby
Cross-examination by Mr. Zelenka

1 A Nah. I didn't -- I probably sat there, probably 10 or
2 15 minutes at the most. I sat there long enough just to
3 smoke a joint and leave. That's all I did.

4 Q Okay. Were you out in a fire pit area at all that
5 morning?

6 A The night before.

7 Q How about that morning around 5:00 or 6:00 o'clock?
8 Were you out in the fire pit?

9 A No.

10 Q Did you see anybody out in the fire pit around that
11 time?

12 A No.

13 Q Did you see Holly or Chuck Emery at the fire pit that
14 morning?

15 A No. When I seen them he was -- they was coming out
16 the front door. Chuck was drying his hair with a towel.
17 And Holly walked up talking like she always does. And she
18 said my hands -- do I smell like gas. I smelled her hands.
19 I said no. I ain't seen nothing. I don't know nothing
20 about no fire pit that morning. I know about the fire pit
21 the night before at the Trestle. But it wasn't a fire. We
22 just had a little fire going. It wasn't like we had no
23 bonfire or nothing going.

24 Q Okay. You were good friends with Ray Emery?

25 A Yes, sir.

Roger Kirby
Cross-examination by Mr. Zelenka

1 Q At one point you said he treated you like the father
2 you never had.

3 A Right.

4 Q Would drive you around and take you wherever you
5 wanted to go.

6 A Yeah.

7 Q Yet you had information then, you're saying today,
8 that you thought his son was at the crime scene shortly
9 around the time the crime would have occurred.

10 A Uh-huh.

11 Q And you never told law enforcement.

12 A Never.

13 Q Never told anybody --

14 A Never.

15 Q -- in your entire life.

16 A Never.

17 Q No friends, no acquaintances, no enemies.

18 A Nobody.

19 Q Until today.

20 A Until today.

21 Q Now, when you testified during your deposition you
22 said you had been friends with Chuck virtually your entire
23 life.

24 A Uh-huh.

25 Q And then you said until a week before I was sentenced.

Roger Kirby
Cross-examination by Mr. Zelenka

1 Do you remember saying that?

2 A Yeah. When my stepdad had to come and pick me up.

3 Q Now, why did you stop being friends with Chuck Emery a
4 week before you were --

5 A Because a bunch of my money got gone when I had passed
6 out and went to sleep. And I called my stepdad to come and
7 get me.

8 Me and Chuck had got into it after that, so I -- I was
9 just like don't worry about the money. And he didn't have
10 no way of traveling but the Camaro keys and a motorcycle.
11 So I took the -- the little box that makes the whole
12 motorcycle work. And I told him I'd bring it back to him
13 when he done got him some rest and calmed down and got him
14 some sleep.

15 So he tried to hit me with some kind of little police
16 stick thing. My stepdad was just like give it back to him,
17 get it back to him, just get in the car, let's go. So I
18 gave it back to him and left. And that was the last time I
19 seen him.

20 Q Okay. So did your actions with Chuck cause you any
21 criminal responsibility? Did you end up in jail because of
22 anything, any plan, any actions that you had with Chuck
23 Emery?

24 A No.

25 Q Okay. So a week before you got sentenced, and

Roger Kirby
Cross-examination by Mr. Zelenka

1 presumably up until today, you've had a personal vendetta
2 against Chuck Emery, correct?

3 A Vendetta?

4 Q You said you aren't friends any more. You're upset
5 with him because he took your money.

6 A That don't make me have a vendetta against him.

7 Q Okay.

8 A Stop, man.

9 Q Now, with respect to the little green box, you
10 described the box as being approximately two feet wide.

11 A No. Two feet long and about a foot and a half wide.

12 Q Two feet long and about a foot and a half wide, is
13 that correct?

14 A Yeah.

15 Q Did the box look like this?

16 A Kinda. Is that black or green? I can't tell. The
17 one I had seen was green. That looks black.

18 Q Showing you a color picture.

19 A That's not it.

20 Q But was it about that same length?

21 A Yes, sir. It had like -- instead of it being a smooth
22 paint it had -- it was like green. You know how the
23 military stuff is like green. It had like grooves in it
24 with like gold in it. It's like a military green. Do you
25 know what I'm talking about?

Roger Kirby
Cross-examination by Mr. Zelenka

1 Q I think I do.

2 A Yeah. It's -- it's like -- it wasn't a smooth color.
3 It was like green. It was like a military green, but it
4 was gold -- it was green and it had like gold grooves in
5 it.

6 Q Okay. Did you see Chuck with a box the night you saw
7 him or the morning you saw him?

8 A No. That was -- that was a couple of days after
9 they -- all the police had left from up there and stuff.

10 Q Did Chuck ever tell you that he had -- prior to
11 showing you the lock box that he was aware of -- that his
12 father had maybe three lock boxes in his house?

13 A No. He ain't never said nothing to me.

14 Q Did he ever say anything about the lock box itself?

15 A Not before then.

16 Q Now, when you testified on February 20th, 2014, you
17 said you told Chuck that he should get rid of the lock box
18 and dump it in the river, correct?

19 A Yeah. He asked me did -- when he first brought it --
20 well, before -- before we knew we couldn't get in it I
21 was -- I was going to buy the box because I needed a safe.
22 But we couldn't get -- there wasn't no way to get in it,
23 period. It was -- it was heavy duty. It was heavy.

24 Now, what was in it, I don't know. But it was heavy.
25 And before we figured out we couldn't get in the box I was

Roger Kirby
Cross-examination by Mr. Zelenka

1 going to buy the box from him because I needed a safe.

2 So he took it and left, and I ain't never seen it
3 again since.

4 Q No. But you told him to dump it in the river, didn't
5 you?

6 A He asked me what -- did I want it after he cut it
7 open, and I told him no. I didn't have no use for it. I
8 couldn't lock it.

9 Q But you told him that he should dump it in the river,
10 correct?

11 A I told him throw it off the bridge, do what you want
12 to, I don't need it, it don't lock no more.

13 Q And you testified in your deposition that you didn't
14 know what he did with it after that. Do you remember that?

15 A No. He told me that he was going to throw -- he threw
16 it off in the river. And I told him I didn't know what he
17 did with it after that. That's what he told me he did with
18 it. He said he threw it off the bridge in Drayton. Yeah.
19 It's in that same deposition you've got.

20 Q Okay.

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

22 (Pause.)

23 Q Now, when you were living with Chuck in Ray's house,
24 that was around 2010. And you said for a number of months.

25 A Uh-huh.

Roger Kirby
Cross-examination by Mr. Zelenka

1 Q How many months did you live with him?

2 A I don't know. I didn't keep up with time like that,
3 man.

4 Q Was it --

5 A It was a good number of months.

6 Q Okay. And how long before you were put in jail? Do
7 you remember when you went to jail?

8 A Yeah, I remember when I went to jail.

9 Q And you got convicted of assault and battery of a high
10 and aggravated nature.

11 A Yeah.

12 Q And you were also involved with drugs significantly at
13 that time, correct?

14 A I don't -- I don't -- I ain't going to say nothing
15 that's going to incriminate myself. I ain't.

16 Q Okay. You testified in the deposition.

17 A I been known to use them, but I don't know nothing
18 about no selling or nothing -- nothing like that. I said
19 I've used drug. I don't know nothing about no drug
20 activities.

21 Q Okay. Well, while you were using drugs while you were
22 living in Chuck's house, these descriptions that you
23 testified on direct through the deposition, you're
24 acknowledging you and Chuck were both under the influence
25 of meth, correct?

Roger Kirby
Cross-examination by Mr. Zelenka

1 A Yes, sir, right.

2 Q Were you under the influence of other drugs during
3 that period of time?

4 A Weed. That's it.

5 Q Meth and weed?

6 A Yeah.

7 Q But you testified you were significantly under the
8 influence -- both you and Chuck -- at the time that you're
9 describing him -- seeing the blood in his hands, correct?

10 A Yeah.

11 Q You describe him as being pretty wiggled out.

12 A Yeah.

13 Q And how do you define wiggled out?

14 A You could see it in his eyes.

15 Q You could see it in his eyes. Could you see it in
16 your eyes?

17 A I wasn't wiggled out. I'd been up longer than he
18 had -- if not longer.

19 Q How long -- four days, five days?

20 A I don't even know, man.

21 Q Well, how long did you say a few months ago?

22 A Probably five, six, seven. Ain't no telling. I mean,
23 when you -- when you're on meth, man, you don't. They
24 ain't -- you don't have no sense of time.

25 Q Do you have -- do you have a good memory as to what

Roger Kirby
Cross-examination by Mr. Zelenka

1 you did?

2 A Yeah.

3 Q And what occurs?

4 A Yeah, yeah.

5 Q You do?

6 A Yeah. I can tell you anything that happened any day
7 you name. Ain't got nothing to do with your memory.

8 Q Okay. What do you choose to say?

9 A When I see this is not going to incriminate me.

10 Q Okay. When you saw Jessica that morning between
11 9:00 and 10:00 when you drove up -- why did you drive to
12 the crime scene that morning between 9:00 and 10:00?

13 A I was going to see my girl.

14 Q Between 9:00 and 10:00 in the morning.

15 A I was going to see my girl.

16 Q Okay. Had she called you?

17 A No.

18 Q Had anybody called you to come over there?

19 A No. I was just dropping by to see her.

20 Q Were you curious about what was happening over there?

21 A I didn't know nothing what's happening until I turned
22 on Montgomery Street and saw the police over there.

23 Q You didn't know anything was happening.

24 A Nah. That's why I said I called what was my girl at
25 the time -- Jessie. And I said what's going on. And then

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Cross-examination by Mr. Zelenka

1 that's when she told me. Before that I knew nothing about
2 it.

3 Q Okay. Now, you've also testified here today that a
4 few hours before you were called to that scene by Chuck, is
5 that correct?

6 A Yeah.

7 Q And while you're at the scene someone approached you
8 about smelling accelerants, correct?

9 A Right.

10 Q Then five hours later you didn't think anything had
11 gone on. You weren't worried? I'm curious.

12 A I didn't know nothing about nobody -- I didn't know
13 nobody -- about putting gas in the house. I didn't know
14 about that until I talked to Drucy, and that was years
15 afterwards, after he had done been sentenced to death.

16 Q Okay. When did you learn that the victim had been
17 raped? And that rape --

18 A When I talked to Drucy.

19 Q Oh, you didn't know about it then?

20 A No. I didn't.

21 Q Did you know about it when you did your deposition?

22 A Yeah.

23 Q Yet you didn't mention that?

24 A I wasn't asked. I wasn't asked a question about it.

25 It was a question-and-answer situation. It wasn't

Roger Kirby
Cross-examination by Mr. Zelenka

1 something I was just telling. It was a question. I was
2 never asked about it, so I didn't say nothing about it.

3 Q Okay. Now, you spoke about in your deposition, about
4 some other crimes that you thought Chuck Emery had done.

5 A I ain't going to say nothing. Like I said, I ain't
6 going to say nothing that's going to incriminate myself
7 about the situation.

8 Q Okay. And one of those you mentioned was the
9 Superbike case, correct?

10 A Right.

11 Q The killing in Chesnee --

12 A Yeah.

13 Q -- of four individuals in 2003.

14 A Uh-huh.

15 Q And you're trying to pin that on Chuck, correct?

16 A I'm not trying to pin nothing on nobody. You asked me
17 if I heard anything, and I told you what I heard. I'm not
18 trying to pin nothing on nobody.

19 Q Okay. But you had previously prior to that told
20 individuals in the Department of Corrections that you were
21 present at that crime scene and your cousin had done it,
22 correct?

23 A I ain't never said I was -- no. I ain't never said I
24 was present nowhere.

25 Q Right. And you weren't present there because you were

Roger Kirby
Cross-examination by Mr. Zelenka

1 in jail at that time, correct?

2 A Right.

3 MR. ZELENKA: Court's indulgence.

4 (Pause.)

5 Q Did you ever talk to Pete Skidmore?

6 A Yeah.

7 Q And when did you talk to Pete Skidmore?

8 A The first time I talked to Drucy Glass. I was at Lee
9 County.

10 Q And Pete Skidmore was there who was working with the
11 current defense team at that time?

12 A Yes, sir.

13 Q And you understood that at that time?

14 A Yeah.

15 Q Did they ask you when you had -- did Mr. Skidmore ask
16 you when you had seen Chuck Emery around the time of the
17 crime?

18 A Yeah.

19 Q And did you tell them that you saw him earlier that
20 morning with Holly?

21 A No. I told him I saw him the night before.

22 Q And when did you tell him the next time you saw him?

23 A The same thing I told him the first time.

24 Q When the officers came to Gilliam to talk to you about
25 the information you had sent them about the Superbike case

Roger Kirby
Cross-examination by Mr. Zelenka

1 did you tell them about Tony Torres' case at all?

2 A No.

3 Q why didn't you do that at that time?

4 A I don't know. That wasn't what they come to talk to
5 me about. That's why I didn't talk to them about it.

6 Q No. They wanted to talk to you about something else
7 where you were incriminating yourself.

8 A No.

9 Q Okay. The tattoo about the praying hands, when did
10 Chuck ask you to do the tattoo on him?

11 A while I was living with him.

12 Q So his family had been killed in 2007.

13 A Uh-huh.

14 Q And this was in 2010. He was asking for a memorial to
15 his father to be placed on him?

16 A Yeah.

17 Q And in a tattoo world that's not unusual to have
18 something like that happen, is it? People put memorials to
19 dead family members on their body.

20 A Yeah. But when -- when they want something that their
21 family was killed with put on them, there's something very
22 wrong with that. That don't happen every day.

23 Q Okay. But that didn't happen to Chuck, did it?

24 A His dad is a part of him, ain't he?

25 Q Yeah. But he doesn't have a hammer on any tattoo --

Roger Kirby
Cross-examination by Mr. Zelenka

1 A No. He don't.

2 Q -- on his body.

3 A No. He don't.

4 Q So it's only your word, again, that he was asking for
5 that to be done.

6 A Yeah.

7 Q Because it wasn't done, right?

8 A Right. It wasn't. The praying hands with the
9 original in his daddy's name, a love and memory, yeah, that
10 was done with the sunrays behind it.

11 Q Okay. Chuck never told you when he got the box from
12 his father's house, did he?

13 A No.

14 Q So you have no idea when.

15 A No.

16 Q You just know in your mind that it was done.

17 A After they was dead and after the police wasn't up
18 there, because the police stayed around the house for like
19 two or three days straight. And Chuck -- I guess that's
20 when he got up and he left. I didn't see him none before
21 then.

22 Q Okay. Now, what you know about the crime, you know
23 there was blood on the walls, don't you?

24 A No.

25 Q Blood splatters on the walls?

Roger Kirby
Cross-examination by Mr. Zelenka

1 A I mean, common sense would tell you that, but I
2 didn't -- I didn't know there was blood on the walls, no.

3 Q Okay. And when Chuck was in the bedroom he wanted the
4 blood cleaned off the walls, didn't he?

5 A Yeah.

6 Q And he wasn't satisfied that the blood wasn't still on
7 the walls of his dead family members.

8 A I never seen the blood. I'm just going by what he
9 said. I never seen no blood. He was saying there was
10 blood there.

11 Q But he wanted it cleaned off.

12 A Yeah.

13 Q And it bothered him, correct?

14 A Yeah.

15 Q That's not that unusual, is it?

16 A I don't -- I'm just telling you what the man told me.
17 I can't tell you where his thoughts was coming from.

18 Q Okay. Because you didn't see Tony Torres on the night
19 before the crime or the incident, you don't know whether
20 Mr. Torres hit Holly Melton or slammed the door on her foot
21 a couple of times that night, do you?

22 A No.

23 Q If that would have been done would that suggest that
24 Mr. Torres did have aggression?

25 A I can't speak for something I have no knowledge of.

Roger Kirby
Cross-examination by Mr. Zelenka

1 Man, I don't know what you're talking about.

2 Q Did you ever hear Holly Melton say that Torres had hit
3 her?

4 A No.

5 Q Okay. And that early morning, that next day, did she
6 tell you that Chuck had hit her?

7 A I've seen -- I've seen Chuck beat Holly. I've had to
8 pull Chuck off of Holly before.

9 Q Okay. But did you ever see -- hear Holly say that
10 Chuck hit her that morning?

11 A No.

12 Q Okay.

13 A It wasn't nothing unusual for the man to hit the girl.
14 It wasn't nothing new.

15 Q Did Chuck ever say he was with Torres that night?

16 A No.

17 Q Did Chuck ever say that Torres was with him when he
18 left the house?

19 A No.

20 Q When his father was still alive?

21 A Uh-uh.

22 Q Now, Mr. Emery had a photography business at the
23 house, correct?

24 A Uh-huh.

25 Q And how did you get to the -- where he had his

Roger Kirby
Cross-examination by Mr. Zelenka

1 photography business? He had a sign in the front yard
2 saying Emery Photography?

3 A Right.

4 Q How would the patrons --

5 A They'd pull straight in the driveway and get out of
6 the car and walk in.

7 Q Okay. And could they walk in the house from that same
8 driveway?

9 A Yeah. You could, but you'd have to walk around to the
10 front of the house or the back of the house, which nobody
11 could get through because of the pit bulls that was in the
12 back yard.

13 Q Well, they had -- on a patio they had tables and
14 chairs, correct?

15 A That's through the front of the house.

16 Q Okay. There weren't any tables and chairs in the back
17 of the house on the porch?

18 A You couldn't -- they couldn't nobody go back there but
19 Ray and Chuck. The dogs wouldn't let nobody else in the
20 backyard, not even me, and I lived -- I was around the
21 fence, around the dogs, all of the time.

22 Q Okay. Where were the dogs that morning when you went
23 there?

24 A I don't know.

25 Q Did you hear the dogs?

Roger Kirby
Cross-examination by Mr. Zelenka

- 1 A No.
- 2 Q Did you see the dogs?
- 3 A No.
- 4 Q what was the last time you saw the dogs?
- 5 A when I went up there to get my -- Ray was keeping my
6 motorcycle in his back -- the building for me. That was
7 the last time I seen him when I went to the gate. They
8 pushed my motorcycle out for me.
- 9 Q Okay. And when was that?
- 10 A It was -- it was a while. It was a while before that.
- 11 Q Long before the incident?
- 12 A Yeah, it was a long time before the incident.
- 13 Q And the dogs certainly weren't there. When was the
14 last time you went back to that area?
- 15 A After they was -- when I went up there to live with
16 Chuck.
- 17 Q Okay. And the dogs weren't there then.
- 18 A I asked him where they was, and he never would say.
- 19 Q Okay.
- 20 A But I know he don't have them no more.
- 21 Q They had a dog pit in the back yard too, didn't they?
- 22 A A dog pit?
- 23 Q They didn't?
- 24 A No.
- 25 Q Okay.

Roger Kirby
Cross-examination by Mr. Zelenka

1 A They had a building where they used to try to lock
2 them in there when we'd go in the back yard, but the dogs
3 chewed the bottom of the door off, so they couldn't lock
4 them in there no more.

5 Q Now, who played basketball on the basketball goal?
6 Did you ever go back there and play that in the yard?

7 A No.

8 Q Was there a basketball goal in the back yard?

9 A I think there was like soon as you walk out the back
10 door, but we always -- we had 4-wheelers and dirt bikes,
11 and we never played in the back yard.

12 Q Okay. But somebody was back there shooting baskets
13 sometime probably, right?

14 A No.

15 Q No? Never?

16 A No.

17 Q Because of the pit bulls?

18 A Yeah. Couldn't nobody go around them but Ray and
19 Chuck.

20 MR. ZELENKA: Court's indulgence.

21 (Pause.)

22 Q Mr. Kirby, when you met with counsel and their
23 representatives what did they show you?

24 A I ain't -- what do you mean, what did they show me?

25 Q Did they show you pictures; did they show you

Roger Kirby
Cross-examination by Mr. Zelenka

1 statements?

2 A Ain't showed me nothing.

3 Q Okay. who is Gwen Kirby?

4 A Gwen?

5 Q Uh-huh.

6 A I don't know no Gwen Kirby.

7 Q what's Chuck's mother's name?

8 A His real mother?

9 Q Yeah.

10 A I don't even -- I hardly ever seen her but a couple of
11 times. I don't remember her name though. I probably
12 wouldn't even remember her if I seen her.

13 Q Okay. were you bringing drugs to the scene earlier
14 that night?

15 A I'm not going to say nothing that will incriminate
16 myself.

17 Q Did you previously say you were bringing drugs that
18 night?

19 A I was doing drugs that night. I don't know nothing
20 about bringing no drugs to nobody.

21 Q You don't know anything about bringing drugs?

22 A I do drugs. I don't -- I don't sale; I don't
23 distribute. I was -- I was going to get high. I wasn't
24 taking drugs to nobody to sell or nothing.

25 Q You weren't taking drugs to Chuck and you weren't

Roger Kirby
Cross-examination by Mr. Zelenka

1 sitting around in Chuck's house --

2 A No.

3 Q -- or Jessica's house --

4 A No.

5 Q -- doing drugs with other folks?

6 A Nah. I wasn't -- I sat in the car, like I said, ten
7 or fifteen minutes. We sat there and got high, and I got
8 on through. I don't -- as far as selling drugs and all of
9 that, I don't know what you're talking about.

10 Q Okay. That morning when you got the call from Chuck,
11 what was the call about?

12 A Nothing. He wanted to get high.

13 Q He wanted to get high?

14 A Yeah, he wanted to get high.

15 Q Okay. And how was he going to get high? Why would he
16 call you?

17 A Because I like to get high. I mean, that's why.

18 Q Okay. Well, why would he bring the drug? Were you
19 bringing the drugs or was he going --

20 A I had some drugs, but it was for my personal use. It
21 wasn't for no selling, no none of that.

22 Q Okay. And when you got there did you get high?

23 A Yeah.

24 Q So how long did it take you to get high while you
25 were --

Roger Kirby
Cross-examination by Mr. Zelenka

1 A About ten or fifteen minutes.

2 Q About ten or fifteen minutes?

3 A Uh-huh.

4 Q And who were you with then?

5 A Me, and I don't even remember who all was in the car.
6 It was two or three of us. I don't remember exactly who it
7 was.

8 Q Now I'm confused. Maybe I've confused you. I'm
9 talking about --

10 A When I --

11 Q -- the morning that you --

12 A Yeah. It was me and three others. It was me, some
13 other dude named Zack and some other, one of his homeboys.
14 I don't know. I don't know their last names. I just know
15 Zack. It was me, Zack and the dude that was driving the
16 car.

17 So we sat there. And Holly and Chuck got in the back
18 seat. We got high. They got out and we got on through.

19 Q So all of these other people are at the crime scene
20 that morning?

21 A Yeah.

22 Q You never told anybody that before, did you?

23 A Yes. I told them that it was me and a couple of other
24 people in the car, yeah, because I don't have a car and I
25 didn't have a license to drive, so somebody else was

Roger Kirby
Cross-examination by Mr. Zelenka

1 driving me.

2 Q Okay. But you don't -- how do you get in touch with
3 those folks today? Do you know?

4 A I been locked up five years now. I don't even hardly
5 keep in contact with my family, much less associates. I
6 don't even know if they're still alive.

7 Q When do you expect to get out of custody?

8 A February of next year.

9 Q Okay.

10 A Well, January 30th.

11 Q When you're at Gilliam Psychiatric, what was the
12 reason you were there?

13 A Posttraumatic stress disorder. And they say it was
14 something else -- posttraumatic P.T.S.D. and bipolar.

15 Q Okay. I was asking you about tattoos. You've got a
16 little tattoo on the side of your face.

17 A Yes, sir.

18 Q What's that one for?

19 A For personal reasons.

20 Q For personal reasons. It's a tear drop?

21 A Yeah.

22 Q And why would you put a tear drop on the side of your
23 face?

24 A This -- I'm coming to testify. This ain't about me.
25 I mean, this -- this is just for personal reasons though.

Roger Kirby
Cross-examination by Mr. Zelenka

- 1 It's nothing to do with this case.
- 2 Q I'm asking you why you have it.
- 3 A For personal reasons.
- 4 MR. TESSIER: Objection. Relevance.
- 5 THE COURT: Overruled.
- 6 Q Why do you have it?
- 7 A Personal reasons.
- 8 Q And what's the personal reason?
- 9 A For a loved lost one.
- 10 Q Pardon me?
- 11 A For a loved lost one.
- 12 Q Is that what tear drops are usually for?
- 13 A They could be used for several different things.
- 14 Q What else could they be used for?
- 15 A Homicides, loved lost ones, different reasons.
- 16 Q Okay. Did you ever do any tattoos on Mr. Torres?
- 17 A No.
- 18 Q Did you do any other tattoos on Chuck Emery?
- 19 A I did one on his shoulder and one on his back. I did
- 20 two. One on his right shoulder and one on the right --
- 21 right shoulder blade.
- 22 Q Okay.
- 23 MR. ZELENKA: Thank you, Your Honor.
- 24 No further questions.
- 25 MR. TESSIER: One area if I may, Your Honor.

Roger Kirby
Redirect examination by Mr. Tessier

1 REDIRECT EXAMINATION

2 BY MR. TESSIER

3 Q I want to ask you, Mr. Kirby, about one area of
4 questioning that Mr. Zelenka asked you about, which was
5 about the fact that you had not told anybody what you told
6 us in court today about the morning of the 11th until
7 today.

8 would it be fair to say that you had some run-ins with
9 the government of South Carolina?

10 A Yes, sir.

11 Q You've been put in jail several different times?

12 A Yes, sir.

13 Q So would it be fair to say that you're a little
14 suspicious of your interactions with people in the
15 government?

16 A Yes, sir.

17 Q So you're pretty careful about things that you say
18 that might incriminate you. Is that fair?

19 A Yes, sir.

20 Q And did -- when you saw us this morning -- Mr. Ehlies
21 and me -- in the holding room did you tell us that you had
22 some new information that you were willing to talk about if
23 you had a lawyer to help you figure out if it would
24 incriminate you?

25 A Right.

Roger Kirby
Redirect examination by Mr. Tessier

1 Q And is that when we went and got you an attorney to
2 come over and talk to you?

3 A Right.

4 Q And that attorney talked to you -- just you and him,
5 right?

6 A Right.

7 Q And after that then you agreed to go ahead and tell us
8 this new information.

9 A Right.

10 Q But it was only then that you felt comfortable
11 sharing, is that fair?

12 A Yeah.

13 Q You know enough from your dealings with the government
14 that the government has the ability to give you a deal if
15 it wants to and if it thinks you did something wrong.

16 A Right.

17 Q And they can even give you immunity, correct?

18 A Uh-huh.

19 Q Did the government ever approach you and offer to give
20 you immunity in exchange for learning what you knew about
21 the Emerys' death?

22 A No.

23 Q Did anyone from the government ever try to talk to you
24 or ask you questions about their death?

25 A No.

Roger Kirby
Redirect examination by Mr. Tessier

1 Q Did Mr. Zelenka or anyone on the team here, table
2 here, ever try to talk to you before today to find out what
3 you knew about that morning?

4 MR. ZELENKA: Object. The deposition states
5 otherwise.

6 MR. TESSIER: Well, we offered the deposition. They
7 objected to it, so.

8 MR. ZELENKA: There's no factual foundation for the
9 question.

10 MR. TESSIER: The factual foundation is you never
11 talked to him, and he's going to say that, unless you did,
12 and then he'll say that.

13 I mean, Mr. Zelenka picked on the witness considerably
14 about how he never told anybody this story. Well, he --
15 they had an opportunity to talk to him, and they chose not
16 to do it. That's all I'm saying.

17 MR. ZELENKA: Again, I object. We did. We asked the
18 questions during the deposition in February, and he
19 answered them.

20 THE COURT: All right. Well, go ahead.

21 Overrule the objection.

22 Q Okay. Other than the time that you spent in the
23 deposition did anyone from the team here -- Mr. Zelenka or
24 anyone else -- try to talk to you outside of the context of
25 that deposition?

Roger Kirby
Redirect examination by Mr. Tessier

1 A No.

2 Q Did anyone at the deposition offer to give you from
3 the government's side -- did they offer to give you
4 immunity if you told what you knew about areas of concern?

5 A No.

6 Q In fact, in your deposition did Mr. Ehliès at the very
7 beginning remind you that certain areas of question could
8 cause you to incriminate yourself?

9 A Yeah.

10 Q And didn't he tell you that he felt concerned that you
11 shouldn't answer the questions?

12 A Yes, sir.

13 MR. TESSIER: That's all, Your Honor.

14 THE COURT: You may step down.

15 we're going to be at ease for 15 minutes, and then
16 we'll resume.

17 MR. EHLIES: Excuse me. Judge, is this witness
18 excused to go to Kershaw?

19 THE COURT: He is unless y'all need him.

20 MR. EHLIES: I see no reason.

21 THE COURT: He may be excused.

22 (Whereupon, the witness was excused.)

23 (Whereupon, a recess was taken.)

24 THE COURT: All right. Who is the next witness?

25 MR. SCHOEN: The applicant calls Kevin Biggerstaff to

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 the stand.

2 KEVIN BIGGERSTAFF, having been
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. SCHOEN

5 Q Good morning.

6 A Good morning.

7 Q would you please state your name for the record? And
8 spell your last name.

9 A Kevin Biggerstaff, B-I-G-G-E-R-S-T-A-F-F.

10 Q Thank you, Mr. Biggerstaff.

11 My name is Chris Schoen, and I'm an attorney. Along
12 with my cocounsel Hank Ehlies and Troy Tessier, we
13 represent Mr. Tony Torres.

14 A Okay.

15 Q what's your date of birth?

16 A [REDACTED], 1982.

17 Q And where do you currently live?

18 A Currently in Spartanburg County.

19 Q where in Spartanburg County?

20 A You mean as of right now?

21 Q Yes, sir.

22 A Or whenever I get out or what?

23 Q No. Just --

24 A I'm currently at Livesay Correctional Institute,
25 Spartanburg County.

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 Q And why are you currently incarcerated?

2 A Shoplifting.

3 Q How long have you been incarcerated for shoplifting?

4 A I've been incarcerated for about 18 months.

5 Q Have you ever been incarcerated prior to this stint
6 for shoplifting?

7 A Yes, sir.

8 Q When was that?

9 A I was in. The first time was in 2007; I was
10 incarcerated again in 2009; and then now.

11 Q In 2007, why were you incarcerated at that time?

12 A Violation of probation.

13 Q What were you on probation for?

14 A Grand larceny and breaking into a motor vehicle.

15 Q And was that what you were incarcerated for the first
16 time in 2007 or --

17 A Yes, sir.

18 Q I'm sorry. I mean, you were on probation. The first
19 time you were incarcerated was in 2007.

20 A Yes, sir.

21 Q And it was because you were on probation for those
22 offenses, breaking into a motor vehicle and grand larceny.

23 A Yes, sir.

24 Q What about in 2009?

25 A C.D.V. -- criminal domestic violence.

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 Q Yes, sir. I'd like to draw your attention to some of
2 the folks that you may have known. Can you tell us whether
3 you know Chuck Emery?

4 A Yes.

5 Q How long have you known Chuck for?

6 A Since I was probably I want to say -- about 17 years,
7 somewhere around in there.

8 Q So since you were 17 years old, or you've known him
9 about 17 years?

10 A I've knowed him for about 17 years.

11 Q How old were you when you met him?

12 A Thirteen or fourteen.

13 Q How would you describe your relationship with him?

14 A We're pretty good friends, you know. I mean, we went
15 to school all through our life and all. And I'd go to his
16 house and stay sometimes. He'd come to my house and stay
17 sometimes. We rode the school bus together and went to the
18 same school.

19 Q And what about Tony Torres? Could you tell us whether
20 you were friends with him?

21 A Yes, I was.

22 Q Were you as close to Tony as you were to Chuck?

23 A I'd say pretty much so.

24 Q What about Roger Kirby? Did you know him?

25 A Yeah, I knowed Roger.

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 Q Were you close to Roger Kirby?

2 A Yeah, but I wasn't as close to Roger as I was to Tony
3 and Chuck though.

4 Q All right. Did you remain friends with Tony and Chuck
5 all the way up until May of 2007?

6 A Yes, I did.

7 Q Are you still friends with Chuck Emery today?

8 A Yes.

9 Q Did you know Holly Melton?

10 A Yes.

11 Q Who was Holly Melton?

12 A That was Chuck's girlfriend.

13 Q Was she Chuck girlfriend's in May of 2007?

14 A Yes.

15 Q Did you know Chuck's dad?

16 A Yes.

17 Q Ray Emery?

18 A Yes, sir.

19 Q And what about his stepmother Ann?

20 A Yes.

21 Q I want to talk to you a little bit about Chuck's
22 relationship with his stepmother. How would you describe
23 that relationship?

24 A They didn't get -- they didn't get along very well the
25 whole -- you know, the whole time that me and Chuck were

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 friends, you know, me and him and Tony were all friends,
2 and there'd be times that we'd all, you know, stay at
3 Chuck's house. But as long as we were friends they never
4 got along, and I don't really know why, but they just never
5 got along.

6 Q How did you know that they didn't get along?

7 A They was -- you know, they'd argue, or Chuck and Ray
8 would be arguing, and Chuck would say something about Ann
9 or whatever. And I think a lot of times Chuck would be
10 trying to get money or whatever, and I think she was kind
11 of putting a damper, you know, on his money situation and
12 things like that.

13 Q You said that he would say things about Ann. What
14 kind of things would he say about her?

15 A You know, just he couldn't stand her. You know,
16 things like that. I heard him call her a bitch a few
17 times, you know, just different things.

18 Q You heard him call her a bitch to her face?

19 A No. I mean, he would, you know, say it to us.

20 Q Did he have any other derogatory terms that he used
21 for Ann?

22 A I heard him, you know, a couple of times he'd call
23 her, you know, muther-fucking Stewart you know, just things
24 like that.

25 Q Now, in May of 2007 where were you living?

Kevin Biggerstaff
Direct examination by Mr. Schoen

- 1 A [REDACTED] Sandy Ford Road.
- 2 Q How far is that from where Chuck Emery lived?
- 3 A Where he was living with Ray?
- 4 Q Yes. In the Emerys' house.
- 5 A You could probably get there in ten or fifteen
- 6 minutes.
- 7 Q Would you say it's less than ten miles?
- 8 A Yeah.
- 9 Q And whose house were you living in at that time?
- 10 A My grandfather's house.
- 11 Q Was there anyone else living with you?
- 12 A Yes.
- 13 Q Who was that?
- 14 A Debra Lazurick, my girlfriend at the time.
- 15 Q And how long had you and Debra been together?
- 16 A Probably about two years at the time. Maybe three.
- 17 Q Can you tell us whether you had any children with
- 18 Debra?
- 19 A No.
- 20 Q Can you tell us whether Debra had any children living
- 21 in that home?
- 22 A Yes. Two.
- 23 Q How old were they?
- 24 A Not exactly sure how old they were at the time. I'm
- 25 going to say maybe around six and nine.

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 Q Six and nine. Do you remember by chance what your
2 cell phone was -- your cell phone number was?

3 A I have no clue.

4 Q Do you remember giving a statement to a police officer
5 following the events of May 11th of 2007?

6 A Over the telephone or written?

7 Q A written statement.

8 A Yes.

9 Q If I showed you a copy of that statement do you think
10 it might refresh your recollection of what your telephone
11 number was at the time?

12 A Maybe if I look at it, but just right off my mind I
13 have no clue of what it was.

14 Q Have a look at the top. Does that help to refresh
15 your recollection?

16 A That's my home number.

17 Q That's your home telephone number.

18 A That's my home telephone number at that time.

19 Q The next page is handwritten. That number that's
20 listed there is [REDACTED]12. You said that's your home
21 number.

22 A Yes, sir. That was my parents' home number.

23 Q Is that the number for the house where you were
24 living?

25 A No. That was just -- I -- I don't -- I don't really

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 know why I gave them that number. But, yes, I do know why.
2 They told me they needed a number where they could -- a
3 good number where they could get in touch with me at any
4 time. So I gave them that number because I was always
5 originally with my parents.

6 Q Does the number [REDACTED] 616 sound familiar to you?

7 A Not right off.

8 Q Do you know Chuck or Holly's telephone number at the
9 time?

10 A I have no clue.

11 MR. SCHOEN: Court's indulgence for just a moment.

12 (Pause.)

13 Q All right. Mr. Biggerstaff, let's talk a little bit
14 about how you made your living. Were you employed at the
15 time?

16 A No, sir.

17 Q So how did you make money?

18 A I was selling methamphetamine.

19 Q Selling methamphetamine. Were you making
20 methamphetamine?

21 A No, sir.

22 Q So you were getting methamphetamine from other people
23 to sell to folks.

24 A Yes, sir.

25 Q And did you have -- did you have transportation at the

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 time?

2 A Yeah. It was Debra's car, but we did have a car. My
3 girlfriend Debra that was living with me, we did have a
4 car.

5 Q So would your girlfriend Debra drive you?

6 A Uh-huh.

7 Q Who would stay with the children when this was going
8 on?

9 A Different people. It was, you know, friends or
10 whatever.

11 Q Was Chuck Emery one of those friends who watched the
12 kids while you kicked up meth?

13 A Yes, yes, he did.

14 Q And what would you do in return for Chuck Emery
15 watching the kids?

16 A I'd usually give him a bag of dope.

17 Q When you say dope, you mean meth?

18 A Methamphetamine.

19 Q I want to direct your attention to the night of May
20 10th of 2007, the morning, early morning, of May 11th,
21 2007. Now, can you tell us whether you saw Chuck Emery on
22 that evening?

23 A Yes. I did.

24 Q And whether you saw Holly Melton.

25 A Yes.

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 Q Were they together?

2 A Yes, they were.

3 Q And when did you see them?

4 A They came to my house at around -- I want to say close
5 to midnight.

6 Q So do you remember providing a deposition in this
7 case?

8 A Yes. Do you mean for the lawyer a few weeks ago?

9 Q That's right.

10 A Yes, sir.

11 Q And do you remember giving that statement to
12 officer -- give me a second. We just put it up here a
13 minute ago.

14 A Yes, sir.

15 Q And isn't it true that when you gave a statement you
16 said that it was -- that they arrived at 1:30 a.m.?

17 A I guess, yes, sir.

18 Q When you gave your deposition you said it was between
19 11:00 and midnight.

20 A I mean, I can't be a hundred percent sure -- you know
21 what I'm saying -- but I know it was around midnight
22 somewhere. I mean, I can't, a hundred percent, you know,
23 but around about that time.

24 Q So somewhere in the two-and-a-half-hour window between
25 11:00 o'clock and 1:30 in the morning.

Kevin Biggerstaff
Direct examination by Mr. Schoen

- 1 A Yes, sir.
- 2 Q Would it surprise you if Holly Melton said it was
3 closer to 3:00 o'clock in the morning?
- 4 A It wasn't that late.
- 5 Q It wasn't that late.
- 6 A No. It was not that late.
- 7 Q Between 11:00 and 1:30.
- 8 A Yeah. It wasn't 3:00 o'clock in the morning.
- 9 Q And what did you do on the night of May 10th and the
10 early morning of May 11th?
- 11 A They came, Chuck and Holly came, to my house, and I
12 didn't have any dope, and I needed a ride to Springfield to
13 pick up some money so we could get some dope. And they
14 were in Holly's mom's car. So they took us. We left, and
15 they took us up there and got the money and stopped at a
16 store. And we came back, and I had a friend come over and
17 bring us some dope.
- 18 Q When you say us, who is us?
- 19 A Do you mean who all went in the car?
- 20 Q Yes.
- 21 A It was me and Holly and Chuck and Debra.
- 22 Q Who was with the kids?
- 23 A I'm not sure where the kids were at the time.
- 24 Q Was there anyone else at the house?
- 25 A Well, I think they were with Debra's mom that night,

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 or her sister one, but we didn't have the kids that night.

2 Q Do you remember giving that deposition?

3 A What? That we didn't have the kids?

4 Q Well, let me show you that and see if this refreshes
5 your recollection.

6 (Pause.)

7 Q Handed you a copy of your deposition. I'll give the
8 top several lines and read.

9 A Maybe the kids had been home then.

10 Q So are you positive?

11 A But I know that we didn't leave the kids at home, so.

12 Q Was there somebody else in the house?

13 A No, there was nobody else there but us.

14 Q Is it fair to say that your recollection of the
15 evening is not like crystal clear?

16 A Yeah. Pretty -- it's very -- it is not -- you could
17 say that. It's just not clear at all, you know.

18 Q It's understandable since you were using
19 methamphetamine.

20 I will take that from you.

21 So let's pick back up where we were. You're going
22 out, you know, to pick up some money, get some food. Where
23 did you stop?

24 A At the -- there's a big gas station right there on the
25 corner of 176 and 26. We stopped there. I'm not sure what

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 the name of the gas station is, but that's where we stopped
2 at.

3 Q And did you go anywhere else beside the gas station
4 before going back to the house?

5 A We went to my friend's and picked up the money.

6 Q Sure.

7 A And then stopped at the gas station. And then we went
8 back to my house.

9 Q And got some food at the gas station?

10 A Uh-uh.

11 Q So you walked inside the gas station.

12 A Yes.

13 Q Was the gas station a Fuel City perhaps?

14 A Fuel City, yeah. That's what it is.

15 Q And would you have told that information to the
16 police?

17 A I did. I think so.

18 Q And as far as you know does Fuel City have
19 surveillance cameras?

20 A I'm sure they do. It's a pretty large gas place -- a
21 pretty large place.

22 Q And what did you do when you got back from the Fuel
23 City?

24 A I called a friend and had them come over and bring me
25 some meth. And we sat there and smoked it until it was

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 gone. And my girlfriend -- she had laid down and was just
2 about to fall asleep, and I woke up. Chuck and Holly -- I
3 kinda, you know, was falling in and out. And I woke up or
4 started to. I guess I just noticed movement in there. And
5 Chuck and Holly were putting their jackets on about to
6 leave. So I went and let them out the front door, and I
7 locked the door behind them.

8 Q And about what time was that?

9 A It was still dark outside, so it was, I'm going to
10 say, around 5:00 maybe.

11 Q Around 5:00. Do you remember talking to Ms. Drucy
12 Glass sitting back here?

13 A Yes.

14 Q Do you remember whether you told Ms. Glass that they
15 left around 3:30?

16 A I didn't remember it was that early.

17 Q You're sure.

18 A Pretty sure.

19 Q Do you remember giving your deposition in -- let me
20 direct you to page 17. Is it true that in your deposition
21 you state that it could have been between anywhere from
22 like 4:00 and 6:00?

23 A Yes, sir.

24 Q So that's a 2-hour window, right?

25 A Yes, sir.

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 Q Two-and-a-half-hour window as to when they got there
2 and 2-hour window as to when they left.

3 A Yes, sir.

4 Q So only about ten minutes back to Chuck Emery's house
5 or the house where his parents lived?

6 A Yes, sir.

7 Q How did you know that it was between 4:00 and 6:00?

8 A Because I know that -- they've been there for a good
9 while, you know. We hung out and watched T.V. for a little
10 bit, you know. And it had to have been at least that late.

11 I mean, I'd done started falling asleep, and then
12 whenever I went to let them out it was still dark outside.
13 I mean, we had done drove all the way to Springfield. It
14 had to have been at least that time, that late.

15 Q Would it be unusual for you to have fallen asleep
16 after just having used meth?

17 A No. I was so strung out at the time that that's
18 just -- that's pretty much what I did. I'd just stay up
19 until I, you know, fell out.

20 Q Were you using anything else at the time as well in
21 addition to meth?

22 A No, sir.

23 Q And do you remember what time it was you fell asleep?

24 A I'm not exactly sure.

25 Q Do you remember how long you slept?

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 A It wasn't long because, you know, like I say -- it
2 was -- I hadn't fell asleep enough and been asleep long
3 enough to where that just a little bit of movement inside
4 the house of them getting -- putting up -- getting up and
5 putting their jackets on that it woke me up.

6 Q So I want to -- I want to go back to that time when
7 they're there putting jackets on. And these are really
8 important details here.

9 Can you tell me everything that happened from the time
10 they put the jacket on walking through what you do between
11 them putting their jackets on and you going back to sleep?

12 A I just walked them to the front door, and they went
13 out and got in the car and left. I shut the door and
14 locked it, and I come back in and laid down and went to
15 sleep.

16 Q Did you call anybody or do anything else during that
17 time?

18 A No.

19 Q I want to go back to -- take you back a little bit to
20 where you're having to drive around going to Fuel City.

21 A Okay.

22 Q Do you recall whether Chuck Emery ever got a text
23 message from anyone that evening?

24 A Yes. He got a text message. This was just -- we had
25 just left my house whenever he got the text. And he got it

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 from Tony's aunt. And all it said was just call the
2 police.

3 Q Grab that from you real quick. Thanks.

4 said call the police. Did you think that was unusual?

5 A Well, I knowed that they was having a little -- you
6 know, Tony and Chuck had been into a little spat that night
7 or whatever. And with -- with meth heads that's kind of --
8 you know, that's kinda just -- I don't know how to put it
9 really. We called it wiggling or tweaking, you know. And I
10 just kind of thought that, you know, they was messing with
11 Chuck. So I told him just, you know -- just to let it be.
12 I mean, I didn't think nothing of it, and it was nothing
13 serious or anything. So we just kind of blowed it off when
14 it happened.

15 Q Was Chuck agitated that evening?

16 A He was when he got -- when he first got to my house.

17 Q Was -- when Chuck got that text message, where were
18 you in relation to him?

19 A I was sitting in the back seat beside him.

20 Q And was he -- was he calling people at that time?

21 A I don't think he was calling nobody, but he just -- he
22 got the text message, and he was like, look, man, you know.
23 He got a little bent out of shape about it and showed it to
24 me. But I don't think that -- which I can't say for sure
25 though, you know, that he wasn't calling anybody.

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 Q Would it surprise you if Chuck's cell phone records
2 reveal that he had called someone at the Hughey residence
3 three minutes before he got the text message?

4 A I don't know.

5 Q You don't remember if he was making a whole bunch of
6 phone calls?

7 A I wasn't really paying him a whole lot of attention,
8 which it's been so long ago though I can't, you know.

9 Q Do you remember what time you told the police that
10 Chuck and Holly left your house?

11 A I'm not exactly sure. I mean, I would assume it'd be
12 somewhere around the same thing I'm telling you.

13 MR. SCHOEN: Can we put the statement that previously
14 was shown Mr. Biggerstaff up?

15 (Pause.)

16 Q Would it be accurate to say that you told him it was
17 5:00 a.m.?

18 A Yes, sir.

19 Q We've been over there before when you gave your
20 deposition. You said it was somewhere between 4:00 and
21 6:00.

22 A Uh-huh.

23 Q I also want to draw your attention to one other
24 statement in that statement you made at the top.

25 A Okay.

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 MR. ZELENKA: Your Honor, I have an objection.

2 The document they have up is not in evidence. We
3 don't have any objection to them putting it in evidence,
4 but we think it's not appropriate for them to --

5 MR. SCHOEN: I am happy to put it in evidence.

6 THE COURT: Okay.

7 MR. ZELENKA: We think it's not for them to ask
8 questions like that since it isn't currently in evidence.

9 MR. SCHOEN: These are documents that are from defense
10 counsel. They're the police statements, but they're from
11 defense counsel's file. Bates numbers are CA00175 and
12 CA00176.

13 MR. ZELENKA: No objection.

14 MR. SCHOEN: Submitted as Exhibit 9.

15 THE COURT: It's admitted.

16 (Voluntary statement of Kevin Biggerstaff dated May
17 16, 2007, marked Applicant's Exhibit No. 9.)

18 THE COURT: You may continue.

19 Q I want to draw your attention to this statement here.
20 "We've got drinks and some food."

21 THE COURT: Excuse me. Do you want to give the
22 witness that statement so he can see it?

23 MR. SCHOEN: Yes, Your Honor. I apologize.

24 Q Draw your attention to the sentence that says, "We've
25 got drinks and some food and headed back to my house to

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 hang out for a while." At about 2:34 a.m. he got a text
2 message from Tammy. It was at about 2:34 a.m.

3 A See, all of that was still pretty fresh in my mind
4 whenever I gave them that. I remember when -- I remember
5 whenever he showed me the text message that it was 2:30.
6 That's why I had it. That's why it said -- that's why I
7 put 2:34, because it was 2:34 whenever.

8 Q Pretty exact number.

9 A Yeah.

10 Q And you gave this statement, let's see, on May 19th.

11 A Yes, sir.

12 Q That was well over a week after the events, and you'd
13 been on meth.

14 A Uh-huh.

15 Q But you could still remember that that text message
16 was sent at about 2:34.

17 A Uh-huh.

18 Q Did the police show you the text messages before you
19 gave them the statement?

20 A No.

21 Q Did Chuck Emery show you the text messages right
22 before you went to talk to the police?

23 A He showed me the text message whenever we were -- we
24 were going up the road, and whenever it come through he
25 showed it to me.

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 Q And that was the last time that you saw it.

2 A That was the last time that I seen it.

3 Q I want to talk to you about the next time you talked
4 to Chuck Emery. So he walks out of your house, gets in
5 this car with Holly. And then what do you do?

6 A I went and got in the bed.

7 Q And when was the next time you talked to Chuck Emery?

8 A He called me the next morning, or I guess it was that
9 same morning. I'm not sure what time it was, but he called
10 me and was flipping out, you know, told me that somebody
11 had killed his mom and dad. And that's when I talked to
12 Detective Lindsey over the phone and, you know, verified
13 that Chuck was at my house, you know, when all of that was
14 going on.

15 Q And did Detective Lindsey ask you about a specific
16 timeframe?

17 A I can't recall for sure, but more than likely, I
18 think, you know. He asked me what time he had got there
19 and what time he left.

20 Q And when you answered what time he got there did you
21 say 11:00 or did you say 12:00 or did you say 1:30?

22 A I can't remember.

23 Q And when he asked you what time he left did you say
24 4:00 or did you say 5:00 or did you say 6:00, or what time?

25 A I can't remember.

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 Q You just told them that he had been with you at some
2 point.

3 A I mean, I told him the truth. Know what I'm saying?
4 I wouldn't try to lie for anybody or cover anything up for
5 anybody. I told him the truth as best as I could recollect
6 it.

7 Q And did you tell him that he had been with you at the
8 time of the murders?

9 A I told him that he had been with -- I didn't even --
10 see, I didn't know what time that they happened, but I told
11 him, you know, what time he had been with me and what time
12 that he left.

13 MR. SCHOEN: Court's indulgence for one moment.

14 (Pause.)

15 Q All right. One last set of questions,
16 Mr. Biggerstaff.

17 At any time were you contacted by defense counsel for
18 Mr. Torres?

19 A Not that I know of.

20 Q At any time were you contacted by the prosecution in
21 this case?

22 A Yes, I was.

23 Q And when was that?

24 A I'm not exactly sure of the date, but I want to say it
25 was after -- it was after I got out of prison in '08.

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 Q And what -- who did you meet with from the solicitor's
2 office?

3 A Solicitor Gowdy. And there was a couple of females
4 with him. I'm not sure who they were, but there's two or
5 three other females that was in there in the office with
6 us.

7 Q Can you tell us about the conversation you had with
8 him?

9 A Yeah. He -- he just asked me, you know -- he --
10 whenever I went in he had some pictures of a phone laying
11 busted in Ray and Ann's front yard. Asked me if I knowed
12 whose phone it was. And I recognized the phone as Tony's
13 phone, and I told him. And we sat there and talked for a
14 minute.

15 He made the remark to me that he didn't care anything
16 about the drugs, you know, that he knowed what was going on
17 with the drugs and all but if I fucked up his murder -- his
18 murder case that he was going to come for me.

19 Q Do you know what he meant by if you fucked up his
20 murder case?

21 A I guess if -- I took it as, you know, if I didn't tell
22 him what he was wanting to know or if I beat around the
23 bush with him, you know, that he was going to in some way
24 try to get at me.

25 Q what -- if you know, what was it that he was asking?

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 what did he want to know?

2 A He really wasn't asking a whole lot because he was
3 pretty much a hundred percent set that, you know, he had
4 his guy and, you know, that was it. I mean, Tony was the
5 monster that done it. And, I mean, that was just pretty
6 much how I took it, you know, everything that he was
7 telling me.

8 Q Did he make any statements about whether he wanted you
9 to testify?

10 A He said that he may need me to testify, and then,
11 again, he may not, but he would try to keep me out of it.

12 Q Let's -- let's talk about what happened after May the
13 11th of 2007. Did you continue to hang out with Chuck?

14 A Yes.

15 Q And can you tell us a little bit about his behavior
16 following the night of May 11th of 2007?

17 A He started acting real strange -- real, real strange.
18 And I don't think I was the only one that noticed it. Me
19 and my girlfriend had done talked about it several times.

20 It had even got so bad that I'd even said something to
21 my parents about it, you know, I mean, just the way -- like
22 on one particular night he had stayed -- he'd babysitted
23 the kids for me and my girlfriend while I went to
24 Greenville to get some dope.

25 And I was on my way back, and Holly called me and told

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 me not to go home, that Chuck had the police there trying
2 to get them to search my house, said that he had found a
3 hammer in there. And it was just a new ball peen hammer
4 that I'd bought from Advance Auto Parts. And it had red
5 paint on it.

6 And he knowed that I was -- that I had a pistol in the
7 car and a large amount of methamphetamine in the car. But
8 he had the police there trying to get them to search my
9 house because he thought that he had found the hammer that
10 had killed his parents in my house.

11 You know, it just -- he got real -- really, really,
12 really strange after all of this happened.

13 Q You had -- do you know why Mr. Emery would suggest
14 that you killed his parents when he told the police that
15 you were the one who was with him on the night?

16 A I have no clue. I mean, his behavior just got really
17 strange.

18 Q Let's talk about his financial situation following
19 this. What -- how did the death of Ray and Ann Emery
20 appear to affect Chuck's financial standing?

21 A Well, he seemed to have done pretty good from it, you
22 know, the last time I seen him before I got locked up. I
23 mean, he got a house. He had a 4-wheeler, motorcycle,
24 Camaro, truck, always had money. So he done pretty good
25 off it some way, somehow.

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 Q Plenty of money for methamphetamine at that point?

2 A Yes.

3 Q Did he need to babysit your stepkids any more?

4 A No.

5 Q Where did Chuck live after his parents passed?

6 A I think he was staying with Holly after they passed.

7 Q At any point did you become aware that he started
8 living in the Emerys' house?

9 A After I come home from prison the next time, whenever
10 I come home he was living in their house.

11 Q What was he doing in the house?

12 A Well, whenever I first went over there I was just
13 going over there buying nerve pills from him. And he had a
14 girl and two kids that were staying there with him. And
15 then a little bit later on he'd got to where he was cooking
16 methamphetamine, shake and bake methamphetamine, shaking it
17 in a bottle. He was cooking methamphetamine at Ray and
18 Ann's house.

19 Q Did -- do you ever recall a time when Chuck was using
20 his parents' credit cards?

21 A I do.

22 Q Tell us about that.

23 A All right. Right after Ray and Ann were killed he had
24 come to my house -- him and Holly -- and he wanted a ride
25 to Wal-Mart. So I was waiting on some people to come by

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 the house, so I got my girlfriend to take them to wal-Mart.

2 well, she took them to wal-Mart, and they come back.

3 And he had went in there and bought a welder. well,

4 whenever he went to pay for it my girlfriend was standing

5 beside him at the check-out line, and she noticed that the

6 credit card that he had had Ray's name on it.

7 she come back home. And when she told me she was kind

8 of freaking out because we'd already been, you know,

9 watching Chuck's behavior, you know, just way he was acting

10 and the way he'd started acting and the things that were

11 going on. So it freaked her out a little bit that he had

12 their credit card.

13 So when she told me about it I talked to my mom about

14 it. And she told me I needed to let the police know. So I

15 called Detective Lindsey and I told him. He told me

16 something supposedly it was his grandma's credit card or

17 something or another and that had all been settled. Or I

18 don't know.

19 Q As far as you know no further --

20 A Nothing else ever came of it.

21 Q -- charges were brought against Chuck.

22 I want to ask you again about the cell phone that you

23 were using at the time, and I'm going to show you a report

24 to refresh your recollection.

25 MR. SCHOEN: I'd be happy to put this into evidence if

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 you would prefer.

2 Q But I'm going to show you a report that is a document
3 that is an investigative report and see. I'm going to let
4 you read it and see if it refreshes your recollection as to
5 your cell phone number.

6 A Okay.

7 MR. SCHOEN: Without an objection, applicant offers
8 investigative report of Investigator Lindsey. This
9 document is taken from defense counsel's file, bate stamped
10 No. CA00419 through CA00420.

11 THE COURT: It's admitted.

12 (Investigative report of Allen Wood dated May 13,
13 2007, marked Applicant's Exhibit No. 10.)

14 Q Mr. Biggerstaff, I'm going to hand you a copy of
15 what's just been admitted as Applicant's Exhibit 10. If
16 you'll review that, in particular if you'll look at the
17 sentence that starts, "I spoke with Kevin by phone."

18 A Okay.

19 Q Do you recognize the cell phone number there?

20 A I guess that would be mine. Like I said, I don't
21 exactly remember it, you know, but if that's the number
22 that he says he spoke to me at, then that would have been
23 my phone number.

24 Q And what's that number again?

25 A [REDACTED] 616.

Kevin Biggerstaff
Direct examination by Mr. Schoen

1 Q Mr. Biggerstaff, can you -- would it surprise you to
2 know that Chuck Emery's cell phone records show a call to
3 that number at 5:04 in the morning on May 11th?

4 A At 5:04 in the morning?

5 Q Yes, sir.

6 A I'd say it really wouldn't surprise me. I mean, you
7 know, it's possible.

8 Q But you stated in your statement previously that you
9 let them out the door and they went in the car and that was
10 the last time you talked to them until 11:00 a.m.

11 A I don't remember talking to him after he left my house
12 until...

13 Q Would it surprise you to learn that ten minutes after
14 that telephone call to you was the first time the phone
15 call was made from Ann Emery's cell phone? And that was
16 stipulated at trial, that that phone call was made by
17 Mr. Torres.

18 A Until after he called me ten minutes later the phone
19 call was made from Anna's [sic].

20 Q I presume he wasn't calling you from inside your house
21 when he was sitting right next to you.

22 A No.

23 Q And if defense counsel had presented this information
24 to you at trial would you have been comfortable serving as
25 Chuck's alibi witness in light of that information?

Kevin Biggerstaff
Cross-examination by Mr. Zelenka

1 A No.

2 MR. SCHOEN: No further questions for this witness at
3 this time.

4 I'd like to offer the deposition of Christopher Kevin
5 Biggerstaff as we did previously.

6 MR. ZELENKA: Same objection.

7 THE COURT: Sustained.

8 Do you have any other questions you'd like to ask him
9 that were included in the deposition?

10 MR. SCHOEN: No further questions at this time.

11 THE COURT: Okay.

12 MR. SCHOEN: Can we mark it as a court's exhibit?

13 THE COURT: You may.

14 MR. SCHOEN: Let the record reflect that we're handing
15 up the deposition of Christopher Kevin Biggerstaff to be
16 marked as Court's Exhibit 3.

17 (Deposition of Christopher Kevin Biggerstaff dated
18 February 21, 2014, marked Court's Exhibit No. 3.)

19 CROSS-EXAMINATION

20 BY MR. ZELENKA

21 Q Mr. Biggerstaff, how are you today?

22 A I am fine. And you?

23 Q Good.

24 Did you have the opportunity to review your statement
25 that you gave to the police on -- which is Applicant's

Kevin Biggerstaff
Cross-examination by Mr. Zelenka

1 Exhibit 9?

2 A Yes, sir.

3 Q Is that statement consistent with your recollection?

4 A Yes, sir, to the best my knowledge.

5 Q And in that statement you stated they arrived at
6 1:30 in the morning.

7 A Uh-huh.

8 Q Is that consistent with what you're trying to say here
9 today?

10 A It says at about 1:30. Like I say, I can't say for
11 sure what time it was, but around about.

12 Q Okay. And how long did you say that they stayed there
13 that day?

14 A About three and a half or four hours, till around
15 5:00 in the morning.

16 Q And with respect to what you did during that time
17 period, how long did they stay at the house after they
18 arrived somewhere around 1:30?

19 A Well, like I say, we left and we went to Springfield,
20 and then we come back and sat around, you know. Two hours
21 or so.

22 Q Okay. And Springfield was to go to what you refer to
23 as Dog's house?

24 A Yes.

25 Q And what was the purpose in going to Dog's house at

Kevin Biggerstaff
Cross-examination by Mr. Zelenka

1 that time?

2 A He owed me some money.

3 Q Okay.

4 A I got them to take me to pick up the money that he
5 owed me.

6 Q Okay. And during that trip to Dog's house you stopped
7 at Fuel City?

8 A Yes, sir.

9 Q And what was the reason to stop at Fuel City?

10 A We got food and drinks.

11 Q Did you -- go ahead.

12 A Just food and drinks.

13 Q Did you eat there or did you take it with you?

14 A No. We took it with us.

15 Q And then you returned back to your house?

16 A Yes, sir.

17 Q And what did you do after that 20-minute trip when you
18 came back to your house?

19 A Called a friend of mine. He came over and brought me
20 some -- brought us some methamphetamines. And we smoked
21 methamphetamines until it was gone, and then they left.

22 Q Okay. Do you recall what time the meth got to your
23 place, how long you were waiting?

24 A I'm not sure.

25 Q Just couldn't tell --

Kevin Biggerstaff
Cross-examination by Mr. Zelenka

1 A No, sir.

2 Q -- right now? Now, during your testimony you stated
3 that around 2:30 while you were out on the road you got the
4 text from Jessica -- excuse me -- Tammy Hughey?

5 A Yes, sir.

6 Q According to the information that you saw on Chuck's
7 telephone?

8 A Uh-huh.

9 Q And that information said to call the police.

10 A Yes, sir.

11 Q And what was Chuck's reaction to that message at that
12 time?

13 A He kind of freaked out a little bit, you know, like --
14 like they were messing with him or something. And that's
15 kinda what I took it as. So I told him, you know, just to
16 kinda let it go, just blow it off or whatever, that I
17 didn't know -- which I don't really -- still don't know the
18 purpose of the text message. But I didn't -- at the time I
19 didn't think that it was nothing, you know, of what was
20 really going on.

21 Q Okay. And during that time did Chuck tell you about
22 the incident that he and Holly had earlier that night with
23 Tony Torres?

24 A Yes.

25 Q And did that incident involve Tony Torres striking

Kevin Biggerstaff
Cross-examination by Mr. Zelenka

1 Holly in the face, do you recall?

2 A I don't know. I know -- I thought -- I was wanting to
3 think that they said that whenever they got to my house --
4 I know Holly had a red mark on her leg, and I think she was
5 saying that Tony had closed the car door on her leg or
6 something.

7 Q Closed the car door on her leg?

8 A Yeah.

9 Q Okay. Was there any discussion that morning that
10 Chuck had hit Holly in the face during that incident?

11 A I don't think so.

12 Q Okay. Now, during your deposition you testified that
13 Chuck did not have a pattern of behavior that brought him
14 into conflict with others, is that correct?

15 A I hadn't never really seen him fight a whole lot, you
16 know, maybe once or twice but...

17 Q Okay. We're talking about Chuck now, right?

18 A Right.

19 Q And how long had you been friends with Chuck?

20 A About 17 years.

21 Q Okay.

22 A Maybe 18.

23 Q And are you saying that based upon that 17-year
24 experience with him you did not find him to be a violent
25 person?

Kevin Biggerstaff
Cross-examination by Mr. Zelenka

1 A I'm not going to say that -- I've seen him -- I've
2 seen him be violent, but it wasn't like he was real easily,
3 you know, fired off or anything. But I have seen him be --
4 be violent, you know, on a couple of occasions.

5 Q Okay. And when were those occasions? Were they --

6 A We were drinking one time, and I seen him jump on this
7 guy that lived down the street from him. And then I seen
8 him jump on his girlfriend one time while we were drinking.

9 Q And that was Holly?

10 A No. It was Ashley.

11 Q Okay. The time he jumped on the guy you were present.

12 A Uh-huh.

13 Q Was he provoked?

14 A I think they had some kind of beef going on before,
15 but me and Chuck actually got in the car and went to the
16 guy's house. And Chuck got out and jumped on him in his
17 yard.

18 Q Now, the beef you understood that he had with Tony
19 that night, that involved use of a cell phone, money that
20 was taken from Tony, is that correct?

21 A They was telling me that it was over a cell phone
22 charger, is what they were saying when they got to my
23 house.

24 Q A cell phone charger?

25 A Right.

Kevin Biggerstaff
Cross-examination by Mr. Zelenka

1 Q Suggesting that Chuck had taken Tony's cell phone
2 charger? Is that your understanding?

3 A Something like that.

4 Q And Tony was upset about that?

5 A Yes.

6 Q Okay. And then it led to the confrontations.

7 Did you hear from Chuck that night that Tony had
8 threatened Chuck and his family, do you recall?

9 A I didn't really know that he had threatened his
10 family.

11 Q Okay. Did you hear that Chuck had threatened Tony's
12 family in your discussions that night?

13 A No.

14 Q Okay. Now, in your deposition you testified -- I
15 believe it's before you were given a copy of your
16 statement -- that they left your house between 4:00 and
17 6:00 in the morning.

18 A Right.

19 Q And that was the deposition that was done this past
20 February, correct?

21 A Right.

22 Q And in your statement that you gave May 19th of 2007
23 you said around 5:00 o'clock, correct?

24 A Right.

25 Q And there was evidence presented here or suggested

Kevin Biggerstaff
Cross-examination by Mr. Zelenka

1 here -- excuse me -- by current counsel that after
2 5:00 o'clock there was a phone call that came to your house
3 from Chuck's cell phone, correct?

4 A Right.

5 Q And that would have been possibly consistent with your
6 March 19th statement after they had left your house,
7 correct?

8 A Yes, sir.

9 Q And that subsequent to that time Mr. Torres may have
10 made a telephone call from Ann Emery's cell phone, correct?

11 A Yes.

12 Q And Mr. Torres' cell phone you identified as being
13 back at -- on the ground essentially at out near the Emery
14 house, correct?

15 A Right.

16 Q In your deposition you testified that Chuck had never
17 made any mention to you about having an inheritance,
18 getting life insurance or that the Emery house needed some
19 repairs that Ann was preventing occurring, isn't that
20 correct?

21 A Right.

22 Q Yet today you're also testifying that after the deaths
23 he ended up getting control of the house, correct?

24 A Right.

25 Q Is that unusual that a son would get control of a

Kevin Biggerstaff
Cross-examination by Mr. Zelenka

1 parents' house after they die?

2 A I don't guess so.

3 Q He also had a 4-wheeler, is that correct? Did he buy
4 a new 4-wheeler?

5 A He had a brand new 4-wheeler, a brand new street bike.
6 I guess he bought it somehow.

7 Q Okay.

8 A I don't think he was working at the time.

9 Q Did you ask him?

10 A No.

11 Q why didn't you ask him?

12 A I mean, I didn't figure it was none of my business, I
13 mean.

14 Q Okay. In your discussions with Mr. Chuck Emery did he
15 ever discuss with you his belief that Mr. Torres had
16 committed the crime after his parents were found to have
17 been -- after his father and stepmother were found to be
18 dead?

19 A Yeah.

20 Q Did he seem to have a belief expressed to you that
21 Mr. Torres did the crime?

22 A Yeah.

23 Q Is that what upset you and caused you to be even a
24 little more confused when the hammer incident occurred
25 later?

Kevin Biggerstaff
Cross-examination by Mr. Zelenka

1 A At the time that all of that happened -- well,
2 whenever it first happened I was pretty -- I was a hundred
3 percent positive, you know, that Chuck had nothing to do
4 with it, it was all Tony.

5 And then as his behavior started changing, and then
6 the hammer incident, and then I started hearing all of
7 these stories and stuff, it kind of made me wonder, you
8 know, does he have something to do with it. And I even
9 kind of, you know, veered away from him a little bit.

10 Q Okay. You started hearing stories from the Hugheys,
11 from Jessica Hughey, from --

12 A Just all of our friends, you know, just stuff that was
13 being said, which none of it may not have amounted to
14 anything but...

15 Q But he never told you he was involved, correct?

16 A No, no.

17 Q And your recollection and your belief was that he was
18 at your home during the time period the police thought the
19 crime occurred, correct?

20 A Yes.

21 Q And you got no reason to disbelieve that, did you?

22 A No.

23 Q And you weren't led by the police to that timeframe
24 when they called you the morning after the shooting.

25 A No, because, I mean, I knowed those two people well,

Kevin Biggerstaff
Cross-examination by Mr. Zelenka

1 you know, that were killed. And whether he had -- whether
2 he did it or whether Chuck did it or whoever did it, you
3 know, I wasn't lying for nobody for whatever happened.

4 Q Okay. You made a comment about him wiggling out.
5 Describe what that meant or when that occurred.

6 A Just like the deal with the hammer, he just -- I don't
7 know why he would have been digging through my things, but
8 to know that he was with me the whole time that it happened
9 and then find that hammer, it is just, I mean, it's just a
10 new shiny red -- red and silver hammer and just, you know,
11 to spaz out and think that, you know, that I have the
12 murder weapon in my house.

13 Q Okay. When you met with solicitor Gowdy and two
14 females that you thought were with the solicitor's office
15 at that time, was that the first meeting you had with a law
16 enforcement side of the case since you gave your statement
17 on May 19th?

18 A Yes.

19 Q Okay. And during that meeting did you discuss with
20 them your recollection of where Chuck was the night of the
21 deaths?

22 A Yes.

23 Q And did you tell solicitor Gowdy consistent with what
24 was in your May 19th statement as best you recall?

25 A Yes.

Kevin Biggerstaff
Cross-examination by Mr. Zelenka

1 Q Did solicitor Gowdy offer you any assistance in any
2 way for any pending charges or past charges?

3 A No, sir.

4 Q Did the other women in the room make any similar
5 offers to you?

6 A No, sir.

7 Q At that time did you express to him anything about the
8 hammer incident that occurred at your apartment if you
9 recall?

10 A I don't -- I don't really recall. I don't know if it
11 had happened at that time or not yet, but if it had I'm
12 sure that I told him about it, which I don't know though
13 it's been so long ago.

14 Q Okay. You made a statement during your deposition
15 that before the deaths of the Emerys you didn't have an
16 opinion that Chuck had financial problems, that he was
17 always having nice things all of the time he was growing
18 up, is that correct?

19 A Yes, sir.

20 Q And is it safe to imply from that his father was kind
21 towards him and provided him many of these things
22 throughout his life --

23 A Yes.

24 Q -- up until the time of Ray Emery's death?

25 A Yes.

Kevin Biggerstaff
Cross-examination by Mr. Zelenka

1 Q Did Chuck ever express any desire to do violence
2 towards his father or stepmother?

3 A No, sir.

4 Q Did he ever suggest to you or make any statements to
5 you that he should -- that he was glad the violence
6 occurred to either of those family members?

7 A No, sir.

8 Q Did he appear to be upset about their deaths through
9 your relationship with him?

10 A Yes, sir.

11 Q What's your relationship with Roger Kirby?

12 A He's just a friend that I met through Chuck and Tony.
13 You know, he lived right there in the area.

14 Q Okay.

15 MR. ZELENKA: Court's indulgence.

16 (Pause.)

17 Q Just a couple of final questions.

18 When you learned of Chuck's possession of the credit
19 cards you shared that with your mother, correct?

20 A Right.

21 Q And based upon those conversations you didn't hesitate
22 to call law enforcement about what you saw going on,
23 correct?

24 A Right.

25 Q And what was the reason for that even though he was

Kevin Biggerstaff
Redirect examination by Mr. Schoen

1 your friend?

2 A Because, I mean, don't get me wrong. I've done my
3 fair share of things that, you know, like maybe I shouldn't
4 have done. But I just felt like, you know, what happened
5 to them two people, no matter how much wrong I've done,
6 that wasn't right. Whoever did it was wrong.

7 Q Okay. But the credit cards specifically, why did you
8 feel like you had to call in the use of the credit cards
9 that Chuck had of his father?

10 A Because they'd just been killed, you know, and it
11 just -- it was strange to me why, you know, why has he got
12 these credit cards after this has just happened.

13 Q Okay.

14 MR. ZELENKA: No further questions.

15 REDIRECT EXAMINATION

16 BY MR. SCHOEN

17 Q Mr. Biggerstaff, opposing counsel asked you a
18 question, and you referred to the period during which the
19 police thought that the Emerys were killed.

20 Did the police ever tell you what period they believe
21 the Emerys were killed?

22 A No, sir.

23 MR. SCHOEN: I'd like to mark for identification
24 purposes the coroner's investigative notes from Spartanburg
25 County for Ann -- Mary Ann Emery and Charles Ray Emery.

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1 Mary Ann Emery is bate stamp No. CA00461 through CA00463.

2 Charles Ray Emery is CA13028 through CA13031.

3 MR. ZELENKA: Okay. And you got those out of defense
4 counsel's file. So I have no objection to them being
5 introduced into evidence.

6 THE COURT: They're admitted.

7 MR. SCHOEN: We would -- we would move these documents
8 into evidence.

9 THE COURT: They're admitted.

10 (Coroner's investigative notes dated May 11, 2007,
11 marked Applicant's Exhibit No. 11; coroner's investigative
12 notes dated May 11, 2007, marked Applicant's Exhibit No.
13 12.)

14 Q Mr. Biggerstaff, this is the coroner's -- these are
15 the coroner's investigative notes for Mary Ann Emery -- Ann
16 Emery -- the woman who was killed.

17 And I'd like to draw your attention to the time of
18 injury that's listed. It lists the time of injury from
19 12:00 a.m. to 9:30 a.m. on the morning of May 11 of 2007.

20 Now, you testified that there was a range, and you
21 weren't exactly certain about what time Chuck was with you.

22 A Yes, sir.

23 Q But you can be very certain you were not -- Chuck was
24 not with you from 12:00 at night until 9:30 in the morning.

25 A No.

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1 Q Chuck was not with you from 9:00 at night until
2 6:30 in the morning. From 12:00. I'm sorry. From 12:00
3 at night until 6:30 in the morning.

4 A Right.

5 Q You're confident about that. And so you were never
6 given a time when the police -- the police never told you
7 this is when we think they were killed.

8 A No.

9 Q The defense counsel also asked you -- took you back to
10 that 1:30 time and asked you, you know, how long Chuck was
11 with you after that. And your answer was three and a half
12 or four hours.

13 So if we move 1:30 up three and a half hours, 5:00 in
14 the morning? If we move it up four hours it's 5:30 in the
15 morning. But if we move the time when they met up with you
16 back to 11:00 o'clock, which is the earliest time you
17 listed in your deposition, that brings it back, what, two
18 and a half hours earlier?

19 A Right.

20 Q And that would make it, what, 3:00 in the morning when
21 they left, 3:30 in the morning?

22 A Right.

23 Q Would it surprise you if the cell phone records for
24 Chuck Emery show that he made 107 -- either made or
25 received 107 phone calls between 10:30 on the night of May

Kevin Biggerstaff
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1 10th and 5:00 in the morning when he called you on the
2 morning of May 11th, but that between 3:39 and when he
3 called you there was a whole hour and 20 minutes when there
4 was no activity on his phone?

5 A That's strange.

6 Q And if defense counsel had presented that evidence to
7 you at trial would you have been comfortable with the
8 testimony that Chuck Emery was with you at the time when
9 the murders were committed?

10 A No.

11 Q Defense counsel or state's counsel asked you about
12 whether Chuck ever told you that he needed money, and you
13 said that he hadn't said that.

14 A No.

15 Q Can you tell us whether Chuck ever tried to sell you
16 speakers out of his car in return for methamphetamine?

17 A I bought, you know, a few things from Chuck for
18 methamphetamine.

19 Q Is it the normal behavior of a grieving son to go out
20 and use his father's credit card when his father just died?

21 A No. That was -- that was just -- that was strange to
22 me, I'd say.

23 MR. SCHOEN: No further questions.

24 THE COURT: You may step down.

25 MR. SCHOEN: Your Honor, we would ask the witness be

1 excused.

2 MR. ZELENKA: No objection.

3 THE COURT: He may be.

4 (Whereupon, the witness was excused.)

5 THE COURT: We'll recess for lunch. We'll resume at
6 2:20 -- 2:20 this afternoon.

7 (Whereupon, a recess was taken.)

8 THE COURT: Could I see the lawyers just a minute on a
9 scheduling matter?

10 MR. EHLIES: Yes, sir.

11 (Bench conference held off the record.)

12 MR. SCHOEN: When I was cross-examining -- or when I
13 was examining Mr. Biggerstaff and the state was
14 cross-examining him, I referenced one document, the date.
15 I misread the date. I read it as --

16 THE COURT: You said the 16th. You said the 19th and
17 it was the 16th?

18 MR. SCHOEN: Yes, sir. We wanted to just note that
19 for the record.

20 MR. ZELENKA: And I did the same thing. We were
21 looking at the same document. So it doesn't become
22 confusing...

23 THE COURT: The document reflects the 16th.

24 MR. ZELENKA: Thank you, Your Honor.

25 THE COURT: Okay.

1 MR. EHLIES: Judge, I have reviewed the circumstances
2 of the case at this point, and we are not going to be
3 calling Officer Allen Wood.

4 THE COURT: Okay.

5 MR. EHLIES: That ends it for us today.

6 We were going through the custody people and Allen
7 Wood. I think they agreed they were going to do some
8 written questions for H. Wayne Tobin, M.D., and today's --
9 that was the plan for today, and we now have completed
10 that.

11 THE COURT: Okay. This witness list that y'all
12 provided, is that an exhaustive list?

13 MR. EHLIES: That's a -- we had two reservations that
14 we've not been able to locate, but we did find them. It'd
15 be Jennifer King and Marshall Wink. But they would not be
16 hanging up any time next week. I think next week we'll do
17 the trial lawyers and the experts.

18 THE COURT: How about, do you have another list for
19 next week?

20 MR. TESSIER: I can produce one for you, Your Honor.
21 It's all the expert names basically.

22 THE COURT: Please. How many, do you know? Do you
23 have --

24 MR. EHLIES: We have five. I can give you the names.

25 MR. TESSIER: I can write them down.

1 THE COURT: Okay. Just put them on here.

2 MR. TESSIER: Three trial lawyers.

3 MR. EHLIES: And Dr. Wren.

4 MR. ZELENKA: If they're calling the trial lawyers,
5 the only ones we would anticipate calling would be Barry
6 Barnette, and Trey Gowdy possibly.

7 MR. TESSIER: I'm sorry.

8 MR. EHLIES: Make sure Dr. Wren is on there, medical
9 doctor. That's one N -- W-R-E-N. John David Wren, I
10 think.

11 THE COURT: Yeah.

12 MR. ZELENKA: Maybe Cindy Crick.

13 (Bench conference held off the record.)

14 THE COURT: Okay. If nothing further, we are in
15 recess until Monday at 2:00 o'clock.

16 MR. TESSIER: Your Honor, is there any difficulty at
17 all with leaving our equipment here on the weekend? We're
18 going to be back here.

19 THE COURT: Not as far as I am concerned. We will
20 lock it up.

21 END OF PROCEEDINGS APRIL 16, 2014

22

23

24

25

Dr. Jack M. Rary
Direct examination by Mr. Tessier

1 (Proceedings April 21, 2014)

2 THE COURT: Mr. Ehliès, that witness that y'all are
3 looking for apparently is in jail under the name of
4 Mondenato [sic].

5 MR. EHLIES: Your Honor, I'm glad you had found her,
6 Judge.

7 THE COURT: Montdenato.

8 MR. EHLIES: And I do thank you. I understand that
9 they have made arrangements to get her here. That's who we
10 are after.

11 THE COURT: They might be bringing Montdenato.

12 MR. EHLIES: Well, we'll just have -- thank you.

13 THE COURT: Okay. Are we ready to proceed?

14 MR. EHLIES: Yes, sir.

15 MR. TESSIER: Your Honor, at this time the applicant
16 calls Dr. Jack Rary.

17 DR. JACK M. RARY, having been
18 first duly sworn, testified as follows:

19 THE COURT: That black microphone is the one you'll be
20 using, so be careful with it.

21 MR. TESSIER: Thank you, Your Honor.

22 DIRECT EXAMINATION BY MR. TESSIER

23 Q Good afternoon, Dr. Rary.

24 Please let me know if I need to speak up or you can't
25 hear.

Dr. Jack M. Rary
Direct examination by Mr. Tessier

1 A It's okay right now.

2 Q Okay.

3 A Yeah.

4 Q And would you just go ahead and tell us your full name
5 for the record?

6 A My name is Jack M. Rary, R-A-R-Y.

7 Q And where are you currently employed?

8 A East Tennessee State University Department of
9 Pediatrics.

10 MR. TESSIER: Let me ask if I can approach the
11 witness, Your Honor.

12 THE COURT: You may.

13 (Curriculum vitae of Dr. Jack M. Rary marked
14 Applicant's Exhibit No. 13 for Identification.)

15 Q Dr. Rary, I'm going to show you what's been marked as
16 Applicant's Exhibit No. 13. Is this a copy of your C.V.?

17 A That's correct, yes.

18 Q And other than some more recent publications is this an
19 accurate description of your educational history and
20 publications?

21 A That's -- that's correct. I haven't added publications
22 to it in a couple of years or longer.

23 Q Okay. Tell us if you would some -- let's go over your
24 educational background if we could.

25 where did you get your undergraduate degree?

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- 1 A Graduate school?
- 2 Q No. I want to start you back at college.
- 3 A Oh, in college. Okay. Basically, I started out in
4 North Carolina at Western Carolina University for a B.S.
5 degree, then to the University of Tennessee for a Ph.D. in
6 medical or in genetics then.
- 7 I eventually ended up at Johns Hopkins University for a
8 postdoctoral training fellowship for two years in medical
9 genetics there.
- 10 Q Okay. So your degrees include a bachelor of science in
11 biology and chemistry?
- 12 A That's right, yes.
- 13 Q Do you also have a master of science in zoology?
- 14 A You're right.
- 15 Q And then a Ph.D. in genetics.
- 16 A Right.
- 17 Q You received your Ph.D. in genetics in 1968?
- 18 A I'm sorry?
- 19 Q Did you receive your Ph.D. in genetics in 1968?
- 20 A That's correct, yeah.
- 21 Q From the -- after the Ph.D. you went on to a
22 postdoctoral program at Johns Hopkins.
- 23 A Right.
- 24 Q What did you do at that postdoctoral fellowship?
- 25 A We were trained in basically what we knew about medical

Dr. Jack M. Rary
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1 genetics. We saw patients routinely every week actually and
2 also trained in some laboratory aspects of medical genetics.

3 Q How would you describe the field of medical genetics
4 back in 1973?

5 A We didn't know a whole lot for sure.

6 Q Would it be fair to say that you are one of the
7 pioneers in the field?

8 A Well, some of my mentors were obviously there long
9 before I was, but certainly I was one of the first people.
10 For example, we were the first -- I think one of four labs
11 in the country even in '74 when we started the laboratory
12 there doing medical genetics.

13 Q Okay. And after you completed your postdoctoral
14 fellowship at Johns Hopkins where did you go to work?

15 A They hired me, and I stayed on the faculty as a faculty
16 member at Johns Hopkins in the department of obstetrics and
17 also a joint appointment in the department of medicine which
18 housed the genetics program.

19 Q And about how long did you work in that role?

20 A I think I was there, what, six years, I guess, five or
21 six years.

22 Q And what did those jobs entail? What -- what
23 responsibilities did you have on a day-to-day basis?

24 A In -- at Johns Hopkins basically I had two
25 responsibilities. We would see some of the patients, and

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1 the other half I would be doing genetic lab work like
2 prenatal work.

3 Q And from that job where did you go next after you left
4 Johns Hopkins University School of Medicine?

5 A I left Hopkins and went to Eastern Virginia Medical
6 School for a purpose, I guess. We started the in vitro
7 fertilization program that we couldn't start in Baltimore.
8 And that's basically why I left Baltimore.

9 Q while -- and just to back up one second, back at Johns
10 Hopkins University did you have an assistant professorship
11 as well?

12 A That's correct, yes.

13 Q And then when you arrived at the Eastern Virginia
14 Medical School did you have a professorship?

15 A They gave me a full professorship there.

16 Q And did you see patients while you worked as a
17 professor at Eastern Virginia Medical School?

18 A Yes, sir.

19 Q So your clinical observation of patients began back at
20 your postdoctoral fellowship and continued on through your
21 time as a professor?

22 A Right.

23 Q And then after your stint with Eastern Virginia Medical
24 School where did you go?

25 A Then I went to East Tennessee State University as a

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1 professor or faculty member in the department of pediatrics.

2 Q And are you --

3 A And director of genetics there.

4 Q So you were the director of genetics at Eastern

5 Tennessee State University since about 1988?

6 A That's right, yes.

7 Q And do you continue in that role today?

8 A Yes.

9 Q And do you continue to be a professor in the department
10 of pediatrics there?

11 A That's right.

12 Q Did you continue to see patients on a clinical basis
13 during your time at Eastern Tennessee State University?

14 A Yes, absolutely. We -- I've been trying to retire for
15 the last three or four years, but we can't find a
16 replacement, so. But up until then I was seeing eight or
17 nine hundred patients a year in the clinic.

18 Q Okay. And would you describe yourself among other
19 things as a clinician?

20 A Yes.

21 Q So part of your work for the past 30 years or more has
22 been to actually see patients in a clinical setting.

23 A That's correct, yes.

24 Q And the purpose of your clinical observation of
25 patients was to in part diagnose genetic conditions in those

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1 patients?

2 A That's right. The -- for example, if we have an
3 abnormal baby in the N.I.C.U. or in the hospital we're
4 called in as a consultant to try to make a diagnosis of what
5 is wrong with the baby in genetic terms.

6 Q And is your experience in the clinical context of
7 observing patients to diagnose genetic disorders in those
8 patients, is it exclusively limited to babies?

9 A No, no. We saw adults, cancer patients, the whole
10 spectrum.

11 Q And do you have an estimate even if it's very rough on
12 the number of patients you have seen in your career to come
13 up with a clinical diagnosis of a genetic disorder in the
14 patient of whatever type -- hundreds, thousands?

15 A That actually made a diagnosis, I can give you perhaps
16 a good percentage. In medical genetics we're lucky if we
17 make a diagnosis on 30 percent or 40 percent, extremely
18 lucky.

19 So it'll be percentage-wise no more than 30 percent I
20 would say that we actually are able to make a diagnosis and
21 say this child or baby has Down syndrome or whatever it
22 might be.

23 Q Okay. And so the number of total patients you have
24 observed in the clinical setting, what would you estimate
25 that to be -- thousands, tens of thousands?

Dr. Jack M. Rary
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1 A Well, if I saw eight or nine hundred a year, whatever
2 that multiplies out to be, 30 percent of that.

3 Q And how would you describe your basic methodology just
4 in general terms? If a patient comes to you and you are
5 trying to diagnosis them clinically with any type of genetic
6 disorder, what is your basic methodology for doing that?

7 A You mean how do I approach --

8 Q Yes.

9 A -- this? It depends on why they are referred and what
10 reason they are referred.

11 If it's a newborn baby in the nursery usually they're
12 referred because of anomalies or failure to thrive or things
13 like that.

14 So I go in and examine the baby as carefully as I can
15 trying to determine if the baby has any what we call
16 dysmorphic features, abnormal features, and then put those
17 features together and see if we can make a diagnosis. And,
18 as I said, sometimes we succeed, sometimes we don't.

19 Q Is the observation of the dysmorphic features in a
20 patient one of the primary methodologies that geneticists
21 use to make a diagnosis of a genetic disorder?

22 A That's right, yeah.

23 Q Are you board certified?

24 A Now we do -- we do go ahead and sometimes order lab
25 tests to confirm our observations but...

Dr. Jack M. Rary
Direct examination by Mr. Tessier

1 Q Okay. But the primary methodology used by clinical
2 geneticists and yourself is to observe the patient in a
3 clinical setting.

4 A That's right.

5 Q And using primarily dis --

6 A what we see, yeah.

7 Q Are you board certified in any area?

8 A Yes, sir.

9 Q what are you board certified in?

10 A I'm -- I'm a founding fellow in the American Board of
11 Medical Genetics. We started that board in 1993.

12 Q You were one of the first fellows on that in that
13 college?

14 A No. I was one of the first people that helped start
15 it, yeah.

16 Q Okay. And you're board certified by that organization?

17 A That's correct.

18 Q what does it take in general terms to become board
19 certified as a medical geneticist?

20 A Today and back then you had to be trained in a
21 postdoctoral fellowship at least for two years and have
22 either an M.D. or Ph.D. degree.

23 Q And are you part of the college that sets the standard
24 for board certification for medical geneticists?

25 A Right.

Dr. Jack M. Rary
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1 Q You have been since 1993?

2 A That's right. The American College of Medical
3 Genetics, that's kind of the criteria for how we practice
4 medicine or genetics.

5 Q And I want to ask you to help us with this because I
6 certainly did not know and the judge may not know. But how
7 would you, Dr. Rary, describe the difference, if any,
8 between a medical geneticist, which is what you are, and a
9 medical doctor?

10 A Okay. If we are practicing medical genetics or
11 genetics or seeing an abnormal baby in the clinic we do the
12 identical thing.

13 Q Whether you're a doctor or a medical --

14 A That's right. We examine the baby, put everything we
15 find together and try to make a diagnosis. So that part is
16 identical.

17 Neither the M.D. nor the Ph.D. medical geneticists or
18 clinical geneticists do anything else. We might order
19 tests, but we would never treat the baby, neither one of us.

20 Q Okay. And so we may get into this a little bit later
21 in your testimony, but effectively what the medical
22 geneticist does or a medical doctor in a genetics context is
23 you observe a patient and try to diagnose any medical or any
24 genetic disorder in that patient.

25 A That's right.

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1 Q And once you do that you then turn the patient over to
2 the care of some sort of treating provider.

3 A Whatever service they need. For example, if we have a
4 baby born with Down syndrome or whatever syndrome that's
5 serious, we tell the patients to get all of the help they
6 can with special school training, if they need psychiatric
7 help, whatever it might be, and refer the patients to those
8 appropriate places.

9 Q And your role as a medical geneticist in terms of
10 treatment really does end after you diagnose the genetic
11 condition.

12 A That's right.

13 Q Now, you understand, Dr. Rary, that I'm here to ask you
14 certain questions about Mr. Tony Torres and his particular
15 genetic condition.

16 A Yes, sir.

17 Q Is it fair to say that your expertise is particularly
18 appropriate in answering that type of question about Mr.
19 Torres?

20 A Yes.

21 MR. TESSIER: Your Honor, at this time we offer Dr.
22 Rary as an expert in the field of medical genetics.

23 MS. TIMMONS: No objection.

24 THE COURT: He is so qualified.

25 MR. TESSIER: And, Your Honor, we would offer as well

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1 a copy of Dr. Rary's C.V., which is Exhibit 13.

2 THE COURT: It's admitted.

3 (Curriculum vitae of Dr. Jack M. Rary marked
4 Applicant's Exhibit No. 13.)

5 Q Dr. Rary, do you have an opinion to a reasonable degree
6 of certainty as a medical geneticist as to whether
7 Mr. Torres suffers from any genetic abnormalities or
8 defects?

9 A Yes, sir.

10 Q And what is your opinion?

11 A I think he has three different conditions. The No. 1
12 thing is Prader-Willi Syndrome.

13 Q Okay.

14 A No. 2 is a hyperprolinemia deficiency; and the No. 3 is
15 a 22q DiGeorge region deletion in the genetic makeup he has.
16 And I'll -- I can explain those further as we go through.

17 Q Yes. And fair enough to say, in general terms would it
18 be fair within the medical community to describe the
19 condition that Mr. Torres has with respect to his DiGeorge
20 region of deletion as 22q11 deletion syndrome as well?

21 A Right, right.

22 Q Do some people refer to it as that?

23 A Yeah.

24 Q And that is a deletion that covers a portion of the
25 DiGeorge critical region gene?

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1 A Right.

2 Q Are both of these or all three of these, the things you
3 just described -- Prader-willi syndrome, the deficiency that
4 causes hyperprolinemia and the 22q11 deletion in the
5 DiGeorge critical region -- are these all genetic defects?

6 A Yes.

7 Q And are they acquired effectively at conception?

8 A They're acquired prior to conception on conceiving. In
9 other words, H gene or abnormal gene is inherited from
10 either the mother or the father or both.

11 Q So in the case of Mr. Torres with the genetic defects
12 that you described, effectively to boil it down, this is the
13 deck of cards he was dealt.

14 A Is it what?

15 Q This would be the deck of cards that he is dealt before
16 he's even born.

17 A That's correct, yes.

18 Q Something like -- another example of a genetic defect
19 would be Down syndrome.

20 A Right.

21 Q Let's talk about the basis of your opinion, Dr. Rary,
22 if we may.

23 The first thing I'll do just to help us is ask you. As
24 I understand it we prepared or you prepared effectively a
25 PowerPoint presentation that will assist you in presenting

Dr. Jack M. Rary
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1 your testimony here today?

2 A Yes.

3 Q Is that right? Okay. And we're going to show that in
4 a minute. Before I get to that I want to show you.

5 (Photographs of the applicant marked Applicant's
6 Exhibit No. 14 for Identification.)

7 MR. TESSIER: Your Honor, may I publish?

8 Q Dr. Rary, I'd like to show you what's been marked as
9 Applicant's Exhibit 14 at the moment. And basically I know
10 the Court is going to see these photographs in the
11 PowerPoint as well, but I want to make sure you identify
12 them for us.

13 Are these photographs of Mr. Torres that you had
14 available to you as you worked on this case?

15 A Yes. These were shown to me, and we proceeded. I
16 think Dr. Lipman showed me these pictures originally asking
17 if I thought this child had any genetic syndrome.

18 Q And if you look through them quickly you will see that
19 there are one, two, three, four -- there are five pages.

20 A Several pictures, yes.

21 Q And they're not all of the photographs that you relied
22 on.

23 A Right.

24 Q There will be some more that I'm going to show you.

25 A Now, I only received some of the children photos

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1 initially.

2 Q Right. Fair to say you relied on these photographs
3 among others as you formed your conclusions in this case?

4 A Well, I didn't form a conclusion on these original
5 photographs.

6 what I told Dr. Lipman was that I was convinced by
7 looking at these pictures that there were enough dysmorphic
8 features. And I'll describe some of these later if you want
9 me to -- the low-set ears, the eye shape and a number of
10 dysmorphic features that I felt comfortable saying this
11 child had a genetic syndrome. But I didn't know what.

12 Q Okay. And in the end now that you've come to the point
13 where you're testifying would you agree that you used all of
14 these photographs and some others in forming your opinions?

15 A That's right.

16 MR. TESSIER: Your Honor, we would offer Exhibit 14
17 into evidence.

18 MS. TIMMONS: No objection.

19 THE COURT: They're admitted.

20 (Photographs of the applicant marked Applicant's
21 Exhibit No. 14.)

22 Q Now, if you would, I'll go ahead and show the first
23 page of your -- I'll retrieve this from you if I may.

24 Flip to the next page actually. This is the PowerPoint
25 presentation we referred to, Dr. Rary, and I'd like you to

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1 just start at the first page of this PowerPoint and help us
2 understand.

3 Basically, when you first observed the photograph, the
4 children's photographs of Mr. Torres, it sounds like you
5 came to believe immediately that there was some genetic
6 disorder involved here, is that correct?

7 A Right, yes.

8 Q And you wanted to explore it further, is that fair?

9 A That's correct.

10 Q So tell us if you would whether or not Prader-Willi
11 syndrome came to mind at that early stage or not. If you
12 were to evaluate someone for Prader-Willi syndrome what are
13 the clinical characteristics you are looking for as a
14 medical geneticist?

15 A Okay. In the early -- in the first pictures I was
16 allowed to look at Prader-Willi didn't come up.

17 Q Okay.

18 A It came up later. When it came up later -- then I can
19 answer your question. There's a whole host of what we call
20 features or dysmorphic behavior or dysmorphic features in
21 general that occur in Prader-Willi starting even prenatally.

22 For example, prenatal, postnatal hypotonia, lack of
23 movement in the babies even prenatally. Early onset
24 obesity. All of these babies with Prader-Willi syndrome end
25 up gaining weight starting usually around two years of age,

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1 and it goes on until some of them actually have the next
2 disorder here, the eating or hyperphagia. Some Prader-Willi
3 patients have actually eaten themselves to death by eating
4 too much and rupturing their gut and getting so obese they
5 die from that.

6 Q So what are the -- one of the characteristics of
7 Prader-Willi patients is they are never satiated. They
8 won't feel full?

9 A Nobruf [sic].

10 Q They don't feel like they're full?

11 A I think that's correct, yeah, yeah.

12 Q So what else do you have in terms of when you're
13 looking at clinical characteristics? What are the types of
14 things you're looking for?

15 A Yeah. Other things that we consider are dysmorphic
16 features, and I'll show you some of those later.

17 Cryptorchidism, one undescended testis. They're in a high
18 percentage of patients with Prader-Willi.

19 Microphallus or small phallus is always there.

20 Behavioral problems of a variety of things are always
21 there in Prader-Willi patients.

22 High pain threshold is one that's there.

23 Essentially all of them have short stature.

24 There's probably a list of 15 or 20 other minor defects
25 or behavioral characteristics that I didn't list here, but

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1 these are the major ones that we see.

2 Q And when you're observing a patient to try to evaluate
3 whether they have Prader-willie syndrome do they -- must the
4 patient exhibit all of these characteristics for you to
5 diagnose them with Prader-willi?

6 A No. That's unfortunately what a syndrome is. In other
7 words, if we go -- I pushed the wrong button. If we go back
8 to this statement here, I should have explained that at the
9 outset before we got to these, what a syndrome is. And a
10 syndrome is a collection of anomalous features or dysmorphic
11 features, different features that occur in a syndrome.

12 For example, Down syndrome which most people are
13 familiar with have probably 30 or 40 dysmorphic features
14 that we can pick up.

15 And we don't require or don't ever see all of those
16 features in any one individual. We may see eight or ten, we
17 may see 15 or 20 in one baby. The next one we may only see
18 one or two. So you have to be careful and diagnose by
19 looking very carefully at whatever in order to get some of
20 these.

21 N.I.H. originally came out with saying that if a child
22 or a baby or an adult had five of these characteristics,
23 then that would be enough to say definitely that he had
24 Prader-willi.

25 Q That was originally.

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1 A That was changed however, because once we did the
2 clinical genetic tests some of them didn't have all of these
3 characteristics.

4 Q So if I understand what you're saying, Dr. Rary, the
5 National Institutes of Health -- is that the N.I.H.?

6 A Yes.

7 Q They had a period of time when they had a list of
8 clinical characteristics that --

9 A That's right.

10 Q -- they were looking for?

11 A That's right.

12 Q And effectively that list was underdiagnosing
13 Prader-Willi.

14 A That's right. And that's what we based our diagnosis
15 on.

16 In other words, we did follow it up until '94, I
17 think -- '93 or '94. We followed the N.I.H. list. If we
18 had four or five characteristics of -- or dysmorphic
19 features. Any combination of these, then that would be
20 enough to say we're satisfied that he has Prader-Willi
21 syndrome.

22 Q And in a normal individual who has no genetic
23 condition, might have some of these features as well.

24 A Absolutely. There's no question about it. I could
25 examine the people in the room and I can guarantee you I'll

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1 find some dysmorphic features even though they don't have --

2 Q We will ask you not to try too hard at the moment.

3 If you would look now, I want to focus you if I can on
4 Mr. Torres in particular -- the photographs, other
5 information you had available and how you sort of worked
6 your way through to the diagnosis of Prader-Willi.

7 But before I do move to the next slide, did you have an
8 opportunity over the course of your work on this case to
9 actually physically examine Mr. Torres?

10 A To examine Mr. Torres?

11 Q Yes.

12 A Yes, yes, sir.

13 I wasn't comfortable making a diagnosis by looking at
14 the pictures, so I did request that I be allowed to examine
15 Mr. Torres completely.

16 Yesterday we went over him from head to toe to confirm
17 what we had seen in the pictures and also confirm some other
18 findings that I was questioning.

19 Q Okay. And so would it be fair to say that when you
20 first saw photographs of Mr. Torres they were those
21 young-child photographs? That's the first photographs you
22 saw for when he was a young child?

23 A Yes.

24 Q And then you asked for more photographs at that point
25 in time.

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1 A That's right.

2 Q And did you feel pretty comfortable early on after you
3 saw the initial round of photographs that you received that
4 he probably had Prader-Willi?

5 A Well, we received two different sets. The first set
6 we've already talked about. No. I wasn't even --

7 Prader-Willi didn't enter into the equation at that point.

8 Once I received the second set, yes, Prader-Willi came
9 up immediately.

10 Q Okay. And then the physical exam was the final piece
11 for you in finalizing what you --

12 A That's right.

13 Q -- confirmed.

14 A That's right. I confirmed that some of the
15 characteristics were real and not something else.

16 Q Okay. And is it fair to say that part of what you do
17 as a medical geneticist is rule out certain syndromes as you
18 work your way towards a diagnosis?

19 A Yes. We have to do that.

20 Q Is that part of what you did with Mr. Torres?

21 A Right.

22 Q If you look at the next slide what I'll have you do if
23 you will, Dr. Rary, is sort of walk us through the
24 photograph that you looked at and relied upon as you worked
25 your way to this diagnosis.

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1 A Okay.

2 Q And this is on Prader-willi diagnosis.

3 A Yes.

4 Q And there are obviously a couple of photographs of Mr.
5 Torres as a young child.

6 A Right. These are some -- I think the first two -- one
7 or two of the first two anyway that we saw -- and this is
8 what Dr. Lipman asked me to look at to see if I thought he
9 had any genetic syndrome. And I concluded and looked at,
10 for example, the low-set ear, the shape of the eye, the
11 obesity, small mouth, low nasal bridge.

12 All of these may not mean anything individually, but if
13 you put them all together this is very typical of what we
14 would see in any delayed development and any syndrome. That
15 includes delayed development of these individuals.

16 Q Okay. And so would it be fair to say based on what you
17 just explained it's -- it's -- may be easier to diagnose
18 Prader-willi at a little bit later time in a child's life
19 then?

20 A That's right.

21 Q Immediately after birth, for example.

22 A I'm sorry?

23 Q At a later time than immediately after birth.

24 A Yes.

25 Q First few months.

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1 A Absolutely. Most -- most of the Prader-Willi babies we
2 see over the years have been children.

3 Q Okay.

4 A Four or five.

5 Q And so after you saw these initial photographs which
6 convinced you that Mr. Torres had some genetic disorder,
7 even though you didn't know what, you asked for some
8 additional photographs to be made.

9 A That is correct, yes.

10 Q And then you received a second set of photographs.

11 A Right.

12 Q Now, if you look at the next slide, would these be the
13 ones, some of the ones, that you received and evaluated for
14 Mr. Torres?

15 A That's right, that's right.

16 Q Tell us what you see of significance in these
17 photographs.

18 A Well, in the -- we -- we received all of these
19 together, but it's going in a different order here. Neither
20 myself or my colleague back at the office recognized the
21 Prader-Willi from this photograph here.

22 Q You pushed the button.

23 A I'm sorry. From this photograph here.

24 The only thing we noted was the obesity. There are
25 lots of different syndromes that can cause obesity fairly

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1 similar to this.

2 we did look carefully at these for other dysmorphic
3 features, and we saw quite a few other things -- truncal
4 obesity, of course, this unique type of obesity involving
5 just the truncal area.

6 Again, low-set ears, narrow forehead and a few other
7 things like that. You can see the low-set ears here also.

8 And then the next photograph.

9 Q was there any significance to the photograph on the
10 right?

11 A Yeah. This really didn't help a lot, but it does show
12 the obesity. But nothing, nothing else that's striking.

13 Q Okay. So then you continued to review photographs.
14 The next slide.

15 A We are both pushing the button.

16 Okay. Now, yes, this is one of the original photos we
17 saw also, I think. And this shows exactly the same thing
18 that we've talked about earlier -- the low-set ears. And
19 you'll see in a moment that they are also posteriorly
20 rotated. You see the low nasal bridge, small mouth.

21 Q Now, is your pointer working at the moment? Is your
22 pointer working -- the laser?

23 A Point?

24 Q Yeah. If you look -- how do you look for low-set ears,
25 for example, on --

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1 A Okay. what I do is very simple. I'll a take a sheet
2 of paper and put it right across the corner of each eye.

3 Q Okay.

4 A And if you can see the ears above that, then you have
5 normal-set ears. Obviously, if you put a ruler or a line
6 across the corner, outside corner, of his eyes, the ears are
7 going to be below that. so that's what we call low-set
8 ears.

9 Q And that's one of the things you were looking for for a
10 lot of different genetic issues.

11 A A lot of different syndromes have this. A lot of
12 different developmentally delayed children have this.

13 Q Including Prader-Willi.

14 A Right.

15 Q what about the next slide?

16 A This -- this shows very nicely. This was one of the
17 pictures -- the second pictures we received. This shows the
18 low-set ears very clearly. In addition it shows the very
19 small ear. This is approximately only maybe 60 percent of
20 what a normal ear's length from top to bottom would be.

21 Q Okay.

22 A So small ears. And if you notice this ear is
23 posteriorly rotated. That's another common feature that we
24 see in dysmorphic children or delayed development children.

25 Q so typically in a child without a genetic disorder you

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1 would expect the ears to be more vertical, more
2 perpendicular to the ground.

3 A That's right.

4 Q what about the next slide?

5 A Another characteristic of the Prader-Willi and many
6 other syndromes are short fingers.

7 If you look at the measurement -- I don't remember the
8 exact measurement on Mr. Torres here -- but we remeasured it
9 yesterday because we didn't want to totally trust this ruler
10 and the old picture. And it did come out maybe
11 three-quarters of an inch short from normal, at least that,
12 that much shorter.

13 Q Okay. It's a small hands and short fingers -- is that
14 something else dysmorphically you're looking for to make a
15 Prader-Willi diagnosis?

16 A That's one of them. But, again, short fingers occur in
17 quite a few different syndromes.

18 Q So it sounds like, Dr. Rary, what you are doing is
19 putting together a whole host of different --

20 A That's what you have to do. That's what we have to do,
21 yeah.

22 Q And then there's also -- the next slide is blank, I
23 believe.

24 MR. TESSIER: And if I may, Your Honor, approach the
25 witness.

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1 Your Honor, I have an extra copy for the Court,
2 because he's going to probably want to track through these
3 photos and the significance of them. If you're willing to
4 take a look at these photos, Your Honor, I'll give the
5 witness Exhibit No. 15.

6 Q Before I ask you about detail, Dr. Rary, let me just
7 get these photographs admitted.

8 A Okay.

9 Q Would you agree with me that these photographs in front
10 of you that are Applicant's Exhibit 15 are photographs that
11 you used and relied upon in coming up with your conclusions
12 in this case?

13 A That's correct, absolutely.

14 MR. TESSIER: Your Honor, we offer Applicant's
15 Exhibit 15 into evidence.

16 MS. TIMMONS: No objection.

17 THE COURT: It is admitted.

18 (Photographs of the applicant's body marked Applicant's
19 Exhibit No. 15.)

20 Q Now, if you would, Dr. Rary, just walk us through the
21 clinical significance of these photographs obviously.

22 A Okay. I can't point it out obviously, but I will point
23 out first that some of the records have shown that
24 Mr. Torres had a missing testis which -- and it was
25 described as cryptorchidism, but in an examination yesterday

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1 he had two normal testes.

2 The other thing we confirmed is what we call a
3 microphallus or small, small penis.

4 And the third thing that this shows -- and not many
5 people are familiar with it -- I don't know why -- this has
6 a female ascution [sic] or female pubic hairline. A male
7 pubic hair is more of a diamond shaped and totally different
8 from a female pubic hair.

9 Q Okay.

10 A So those three things -- the striking, small penis --
11 one -- actually my colleague when she saw the pictures
12 before I did said Prader-Willi immediately. And she showed
13 them to me, and I certainly agreed that that was the first
14 thing on the list.

15 Q Okay. Because would it be fair to say that the number
16 of genetic defects that result in a small penis are --

17 A That's right.

18 Q -- pretty small. The number of such syndrome is pretty
19 small.

20 A Yes. Some of the hermaphroditic type individuals,
21 intersex individuals, are called sometimes -- have what we
22 call a microphallus or ambiguous genitalia.

23 We tried to eliminate and did eliminate essentially all
24 of the hermaphroditic type things that could cause a similar
25 picture in the genitalia.

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1 Q Okay.

2 A And --

3 Q So walk us through. That was the very first top
4 photograph if I followed you properly, Dr. Rary.

5 The other two photographs behind, what is the
6 significance of them? And then we'll leave the photographs.
7 Tell us, if anything, about the second photograph.

8 A The second shows the -- the picture of what I consider
9 and after examining Mr. Torres certainly two normal testes
10 and, again, a very small phallus.

11 Q Okay.

12 A And if you look carefully you can see the pubic hair is
13 female rather than male.

14 Q And then the last photograph of the three, what does
15 that demonstrate for you?

16 A Yeah. In No. 3 I tried to measure by going down to the
17 base of the phallus the best we could. And I -- I still
18 consider this a very, very small penis.

19 In addition the urethral opening was terribly small,
20 extremely small.

21 so that really confirmed one of the major
22 characteristics that we see in Prader-Willi syndrome, is a
23 micro penis or small penis as it's called.

24 Q And was there anything about the location of the
25 urethral opening that was significant to you?

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1 A That was a fairly normal location. He didn't have
2 hypospadias or anything like that that would -- if he had
3 had the hypospadias or something like that, then we would
4 have considered hermaphroditism or something else, but he
5 didn't -- that didn't show up.

6 Q The word you just used, hyperstadius [sic]?

7 A Oh, hypospadias, the urethral opening. There's
8 different degrees of hypospadias. The urethral opening
9 normally is on the tip of the phallus. In hypospadias the
10 tip or the urethral opening moves back under the phallus.

11 Q Okay.

12 A And more like a clitoral situation.

13 Q Okay.

14 A A severe hypo phallus the -- if I can use my finger as
15 a phallus here --

16 Q Okay.

17 A -- some of the severe cases of hypospadias have the
18 urethral opening back towards the base. They don't urinate
19 out of the end. They urinate out back here.

20 Q And the significance of that to you as a medical
21 geneticist is you are trying to rule out some sort of
22 partial hermaphroditism, is that correct?

23 A Yes. We -- we -- by examining him I think we ruled out
24 all of the hermaphroditic types that can mimic this.

25 Q Okay.

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1 A For example, essentially all of the hermaphroditic
2 types have a scrotal fold in the middle suture line we call
3 it sometimes that's abnormal. They usually have
4 hypospadias, various other anomalies of the phallus and
5 genital area.

6 Q And based on your clinical observation and your
7 physical examination were you confident in reaching the
8 conclusion that Mr. Torres has Prader-willi syndrome?

9 A Yes, absolutely.

10 Q Anything about your physical exam or any of the
11 information that you received cause you any concern over
12 reaching that diagnosis for Mr. Torres?

13 A I'm sorry. What?

14 Q Was there anything about your physical exam or any of
15 the information you received that caused you to have any
16 concerns about diagnosing him with Prader-willi syndrome?

17 A No.

18 Q About how many patients would you say, Dr. Rary, in
19 your career have you diagnosed with Prader-willi syndrome?

20 A Rough estimate.

21 A They are not very frequent. My best guess is that we
22 see at least one a year, or sometimes two. Right now in the
23 clinic we have two that we're following this year.

24 Q And when you say one or two, is that one or two a year
25 on average?

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1 A Correct.

2 Q And that's in about 30 plus years of doing it?

3 A Yeah, yeah. Now, you've got to consider in East
4 Tennessee State we get referrals from Kentucky, Virginia,
5 all around. So it's a large referral area. That's why
6 we're seeing so many.

7 Q Let me show you.

8 MR. TESSIER: If I may, Your Honor, mark another
9 exhibit.

10 (Report from LabCorp dated 3/21/14 marked Applicant's
11 Exhibit 16 for Identification.)

12 Q Dr. Rary, I'm now going to show you Applicant's Exhibit
13 No. 16. Dr. Rary, this obviously is a test result for the
14 particular test, genetic test, that was done on Mr. Torres,
15 is that right?

16 A That's right.

17 Q Can you explain for the Court what this test was, like
18 how did it come to be that you had this test done on
19 Mr. Torres?

20 A Okay. It's a very complicated thing to understand, but
21 methylation simply means inactivation of a gene --

22 Q Okay.

23 A -- so that certain genes and chromosomes inherited from
24 the mother are inactivated. Certain genes that are
25 inherited from the father are inactivated. And in this case

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1 this particular test ruled out the possibility that
2 Mr. Torres had inherited two No. 15 chromosomes from his
3 mother.

4 This is an extremely odd inheritance pattern.
5 Normally -- I'll go ahead and explain this now if it's okay,
6 because in order to understand this you've got to understand
7 what the inheritance is.

8 Normally we inherit one chromosome 15 from our father
9 and one from our mother. In the case of Prader-Willi
10 syndrome about 40 -- 30 or 40 percent of the cases have
11 inherited two chromosomes 15s from their mother and none
12 from their father.

13 And I am sorry. I have no idea how this can happen,
14 because it takes two things to happen. They shouldn't get
15 but one from the mother and should get one from the father,
16 but it doesn't happen that way.

17 But, in fact, we confirmed it many, many times that
18 that's the way it is so. This test eliminates anything like
19 that.

20 Q Okay. So just to be clear then are there more than one
21 cause of the genetic deletions that are --

22 A There are mul -- there are multiple causes of
23 Prader-Willi syndrome. This is just one cause here.

24 Q Okay. And the one cause --

25 A One genetic cause.

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1 Q And the one genetic cause that you're referring to if I
2 understand correctly is also referred to as uniparental
3 disomy.

4 A Uniparental disomy is what we're talking about here.
5 That's one way to describe this.

6 Q Okay. In other words, that's the one you just
7 described where instead of getting one chromosome 15 from
8 mom and one from dad you got both from mom somehow.

9 A That's correct.

10 Q And if you got that genetic deck of cards dealt to you
11 you're going to have Prader-Willi.

12 A Yes.

13 Q And-but for Mr. Torres we know from this test that
14 that's not the cause of his Prader-Willi.

15 A That's correct. He did not have this.

16 Q And is there any other cause, genetic cause, of
17 Prader-Willi that is ruled out by the tests you have in
18 front of you?

19 A I will have while you're doing that for the other
20 interests here -- if you notice this has angelman syndrome.

21 To show you how complicated this picture is, if you
22 inherit two No. 15 chromosomes from your mother you get
23 Prader-Willi syndrome. If you inherit two No. 15
24 chromosomes from your father you get angelman syndrome.
25 They're totally opposite syndromes. Angelman syndrome are

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1 little tiny short people totally opposite from Prader-Willi.

2 Q So a completely different set of dysmorphic features in
3 angelman syndrome.

4 A Right. For both -- for both.

5 Q And all caused by a difference in one chromosomal
6 abnormality.

7 A Right.

8 Q And so this particular test is a test that would show
9 you either angelman syndrome or Prader-Willi syndrome. Is
10 that fair? Like if he had had two No. 15s from his father
11 instead of from his mother that would have come up on this
12 test.

13 A It's what, now?

14 Q In other words this test, if Mr. Torres was a person
15 who had inherited two No. 15 chromosomes from his father
16 instead of the two from his mother, this test would have
17 shown you he had angelman.

18 A That's correct, yeah, as he would have had angelman
19 syndrome.

20 Q Right. If you look at the small print below -- and
21 it's on your piece of paper in front of you if that's any
22 better -- but it talks about a micro deletion of the
23 paternal chromosome being another reason why a person might
24 end up with Prader-Willi syndrome.

25 A The --

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1 Q It's the very last sentence.

2 A I'm sorry?

3 Q Oh, I'm sorry. I'm just going to try to get you to
4 tell us what other causes of Prader-Willi syndrome
5 generically are you aware of.

6 A Other causes?

7 Q Yes.

8 A Yeah.

9 Q We know one is the uniparental disomy.

10 A Okay. Yeah.

11 Q What is the -- what are others -- examples?

12 A You mean laboratory tests.

13 Q Right.

14 A Okay. The next laboratory test -- this is -- this
15 first one that we looked at, the methylation study, just
16 came out a couple of years ago, no more than two years ago.

17 The other one that encompasses perhaps 40 or 50 percent
18 maybe of the Prader-Willi patients is a deletion of part of
19 the chromosome No. 15 in the q arm. And the q arm simply
20 means the lower arm of the picture. If you look at a
21 picture of a chromosome, it's in the q arm or the lower arm.

22 Q Okay. So that's a different type of genetic
23 abnormality that results in Prader-Willi syndrome.

24 A Right.

25 Q And is that something that Mr. Torres has, that

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1 particular micro deletion?

2 A Did not have it.

3 Q And is this a test that confirms for you or rules out
4 for you that that's the cause for him?

5 A This would -- this test would also confirm he does not
6 have a deletion.

7 Q Okay. And so the question then becomes if he doesn't
8 have the micro deletion that causes Prader-willi syndrome,
9 he doesn't have uniparental disomy which causes Prader-willi
10 syndrome --

11 A Right.

12 Q -- how can you be confident that he has Prader-willi
13 syndrome?

14 A We've seen probably half a dozen or more different
15 causes of Prader-willi syndrome. Some of them are not as
16 complex as what we've talked about up to this point.

17 For example, we found some Prader-willies that have a
18 single gene mutation in the 15 area, which the -- this test
19 would not pick up, nor would a deletion test pick up.

20 We've seen patients with Prader-willi syndrome that
21 have an normal gene adjacent or next to the Prader-willi
22 gene area that's abnormal that would cause the Prader-willi
23 gene to malfunction and not function properly.

24 Q Okay.

25 A So, and there's probably 15 -- not 15 but at least four

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1 or five or six other things that have been described. Those
2 are the two that I've seen personally.

3 Q Okay.

4 A So there's several other things that can cause
5 Prader-willi.

6 Q And those several other things that you've just
7 described are things that do not show up on that particular
8 methylation assay that you have.

9 A That's right, that's right. They would not show up
10 with this report.

11 Q Are there genetic tests available to search for at
12 least some of those other genetic causes of Prader-willi?

13 A One could look at sequencing. You can pick up single
14 gene changes by looking at genome sequencing or sequencing
15 of the Prader-willi area. But that may miss it because you
16 can have an abnormal gene elsewhere in the genome that could
17 be affecting the Prader-willi gene.

18 So we would have to do an entire whole genome sequence
19 before we could comfortably say there's no single based pair
20 deletion or change that would be causing Prader-willi
21 syndrome.

22 Q And so that takes more time to search for?

23 A Is what?

24 Q It takes more time to conduct those tests?

25 A Yeah. There's a backlog of them right now. Probably a

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1 couple of months to get it done.

2 Q And there's still no guarantee that the particular
3 genetic malfunction for Mr. Torres would be discovered even
4 with that, even with that test, is that true?

5 A That's right.

6 Q Are you confident given your experience as a medical
7 geneticist -- do you -- do you typically need or want
8 genetic testing to confirm a Prader-Willi diagnosis?

9 A It depends on the -- you mean would I --

10 Q Like basically what I'm getting at is you're a medical
11 geneticist. Do you need genetic testing to confirm to your
12 satisfaction that --

13 A Not necessarily. What we normally do whether it's
14 Prader-Willi -- Prader-Willi is not that much inherited. In
15 other words, we -- we rarely -- I've never seen two children
16 with Prader-Willi from the same family. And it's been
17 reported but it's extremely rare. So there's -- if we're
18 comfortable with the clinical diagnosis we stop at that
19 point.

20 Q From a medical geneticist's perspective do you feel
21 comfortable that Prader-Willi is diagnosable purely from the
22 clinical diagnosis?

23 A Oh, absolutely.

24 Q And is that how you have been diagnosing Prader-Willi
25 since the 1970's?

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1 A Yes. That's the only thing we had to do prior to --
2 the only way we could diagnose Prader-Willi until the middle
3 90s.

4 Q And so what -- what is the value of genetic testing for
5 a family that discovers it has a child with Prader-Willi
6 syndrome?

7 A Virtually none for Prader-Willi. It would do the
8 family no good to have the patient tested clinically or
9 laboratory tested.

10 For something like Down syndrome, many cases of Down
11 syndrome, they can be inheritable. In other words, the
12 mother or father may have a chromosomal translocation that
13 would be contributing and causing the Down syndrome. And
14 many syndromes if we know they are inheritable, then we can
15 recommend that the patient be tested further to see if he
16 has this type of anomaly.

17 Q And using an example of Down syndrome, Dr. Rary, are
18 you comfortable diagnosing Down syndrome without need for a
19 genetic test to confirm it?

20 A With that criteria I feel very comfortable. I wouldn't
21 have any problem whatsoever. But I would make sure before I
22 did not order a clinical test on a Down syndrome child that
23 the parents were not having more children. If they're
24 having more children, then I would highly recommend that
25 they go ahead and have the child tested. That way they can

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1 make the choice if they want to subject their family to
2 another risk for another child with Down syndrome.

3 Q Is this the case, Dr. Rary, for many of the genetic
4 abnormalities that you study, that the genetic testing is
5 not so much for you as the medical geneticist but more for
6 family planning purposes?

7 A Mostly, yeah.

8 Q And is Prader-willi one of those syndromes that you
9 feel comfortable diagnosing like clinical diagnosis alone?

10 A which one?

11 Q Prader-Willi. I'm sorry.

12 A Oh, absolutely, yeah.

13 Q If someone -- if a geneticist, a medical geneticist,
14 like yourself had observed Mr. Torres back in 2007 and
15 2008 -- so about seven or eight years ago -- would they have
16 been able to diagnosis him with Prader-willi syndrome?

17 A In my opinion. Actually any -- I think it would have
18 taken a pretty incompetent medical geneticist or a clinical
19 geneticist who wouldn't call it Prader-willi syndrome.

20 Q And that's even without doing any genetic testing.

21 A Right.

22 Q Is there anything -- I may have asked you this, and I
23 apologize if I did, Dr. Rary -- but is there anything about
24 the negative test result that you have in front of you that
25 reduces your confidence in any way of your diagnosis of

Dr. Jack M. Rary
Direct examination by Mr. Tessier

1 Prader-Willi syndrome in Mr. Torres?

2 A Nothing at all that I see.

3 Q And were you able based on your review of records and
4 your physical examination of Mr. Torres to rule out every
5 other syndrome that you had considered as a possibility for
6 Mr. Torres?

7 A We ruled out everything that we thought could be a
8 possibility, yes.

9 Q And so is it still your opinion to a reasonable degree
10 of certainty as a medical geneticist that Mr. Torres has
11 Prader-Willi syndrome?

12 A Yes, sir.

13 Q If I look -- I look at the next slide if you have it
14 available -- I want to move you now, Dr. Rary, to 22q11 and
15 the deletion you discovered there. Oh, I guess I've got
16 another slide actually. On the behavioral side of
17 Prader-Willi --

18 A Go back?

19 Q No. You can go to the behavioral.

20 A Keep going?

21 Q Yeah. This slide -- I think you touched on this a
22 little bit earlier, Dr. Rary, as to why -- why it might be
23 that a parent would bring you a child to diagnose. And with
24 respect to Prader-Willi, is this a fair list of some of the
25 common behavioral problems you see or --

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1 A Right. We -- oftentimes a child will be referred to us
2 because of behavioral problems, and either the pediatrician
3 or the family member will think it's genetic. And these are
4 some of the things that have shown up in our referrals for
5 Prader-Willi syndrome.

6 Q And these are often young children.

7 A Yes. In other words, they -- we've seen patients
8 referred to us that had hyperphagia or children that
9 couldn't quit eating. And temper tantrums is common.
10 Violent outbursts is very common.

11 And, again, all of these are different things that
12 have -- either the parent or pediatrician have referred to
13 us.

14 But we do not treat these, again. We will evaluate the
15 kid to see if he has the genetic condition, but we don't
16 approach these. We refer these to Dr. Lipman or somebody
17 else.

18 Q And the goal would be that if you as a medical
19 geneticist can accurately diagnose the genetic condition,
20 then the medical provider who takes up the care for that
21 patient will be able or be better prepared to deal with
22 their symptoms. Is that fair?

23 A That's right.

24 Q But you as a medical geneticist -- that's really not
25 your role, is to treat the patient. You diagnose.

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1 A That's absolutely. Only diagnosis.

2 Q Now, if you look at the next slide I think we're now to
3 22q11, which I want to touch on. This is the other genetic
4 condition that you testified that Mr. Torres suffers from.
5 Is that fair?

6 A That he --

7 Q Is this another genetic defect that Mr. Torres suffers
8 from?

9 A That, yes, yes.

10 Q And this is a genetic defect that you discovered how?
11 How did you discover that?

12 A Okay. When Dr. Lipman showed us the pictures, the
13 final pictures, and we thought it might be Prader-Willi, we
14 had the capability and still do -- but we ran what we call a
15 microarray D.N.A. testing system.

16 what this does -- in this particular test or system we
17 have 105,000 different D.N.A. probes that we can look at.
18 And by running this we were able to determine that two
19 things, several things actually -- that Mr. Torres in his
20 chromosome 22q -- and the q region means the lower arm.
21 I'll show you a picture in a moment of it if we get to it --
22 was missing 90,766 base pair in the chromosome 22q region.

23 This encompassed two different genetic syndromes. It
24 encompassed the -- what we call PROD one which is the
25 hyperprolinemia gene and it encompassed a big area of the

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1 critical DiGeorge area.

2 Q DiGeorge region. That's DiGeorge critical region
3 you're talking about?

4 A Yes.

5 Q Is that just named after a scientist or someone?

6 A Was it?

7 Q Is that just named after some scientist?

8 A It was named after DiGeorge.

9 Q So if he -- this test that you conducted confirmed in
10 an objective way that Mr. Torres has a deletion that covers
11 a portion of both of those different genes?

12 A Yes, absolutely. What -- what we ordered next and was
13 sent out and tested -- we tested first the PRODH or the
14 hyperprolinemia gene. This gene has the responsibility
15 of -- I don't mean to make this too complicated. But it's
16 the only way I can explain it -- is degradation of proline
17 which is an amino acid.

18 Q Okay.

19 A If this gene is not functioning in an individual, which
20 it was deleted here in Mr. Torres, then the amino acid
21 analysis of him should show an elevation of proline in his
22 plasma.

23 Q Okay.

24 A And it certainly did. It was dramatically elevated --

25 Q Okay.

Dr. Jack M. Rary
Direct examination by Mr. Tessier

1 A -- in his plasma, which in our mind then would confirm
2 two things, that this deletion was correct and that we
3 confirmed that this gene is actually not functional, so.

4 Q Okay. And so that in addition to Prader-Willi
5 syndrome, which is a genetic defect in its own right --
6 correct?

7 A It's what, now?

8 Q Prader-Willi syndrome is a genetic defect of its own,
9 correct?

10 A Right.

11 Q And that's over chromosome No. 15.

12 A Right.

13 Q This defect is over on chromosome No. 22.

14 A Totally different genetic location and gene.

15 Q And then within the chromosome No. 22 what you're
16 saying is the gene for proline processing effectively is
17 messed up --

18 A Right.

19 Q -- for Torres.

20 A Yeah. Well, it's not there.

21 Q It's not there.

22 A So they can't function if they're not there.

23 Q And then in addition to that subset of genetic defect
24 he has a deletion that also affects his DiGeorge critical
25 region, is that fair?

Dr. Jack M. Rary
Direct examination by Mr. Tessier

1 A That's absolutely correct, yeah.

2 Q Okay. And what is the DiGeorge critical region
3 associated with if you know? You said the proline side.
4 That's an amino acid and the processing and the metabolizing
5 of amino acid. Do you know the significance of the DiGeorge
6 critical region?

7 A The significance of it?

8 Q Yes.

9 A Well, if there's mutations or changes or deletions as
10 we see here in the DiGeorge area nine times out of ten the
11 patient will have what we call DiGeorge syndrome or a form
12 of it.

13 There's a tremendous variation, and how much is deleted
14 depends on how severely the DiGeorge syndrome will appear in
15 the patient. So there's a tremendous variation in the
16 patients.

17 Q So DiGeorge syndrome is a spectrum.

18 A That's right.

19 Q Some have it very severely based on a greater portion
20 of deletion. Others have it not as bad, but they still have
21 it. But they don't have as big of a deletion.

22 A That's correct.

23 Q And so with Mr. Torres is there any way to categorize
24 how much of a deletion of his DiGeorge region is affected?
25 It's not a hundred percent.

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1 A Yes, absolutely. We have the human genome, but I
2 honestly did not look at this to see how much. I would
3 guess quite a significant amount because the PRODH gene
4 probably is only three or four thousand base pairs in
5 length. So most of this 90,000 deletion would be in the
6 DiGeorge area. So a large portion of the DiGeorge gene is
7 deleted in this case.

8 Q And is it fair to characterize this deletion -- at
9 least some practitioners call it the 22q11 deletion
10 syndrome, is that right?

11 A Absolutely.

12 MR. TESSIER: Let me if I may, Your Honor, approach
13 one more time.

14 Q Dr. Rary, I'm going to show you what's been marked.

15 MR. TESSIER: Actually before I forget, Your Honor,
16 we'll go ahead and offer Applicant's Exhibit 16 into
17 evidence.

18 MR. TIMMONS: No objection.

19 THE COURT: Admitted.

20 (Report from LabCorp dated 3/21/14 marked Applicant's
21 Exhibit 16.)

22 Q Now I'm showing you now, Dr. Rary, Exhibit No. 17 just
23 to ask you to identify what that is.

24 A Okay. This is our microarray report that we ran to
25 show and detect any -- and keep in mind the microarray test

Dr. Jack M. Rary
Direct examination by Mr. Tessier

1 only shows deletions of D.N.A., or additions.

2 Q Okay.

3 A And this showed that -- this is the report showing from
4 our lab, that showed the deletion of the DiGeorge 22q
5 deletion syndrome.

6 Q Did this -- is this the test, in other words, that
7 showed you the 90,766 base pairs?

8 A That's right, that's right, absolutely.

9 Q And this test is the one that showed you both the
10 deletion in the DiGeorge region and the deletion --

11 A And the PRODH, yes.

12 MR. TESSIER: Your Honor, we offer Exhibit No. 17 into
13 evidence.

14 MS. TIMMONS: No objection, Your Honor.

15 THE COURT: Admitted.

16 (D.N.A. report of Dr. Rary marked Applicant's Exhibit
17 No. 17.)

18 Q I think -- I think, Dr. Rary, I have a slide that will
19 highlight a couple of pages from within.

20 A Do you want to look at that?

21 Q Yeah. I think she's got it or --

22 A Okay.

23 Q And on this slide if you would, let me just confirm.
24 This is a portion of Exhibit No. 17.

25 A Right. This is the basic report that is printed out

Dr. Jack M. Rary
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1 from our computer program. And we have to have a computer
2 to do all of this because of the tremendous large numbers of
3 segments of D.N.A. that we have there.

4 The top -- I don't know if you can see them here, but
5 the -- if you look at the 22 there should be a little dot
6 here beside it. And this indicates a deletion.

7 Q Okay.

8 A So this top portion just shows where the deletion or
9 addition is on the human chromosome.

10 Q Okay.

11 A This bottom chart shows all of the deletions and
12 additions that we saw in the sample from Mr. Torres.

13 Q Okay.

14 A Most of these meant nothing. In other words, all of us
15 have what we call polymorphisms or changes or deletions and
16 additions in our D.N.A. that are not standard and found in
17 everybody. So we all have things. So essentially all of
18 these top ones are not pathogenic. They don't cause
19 disease. They're located in a deletion that's located in a
20 nongenetic or genes -- significant gene area that would
21 cause a genetic defect.

22 Q Okay. So what -- let me just help if I can, Dr. Rary.
23 with your computer test printout as you're looking for
24 either additions or deletions from the genetic material,
25 your test will send you out a report that indicates or

Dr. Jack M. Rary
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1 highlights for you the various areas where there is either a
2 deletion or an addition.

3 A Right.

4 Q And of those it spits out and looks like it's sort of a
5 question. And many of them, like you say, on there are
6 benign.

7 A Right.

8 Q They're not significant.

9 A No. We have to look each -- when the computer prints a
10 question mark by them we have to look up any that sequence
11 we can look at and see what genes are located in that
12 sequence if there are any in the gene. Most of the time
13 there are no significant gene located in the deleted or
14 addition area.

15 Q And then you can move on to the next one.

16 A Right, right.

17 Q And so in the case of Mr. Torres and this particular
18 test result the only one of significance was the 22q11
19 deletion?

20 A That's right.

21 Q Is that -- where is that listed on the page?

22 A I think it shows up better on the next slide if we can.

23 Q There's the --

24 A Can I go backwards? well, this shows the chromosome
25 printout or the genetic or the computer printout showing the

Dr. Jack M. Rary
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1 deletion dot that it puts beside and shows you simply where
2 the deletion is.

3 Q And, Dr. Rary, before you leave that slide I think in
4 basic biology every human has 23 chromosomes that they get
5 from their parents.

6 A That's right, 23 pairs of chromosomes.

7 Q Pairs. And the last one --

8 A Forty-six total.

9 Q That's right. So the last one here, X and Y, those
10 chromosomes tell you if you're going to be male or female.

11 A Right.

12 Q And then the other 22 are the ones of interest to you
13 in this particular sort of study to see if there's a genetic
14 defect there.

15 A Right.

16 Q And here the defects we know of for Mr. Torres come
17 from chromosome No. 15, which would be the Prader-Willi.

18 A Right.

19 Q And chromosome No. 22, which you just showed a minute
20 ago.

21 A That's right.

22 Q Okay. The next slide I think is the one you were
23 looking for. So which one shows you the deletion at issue
24 here?

25 A Right. This is a computer printout of the final result

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1 and showing the 22q deletion. And it actually prints out
2 the start of the base pair deletion and the D.N.A. and the
3 ending base pair and tells you exactly how many base pairs
4 are missing in this gene. And I think if I remember -- I
5 can't read that. I'm sorry. But it's roughly 90,000 plus
6 base pairs that are missing in his genome in this gene.

7 Q And, as you said, those, the 90,000 pairs, cover both
8 the PRODH gene --

9 A That's right.

10 Q And --

11 A That's right. It starts on the PRODH side and
12 encompasses more of the DiGeorge area.

13 Q Dr. Rary, you're obviously a medical geneticist. Were
14 there tests available back in 2007 and 2008 of whatever
15 form? Were there genetic tests available back in '07 and
16 '08 that would have detected this deletion in Mr. Torres if
17 they had been --

18 A Yes. Nothing -- nothing like what we are using today,
19 but there was tests available that have come out probably in
20 '89, '90, before that perhaps even, called FISH.

21 what this means is -- fluorescent means that your
22 hybridization -- we take a D.N.A. segment and hybridize it
23 to a gene. If the gene is not there, we don't get
24 hybridization. And we can see this by florescent
25 microscopy. And that was the common things we refer for

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Direct examination by Mr. Tessier

1 clinical, or not clinical but for laboratory testing of both
2 Prader-Willi and DiGeorge syndrome.

3 Q So as a medical geneticist if the case of Mr. Torres
4 had been brought to you back in 2007 and 2008 it would have
5 been a pretty standard test to run, this FISH test.

6 A That's the first thing. If we had examined Mr.
7 Torres -- and that would have been if the parents had wanted
8 in this situation. I don't know if the parents were
9 involved or not. But if the parents would have wanted the
10 test done we certainly would have recommended it.

11 Q And if a FISH test --

12 A Yes.

13 Q -- as you described had been done back in '07 or '08
14 for Mr. Torres it would have confirmed the deletion that
15 we're talking about -- 22q11.

16 A That's right.

17 Q You -- would it be fair to say, Dr. Rary, that you came
18 into this case later than any of the other experts that you
19 have talked with about Mr. Torres? Were you the last expert
20 that came into this case as far as you know?

21 A Say that again, now. I'm not sure.

22 Q You came to this case fairly recently, is that fair,
23 within the last eight months or so?

24 A Right.

25 Q And you came to the case through Dr. Lipman talking to

Dr. Jack M. Rary
Direct examination by Mr. Tessier

1 you about it?

2 A Yeah.

3 Q Dr. Lipman is a colleague of yours.

4 A Yes. He's in the same school, medical school.

5 Q And you ran -- you asked for and ran certain testing as
6 you learned more about Mr. Torres.

7 A That's right.

8 Q And ultimately you had the opportunity yesterday to
9 actually do a clinical exam.

10 A That's right.

11 Q Are you satisfied -- I'm sorry. I forgot one more
12 thing. There's another slide. I'm going to show you this
13 last slide, Dr. Rary.

14 MR. TESSIER: Let me if I may, Your Honor, one last
15 exhibit I believe.

16 (Report from the Great Plains Laboratory, Inc. marked
17 Applicant's Exhibit No. 18 for Identification.)

18 Q Dr. Rary, I'm going to show you Applicant's Exhibit
19 No. 18 and just ask if you can confirm that that is the test
20 that was run on hyperprolinemia on Mr. Torres.

21 A Yes. When we got the deletion of the 22q area back we
22 ran and ordered a test for the proline levels in Mr. Torres.

23 And if you'd look at the bottom that's circled up here
24 you'll see that the proline level is way high, tremendously
25 elevated, as opposed to the normal midrange, which is right

Dr. Jack M. Rary
Direct examination by Mr. Tessier

1 in this area here.

2 Q And that, this slide on the board, is simply part of
3 the first page.

4 A Right. Same thing.

5 MR. TESSIER: What is it 18? Your Honor, we offer
6 Applicant's Exhibit 18 into evidence.

7 MS. TIMMONS: No objection.

8 THE COURT: They're admitted.

9 (Report from the Great Plains Laboratory, Inc. marked
10 Applicant's Exhibit No. 18.)

11 MR. TESSIER: Beg your indulgence one minute, Your
12 Honor.

13 (Pause.)

14 Q Sorry, Dr. Rary. Are you satisfied, Dr. Rary, that the
15 information you had access to over the course of your work
16 on this case including your own clinical exam -- are you
17 satisfied that that information was sufficient for you to
18 form and render opinions about Mr. Torres' genetic
19 condition?

20 A All, all three, yes. I'm totally satisfied.

21 Q Is there -- and let me ask this question, Dr. Rary. If
22 Mr. Torres has the 22q11 deletion that you described would
23 you expect as a medical geneticist that any sample of bodily
24 fluid for D.N.A. from Mr. Torres if examined properly and
25 tested properly would show the same deletion?

Dr. Jack M. Rary
Direct examination by Mr. Tessier

1 A Absolutely. It should, yeah.

2 Q And so if the government found a sample of bodily fluid
3 that it believed was Mr. Torres' from the scene of a crime
4 and ran the right testing it should come up with that same
5 deletion.

6 A If -- if the D.N.A. has been reasonably taken care of
7 it should be there or will be there.

8 Q Is there anything that I have not asked you about, Dr.
9 Rary, that you think is important to share with the Court
10 about Mr. Torres and his genetic condition? Do you think I
11 missed anything that you thought was important for me to ask
12 that you share with the Court?

13 A I think we've pretty well covered most of it.

14 Q Well, thank you very much. Dr. Rary, at this point I
15 would like you to answer any question that the government
16 may have.

17 CROSS-EXAMINATION

18 BY MS. TIMMONS

19 Q Good afternoon, Dr. Rary. My name is Kaycie Timmons.
20 I'm with the attorney general's office. I have a couple of
21 questions for you. Can you hear me okay?

22 A Yeah. I can barely hear you. I'm sorry.

23 Q I'm sorry. I'll speak up. I've never been asked to
24 speak louder. Maybe I'll come a little closer.

25 A Okay. Thank you. I'm sorry.

Dr. Jack M. Rary
Cross-examination by Ms. Timmons

1 Q That's fine.

2 A That's why I've been trying to retire for a couple of
3 years.

4 Q I first had a couple of questions about your current
5 practice. How would you characterize what you do normally
6 as a clinical geneticist?

7 A How would I characterize?

8 Q How do you divide your time between patients, teaching,
9 those sorts of things?

10 A Okay. Up until the time I tried to retire probably
11 50-50, maybe more like -- more like 60-40, I guess, would be
12 a better description of seeing patients and laboratory time.

13 Q Okay. And now that you're trying to retire.

14 A Now I've tried to cut it back. We've hired somebody to
15 kind of take my place until we can find a full-time person.
16 And I'm not seeing very many patients now, just the cases
17 that the fellow can't help with.

18 Q Okay. Have you been involved in other legal cases in
19 the past?

20 A Any?

21 Q Legal cases such as this one where you look at
22 someone's genetics for purposes of the --

23 A You mean Prader-Willi cases?

24 Q Any. Any genetics cases. In the legal context for a
25 trial or this sort of proceeding.

Dr. Jack M. Rary
Cross-examination by Ms. Timmons

1 A From the legal standpoint, you mean?

2 Q Yes.

3 A 90 percent of what I've testified or helped with have
4 been paternity tests.

5 Q Paternity.

6 A And gone to court for those. There's -- there's one or
7 two other cases that involved D.N.A. evidence, things like
8 that.

9 Q Have you ever been involved in any other capital cases?

10 A No, no.

11 Q Do you approach a legal case such as this one in a
12 different way from in your clinical setting?

13 A No.

14 Q No. How did you first approach this case?

15 A Well, exactly like we always do. If they're referred
16 to us or if somebody comes to us and asks our opinion of
17 them, I guess the best way to describe my approach is that
18 I'm always interested in making a diagnosis, I guess.

19 Q Uh-huh.

20 A And any different case is always interesting. So we
21 would approach it exactly like we would any other patient
22 referred to us.

23 Q And in this case you said Dr. Lipman first approached
24 you about Mr. Torres?

25 A That's correct. Yeah. Dr. Lipman brought the first

Dr. Jack M. Rary
Cross-examination by Ms. Timmons

1 pictures to us.

2 Q Okay. Did he suggest any genetic conditions at that
3 time?

4 A No, no.

5 Q And the first pictures were pictures of Mr. Torres as a
6 child?

7 A Right.

8 Q And you didn't immediately know a particular genetic
9 condition.

10 A That's right. That's absolutely right. I did not. I
11 told Mr. Lipman or Dr. Lipman that the child has several
12 dysmorphic features, which we listed earlier, but I couldn't
13 make any diagnosis by those pictures --

14 Q Okay.

15 A -- and had no idea what the child had.

16 Q But the second set of pictures you saw were the ones
17 that we showed up here.

18 A The second set included the phallus, small phallus.
19 And that was the real clincher that would point immediately
20 to Prader-Willi syndrome.

21 Q Okay. When you mentioned seeing patients and
22 diagnosing them you used the term we sometimes -- we. Do
23 you work in conjunction with medical doctors or other
24 clinical geneticists?

25 A Not -- not in East Tennessee. I'm the only one there,

Dr. Jack M. Rary
Cross-examination by Ms. Timmons

1 unfortunately. I do consult with other people and other
2 universities. I've got colleagues at Vanderbilt that I
3 routinely consult with on cases and...

4 Q And once you determine that someone has a particular
5 genetic condition you then turn them over to whatever
6 physician can help treat their symptoms.

7 A That's right.

8 Q Is that right?

9 A Right.

10 Q So you do not do any treatment.

11 A No.

12 Q And, in fact, there's no cure for genetic conditions,
13 is that right?

14 A There's no cure?

15 Q Cure.

16 A No. I wish there were. Well, some there are -- some.
17 Absolutely. Some there are, and quite a number.

18 Q And in those cases do you modify the D.N.A.? How does
19 that work?

20 A Yeah. Probably the best example, South Carolina has
21 the same system as do most states. All of the states have
22 what we call a newborn screening test.

23 We have this in Tennessee in which we screen the blood
24 sample of a newborn at 24 hours and run it through a panel
25 of genetic tests. And we come up with a list of actually 41

Dr. Jack M. Rary
Cross-examination by Ms. Timmons

1 in Tennessee. I don't remember what it is in South
2 Carolina. Forty-one different genetic syndromes that can be
3 treated if picked up early, and are treated and are
4 treatable.

5 There are a number of these -- sickle cell anemia, for
6 example. In the black population if we pick up a baby with
7 sickle cell anemia we immediately recommend that the
8 physician or pediatrician put this baby on antibiotics, and
9 this will prevent an infection. So it saves the life of
10 those babies. So there are many examples -- 40 -- 41 in
11 Tennessee that we screen for.

12 Q But there's no cure for Prader-Willi syndrome, is
13 there?

14 A No, no. There's no cure or no help for it.

15 Q Is there a cure for 22q11 deletion syndrome?

16 A No, no.

17 Q In both of these cases you just have to treat the
18 symptoms.

19 A Right.

20 Q Dr. Rary, do you have a copy of the materials that
21 counsel provided us that were your expert materials?

22 A I'm sorry. I don't -- I don't remember what.

23 Q We got about a hundred pages that were provided as your
24 expert file.

25 A Okay.

Dr. Jack M. Rary
Cross-examination by Ms. Timmons

1 Q Do you have a copy of that with you?

2 A I've got one back here.

3 Q I've got a copy as well I can hand you if you want to
4 review it. I've got some questions about it.

5 MS. TIMMONS: Permission to approach.

6 Q With Prader-willi syndrome you mentioned that there
7 once were some diagnostic criteria by N.I.H., I think you
8 said.

9 A Right, that's right.

10 Q I believe if you'll turn to page 34 of those materials
11 at the bottom they have bates numbers on the bottom.

12 A Thirty-four?

13 Q Yes, sir.

14 A Okay.

15 Q Are those the criteria you mentioned earlier?

16 A Yes. This is the general criteria. They -- they break
17 them down into major criteria and minor criteria.

18 Q And from what I read in order to be diagnosed with
19 Prader-willi syndrome you need to get a total of eight
20 points.

21 A I think that's correct. With this particular system,
22 yeah.

23 Q Okay. Five of those points coming from the -- at least
24 five of those points --

25 A From the major --

Dr. Jack M. Rary
Cross-examination by Ms. Timmons

1 Q Major criteria.

2 A -- criteria.

3 Q Right. And when did the N.I.H. move away from using
4 this criteria? Do you know?

5 A Roughly when the newer tests came out. The reason for
6 it, that we quit using these N.I.H. guidelines, when we
7 tested many of the Prader-willi patients they actually had
8 the uniparental disomy or the deletion. And about 15 or
9 16 percent of the patients who actually had the deletion or
10 the uniparental disomy causing Prader-willi -- they did
11 not -- those patients did not meet the eight point system.

12 Q Okay.

13 A So we had -- we felt we would be missing some patients
14 if we didn't reduce the criteria.

15 Q Okay. And you -- and those anomalies are detected
16 through the methylation test, is that right?

17 A Some. The uniparental disomy is detected, and also the
18 deletion can be detected --

19 Q Okay.

20 A -- through the methylation test.

21 Q And I believe you said that the methylation test came
22 out about two years ago, is that correct?

23 A Roughly, yeah.

24 Q Okay. So 2011-2012?

25 A Yeah.

Dr. Jack M. Rary
Cross-examination by Ms. Timmons

1 Q And that's when we moved away from these criteria, is
2 that right?

3 A No, no. We moved away from the consensus back in --
4 when FISH came out.

5 Q And how long ago was that?

6 A 93-94.

7 Q Okay. But the FISH test would only detect the --

8 A Deletions.

9 Q -- paternal deletion, is that right?

10 A It would -- it would detect any deletion that we FISH
11 it for. In this case it would detect a Prader-willi
12 deletion if we probed it for that.

13 Q Okay. And Mr. Torres does not have that deletion, is
14 that correct?

15 A He did not have that deletion, that's correct.

16 Q So if someone had done that test back in 2007 or
17 2008 --

18 A It would have come out negative.

19 Q Negative. The methylation test was not available at
20 that time?

21 A That's right.

22 Q But we now know that test also comes back negative.

23 A That's right.

24 Q I read something about an imprinting defect that can
25 also result from Prader-willi, is that correct?

Dr. Jack M. Rary
Cross-examination by Ms. Timmons

- 1 A Imprinting?
- 2 Q Yes.
- 3 A That's another term for methylation.
- 4 Q Okay.
- 5 A Or inactivation of genes.
- 6 Q Okay.
- 7 A And that's simply another method of doing methylation,
8 or it describes methylation in other words.
- 9 Q Okay. would you turn to page 43 of these materials --
10 43?
- 11 A I'm sorry?
- 12 Q Page 43 of your materials.
- 13 A 22q?
- 14 Q No. Page 43.
- 15 A Oh, 43.
- 16 Q Yes, sir.
- 17 A I thought you were talking about chromosomes.
- 18 Q There's a lots of numbers flying around.
- 19 A Okay.
- 20 Q And actually, if you could, turn to page 44 and 45.
21 According to this document, which you reviewed for your
22 opinion here, the paternal deletion is about 70 percent of
23 cases of Prader-willi. would you agree with that?
- 24 A Yes. That's approximate.
- 25 Q Okay.

Dr. Jack M. Rary
Cross-examination by Ms. Timmons

1 A These are all very approximate things because of a
2 rarity of Prader-Willi.

3 Q Okay. The maternal uniparental disomy -- disomy -- is
4 25 percent approximately?

5 A Right.

6 Q And then it lists an imprinting defect on page 45.

7 A I don't have -- I can't read the percentage on mine.
8 What is it, 25? Yeah. I can't barely read it. It's 25
9 percent of the uniparental disomy. That'd make it about 95,
10 yeah.

11 Q And then the final cause of Prader-Willi that it lists
12 is this imprinting defect.

13 A Imprinting. They're stating less than 5 percent.
14 That's probably a close, yeah.

15 Q Okay. So have you ever seen another patient with
16 Prader-Willi syndrome who did not have either the paternal
17 deletion or the disomy?

18 A Yes, ma'am.

19 Q How many of those have you seen?

20 A Probably no more than two that I remember.

21 Q Okay. And that would have been in the last few years
22 since?

23 A It's been since FISH came out.

24 Q Okay. Two since '94 or ninety --

25 A Yeah. No more than two. I may even be stretching that

Dr. Jack M. Rary
Cross-examination by Ms. Timmons

1 a little bit, but I know I've seen at least one positively
2 that fit that criteria.

3 Q Okay. And the criteria that you used in this case to
4 diagnose Mr. Torres with Prader-willi were mostly physical
5 criteria, external physical criteria, is that right?

6 A That's correct, yeah.

7 Q And some of those things that were listed in the N.I.H.
8 diagnostic criteria such as hypotonia, did you look to see
9 if there was any history of that?

10 A When they were advised? Is what you're saying?

11 Q No. These other criteria. Those are still valid
12 Prader-willi syndrome diagnostic criteria, right?

13 A Right.

14 Q As in people with Prader-willi syndrome still may have
15 these conditions.

16 A That's right.

17 Q Okay. Did you look into any of the additional
18 conditions other than these physical traits that you went
19 through earlier?

20 A The Prader-willi like genes or syndromes?

21 Q Prader-willi symptoms such as hypotonia, the --

22 A That -- that other syndromes would have? For example,
23 other syndromes that would have hypotonia?

24 Q Well, no. People who have Prader-willi syndromes still
25 sometimes have hypotonia or a weak suck, a poor suck.

Dr. Jack M. Rary
Cross-examination by Ms. Timmons

1 A At -- that's newborns.

2 Q Yes.

3 A Yes.

4 Q There was no notation in Mr. Torres' history that --

5 A Right.

6 Q -- he had those.

7 A I couldn't find anything.

8 Q Okay. And did you review --

9 A But I didn't really see a history. I did see some -- a
10 report that's in this, these documents -- maybe not in these
11 but the others -- that were from the N.I.C.U. after his
12 birth, but I couldn't read a word of it.

13 Q Okay.

14 A It was so faded that I gave up looking. So there could
15 be something there, but I found nothing that implied that he
16 was hypotonic or a poor sucker or anything like that.

17 Q You did review his medical history, is that correct?

18 A As much of everything that I could, yes.

19 Q Did you see any notation that he had an eating
20 disorder, an obsession with food that's associated with
21 Prader-Willi?

22 A Yes, yes.

23 Q And what did you -- where did you see that?

24 A It appeared several times. From the obesity there are
25 several reports in his medical records which showed. She

Dr. Jack M. Rary
Cross-examination by Ms. Timmons

1 had him to the pediatrician or endocrinologist a couple of
2 times -- his mother -- for eating disorder. He wouldn't
3 quit eating.

4 Several different entries in his medical records
5 where -- two at least -- the mother took him to a
6 pediatrician, and also an endocrinologist, trying to find
7 out what was wrong with his eating habits.

8 Q And they were -- am I correct that they were worried
9 because he was obese? He -- is that right?

10 A That was part of it. And his behavior towards eating
11 is what was stated in a couple of the records.

12 Q Okay.

13 MS. TIMMONS: Beg the Court's indulgence.

14 (Pause.)

15 Q With the 22q11 deletion syndrome were there any
16 physical characteristics that clued you in that he may have
17 that syndrome?

18 A Yes. He had several, and this is why I explained this
19 syndrome.

20 If you look at the 22q syndrome, or DiGeorge syndrome
21 in particular, there's a long list of dysmorphic features
22 that Mr. Torres has also. For example, one of the leading
23 things, his low-set ears. A number of others that appear in
24 the description there also.

25 Q So his low-set ears could be a result of the 22q11

1 deletion, is that right?

2 A Yes.

3 Q what other characteristics does Mr. Torres exhibit that
4 would be common to both Prader-willi and 22q?

5 A The only common ones were the facial low-set ears, the
6 obesity. But it's a -- it's a little bit different obesity
7 than shows up in Prader-willi and not a -- not -- not a
8 hundred percent or anywhere near it.

9 I think if I remember correctly maybe 30 or 35 percent
10 of the babies with or children with DiGeorge end up to be
11 obese, but most do not end up to be obese.

12 So some -- I would classify some of them minor
13 dysmorphic features that we wouldn't count towards -- either
14 one really show up in both syndromes.

15 Q Okay. Do you have any sort of standard that you use
16 that lists the different dysmorphic features for
17 Prader-willi?

18 A Any what, now?

19 Q Standard, a medical standard, similar to the N.I.H.
20 diagnostic criteria, but I think you said they moved away
21 from that. Is there any standard that remains now?

22 A Standard list of dysmorphic features?

23 Q Yes.

24 A Oh, yes. There are -- there are many of them. In
25 fact, we go by -- there are many publications in the

Dr. Jack M. Rary
Cross-examination by Ms. Timmons

1 literature.

2 The one I go by most often is on the -- what we call
3 OMIM, and it's an N.I.H. sponsored site that gives a full
4 description and history of every known genetic syndrome.
5 And if you look at the 22q DiGeorge it will have a complete
6 description of all of the clinical anomalies, all the
7 dysmorphic features. Same thing for Prader-willi and all of
8 the clinical tests that are available. So this -- that's
9 basically what I look at for the list.

10 Q The microarray test that you did, there was some other
11 things in there that showed up abnormal?

12 A Right.

13 Q Is that correct? There was one other chromosome spot
14 that was noted as being pathogenic. Do you recall?

15 A It had pathogenic with a question mark by it, I hope.

16 Q Yes, it did.

17 A And we looked those up and those -- we found no what we
18 call OMIM genes. In other words, there were no known gene
19 in that deletion area.

20 Probably why the question mark is there, it could have
21 been close to a real gene. And they put a question mark if
22 it's near there.

23 Q And there was a question mark beside 22q11 deletion
24 also, wasn't there?

25 A Right.

Dr. Jack M. Rary
Cross-examination by Ms. Timmons

1 Q And --

2 A And what that's doing is telling us to really check
3 those out.

4 Q Cat eye syndrome was also noted?

5 A I'm sorry?

6 Q Cat eye syndrome was noted for 22.

7 A Cat eye syndrome does have a peculiar inheritance
8 pattern involving the 22. It's a totally different syndrome
9 though.

10 Cat eye syndrome is caused by a replication of part of
11 the 22 centromere and the area next to the centromere. So
12 the cat eye syndrome has -- has extra genetic material like
13 a trisomy that causes Down syndrome. A cat eye syndrome is
14 a trisomy of part of chromosome 15.

15 Q So you looked into that and he does not have that.

16 A Oh, definitely not, no. If you have ever seen one of
17 those, that's a terrible disease.

18 Q Very obvious when you look at someone?

19 A Oh, yeah, yeah.

20 Q For the testing that you did on the amino acids, you
21 tested Mr. Torres' blood, is that correct?

22 A Okay. Now, we didn't do the testing on the amino acid
23 ourselves. We had -- we sent it out or it was sent out to a
24 laboratory.

25 Q Okay.

Dr. Jack M. Rary
Cross-examination by Ms. Timmons

1 A And all I did was look at the results.

2 Q All of the tests that you did in this case did you do
3 on the same sample of Mr. Torres' blood?

4 A You mean the microarray?

5 Q Yes.

6 A No, no. This -- this was done separately. After we
7 finished the microarray we requested another sample be taken
8 from Mr. Torres to confirm the PROD gene deletion. And we
9 requested the proline levels and that would -- that then
10 confirmed it.

11 Q So how many samples of blood did you test separately?

12 A I think at least two I know of. We got the original
13 blood sample that came to us. We only got one.

14 Q Okay.

15 A The other requests that were sent out for the
16 uniparental disomy were the methylation study and this amino
17 acid study. We did not receive those. We just simply told
18 them where, what lab to send the blood to, and it's a
19 commercial laboratory, LabCorp or somewhere like that.

20 Q Okay. Are there any particular conditions under which
21 you need to take the blood as in does the patient need to
22 fast for a certain amount of time before you take the blood
23 for correct results?

24 A There shouldn't be. Normally an amino acid from
25 plasma, you don't have to worry about it. Urine, sometimes

Dr. Jack M. Rary
Cross-examination by Ms. Timmons

1 we have to collect it for 24 hours to make it come out
2 proper or determine if it's really normal. But plasma,
3 there's no requirement there.

4 Q Okay.

5 MS. TIMMONS: Beg the Court's indulgence.

6 (Pause.)

7 Q Dr. Rary, you were asked a question right at the end of
8 direct examination about if a sample was tested would a
9 22q11 deletion show up.

10 A Today?

11 Q No. At the -- by the state in the original trial. The
12 question was if the right testing was done.

13 A Oh, back in from the original semen sample?

14 Q Yes, from the semen sample.

15 A It absolutely showed provided they took reasonable care
16 of the D.N.A.

17 Q Okay.

18 A If the D.N.A. degrades or is contaminated, then of
19 course you're going to have problems. But there's no
20 question that if they did the analysis on the semen, then
21 the deletion would show up.

22 Q And what analysis would that be?

23 A Since -- since it's so old you would have to do
24 either -- another microarray would work. You could do that.
25 That would be the simplest to do and the easiest to do.

Dr. Jack M. Rary
Cross-examination by Ms. Timmons

1 Q Do you know whether or not that's the type of test used
2 to do D.N.A. matching?

3 A For matching?

4 Q If you test a sample to find out the -- to match D.N.A.
5 between two different samples.

6 A Right.

7 Q Is a microarray the test that you would do?

8 A Oh, you -- yes, certainly, certainly. Most of the
9 chart we showed up here showed the extra deletions and
10 additions and so on.

11 Everybody here would have a different pattern, and a
12 different semen sample would have a different pattern than
13 Mr. Torres if you ran a microarray test on it. I have
14 never -- unless it had a zero. We have seen a few people
15 who have no deletions or additions in their genome.

16 Q Dr. Rary, once you saw the pictures of Mr. Torres and
17 you made a diagnosis of Prader-Willi syndrome, if you were
18 satisfied with your diagnosis based on his physical features
19 why did you test, do genetic testing, or do the microarray
20 and the methylation test?

21 A I'm -- I'm not sure why we -- we did it. I think it
22 was requested down here.

23 Q Okay.

24 THE COURT: Can you back away from that microphone
25 please, sir?

Dr. Jack M. Rary
Cross-examination by Ms. Timmons

1 THE WITNESS: Yeah. I'm sorry.

2 A I am not sure the sequence of why we did this. I think
3 we -- we may have recommended it to confirm this, and in,
4 fact, that's probably the way it happened.

5 MR. TIMMONS: Beg the Court's indulgence.

6 (Pause.)

7 Q You said that the -- one of the purposes of genetic
8 testing is for family planning, is that right?

9 A Right.

10 Q If someone tests positive for a particular genetic
11 condition, that doesn't necessarily mean that they will have
12 the symptoms, some of the symptoms, associated with that
13 condition, right?

14 A Not all of the symptoms. If they test positive they're
15 going to have some symptoms and signs and dysmorphic
16 features but not necessarily all of the whole list.

17 Q For example, they might not have a psychiatric
18 condition associated with it.

19 A That's possible in some of them. In fact, I've seen
20 some children with Prader-Willi who are I will consider
21 almost normal except for their eating habits.

22 MS. TIMMONS: No further questions.

23 MR. TESSIER: Brief followup, Your Honor.

24

25

Dr. Jack M. Rary
Redirect examination by Mr. Tessier

1 REDIRECT EXAMINATION

2 BY MR. TESSIER

3 Q Dr. Rary, I'm going to touch on just a few areas of
4 that cross-examination.

5 To start with I need to talk about the D.N.A. found at
6 the scene of the crime that was alleged to be Mr. Torres'
7 semen sample.

8 Do you know from your experience as a medical
9 geneticist if you are looking at a sample of D.N.A. found at
10 a crime scene and trying to come up with a so-called match
11 to a particular individual, do you know what type of testing
12 is done to determine a, quote, unquote, D.N.A. match for
13 that purpose?

14 A Certainly. There's a number of what we call
15 polymorphisms. They are not actual significant genes. But
16 if we examine the D.N.A. of everybody in this room everybody
17 would have their own pattern of polymorphisms. And these
18 are changes in the D.N.A. that we can pick up either by the
19 microarray or by P.C.R., which is a different type
20 technique. We can amplify these regions and pick up a
21 certain numbers of genes or polymorphisms and show the
22 pattern from this. It's a very simple, easy, quick test
23 that's very inaccurate.

24 Q It's showing -- it's matched up against what science
25 happens to know would be certain characteristics in the

Dr. Jack M. Rary
Redirect examination by Mr. Tessier

1 human population that will come up in these various
2 polymorphisms, or sometimes I don't know if this is the same
3 word, but they search particular alleles, do they not, when
4 they're trying to make a so-called match for D.N.A.
5 purposes?

6 A Yeah. If you mean ethnic background, picking up genes
7 in certain ethic backgrounds -- is that what you mean?

8 Q Yeah. And what I'm getting at is this. The normal
9 standard D.N.A. test done at a crime scene to detect what
10 they would call a match to a particular individual is not
11 the microassay that you guys did to find the 22.

12 A No, no. We didn't do that.

13 Q And nobody does typically as a D.N.A. match type test
14 at a crime scene, do they?

15 A No.

16 Q And so in order to determine if the semen sample found
17 at the crime scene that was claimed to be Mr. Torres -- in
18 order to determine if that semen sample has the 22q11
19 deletion Mr. Torres has a different type of test would have
20 to be done.

21 A Right.

22 Q Like the one did you on his blood sample.

23 A That's right.

24 Q And if that test is actually done and it's Mr. Torres'
25 sample it would have to show the same deletion, would it

1 not?

2 A That's right.

3 Q When you do testing at various labs is it not the case
4 that the lab provides the criteria by which you are to
5 provide the sample of bodily fluid to the lab?

6 A All of them do, yes.

7 Q So if they want a urine sample they will specifically
8 tell you exactly what they want in the urine sample.

9 A That's correct.

10 Q Temperature.

11 A Yeah.

12 Q Shipping, methodology, all of that.

13 A Some tests you have to freeze it. Some tests you don't
14 want to freeze it. That's why, because they won't come out
15 proper if you do the wrong thing.

16 Q Okay. So you have to -- the testing result is
17 dependent upon the criteria that the lab sends.

18 A Right.

19 Q And if you don't follow the lab testing or protocol or
20 criteria you'll get -- you may not even get a result.

21 A Right.

22 Q Let me finalize with the Prader-Willi syndrome. Human
23 beings have had genetic defects as long as there have been
24 human beings, is that right?

25 A As long as --

Dr. Jack M. Rary
Redirect examination by Mr. Tessier

1 Q As long as there have been human beings on this earth.

2 A Right.

3 Q There have been gene --

4 A Somebody has had one. They all originated somewhere.

5 Q Right. So what I'm getting at is sort of chicken and
6 an egg. We did not have genetic testing available to
7 confirm genetic disorders in human beings until relatively
8 recently in human history.

9 A That's absolutely correct, yeah.

10 Q So that doesn't mean that a medical geneticist like you
11 can't accurately diagnose a genetic disorder just because
12 you don't happen to have a medical test that will determine
13 it.

14 A Right, right.

15 Q And, in fact, isn't that how you have been diagnosing
16 genetic conditions in your entire career, primarily by the
17 clinical assessment?

18 A That's correct.

19 Q And so is there any concern in your mind with respect
20 to what you've seen with Tony Torres that makes you in any
21 way not comfortable with your diagnosis based on the
22 clinical assessment that he has Prader-Willi syndrome?

23 A No. I'm as comfortable as telling a family member that
24 their child has these syndromes. I have no, absolutely no,
25 question about it.

Jennifer Ann Mondonedo
Direct examination by Mr. Schoen

1 Q Thank you. That's all I have.

2 THE COURT: You may step down.

3 We are going to be in recess for 15 minutes.

4 (Whereupon, a recess was taken.)

5 MR. EHLIES: We are going to go with our young lady to
6 get her back, and they have gone to get her.

7 THE COURT: Okay.

8 (Pause.)

9 JENNIFER ANN MONDONEDO, having
10 been first duly sworn, testified as follows:

11 THE COURT: State your name, please.

12 THE WITNESS: It's Jennifer Ann Mondonedo.

13 THE COURT: Spell your last name.

14 THE WITNESS: M-O-N-D-O-N-E-D-O.

15 DIRECT EXAMINATION BY MR. SCHOEN

16 Q Good afternoon. May I call you Jennifer?

17 A Yes.

18 Q Jennifer --

19 THE COURT: You'll need to get a little bit closer to
20 that microphone. The black one is what you use.

21 Q As I told you a little bit earlier today, my name is
22 Chris Schoen. I'm an attorney for Mr. Torres. As I also
23 told you, I'm not your attorney. I'm Mr. Torres' attorney.
24 And I don't represent you.

25 A Yes.

Jennifer Ann Mondonedo
Direct examination by Mr. Schoen

- 1 Q I'd like to ask you just a couple of quick questions.
2 I want to take you back to the night of May 10th and
3 the morning of May 11th of 2007. Do you remember that time?
4 A Yes, I do.
5 Q How do you remember that time?
6 A How do I remember it? Because I was there.
7 Q what -- where were you that night?
8 A I was actually looking for my boyfriend at the time --
9 Jonathan -- and I actually heard that they were going to be
10 a fight between Tony and Chuck.
11 Q And what did you do in order to try to find Jonathan?
12 A Huh?
13 Q what did you do to try to find Jonathan?
14 A I called Tony's phone over and over again, and I also
15 tried to call Jonathan's phone. And I talked to Chuck,
16 actually. But I talked to him face to face.
17 Q what time was that?
18 A Huh?
19 Q when was that?
20 A That was around midnight.
21 Q Now, can you tell us whether at any point you called
22 the home phone where Ann and Ray lived?
23 A Yes. I did.
24 Q And how many times did you call that phone?
25 A I called several.