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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2008-CP-10-0057

Anthony Mann, 242498,

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

VOLUME II OF IV

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1 MS. SHEALY: May I approach, your Honor?

2 MR. BUTLER: I don't mean to interrupt. He's
3 already identified it, parts of it.

4 THE COURT: Parts of those notes are in?

5 MR. BUTLER: Mark for I.D. and Anthony Floyd
6 said, Yes, that is Dante's handwriting. From the same
7 notebook, all of them except the top part of the page that
8 is torn off.

9 MS. WILSON: I think we need to look and see
10 exactly what Anthony Floyd said about that. I don't have
11 that part.

12 MR. BUTLER: How else would it have been marked
13 for ID? It's marked for ID and he said --

14 THE COURT: If he's identified that as a
15 person's handwriting.

16 MS. WILSON: Why is it relevant? No one is
17 challenging the fact that when Anthony Mann was called he
18 was told and he believed that Dante Tobias was trying to
19 pimp out Brownie.

20 THE COURT: No one is challenging that fact?

21 MS. WILSON: Not that Anthony Mann thought that.

22 THE COURT: But why does he want the testimony
23 in that the person was lying?

24 MS. WILSON: Judge, as I argued at that time,
25 that was part of the whole context of what happened inside

1 that house, and I thought it was critical for us to show
2 that.

3 I also think it's unfair that Dante Tobias is
4 being portrayed as a pimp without being able to defend
5 himself because this defendant murdered him, and I have
6 some obligation to that as well. But whether or not Dante
7 Tobias actually was starting some prostitution business
8 doesn't have anything to do with the fact that he has a
9 bullet in the back. The point is Beverley Blake called
10 Anthony Mann and told him this. Anthony Mann, for all I
11 know, believed it; Eric Zack believed it; Michael Crumb
12 believed it.

13 THE COURT: He said it looks like Dante's
14 handwriting.

15 MS. WILSON: I don't think that is enough.

16 MR. BUTLER: It's enough that it looks like his
17 handwriting. It's not his handwriting, and it's not
18 Floyd's handwriting. It looks like his handwriting. It's
19 not Floyd's handwriting and it's in his house and it
20 pertains to his business.

21 THE COURT: Would it not be relevant to
22 Mr. Floyd's credibility if he was running a prostitution
23 business?

24 MS. WILSON: Mr. Floyd wasn't cross-examined
25 about that aspect of it. He told what he thought -- what

1 if there was going to be a prostitution business as far as
2 Tobias was concerned and Floyd knew nothing about it? He
3 thought they were going to have dancers for birthday
4 parties. He knew nothing about it. So he's being
5 impeached for something that maybe Dante Tobias wrote?
6 That's certainly not fair to him either.

7 THE COURT: But did he acknowledge that Tobias
8 was his partner?

9 MS. WILSON: He acknowledged that they were
10 going to start a business to have dancers for birthday
11 parties, weddings, things of that nature.

12 THE COURT: And adult entertainment.

13 MS. WILSON: Right.

14 MR. BUTLER: I don't know if he said adult
15 entertainment. I think we used that word.

16 THE COURT: He did.

17 MR. BUTLER: He said -- he didn't use the word
18 adult entertainment? It goes to --

19 THE COURT: He said the person is not a
20 stripper.

21 MR. BUTLER: Okay. It goes to his credibility
22 as your Honor has proposed, but I think more centrally the
23 argument I have not made yet is that Ms. Burney in her
24 opening statement said that it's just a fluke that Dante
25 even knew Beverly, and this documentation shows it's not a

1 fluke, that she was going to be working for him.

2 Secondly, most importantly, when Michael Crumb
3 testifies that Dante said that Beverly was lying about
4 prostituting her, this is in direct response to that.
5 Rule 806 allows the defense to impeach the declarant whose
6 hearsay statement comes in as if he testified. There
7 seems to be no argument that if Dante Tobias were here and
8 testified saying, I wasn't prostituting her out.. And I
9 have this from his house that someone else says is made in
10 his handwriting that I can impeach him with that.

11 They can't have it both ways. We strenuously
12 object to that statement coming in. We sent the jury out,
13 we've fought about it for 40 minutes. They can't have it
14 both ways. It came in; now they're stuck with it.

15 Beg the Court's indulgence.

16 Also, Mr. Tobias, Sr. came in to say that he was
17 self-supporting; that his line of work was cleaning tanks
18 or he worked for a tank service; and that Brownie, in her
19 opening statement, Ms. Burney said that Brownie was taking
20 advantage of Mr. Tobias, and we think that all this is in
21 response to -- all of this evidence opens the door to
22 those documents taken from his house.

23 THE COURT: Anything else?

24 MR. BUTLER: Beg the Court's indulgence.

25 We also have at some point --

1 THE COURT: Yes, sir?

2 MR. BUTLER: I think that's all I have.

3 THE COURT: Yes, ma'am.

4 MS. WILSON: Judge, I think again, the first
5 problem is the handwriting has not been identified. There
6 is testimony that Anthony Floyd was there. There was
7 testimony that other people were there in the house that
8 night.

9 THE COURT: Are those the same notes that
10 Mr. Floyd looked at when he was on the stand?

11 MR. BUTLER: They are. The only one that is not
12 is the top of the page that was torn off that you can
13 match and see that it's the top of the page.

14 MS. WILSON: In addition, your Honor, again I
15 don't think that Anthony Floyd saying that looks like his
16 handwriting is strong enough to have an introduction of
17 the documents as Mr. Tobias'.

18 Also, I think regardless of Rule 806 --

19 THE COURT: Well, why did you ask him about
20 whether he recognized the handwriting?

21 MS. WILSON: I didn't.

22 MS. SHEALY: I did.

23 THE COURT: I'm sorry, Mrs. Shealy asked him
24 that. Go ahead.

25 MR. BUTLER: I'll solve that problem. I won't

1 introduce these as his handwriting. I will introduce them
2 as having come from his residence coupled with the fact
3 that Mr. Floyd said that it looked like his handwriting.
4 I won't say this is his handwriting, I won't introduce
5 them as that. I think that's what they are. If that's
6 the problem, although I have to say that is the relevant
7 minimal standard; he says it looks like his handwriting, I
8 think that is sufficient. If that's the problem, I won't
9 introduce them as that.

10 MS. WILSON: If they're not introduced as Dante
11 Tobias's, then they're just not relevant at all. And I
12 think that even still a 403 analysis applies.

13 THE COURT: Why would you be prejudiced by
14 those?

15 MS. WILSON: Because it's smearing the victim
16 around this courtroom when he's not here to defend
17 himself.

18 I think that we are not disputing the fact that
19 Anthony Mann thought, according to Brownie, that the
20 defendant was, that the victim was trying to pimp her out,
21 to use their expression. Nobody is going to stand up and
22 argue and say that that wasn't told to Anthony Mann, that
23 Eric Zack didn't believe that, and that Michael Crumb
24 didn't believe that.

25 MR. BUTLER: If that's so, why introduce the

1 hearsay statement? If their position is that he goes over
2 there thinking that he is pimping her out, but I should
3 say there's conflicting testimony about it that he is
4 going to rescue Brownie, and then on the other hand, the
5 evidence then that he was going over there to get guns and
6 drugs.

7 So on the first point, they are rescuing Brownie
8 from being pimped out. Secondly is that if they're not
9 disputing that is why he went over there, why introduce a
10 hearsay statement that Dante says she's lying, okay? He's
11 over there at that point. When Mr. Tobias supposedly
12 says, She's lying, that is supposed to undermine his
13 impression that she's being pimped out, and we fought and
14 fought to keep that out, and they insisted on it coming in
15 and it came in.

16 THE COURT: Well, they argued that it was part
17 of the whole context of what was being sensed at that
18 time.

19 MR. BUTLER: That's fine. If a hearsay
20 statement comes in, anything that can be used to impeach
21 the declarant if he testifies comes in under Rule 806. If
22 they didn't introduce that statement, then this wouldn't
23 be so much an issue.

24 The other thing as far as raising issues of
25 Mr. Tobias' character, if you want to characterize it as

1 that, they opened the door to that in their opening
2 statement and through Mr. Tobias, Sr.'s testimony.

3 MS. WILSON: Your Honor, first of all, I don't
4 think -- I don't believe the opening statement is
5 evidence. Second of all, as I said earlier, that whether
6 or not the co-defendants were told that Mr. Tobias was
7 trying to prostitute Brownie is not an issue.

8 Yes, we do believe that there was a mixed motive
9 to going over there, that he was not all that interested
10 in going over there until he hears money and dope and
11 safe. There is no question about that. It doesn't change
12 the fact that's what he was told over the telephone, you
13 know, at first.

14 THE COURT: But I still don't see why it doesn't
15 bear on Mr. Floyd, too.

16 MS. WILSON: Because we don't know that
17 Mr. Floyd knew anything about those records. They asked
18 if he could identify the handwriting, and he said, It
19 looks like Dante's.

20 THE COURT: But he talked about the business in
21 his testimony and he portrayed the business to be a
22 certain thing. He was a partner to the business. If he
23 was running a business that was engaged in that type of
24 activity, that impugns his credibility, just as you say it
25 impugns that of the deceased. It works both ways, does it

1 not? You say it impugns the integrity of the deceased.
2 Does it not impugn the integrity of that person whose
3 credibility is at issue by testifying in the case for the
4 State?

5 MS. WILSON: I understand what the Court is
6 saying, but I still think without any connection to
7 Mr. Floyd except for the location, I mean it does work
8 both ways. From Mr. Floyd's behalf, who knows that he
9 knew anything about these thoughts that someone had.

10 THE COURT: Well, the thing is, though, I think
11 they can make a threshold showing that he thought that
12 they were Mr. Tobias's notes in that they were found in
13 the house. And certainly I think, at that point then, it
14 becomes something for the jury to weigh. I also think you
15 are free to bring Mr. Floyd back to refute that or respond
16 to that.

17 MR. BUTLER: Judge --

18 MS. WILSON: Is there, and I'm just looking to
19 see that these -- I don't see anything in here that talks
20 about prostitution.

21 THE COURT: Insofar as the defense is concerned,
22 who are you going to offer those notes through now?

23 MS. WILSON: They would come through the crime
24 scene investigator, and we don't argue about the fact that
25 they were found in the house.

1 THE COURT: All right. What's going on?

2 MS. SHEALY: We're trying to get the case on
3 point.

4 THE COURT: I'm inclined to allow that in. I
5 thought that's what I was saying. You can bring Mr. Floyd
6 back if you want to challenge that. I think a threshold
7 showing has been made they were found in his house; that
8 the person who claims to be familiar with his handwriting
9 said it looked like his handwriting. Mr. Floyd testified
10 that it was a different type of business. Mr. Floyd's
11 credibility is at issue in this case if indeed it is that
12 type of business as indicated, and the State agrees that
13 it does work both ways, it could suggest something about
14 his credibility. The items are admissible.

15 Are you all ready to proceed now?

16 MS. WILSON: Yes.

17 MS. SHEALY: Yes.

18 THE COURT: All right. Bring the jury in.

19 (The jury came into open court at approximately
20 9:45 a.m.)

21 THE COURT: Good morning, ladies and gentlemen.

22 JURORS: Good morning.

23 THE COURT: We're ready to proceed at this time.

24 Call your next witness.

25 MS. WILSON: Mike Ringley.

1 MICHAEL B. RINGLEY, JR., after being duly sworn,
2 testified as follows:

3 THE CLERK: Please state your full name for the
4 Court and spell your last.

5 THE WITNESS: Michael B. Ringley, Junior,
6 R-I-N-G-L-E-Y.

7 (WHEREUPON, State's Exhibit No. 105 was marked
8 for identification only.)

9 DIRECT EXAMINATION

10 BY MS. BURNEY:

11 Q Mr. Ringley, where do you work?

12 A I'm currently employed by the Charleston County
13 Sheriff's office.

14 Q And how long have you been working with the sheriff's
15 office?

16 A I have a break in time. I have been working with the
17 sheriff's office about 15 years now.

18 Q In what capacity do you work at the sheriff's office?

19 A I'm a crime scene investigator.

20 Q What does a crime scene investigator do?

21 A A crime scene investigator -- it's a specialized
22 division within the sheriff's office. We respond to
23 crimes where we're called to process scenes, take
24 pictures, videotape and collect evidence, and keep that
25 evidence until court.

1 Q Have you been working crime scene the entire time
2 you've been with the sheriff's office?

3 A No, ma'am. I had six years prior on the road before
4 I went to crime scene.

5 Q The balance of that was in crime scene?

6 A Yes, ma'am, approximately eight and a half years.

7 Q Were you working on January 7th, 2002?

8 A On January 7th, the call came in at 19:01. I was
9 already off that day. We work from 8:30 to 4:30. I was
10 at my residence when I received a call.

11 Q Did you get called out to the scene?

12 A Yes, ma'am, I did.

13 Q Tell the jury where you went and what you did.

14 A At approximately 19:01 p.m, which is 7:01 p.m.
15 standard time, on January 7th, 2002, I responded to 36
16 Magnolia Road, which is in Charleston. It runs right off
17 Savannah Highway and runs -- I believe it runs over to
18 Ashley River Road.

19 Q What other officers were with you that night?

20 A That night it was myself and Investigator Wenger and
21 Sergeant Presnell and the detective office.

22 Q And what did you observe when you arrived?

23 A When I arrived on the scene, it was rather cool that
24 night. We were awaiting a search warrant. I arrived, the
25 detectives were already on the scene, and Investigator

1 Wenger was already on the scene, and Sergeant Presnell was
2 en route. And it was a residence, pretty much dark.

3 Q And would you explain to the jury what you did to go
4 about processing that scene?

5 A Like I stated before, we waited for a search warrant.
6 Once we arrived, my job with the crime scene team was to
7 do the videotaping of the crime scene.

8 Q And did you videotape the crime scene?

9 A Yes, ma'am, I did.

10 Q What areas did you videotape?

11 A We videotaped the front of the house, all the sides,
12 the back, the front porch area, and all throughout the
13 house.

14 Q Interior and exterior?

15 A Interior and exterior.

16 Q What other methods were used to process that scene
17 besides videotape?

18 A Photographs were taken, sketches, diagrams and
19 measurements.

20 Q Where did you understand that the victim was found
21 when you got to that scene?

22 A The victim had been transported by EMS prior to my
23 arrival, and I was told when I first responded to the
24 scene that the victim was found on the front porch with a
25 gunshot wound.

1 Q Okay. I'm going to show you what is marked as
2 State's Exhibit 39 and ask you if you can identify what
3 porch you are talking about that the victim was found on.

4 A With this pointer, the victim was in this area right
5 in here, on the floor.

6 Q All right. And I'm going to ask if you'd look at
7 these Exhibits 27 through 39. Do you recognize those
8 photos as the ones that were taken?

9 A Yes, ma'am, I do.

10 Q And these were that night?

11 A Yes, ma'am.

12 Q And do they fairly and accurately depict the scene
13 that night when you arrived?

14 A Yes, ma'am, they do.

15 Q How many rooms, other than closets, were in that
16 house?

17 A There were three bedrooms with one common bathroom.

18 Q I'm going to show you -- I'll first ask you, was
19 there anything of significance on that porch where you
20 said the victim was found?

21 A Yes, there was. On the porch where the victim was
22 found was projectile, a shell casing.

23 Q Put up State's 40.

24 A A moderate amount of blood.

25 Q I would ask you if you can tell what that is.

1 A That item that I am circling is the copper-colored
2 projectile which was found on the front porch.

3 Q What is a projectile?

4 A A projectile is, technically is the bullet.

5 Q And State's 36?

6 A This item here is the expended shell casing. It's
7 the component of the bullet that contains the gun powder,
8 that when it's struck it expels the bullet.

9 Q And 34?

10 A That's a photograph of the front porch from the door.
11 That area right in here is the blood that was found on the
12 front porch.

13 Q Can you tell if the bullet is in that photograph, the
14 projectile that you described?

15 A If I could refer to it.

16 I can't see it in this photograph here. It's
17 relatively small.

18 Q All right. I'm going to show you State's 27 and ask
19 you if you can identify that photograph.

20 A That is the photograph of the kitchen area inside the
21 house.

22 Q And 28?

23 A That's a photograph of the victim's bedroom.

24 Q What kind of evidence was collected from the victim's
25 bedroom? Do you have that in your notes?

1 A The evidence collected from the victim's bedroom, if
2 I can refer to my notes, a combination safe with papers
3 and two sets of shelves.

4 Q Do you know where that safe was located?

5 A Yes, it was located in the victim's closet at the
6 very bottom.

7 Q Could you take a look at State's Exhibit 29 that's in
8 evidence. Is this the safe that you're referring to?

9 A Yes, ma'am, the safe. I'm circling it right now.
10 That is the safe.

11 Q Is that in the location that it was found?

12 A Yes, ma'am.

13 Q And you seized that?

14 A Yes, ma'am.

15 Q What kinds of things are you looking for as a crime
16 scene technician when processing a crime scene?

17 A When we process a scene we're looking for weapons,
18 ammunition, bullets, projectiles, casings.

19 Q Are you looking for fingerprints?

20 A Yes, we're also looking for fingerprints, fibers,
21 hairs, anything that can be used to prosecute a case.

22 Q How is it possible for people to leave fingerprints
23 on an item?

24 A The way fingerprints are left on an item is that a
25 fingerprint normally is made up of 98 percent moisture and

1 two percent inert materials such as vitamins, lipids,
2 acids, amino acids, and various other compounds. Oils are
3 picked up from other parts of the body and other objects
4 that are handled.

5 The fingers normally secrete sweat which as
6 moisture. When a person touches something it leaves a
7 residue behind which is a distinct pattern which can be
8 compared to a suspect or entered into a computer and
9 through the database be matched to a suspect.

10 Fingerprints are normally left behind by
11 suspects who touch things and who are secreting or have
12 been sweating.

13 Q Okay. How do you go about finding latent prints?

14 A Latent prints are developed in many ways. One of the
15 common ways is to utilize powders, fingerprint powders,
16 and utilizing a fingerprint brush. We usually use a
17 fiberglass fingerprint brush and fingerprint powder. We
18 dust hard, solid objects that are not porous.

19 We can also fume things with cyanoacrylate,
20 which people normally know as superglue. Evidence can
21 also be processed with chemicals such as anhydrite which
22 develops the amino acids, and we have other chemicals that
23 develop chloride, which are salts from sweat.

24 We also have a fluorescent chemical that we can
25 use to spray items to make fingerprints glow under certain

1 conditions utilizing an alternate light such as a black
2 light.

3 Q Once you're able to identify a latent print, get it
4 to glow under the light or the other methods that you just
5 mentioned, how do you compare that to a known print?

6 A At that point we take the fingerprints we find, lift
7 with them lifting tape, put the prints on a backing card,
8 or in the case of fluorescent prints or prints that are
9 developed with anhydrite, we photograph them one to one.
10 We take those fingerprints over to the automatic
11 fingerprint identification system, which is located either
12 at the North Charleston Police Department or at the City
13 of Charleston or SLED, and we take them to those locations
14 where we enter them into a database, and that database
15 will make a match and then it is compared, and that is how
16 we develop a suspect by fingerprint.

17 The other way is to have a ten-print card or
18 major case prints where they're actually matched one to
19 one by a fingerprint examiner.

20 Q In this case did you fingerprint that or test that
21 safe for latent prints?

22 A Yes, ma'am, we did.

23 Q Are there any other items that were tested for latent
24 prints?

25 A Yes, ma'am, we processed a multitude of items from

1 that residence. Would you like me to go through the list?

2 Q Yes.

3 A I have to refer to my notes.

4 On January 22, 2002, one of the items that we
5 did collect from the scene was a door and the raw wood.
6 What I mean by raw wood is it's wood that hasn't been
7 painted or stained.

8 This door had recently been installed. That's
9 the front door as you're looking at the front porch in the
10 first photograph.

11 The frame was sprayed with a chemical called an
12 anhydrant. An anhydrant will develop fingerprints on
13 paper and on wood, but we failed to develop any
14 identifiable fingerprints or fingerprints with enough
15 detail to do anything with.

16 Q I'm going to show you State's 88 and ask if you can
17 identify that.

18 A Yes, ma'am, that is the front door. That is another
19 item that we fingerprinted.

20 On that item, it was painted; therefore we used
21 conventional fingerprint powders. Plus the front and back
22 of the door is glass, and glass is a very good material to
23 develop fingerprints.

24 Q Where is the door in this picture?

25 A The door is at the evidence compound and being dried

1 at our office.

2 Q You actually took it from the scene?

3 A Yes, ma'am, we collected it and took it to the lab.

4 Q How about 90?

5 A That's the bedroom door. It was collected as well
6 and taken to the lab and fingerprinted there.

7 Q And I will show you State's 87 and ask if you can
8 identify that exhibit.

9 A That is the safe from the closet that was
10 fingerprinted at the lab.

11 Q And that photograph shows you inside the lab, not at
12 the scene?

13 A Yes, ma'am.

14 (WHEREUPON, State's Exhibit No. 107 was marked
15 for identification only.)

16 BY MS. BURNEY:

17 Q I'm directing you to State's 107 for identification.
18 Tell the jury what that is.

19 A Yes, ma'am. That's the Sentry safe from the bedroom
20 with the shells that were fingerprinted at the evidence
21 compound but were originally seized from the victim's
22 bedroom.

23 Q And was the safe in this condition when you retrieved
24 it from the 36 Magnolia residence?

25 A Yes, ma'am, with the exception of the fingerprint

1 powder.

2 Q Was there anything inside the safe?

3 A There were papers, and there was papers inside and
4 outside the safe.

5 Q And this black stuff all over the safe is what?

6 A That is the fingerprint powder we use to develop
7 fingerprints.

8 (WHEREUPON, State's Exhibit No. 106 was marked
9 for identification only.)

10 BY MS. BURNEY:

11 Q I'm going to show you what is marked as State's 106
12 for identification and ask you if you can identify that.

13 A It's a green notebook that was found in the kitchen.

14 Q All right. Now, Deputy Ringley, let me show you one
15 more photograph, State's 42. I would ask if you can
16 identify what State's 42 shows.

17 A That item that's in the center right there is a
18 Crossman, I believe it's a Crossman air pistol. It's a BB
19 gun.

20 Q How can you tell it's a BB gun? How can you tell by
21 looking at it that it's a BB gun?

22 A There are two things that are identifiable to make it
23 appear as if it's a BB gun; that is the fact that the
24 barrel's open right there, and there are two air
25 cartridges right there, and I need to look at the picture,

1 but there are 2 CO2 cartridges there.

2 There's the opening. There is a CO2 cartridge
3 there, there, and the pistol's actually broken in half
4 right there in front of the cylinder.

5 Q And State's 32. And what does State's 32 show?

6 A That is money that was within a cigar box that was
7 inside the safe.

8 Q Okay. And what does State's Exhibit 33 show?

9 A This is the victim's bedroom. It shows stereo
10 equipment and a bed.

11 Q Let me be clear. I think you testified earlier that
12 State's 28 was the victim's bedroom. Was this the
13 victim's bedroom or another bedroom in the house if you
14 can recall? Or did the victim have two bedrooms?

15 A I can't recall.

16 Q Now at some point were you involved in a search of a
17 white Hyundai owned by Danielle Batista?

18 A Yes, I was.

19 Q When did that car come into custody of the sheriff's
20 office?

21 A I believe it was on the 17th, January 17th, 2002.

22 Q And I'm going to show you a photograph, State's
23 Exhibit 72, and ask if you can identify that.

24 A That's the vehicle that was towed to the evidence
25 compound where a search warrant was conducted.

1 Q What condition was this white Hyundai in when you got
2 it to the sheriff's office? Was it clean? Was it dirty?

3 A In my opinion it was almost in pristine condition.
4 It was as if it had been washed, waxed, vacuumed,
5 shampooed. It was a very, very clean car.

6 Q What kind of tests did you perform on that vehicle?

7 A On January 18th, 2002, I conducted a search warrant
8 on the vehicle. I fingerprinted the exterior of the
9 vehicle, the interior of the vehicle. I utilized a
10 chemical called Starlight Bloodhound, a blood-locating
11 chemical that reacts with blood and it's luminescing; in
12 other words, it glows, similar to like a stilbene stick,
13 sticks that you break and they glow. I also utilized
14 presumptive McFalls blood reagent on the brake and gas
15 pedal.

16 Q Explain to the jury why you used that agent, reagent.

17 A I utilized that chemical on the test on the brake
18 pedal and gas pedal in case a suspect or someone had
19 walked through the blood, picked up any of the blood and
20 carried it to that vehicle and drove away in it.

21 The Starlight blood locating spray was used in
22 the same manner. It was utilized to locate any kind of
23 blood or blood residue that may have been in that vehicle.
24 And all the tests came back negative. And we didn't even
25 lift any fingerprints off the vehicle it was so clean.

1 Q I will show you State's 78 and ask you if this is
2 what you're talking about when you say you fingerprinted
3 the car --

4 I will show you what is in evidence as State's
5 Exhibit 78 and ask if you can identify that.

6 A That is the vehicle, the Hyundai, that was
7 fingerprinted. There's fingerprint residue all over the
8 vehicle. That's why it's got kind of a grayish tint to
9 it. All that's the fingerprint powder that was used on
10 the vehicle, front, rear, sides, doors, top of the roof,
11 windows.

12 Q And with all that, nothing on the vehicle?

13 A Did not lift a single print.

14 MS. BURNEY: I beg the Court's indulgence. I
15 want to ask about this.

16 BY MS. BURNEY:

17 Q I will show you what is in evidence. I'm going to
18 show you what is marked for I.D. as State's Exhibit 3B,
19 3A, 4 and 5?

20 A Exhibits 3A and 3B are the projectile or the bullet
21 and the casing that was collected off the front porch. It
22 was sent to SLED and entered into the IBIS, that's the
23 sticker, which is the Integrated Ballistics Identification
24 System.

25 Q Did they have any markings on them that indicated

1 that they were sent to SLED and collected by your office?

2 A Yes, ma'am, they do. Our numbers are on the box.
3 The blue writing is indicative of what SLED writes on
4 their evidence when they receive it. They have swabbed
5 the casing and they have written their markings on it.
6 They have a different control system and a different
7 marking system than we do, so their number is on it as
8 well.

9 Q How about State's 4?

10 A State's 4 is the gunshot residue kit known as the GSR
11 kit. It consists of swabs and sticky tabs, and what it
12 does is it picks up trace evidence off the hands of
13 someone who may have fired a weapon. And what it does, it
14 picks up the heavy metals from the primer. And then also
15 in this kit is a five percent nitric acid swab which picks
16 up any unburned gunshot, gunpowder residue, gunshot
17 residue, and this is sent to SLED and they examine it
18 under a scanning electron microscope and they are able to
19 determine whether someone fired a gun or if they were in
20 the proximity when the gun was fired.

21 Q Can you tell the jury whose hands were swabbed to
22 collect that evidence from the gunshot residue?

23 A This kit was collected at MUSC on January 7th, that
24 evening, by Detective Harry Long on the victim, Dante
25 Tobias.

1 Q All right. And I handed to you State's Exhibit 5 for
2 identification.

3 A Yes, ma'am. It's the victim's pager.

4 Q Are you sure that is the victim's pager or look
5 through your notes to see if you have any recollection.

6 A Let me refer to this further.

7 I stand corrected. This pager was found at a
8 search warrant at 215 Red Bank Road.

9 Q Thank you. Is that all I gave you?

10 A Yes, ma'am.

11 MS. BURNEY: Okay, four and five.

12 Your Honor, at this time we'd move State's
13 Exhibits 3A, 3B, 4, 5, 106 and 107 into evidence.

14 MR. BUTLER: Beg the Court's indulgence one
15 moment, please.

16 THE COURT: Yes, sir.

17 MR. BUTLER: Without objection.

18 THE COURT: All right. Those items are in
19 evidence without objection.

20 (WHEREUPON, State's Exhibits Nos. 3A, 3B, 4, 5,
21 106, 107 were admitted into evidence.)

22 BY MS. BURNEY:

23 Q All right. Now, Deputy Ringley, were you familiar
24 with the search of this vehicle marked in State's --
25 identified in State's Exhibit 63?

1 A Yes, ma'am.

2 Q Okay. And how was this car processed?

3 A It was processed pretty much the same way. If I
4 could refer to my notes.

5 Q I'm going to show you State's Exhibit 65 and ask you
6 if this shows the collection process that you used.

7 Does State's 65 show -- maybe you need to take a
8 look at the picture.

9 What is that on the doors there on the side?

10 A This vehicle has been fingerprinted as well. That's
11 the gray fingerprint powder on the doors and the edges of
12 it, right there. And it was fingerprinted and processed
13 pretty much the same way as the other vehicles.

14 Q Were there any latent prints lifted from this
15 vehicle?

16 A On the '96, correction, '97 Honda Accord pursuant to
17 search warrant we sprayed blood detection chemicals, the
18 Bloodhound --

19 Q Take a look at State's 63. This is a Honda Accord?

20 A Correct, this is a red Honda Accord. This is a Ford
21 Escort.

22 Q Were you telling the jury that on the side of that
23 car is what?

24 A Fingerprint powder.

25 Q I'm going to show you State's 66 and 68. First 66.

1 Were these items in the car when it was received at the
2 sheriff's office for processing?

3 A Yes, ma'am.

4 Q How about 68?

5 A Yes, ma'am.

6 MS. BURNEY: Beg the Court's indulgence.

7 That's all I have. Answer any questions from
8 the defense attorney.

9 MR. BUTLER: Beg the Court's indulgence.

10 May it please the Court.

11 CROSS-EXAMINATION

12 BY MR. BUTLER:

13 Q Good morning, Detective.

14 A Good morning.

15 Q The white Hyundai that you processed?

16 A Yes, sir.

17 Q Are you aware of the date that vehicle was processed?

18 A I stand corrected. It was processed on

19 January 22nd at 1 o'clock p.m.

20 Q The 22nd?

21 A Yes, sir.

22 Q And that vehicle had been initially impounded by law
23 enforcement, retrieved by its owner, and then repossessed
24 by law enforcement to process; is that correct?

25 A I'm not aware of that.

1 Q And the 22nd, of course, is nine days after the
2 13th of January?

3 A That's correct.

4 Q And we're speaking of what is depicted in State's 72?

5 A That's the car as it came in, right.

6 Q Right. So when you say that it was in pristine
7 condition, you don't know what may have happened to it or
8 who may have cleaned it between the 13th and the 22nd,
9 do you?

10 A No, sir, I don't.

11 Q And did law enforcement, in fact, go to the owner and
12 retrieve the items that were taken out in the process of
13 cleaning it, the trash, and take that into evidence?

14 A I can't answer that question.

15 Q You're not aware of that?

16 A I'm not aware of that.

17 MR. BUTLER: Okay. Beg the Court's indulgence.

18 May I approach?

19 THE COURT: Yes, sir.

20 BY MR. BUTLER:

21 Q You were present at 36 Magnolia when the crime scene
22 was processed?

23 A Yes, sir, I was.

24 Q I would ask if you recognize these five photographs.

25 A I recognize four of them.

1 MR. BUTLER: Beg the Court's indulgence, one
2 moment.

3 BY MR. BUTLER:

4 Q You recognize these four?

5 A Yes, sir, I do.

6 Q And these are photographs taken from 36 Magnolia?

7 A Yes, sir.

8 Q In the process of processing the crime scene?

9 A Yes, sir.

10 MR. BUTLER: I would like to have these marked
11 and moved into evidence.

12 THE COURT: Any objection?

13 MS. WILSON: No, sir.

14 THE COURT: Twenty-one through 24 are in
15 evidence without objection.

16 (WHEREUPON, Defendant's Exhibits Nos. 21, 22,
17 23, 24 were marked for identification and received
18 into evidence.)

19 BY MR. BUTLER:

20 Q You're aware of the items that were retrieved from 36
21 Magnolia in general?

22 A In general, yes, sir.

23 Q You say that there was an amount of money that was
24 retrieved from the safe; correct?

25 A From the cigar box inside the safe.

1 Q Inside the safe?

2 A Yes, sir.

3 Q And do you know the amount of money?

4 A If I could refer to my notes.

5 Q Sure.

6 A According to the evidence log, it was \$500 in

7 currency from a Honduras wooden box, cigar box.

8 Q I'm showing you State's 32. Does that depict the

9 money that was taken from the safe?

10 A Yes, it does.

11 Q And in denominations of \$20 and \$100 bills?

12 A Yes, sir, they appear to be.

13 Q And when law enforcement arrives the safe is opened?

14 A Yes, sir.

15 Q And the money is in the safe?

16 A Yes, sir, in the box.

17 Q In the box that's in the safe?

18 A Right.

19 Q And are you familiar with State 107, the safe that

20 was taken from the residence?

21 A I processed it, yes, sir.

22 MR. BUTLER: Can I ask the witness to step down

23 for a moment, please?

24 THE COURT: You may step down, sir.

25 BY MR. BUTLER:

1 Q Looking at State's 107, tell me what they are. This
2 is a dual-locking mechanism; is that correct?

3 A Yes, sir.

4 Q That there is a combination keypad locking mechanism
5 here, and then over here there is a lock that requires a
6 key; is that correct?

7 A That's correct.

8 Q And for a person to enter the safe they have to be
9 able to both know the combination and unlock the locking
10 mechanism with the key, correct?

11 A To the best of my knowledge.

12 MR. BUTLER: May the witness resume the witness
13 stand?

14 THE COURT: Yes, sir.

15 BY MR. BUTLER:

16 Q Now, when you process a crime scene and you inventory
17 physical evidence and take it into the evidence room, you
18 keep a list of those items?

19 A In the case at 36 Magnolia, we indicated what we took
20 on the search warrant return, and then when we get to the
21 evidence compound, we enter it into our database where we
22 track the evidence where it goes and when it comes back,
23 et cetera.

24 Q When you say search warrant return --

25 MR. BUTLER: Beg the Court's indulgence one

1 moment, please.

2 May I approach the witness?

3 THE COURT: Yes.

4 BY MR. BUTLER:

5 Q When you say search warrant return, does that appear
6 to be the search warrant return for 36 Magnolia?

7 A Yes, sir, it does.

8 Q And does that then list the items that were taken?

9 A Yes, sir, it does.

10 Q If I could show this to you. It indicates that two
11 beer bottles were taken from Dante's room; correct?

12 A Correct.

13 Q Two 9-millimeter Luger bullets from a foot locker in
14 Dante's bedroom; correct?

15 A Correct.

16 Q Sixteen 9-millimeter Luger bullets from the same as
17 18 meaning Dante's bedroom?

18 A Correct.

19 Q And two 32 automatic bullets from the same as 18,
20 meaning Dante's bedroom; correct?

21 A Correct.

22 Q Green leafy substance in plastic bag in medicine
23 container?

24 A Yes.

25 Q Drug paraphernalia pipe from Dante's bedroom?

1 A Correct.

2 Q And Mead notebook; correct?

3 A Correct.

4 Q Rifle slug, Magnum loads?

5 A Correct.

6 Q Do you know what that is?

7 A What they are?

8 Q Yes.

9 A They're shotgun rounds.

10 (WHEREUPON, Defendant's Exhibit No. 25 was
11 marked for identification only.)

12 BY MR. BUTLER:

13 Q I'll show you what's been marked as Defendant's 25
14 for identification only. Can you read what's on that box?

15 A Rifle slug, Magnum loads.

16 Q The same thing that's listed in the return; is that
17 correct?

18 A That's correct.

19 MR. BUTLER: At this time I'd move Defendant's
20 25 into evidence.

21 THE COURT: Any objection?

22 MS. WILSON: No objection, your Honor.

23 THE COURT: In evidence without objection.

24 (WHEREUPON, Defendant's Exhibit No. 25 was
25 admitted into evidence.)

1 BY MR. BUTLER:

2 Q You talked earlier about the process of collecting
3 fingerprints from a crime scene?

4 A Yes, sir.

5 Q And you're familiar with that process from your
6 training and experience?

7 A Yes, sir.

8 Q Are you familiar with the term "glove prints"?

9 A Yes, sir.

10 Q What are glove prints?

11 A Glove prints are prints that are made by fabric or
12 material. Instead of leaving a fingerprint behind, it
13 leaves a fabric print behind or a leather, sort of like a
14 bunch of little cords. But it has to have some residue on
15 the glove in order to leave that behind.

16 Q You didn't identify any glove prints at this crime
17 scene, did you?

18 A Not to the best of my knowledge.

19 Q You mentioned earlier that one of the steps in
20 processing a crime scene is that diagrams were made; is
21 that right?

22 A That's right.

23 Q Diagrams that would show the layout of the crime
24 scene?

25 A Rough sketch, yes, sir.

1 Q Rough sketch. Wouldn't have to necessarily be to
2 scale, but you want to know the layout of, in this case
3 the residence, which rooms are in which location, the
4 proximity of one room to another?

5 A Yes, sir.

6 (WHEREUPON, Defendant's Exhibit No. 26 was
7 marked for identification only.)

8 BY MR. BUTLER:

9 Q I'll show you what's been marked as Defendant's
10 Exhibit 26 for identification. Do you recognize that
11 document?

12 A That is the rough sketch that myself and Sergeant
13 Presnell completed of the residence.

14 Q And the purpose in doing so is what?

15 A To get a general layout of the residence to indicate
16 any major sources of evidence, items that are paramount in
17 the case.

18 MR. BUTLER: At this time I move Defense 26 into
19 evidence, I believe, without objection.

20 THE COURT: Any objection?

21 MS. WILSON: No objection.

22 THE COURT: Twenty-six in evidence without
23 objection.

24 (WHEREUPON, Defendant's Exhibit No. 26 was
25 admitted into evidence.)

1 BY MR. BUTLER:

2 Q If I could, please, I'm going to show it to you later
3 on the screen, but now I want you to read it. The portion
4 of the diagram that depicts bedroom number one, do you see
5 that?

6 A Yes, sir.

7 Q And this closet here, is that depicted that that's
8 where the safe was?

9 A Yes, according to the diagram.

10 MR. BUTLER: Your Honor, may I ask him to step
11 down, please?

12 THE COURT: Yes, sir.

13 BY MR. BUTLER:

14 Q And referring to what I showed you previously from
15 the witness stand, this depicts 36 Magnolia, correct?

16 A That's correct.

17 Q Okay. And this would be the side porch that faces,
18 not Magnolia Street but Maylen Street, and this would be
19 the back door that goes onto the porch, correct, right
20 here?

21 A Correct.

22 Q And then there is an entrance from the porch to the
23 living room?

24 A Correct.

25 Q And then you have to go through this other room here;

1 correct?

2 A Correct.

3 Q And this room, I guess you'd also call it a room,
4 this is a table and a couch, right?

5 A Right.

6 Q And then to get to the bedroom where the safe was --
7 the bedroom where the safe was is where?

8 I'm sorry. I've got this upside down.

9 Okay. This is Maylen Road, turning it this way,

10 correct?

11 A That's correct.

12 Q And this is the side porch facing Maylen?

13 A Right.

14 Q And there's a door off the back of the porch?

15 A Yes.

16 Q And then there is a living area here, a table and a
17 couch, right?

18 A Yes, sir.

19 Q You call this the living room?

20 A Yes, sir.

21 Q And then the bedroom with the safe is where?

22 A Here.

23 Q And that was determined to be Dante Tobias' bedroom?

24 A Yes, sir.

25 Q And there's his bed here?

1 A Yes, sir.

2 Q And the closet with the safe there?

3 A Yes, sir.

4 Q All right. And so to get from the outside of the

5 house along Maylen Road, if you went into the porch, you

6 have to first go through the living room, correct?

7 A Correct.

8 Q This room here is the kitchen, right?

9 A Right.

10 Q And either from the kitchen then into the bedroom,

11 right?

12 A Yes.

13 Q Or you have to go through a hallway, right, this

14 hallway?

15 A Right.

16 Q Another bedroom, right? Is that right? Bedroom

17 number two? Would it help to look at your diagram?

18 A It's the same as yours.

19 Q This says bedroom number two; right?

20 A Yes.

21 Q There is a bed in there?

22 A Right.

23 Q So you have to go through the living room, a hallway,

24 a bedroom and then get to Dante's bedroom; right?

25 A According to the sketch, yes, sir.

1 Q Dante's bedroom does not -- is not adjacent to the
2 living room that is adjacent to the porch; correct?

3 A Correct.

4 MR. BUTLER: Beg the Court's indulgence one
5 moment.

6 MR. BUTLER: The witness may resume his seat,
7 please.

8 THE COURT: You may return, sir.

9 The jury has requested a break.

10 Do not discuss this case in any way. Thank you
11 very much.

12 (The jury left open court at approximately 10:48
13 a.m.)

14
15 THE COURT: Sir, you may step down during the
16 break. Do not discuss your testimony.

17 THE WITNESS: Yes, sir.

18 (A short break was taken.)

19 THE COURT: Are you ready to proceed?

20 THE BAILIFF: All jurors are seated.

21 (The jury came into open court at approximately
22 11:12 a.m.)

23 THE COURT: Please be seated. Thank you.

24 BY MR. BUTLER:

25 Q Detective, I have a few more questions.

1 You talked about on the record the pristine
2 condition of the vehicle you processed.

3 A Yes, sir.

4 Q The white Hyundai vehicle?

5 A Yes, sir.

6 MR. BUTLER: May I approach the witness?

7 THE COURT: Yes, sir.

8 BY MR. BUTLER:

9 Q Do you recognize this document?

10 A Yes, sir, I do.

11 Q What is that?

12 A It is the search warrant return indicating that I did
13 collect some hairs and fibers from the driver's seat and
14 the back rest, assorted hairs and fibers from the
15 passenger's seat and back rest, assorted hairs and fibers
16 collected from the rear bench seat and back rest and
17 catalogued with photographs.

18 Q And as you testified earlier, the reason that you
19 collect physical evidence like hairs and fibers is that
20 through forensic science ultimately you may be able to
21 link that evidence to a suspect or perpetrator?

22 A You're correct, sir.

23 Q As far as you know, that was not done with any of the
24 materials that you took from this vehicle; correct?

25 A No, sir, not to my knowledge.

1 Q I'm showing you what has been placed into evidence as
2 State's 106. Do you recognize this bag?

3 A Yes, sir, I do.

4 Q And you recognize the notebook from within the bag?

5 A Yes, sir, I do.

6 Q And that notebook, it was found in the residence of
7 36 Magnolia?

8 A Yes, sir, it is.

9 Q And would you agree with me that this is a
10 stenographic notebook with one, two, three, four loose
11 sheets?

12 A Yes, sir.

13 Q And some other sheets that are still in the notebook
14 with writing on them?

15 A Yes, sir.

16 Q And on this first loose sheet it says Silhouettes;
17 correct?

18 A As far as I can make out, sir.

19 Q I'm showing you now what has been marked as Defense
20 Exhibit 19 for ID only. Does that appear to be a
21 photocopy of the same sheet of paper from the notebook in
22 State's 106?

23 A Yes, sir, it does.

24 Q And that sheet says Silhouettes and then it lists
25 several items and then it says capital; is that right?

1 A That's correct.

2 Q And on the second page -- the second page that is

3 also depicted in Defendant's 19?

4 A Yes, it is.

5 Q And it says "things to do for New Year," correct?

6 A Correct.

7 Q Check time left on existing ad; right?

8 A Yes, sir.

9 Q Run ad for radio?

10 A Yes, sir.

11 Q Get prices down, or it's misspelled. Do you think

12 it's prices?

13 A Yes, sir.

14 Q Make money, must make \$300 by 2001; correct?

15 A Yes, sir.

16 Q Handle business cards?

17 A Yes, sir.

18 Q And "get legal advice" there at the bottom?

19 A Yes, sir.

20 Q And this sheet, is that also depicted in Defendant's

21 19?

22 A Yes, sir.

23 Q And it appears to say, "City Chickens, \$200, one

24 girl"?

25 A Yes, sir.

1 Q And "one girl per guy"?

2 A Yes, sir.

3 Q And does it appear that in Defendant's 19 the top of
4 that page is torn off, right?

5 A Yes.

6 Q Because it was torn out of a notebook, right?

7 A Yes, sir.

8 Q Can you take the notebook in the State's exhibit and
9 match it up and see where it was torn out?

10 A Yes, sir, you can.

11 Q And that says, "Amber, 180 an hour," right?

12 A Yes, sir.

13 Q "Plus \$100 per head," right?

14 A Yes, sir.

15 Q Further down on the page, "Courtney, in call, \$125
16 per hour at their place," right?

17 A Yes, sir.

18 Q "\$150 at my place, rates depends," right?

19 A Yes, sir.

20 Q And on this page in Defendant's 19, you can see the
21 torn off portion that I referenced earlier, "Amber, \$180
22 an hour and \$100 per head," right?

23 A Yes, sir.

24 Q Then "detailed marketing strategies for both sexes"?

25 A Yes, sir.

- 1 Q "Long-term goal, 4K a week or split 2K apiece"?
- 2 A Yes, sir.
- 3 Q K is sometimes used to represent a thousand dollars;
- 4 right?
- 5 A Yes, sir.
- 6 Q "Short goal, make this the main source of income so
- 7 I'm bona fide self-employed," right?
- 8 A Yes.
- 9 Q Below that, "Equation for potential income, ten
- 10 employees at three calls a day for three days," right?
- 11 A Yes, sir.
- 12 Q "At 75 founders fee, 2250," right?
- 13 A Yes, sir.
- 14 Q Divided by two, \$1,125 a week or 1500 a week, right?
- 15 A Yes.
- 16 Q And down at the bottom, that's a percentage sign,
- 17 correct?
- 18 A Yes, sir.
- 19 Q Percentage of owner's gross, right?
- 20 A Yes.
- 21 Q For Beverly, right?
- 22 A Yes, sir.
- 23 Q Except it actually is spelled "Beeverly," isn't it?
- 24 A Yes, sir.
- 25 Q "Percentage from all owner's gross for Beeverly and

1 successful calls she takes," right?

2 A Yes, sir.

3 Q And I want to show you this page from State's 106.

4 See what I'm showing you here?

5 A Yes, sir.

6 Q Says "hips 28," right?

7 A Yes.

8 Q "Bust 38," right?

9 A Yes, sir.

10 Q And "breasts 38," right?

11 A Yes, sir.

12 Q That appears to be the measurements of a female;
13 right?

14 A That is correct.

15 Q And these items were found at Dante Tobias' residence
16 at 36 Magnolia?

17 A Yes, sir.

18 MR. BUTLER: Your Honor, at this time we'd move
19 Defense 19 into evidence that was previously marked for
20 ID.

21 THE COURT: Any objection?

22 MS. BURNEY: Only that State's I think it's 106
23 is the exact same thing in the original form.

24 MR. BUTLER: May we approach?

25 THE COURT: Yes.

1 (A bench conference was held with the judge and
2 attorneys in the presence of the jury but out of the
3 hearing of the jury.)

4 THE COURT: I will allow it into evidence.

5 MR. BUTLER: Beg the Court's indulgence.

6 That's all I have. Thank you.

7 THE COURT: Anything else?

8 MS. BURNEY: Just one question.

9 REDIRECT EXAMINATION

10 BY MS. BURNEY:

11 Q Detective Ringley, who drew this diagram? I think
12 it's Defense 26.

13 A The diagram? Sergeant Presnell actually did the
14 diagram. I walked around with him and helped him and also
15 helped with measurements.

16 MS. BURNEY: Thank you. That's all I have.

17 MR. BUTLER: Nothing further.

18 THE COURT: You may step down. Thank you.

19 MS. WILSON: Your Honor, may I approach?

20 THE COURT: Yes, ma'am.

21 (A bench conference was held with the judge and
22 attorneys in the presence of the jury but out of the
23 hearing of the jury.)

24 MS. BURNEY: Your Honor, may this witness be
25 excused?

1 THE COURT: Any objection?

2 MR. BUTLER: No objection.

3 THE COURT: You may be excused, sir.

4 MS. WILSON: Your Honor, at this time we would
5 propose to introduce a stipulation that the defense and
6 the State have agreed upon, and I would just ask the Court
7 to explain to the jury what a stipulation is.

8 THE COURT: It is an agreed-upon stipulation
9 Counsel?

10 MS. SHEALY: That's correct.

11 THE COURT: A stipulation is an agreement by
12 Counsel, ladies and gentlemen, for certain matters that
13 you are to deem to be true.

14 Go ahead.

15 MS. WILSON: Thank you, your Honor.

16 I won't read the caption and all that. I will
17 just read the body of it.

18 We'd offer State's Exhibit 105.

19 The attorneys for the government and defense
20 counsel do hereby agree and stipulate that Special Agent
21 Bruce Gantt of the State Law Enforcement Division, SLED,
22 were called to testify, that he would state the following:
23 Number one, he is an expert in the field of fingerprint
24 identification and comparison; two, he examined 41 latent
25 print cards which held latent fingerprints lifted from

1 items recovered from the residence at 36 Magnolia; three,
2 he compared the latent fingerprints to the known
3 fingerprints of defendants Anthony Mann, Eric Zack,
4 Michael Crumb and Peter Davies; four, none of the latent
5 prints lifted from the items recovered of the residence at
6 36 Magnolia matched the fingerprints belonging to any of
7 the defendants. And that's signed by me and Ms. Shealy.

8 THE COURT: All right.

9 (WHEREUPON, State's Exhibit No. 105 was admitted
10 into evidence.)

11 MS. BURNEY: The State calls Nicole O'Connell.

12 NICOLE MARIE O'CONNELL, after being duly sworn,
13 testified as follows:

14 THE CLERK: Please be seated. Please state your
15 full name for the Court and spell your last.

16 THE WITNESS: Nicole Marie O'Connell,
17 O-C-O-N-N-E-L-L.

18 DIRECT EXAMINATION

19 BY MS. BURNEY:

20 Q Would you try to lean in and speak into that
21 microphone to make sure the jury can hear you.

22 A Nicole Marie O'Connell, O-C-O-N-N-E-L-L.

23 Q Are you married, Ms. O'Connell?

24 A No, ma'am.

25 Q Do you have any children?

- 1 A Not yet.
- 2 Q Got one on the way?
- 3 A Right.
- 4 Q Have you worked any right now?
- 5 A No, ma'am.
- 6 Q Did you work previously?
- 7 A I did up until I was about four months pregnant, then
- 8 I quit.
- 9 Q Where do you live?
- 10 A I live on 78 with my parents.
- 11 Q That's here in Summerville?
- 12 A Yes, ma'am.
- 13 Q Have you lived in that area all your life?
- 14 A About or around about there.
- 15 Q Did you go to school here?
- 16 A Yes, ma'am.
- 17 Q Do you know the defendant, Anthony Mann?
- 18 A Yes.
- 19 Q How do you know him?
- 20 A I met him through a friend of mine, Terrance Hudson.
- 21 Q Who is Terrance?
- 22 A Another friend of ours.
- 23 Q All right. I want to ask you about the night that
- 24 the defendant and Brownie came to your house. Do you
- 25 remember that night, January 7th, 2002?

1 A Yes.

2 Q What happened that evening when they came to your
3 house?

4 A They all came over. Brownie sat on the bed, Pete was
5 in a chair, and Amp was by the mirror wiping the guns off.

6 Q And who was at home with you before they came over?

7 A Lisa, my mother.

8 Q And what had you all been doing that day?

9 A Just sitting around watching TV; didn't do much.

10 Q You mentioned a guy named Pete. Do you know what
11 Pete's last name is?

12 A Davies.

13 Q Is that Peter Davies?

14 A Yes.

15 Q You said Brownie sat on the bed and Amp was doing
16 what?

17 A He was by the mirror cleaning off the guns with a
18 towel.

19 Q What guns are you talking about?

20 A It was a black sawed-off shotgun and another silver
21 one with a brown handle.

22 Q And he had that when he came in you said?

23 A Yes.

24 Q Did he have anything else with him when he came to
25 your house?

1 A A bag of quarters that he had sat on the dresser.

2 Q And what was he doing with the guns?

3 A After he wiped them off, he was talking to me and
4 Lisa and holding the guns up and asking us how did he
5 look.

6 Q What do you mean holding the guns up? Can you show
7 the jury how he was holding them up?

8 A Like holding them like this and then he would switch
9 positions like that and showing us the guns.

10 Q And he was asking you what?

11 A How did he look.

12 Q Holding the guns?

13 A Yes.

14 Q What did Peter Davies do while he was at your house?

15 A He sat down and talked with us for about five minutes
16 and then proceeded to take a shower. He went and took a
17 shower at my house.

18 Q And did he often take showers at your house?

19 A No, this was a first.

20 Q Okay. Did he have anything with him?

21 A He had a spare change of clothes.

22 Q And what did Brownie do when she was at your house?

23 A She just sat on the end of the bed. She didn't say
24 anything. She was real quiet.

25 Q Had you ever seen Brownie before or met her before?

1 A I had seen her one time before out with friends and
2 things, but not enough to say that I knew her.

3 Q Did you know Peter Davies before that night?

4 A Yes.

5 Q And Amp had actually -- I'm sorry. Did Anthony Mann
6 have a nickname?

7 A Amp.

8 Q And Amp had actually been staying at your house for a
9 while?

10 A On and off. He kept some things there.

11 Q Was that during that period of time?

12 A Yes.

13 Q So was it unusual for Amp to come to your house?

14 A No.

15 Q Now, while Amp, Brownie and Peter Davies were at your
16 house that night with you and Lisa, did anyone else come
17 over to your house?

18 A Terrance Hudson did.

19 Q And that's the same person that you were saying
20 introduced you to Amp?

21 A Yes.

22 Q What happened when Terrance was there?

23 A He came and sat on the chair and talked to me and
24 Lisa for about ten minutes or so and then he left.

25 Q Did you hear what Amp was talking to Terrance about,

1 or if they were talking at all?

2 A I couldn't tell you, you know, what their
3 conversation was about. I know that they said words to
4 each other.

5 Q Did Amp talk to anybody else while he was there?

6 A To Brownie.

7 Q What did he say to Brownie?

8 A He asked her did she have any regrets, and she got
9 even more quiet than she was before.

10 Q Do you recall anything about the tone of voice that
11 he used when he asked her if she had any regrets?

12 A I would say sarcasm.

13 Q And she didn't respond?

14 A It wasn't very serious, no.

15 Q Now, you said that Amp had been staying at your house
16 off and on during that period of time. Did he receive
17 phone calls at your house during that period of time?

18 A Sometimes, sometimes.

19 Q And you said he kept clothes at your house?

20 A Yes.

21 Q Do you remember this number, 875-0693? Do you know
22 what that is?

23 A That was my home number there.

24 Q Was that a land line or cell phone? Is that a phone
25 inside the house?

1 A It was a house phone.

2 Q Did Amp tell you where they were leaving or say where
3 he was going when they were leaving the house?

4 A He said they were taking Brownie home.

5 Q Did they finally leave?

6 A They stayed for about 45 minutes, and after Pete got
7 out of the shower, I think they sat and talked for a
8 couple of minutes, and then they all left.

9 Q Do you remember what Amp was wearing that night?

10 A Blue jeans, a white T-shirt, a black leather jacket
11 and black leather gloves.

12 Q Do you remember what Peter Davies was wearing or what
13 he changed into?

14 A Just a white shirt and a pair of jeans.

15 Q Do you remember what Brownie was wearing?

16 A She was wearing like blue pants, and they were kind
17 of faded at the bottom, a hoodie with a hood, and a
18 bandana.

19 Q Do you remember about what time of day or night that
20 they came over to your house?

21 A I would say around 9 o'clock that night.

22 Q And at some point did they actually leave?

23 A Yes.

24 Q What did you and Lisa do after they left?

25 A We just continued watching TV and just doing our own

1 thing. We didn't really go anywhere. We didn't have a
2 car or anything, so we didn't go anywhere.

3 Q Did you all talk about him bringing any guns and
4 money?

5 A We had talked about it.

6 Q What did you think about that?

7 A I thought it was very unusual, and she said that, you
8 know, something is going on and something happened,
9 something is not right, and I told her yeah, and we really
10 didn't talk about it a lot.

11 Q Did he take his guns and money with him when he left
12 with Brownie and Peter?

13 A I know that he left the black gun there.

14 Q Is that the one you described as a shotgun?

15 A Yes. But I don't know what he did with the other
16 one. I'm pretty sure that he took it. And he left the
17 quarters there.

18 Q Is that the silver one?

19 A Yes.

20 Q And he left the change there?

21 A Yes.

22 Q What were the quarters in?

23 A It was in a white grocery bag.

24 Q Now, after Amp and Peter Davies and Brownie left your
25 house, did you talk to anybody else besides Lisa that

1 night?

2 A Yes, I had talked to Tiffany.

3 Q And do you know Tiffany by any other names?

4 A Star.

5 Q What did you talk to Tiffany about or Star about?

6 A She called and she had said that --

7 MS. SHEALY: I object to hearsay, your Honor.

8 THE COURT: I sustain that.

9 BY MS. BURNEY:

10 Q Just tell me what you talked to Tiffany about. What
11 did you say to her?

12 A That she told me that they were looking for her.

13 Q Don't tell me what she told you. Just tell me what
14 you said in response to her.

15 A I told her that I didn't know anything about it and
16 that if she needed a place to stay, she could come to my
17 house, she was upset, that she said --

18 Q Don't tell me what she said.

19 Now, you told her that you didn't know anything
20 about what?

21 A Where Brownie was.

22 Q Did you talk to anybody else besides Star?

23 A I talked to Chad.

24 Q What were you thinking after you talked with -- well,
25 let me ask you this. When you talked with Star, did you

1 tell her that Brownie had just been to your house?

2 A No, I had not told her that.

3 Q Okay.

4 A We had just talked about what she was doing.

5 Q And why didn't you tell her that Brownie was just at
6 your house?

7 A Because I thought that I should have kept it to
8 myself.

9 Q Did you talk with anybody else besides Star?

10 A I talked to Chad.

11 Q Who was Chad?

12 A Chad was a guy that I was seeing and Star knew.

13 Q At the time?

14 A Yes.

15 Q Are you still seeing Chad?

16 A No.

17 Q And what did you say to Chad?

18 A I had told him what -- that they had been over there.

19 Q And they being?

20 A Pete, Amp and Brownie.

21 Q And did you say anything else to Chad?

22 A Just about what had happened, that they were there.

23 Q Okay.

24 A And he knew because he had talked to Star.

25 Q Now, Ms. O'Connell, did you ever see Amp again after

1 that night?

2 A He came over the next day.

3 Q Okay. Did you talk to him about the conversations
4 that you had had the night before?

5 A Yeah. He had asked me had anybody called and I told
6 him that Star called and --

7 Q How did he respond when you told him about Star
8 calling?

9 A He was upset, and he was upset with me. He was very
10 stern about what I had said to her. He didn't want his
11 name being mentioned in any kind of conversation that me
12 and Star had had. I just told him that Star had called
13 there looking for him.

14 Q Okay. Did he talk to you again about Brownie being
15 missing?

16 A No.

17 Q Now, you said that Amp left a black shotgun at your
18 house. Did that shotgun remain at your house?

19 A Only for about a period of, I would say, about 24
20 hours. It was only, like, one day.

21 Q What happened to the gun after that?

22 A He came and got it.

23 Q Who came and got it?

24 A Amp did.

25 MS. BURNEY: May I approach the witness, your

1 Honor?

2 THE COURT: Yes, ma'am.

3 BY MS. BURNEY:

4 Q I'm going to ask you to take a look at State's
5 Exhibit 60 that's in evidence.

6 Now, when you testified just a moment ago that
7 one gun was a black shotgun and the other gun was a silver
8 gun, did you have any idea what kind of gun the silver gun
9 might have been?

10 A Like a 38 revolver.

11 Q I'm going to show you what is in evidence as State's
12 Exhibit 60 and ask you if -- you mentioned what clothes
13 Brownie was wearing when she came to your house that
14 night. Does this -- what does this picture look like to
15 you?

16 A The clothes she was wearing.

17 Q The night she came to your house?

18 A Yes.

19 Q With Amp and Peter Davies?

20 A Yes.

21 MS. BURNEY: If you would, Ms. O'Connell, answer
22 the defense's questions.

23 MS. SHEALY: May it please the Court.

24 THE COURT: Yes, ma'am.

25 CROSS-EXAMINATION

1 BY MS. SHEALY

2 Q Good morning, Nicky.

3 A Hi.

4 Q How are you?

5 A Fine. Thank you.

6 Q Let me ask you a couple of questions about what you
7 had said this morning.

8 You mentioned that Star had called you. Was it
9 later that evening or the next day? I didn't catch that.

10 A It was the same evening.

11 Q The same evening?

12 A About 20 minutes after everyone had left.

13 Q And I think you told us that you didn't feel like you
14 should tell her that Brownie had been there; is that
15 correct?

16 A It didn't cross my mind to bring it up. She had been
17 talking on the phone, talking on the phone, she was upset.
18 Basically all I told her was if you need a place to say,
19 you know, she could come here.

20 Q Now, you knew Star had a time and you know Brownie
21 had had a time. Is it fair to say these girls kind of
22 lived different places, they stayed different places?

23 A Yes, they did, but to my knowledge they did hang out
24 quite a bit together.

25 Q Star and Brownie?

1 A Yes.

2 Q What I mean is, when you had offered her a place to
3 stay, were both the girls needing places to stay often,
4 they didn't have a home of their own?

5 A I wouldn't say that.

6 Q Okay.

7 A Star had been over a couple of times to my house to
8 stay, but yes, she had a home.

9 Q Okay. She had stayed with you before?

10 A Right.

11 Q Now, you told us today about Terrance Hudson coming
12 over that evening.

13 A Yes.

14 Q When you -- you gave a statement in this case early
15 on; is that correct?

16 A Yes.

17 Q I'm going to ask you some more details about that
18 process. But when you gave that statement, you didn't
19 mention that you had seen Terrance Hudson that evening?

20 A No.

21 Q Did you just not want to bring him into it or did you
22 not remember that he was there?

23 A I wouldn't say that I didn't remember. It just
24 didn't -- it was overwhelming and I put what had happened.

25 Q So you agree, though, that you didn't mention it that

1 evening?

2 A Right, right.

3 Q Now, in asking you a little bit more about that
4 evening, do you recall Brownie saying that Peter Davies
5 had made her smoke a lot of pot?

6 A Yes. She had said that. Lisa had asked her what was
7 wrong.

8 Q Did she look a little different?

9 A Not really.

10 Q Do you recall her saying that Peter Davies made her
11 smoke some pot?

12 A She said she was just really high.

13 Q And you do remember, then, Anthony asking her if she
14 had any regrets and she said no?

15 A Right.

16 Q Now, Peter Davies, have you been around him very
17 much?

18 A Just a couple of times prior to that and it wasn't --

19 Q A constant thing?

20 A Right.

21 Q When he came to your house that evening and took a
22 shower, did you find that odd?

23 A Yes.

24 Q And are you telling us then that he came in with a
25 spare set of clothes into your house?

1 A Yes.

2 Q And that he came in and asked if he could take a
3 shower?

4 A Amp actually asked my mom if Pete could take a
5 shower.

6 Q And when it was occurring, you thought that was odd;
7 is that fair to say?

8 A Yes.

9 Q And did you feel like -- you mentioned that your
10 mother thought Brownie had been acting odd. Did you think
11 she was acting a bit odd when she was in your house?

12 A Yes.

13 Q Now, regarding the guns that came in, did you
14 actually see them take one of the guns out or you just
15 know that one got left in there?

16 A He had left the black gun there by our night stand.

17 Q And you described that as a sawed-off shotgun; is
18 that correct?

19 A Right.

20 Q Let me show you what's been marked as State's Exhibit
21 94. Does this look like what you saw that evening?

22 A Yes.

23 Q When you refer to it as a sawed-off shotgun, this is
24 what it looked like?

25 A Right.

1 Q And that got left behind that evening?

2 A Yes.

3 Q Now, I think you testified today that he came back
4 the next night and got it; is that what you said?

5 A Yes.

6 Q Do you recall that in your statement you may have
7 said that it came back probably on Friday?

8 A (Witness nodding.)

9 Q Does that sound like that might be right? Are you
10 unsure when he came back?

11 A Yes. I don't know if it's written in my statement or
12 not.

13 Q Do you want to take a look at it just to refresh your
14 memory?

15 MS. SHEALY: May I approach, your Honor?

16 THE COURT: Yes, ma'am.

17 BY MS. SHEALY:

18 Q Focusing your attention down towards the bottom of
19 the page --

20 A I don't remember him leaving it that long. It didn't
21 seem that long to me. But he was leaving it because a man
22 was actually stalking my mother.

23 Q I wanted to ask you a little bit about that.

24 Your mother was having problems with someone?

25 A Yeah.

1 Q And that guy was kind of harassing her and following
2 her, et cetera?

3 A Yes.

4 Q So it was your understanding that that gun got left
5 there for your mother?

6 A For protection, yeah.

7 Q Now, you told us that you saw Anthony that night
8 wiping off the guns; is that correct?

9 A Yes.

10 Q And when you described that he was holding the guns
11 and asking how he looked, did that sound like the playful
12 part of Anthony? Was he pretty vain about his looks?

13 A Sometimes.

14 Q So when he was doing that, did it appear to you that
15 he was trying to be cute?

16 A Yes.

17 Q And in asking you that, when you were around him, did
18 he take a lot of attention with his hair and try to dress
19 nicely?

20 A Yes.

21 Q Now, the Solicitor has asked you whether or not the
22 photograph they showed you of Brownie was the type of
23 clothing you saw her in that day.

24 A Right.

25 Q What I would like to do, if we could, is focus a

1 little bit more when you first had contact with the
2 police.

3 A Okay.

4 Q Now, as I understand it, police came to your Ladson
5 Road home; is that correct?

6 A Yes.

7 Q Initially?

8 A Yes.

9 Q Now, you told us that you're pregnant; is that
10 correct?

11 A Yes.

12 Q How far along are you?

13 A About eight and a half months.

14 Q So when this occurred you were not pregnant?

15 A No.

16 Q And how tall are you?

17 A 4-11. We'll say 4-11.

18 Q Back when this occurred, Nicky, how much did you
19 weigh? Do you remember?

20 A A lot less.

21 Q Okay.

22 A Probably about a hundred pounds.

23 Q Okay. Now, on that occasion when the police came
24 into your home, could you describe to the jury what way
25 they came in?

1 A They really just came in and we had to stay in the
2 kitchen. The room that Amp's things were left in was
3 completely, you know, rooted through. Big mess. My mom's
4 room, my room.

5 Q They had a search warrant?

6 A Yes, they did have a search warrant.

7 Q So when the police were coming in they were looking
8 for items; is that fair to say?

9 A Right. All over they were looking. Just all over
10 they were looking.

11 Q Tell the jury, if you would, were they polite to you
12 and to your mother when they came in?

13 A They weren't not polite. They said we have a search
14 warrant, we need to do this, we need to do that. They did
15 it, and they were there very just nonchalant about it.

16 Q Do you recall whether or not they made any comments
17 that were upsetting to you and your mother?

18 A I don't remember.

19 Q You don't remember that?

20 A I can't recall.

21 Q Did they separate you and your mother at some point
22 while you were there?

23 A In the house?

24 Q Yes.

25 A No.

1 Q That occurred down at the police station?

2 A Yes.

3 Q Now, you don't recall whether or not they were asking
4 you inappropriate questions about your sex life?

5 A When?

6 Q The police officers, either at your house or down at
7 the station?

8 A Oh, down at the station, yes.

9 Q So when you get down to the station is it fair to say
10 at that point things get kind of rude?

11 A Yes. I was upset about it.

12 Q And how long would you say they were in your home
13 before you get to the police station?

14 A Probably about a hour, an hour and 45 minutes, almost
15 two hours.

16 Q So you and your mother were asked to stay during that
17 process?

18 A Right.

19 Q Were you upset?

20 A Not really.

21 Q Was your mom upset?

22 A We were upset that they had rooted through
23 everything.

24 Q Then you go from your house on Ladson Road to the
25 sheriff's department; is that correct?

1 A Yes.

2 Q And how did you and your mother travel from one
3 location to the other?

4 A I was actually at my parents' house before that.
5 Lisa had came over.

6 Q Let me clarify something for the jury. When you say
7 Lisa, she is actually your biological mother; is that
8 correct?

9 A Yes.

10 Q When you say your parents, you mean your
11 grandparents?

12 A Right.

13 Q Okay.

14 A Sorry.

15 Q So you consider your parents your grandparents and
16 Lisa called you over?

17 A They actually came in, and I was cleaning up
18 something in my room. The police officer had walked
19 through my house, didn't really tell my parents, couldn't
20 tell my parents why they were there.

21 Q This is at the Summerville location?

22 A Yes. Barged into my room and said, You know, we got
23 to go over there and do this. And I was asking them, What
24 are you talking about? And he goes, You know what I'm
25 talking about. And it was the heavy-set guy with the dark

1 hair. He was just very rude about it.

2 Q Did it upset your parents as well?

3 A They didn't want me to go.

4 Q So you went from there to where?

5 A To the station.

6 Q So you weren't at Ladson Road when they came in

7 there?

8 A I'm pretty sure that that was after we had got back.

9 Q So you went down and gave your statement first?

10 A And then they did the search warrant.

11 Q So to get it in sequential order, you were in

12 Summerville with your grandparents?

13 A Lisa was at her house.

14 Q Lisa was at Ladson Road?

15 A Right.

16 Q And one officer comes to where you are?

17 A And Lisa was already with him.

18 Q Oh, Lisa was with him, okay.

19 A Yes.

20 Q And then did the two of you travel with him to the

21 police station?

22 A Yes. We were together at that point.

23 Q And when you're traveling, then, from Summerville to

24 the police station, are you riding in a police car?

25 A Yes.

1 Q Now, when you get there, tell me what happens next.

2 Is that when they separate you all or talk to you all?

3 A They separated us in separate rooms. She was with
4 the guy that had came and got me and I was with Detective
5 Crews and Frazier.

6 Q At that point was it a pretty upsetting event for you
7 all to be down at the sheriff's department?

8 A It was just late and I was in the middle of doing
9 something.

10 Q Then did greater rude behavior start occurring
11 towards you?

12 A Yes.

13 Q And you've indicated that the gentleman was not
14 exactly polite at the house; is that correct?

15 A Right.

16 Q Then when you get to the police station things even
17 get ruder, more rude?

18 A Yes.

19 Q You were how old when this was going on, Nicky?

20 A Sixteen.

21 Q And you're down at the police station. Did they say
22 insulting things to you about your sex life?

23 A He had asked me, did me and Lisa share our men
24 basically.

25 Q And is it fair to say that they wanted to get a

1 statement from you that evening or that's how you
2 perceived it, that they wanted to get some information
3 from you that evening?

4 A Right, about what had happened.

5 Q How long would you say that you were at the police
6 station that evening?

7 A Almost three hours.

8 Q And during that three hours, you being a 16-year-old,
9 were you separated from your mother the whole time?

10 A Yes.

11 Q Were your grandparents allowed to come in with you?

12 A No.

13 Q Any other person in there with you?

14 A Just the officer.

15 Q When these officers are talking to you, how many
16 would be present in the room with you?

17 A One.

18 Q Just the one. Did you only deal with one officer the
19 whole time?

20 A No, he was the only one I dealt with.

21 Q Did you all stay in the room that whole three hours?

22 A I did.

23 Q So he would leave and then come back in?

24 A When I was writing my statement, he left.

25 Q Okay. And prior to your writing your statement, is

1 it fair to say that he was trying to show you a photograph
2 of Brownie? Did he show you a picture of her?

3 A No, he didn't show me.

4 Q You didn't see a picture of Brownie that evening?

5 A No.

6 Q Did they tell you that they had found Brownie?

7 A No, they really didn't tell me anything. They just
8 wanted to know what had happened that night when she had
9 been there.

10 Q Okay.

11 A That's what my statement was about.

12 Q That's what your statement was about?

13 A Right.

14 Q And did you in fact write your statement or did they
15 write it for you?

16 A I did.

17 Q You wrote your statement.

18 Was he saying anything to you about what would
19 happen to you if you didn't give a statement?

20 A No, not that I can remember.

21 Q Well, after that evening, and you've had the
22 occasion, have you not, to meet with members of the
23 Solicitor's office and their investigators; is that
24 correct?

25 A Right.

1 Q Would you tell the jury, please, how many times you
2 have met with Keith Hair, for example, how many times have
3 you met with him?

4 A Five times.

5 Q And during those five times you have met with him,
6 have those been pleasant experiences?

7 A Yes.

8 Q Would he come pick you up?

9 A He picked me and Lisa up once.

10 Q Other than that, you would come down to the
11 Solicitor's office to meet with him?

12 A Yes.

13 Q How many times have you met with Ms. Wilson or
14 Ms. Burney in this case?

15 A About the same amount of times.

16 Q Would those be the same occasions or in addition to
17 those?

18 A Yeah, we would all talk together.

19 Q Did anybody try to tell you that we were going to be
20 mean to you if you took the stand?

21 A No.

22 Q Did you feel like anybody was putting words in your
23 mouth when you were talking to her?

24 A No.

25 Q Now, in asking you about Peter Davies, is he someone

1 that you enjoy being around?

2 A I wasn't around him enough to be able to enjoy it.

3 Q Was he pleasant to be around that evening or did you
4 find him intimidating?

5 A No, he wasn't intimidating. I really didn't like
6 him.

7 Q You didn't like him?

8 A No.

9 Q And prior to that evening you had already made the
10 decision not to like him or was it something that happened
11 after that?

12 A I didn't know him well enough to be able to say that
13 was my friend. I mean, he was just someone I didn't hang
14 around often.

15 Q Was he bragging about stuff that evening?

16 A Not that I can remember. If it says in my statement
17 I did, then yes, but I don't recall.

18 Q You don't recall having a pleasant conversation with
19 him that evening, do you?

20 A No.

21 Q Do you recall him talking about his life at all?

22 A No.

23 Q You don't recall that?

24 A No.

25 Q Was your mother present during the time -- the whole

1 time that you were in there, your mom was present, too?

2 A (Witness nodding.)

3 Q Is that trailer a large trailer or smaller trailer?

4 A It was large.

5 Q Were you all in the same area?

6 A We were in my mother's room, which was very big, had
7 a king size bed in it. It's usually where everybody would
8 go if someone was over. We would sit in there because it
9 was so big.

10 Q Now, you indicated that you knew Star prior to that
11 evening; is that correct?

12 A Yes.

13 Q Did you know where she was working or what she did
14 for a living?

15 A No.

16 Q You don't have any idea what she did?

17 A No. I knew that she stayed with her mom from time to
18 time.

19 Q Were you aware, in fact -- and Star again is Tiffany
20 Mercardo; is that correct?

21 A Yes.

22 Q Were you aware that she and Amp had dated in the
23 past?

24 A I knew they had been friends in the past, but I
25 didn't really come out, you know, and asked if they had

1 dated, no.

2 Q You weren't aware whether or not they had been
3 romantic?

4 A No.

5 Q So you weren't aware of what the status of their
6 relationship was?

7 A No.

8 Q You didn't know if Star was angry with Anthony about
9 anything?

10 A No. I didn't talk to Star that much.

11 Q And when you and your mother were down at the
12 sheriff's department that evening, was she in with the
13 police officers for three hours, too?

14 A Yes. Well, after it was done we went in the same
15 room with both of the officers.

16 MS. SHEALY: Very good.

17 I beg the Court's indulgence, your Honor.

18 THE COURT: Yes, ma'am.

19 BY MS. SHEALY:

20 Q Nicky, just a couple more questions.

21 When Anthony was leaving that evening on the
22 night in question and you indicated that he left the
23 shotgun for your mother's protection; is that correct?

24 A Yes.

25 Q Do you recall him saying he had to put the other gun

1 up before he left?

2 A I don't remember. I don't recall.

3 Q You don't recall that?

4 A No.

5 Q Did you or your mother, in fact, ask him to bring the
6 guns so she would have them for protection from that guy?

7 A I think she had talked to him about looking for
8 something for protection because she was so scared, but I
9 did not hear the whole conversation. That's what I
10 grasped from the whole thing.

11 MS. SHEALY: Thank you very much.

12 REDIRECT EXAMINATION

13 BY MS. BURNEY:

14 Q Ms. O'Connell, you were just asked about questions
15 that the police asked you about you and your mother, you
16 and Lisa sharing men. What was the defendant's
17 relationship to your mother?

18 A They'd had their thing. They were romantically
19 involved at one point.

20 Q And how's your mother's health?

21 A She's on a lot -- she's bipolar. She's on medication
22 for it, a lot of it.

23 Q Was she on medication that night?

24 A Yes.

25 Q Does she take it all the time?

1 A Yes, she has to.

2 Q Now, you were asked about the gun that Amp left at
3 your house.

4 MS. BURNEY: May I approach, your Honor?

5 THE COURT: Yes, ma'am.

6 BY MS. BURNEY:

7 Q I'm going to ask you to take what is in evidence as
8 State's Exhibit 94 in your hands, and if you would, show
9 the jury -- probably need to stand up from where you
10 are -- and show the jury how the defendant was holding
11 that gun.

12 A Like this, and then he would switch it like this.

13 Q And he asked -- tell the jury again what he was
14 saying to you.

15 A He was asking us how he looked.

16 Q Tell the jury how he was saying it. Can you reenact
17 it for the jury?

18 A He just asked: How do I look? Do I look good?
19 Smiling and laughing about it.

20 Q Where was he standing when he was doing that?

21 A We had a bathroom that had two big mirrors and a big,
22 like, bar in the bathroom, and he was in front of that
23 while me and Lisa were on the bed.

24 Q In front of the mirror?

25 A Yes.

1 Q Was he looking into the mirror himself?

2 A No, he was actually looking at us. He was turned to

3 us.

4 Q His back was to the mirror?

5 A Right.

6 Q Now, Ms. Shealy asked you about the defendant saying

7 to Brownie if she had any regrets. Can you reenact that

8 for the jury, too? Tell them, if you can remember, what

9 words he used to say that to Brownie.

10 A He said: What's wrong? Do you have any regrets?

11 But more sarcastic about it.

12 Q And at some point you did go down to talk to the

13 police department; you testified to that?

14 A Yes.

15 Q And you mentioned that when you gave your statement

16 to the police there was no one else in the room with you?

17 A No.

18 Q They actually left the room?

19 A Yes.

20 Q And are you under subpoena today?

21 A Yes.

22 Q How did you get to court today?

23 A My grandfather brought me.

24 MS. BURNEY: That's all I have.

25 THE COURT: Anything else?

1 MS. SHEALY: Just a couple of follow-ups.

2 RE CROSS-EXAMINATION

3 BY MS. SHEALY:

4 Q Ms. Burney asked you again then about Amp asking
5 Brownie if she had any regrets?

6 A Yes.

7 Q And she did say no; is that correct?

8 A Right.

9 Q Now, I had asked you about whether or not you felt
10 any pressure from law enforcement and whether your
11 conversations with the Solicitor's office were pleasant.
12 You have been interviewed by Gail Davis from my office,
13 have you not?

14 A Yes.

15 Q Is it fair to say that you described those meetings
16 very unpleasant and you told Gail?

17 A No.

18 Q You did not tell her that it was a very unpleasant
19 experience?

20 A No. The only unpleasant experience was when I gave
21 my statement. I had no problems.

22 Q You've had no problems since then?

23 A No.

24 Q And you were indicating that your mother Lisa is
25 bipolar; is that correct?

1 A Yes.

2 Q But you're not trying to suggest that she's not able
3 to recall events; is that correct?

4 A It would be to her. I don't know if she could
5 remember it. We have talked about it before, and she
6 doesn't remember a lot of it.

7 Q Well, she gave a statement that evenings as well; is
8 that correct?

9 A Yes.

10 Q You've indicated that while she has a condition, she
11 was medicated that evening; is that correct?

12 A Her normal medication, yes.

13 MS. SHEALY: Thank you.

14 Beg the Court's indulgence just a moment.

15 THE COURT: Yes, ma'am.

16 MS. SHEALY: Nothing further. Thank you.

17 REDIRECT EXAMINATION

18 BY MS. BURNEY:

19 Q Ms. O'Connell, has Lisa been hospitalized recently?

20 A Yes.

21 Q And is that because of her physical health or mental
22 health?

23 A Mental health.

24 MS. BURNEY: Nothing further, your Honor.

25 THE COURT: You may step down, ma'am. Thank

1 you.

2 MS. BURNEY: May the witness be excused, your
3 Honor?

4 MS. SHEALY: Subject to recall, your Honor.

5 THE COURT: You will be subject to recall.

6 MS. SHEALY: Your Honor, thank you.

7 MS. BURNEY: May we approach, your Honor?

8 THE COURT: Yes, ma'am.

9 (A bench conference was held with the judge and
10 attorneys in the presence of the jury but out of the
11 hearing of the jury.)

12 THE COURT: Ladies and gentlemen, I will send
13 you to lunch. Please do not discuss this case in any way
14 whatsoever. If you'll report back at 1:30, we'll proceed
15 with the trial. Thank you very much.

16 (The jury left open court at approximately 12:10
17 p.m.)

18 (A lunch break was taken.)

19 THE COURT: Are we ready? Bring the jury in,
20 please.

21 (The jury came into open court at approximately
22 1:35 p.m.)

23 THE BAILIFF: The jury is seated.

24 THE COURT: Please be seated.

25 We're ready to proceed at this time.

1 MS. BURNEY: State calls Tiffany Mercado.

2 TIFFANY MERCADO, after being duly sworn,
3 testified as follows:

4 THE CLERK: Please be seated. Please state your
5 full name to the Court and spell your last.

6 THE WITNESS: Tiffany Mercado, M-E-R-C-A-D-O.

7 DIRECT EXAMINATION

8 BY MS. BURNEY:

9 Q You need to speak into the microphone so everybody on
10 the jury can hear you, okay?

11 A Yes.

12 Q How old are you, Tiffany?

13 A I will be 22 October 1st.

14 Q So you are 21 now?

15 A I'm 21.

16 Q Are you working now, Tiffany?

17 A No.

18 Q Are you married or single?

19 A Single.

20 Q Who do you live with?

21 A My mother.

22 Q Do you have any children?

23 A One.

24 Q And how old is your child?

25 A She's three months.

- 1 Q Tiffany, how far did you go in school?
- 2 A Eleventh.
- 3 Q Eleventh grade?
- 4 A Uh-huh.
- 5 Q Did you graduate high school?
- 6 A No.
- 7 Q Did you get your GED?
- 8 A Nope.
- 9 Q How did you do in school? Did you do well in school?
- 10 A Yeah, just a little.
- 11 Q I'm not asking this to embarrass you, but do you read
- 12 and write okay?
- 13 A So so.
- 14 Q Tiffany, do you know who Beverly Blake is?
- 15 A Yes.
- 16 Q And who is Beverly Blake?
- 17 A Good friend of mine.
- 18 Q Okay. How did you meet her?
- 19 A I met her at the Matchbox.
- 20 Q Was she a friend of yours?
- 21 A Yeah.
- 22 Q Remember to speak into that microphone.
- 23 Did she have a nickname?
- 24 A Brownie.
- 25 Q How did she get her nickname?

- 1 A She ate brownies.
- 2 Q Do you know who gave her that nickname?
- 3 A Me.
- 4 Q What kinds of things would you and Brownie do
5 together?
- 6 A We went out, out walking and stuff.
- 7 Q Was Brownie older or younger than you?
- 8 A Younger.
- 9 Q Did Brownie have any family or friends, close
10 friends?
- 11 A Me.
- 12 Q You were like her family?
- 13 A (Witness nodding.)
- 14 Q Where did Brownie live when you knew her?
- 15 A Say it again?
- 16 Q Where did she live?
- 17 A At the time she was just living everywhere.
- 18 Q Tell the jury what you mean by living everywhere so
19 they can understand.
- 20 A She didn't have a place to live, and then she moved
21 into a house with Dante.
- 22 Q Do you know where she was living before she moved in
23 with Dante?
- 24 A Unh-unh.
- 25 Q Do you know if she ever had her own apartment?

1 A No.

2 Q Did you know anything about her parents, whether she
3 had parents or not?

4 A She was saying her family didn't care about her.

5 Q Now, were you and Brownie anything more than friends?

6 A Unh-unh.

7 Q You have to answer yes or no.

8 A No.

9 Q Now, you mentioned that she was living with Dante.

10 A Yes.

11 Q Back in January of last year?

12 A Yes.

13 Q Had you ever been over to Dante's house?

14 A Yes, I have.

15 Q How many times have you been over there?

16 A Three times.

17 Q When you -- I'm going to ask you now about the night
18 that you found out Dante was killed. Can you tell the
19 jury what you were doing that night?

20 A Sleeping, I had the flu, in my house.

21 Q Where were you living at that time? Were you living
22 with your mother?

23 A No. I was staying at a friend's house.

24 Q Do you know what the friend's name is?

25 A Steven Roof.

- 1 Q How long had you been staying there?
- 2 A About a week.
- 3 Q Was it a house or an apartment?
- 4 A Apartment.
- 5 Q And where was the apartment?
- 6 A On Rivers, Rivers Avenue.
- 7 Q Do you remember the name of the complex?
- 8 A No. I have no idea.
- 9 Q Now, on that day, do you remember talking with
- 10 Brownie at all that day?
- 11 A Yeah, one time.
- 12 Q I'm sorry?
- 13 A One time.
- 14 Q What did you talk about?
- 15 A She said she had to get out of the house.
- 16 Q Out of what house?
- 17 A Dante's house.
- 18 Q Did you talk in person?
- 19 A On the phone, on the telephone.
- 20 Q And she was calling you from what phone? Do you
- 21 know?
- 22 A Dante's house, on the house phone.
- 23 Q Whose phone were you talking on?
- 24 A Steven's.
- 25 Q Did you have your own phone?

1 A No.

2 Q Was it a house phone?

3 A No.

4 Q Was it a cellular phone?

5 A Yes.

6 Q Did Steven have a roommate?

7 A Yes.

8 Q Who was his roommate?

9 A Marcus.

10 Q Did Marcus have a phone?

11 A A cell phone.

12 Q Did you talk any on Marcus's cell phone?

13 A Yeah.

14 Q Now, when Brownie told you that she needed a ride,
15 she had to get out of the house, what did you tell her?

16 A Call somebody, I didn't have a car. She was supposed
17 to come to Steven's house that night.

18 Q Why was she supposed to come to Steven's house?

19 A She didn't want to be at Dante's.

20 Q Was it all right for her stay at Steven's house?

21 A Yeah, he said for her to come over.

22 Q You asked permission for her to come over?

23 A Uh-huh.

24 Q Did Brownie tell you who she was going to call for a
25 ride?

- 1 A Yeah.
- 2 Q Who did she say she was going to call?
- 3 A Amp.
- 4 Q Did you know who Amp was?
- 5 A Yes.
- 6 Q How did you know Amp?
- 7 A We talked.
- 8 Q Tell the jury what you mean by "we talked."
- 9 A We'd been dating.
- 10 Q Were you still dating at the time?
- 11 A Unh-unh.
- 12 Q Is that yes or no?
- 13 A No.
- 14 Q What did you do after she told you that she was going
- 15 to call Amp for a ride?
- 16 A I said call him.
- 17 Q And then what did you do after you hung up with her?
- 18 A I went back to sleep.
- 19 Q Did Brownie ever show up?
- 20 A No.
- 21 Q Do you remember about what time it was that you woke
- 22 up or what happened when you woke up?
- 23 A I think she called to say she was on her way.
- 24 Q Okay. And did she show up after that call?
- 25 A No.

1 Q And at some point did you try to check up on Brownie
2 to find out where she was?

3 A Yes, I called Dante's house.

4 Q What happened when you called Dante's house?

5 A I heard police in the background.

6 Q In the background. Who was in the foreground?

7 A A lady picked up the phone, and I asked for Brownie,
8 and they said that she wasn't there. They were asking me
9 if I knew where she was, and I had no clue.

10 Q I'm sorry?

11 A She asked me if I knew where she was, and I said I
12 had no clue.

13 Q And then what happened after that? What were you
14 thinking when you had that conversation? Were you worried
15 or were you not worried?

16 A Yeah, I was worried. I was really worried.

17 Q And did you call anybody else to try to find out what
18 was going on?

19 A Yeah. I called Nicky.

20 Q And what did you tell Nicky?

21 A I asked her if she had seen Brownie, and she said no,
22 she heard from her, and she said no.

23 Q And Nicky is Nicky O'Connell?

24 A Huh?

25 Q Nicky O'Connell?

1 A Yeah.

2 Q Now, you mentioned that there were police in the
3 background when you called Dante's house. How did you
4 know that? What made you think that there were police?

5 A Because I could hear the walkie-talkies and hear
6 someone talking on them.

7 Q Okay. When you were calling around, calling Nicky to
8 find out where Brownie was, what phone were you using?
9 Were you still on --

10 A I think I was using Marcus's.

11 Q That was still the same night that Brownie said she
12 was coming?

13 A Yes.

14 Q Did you call Amp to see if he gave Brownie a ride?

15 A I don't remember.

16 Q And did Brownie ever show up?

17 A No.

18 Q And did she ever call you after that night?

19 A No.

20 Q At some point did you talk with the police?

21 A Yes.

22 Q When did you talk with the police?

23 A Sometime the next day.

24 Q And did you talk to Amp anytime later, after that?

25 A On Thursday.

1 Q Thursday of that week?

2 A I think that was it. At Tango's.

3 Q Say it again?

4 A At Tango's.

5 Q What is Tango's?

6 A Tango's is a night club.

7 Q And when you saw him, what did you say to him?

8 A I asked if he had seen her.

9 Q If he'd seen who?

10 A Brownie.

11 Q What did he say?

12 A He said no.

13 MS. BURNEY: May I approach, your Honor?

14 THE COURT: Yes, ma'am.

15 BY MS. BURNEY:

16 Q Tiffany, do you have a nickname?

17 A Star.

18 Q Do people know your nickname as Star?

19 A Yeah.

20 Q Is that unusual for people to call you Star? Young
21 people, they call you Star?

22 A No.

23 Q Okay. When you talked to Amp later on that Thursday
24 and you asked him if he had talked or asked him about
25 Brownie, did you ask him if he had given her a ride that

1 night?

2 A Say that one more time.

3 Q When you saw Amp --

4 MR. BUTLER: Objection to leading.

5 THE COURT: Rephrase the question.

6 BY MS. BURNEY:

7 Q You just testified that you saw Amp on Thursday?

8 A Yeah, I seen him on Thursday.

9 Q Did you talk to him at all about Brownie calling him?

10 A I can't remember.

11 Q I'm going to show you what is in evidence as State's
12 Exhibit 91. I'd ask you if you can identify that
13 photograph.

14 A That was taken at the mall.

15 Q Who is in the photograph?

16 A Me and Brownie.

17 Q Tiffany, do you know anything about Planter's
18 Crossing or Crossroads Apartment?

19 A I think -- I'm not sure, but I think that's the name
20 of the apartment.

21 Q Which apartments are you talking about?

22 A On Rivers.

23 Q Is that the one that you're saying that you're not --

24 A I'm not sure.

25 Q Okay.

1 A That I stay at.

2 MS. BURNEY: Please answer defense counsel's
3 questions.

4 MR. BUTLER: May it please the Court.

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. BUTLER:

8 Q Tiffany, you said that you and Anthony were talking,
9 right?

10 A Yeah, that's correct.

11 Q And you explained that to mean you were dating?

12 A (Witness nodding.)

13 Q And you referred to him at times as your boyfriend,
14 right?

15 A I don't know if I would call him that.

16 Q Do you remember telling Investigator Garland that he
17 was your boyfriend?

18 A No, I don't remember.

19 Q And around this time you were staying with Marcus
20 Cheathom?

21 A Yes.

22 Q And the reason you were staying there is because
23 Anthony took you to a party there; is that right?

24 A No, I don't know. I can't remember that.

25 Q How did you end up at Marcus Cheathom's house?

- 1 A I don't remember.
- 2 Q You don't remember if Anthony took you to party and
3 left you there?
- 4 A No.
- 5 Q And he was your -- you were dating him at the time,
6 but then he decided he wanted to see another person; isn't
7 that right?
- 8 A Yeah.
- 9 Q Kristy Bunch, right?
- 10 A Yes.
- 11 Q He was with you and then he was with Kristy?
- 12 A Yes.
- 13 Q And at that time you were staying at Marcus
14 Cheathom's and you stayed there about how long, two weeks?
- 15 A Yes.
- 16 Q Where were you working at the time?
- 17 A I wasn't working.
- 18 Q You testified on direct that Brownie called you and
19 told you that she had to get out of Dante's house; is that
20 right?
- 21 A That's correct.
- 22 Q And the reason that she had to get out of Dante's
23 house is because Dante and his roommate Anthony Floyd
24 wanted her to have sex with them and she didn't want to;
25 is that correct?

1 A That's correct.

2 Q You knew that Brownie had been having trouble with
3 her roommate, right?

4 A Yes.

5 Q And at one point her plan was to go back to New York
6 because she was having trouble with her roommate; isn't
7 that right?

8 A Yes.

9 MR. BUTLER: Beg the Court's indulgence.

10 THE COURT: Yes, sir.

11 MR. BUTLER: That's all I have. Thank you.

12 THE COURT: Anything else?

13 MS. BURNEY: Beg the Court's indulgence a
14 moment.

15 REDIRECT EXAMINATION

16 BY MS. BURNEY:

17 Q Tiffany, you testified on direct that you and Brownie
18 were just friends.

19 A Yes.

20 Q And then Mr. Butler just asked you about Dante Tobias
21 and Anthony Floyd wanting to sleep with Brownie. Do you
22 remember that?

23 A (Witness nodding.)

24 Q What were Brownie's feelings toward you?

25 A Well, she was misunderstood. She wanted me as a

1 girlfriend.

2 Q She had a crush on you?

3 A Yeah.

4 MS. BURNEY: That's all I have.

5 THE COURT: You may step down. Thank you.

6 MS. BURNEY: Your Honor, may this witness be
7 excused?

8 MS. SHEALY: Subject to recall, your Honor.

9 THE COURT: You may be excused but you're
10 subject to recall. Thank you.

11 MS. BURNEY: State calls Kristy Bunch.

12 KRISTY LEE BUNCH, after being duly sworn,
13 testified as follows:

14 THE CLERK: Please be seated. Please state your
15 full name for the Court and spell your last.

16 THE WITNESS: Kristy Lee Bunch, B-U-N-C-H.

17 DIRECT EXAMINATION

18 BY MS. BURNEY:

19 Q Ms. Bunch, how old are you?

20 A Twenty-three.

21 Q And are you married or single?

22 A I'm single.

23 Q Do you have any children?

24 A Yes, I do.

25 Q How many children do you have?

- 1 A Two.
- 2 Q Where do you live?
- 3 A I live in Goose Creek.
- 4 Q How long have you lived in this area?
- 5 A Two years.
- 6 Q Where did you live before that?
- 7 A Actually, hold on. At my house, sorry, I lived in
8 Goose Creek for four years. In my present residence I've
9 lived for two years.
- 10 Q Did you live in South Carolina all your life?
- 11 A Yes, ma'am.
- 12 Q Grew up here and went to high school and all?
- 13 A Yes, ma'am.
- 14 Q What kind of work do you do?
- 15 A I'm a dancer at Southern Bell.
- 16 Q What kind of place is Southern Bell?
- 17 A It's an entertainment club. It's a nude
18 entertainment club.
- 19 Q And how long have you been doing this type of work?
- 20 A Four years.
- 21 Q You support your family doing that?
- 22 A Yes, ma'am.
- 23 Q Are you here today under subpoena?
- 24 A Yes, ma'am.
- 25 Q Do you know Anthony Mann?

1 A Uh-huh. Yes, I do.

2 Q How do you know him?

3 A Through mutual friends. I met him through a girl

4 that I know.

5 Q Does he have a nickname?

6 A Yes, he does.

7 Q What is his nickname?

8 A Amp.

9 Q Do you recall, before this all happened, when you

10 first met him?

11 A Very first met him, yes, I do.

12 Q And approximately when was that?

13 A It's approximately two months before the murders.

14 Q And did you spend any time with him during that

15 period of time?

16 A No, ma'am.

17 Q At some point did you begin to spend a lot of time

18 with him?

19 A Yes, ma'am, I did.

20 Q And do you recall when that was?

21 A About a week and two days before Brownie and Dante

22 were murdered.

23 Q Now, I'm going to ask you about a lot of different

24 dates. Would anything assist you to talk about those

25 dates? Would it help to look at anything, like a calendar

1 or anything?

2 A I might need -- yes, ma'am, I might need one.

3 Q Now, where were you and Amp -- when you first
4 starting meeting and hanging out together?

5 A When we first started hanging out we were at an
6 apartment complex called Planter's Crossing.

7 Q Uh-huh. Whose apartment was it?

8 A I didn't know the family. It was, I believe it was a
9 girl named Stephanie's.

10 Q And what was going on there?

11 A It was just a bunch of people hanging out, drinking
12 after hours.

13 Q Can you see that calendar all right?

14 A I can see it, yeah.

15 Q Now, do you recall what day it was that you went to
16 this party at Planter's Crossing?

17 A Yes, ma'am. It was Saturday, the 6th.

18 Q And how --

19 A I'm sorry, go ahead.

20 Q It's Saturday the what?

21 A The 6th.

22 Q I will give you this calendar and let you look at it
23 closely.

24 A It was Saturday, the 5th, I'm sorry.

25 Q All right. And so it's Saturday, the 5th, that

1 you're at this party. And how long did the party last?

2 A I stayed there until later on the next day, the next

3 evening.

4 Q Into the next Sunday, the 6th?

5 A Sunday.

6 Q Sunday evening?

7 A Right.

8 Q What did you all do that night?

9 A Just sat around and talked, just a bunch of us just

10 hanging out.

11 Q What did you talk to Amp about?

12 A I really can't recall. I mean, nothing.

13 Q The kinds of things that you all talk --

14 A It was just a bunch of teenagers and people hanging

15 out. You know, I mean, nothing really in particular, you

16 know. I was just getting to know him, you know.

17 Q Just getting to know him?

18 A Right.

19 Q Then you stayed there until the evening of Sunday,

20 the 6th?

21 A Right.

22 Q What did you do after that? Did you leave at some

23 point?

24 A Right. I left about 6, 6:30. I went home.

25 Q And then did you see him again?

1 A Yes, I see him later on that night. I left my house
2 and went over to a friend of mine's house.

3 Q What friend was that?

4 A Larry Caulder.

5 Q And was he there?

6 A No, he wasn't there, but he had called on the phone
7 and then said he was coming over there.

8 Q Did he come over there?

9 A Uh-huh.

10 Q Did you all spend time together that day?

11 A Uh-huh.

12 Q What did you talk about?

13 A I really can't recall what all we talked about.

14 Q Okay. How long did you stay at Larry's house that
15 Sunday?

16 A Until about 9 o'clock Monday morning.

17 Q And --

18 A We stayed there all night.

19 Q And what did you do Sunday night into Monday morning?
20 You stayed there until 9 o'clock you say?

21 A Right.

22 Q And then what did you do when you left there?

23 A I went home.

24 Q What did you do at home?

25 A I believe I went to sleep.

1 Q Were you working during that time?

2 A No. Actually, the Saturday night that I started
3 hanging out with him, I had lost my job that night.

4 Q Where were you working during that time?

5 A I was working at the Joker, the Wild Joker.

6 Q And so that Monday when you got home did you speak
7 with Amp any that day?

8 A I do recall talking to him that day. He had called
9 me and I hadn't given him my number, and he called me on
10 Peter's phone and we talked a little bit. I know we
11 talked about hanging out later on that night and him
12 coming to get me, and that was about it.

13 Q Now, what phone number did you give him to call you
14 at?

15 A I didn't never give him a number to call me.

16 Q Do you know how he called you?

17 A He called me on Peter's phone.

18 Q What was your phone number back then?

19 A 209-6002.

20 Q How did you know that he was calling you from Peter's
21 phone?

22 A Because I -- I remember it being Peter's phone.
23 That's how I knew how he got my number because he tried to
24 tell me that I gave it to him, but I knew I didn't. I
25 figured it was Peter because it was Peter's phone.

- 1 Q Did you know Peter?
- 2 A Yes.
- 3 Q What's Peter's last name?
- 4 A Davies.
- 5 Q You said that you all had discussed getting together
6 and hanging out some more on Monday, January 7th?
- 7 A Right.
- 8 Q Now, did you all get together on that day?
- 9 A I didn't get together with him until about midnight.
- 10 Q What was the plan on getting together on Monday?
- 11 A Just to go over to Larry's house or go to the Tackle
12 shop and have a few beers, play some pool.
- 13 Q Was he going to come and get you at a certain time?
- 14 A I don't think he gave me a certain time. He was
15 like, I'll be there later on or so to get you.
- 16 Q When did you start expecting him to come get you?
- 17 A Right about 9 o'clock.
- 18 Q What time did he actually show up?
- 19 A About midnight. Well, let's see. It was pretty
20 late. It was after the news, I know that. So it's
21 probably about midnight, 12:30.
- 22 Q Did you watch the news that night?
- 23 A Yes, I did.
- 24 Q When he came to pick you up, how did he look?
- 25 A Fresh, clean cut, like he'd had a shower, his hair

1 was wet.

2 Q Was he alone or was he with somebody else?

3 A He was with Peter.

4 Q What car was he driving?

5 A The white Hyundai Elantra.

6 Q Where were you living back then?

7 A I was living on 315 Pandora in Goose Creek.

8 Q So he came to pick you up and Peter was with him.

9 What did you all do after that?

10 A We went to go pick up a friend of mine.

11 Q What is your friend's name?

12 A Chrissie. I don't know her last name. We went and

13 picked her up, and then we went to Taco Bell to get

14 something to eat. He wanted something to eat. Then we

15 went to Wal-Mart to get some beer and wine, and then we

16 went to, over to Larry's house.

17 Q Now, when you started out from your house, what car

18 were you all riding in?

19 A The Hyundai Elantra.

20 Q Was it your car?

21 A No, it wasn't.

22 Q Do you know whose car it was?

23 A It belonged to a girl named Danielle that was a

24 friend of Anthony's.

25 Q How did you know it belonged to a girl named

1 Danielle?

2 A Because he was just talking about how some girl was a
3 friend of his, went out of town, let him borrow her car
4 while she was out of town.

5 Q What did the car look like?

6 A You mean like color-wise?

7 Q Did you get inside it?

8 A Yeah, I got inside of it. It was clean.

9 Q Did you see anything in it?

10 A Yes, I did.

11 Q What did you see in the car?

12 A A clear makeup bag, like with maybe makeup, a hair
13 brush.

14 Q Did you ask Amp if that was his makeup?

15 A No, I didn't.

16 Q Why not?

17 A I figured, you know, that it belonged to the girl
18 that the car belonged to. I didn't ask. I didn't care to
19 ask.

20 Q Okay. When they came to pick you up, did they say
21 anything to you? Did he say anything to you?

22 A No, Amp didn't really say anything to me. He was
23 pretty much quiet. You know, I mean, after a while,
24 after, you know, going to pick up my friend and wanted to
25 get something to eat he started talking more, you know,

1 but at first he was really quiet, didn't have much to say,
2 but then again I didn't know him all that well.

3 Q When you stopped to pick up the beer and wine at
4 Wal-Mart, where did you put that?

5 A In the trunk.

6 Q Did you see inside the trunk?

7 A Yes, I did.

8 Q What was in the trunk?

9 A Nothing.

10 Q Nothing at all?

11 A Not that I can recall, nothing.

12 Q Now, from there you went where?

13 A From Wal-Mart we went to Larry's house.

14 Q Okay. How long did you stay at Larry's house?

15 A For about an hour, hour and a half, two. Not too
16 long.

17 Q How long do you think?

18 A About an hour and a half.

19 Q Where did you go after that?

20 A Uh, the Ladson Tackle shop.

21 Q What is the Ladson Tackle shop?

22 A It's a bar with pool tables.

23 Q And how long did you stay there?

24 A Until the next morning.

25 Q What time does the Tackle shop close?

- 1 A I think it stays open all the time.
- 2 Q Twenty-four hours?
- 3 A Uh-huh.
- 4 Q And what did you all do at the Tackle shop?
- 5 A Played pool, just hung around, just hung around with
- 6 my friend and all, nothing really. Amp was playing pool
- 7 with some other people and I was just sitting back
- 8 watching him play pool, and a couple of my friends were
- 9 there.
- 10 Q Who are your friends that were there?
- 11 A Chrissie was there and some girls that I know that I
- 12 work with.
- 13 Q All right. So you say that you left at about what
- 14 time?
- 15 A We left at 6:30 that morning.
- 16 Q So now that is Tuesday?
- 17 A It's Tuesday morning.
- 18 Q The 8th?
- 19 A The 8th.
- 20 Q And why did you leave that morning?
- 21 A I had to go make sure my little girl got up for the
- 22 school bus.
- 23 Q Did you do that?
- 24 A Yes, ma'am.
- 25 Q How did you get back home?

1 A Amp gave me a ride in the Hyundai.

2 Q Then what did you do after you got your daughter to
3 school?

4 A We went back to the Tackle shop to let Peter and them
5 know that we were leaving and we were splitting up from
6 them. And me and Amp left and then we went to where he
7 stayed at Lisa's house and we went there for a few
8 minutes. I didn't go inside.

9 Q What is Lisa's last name?

10 A O'Connell.

11 Q And you went over there?

12 A Uh-huh.

13 Q And where were you? Outside you said?

14 A I was in the car.

15 Q How long do you think you sat in the car?

16 A For about two minutes.

17 Q And then what happened after that?

18 A We got back in the car and we went back to my house.

19 Q And then what did you all do after that?

20 A We walked in. He wanted me to introduce him to my
21 mom. She was half asleep, but he insisted that I
22 introduce him. And then we went back to my room and we
23 went to sleep.

24 Q And what did you do after you woke up?

25 A Let's see. We went to sleep. I can't really

1 remember what we did when we woke up. I know we slept
2 most of the day.

3 Q Why did you sleep most of the day?

4 A We were getting sick. It was wintertime, Peter was
5 real sick with the flu, and then he gave it to me and I
6 gave it to Amp.

7 Q So what did you do after you got up?

8 A Started watching TV, just hanging around the house
9 for a little bit, and then Amp decided that he had to go
10 home and take a shower, whatever, and he left my house
11 about 9, 9:30.

12 Q And that's Tuesday, the 8th?

13 A Uh-huh.

14 Q And then do you see him again on Tuesday, the 8th?

15 A Yes. He came back at 10:30. I know that because I
16 remember looking at the clock when he walked back in the
17 door, it was 10:30. And he had been gone a good while. I
18 didn't ask him, you know, where he had been or why he had
19 been gone so long, but he just said to me, you know, sorry
20 it took me so long, I got stopped at a roadblock.

21 Q Then what happened after that? What did you all do
22 Tuesday night?

23 A He had brought back a couple of beers. We drank a
24 couple of beers and we laid on the couch, watched a movie
25 and fell asleep.

1 Q And that was at your house?

2 A Yes, ma'am.

3 Q He stayed your house Tuesday night?

4 A Yes, ma'am.

5 Q Into Wednesday morning?

6 A Uh-huh.

7 Q What happened that Wednesday morning?

8 A We went back to my room and we were just real sick,

9 couldn't get out of bed, sweating, cold flashes, hot

10 flashes. And I remember my mom bringing us food that we

11 didn't eat. His pager was going off a lot.

12 Q And did he have a cell phone at all?

13 A No, he didn't. He used my phone.

14 Q To return the pages?

15 A Right.

16 Q Do you know who he called?

17 A I remember him saying something about Eric and Mike.

18 Q Do you know if he talked to anybody else?

19 A I remember him, because at first he was just, like,

20 avoiding their calls, you know, their pages. They were

21 paging him so much I was, like, just call them back, you

22 know, and I think he called them back a couple of times.

23 Q Do you remember --

24 A I know he called each of them back, though.

25 Q Did anybody call your phone looking for him?

1 A Yes. On Wednesday, Maria Jacques called my phone
2 looking for him.

3 Q Does Maria have a nickname?

4 A Yeah, her nickname is Merv.

5 Q Did Amp talk to Merv?

6 A Uh-huh.

7 Q About how long did he talk to her?

8 A About three minutes, four minutes. Not long.

9 Q So that's Wednesday, the 9th. Now, what happened the
10 rest of that day? Your mom brought you some food?

11 A Right. We just pretty much stayed in bed all day and
12 all night. I don't recall at all even getting out of bed.

13 Q On Wednesday?

14 A Right.

15 Q So now into Thursday morning, what happened on
16 Thursday?

17 A We were just sitting around my house. I finally got
18 up and started getting up and doing things, and then later
19 on that afternoon Peter called, you know, wanted to talk
20 to Amp, wanting to know what he was doing that night, what
21 we were doing, and we decided to finally go get something
22 to eat and Peter wanted to go with us, so we left my
23 house.

24 No, no, hold on. I'm sorry. Amp went home and
25 took a shower and got dressed, shaved or whatever, changed

1 his clothes, then he came back to my house.

2 Q That is back to Lisa's house?

3 A That's back to Lisa's house.

4 And we came back to my house and we left from
5 there to go get Peter from his girlfriend's house.

6 Q Do you remember what area of town you all went to
7 pick up Peter?

8 A Off of Rivers Avenue somewhere, trailer off Rivers.

9 Q And then what did you do after you picked up Peter?

10 A We went to Ryan's Steak House to get something to
11 eat.

12 Q And what did you do after you left Ryan's?

13 A We went to where Peter actually lives in West Ashley
14 so he could change his clothes. They were talking about
15 going to Club Tango. It's proper dress and he had to
16 change his clothes. And we stayed there for a good 20, 30
17 minutes and then we left there. They took me to -- I
18 wasn't going to Tango with them, but they took me to
19 Diamonds where I met up with a friend of mine that night
20 that I was hanging out with.

21 Q And did you stay at Diamonds?

22 A Yes, I stayed at Diamonds for a little while.

23 Q So you all split up then?

24 A Uh-huh.

25 Q And Peter and Amp went where? To Tango's, you said?

1 A Right.

2 Q You stayed at Diamonds?

3 A Right.

4 Q What did you do after that?

5 A Left Diamonds and went over to a friend of mine's
6 house that lives in Ladson, hung out there for awhile,
7 messed with the computer.

8 Q Anything else?

9 A Then me and my friend from Diamonds, we had a
10 bachelor party to do that night, and then we did that and
11 that's about it. Then after a while she just finally took
12 me home.

13 Q Now, the night that he dropped you off at Diamonds,
14 what car was he driving?

15 A The Elantra, the Hyundai Elantra.

16 Q The white one?

17 A Uh-huh.

18 Q Danielle's car is what you're saying?

19 A Right.

20 Q So now does that take us into Friday, the 11th now?

21 A Right.

22 Q And what happened on Friday, the 11th? Did you see
23 Amp at all that day?

24 A Yes, I did. He come to get me at about 7 o'clock to
25 take me to work that night, but I ended up not going.

1 Q Was he alone?

2 A No, he had a friend of his, Harold Smalls, with him.

3 Q Uh-huh.

4 A And we left. I think we took Harold to his house to
5 drop some clothes off or pick up some clothes, and we went
6 and picked up this girl named Trish that wanted to go with
7 us over to Larry's house. Eventually we took Harold home.
8 And then me, Amp and Trish went back to Larry's house.

9 Q Did you all talk about anything Friday night?

10 A Trish and Amp were talking about like warrants they
11 had for each other, or on themselves or trouble they were
12 in, talking about their probation officers and stuff, and
13 somehow the subject of Brownie being missing came up and
14 then he said that --

15 MS. SHEALY: Your Honor, objection to this. May
16 we approach?

17 THE COURT: Yes.

18 (A bench conference was held with the judge and
19 attorneys in the presence of the jury but out of the
20 hearing of the jury.)

21 BY MS. BURNEY:

22 Q Now, what was the discussion about Brownie that
23 night?

24 A Just the fact that she was still missing and nobody
25 knew where she was.

1 Q What was Amp saying about that?

2 A He was saying that Star was -- that Star was saying
3 that he had something to do with it and that he had seen
4 her last. And he was saying that the only reason she was
5 saying that was because she was mad at him because they'd
6 broke up and he didn't want to be there anymore. He was
7 just saying it was, like, a revenge thing.

8 Q You have to speak up loud.

9 A He was just saying that it was, like, a revenge thing
10 that she was saying that because she was mad at him.

11 Q Now, did you know who Brownie and Star were?

12 A Yes, I did.

13 Q How did you know who they were?

14 A I met Star a couple of years ago at Club Tango and I
15 knew Brownie through Star.

16 Q Were you all close friends?

17 A No.

18 Q But you knew who they were?

19 A Right.

20 Q So then where did you go after that? I think you
21 said that Trish, Harold Smalls, you and Amp were together.

22 A Right. We took Harold to somebody's house where he
23 was staying. We were dropping him off for good. And then
24 I believe we went back to Larry's house.

25 No, I'm sorry. We were going back to Larry's

1 house to watch the Fast and the Furious and Amp had to get
2 his DVD back from Clarence, and he was trying to get in
3 touch with Clarence to get it back. And we went over to
4 one of Clarence's girlfriend's house I believe it was to
5 get his DVD back and we ended up having to follow Clarence
6 to another house to get it. And while we were following
7 them they stopped like at a stop sign in the neighborhood
8 and Clarence had to look in his trunk, look in his engine,
9 open up his engine, and Amp got out of the car and was
10 talking with Clarence for a few minutes, and then they all
11 got back in the car and got the DVD and went back to
12 Larry's.

13 Q What did you all do at Larry's?

14 A Larry's neighbors were over there, and just nothing
15 really in particular, you know, like, just everyday talk.

16 Q Did Amp stay there the whole time at Larry's that
17 night?

18 A No, he didn't. He got a page and he said it was from
19 Star and he had to go see her and she was in Planters
20 Crossing and he had to go see her real quick.

21 Q Did he leave to go see Star?

22 A Yes, he did.

23 Q How long was he gone? Did he come back?

24 A Yeah, he came back. He was gone about 30 minutes.

25 Q Did he talk to you about Star after that?

1 A Nope.

2 Q Now, did you have your cell phone with you on that
3 Friday?

4 A Uh-huh, I sure did. I believe he called her back on
5 my cell phone.

6 Q Now, so we're at Friday, the 11th. Did you all
7 stay together the entire night on that Friday?

8 A Yes, up until about I would say about 1 in the
9 morning. I was sick. I was coughing and constantly
10 coughing so much and I told Amp to just take me home. And
11 he kept on procrastinating, hanging out and standing
12 around. Finally I'm like, you know, take me home. And
13 then we left Larry's, went to Kmart to get some cold
14 medicine, and then he took me home. And he stayed at my
15 house for about five or ten minutes, laid on the bed. He
16 almost fell asleep, but he got up and he took my phone and
17 he left and went and met Larry and some other people at --

18 MS. SHEALY: Your Honor, I'd object if she
19 doesn't know.

20 MS. BURNEY: I was going to ask her how she
21 knew.

22 BY MS. BURNEY:

23 Q How do you know they met Larry and other people?

24 A Well, because we left their house, and if I hadn't
25 been taken home I would have been going with them. It was

1 like a group that was going together and he had to take me
2 home, so he had to -- I let him use my phone so he could
3 call them back and get back up with them.

4 Q So when he left you, what was your understanding of
5 where he was going?

6 A He was going to meet back up with Larry and the other
7 people.

8 Q And you stayed home?

9 A Yes, I did.

10 Q That was about 1 o'clock you're saying?

11 A Right. About 1:30, 2 o'clock.

12 Q That's really 1 o'clock into Saturday, the 12th?

13 A Right.

14 Q So now we're into Saturday, the 12th. Did you see
15 Amp at all on that day?

16 A He finally came back to my house about 5:30 that
17 afternoon.

18 Q Was he alone when he came back that day?

19 A No, he had his roommate Lisa's son or whoever was
20 with him.

21 Q What did you all do?

22 A I had a birthday dinner party to go to that night,
23 so I got up, started getting dressed. Amp come in and was
24 telling me about a fight he got into with a guy that was
25 banging on the door at the bar that he was at.

1 Q When did he get into this fight?

2 A He got into the fight late Friday night, early
3 Saturday morning.

4 Q This is after he left you?

5 A After he left me and dropped me off he went back to
6 ODC is where it was.

7 Q What did he tell you about the fight?

8 A He told me he was in the bathroom with Larry and
9 another guy. There was three of them in the bathroom and
10 someone was banging on the door trying to get in and they
11 were holding the door shut, and the guy kept on banging
12 and he opened the door and then words were said and they
13 started fighting, and he told me he hit him in the head
14 with a bottle.

15 Q What is ODC?

16 A It's called Old Dorchester Club. It's a bar/club.

17 Q That's where you're saying he was telling you he had
18 this fight?

19 A That's where he told me he had it, yeah.

20 Q What did you all do after that? He is over there
21 with Lisa's son and telling you about this fight?

22 A Right. And he laid down on the bed and was going to
23 sleep, I guess. I think he had been drinking and she
24 paged him or either called my cell phone, one or the
25 other, wanting her son to come by, wanting him to bring

1 her son back home. She was, like, really worried about
2 him.

3 Q Did he take her son home?

4 A Yeah.

5 Q How do you know that?

6 A Because I left with them.

7 Q And what did you do? Did you go inside Lisa's house?

8 A Yes, I did.

9 Q Where did you go?

10 A I -- we went to her room, and I sat on the bed and
11 talked to her a few minutes while he shaved and did his
12 hair or whatever.

13 Q What did you all do after that?

14 A We left there and we went over to Larry's house for
15 about 10 or 15 minutes. He had to stop by there and we
16 brought them some food that we got from McDonald's and we
17 left there and went to Sticky Fingers.

18 Q Why did you go to Sticky Fingers just after you had
19 some food?

20 A Well, a friend of mine was having a birthday party at
21 Sticky Fingers.

22 Q How long did you and Amp stay at Sticky Fingers?

23 A About a hour.

24 Q What did you do after you left Sticky Fingers?

25 A We rode down in the Hyundai Elantra, we rode down to

1 Wet Willie's, stayed there about five minutes and left Wet
2 Willie's, went to Tango, Club Tango.

3 Q What did you do after you left Tango? What time does
4 Tango close?

5 A It was Saturday night. Probably it closed at 2.

6 Q What did you do after you left Tango, did you go
7 home?

8 A No, we didn't go back to my house. We went back to
9 Larry's house.

10 Q All right. How long did you stay at Larry's -- that
11 is Larry Caulder?

12 A Larry Caulder, yes.

13 Q How long did you stay at Larry Caulder's?

14 A Until about 8 o'clock that Sunday morning.

15 Q Then what did you do after that?

16 A Went back to my house. Amp drove me in the Hyundai
17 and he drove me back to my house, and we almost wrecked,
18 almost got into a wreck. He was driving and almost ran
19 into the back of a stopped car in front of us at a red
20 light. He was driving and looking straight at the road
21 but was not paying no attention to the road. And after
22 that I was just like scared, you know, and he was -- when
23 we got back to my house he was going to come inside, but I
24 told him, I said, No, go back home. I'm going inside, go
25 to sleep, be with my kids, and I told him to go home.

1 Q So now we're into Sunday, the 13th?

2 A Uh-huh.

3 Q Now, did you talk to Amp at all that day, that
4 Sunday?

5 A No more that day, but later on that Sunday night,
6 early Monday morning about 2 o'clock in the morning he
7 called and --

8 Q What did you talk about?

9 A We didn't talk really. I was sleeping, and I can't
10 even recall. If I answered the phone I was, like, I'm
11 sleeping, call me back tomorrow, or I can't remember if I
12 answered the phone or not, but I know it was him calling.
13 I remember I was tired.

14 Q That might have been 2 o'clock in the morning on
15 Monday, the 14th?

16 A Right.

17 Q Now, did you see Amp at all on Monday, the 14th of
18 January?

19 A No, I didn't. Well, I did, but not until about 10
20 o'clock. He came up to my job.

21 Q A.m. or p.m.?

22 A P.m.

23 Q And where were you working then? You said your job
24 -- you told us earlier you had lost your job.

25 A I ended up going back. I talked to my boss and I

1 went back to work there. I believe that was my first
2 night back actually.

3 Q And?

4 A And he had called me on my way to work. I was going
5 to work about 7. He called me on a pay phone wanting to
6 know if I needed a ride because I didn't actually have a
7 license at that time. I wasn't supposed to be driving,
8 but I drove to work that night. And I told him I had a
9 ride or whatever. And him and Dan Cavey came up to my job
10 about 10:00, 10:30.

11 Q What did you all talk about then?

12 A They had gone and done something that they were proud
13 of. They were, like, busted someone's house up or
14 something; one of Dan's girlfriend's boyfriends that he's
15 mad at. I didn't ask what they actually did. I didn't
16 want to know. But they were just all, you know, ramped up
17 about whatever they had done.

18 Q Do you know what car he was driving that Monday, the
19 14th?

20 A He was -- he had his car back, his red car. He had
21 given the car back to Danielle. She came back home or
22 whatever and he had given it back, so he said.

23 Q What kind of car did he have, what kind of red car?

24 A I'm not sure what kind of car it was. It was a
25 little small red car, two door.

1 Q Okay. And at some point later -- I know I'm jumping
2 ahead -- at some point later did you talk to the police
3 about all this?

4 A Yes, I did.

5 Q Did you give a statement?

6 A Yes, I did.

7 Q In your statement did you talk to him about you
8 getting a ride from Amp to work on that day, that Monday,
9 the 14th?

10 A I didn't want him to know that I was driving without
11 a license. You know, I was scared to say that I was
12 driving without a license when I was doing my statement.
13 So I said that Amp drove me to work and that someone
14 followed in his car and they had dropped me off in my car
15 and they left, they both left in his car.

16 Q But the truth is what?

17 A The truth is, I drove to work that night without my
18 license, and he came up about 10:30.

19 Q What did you do after you got off work on Monday, the
20 14th?

21 A Amp come and picked me up in his car with Dan, and he
22 drove my car, me and Amp rode in my car and Dan left in
23 his and we went back to Larry's house.

24 Q Okay. And how long did you stay at Larry's house?
25 What time did you get off work?

1 A About 2.

2 Q And that's 2 into Tuesday, the 15th?

3 A Yeah.

4 Q So that is 2:00 a.m. on the 15th. And you went
5 over to Larry's house. And how long do you think you
6 stayed at Larry house?

7 A About 5:00, until daybreak the next morning.

8 Q And then what did you do at daybreak?

9 A We went back to my house, got my little girl to
10 school and then went to sleep. And then we slept until
11 about 6:30 that evening.

12 Q On the 15th?

13 A Uh-huh.

14 Q Did you stay at your house all day?

15 A Yes, ma'am, we did.

16 Q You didn't leave at all?

17 A We left after I got up, but we stayed there all day
18 and slept. When I got up, we left in my car and he drove.
19 We went right around the corner to the gas station to pick
20 up some Black and Miles.

21 Q And did you get your Black and Miles?

22 A No. He got out of the car to go get the Black and
23 Miles but the line was too long. So he come back to get
24 back into the car, and after he was getting back in the
25 car the police came up on us with their guns, you know,

1 telling him to freeze, whatever. I thought we were being
2 robbed, you know. All I heard was yelling and guns in my
3 face, and I thought we were being robbed at the time.

4 Q And after you figured out it was the police, then
5 what happened?

6 A They pulled him out of the car, pulled me out, pulled
7 him to the back, pulled me to the front, and I'm standing
8 there not knowing what's going on. And Derrick arrested
9 him, asking him, you know, what's his name, and he said
10 his name was Brandon Mann, which is his brother's name.
11 And I looked at Detective Walker and I said, What's going
12 on, you know, What is he being arrested for? And then he
13 said a homicide.

14 Q What did you do after that?

15 A I just -- I just stood there and just did what they
16 said, you know.

17 Q What did they tell you to do?

18 A Stand there and be quiet.

19 Q Were you able to leave the Pantry then?

20 A To leave with them, yeah. To go back to my house.
21 They wanted to search it to see if there was anything he
22 left, clothes, guns, whatever.

23 Q Did they search your house?

24 A Yes, they did. All they found of his was a sweater
25 that he had there.

1 Q And what else happened after that?

2 A I went back down to the Pantry and they read me my
3 rights, then we went down to the station, and then I
4 proceeded to write a statement.

5 Q Do you know who Michael Crumb is?

6 A I know of him. I don't know him on a personal level.

7 Q Have you ever hung out with him, spend any time with
8 him?

9 A I know that I used to go to school with him back in
10 middle school, but I didn't know him personally.

11 Q Do you know who Eric Zack is?

12 A No, I don't.

13 Q Now, you said that you gave a statement to the police
14 that day which was the 15th. At some point did you give
15 another statement to the police or talk to the police?

16 A Yes, ma'am. Because I was so shaken up by what was
17 going on and just couldn't believe the situation that was
18 happening, and I just couldn't get my days right on my
19 statements, you know. You know, I got, like, what
20 happened on the 9th I said happened on the 8th and it was
21 just all mixed up. And I told them it wasn't right, you
22 know.

23 Q Was the entire statement not right or just --

24 A Pretty much a lot of it.

25 Q Okay.

1 A Because I had to go back and I was still confused and
2 just, I mean, I needed time to sit back and think about
3 everything that happened and which order it happened, you
4 know.

5 Q Were you able to get your dates right?

6 A Pretty much for the most part. But the second time
7 that I -- I went back the next day, which was the 16th,
8 to change it, to fix it, and I still was just confused and
9 couldn't get my days right.

10 (WHEREUPON, State's Exhibits Nos. 108, 109 were
11 marked for identification only.)

12 BY MS. BURNEY:

13 Q I'll show you what is marked State's Exhibit 108 for
14 identification and 109 for identification and ask if you
15 recognize those.

16 A Do I recognize them?

17 Q Yes.

18 A Yes, ma'am, I do.

19 Q What are they?

20 A These are my statements.

21 Q What is the date on the first statement that you
22 gave?

23 A The 15th.

24 Q Of what year?

25 A January 15th, 2002.

1 Q And what is the date on the second statement?

2 A January 16th, 2002.

3 Q Do you recognize 572-8034?

4 A Yes, ma'am, that was my home phone number at the
5 time.

6 Q Is that a land line or a cell phone?

7 A Land line.

8 Q Now, you've just described being with the defendant
9 for about an eight- or nine-day period of time. Did you
10 all develop a close relationship during that time?

11 A Yeah. I mean, I was crazy about him. You know, I
12 mean, I just -- I mean, when I met him, when I first
13 started to hang out with him, being around him and all, I
14 just -- he just stole my heart. I mean, he just stole my
15 heart. He was just funny, you know, just -- I liked being
16 around him. I don't know, just, I was crazy about him.
17 Really, I was.

18 Q Did you talk to him after he was arrested?

19 A About two weeks after he was arrested he was able to
20 call me on one of the officer's cell phones. He called me
21 for about a minute and then he got my home phone number.
22 Then when he got back to the jail he called me.

23 Q He called you from the jail?

24 A Yes, ma'am.

25 Q How did he call you?

1 A Collect.

2 Q Collect call?

3 A Uh-huh.

4 Q Can you give the jury some idea of how many collect

5 calls you got from him?

6 A Over the whole time?

7 Q While he was at the jail, the county jail.

8 A I would say about two or three a day at that jail,

9 that county jail.

10 Q Did you ever visit him there?

11 A Uh-huh. Yes, ma'am.

12 Q How many times do you think you visited him?

13 A About four or five.

14 Q Did you ever take him any money or anything?

15 A I took him money for his canteen there, yes.

16 Q At some point did you talk to him about why he was

17 arrested and the charges against him?

18 A We talked. I didn't want to discuss any of that,

19 putting me in a position of knowing. You know, I just

20 didn't want to ask him and have him tell me himself what

21 happened or what he --

22 Q Why not?

23 A Because I didn't want to know at that -- I mean, I

24 just didn't want to know. I mean, at that point in time I

25 was really concerned with -- at first, just getting to

1 know the person, you know, because when I went to go see
2 him, I was like, I've known you for two weeks, all this
3 happened and I don't know anything about you, you know.
4 And then a little while later I came across a lawyer that
5 came into the club, and he was a criminal defense lawyer,
6 and he started talking to me about --

7 MS. SHEALY: Your Honor, I object to hearsay.

8 MS. BURNEY: I will move on, your Honor.

9 THE COURT: All right.

10 BY MS. BURNEY:

11 Q What did he tell you about his charges? What were
12 you all talking about in those calls?

13 A Just that he, I mean, he pretty much, you know, owned
14 up to being at Dante's house that night. But, you know,
15 he always said that he didn't do it.

16 Q What do you mean, he owned up to it?

17 A I mean, he's like, yeah, I was at Dante's house that
18 night, but I didn't do it, I'm innocent.

19 Q He didn't do what?

20 A Commit the crimes that they were charging him with.

21 Q Okay.

22 A And he was, you know, all concerned about getting a
23 lawyer because I had talked to a lawyer. And he was
24 wanting to call people to help get money for him, you
25 know.

1 Q How was he going to go about doing that? How was he
2 going to go about calling people to get money, to raise
3 money for a lawyer?

4 A I was making three-way calls for him to different
5 girls he knew or whoever he knew that had money in the
6 bank, like Carol had money, Danielle had money. He could
7 get people to take loans for him, or, you know, he was
8 wanting to get ahold of people -- one of our friends, Dan
9 Cavey, his girlfriend knew people that were officers in
10 the system that he would get to help him in any kind of
11 way, the judges. He was just all about getting money up
12 so he could get a lawyer to prove that he was innocent.

13 Q Did he want to talk to other people about other
14 things?

15 A Yes, he did. He wanted to talk to Dan about getting
16 drugs together to have them --

17 MS. SHEALY: Objection, your Honor. May we
18 approach?

19 THE COURT: Yes.

20 (A bench conference was held with the judge and
21 attorneys in the presence of the jury but out of the
22 hearing of the jury.)

23 THE COURT: Ladies and gentlemen, I need to send
24 you to the jury room. Please do not discuss this case in
25 any way. Thank you very much.

1 You all return and be seated, please.

2 (The jury left open court at approximately 2:48
3 p.m.)

4 THE COURT: Are you ready to make your motion?

5 MS. SHEALY: Yes, your Honor.

6 THE COURT: All right. What is the basis of
7 your motion?

8 MS. SHEALY: First of all, your Honor, the
9 motion is for a mistrial. I'd ask that Ms. Bunch be
10 excused from the courtroom for the argument.

11 THE COURT: You may step down, ma'am. Please do
12 not discuss this case in any way. If you will remain
13 outside, and do not discuss your testimony with anyone.

14 All right. What is the language that you say
15 constitutes a mistrial?

16 MS. SHEALY: First just as a reminder, your
17 Honor, we had previously had several motions hearings.
18 During one we addressed what was potential Lyle testimony
19 that would come in.

20 From this witness they have elicited two things
21 that we've never discussed before, never been advised of,
22 never addressed before despite the fact that pretrial
23 motions were supposed to entertain that type of subject
24 matter.

25 This witness has testified to some type of

1 conduct with Daniel Cavey that they messed up someone's
2 house. And then just what I've just objected to was the
3 discussion regarding his wanting, and I believe that was
4 Daniel Cavey, to get some money for some drugs, or we may
5 have to have the court reporter play back exactly what was
6 elicited. And certainly this is extremely prejudicial,
7 your Honor.

8 THE COURT: Was the testimony that he was trying
9 to arrange that?

10 MS. SHEALY: She testified that he was trying to
11 have someone arrange to get some drugs, and I think I
12 interrupted.

13 THE COURT: "He" being the defendant?

14 MS. SHEALY: I don't know if it's Cavey or the
15 defendant, but it was on behalf of the defendant. She
16 indicated that it was Mr. Mann who was trying to get the
17 drugs together.

18 THE COURT: That's our understanding. I just
19 wanted to double-check.

20 MS. SHEALY: I was looking for, your Honor,
21 March 3rd we filed a Lyle motion.

22 THE COURT: Do you want to respond?

23 MS. BURNEY: Your Honor, I'm not trying to
24 elicit this testimony. I'm not trying to elicit testimony
25 about him arranging drugs. I anticipate this witness

1 saying eventually that she would have done anything to
2 help him. And she's going to testify, and I would
3 anticipate her testifying, that she would have tried to
4 sell drugs or try to arrange for other people to do things
5 to get money for an attorney. I can move on. ,

6 THE COURT: I mean, if it's come out that he was
7 trying to arrange for the purchase of drugs.

8 MS. BURNEY: I think what she was about to say
9 was Dan was supposed to get drugs to sell and then raise
10 money for his attorney. I don't think that it's talking
11 about this defendant selling drugs. I think it's about
12 this guy Dan.

13 MS. SHEALY: As I understood the testimony, it
14 was that Mann was directing that.

15 MS. BURNEY: I think I asked about three-way
16 phone calls.

17 THE COURT: Let's have the court reporter please
18 find that.

19 MS. SHEALY: I apologize, I didn't hear you.

20 THE COURT: Let's have the court reporter find
21 that.

22 MS. BURNEY: The other thing about the house, I
23 had not anticipated her saying that.

24 THE COURT: Hold on. The court reporter can't
25 do both at the same time.

1 (A portion of the testimony of Kristy Bunch was
2 played back for the judge and attorneys.)

3 THE COURT: All right. State the grounds for
4 your motion.

5 MS. SHEALY: Your Honor, as we just relistened
6 to the testimony of Ms. Bunch, there were three occasions
7 during her testimony, none of which we've ever been
8 alerted to, that inappropriate testimony was elicited from
9 Ms. Bunch.

10 One involved an episode with Mr. Mann and Daniel
11 Cavey and their messing up some kind of house because they
12 were mad at someone, and they were excited about it. I
13 did not object to it at that time, your Honor. In fact, I
14 was involved in a discussion with my client at the time
15 that she was saying that and did not object.

16 Then there was a reference, right before the
17 testimony most recently in question, where she's
18 indicating that they were trying to get money up, that he
19 wanted, and certainly the inference is, some money to
20 assist in his being able to reach out to officials and
21 judges in an effort to help himself out. Never have we
22 been alerted that she would testify to that fact or that
23 that would be elicited.

24 And then thirdly, the testimony regarding his
25 wanting Daniel Cavey to get some drugs together in an

1 effort to raise money was the most recent testimony that
2 we have objected to, your Honor.

3 And Ms. Burney was certainly eliciting those
4 things from her by asking: What else did he do? What else
5 was he trying to get you to do or get others to do?

6 And, your Honor, in defense of that, we filed a
7 Lyle motion months ago, we had hearings in this case, and
8 I thought the goal was that to not have these type of
9 surprises in the courtroom. But now this jury has heard
10 three things that we've never heard before, could not
11 anticipate. And I think it's extremely prejudicial, and I
12 move for a mistrial.

13 THE COURT: Well, let me ask you, isn't the
14 interjection of drugs going to be present in this case?

15 MS. SHEALY: The interjection of drugs?

16 THE COURT: Yes.

17 MS. SHEALY: That drugs were taken from Dante's
18 house.

19 THE COURT: Right.

20 MS. SHEALY: That has nothing to do with that
21 while he's in jail, having someone else try to get drugs
22 together. That suggests that he has the ability to direct
23 people, that he has the ability to tell other people what
24 to do and how to get drugs together. I mean, this
25 certainly isn't a drug trial.

1 THE COURT: All right. The State's position?

2 MS. BURNEY: Your Honor, as to the first matter
3 about the break-in or busting up of somebody's house with
4 Dan Cavey, I don't recall her ever telling me that before.
5 I did not anticipate it, was not asking her about that,
6 was just setting the context for the week's events with
7 this defendant. And I think, your Honor, in fact, the
8 witness testified something about busting up somebody's
9 girlfriend's house, Dan's girlfriend's house, and she
10 didn't ask. So, I don't think that she could go into
11 detail about it. I think your Honor can give a curative
12 instruction of the jury to disregard that and that will
13 resolve that situation.

14 As to the thing about the allegation that there
15 is a bribe, I don't think that the testimony that this
16 witness gave suggests that. I think she's just saying
17 he's asking for money for a lawyer. She's saying that he
18 was asking guards, people in the system who can help him
19 in any way. It has nothing to do with bribing anybody.
20 Anybody who knows anybody that might have connections that
21 might be able to help him.

22 As to the third point, I think there's already
23 been testimony, I believe, that drugs were taken from the
24 victim; that this defendant was a part of a party of those
25 group of people who took drugs from the victim. I think

1 speculate. Go ahead.

2 BY MS. BURNEY:

3 Q Now, I want to ask you about some phone calls.

4 A What does speculate mean?

5 Q Don't worry about that.

6 THE COURT: What it means is that what she's
7 asking you about is what you actually know. If you have
8 to guess or you assume, that's not what they're after.

9 MS. SHEALY: Your Honor, may we beg your
10 indulgence just a moment?

11 THE COURT: Go ahead.

12 BY MS. BURNEY:

13 Q Kristy, I want to ask you about some phone calls that
14 you participated in. You talked about three-way phone
15 calls?

16 A All right.

17 Q Let me ask you a question. Did you talk to Merv or
18 Maria Jacques in a three-way phone call?

19 A Yes.

20 Q What was Amp saying to Merv during that three-way
21 phone call?

22 A He was wanting her to go back and say that the police
23 made her lie in her statements.

24 Q Okay. Did you know what her statement said?

25 A She told me that her statement said that she heard

1 him shout out a statement in the fight that they had at
2 ODC that Friday night.

3 Q Did you talk to Amp about that?

4 A Yes, I did. He said he didn't say it.

5 Q And when you were on that three-way phone call, what
6 was he trying to get her to say that the police made her
7 say? You said the police made her say that.

8 A That he was trying to get her to say that the police
9 made her say that he said, I've already got two murder
10 charges, I'm not afraid to get another one.

11 Q Can you remember how Amp was saying that to Merv? Do
12 you remember what his words were?

13 A He was just saying things like, you know, you're
14 going to have to testify, you know, and telling her -- and
15 trying to make her feel guilty, and she was the reason
16 that he got arrested, her statement was the reason that he
17 got arrested. And he was like, you know those police made
18 you lie, you know that I didn't say that, Merv; you know
19 the police just scared you and made you say that.

20 Q Okay. Now, I want to ask you about other ways that
21 you communicated with him.

22 You talked about phone calls, you talked about
23 visiting him in person. Did you communicate with him
24 through any other way?

25 A Letters.

1 talk, stuff like that.

2 Q And you were in their presence when this was being
3 discussed?

4 A Right.

5 Q You did not testify to that earlier. Tell me again
6 what he asked that he said in the letter.

7 A Just to keep quiet, that they could get through it.

8 Q Now, during that conversation did Mann ever tell you
9 that he and Peter had done something criminal during that
10 conversation?

11 A Not that I can recall, no.

12 Q So when he was saying to Daniel Cavey, send Peter a
13 letter telling him that we can get through this, there was
14 no acknowledgment that they had done anything criminal; is
15 that correct?

16 A Right.

17 Q And then you were telling us about three-way calls
18 with Marie Jacques?

19 A Right.

20 Q You all called her Merv; is that correct?

21 A Yes.

22 Q From what I understand your testimony to be, that he
23 had said that she needed to tell -- that the police had
24 made her say what she had said earlier about some comment;
25 is that correct?

1 A He wanted her to testify that they made her say that,
2 that it really wasn't said, she didn't hear it.

3 Q And you were on the phone when this conversation took
4 place?

5 A Right. He had said that to her a couple of times,
6 you know, like, trying to drill it into her head.

7 Q Okay. But you don't know, do you, whether or not in
8 fact the police did make her say that?

9 A No.

10 Q You're not sure whether or not in fact the police had
11 made her say that she heard a comment; is that correct?

12 A Right.

13 Q And then, I'm sorry, I'm reading my notes, was it
14 Maria Jacques also that he said, You know you're going to
15 have to testify, you know the police made you lie. That
16 is the kind of conversation he had had with her?

17 A Right.

18 Q And again you don't know whether or not in fact they
19 did make her lie; is that correct?

20 A That's correct.

21 Q Then regarding this letter from Michael Grasso, who
22 you call Boston, are you saying that Amp gave you a letter
23 to give to Michael?

24 A He sent it to me.

25 Q He sent it by mail to you?

1 A Uh-huh.

2 Q You don't have a copy of that letter?

3 A No, I don't.

4 Q And you certainly don't know what Michael Grasso may
5 or may not know about this case; is that correct?

6 A Correct. The only thing that I know is that Boston
7 had told me that, you know, that he in fact was guilty of
8 the crimes that he was being charged with.

9 Q The ones that Amp was being charged with or Grasso
10 was being charged with?

11 A The ones that Amp was being charged with.

12 Q So Grasso just tells you he's guilty, but he wasn't
13 present was he? You don't know?

14 A Right.

15 Q You, in fact, never delivered that to Michael Grasso?

16 A No, ma'am.

17 Q Do you recall when that was sent to you?

18 A Whenever he was in the county jail, I believe. Yes,
19 definitely when he was in the county jail.

20 Q And then the letter that was sent to you to be passed
21 onto Dan, you never looked at?

22 A No.

23 Q So obviously you destroyed it as well?

24 A Yeah, it got burned away with all the other letters I
25 had with him.

1 Q In going over with me again the conversation that you
2 were saying you participated in when Mann said that he
3 wanted -- the thing about you'll never catch that little
4 bitch, I didn't quite catch that.

5 A He wanted me to testify.

6 Q This is just through conversation that you all are
7 communicating or by letter?

8 A By letter.

9 Q You and Anthony Mann, Amp, are communicating by
10 letter?

11 A Right. He wrote this statement letter to me and sent
12 it to me.

13 He was saying in the letter that he wanted me to
14 testify that whenever he stepped out the car, whenever Amp
15 stepped out the car, Peter turned around and looked at me
16 and said: Brownie, yeah, she's still missing and they'll
17 never catch that little bitch. And then he wanted me to
18 say that he had a real evil and devious look on this face
19 when he said it.

20 Q That Peter did?

21 A Yes.

22 Q When did you receive that letter?

23 A The same time with the one for Boston.

24 Q And you're not sure? All you can say is when he was
25 in the county jail, that's all you say about the time of

1 that?

2 A Yes.

3 Q That is a letter you do not have a copy of?

4 A Right.

5 Q And then you were asked when you all stopped talking.
6 When did you and Amp stop talking?

7 A April of last year.

8 Q Of last year, of 2002?

9 A Right. I believe it was last year, 2002. All this
10 has been so confusing. I mean, it's been like a year or
11 longer.

12 Q Is it fair to say you're not sure when that was?

13 A Right. It was 2002.

14 Q Now, these discussions that you had with his
15 discovery material, he was just informing you of what he
16 had gotten in, what he was looking at?

17 A I'm sorry?

18 Q The information that you gave us regarding the
19 autopsy report, for example, he was just telling you what
20 the autopsy had said?

21 A Right, as that information came in.

22 Q And then when you said that he said, No way I could
23 have murdered anyone on Tuesday night because I was with
24 you, that was not a lie, was it? He had been with you
25 that night; is that correct?

1 A Yes, he was with me that night, but he also left,
2 though.

3 Q And as I understand what you testified to regarding
4 your schedule for that time period, you all were both very
5 sick during that time period; is that correct?

6 A Yes, ma'am.

7 Q So you're saying despite the fact that he was sick on
8 Tuesday night he left?

9 A Uh-huh.

10 Q And when you said Tuesday night, which Tuesday night
11 are you talking about, the 8th of January?

12 A Right.

13 Q And then he told you that no one matched up to the
14 semen that was found; is that correct?

15 A Right.

16 Q And regarding the statements of Lisa, Maria, Shannon,
17 Eric and Mike, he was telling you that they didn't fit,
18 that there were discrepancies and they were all lying?

19 A Right. Something that was said in Lisa's statement,
20 whenever -- he told me that whenever they had left
21 Dante's, they went back to Lisa's house and that Bryan was
22 sitting on the bed and he looked at Brownie and said, Are
23 you ashamed of what you've done? And she said, No, I'm
24 just hungry. And that was in Lisa's statements, and
25 that's one thing that he --

1 Q He told you about Lisa's statement?

2 A Told me about Lisa's statement.

3 Q Now, what were you saying about Dante and the semen
4 that was found on Brownie, what did he say about that?

5 A He said that, you know, it could -- he didn't
6 actually say that it was Dante's, but he was, like, well
7 if it wasn't none of ours, then who else could it have
8 been? I said, Well, Dante's? And he was, like, All
9 right, you know, as if he agreed with me.

10 Q Okay. What were you saying to Ms. Burney at the end
11 about trying to make it a motive?

12 A To make it look like he was forcing her to have sex.

13 Q Did he say that to you, or that's what you were
14 concluding from what Anthony said to you? What did
15 Anthony say?

16 A He said what was he making her do. And, I mean, I
17 knew that, you know, they had been messing around,
18 whatever, you know, and he was just like, you know,
19 insinuating to me that that's what her motive was. That's
20 the reason why she would be the one to commit that crime.

21 Q Did he did not suggest to you that he was making up
22 that motive, though; is that correct? He was just
23 analyzing it with you?

24 A Right.

25 Q Now, Kristy, is there anything else that was

1 communicated to you by Anthony that we have not discussed
2 during this hearing with the jury out? Any other aspects
3 of his communicating with you that you recall?

4 A Not that I can recall at this moment.

5 Q Now, you have told us that you had met him a couple
6 months before he spent the night over at your house for
7 the first time; is that correct?

8 A Right.

9 Q And then once that occurred, you all were together
10 for about a week before he got arrested; is that correct?

11 A Correct.

12 Q And would you agree with me during that week that you
13 all were together you all were communicating just face to
14 face and by telephone; is that correct?

15 A Right.

16 Q There was no letter writing between you all during
17 that week?

18 A No, right.

19 Q So when Anthony Mann gets arrested, you're not
20 familiar with his handwriting; is that right?

21 A Right.

22 MS. SHEALY: I beg the Court's indulgence just a
23 moment.

24 I have nothing else, your Honor.

25 MS. WILSON: Beg the Court's indulgence.

1 MS. SHEALY: Your Honor, we have another matter
2 we need to discuss probably outside the witness's
3 presence.

4 THE COURT: All right. You may step out again.
5 Thank you. You may not discuss your testimony with
6 anyone. Thank you.

7 MS. SHEALY: Your Honor, before I argue or do
8 you want me to address this and then go to the next one or
9 do you want me to address the next thing?

10 THE COURT: First I want to know, how many
11 witnesses are you going to go through this process with?

12 MS. WILSON: I don't think this is necessary in
13 every witness's case. I think when we call Maria Jacques,
14 I think the testimony will flesh out that she knows what
15 happened that night and he tells her to change her story.
16 You know, that's not -- we don't need to have a hearing on
17 that I don't think. I think Shannon Keyes -- it will also
18 come up with Shannon Keyes much like it came up with Marie
19 Jacques, is that witness being talked to by Anthony Mann
20 about changing her statement. I don't think there is any
21 need for a hearing on that.

22 We had some other questions for this witness,
23 but I think we got ahead of ourselves.

24 MS. SHEALY: I think I want to proceed at this
25 point, your Honor. Would you like me to address what

1 we've heard so far, or do you want to move on to the next
2 issue?

3 THE COURT: Well, I mean, you haven't dealt with
4 that issue yet. Have you got another one for me?

5 MS. SHEALY: Uh-huh.

6 THE COURT: Which one do you want to do first?

7 MS. SHEALY: I want to do the one that's
8 freshest in my mind.

9 THE COURT: That's fine with me.

10 MS. SHEALY: Your Honor, first of all, I find
11 quite a few things very troublesome about what they're
12 trying to elicit from her. As she's asked questions she
13 gives greater details each time. When they asked her a
14 question she didn't reveal certain parts of that
15 conversation. When I asked her, she revealed more. I
16 still don't feel totally comfortable, though, that we know
17 what she's going to say on the stand. I don't want
18 another problem in the case.

19 THE COURT: But that could happen all the time,
20 right?

21 MS. SHEALY: Well, it could be, it could happen
22 because we've recognized that this is potential other bad
23 acts testimony, and I think that it's purposeful to have a
24 hearing and flesh it out now, and I don't have a level of
25 confidence that that can be accomplished.

1 Regarding the initial conversation that she's
2 testified to, that being with Dan Cavey, she explains that
3 two or three months after the arrest of Mr. Mann, and so
4 by that point Peter Davies has already given a statement
5 in the case, and she indicates that what is said is Peter
6 needs to keep his mouth shut, that they could beat it.
7 Well, in that that is not suggestive of his saying that
8 they would inappropriately beat it, I don't think it's
9 relevant, that this conversation is relevant at all. All
10 it would do is inflame the jury by presenting it. It is
11 somewhat suggestive that he and Peter had done something
12 wrong. However, she doesn't know that. There's been
13 nothing to support that Daniel Cavey is aware of that, but
14 it's going to leave the jury with the wrong impression. I
15 mean, it just completely clouds everything.

16 She says that he says to Dan Cavey, Say that you
17 were with me. Well, as of right now, we don't know that
18 that's inaccurate. So to elicit this from Kristy Bunch I
19 think is inappropriate. That would be in regard to that
20 conversation.

21 Now, then the one with Maria Jacques in a
22 three-way phone call, where she is saying that Amp is
23 saying, Tell the police that you lied in your statement,
24 tell them that the police made you lie in your statement,
25 is not in the record that, in fact, she had not lied in

1 her statement. So, similarly, I think it would be
2 inappropriate to elicit that from Kristy Bunch.

3 THE COURT: Do you wish to respond to these one
4 by one, or do you want to wait?

5 MS. WILSON: Go ahead.

6 THE COURT: All right. Go ahead.

7 MS. SHEALY: She furthers that by saying you
8 know the police made you lie. She's not saying lie for me
9 in saying the police made you lie. She's saying that he
10 said, You know the police made you lie. And I think that
11 is distinguishable.

12 THE COURT: I don't even understand how that
13 prejudices your client. It seems to me that helps your
14 client.

15 MS. SHEALY: It's inappropriate. But what
16 they're doing is they're presenting in a fashion that is
17 going to be suggested to the jury there's something wrong
18 with it. I think it's inappropriate. I think it's
19 inflammatory.

20 Then regarding the letter to Michael Grasso,
21 that is -- that is just so confused to me. She says she
22 read the letter. Michael Grasso didn't get the letter, so
23 Michael Grasso can't come in here and say that he got a
24 letter from Mann asking him to lie. She can't say whether
25 what Mann put in the letter is asking him to lie. So why

1 shouldn't that come in? Grasso didn't get the letter.

2 Then even the mentioning of a letter for Dan,
3 they want to present that as if he were giving cues to
4 people. We don't even know what that letter contained.
5 Dan never received it, she never read it. I think that
6 would be inappropriate.

7 Regarding the letter that she says she got where
8 she is saying Mann directs her to say that Peter said that
9 evening, You'll never catch that little bitch, she doesn't
10 have that letter, and you have no way of -- it's just
11 too -- it's just too iffy. I mean, to bring that in when
12 there's nothing to verify whether or not that occurred
13 except her saying she got a letter when she maintained
14 other letters it's just highly prejudicial.

15 And in the discussion about the discovery
16 materials, I really don't understand why she's offering
17 that. I mean, the undercurrent is they are presenting it
18 with the theory that everything he's telling people to say
19 is a lie, but that's not been established, and that
20 everything he says about his case is manipulative, and
21 that has not been established. So we would object to
22 everything she has testified to in camera.

23 THE COURT: Do you want to respond?

24 MS. WILSON: Do we need to argue on this? I
25 really think that to say that we haven't shown that it's a

1 lie, we've explained to the Court or to the jury what's
2 happening and we continue to do that in our case, and all
3 of Ms. Shealy's argument goes to the weight of the
4 evidence, not the admissibility of the evidence.

5 THE COURT: If there's evidence that there is
6 some attempt to --

7 MS. SHEALY: But what is troublesome at this
8 point, it's a vacant showing. I mean, in other words, if
9 Grasso doesn't get the letter, Dan Cavey doesn't get the
10 letter, and we don't know if Maria Jacques says it is a
11 lie, et cetera, et cetera, then why should she be allowed
12 to testify to it? It would be very different if she came
13 in here and said, Anthony Mann said you need to lie for
14 me; you need to lie for me; you need to lie for me. That
15 is not coming out of this witness's mouth.

16 I also have an issue regarding credibility to
17 read from this letter in that she was not familiar with
18 his handwriting.

19 THE COURT: I'm not sure, I don't understand why
20 that -- what I was going to say a minute ago is that
21 there's anything to indicate that there was some attempt
22 to show or to influence or change or procure testimony
23 that was not in accordance with the actual facts, why is
24 that not --

25 MS. SHEALY: But we don't know that at this

1 point, your Honor.

2 THE COURT: Why wouldn't that be something for
3 the jury -- that they make that type of showing, why
4 wouldn't that be something for the jury to hash out?

5 MS. SHEALY: I'm sorry.

6 THE COURT: If they make that showing, why would
7 that not need to be something that the jury would hash
8 out?

9 MS. SHEALY: Well, I think the more cautious way
10 to handle that, your Honor, would be to see whether or not
11 they can in fact establish that in-camera before we allow
12 her to say that. I mean, there's certainly nothing
13 inappropriate about a defendant attempting to get
14 witnesses on his behalf to testify for him as long as
15 they're not asking it to be done, he is not asking them to
16 lie for him. As of right now, we don't have that in the
17 record.

18 THE COURT: I thought she said that there was an
19 attempt to create a motive?

20 MS. SHEALY: But did you hear the way she
21 answered that question, your Honor? I asked her whether
22 Mann said that. She said that's what she's deducing.

23 MS. WILSON: That's one of the things that we
24 needed to ask follow-up questions, but we sent her out and
25 started arguing before we finished up on that subject.

1 I think what Ms. Shealy is arguing is, say we're
2 in a wreck case and the driver says to another witness:
3 Tell him the light was green, tell them the light was
4 green. The witness doesn't know whether the light was
5 green or red; she doesn't know whether it's a lie or the
6 truth. But later on, whoever is putting up that case puts
7 up evidence to the contrary of that. We don't have to
8 wait until the other evidence comes in about whether the
9 light was green or red. The fact that he says it comes in
10 and then we put the rest up.

11 THE COURT: Back to where I was going in
12 response to your statement.

13 It seems you're suggesting that they would have
14 to prove that with some degree of certainty that that was
15 in fact what happened. If the witness is saying, that's
16 the witness's perception and then someone -- and there's
17 other evidence to contradict that, I still think that's
18 something the jury has to hash out.

19 MS. SHEALY: Judge, as she testified, she
20 enumerated the various people that were also present
21 participants in this without their having said that he's
22 asked them to do something untruthful. Then why should
23 that be even injected into the trial at all? I don't know
24 it. I have no idea what Daniel Cavey is going to say
25 about it, and I have no idea what Marie Jacques is going

1 to say about it. I'm operating with an unknown. I don't
2 have the benefit of knowing that.

3 THE COURT: But the witness, the witness's
4 impression was that there is an attempt to influence
5 testimony.

6 MS. SHEALY: I don't know that you can conclude
7 that, Judge, because I asked her, Did you know whether or
8 not that was a lie, and she said no.

9 THE COURT: Do you want to respond to that?

10 MS. WILSON: Judge, that is not the issue, what
11 this witness knows. What we're doing is introducing
12 statements of this defendant, and when we go to introduce
13 those, it is presumed they're against his interest. We
14 haven't put up Maria Jacques yet. When we do and she
15 testifies about what happened that night and testifies
16 about what the truth is, it will all come together.

17 THE COURT: First of all, no one mentioned that
18 there was an intent to introduce some statement against
19 interest.

20 MS. WILSON: This defendant? That's what I
21 think --

22 THE COURT: It was that it was an attempt to
23 influence testimony.

24 MS. WILSON: I think that is a statement against
25 his interest.

1 THE COURT: Well, that's not how those cases
2 usually analyze that under that problem with the rule.

3 MS. WILSON: I think for the defendant to say
4 things like that's been testified to in that context, it's
5 not --

6 THE COURT: They're usually analyzed in terms of
7 whether or not it evinces some guilty knowledge on the
8 part of the defendant if you take -- if there's some
9 guilty act, statement or conduct that suggests the
10 defendant might be guilty.

11 MS. WILSON: They don't like the order that
12 we're calling our witnesses, and I just don't think that
13 is a basis for an objection. Because it's not proved up
14 yet? If we never were to call Boston, Kristy Bunch
15 doesn't have to know whether or not Boston saw Brownie or
16 not.

17 We're going to prove by other means that Boston
18 didn't have anything to do with Brownie. And actually I
19 think Kristy did testify that that was not true. But I
20 think to even go down that analysis as far as what Kristy
21 Bunch knew or thought about the truth or veracity of each
22 and every one of those statements, some of them she knows
23 aren't true, some of them she doesn't know. But the fact
24 that he has said something that is not true and we show it
25 not to be true later is certainly probative and certainly

1 relevant to this case.

2 MS. SHEALY: Well, your Honor, I'm plagued by
3 the continuing not knowing on the part of the defense as
4 to what is going to be presented by other witnesses.

5 MS. WILSON: That's how it goes.

6 MS. SHEALY: No. I thought that we were trying
7 to avoid trials by surprise. I mean, I don't know if
8 Michael Grasso is testifying. I don't know if Marie
9 Jacques is for sure. I don't know what they're going to
10 say about this issue.

11 We have run into three problems with this
12 witness; we're trying to flesh it out. I don't that we
13 can -- to allow her to testify to all these variety of
14 things and allow her to speculate to what it may mean,
15 allow her to suggest what it may mean. I mean, she
16 doesn't have the ability to do that.

17 THE COURT: It was a letter to the witness,
18 correct?

19 MS. SHEALY: To her, yes.

20 THE COURT: I'm sorry, I said the -- the
21 analysis is whether or not this was some attempt by the
22 defendant to influence this witness's statements, whether
23 it's suggested through directly or indirectly. I still
24 think that if there's any kind of attempt to lure the
25 defendant or I mean not the defendant, the witness, or to

1 get the witness to say one thing to maybe create an
2 impression about motive or whatever, whether it's true or
3 not, I don't think that is the analysis. I think that
4 that attempt, whether it's by letter, conduct, statement,
5 acts or whatever, can be admissible as to guilty knowledge
6 because generally inferences can be drawn. If you take
7 acts, for example, to get someone to make a false
8 statement, then that does create an inference that you
9 might be guilty.

10 MS. SHEALY: But I think the critical word here
11 is a false statement. We don't know that these statements
12 were false. Even as it relates to the letter that she
13 had, the only physical letter she has is that, I was with
14 you from 9 o'clock until whatever. Well, her written
15 statement says 10 o'clock. So whether even that would be
16 permissible, she's now wrong, he's now wrong according to
17 that letter.

18 MS. WILSON: That all goes to the weight of it,
19 Judge. Every bit of that goes to the weight of that
20 evidence. And unless Kristy Bunch knows, I agree she
21 doesn't need to pontificate about whether or not her gut
22 feeling is it's true or false. Unless he told her it's
23 true or false, I don't think she gets to go into it, her
24 thoughts on the truthfulness of it. But, you know, if she
25 were to testify that Anthony Mann told her to say that or

1 told her that he put Brownie on a plane Monday night at
2 8:30, he put Brownie on a plane Monday night at 8:30, he
3 drills that into her head, and we want to ask her,
4 Ms. Bunch, what did Anthony Mann tell you about putting
5 Brownie on a plane? He said he put her on a plane at 8:30
6 Monday night. Okay, she doesn't know if that's true or
7 not. But when we finish our case, the jury will know that
8 that's not true. And the fact that he said that is
9 incriminating. And that's the same here with these other
10 examples.

11 THE COURT: I'm going to allow it in.

12 You ready to proceed?

13 MS. WILSON: I guess we are.

14 THE COURT: What else do you want to do?

15 MS. SHEALY: We did have a couple other -- and
16 regarding my objection, your Honor, about her being able
17 to testify to the letter and not knowing his handwriting.

18 THE COURT: What about that?

19 MS. WILSON: There was some redirect, there was
20 some re-questioning on that. But I think that she's
21 familiar with his handwriting. I think we laid the
22 foundation for that. We're talking about getting 15 to 20
23 letters from him.

24 MS. SHEALY: What she really said was that she
25 was not exposed to his handwriting before he went to jail.

1 MS. BURNEY: And also, your Honor --

2 THE COURT: But that after that she received
3 letters from him from jail?

4 MS. SHEALY: That's what she says, that she
5 believes she received letters from him.

6 THE COURT: I think I will let that in. What
7 other testimony do you want -- does the State want to
8 elicit any more testimony?

9 MS. BURNEY: Just a couple of questions.

10 MS. SHEALY: There's another issue, your Honor
11 that has presented itself that concerns me.

12 Ms. Wilson had notified me earlier that Kristy
13 Bunch had told her that Anthony Mann had confessed to
14 killing Brownie, that it was done while he was at Leiber
15 by phone.

16 THE COURT: Is that something new? Because
17 we've never discussed that.

18 MS. SHEALY: We've never discussed it.

19 THE COURT: All right.

20 MS. SHEALY: But let me finish what is
21 problematic about it.

22 She had sent her investigator to Leiber to try
23 to find the recording of it. It's my understanding that
24 she found no recording where he confessed to that. She
25 has explained to me that she does not intend to elicit

1 from Ms. Bunch that that statement occurred. But she
2 said, If you step into it, she's going to say it.

3 Well, it's of interest to me that they would not
4 attempt to elicit that from their own witness if they
5 believe it to be true. So if they do not believe it to be
6 true, I would like to have this witness cautioned not to
7 say it.

8 THE COURT: Well, if you're agreeing not to
9 bring that up, why not?

10 MS. WILSON: I think it's open and fair game for
11 cross-examination if Ms. Shealy opens that door.

12 MS. SHEALY: If she thought that my client had
13 confessed to this woman that he had killed Brownie, why
14 would she not ask that of her? So it's suggested that she
15 does not believe it's true. She wouldn't --

16 MS. WILSON: I'm saying as an officer of the
17 court that's not the issue, that's not my problem with it.

18 MS. SHEALY: Well, I would like to explore what
19 the problem is.

20 MS. WILSON: I don't think -- I mean, Judge.

21 THE COURT: I mean, if she doesn't want to ask
22 that question, I don't understand. Do you want to ask
23 that question?

24 MS. SHEALY: No. I want to know why she doesn't
25 want to ask the question. And then she's telling me that

1 this witness that they're putting up to tell the truth and
2 said that my client confessed to her.

3 MS. WILSON: I will be happy to tell the Court
4 ex parte why.

5 THE COURT: I'm just not into that. I don't
6 like that reference.

7 MS. WILSON: I apologize, Judge. I'm sorry.

8 MS. SHEALY: It certainly sounds to me that she
9 doesn't believe her own witness.

10 THE COURT: I mean, but it's just unusual for
11 the Court to inquire as to why someone doesn't ask a
12 question.

13 MS. SHEALY: Your Honor, she told me that she
14 had a witness that said that my client confessed. She
15 tells me that her investigator made an attempt to go find
16 the tape, and it does not exist. She tells me she's not
17 going to ask her that but has told me that if I step into
18 it, it's coming out. I think I am entitled --

19 THE COURT: Is this a telephone conversation at
20 the jail?

21 MS. SHEALY: Yes. There is no recording of it.

22 MS. WILSON: I'm saying as an officer of this
23 court that we're not going into that. The fact that we
24 are not eliciting that testimony is not because we don't
25 believe it's true. Does the Court and does the defense

1 accept that or not? If they don't, I will be happy to
2 tell the Court ex parte the reason.

3 THE COURT: I don't think that I have to compel
4 her to say why she's not asking the question.

5 Approach the bench.

6 (A bench conference was held with the judge and
7 attorneys in the presence of the jury but out of the
8 hearing of the jury.)

9 THE COURT: Let the record reflect that I will
10 give Counsel the opportunity to go where she wants to go
11 with this. I don't think it's the purpose of the Court to
12 specifically direct this witness not to make that
13 statement. The State has indicated they're not going to
14 go that route, but that could possibly come out through
15 responses to defense counsel's questions.

16 Anything else as to that issue?

17 MS. BURNEY: Your Honor, the letter that we had
18 this witness read from, we have redacted a copy. I've
19 shown it to defense counsel.

20 MS. WILSON: The original copy makes some
21 reference to the December armed robbery.

22 MS. SHEALY: Subject to my earlier objection.

23 THE COURT: All right. I will allow that in.

24 MS. BURNEY: If I could just take a moment.

25 MS. WILSON: State's ready, your Honor.

1 THE COURT: Ready?

2 MS. SHEALY: Yes, sir.

3 THE COURT: Bring the jury in, please.

4 (The jury came into open court at approximately
5 5:03 p.m.)

6 THE BAILIFF: Jury is seated, your Honor.

7 THE COURT: Thank you. Please be seated.

8 Ladies and gentlemen, I apologize for the delay.
9 We're ready to proceed at this time. Go ahead.

10 MS. BURNEY: We need to recall Ms. Kristy Bunch.

11 MS. SHEALY: Your Honor, may we approach?

12 THE COURT: Yes, ma'am.

13 (A bench conference was held with the judge and
14 attorneys in the presence of the jury but out of the
15 hearing of the jury.)

16 CONTINUED DIRECT EXAMINATION

17 BY MS. BURNEY:

18 Q All right. Now, I had asked you about phone calls
19 that you had with Amp after he got arrested. And I want
20 to ask you about, did he have any, make any phone calls
21 with Merv?

22 A Yes, he did.

23 Q How did he make that phone call with Merv that you
24 know about?

25 A How did he make it?

1 Q Uh-huh.

2 A You mean three-way?

3 Q Okay. And explain to the jury how you arranged a
4 three-way phone call.

5 A He would call my home phone and we would just
6 three-way over to her cell phone.

7 Q You would call her?

8 A Right. I would click over and call her and click
9 back over.

10 Q What did he talk to Merv about on the phone call that
11 you listened to?

12 A He talked to Merv about testifying, that what she
13 actually put in her statement was a lie.

14 Q Did you remember what he said, the words that he
15 used? Can you tell us what those words were?

16 A He was like, Merv, you know that you're the reason,
17 your statement is the reason that I got arrested. And you
18 know that the cops made you lie, you know that I really
19 didn't say what you said I said, you know the cops made
20 you say that.

21 Q And what is Merv's real name?

22 A Maria Jacques.

23 Q Now, we talked about meeting him in person, we talked
24 about talking to him on the telephone. Did you
25 communicate with him in any other way?

1 A We communicated through letters also.

2 Q Did you write him letters?

3 A Yes, I did.

4 Q Did he write you letters?

5 A Yes, he did.

6 Q When you got letters from him -- how many letters do
7 you think you got from him?

8 A About 15, 20.

9 Q Remember to speak up.

10 A About 15 or 20.

11 Q When you got letters from him, did you all talk about
12 the letters once you got them?

13 A Not really. Just the letters that he wanted me to
14 give to other people.

15 Q Did you talk about what was in them: Did you get my
16 letter, I sent you a letter, that kind of thing?

17 A Yeah.

18 Q Did you talk about the things that were written in
19 the letters?

20 A The statements -- the letters that he wrote for me to
21 give to Boston, Michael Grasso. Do you want me to explain
22 what his letter --

23 Q Let me ask you this. What are you talking about, a
24 letter that he sent you to give to Michael Grasso?

25 A It's a letter that he wanted him to memorize for him

1 to testify.

2 Q How did you get that letter?

3 A He sent it to me in the mail.

4 Q Was that letter within a letter?

5 A Yes, it was.

6 Q And did you read it?

7 A My letter or the one for Mike or Boston?

8 Q First talking about the one for Boston, Michael

9 Grasso.

10 A Yes, I did.

11 Q What did that letter say?

12 A That letter said that he wanted Boston to testify.

13 Q Who's he?

14 A Amp, sorry, Amp wanted Boston to testify that he had
15 dropped Brownie off at Boston's house at James Island and
16 he dropped her off there, and that she had told Boston
17 that she did what she had to do.

18 Q Don't tell me what it meant, just tell me what was in
19 the letter he wrote.

20 A He wanted to say that Brownie told Boston that he had
21 to do what he had to do and to say that whenever Boston
22 woke up the next morning, Brownie was already gone.

23 Q So that letter said that Boston was to say that Amp
24 dropped Brownie at Boston's house and Brownie spent the
25 night there at Boston's house?

1 A Right, but was already gone when he woke up.

2 Q Now, did you give that letter to Boston, did you
3 deliver it to him?

4 A No, I didn't.

5 Q What did you do with the letter?

6 A I burned it.

7 Q Did you get any letters for anybody else from Amp?

8 A I got one for Dan, but he never received it. I ended
9 up throwing it away because I knew I would never see Dan
10 again.

11 Q Did you get any letters for yourself?

12 A Yes, I did.

13 Q What did that letter say?

14 A It was a statement from Amp wanting me to say that
15 during the time that we were picking Peter up from his
16 girlfriend's house that Amp stepped out the car, and
17 whenever Amp stepped out the car, Peter turned around and
18 looked at me and said, Yeah, Brownie's still missing and
19 they'll never catch the little bitch with a mean --

20 Q Don't tell me what it meant.

21 A With a mean face, like, a mean look on his face.

22 Q His statement said for you to say that Peter had a
23 mean look on his face?

24 A Right.

25 MS. BURNEY: If I could approach, your Honor.

1 (WHEREUPON, State's Exhibit No. 110 was marked
2 for identification only.)

3 BY MS. BURNEY:

4 Q Now, the letter that he sent to you and he asked you
5 to say --

6 A I'm sorry.

7 Q Say again what the letter that was directed to you
8 said.

9 A That when we were picking Peter up from his
10 girlfriend's house Amp stepped out the car and whenever he
11 did, Peter turned around said to me, Brownie was still
12 missing and they won't find the little bitch.

13 Q And was that true? Did that actually happen in
14 reality?

15 A No, he never said that to me.

16 Q Now, I'm going to show you --

17 MS. BURNEY: May I approach the witness, your
18 Honor?

19 THE COURT: Yes, ma'am.

20 BY MS. BURNEY:

21 Q This is marked for identification as State's Exhibit
22 110. Would you take a look at that and tell me if you
23 recognize it.

24 A Yes, I do.

25 Q What is it?

1 A It's a letter that I got from Amp after we had quit
2 talking.

3 Q Now, do you know when that letter was sent to you?

4 A It was sent April 4th of 2003.

5 Q I'm going to ask you to start at this point and read
6 to the end.

7 A Okay. "My main point in writing you this letter is
8 to say I know you no longer want anything to do with me
9 and you probably hate me by now and don't really give a
10 fuck what happens to me at this trial, but I am writing to
11 ask that you will at least come to my trial and testify
12 that I was with you from 9 o'clock Monday, January 7th,
13 2002, until Thursday night, January 10th, 2002."

14 Q And I want you to read from here to the end.

15 A All the way to the end?

16 Q Yes.

17 A "And I want to know if you will be willing to testify
18 on Peter's reputation. You've known him for years and
19 know more than most people do about him. If you will do
20 this, it will greatly enhance my chances of beating this
21 shit. Kristy, if you have any amount of love or care for
22 me left in you, please do this for me. You don't have to
23 write me or talk to me about this. I know that -- I know
24 that is out of the question, but at least call my mom and
25 let her know what you will or will not do. Thank you for

1 your help and for your time. And for everything that
2 you've already done for me, thank you. I will always love
3 you for it." Anthony Mann.

4 Q Read the PS.

5 A PS, "just to let you know you are still the love of
6 my life."

7 Q Did you talk with Amp about any of the reports in his
8 case?

9 A Yes, we talked about the statements and the autopsy
10 reports as they came in.

11 Q What did he have to say about the autopsy?

12 A I was talking to him and he said that the autopsy
13 reports came back and said that Brownie had semen in her
14 mouth and her vagina and her behind, her butt.

15 Q And whose semen did he tell you it was?

16 A He said that it wasn't anybody who was arrested for
17 the charges, and it was, like, Well, whose do you think it
18 is? And he was like, Who else would it be, who else could
19 it be? And I was like, Dante? And he agreed with me.

20 Q How did he agree with you?

21 A He was just like, Yeah, you know, he died.

22 Q And how often would you talk with him during the time
23 that you did talk with him on the telephone?

24 A A lot. Anywhere from five to ten times a day. A
25 lot.

1 Q Do you still have your land line phone?

2 A Yeah, I do.

3 Q Do you still have that one that you had before back
4 then? You gave us the number.

5 A I have a cell phone and I had a land line.

6 Q What happened to the land line?

7 A It got disconnected.

8 Q Why did it get disconnected?

9 A Sky-high phone bill.

10 Q Now, at any time did you talk to him about whether he
11 actually did do it, any of these things he was charged
12 with?

13 A Yes. One night, it was at nighttime, so it had to
14 have been during the time he was on lock up, and me and
15 him were arguing and I was just, you know, was badgering
16 him about, you know.

17 Q About what?

18 A About whether or not he killed Brownie or not.

19 And after about a little while of arguing, he
20 just fessed up to it. He just said, Yeah, I killed the
21 fucking bitch.

22 Q What did you do when he said that?

23 A I really don't remember. I just didn't really do
24 nothing, you know. I mean, I didn't try to go anymore
25 further than that, you know. I mean, I didn't, why, when,

1 where, I didn't ask all that.

2 Q You didn't ask him anything else about that once he
3 told you?

4 A No.

5 MS. BURNEY: Beg the Court's indulgence.

6 THE COURT: While they're looking at that,
7 ladies and gentlemen, before the witness came back in --
8 the witness -- when the witness left and you went to the
9 jury room, the witness's last statement had been, you'd
10 heard something from the witness about drugs. You should
11 dismiss that testimony from your minds and should not
12 consider it in any way whatsoever in this case.

13 MR. BUTLER: May we approach?

14 THE COURT: Approach.

15 (A bench conference was held with the judge and
16 attorneys in the presence of the jury but out of the
17 hearing of the jury.)

18 MR. BUTLER: At this time we'd like to renew our
19 motion for a mistrial and object to the curative
20 instruction as not curing the prejudice.

21 THE COURT: It's overruled. Thank you.

22 MS. SHEALY: May it please the Court.

23 CROSS-EXAMINATION

24 BY MS. SHEALY:

25 Q Kristy, let me ask you about a couple of things you

1 just testified to.

2 You indicated that, by way of a three-way phone
3 call, that Amp was telling Maria Jacques, You know that
4 you told a lie, you know the police made you lie, you've
5 got to tell them that first statement is not true; is that
6 correct? Is that how you described that conversation?

7 A I'm sorry, say it again.

8 Q As I understand it, there was a three-way phone
9 conversation between you, Anthony, and Maria Jacques; is
10 that right?

11 A Right.

12 Q I think you testified that Anthony was telling Maria
13 Jacques, You know that was a lie, you've got to say your
14 first statement was a lie; is that correct?

15 A Right.

16 Q And he was telling her, You know the police made you
17 lie?

18 A Right.

19 Q That's what he was saying to Maria Jacques?

20 A Trying to implant it into her head.

21 Q You don't know whether or not the police did make her
22 lie, do you?

23 A Right.

24 Q Okay. So what you heard was his telling Maria
25 Jacques, You know the police made you lie; is that

1 correct?

2 A Correct.

3 Q Then regarding what you said he wrote to you about
4 what Peter may have said to you, did you ever tell Amp --
5 didn't you tell Amp one time that Peter had said something
6 about Brownie?

7 A Yeah. Well, he did.

8 Q Peter did?

9 A Right. It wasn't nothing along those lines.

10 Q You told Anthony, did you not, that Peter had a
11 conversation with you about Brownie; is that correct?

12 A Just that --

13 Q If you can't remember, I don't want you to testify to
14 something you don't remember, but you do recall --

15 A I'm just thinking to myself whenever I heard about
16 it, you know, because after they'd come to pick me up I'd
17 just watched on the news, and Peter did say that Brownie
18 was missing, and I was thinking to myself, I wonder where
19 she'd be. and that's pretty much all it was, that I can
20 remember.

21 Q I'm sorry?

22 A It wasn't nothing, you know, anything like he wanted
23 me to say.

24 Q Is the letter that you read from earlier still up
25 there with you?

1 A No, it's not.

2 Q I'm showing you what has been marked as State's
3 Exhibit number 110 and focusing your attention --

4 MS. SHEALY: May I approach the witness, your
5 Honor?

6 THE COURT: Yes, ma'am.

7 BY MS. SHEALY:

8 Q Focusing your attention on the part that they asked
9 you to read which was, Will you at least come to my trial
10 and testify that I was with you from 9 o'clock on Monday
11 until Thursday night, January 10th; is that correct?

12 A No, that's not correct.

13 Q But is that correct that that's what this letter
14 says?

15 A Right.

16 Q Okay. Now, in the statement that you gave the police
17 back on the 16th of January, let me ask you whether or not
18 you can identify this.

19 A Okay. Now I told you all before that my statements
20 were all just out of whack because I couldn't get my dates
21 right and I was confused and my head just was not right
22 during the time I was writing the statements because it
23 was the day of or the day after he got arrested and it was
24 still a shock to me.

25 Q Okay. Well, this is the later statement, is that

1 correct, later than that day?

2 A Right, the very next day.

3 Q And would you agree with me -- let me kind of point
4 you in the right direction. Hand it back to me for just a
5 second.

6 In looking at line seven where I've circled, do
7 you in fact tell the police that evening that you were
8 with Anthony from 10 o'clock, is that correct, on January
9 7th?

10 A Yes, it says that, but that's not true, though. I
11 was wrong about the time.

12 Q You're saying now that you were wrong about the time?

13 A Right.

14 Q Now, the police were asking you a bunch of questions
15 that evening; is that what you're saying?

16 A Right.

17 Q That was certainly closer in your mind on the date
18 that you gave the statement than another year and a half
19 as today is; is that correct?

20 A No. I'm not -- I mean, it was a further day away for
21 me to remember, you know what I mean?

22 Q What I'm asking you, Kristy, is the date of that
23 statement is what? Look at the top right-hand corner.

24 A January 16th, 2002.

25 Q And here we are in September. You would agree with

1 me, would you not, that your memory would have been
2 fresher as to what time you saw Anthony back in January of
3 2002 than today?

4 A With all that chaos going on? No.

5 Q So you're telling this jury that you're more
6 refreshed today than you were on that day at the time?

7 A Yes. I have had time to think and get my head clear
8 and get it straight. I've had plenty of time to think and
9 my head hasn't been as chaotic as it was then when I wrote
10 this statement. And, I mean, I wasn't trying to give them
11 the wrong dates, wrong times. I was just trying to help
12 them any way that I could. And yeah, I gave them the
13 wrong dates and times. I mean, I'm not here to --

14 Q Let me ask you this, Kristy. You would agree with
15 me, would you not, that the letter that Anthony sent you
16 saying that you all were together from 9 o'clock on the
17 7th is one hour off from the statement you gave on the
18 16th; is that right?

19 A Right.

20 Q And you told us that he was discussing with you some
21 of his discovery materials that he got in about the case,
22 the autopsy report; is that correct?

23 A Right.

24 Q Is that correct?

25 A Right.

1 Q What does "hung out" mean?

2 A Just hung out. I mean, I was seeing one of his
3 friends at the time, so they would come over to my house
4 sometimes, and then after awhile Peter just faded away and
5 I didn't see him anymore. And then I bumped into Peter a
6 couple of months before getting to know Mann at a place
7 called -- I forget the name of the bar. I bumped into
8 Peter and gave him my phone number because I hadn't seen
9 him in years and I'd always liked Peter. He's never done
10 anything wrong to me and I've never known him to be a mean
11 person.

12 Q Well, that's not really what I asked you, though, is
13 it, Kristy?

14 A No.

15 Q But you did take the opportunity to say something
16 good about Peter, though, right?

17 A I mean, he's done anything harmful.

18 Q To you?

19 A I've never seen him do anything harmful.

20 Q Okay. Now, focusing your attention then back to
21 January 7th -- no, I'm sorry, January 14th when Mann was
22 arrested, you were with him and you all stopped at the
23 convenience store to get you what, those little cigars?
24 What are Black whatever?

25 A Black and Miles.

1 Q What are those?

2 A Cigars.

3 Q So you were stopped there getting cigars and that's
4 when the police came up?

5 A Right. This is on the 15th.

6 Q The 15th, okay. And describe that for me a little
7 bit more. You said they had their guns drawn; is that
8 correct?

9 A Yes, as they were pulling us out of the car.

10 Q Were both of you in the car when that occurred?

11 A I was in the car, he was getting in the car.

12 Q Okay. And when the police approached with their
13 guns, is it fair to say that it was a frightening event?

14 A Yes, it was.

15 Q In fact, you thought you were getting robbed; is that
16 what you testified to?

17 A Right.

18 Q Were they using profanity in telling you all to get
19 out of the car?

20 A Yes, they were.

21 Q And they put you where then? Once you got out of the
22 car, where did you go?

23 A They moved me to the front of the car.

24 Q Do you recall them saying something like, We're going
25 to blow your heads off if you don't get out?

1 A No.

2 Q You don't recall that? But you recall the use of
3 profanity; is that correct?

4 A Correct.

5 Q Now, you were then on that night taken down to the
6 police station; is that correct?

7 A Uh-huh.

8 Q How did you get that?

9 A Police escort.

10 Q When you say police escort, you mean you were put in
11 the back of a police car?

12 A Right.

13 Q And do you recall who it was that drove you over?

14 A No, I don't.

15 Q Now, when you got to the police station, how long
16 would you say you were down there that evening?

17 A About six hours.

18 Q Six hours. Were you treated courteously while you
19 were down there?

20 A Yes, I was.

21 Q They were treating you very politely?

22 A Yeah. Other than the fact that, you know, they threw
23 my kids into it and threatened to take my kids from me.

24 Q Okay. Would you agree with me that that is not
25 terribly polite?

1 A I mean, other than that -- it was like, you know,
2 remember here, you've got kids, and if you want to go home
3 tonight you'd better tell us what you know, and I told
4 them everything I knew.

5 Q Did they also tell you that if you didn't cooperate
6 with them they would take your kids from you?

7 A Yeah, I think you could say that. Yeah.

8 Q Did they threaten you at all about your mother, make
9 any threat towards your mother?

10 A No.

11 Q Well, during this polite conversation then, could you
12 explain to me why it took six hours?

13 A Because it was, like, four or five different cops
14 coming in talking to me, going over the same thing over
15 and over and over again, and then I was trying to get, you
16 know, everything right. It took me about an hour and a
17 half to write my first statement.

18 Q To physically write it?

19 A Right.

20 Q So it took an hour and a half to write it and then
21 four and a half to discuss it?

22 A Three or four or five different officers, yeah.

23 Q So is it fair to say that when these four or five
24 different officers are talking to you about this for four
25 and a half hours, are you getting an idea of what they

1 want you to say?

2 A What do you mean, am I getting an idea?

3 Q I'm trying to figure out why it took so long, Kristy.

4 A Because there wasn't nothing for me to say. They
5 were trying to pump me, pump me, pump me for something I
6 couldn't give them.

7 Q When you did give it to them, it took you an hour and
8 a half to write it?

9 A I was trying to be as thorough as I could.

10 Q Okay. In that attempt to be thorough then, you say
11 you got your dates and times wrong?

12 A Right.

13 Q Were you having problems thinking that night, Kristy?

14 A Yes, I was. From drug use? No, not that night.

15 Q Not that night?

16 A Not that night.

17 Q Well, you would agree, would you not, that your drug
18 use would certainly cause you some difficulties in
19 thinking other nights?

20 A Yeah.

21 Q Now, you've told us that when you met Anthony Mann
22 and you all spent that week together, most of it being
23 sick, that you became completely smitten with him; is that
24 correct?

25 A I'm sorry?

1 Q That you that became completely attracted to him; is
2 that correct?

3 A Very much so, very much so.

4 Q I'm sorry?

5 A Very much so.

6 Q And during the course of your relationship then, most
7 of the time he was in jail; is that correct?

8 A Right.

9 Q And you've indicated to us that you would correspond
10 with him by letter and talk on the telephone?

11 A Right.

12 Q Now, you and he had a falling out, is that fair to
13 say?

14 A Fair to say.

15 Q And you were mad at him about some stuff and he was
16 mad at you about some stuff, is that fair to say?

17 A Correct.

18 Q He was mad at you because you slept with Larry
19 Caulder while he was in jail; is that correct?

20 A Right.

21 Q And Larry Caulder is the gentleman you've mentioned
22 that you all go over to his apartment and entertain
23 yourselves; is that correct?

24 A Right.

25 Q So Mann was angry with you about having slept with

1 someone else while he was in jail; is that correct?

2 A Correct.

3 Q Did you also prostitute yourself while he was in
4 jail?

5 A Sure did.

6 Q How much did you get paid for that?

7 A About a thousand dollars.

8 Q Is it fair to say Anthony Mann was irritated with you
9 for having become a prostitute while his was in jail?

10 A It's fair to say. But, I mean, it wasn't like he
11 cared. You know, all he cared about was me collecting
12 money for him, so you know.

13 Q Let me ask you this, Kristy. You got irritated with
14 Anthony Mann, did you not?

15 A Uh-huh.

16 Q You got irritated with him because he was still
17 seeing people like Maria Jacques while he was in prison;
18 is that correct? Or talking to her, talking to her?

19 A Not necessarily just her.

20 Q Oh, not just her?

21 A Just people in general.

22 Q Well also Amy, Amy Nelson; is that correct?

23 A Correct. And I was also honest to him about the
24 things I did. He, you know, continuously lied to me about

25 --

1 Q About other women?

2 A Right.

3 Q So you were mad at him about lying about the women
4 and he was irritated with you about sleeping with someone
5 else while he was in jail and becoming a prostitute. Or
6 did you become a prostitute or just further it? Had you
7 already prostituted yourself before he went to prison?

8 A I can't recall.

9 Q Let me ask you if you can identify this.

10 A I do recall this.

11 Q Okay. That letter was written after you all had your
12 falling out; is that correct?

13 A That's correct.

14 Q Would you please read it to the jury?

15 A It says, "To let you know that you're talking shit
16 about the wrong person."

17 Q Let me interrupt you real quick.

18 When you say "talking shit," you had heard he
19 was calling you a drug addict; is that correct?

20 A He was calling me everything in the book.

21 Q Maybe a prostitute?

22 A Maybe.

23 Q Maybe a drug user?

24 A Right, someone who didn't care nothing about their
25 kids.

1 Q You're saying you cared about your kids because you
2 got home to take them to school; is that correct?

3 A Yes. And I also danced and do things to take care of
4 my children. Whatever it takes.

5 Q Go ahead.

6 A "To let you know that you are talking shit about the
7 wrong woman. All right. Keep it up, Mr. Sniper. But
8 don't worry, I got your back."

9 Q I got your back?

10 A "I got your back about as much as Detective Walker
11 does. Go figure, dear. You can talk all the shit you
12 want to about my ass, but you fucked up -- hold on -- but
13 you fucked when you put my family in your cellmate's jail
14 bait mouth. You got a lot of nerve, you piece of shit.
15 You know -- no, scratch that. I wouldn't even insult a
16 piece of shit like that. Someone needs to wash your mouth
17 out with some soap on a rope and then bust you in the
18 grille. Maybe the tooth fairy will bring you some money
19 it's going to take a fucking miracle to save your ass.
20 Let me tell you, it felt so good to block your ass out."

21 Q Block your ass out? Does that mean he's not allowed
22 you to call you anymore?

23 A Right.

24 "You have no clue. It was almost like -- it was
25 almost like a nut --"

1 Q What does that mean?

2 A I'm sorry?

3 Q What does that phrase mean?

4 A It was almost like a nut but not close?

5 Q Yes, what does that mean?

6 A Orgasm. Almost as good as an orgasm but not close.

7 "I don't know why I didn't do it any sooner.

8 Oh, and I was saving my cash flow about a quarter of the
9 time and I would love to maybe help you a little again,
10 but after all the shit that has come out of your mouth,
11 out of your raunchy mouth about me has really hurt my
12 little bit of feelings. Wait. Great people don't have
13 any or is it all the drugs I do that take it all away?
14 Regardless, I don't care if you were down to being with
15 big roaches that crawl across your face, I still wouldn't
16 send you one red cent. Okay, maybe one, I still have a
17 heart, but no feelings. But -- but no feelings, that dumb
18 dope."

19 Q That dumb dope?

20 A Yeah.

21 "I am coming off it all a little -- I am coming
22 off it all a little because I can remember now doing
23 indeed this final letter "-- I can't even read my own
24 writing -- "I really can't even believe I'm wasting my
25 time like this or train of thought, what I do have. Also,

1 how are you going to say that I'm crazy? I'm not the one
2 looking at death for not only one but two murders. I just
3 don't understand your reason for talking this shit you do.
4 Don't forget, your mouth is why you're in jail now. And
5 it seems like it's all you've got left, so use it wisely.
6 Think before you speak and don't be calling me a drug
7 addict anymore, okay? I know your life was destroyed by
8 one, but everyone who uses abuses. Some of us have
9 control, knock on wood. I hope this letter didn't piss
10 you off. Don't bother to respond. I can't read when I'm
11 all fucked up anyways."

12 MS. SHEALY: Your Honor, I'd offer the letter
13 into evidence at this point.

14 THE COURT: Any objection?

15 MS. BURNEY: No objection, your Honor.

16 THE COURT: Defendant's 27 in evidence without
17 objection.

18 (WHEREUPON, Defendant's Exhibit No. 27 was
19 marked for identification and received into
20 evidence.)

21 MS. SHEALY: I beg the Court's indulgence.

22 BY MS. SHEALY:

23 Q I believe in that letter you said, I got your back
24 about as much as Detective Walker does. That means you
25 were ready to hurt Anthony Mann; is that correct?

1 A No, meaning that I wasn't about to testify for him,
2 which I knew that's what he was wanting me to do anyways
3 all along.

4 Q Let me ask you this, Kristy. That letter represents
5 the anger you had towards Anthony Mann; is that correct?

6 A Correct.

7 MS. SHEALY: I have no further questions.

8 THE COURT: Anything else?

9 MS. BURNEY: Beg the Court's indulgence.

10 REDIRECT EXAMINATION

11 BY MS. BURNEY:

12 Q What were you angry about?

13 A Just the letter or just --

14 Q As you wrote this letter, Ms. Shealy asked you, The
15 letter represents your anger.

16 A Okay. After all that he and I -- Glover called me
17 and --

18 MS. WILSON: Your Honor, I object. Can we
19 approach, please?

20 THE COURT: Yes.

21 (A bench conference was held with the judge and
22 attorneys in the presence of the jury but out of the
23 hearing of the jury.)

24 MS. WILSON: My concern is, I think now that
25 Ms. Shealy has asked the question about her anger --

1 THE COURT: Yes.

2 MS. WILSON: -- I think she's opened the door
3 for all the things that she's angry at that guy about, and
4 it's going to be a lot of things that she's mad about, and
5 I think it's fair game now.

6 THE COURT: Like what?

7 MS. WILSON: I don't know what all she's going
8 to say, but I know a lot of those things --

9 THE COURT: Well, you did ask the question.

10 MS. SHEALY: I did not ask -- if inappropriate
11 things come in, we have another problem.

12 MS. WILSON: I think the fact that she's having
13 to run around perhaps prostituting herself, trying to
14 raise money to get his lawyer, get people to smuggle cell
15 phones in, and she's running herself ragged for him.
16 She's had enough. And we've got phone call after phone
17 call and she's had enough of being his, you know, little
18 do-girl, and I think she's going to say all that, and I
19 think some of it is going to include trying to arrange for
20 him to get dope in the jail, putting herself on the line.
21 I think they have opened it wide open.

22 THE COURT: Right. I can't -- I don't know what
23 she's going to say.

24 MS. SHEALY: Well, I think if she's talking
25 about other potential crimes, that we need to address that

1 in camera before it's said. We can't let it happen and
2 then address it.

3 THE COURT: If you're talking about other bad
4 acts, there's a little bit of concern.

5 MS. WILSON: I don't know what she's going to
6 say. They fought all the time. She was mad a lot. I
7 didn't hear exactly when that letter was written. I know
8 that she does have a lot of anger and she has a lot of
9 anger that's built up over a year of running his errands
10 for him.

11 MS. SHEALY: Well, once again, I asked what Lyle
12 evidence they had and they've never alerted me to that,
13 Judge. And that's the purpose of filing the motion for
14 what is the potential Lyle evidence that you have.

15 MS. WILSON: That's not Lyle when she is asked
16 why she's angry. That is rehabilitation.

17 MS. SHEALY: No.

18 MR. BUTLER: She said this letter represents her
19 anger.

20 MS. WILSON: Right. So he's opened the door to
21 what the anger is about.

22 THE COURT: What's your last statement?

23 MR. BUTLER: This letter represents your anger;
24 in other words, she's angry today.

25 MS. WILSON: She was asked earlier, You were mad

1 about him sleeping with other girls and all that. I mean,
2 she's mad about a bunch of things.

3 MS. SHEALY: Judge, I tell you what. I filed a
4 Lyle motion and I asked what Lyle evidence they had. None
5 of this has ever been articulated to me.

6 MS. WILSON: But that's stuff we seek to
7 introduce in our case in chief, not in response to matters
8 they bring up.

9 MS. SHEALY: They need to tell me about other
10 bad acts.

11 MS. WILSON: We don't have any obligation to
12 tell about prior bad acts that we don't intend to bring
13 up.

14 THE COURT: If you are going to do it, I do
15 think --

16 MS. SHEALY: Well, I don't think I opened the
17 door to it.

18 THE COURT: By calling her letter anger?

19 MS. SHEALY: I said, Does that represent your
20 anger.

21 MS. WILSON: She said, Tell us about your anger,
22 let's hear it. I mean, the jury needs to know what she's
23 angry about.

24 THE COURT: But do you want to risk something
25 coming in or do you want to do it in camera?

1 MS. WILSON: We can do it in camera in the
2 morning or right now and just send them home, that's fine.

3 THE COURT: Fine.

4 MS. WILSON: Judge, may we approach?

5 THE COURT: Yes.

6 (A bench conference was held with the judge and
7 attorneys in the presence of the jury but out of the
8 hearing of the jury.)

9 THE COURT: Ladies and gentlemen, I know it's
10 getting late in the day. I need to take up a brief
11 matter. I'll try to get you out of here as close to 6
12 o'clock or a little bit after. If you'll just bear with
13 me, I need to send you to your jury room. Do not discuss
14 this case in any way. Thank you very much.

15 (The jury left open court at approximately 5:50
16 p.m.)

17 THE COURT: All right. Go ahead. Ask your
18 question.

19 IN CAMERA REDIRECT EXAMINATION

20 BY MS. BURNEY:

21 Q Kristy, Ms. Shealy asked you about this letter
22 reflecting your anger. What were you angry about?

23 A The way he had put me down and talked about me to a
24 friend of ours.

25 Q Okay. And what else were you angry about or were you

1 angry about anything else?

2 A I'm sorry?

3 Q Were you angry about anything else?

4 A Just the fact that I stuck by him so long and that,
5 you know, as soon as I finally let it all go and then quit
6 talking to him, he turned around and put me down like
7 that.

8 Q What did you do in sticking by him?

9 A Made all his phone calls for him and accepted his
10 phone calls, went to go see him, sent him money for his
11 canteen. I was his --

12 THE COURT: I need you all to approach.

13 (A bench conference was held with the judge and
14 attorneys.)

15 THE COURT: Ma'am.

16 THE WITNESS: Yes, sir.

17 THE COURT: So far your responses to that last
18 question have not implicated you in any way. I just want
19 to advise you that based on what has been alleged to me,
20 there's a possibility that you might implicate yourself
21 for some crime. I don't know that you intend to go into
22 anything else, but I just want to advise you if that's the
23 case, then you certainly would have a right to have a
24 lawyer here present with you before you are questioned
25 here any further. Anything you say or do can be used

1 against you. Do you understand that?

2 THE WITNESS: Yes, I do.

3 THE COURT: Knowing that, do you wish to
4 continue?

5 THE WITNESS: I don't completely understand.
6 Like, explain it to me again.

7 THE COURT: Right now you've answered the
8 question that you were angry with this individual and that
9 because you stood by his side --

10 MS. SHEALY: Your Honor, I apologize. May we
11 approach the bench just a moment?

12 THE COURT: Yes.

13 (A bench conference was held with the judge and
14 attorneys.)

15 THE COURT: But what I was going to say is I
16 don't know whether you're going into any other kind of
17 acts that could incriminate you.

18 THE WITNESS: Okay.

19 THE COURT: And if you're going that way, then
20 any such statements could be used against you.

21 Knowing that, do you understand what I'm saying?

22 THE WITNESS: Yes, I do.

23 THE COURT: All right.

24 BY MS. BURNEY:

25 Q Okay. So you were saying you stood by him, made

1 phone calls and went to see him, gave money for his
2 canteen.

3 MS. SHEALY: I object to the leading even in
4 camera.

5 THE COURT: Yes, you can't lead, Counsel.

6 BY MS. BURNEY:

7 Q What kinds of things were you doing for him to stick
8 by him?

9 A Just, you know, I guess being there for him. I
10 wasn't doing anything for him, I guess. I wasn't, you
11 know, saving money for him, or -- I was just there for
12 moral support really.

13 THE COURT: She's asking what kind of things you
14 were doing for him that made you angry. That's what she's
15 getting into.

16 THE WITNESS: No, I just meant that it made me
17 angry for him to talk about me that way whenever I tried
18 to be the one to be there for him, you know.

19 BY MS. BURNEY:

20 Q And --

21 A I mean, I got a sky-high phone bill.

22 Q Okay.

23 A You know. Just, I mean, time away from my family,
24 the ones that really love me and the ones I really love,
25 things like that. Lost time, you know, just -- I don't

1 know.

2 Q How much time would you spend on the phone with him
3 talking --

4 A A lot.

5 Q -- with him giving him moral support?

6 A More than I ever should have.

7 Q Give me some kind of idea of how much time it was.
8 Was it minutes, seconds, hours?

9 A Like two to four hours a day, maybe more. No less.
10 It was always at least two hours.

11 Q And how would he -- how would those calls be -- were
12 they all one continuous two- to four-hour phone call?

13 A No, they would cut off and he would call back, or he
14 would have to go for count and he'd call me back, or I'd
15 have to leave to go to work or whatever.

16 Q Repeated phone calls?

17 A Right.

18 Q And in your letter you were saying, you called him
19 Mr. Sniper. What are you talking about then?

20 A He told me one time before that they were trying to
21 say he was a sniper.

22 Q Who was trying to say that?

23 A I think it was the police. Amp told me that the
24 police were trying to say he was.

25 THE COURT: Is that a question you were asked on

1 cross?

2 MS. BURNEY: She had her read the letter.

3 THE COURT: I'm just making sure this is what
4 you plan to ask on reply. Let's not go further.

5 MS. BURNEY: Well, this might be -- I didn't
6 realize she was going to say this. I think we probably
7 need to hear that part in camera. She's talking about
8 somebody saying he was a sniper. I didn't know anything
9 about that.

10 MS. SHEALY: Of course, that is her saying what
11 he said somebody said about him.

12 MS. BURNEY: Well, that's his statement.

13 THE COURT: I mean, that letter, it's in.

14 MS. SHEALY: I understand that. But what she's
15 saying is that she's making a reference to somebody said
16 that about him.

17 MS. BURNEY: No, she just testified the
18 defendant said somebody told him.

19 MS. SHEALY: You need to address the Court.

20 THE COURT: Yes, ma'am. Go ahead.

21 MS. BURNEY: I think what she's saying is that
22 the -- I think her testimony was that Amp had said that
23 someone had called him a sniper one time.

24 THE COURT: Go ahead and I'll deal with it.

25 BY MS. BURNEY:

1 Q What do you mean when you saying that he's Mr. Sniper
2 in the letter?

3 A Just referring to what he said that the police called
4 him.

5 Q Who said the police called him that?

6 A Amp did.

7 Q When did they call him Mr. Sniper?

8 A I don't know.

9 Q You don't know when they were saying the police
10 called him that?

11 A No, I don't.

12 MS. BURNEY: That's all I have.

13 THE COURT: Is that what she's going to say? Do
14 you have a problem?

15 MS. SHEALY: No, I don't have any problem.

16 BY MS. BURNEY:

17 Q Are you angry at him now?

18 A No, I'm not.

19 THE COURT: Is that it?

20 MS. BURNEY: That's all.

21 THE COURT: All right. Let's bring the jury
22 back in.

23 How much longer do you have of this witness? Is
24 that it?

25 MS. BURNEY: Not much longer, your Honor.

1 That's it.

2 THE COURT: All right. Bring the jury in,
3 please.

4 (The jury came into open court at approximately
5 6:02 p.m.)

6 THE BAILIFF: The jurors are seated, your Honor.

7 THE COURT: Thank you. Please be seated.

8 CONTINUED REDIRECT EXAMINATION

9 BY MS. BURNEY:

10 Q Ms. Shealy had asked you to read this letter that you
11 wrote. And in it you -- she asked you about the letter
12 reflecting your anger or representing your anger. What
13 were you angry about?

14 A I was angry at the fact that he could put me down so
15 harshly after I'd spent so many days and months, hours,
16 you know, being there for him for moral support and just,
17 you know, accepting his phone calls.

18 Q And how many phone calls?

19 A Anywhere from five to 10 a day.

20 Q How long would you all talk a day?

21 A Four hours.

22 Q Did you all talk every day or every other day or
23 what?

24 A Pretty much every day. There might have been a day
25 that went by that we didn't talk.

1 Q And Ms. Shealy asked you also about your relationship
2 with Peter Davies. Did you spend hours on the phone with
3 Peter Davies?

4 A No, I didn't.

5 Q You talked about your relationship with him and you
6 fell head over heels for him. Were you thinking about
7 spending your life with him?

8 A Yeah. During the week that I was around him I just,
9 I don't know, I just, like, planned a whole future and I
10 just didn't want to let that go. I just refused to let it
11 go.

12 Q Did you have that same type of relationship with
13 Peter Davies?

14 A No, I didn't.

15 Q Did you spend hours on the phone talking to Peter
16 Davies?

17 A No, I didn't.

18 Q I think you were asked something about the night that
19 Amp picked you up with Peter Davies.

20 A On the 5th?

21 Q You said something about the news at the time they
22 picked you up.

23 A I know I was watching the news.

24 Q And what news was that?

25 A Lifetime news I think it was.

1 Q Was it the 8 a.m.?

2 A No, the 11 o'clock news.

3 MS. BURNEY: That's all I have, your Honor.

4 THE COURT: Anything else?

5 MS. SHEALY: I have nothing further. Thank you.

6 THE COURT: You may step down, ma'am. Thank
7 you.

8 MS. BURNEY: We ask this witness be excused,
9 your Honor.

10 THE COURT: Any objection?

11 MS. SHEALY: Subject to recall.

12 THE COURT: Ma'am, you may be excused at this
13 time and you're subject to being recalled.

14 THE WITNESS: Okay. Thank you.

15 THE COURT: All right. Ladies and gentlemen,
16 we're pretty close. I want to go ahead and send you home,
17 excuse you for the evening.

18 Again, I thank you very much. I know these are
19 long hours, and it's going to be a long trial, and I
20 appreciate your patience. Sometimes we do have these
21 breaks, things come up that I have to address, and it
22 feels like you're back there a little bit more than you
23 think you should be back there, and I appreciate your
24 willingness to bear with us.

25 If you will please report back tomorrow at 9

1 we'll proceed with the trial. Thank you very much and
2 have a good night.

3 (The jury left open court at approximately 6:07
4 p.m.)

5 MS. BURNEY: Your Honor, we need to put in
6 State's 110 into evidence. It's the letter that Kristy
7 Bunch identified.

8 THE COURT: Do you want to move it in?

9 MS. SHEALY: I had earlier objections to it.

10 MS. BURNEY: The redacted portion. The Court's
11 exhibit has the original one.

12 THE COURT: I thought you said that?

13 MS. BURNEY: I don't think I did.

14 MS. SHEALY: I couldn't tell if it was in or not
15 when I looked at it. If it's not in and she's moving it
16 in, I have the same objection that I stated before.

17 THE COURT: All right. I will allow it in.

18 (WHEREUPON, State's Exhibit No. 110 was admitted
19 into evidence.)

20 (The proceedings were concluded for the day to
21 be reconvened on September 18th, 2003.)
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23
24
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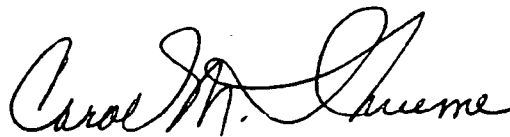
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

I, CAROL M. THUEME, RPR, Official Court Reporter for
the 8th Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate
and complete Transcript of Record of the proceedings had
and evidence introduced in the trial of the captioned
case, relative to appeal, in the Court of General Sessions
for Charleston County, South Carolina, on the 17th day of
September, 2003.

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

June 3rd, 2004



CAROL M. THUEME, RPR, Court Reporter

My Commission Expires: 06-04-2007

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF CHARLESTON) 2002-GS-10-4413
) 2002-GS-10-4414
) 2002-GS-10-4415

STATE OF SOUTH CAROLINA)
)
) vs.) TRANSCRIPT OF RECORD
)) VOLUME 4
ANTHONY L. MANN)
 DEFENDANT)

September 18, 2003
Charleston, South Carolina

B E F O R E:

THE HONORABLE DANIEL F. PIEPER, JUDGE; and a jury.

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

SCARLETT WILSON, CHIEF DEPUTY SOLICITOR
JENNIFER BURNEY, ASSISTANT SOLICITOR
Attorneys for the State

JENNIFER KNEECE SHEALY, PUBLIC DEFENDER
BEATTY BUTLER, ESQ.
Attorneys for the Defendant

CAROL M. THUEME
Official Court Reporter

1 THE COURT: You all have something you need to
2 put on the record?

3 MS. SHEALY: I do, your Honor. One brief
4 matter.

5 Would you like me to proceed?

6 THE COURT: Yes, ma'am.

7 MS. SHEALY: Your Honor, yesterday when
8 Investigator Ringley was testifying, Ms. Burney and
9 Mr. Butler were handing that witness and Scarlett leaned
10 over to me to ask would I agree to stipulating regarding
11 Danielle Batista's car, and I asked her, Is Danielle
12 Batista available? She said no, but her mother is. Her
13 mother's name is Paula Stone.

14 So last night as we were working, I asked my
15 investigator to call Paula Stone and find out what does
16 she know about Danielle Batista's car.

17 During that conversation, Gail Davis, our
18 investigator, talking to Paula Stone, and she indicated
19 that the car was cleaned, and Gail then responded, Yeah,
20 they said it was pristine, not thinking that she was going
21 to be able to come into what was said in the courtroom.
22 So I felt like I needed to put that on the record. She
23 certainly didn't intend it, and she was just telling,
24 agreeing with what the woman had said, not in any way
25 trying to influence what she would say.

1 THE COURT: All right. Anything from the State
2 on that?

3 MS. WILSON: No, sir.

4 THE COURT: All right.

5 MS. WILSON: Judge?

6 THE COURT: Yes, ma'am.

7 MS. WILSON: One issue that won't come up
8 immediately but will come up this morning, and it will
9 come up pretty quickly.

10 We're going to offer Sergeant Presnell with the
11 sheriff's department, who attended and worked both crime
12 scenes.

13 At the crime scene where Beverly Blake was found
14 they did a videotape. They had the mic on when they were
15 doing the filming of the crime scene. During that
16 filming, officers were talking back and forth. The
17 coroner or someone from the Coroner's office showed up and
18 they were having discussions speculating about how long
19 Beverly Blake had been in the woods.

20 I anticipate that Ms. Shealy will attempt, to
21 offer that through Sergeant Presnell, and I don't object
22 to the authenticity of it. We object to the admission of
23 that videotape based on hearsay and would ask that you
24 rule in limine on that.

25 I believe you might want to take a look at that

1 videotape. I don't have a problem with the videotape
2 coming in with no sound, and I don't have a problem with
3 Ms. Shealy asking the witness his impression, not his
4 opinion, you know, as an expert, I don't think he's
5 qualified to give his opinion on that, but I don't have a
6 problem with her asking a question about what he says.

7 And I would assume, in her case, she may call
8 the assistant coroner who was there. I don't know. But
9 we would object to that on the grounds of hearsay and ask
10 that the Court rule in limine before we put up that
11 witness.

12 MS. SHEALY: Your Honor, I do think it's going
13 to be appropriate for it to come up under 803(1), but I
14 feel you have to look at it to be able to evaluate it.

15 THE COURT: Well, why don't you go ahead and
16 play it while we're waiting for the jury? How long is it?

17 MS. SHEALY: I don't know.

18 THE COURT: Do you know how long it is?

19 MS. WILSON: I can't remember. I mean, it's not
20 five minutes. Probably closer to 30, 15.

21 THE COURT: Oh, really? I'll do it before we
22 get to it then. I don't know when you're thinking it will
23 come up. We'll have to take a break.

24 MS. SHEALY: Are we waiting on some jurors now?

25 THE COURT: I'm not sure. Are they all here?

1 THE BAILIFF: I will check.

2 THE COURT: I'll look at it. We'll listen to as
3 much as we can until the jury gets here. I don't want
4 them to have to wait again. We keep them waiting every
5 morning.

6 Is the audio on?

7 MS. SHEALY: Yes. I think it changes, the tape
8 changes as you're watching it.

9 (Videotape was played.)

10 THE COURT: Who is seeking to introduce that
11 tape?

12 MS. SHEALY: I am. I think it certainly falls,
13 Your Honor, under 803(1), present sense impression, as
14 it's defined as a statement describing or explaining an
15 event or condition made while the declarant was perceiving
16 the event or condition, or immediately thereafter.

17 Statements that are on the videotape are just
18 the people that's present at the crime scene and their
19 comments regarding what they're seeing. So I think it's
20 certainly right for us to request to bring that in.

21 And interestingly, it also falls within number
22 two.

23 THE COURT: I'm sorry, what were you saying?

24 MS. SHEALY: I said it also, I think, it fits
25 under excited utterance in that that is defined as a

1 statement relating to a startling event or condition made
2 while the declarant was under the stress of excitement
3 caused by the event or condition.

4 THE COURT: That's kind of hard for people who
5 do this regularly in the course of their business.

6 MS. SHEALY: Well, somebody screamed out the
7 F-word when he rolls her over.

8 MS. WILSON: And I think that that will be
9 explained by -- the F-word was as a result of realizing
10 that it was the person they had been looking for. That
11 had nothing to do with her condition.

12 THE COURT: Do you have any concerns about this
13 body being on the screen full time like that for so long?

14 MS. SHEALY: About what?

15 THE COURT: The body being flashed across the
16 screen like that for so long?

17 MS. SHEALY: I think the condition of the body
18 is very relevant, your Honor, and it's important to our
19 case, very important to our case. I mean, is it pleasant?
20 No.

21 THE COURT: I will think about it.

22 MS. WILSON: Judge, could I be heard on that?

23 THE COURT: I'm sorry, I thought you had already
24 indicated what your position was. Go ahead.

25 MS. WILSON: I didn't address the present sense

1 condition or I believe under that Rule 803(1), the
2 statement has to describe or explain an event or
3 condition.

4 It's our position that an event, I mean a
5 statement explaining the condition would be a statement
6 such as she has rigor, she has fly eggs, she has
7 discoloration, there is steam around the body. That goes
8 to the condition.

9 What they're seeking to do is introduce
10 statements regarding speculation of an event that they did
11 not perceive. The event was the murder of Beverly Blake.
12 The event was when Beverly Blake was put in the woods.

13 No one out there perceived that event, and I
14 think that squarely addresses this issue. And these
15 statements are not made about an event that was perceived
16 by anyone out there.

17 Any statement regarding the condition of the
18 body we don't have a problem with. But, I think, because
19 all of those statements were interwoven, there's no way to
20 parse them out.

21 Certainly Ms. Shealy can ask Sergeant Presnell
22 about the steam, about the rigor, about the fly eggs,
23 about what he thought when he saw her as far as the time
24 the body had been out there based on his experience I
25 suppose in crime scene investigation.

1 But nobody perceived when the body got put out
2 there, and I think those things taken in connection with a
3 403 analysis, we're getting into highly technical
4 medical -- actually it's not as technical as we all wish
5 it would be, but that's something that in the medical
6 forensic autopsy field is a very difficult thing to
7 ascertain, that being the time of death, postmortem
8 interval. And I think it's extremely prejudicial to the
9 State to have these speculative statements by people who
10 are not trained in postmortem interval as far as the
11 science of it. True, they had experience of bodies and I
12 don't -- I suppose they will be able to be asked questions
13 about that, but 803(1) just doesn't fit. It doesn't fit
14 at all.

15 MS. SHEALY: I clearly think it does, your
16 Honor. It is certainly each of these individuals'
17 descriptions of the condition that they are finding her
18 body in. I mean, that is the only language that's on the
19 tape, other than Coroner Wooten saying she's been out
20 there 24 to 36 hours. Well, that is her perception of the
21 condition of the body and that clearly goes to the
22 condition of the body. She's not speculating about the
23 facts of the case; she knows nothing about the facts of
24 case. She's only describing the condition of the body
25 when she said that.

1 THE COURT: Is that someone who has done this
2 for a long time?

3 MS. SHEALY: Wooten? Yes, sir. She's a
4 coroner.

5 THE COURT: I was going to ask a minute ago why
6 wouldn't the coroner be able to make that kind of
7 statement?

8 MS. WILSON: I think the Coroner can come into
9 court and make that kind of statement.

10 THE COURT: Is that person going to be called as
11 a witness?

12 MS. WILSON: Not by us.

13 MS. SHEALY: She's on our witness list, your
14 Honor. And I certainly think that through the officers
15 who were doing the videotaping of the scene and also
16 present, I should be allowed to enter this videotape and
17 have them -- have it played while these officers are on
18 the stand, and that nothing prevents my being able to
19 allow the audio tape to be played as well. I mean,
20 clearly what it is is the crime scene. And here are law
21 enforcement officers and the Coroner and they are finding
22 the body and describing it? I mean, that is the language
23 that is on the tape. I think it fits squarely under
24 803(1).

25 THE COURT: All right. I will take note of

1 that.

2 MS. WILSON: Again, your Honor, I just want to
3 make it clear that it would be a totally different thing
4 for those witnesses to come in, the Coroner.

5 THE COURT: I agree they ought to come in and
6 say, This is what I said, then there's no problem
7 whatsoever.

8 MS. WILSON: Right.

9 MS. SHEALY: Well, I think it's fair for the
10 jury to see how the body was perceived that evening. I
11 mean, we have a videotape that reflects it.

12 MS. WILSON: Well --

13 MS. SHEALY: Excuse me.

14 How people who are trained in dealing in these
15 type of situations are reacting to it at the time. I lose
16 something by just asking on the stand if we have something
17 describes it as it's being seen.

18 THE COURT: How many of the people that were in
19 that tape are going to testify in the State's case?

20 MS. WILSON: I think two out of maybe four or
21 five out there.

22 But what I'm saying is, I'm not saying that
23 eventually this can't come in through one of Ms. Shealy's
24 witnesses. I just don't think it can come in now.

25 THE COURT: Well, obviously it can come in

1 through -- obviously as to the two that are going to
2 testify, it could come in as to anything they did. The
3 problem would be how do you stop it.

4 MS. WILSON: Exactly. That's why I think it's
5 fairer under a 403 analysis, a fairer approach for it to
6 come in after all of that, instead of trying to cut and
7 paste the tape.

8 THE COURT: Anything else?

9 MS. SHEALY: No, other than what I've stated. I
10 would like to be able to present it through the officers
11 that were there and not have to wait until some later time
12 to do so.

13 THE COURT: All right. I'll be right back.

14 (A short break was taken.)

15 THE COURT: The jury is here. Bring the jury
16 in, please.

17 (The jury came into open court at approximately
18 9:25 a.m.)

19 THE BAILIFF: All jurors are present, your
20 Honor.

21 THE COURT: Thank you. Please be seated.

22 Good morning, ladies and gentlemen.

23 THE JURORS: Good morning.

24 THE COURT: We're ready to proceed at this time.
25 I hear they had doughnuts for you this morning.

1 MR. BUTLER: Yes, sir, no objection.

2 THE COURT: You may be excused, sir. Thank you.

3 THE WITNESS: Thank you, sir.

4 MS. BURNEY: State calls Jason Waters.

5 JASON WATERS, after being duly sworn, testified
6 as follows:

7 THE CLERK: Please be seated. Please state your
8 full name for the Court and spell your last.

9 THE WITNESS: It's Jason Waters. The last name
10 is W-A-T-E-R-S.

11 DIRECT EXAMINATION

12 BY MS. BURNEY:

13 Q Where are you employed?

14 A I'm employed with the Charleston County Sheriff's
15 office.

16 Q How long have you been with the sheriff's office?

17 A I have been with the sheriff's office just under two
18 years.

19 Q What is your assignment with the sheriff's office?

20 A Currently I'm assigned to the bloodhound -- the K9
21 unit with the sheriff's office. I'm a bloodhound handler.

22 Q Was that your assignment last year in January?

23 A No, ma'am. In January of last year I was assigned to
24 the north patrol district with the sheriff's office.

25 Q Now, were you called out to the Lincolnville Road

1 area on January 13, 2002?

2 A On January 13, 2002, I was dispatched to meet with
3 the complainant at the intersection of Von Oshen and
4 Lincolnville Road.

5 Q Do you know what kind of call you were out there on?

6 A At the time I was dispatched I was advised that the
7 complainant believed he had possibly found a dead body.
8 He wasn't sure but believed there might have been a body
9 in a wooded area off Lincolnville Road.

10 Q Did you go out to that scene?

11 A Yes. I met with Mr. Elsworth, the complainant, at
12 the intersection of Von Oshen and Lincolnville where I
13 followed him into a wooded area off of Lincolnville Road
14 where he pointed out where the person was located.

15 Q What did you do when you got out there and were
16 pointed to that person?

17 A I followed him. It took several minutes down through
18 some very narrow trails at which point the trail that we
19 were on veered hard to the left. He stopped there and he
20 pointed me to where he believed that person was, at which
21 time I told him to stay at his car.

22 I walked down the trail approximately a hundred
23 yards, and on the left side of the trail I was on, there
24 was a form of what appeared to be a human being laying on
25 its right side. And at that point in time, it was

1 appropriate to ask them, how do you think she appeared
2 that evening, and didn't you say at the time you saw her,
3 whatever. I mean, it's perfectly appropriate from the
4 investigating officers.

5 THE COURT: If it were a prior consistent
6 statement, though, it would only come in if it were under
7 D1, correct, 801(d)(1)?

8 MS. SHEALY: Your Honor, frankly, I don't know
9 how to respond to that. I mean, I would not even
10 contemplate that the solicitors would permit my being able
11 to ask them what they saw and what they commented on that
12 evening. She's not raised that issue.

13 THE COURT: Well, you would be normally doing
14 that in cross-examination, about what that individual
15 witness saw. That would certainly be different.

16 MS. SHEALY: What you're asking is --

17 THE COURT: You're in the posture of wanting to
18 introduce -- it's a little bit different with crime scene
19 tapes because you're the one that's actually wanting to
20 introduce it. So you're in the posture of actually
21 wanting to introduce the hearsay, what you claim to be
22 hearsay. The question is, is it hearsay or is it prior
23 consistent statement of that witness. If you were doing
24 that through that witness, but you're really doing it
25 through another witness, so let's just go down the track

1 that it is hearsay because you're doing it through a
2 different witness that for which the statement is really
3 being offered.

4 MS. SHEALY: Okay.

5 THE COURT: So your approach is hearsay if
6 you're doing it that way.

7 MS. SHEALY: As it relates to Officer Presnell,
8 is that what you're suggesting?

9 THE COURT: With regards to the different
10 officer than the one making the statement, yes. So I
11 guess really you can't go under any analysis other than a
12 hearsay analysis in that situation where you're posturing
13 it. So if it's a hearsay analysis, then you get into the
14 question about whether or not the witness is available to
15 testify, or whether or not it falls under exception, or
16 when it is immaterial, whether the witness is available to
17 testify, which your argument is it's present sense
18 impression. And the concern I have about that is that it
19 seems to deprive the State of the right to cross-examine
20 both those statements as they're being introduced at that
21 time.

22 MS. SHEALY: Your Honor, just to respond to that
23 briefly.

24 THE COURT: Anything else?

25 MS. SHEALY: Yes, your Honor. Under Rule

1 801(d)(2), it would be our position that if in fact would
2 not be hearsay because it is an admission by a party
3 opponent. The coroner's office, law enforcement officers
4 are all agents of the state.

5 And similarly, in addition to that, your Honor,
6 I think I also mentioned that you always have a problem
7 with cross-examination with hearsay exceptions, but that
8 they do not have the right to cross-examination as we do.
9 So we're balancing my client's right to aggressively
10 defend his case, and they don't have the same right to
11 cross-examination that the defense does.

12 THE COURT: What do you mean by that?

13 MS. SHEALY: I mean, he has a right to
14 cross-examination; he has a constitutional right to it.

15 THE COURT: They have a right to cross-examine.

16 MS. SHEALY: They have a right to cross-examine
17 within the court system. I mean, it's not the same type
18 of right to cross-examine that the defendant has when
19 you're trying to balance the fair thing to do here.

20 THE COURT: Which part of (d)(2) do you find it
21 falls under?

22 MS. SHEALY: A, The party's own statement,
23 either individual or representative capacity.

24 THE COURT: What is your position on that?

25 MS. WILSON: I think that is a great stretch to

1 say that it's some sort of admission. And I just --
2 frankly, I don't really know the setup of the coroner,
3 whether it's a county or state agency, I don't know. I've
4 never fully understood how that all works, to be candid
5 with the Court.

6 I think that they're reaching. I think that
7 it's -- again under a 403 analysis, it may come in
8 eventually. I think that this discussion, in itself,
9 shows why it's so confusing.

10 THE COURT: Well, I don't have -- it seems to me
11 that several of the statements are present sense
12 impressions about describing what is going on there at the
13 time, the circumstances that are there that moment. I
14 think the only part that I am struggling with a little bit
15 would be the conclusion from the coroner.

16 MS. WILSON: That's the part that causes us
17 considerable concern and it hampers our ability to present
18 our case in an orderly fashion. We have to call, you
19 know -- I think it's confusing. I don't think they're
20 prejudiced by it not coming in because they can get it in
21 eventually either way. I think it is a conclusory
22 statement. It's not a present sense impression, and I
23 think that it shouldn't come in. I don't think it's a
24 present sense impression. I don't think that -- you know,
25 I said how I feel.

1 THE COURT: Obviously as to most of these
2 statements they are describing or explaining events or
3 conditions; do you agree with that?

4 MS. WILSON: A lot of the statements that are
5 made, you know, as I said, and then they describe rigor
6 when they describe the temperature of the body, then they
7 describe fly eggs, then they describe steam, those things
8 I understand are going to come in.

9 THE COURT: So you agree all those were
10 describing the condition at the time?

11 MS. WILSON: Correct. Not correct. But yes,
12 sir, I do.

13 THE COURT: Well, I'm not sure which part the
14 conclusion statement would not fall under insofar as the
15 requirements for present sense impressions.

16 MS. WILSON: I don't think it's a present sense
17 impression that the body hasn't been out there -- that the
18 body -- I can't remember exactly how she says it, but when
19 she gives the time frame, I think that that's a
20 conclusion. I think also when she says, It ain't been out
21 there for a week, she's giving a conclusion. She's not
22 telling about the condition of the body.

23 THE COURT: But the peculiar thing is that when
24 you're talking about bodies, that just happens to be
25 something that describes the condition of body.

1 MS. WILSON: That's not clear from that, from
2 her statement.

3 THE COURT: How does she arrive at -- how does
4 she --

5 MS. WILSON: We've got to ask her all that.
6 That's the whole problem.

7 THE COURT: The evidence presented, she just
8 said the body's been out there for whatever period of
9 time?

10 MS. SHEALY: Are you asking how she says it?

11 THE COURT: Yes.

12 MS. SHEALY: She says two things: that the body
13 hasn't been out here long; and it's been out there 24 to
14 36 hours are the two references she makes.

15 Your Honor, certainly it is our opinion that
16 that is exactly what her impression is as she's out there.
17 It's nothing but an impression. She's the coroner, she's
18 asked to come to the scene, she's asked to look at the
19 body, she touches it, she moves it, she's describing what
20 she sees.

21 THE COURT: Is that something that can be
22 perceived through your senses?

23 MS. SHEALY: I think so, your Honor. She's
24 looking at the fly eggs, she looking at the stiffness of
25 the body.

1 MS. WILSON: And drawing a conclusion.

2 THE COURT: I don't have a problem with the fly
3 egg and stiffness of body. I don't think the State
4 contests that. It's just the conclusion part. Is that
5 something you can perceive from your senses? Maybe that's
6 a better way to ask the question.

7 MS. SHEALY: I think it is.

8 THE COURT: Because present sense impression is
9 something you sense, right? We agree with that?

10 MS. SHEALY: Yes.

11 THE COURT: All right. How can you sense that
12 from -- how is that derived from your senses? Tell me.

13 MS. SHEALY: From your senses? From your sight,
14 that her body is stiff. From your sight, that she has fly
15 eggs in her eyes. From your nose, that she does not
16 smell. From your eyes, that she's not decomposed,
17 appearance of her skin.

18 MS. WILSON: And it's our position she put all
19 of those things together and came up with her opinion
20 about when something happened.

21 THE COURT: See, that's the catch. Is it really
22 impression or is it a conclusion?

23 MS. SHEALY: Well, if you look again at how it's
24 defined: A statement describing or explaining an event or
25 condition. And I think her statement explains the

1 condition. It describes it, it explains it. They
2 elicited from this officer that he didn't think the body
3 looked decomposed, he didn't smell anything.

4 MS. WILSON: I don't think we --

5 THE COURT: They don't object to that part.

6 MS. SHEALY: I understand that. That was his
7 impression. This is her impression at the time that she
8 sees it.

9 MS. WILSON: I believe he volunteered that. I
10 don't know that that was elicited. But again, he's the
11 person who perceived it. That's the whole issue, too. He
12 was the one doing the perceiving.

13 THE COURT: Normally, it just would be too --
14 I'm not saying an analysis is difficult. I just think
15 that when you talk about a body, it just might be that one
16 peculiar situation that can both -- the question is, is it
17 that one peculiar situation that can be both perception
18 and a conclusion at the same time? I'm prepared to say
19 that conclusions generally, which the rationale of the
20 rule is not to address the compilation of impressions to
21 reach a conclusion; do you agree with that?

22 MS. SHEALY: Not necessarily. I mean, as it is
23 defined it is -- I mean, I keep saying the same thing, but
24 I don't mean to but, a statement describing or explaining
25 a condition. The coroner is out there, she is explaining

1 it, she's describing it as she sees it.

2 MS. WILSON: I believe, your Honor, Andrews V
3 Nash, 256 SC 102, stands for the proposition that opinions
4 and conclusions drawn are not admissible. I have not read
5 that whole page, so I'm just reading from South Carolina
6 Evidence, second edition.

7 THE COURT: It's an auto accident case. I don't
8 know that that makes a difference, but that is cited in
9 that evidence manual. Well, commentary at least in that
10 evidence, that evidence book, the commentary in the
11 evidence book suggests that those kinds of opinions or
12 conclusions should still be exempted from the present
13 sense impression rule. That's where the State is coming
14 from. At least the commentator of the evidence book,
15 Danny Cobbler, that at least one commentator thinks that
16 there is a rationale to continue exempting conclusions
17 from application of present sense impression.

18 MS. SHEALY: I think you have an unusual
19 situation here when it's the coroner out there on a crime
20 scene videotape perceiving it, and that's pivotal as to
21 how she appeared at the scene.

22 THE COURT: Like I said, the real question is
23 can you put everything together? Is the point of the rule
24 to put things together and come up with something? Or is
25 the point of the rule whatever your impression is the

1 moment you see something, you are describing something?

2 MS. SHEALY: Well, I think when it comes to the
3 coroner, those two things are combined. I mean, she is
4 looking at it as a coroner.

5 THE COURT: It just may be a little different
6 when talking about a body.

7 I'm not convinced that the statement, that the
8 coroner would fall into (d)(2). Otherwise any time the
9 coroner reached some kind of conclusion --

10 MS. WILSON: There's certainly been no
11 foundation laid for that, and I don't think there would be
12 a foundation laid through this witness for the argument.

13 THE COURT: There is a 2000 case from Texas that
14 really goes to the same thing. "We do not believe that a
15 statement of opinion about a condition or event, as
16 opposed to a statement of description or explanation about
17 something observed or otherwise sensed, qualifies for
18 present sense impression."

19 I think everything but that conclusion can come
20 in. I don't think that that conclusion qualifies as a
21 present sense impression. If you want to play the tape
22 and pause that part or redact that part, I will be happy
23 for you to do that.

24 MS. SHEALY: Yes, I guess we would need a moment
25 to show her how to do that.

1 THE COURT: Yes, ma'am, I understand.

2 MS. SHEALY: Would you like us to do that now?

3 THE COURT: I assume by you asking me to rule on
4 this that it's coming up next?

5 MS. SHEALY: Judge?

6 THE COURT: Yes, ma'am.

7 MS. SHEALY: Would you prefer that we go ahead
8 and try to figure out how to do that now or do it at the
9 end of her direct of this witness?

10 THE COURT: No, let's do it now. I don't want
11 to send the jury back out. My understanding was that it
12 was going to come out through this next witness, so let's
13 go ahead and take care of that.

14 MS. WILSON: May I approach the clerk?

15 THE COURT: Yes.

16 MR. BUTLER: May I approach?

17 THE COURT: Yes, sir.

18 (A bench conference was held with the judge and
19 attorneys in the presence of the jury but out of the
20 hearing of the jury.)

21 THE COURT: We'll go ahead and take a break
22 while you all do that.

23 (WHEREUPON, State's Exhibits Nos. 111-119 were
24 marked for identification only.)

25 MS. SHEALY: We've agreed it is going to be

1 entered in through Detective Walker's testimony. We'll
2 have to take some time to do it then, your Honor.

3 THE COURT: All right. Bring the jury in,
4 please.

5 (The jury came into open court at approximately
6 11:04 a.m.)

7 THE BAILIFF: All jurors please be seated.

8 THE COURT: Ladies and gentlemen, we're ready to
9 proceed at this time.

10 MS. WILSON: State calls Sergeant Presnell.

11 PATRICK RAYMOND PRESNELL, JR., after being duly
12 sworn, testified as follows:

13 THE CLERK: Please be seated. Please state your
14 full name for the Court and spell your last.

15 THE WITNESS: My name is Patrick Raymond
16 Presnell, Junior, P-R-E-S-N-E-L-L.

17 MS. WILSON: Your Honor, before we start, I
18 would like to move some items into evidence that we have
19 not moved in yet.

20 I believe without objection, State's 112, 113,
21 111, 114, 115, 116, 117, 118, 119.

22 MS. SHEALY: That's correct, your Honor.

23 THE COURT: All right. In evidence without
24 objection.

25

1 (WHEREUPON, State's Exhibits Nos. 111-119 were
2 admitted into evidence.)

3 DIRECT EXAMINATION

4 BY MS. WILSON:

5 Q Sergeant Presnell, where are you employed?

6 A Charleston County Sheriff's office.

7 Q How long have you worked for the sheriff's office?

8 A Twenty-three years.

9 Q What do you do there?

10 A As of right now, for the past seven years I've been
11 the supervisor of the technical services unit, which is
12 also known as the crime scene unit and evidence.

13 Q How long have you worked in that unit?

14 A In the technical services?

15 Q Yes.

16 A About 17 years.

17 Q Seventeen?

18 A Yes, ma'am.

19 Q You have been the supervisor for how many years?

20 A Seven.

21 Q Now, how much of your time is developed -- is used to
22 investigate crime scenes?

23 A Hundred percent.

24 Q Were you called out to a scene at 36 Magnolia on
25 January 7th, 2002?

1 A Yes, I was.

2 Q And did you do the diagram, Defendant's Exhibit 26?

3 A This is a photocopy of the diagram that I drew at the
4 scene, yes.

5 Q Now, State's Exhibit 119, is that just a blow-up of
6 your diagram?

7 A Yes, it's an enlarged version, yes, ma'am.

8 Q Were you present when the video of the crime scene
9 was made?

10 A Yes, I was.

11 Q Have you had an opportunity to review that video?

12 A Yes, ma'am.

13 Q And photographs that have already been introduced
14 into evidence from that crime scene, you were present when
15 those were taken as well?

16 A Yes, I was.

17 MS. WILSON: I'm going to ask you -- Judge, is
18 it okay if he steps down?

19 THE COURT: Yes, you can step down, sir.

20 BY MS. WILSON:

21 Q Before we get started with the crime scene, if you
22 could just orient the jury as to where -- Magnolia Road is
23 right here; is that right?

24 A Yes.

25 Q Step back just a little.

1 A This area, this is Savannah Highway, Highway 17.
2 This is Magnolia Road. Radio Road runs right in here. 36
3 Magnolia is right here at the intersection with Magnolia
4 and Maylen Road.

5 Q Go ahead.

6 A This area is the yard around the perimeter of the
7 house. We came up, we parked right in the roadway at the
8 curbage awaiting a search warrant that night.

9 Q Just for more orientation, can you describe what
10 businesses are located in this area of Savannah Highway?

11 A There is a dry cleaners, an old Krispy Creme store,
12 there are a few restaurants, and there's a couple of bars
13 across the street.

14 Q Do you know if Gerald's Recaps is in that area?

15 A It is, but I couldn't tell you exactly where it is on
16 the map.

17 Q And Coburg Road, do you know of anything in that area
18 of Coburg Road?

19 A There is a shopping center right here.

20 Q All right. Your diagram, I need you to help me out
21 on the back. State's 119, is this a diagram that you
22 drew?

23 A If I can just flip it over.

24 Q However you want to use it.

25 All right. Let me get straight here. This

1 would be Magnolia Road?

2 A This is Magnolia and this is Maylen Road.

3 Q So the way you have it situated, Donna Kann's house
4 would be over in here?

5 A Across the street from Donna Kann's house, this is
6 right where we parked our cars at Magnolia and Maylen,
7 right at the intersection.

8 Q Were you aware that night of our witness who lived in
9 this area across the street?

10 A I believe there are photos taken of her house, but I
11 don't know anything about that.

12 Q In your role as a crime scene investigator, are you
13 in charge with doing interviews of witnesses and following
14 leads and things like that?

15 A No, ma'am, that is the detectives.

16 Q What is your role specifically?

17 A My job, the technical services job is crime scene
18 investigation. Basically when we come to the scene, the
19 investigation from the technical office to a private
20 residence like this, they will go and get a search warrant
21 to give us the ability to get into the house.

22 We sat outside this house, and it was very cold
23 that night. Actually, I bought everybody coffee and
24 doughnuts there. We sat there waiting for the search
25 warrant.

1 When the search warrant came in, our first
2 process is to evaluate what we have. And the first deputy
3 upon arrival at the scene should have cleared the
4 residence of any suspects or victims or witnesses of the
5 house. So the house should be empty when we get there.

6 Once the search warrant's obtained, we have to
7 go and photo-document what we have found at the residence
8 and videotape the residence as we find it.

9 Q I believe you said you watched that videotape?

10 A Yes, ma'am.

11 Q And explain to the jury the difficulty in doing this
12 diagram, if there was a difficulty.

13 A Okay. I have been doing diagrams for 17 plus years.
14 I've done them out on the road, accident scenes and stuff.

15 Houses are difficult to do, and especially this
16 house.

17 I don't know what was going on in the house. It
18 looks like this room that has a large table in it is an
19 office-type. This bedroom over here that doesn't have a
20 number is the owner of the house's bedroom, and it was
21 completely locked. This has I guess you'd call it french
22 doors with glass in it, and this place was locked.

23 The front porch was locked. There was only two
24 entrances to the house that we had to open. The porch was
25 under construction. There was all throughout the house it

1 looked like construction was going on. It looked like
2 they had kept adding onto the house over and over again,
3 putting new doors in, porches and stuff like that.

4 Right in this area here there is a porch that is
5 nothing but cinder blocks and made a U-shape. You could
6 drop down below and there wasn't anything to walk across
7 it. The door was open. There was another porch over here
8 that is made out of cinder blocks and that door was open.

9 This is the front door or the side door of the
10 house. Look at this real quick. I believe this is going
11 to be the front of the house on Magnolia. This side door
12 was open.

13 Now everything else in the house was locked with
14 the exception of the door back here in bedroom number two
15 which is open a couple of inches. Everything else on the
16 house on all sides was locked.

17 Q Okay. Now, you said that when you and all the other
18 officers arrived, you all parked in this area?

19 A Closer to the intersection.

20 Q And you recall from the photographs and video seeing
21 a car, a truck, a car parked in --

22 A There was a truck or a car, yes, there is.

23 Q So it varies as to what the front of the house would
24 be. Technically the address is Magnolia Road, 36?

25 A Yes.

1 Q There were cars parked at the entrance to the porch?

2 A Yes, they were. They were parked in the side yard.

3 There was a truck, it looked like a construction-style
4 truck and an older model car with real old South Carolina
5 tags on it.

6 Q Now, you watched the video, you were there when it
7 was made. Is it a fair and accurate video of the scene as
8 it was when you arrived?

9 A It is to a certain extent. The video was zoomed in a
10 little bit too much for my liking. It makes everything
11 herky-jerky when you walk through the house. And like I
12 said, the house was full of construction-type debris, like
13 painting and fix-up stuff, so you had to sort of squeeze
14 through certain areas in the house.

15 Actually, there was a place right here near this
16 door going to the bedroom closet, you couldn't even get in
17 this area except through the door in bedroom number one.
18 This door was completely blocked off by construction
19 debris.

20 Q And again, this diagram is not to scale?

21 A No, ma'am, this is my original diagram.

22 MS. WILSON: Now, what I would like to do now,
23 your Honor, is play the crime scene video. I'm going to
24 need for the jury to be able to see the video and this at
25 the same time. Would you inquire if they can see them?

1 Can everybody see the screen and this?

2 THE COURT: Can everyone see, ladies and
3 gentlemen?

4 (Jurors all nodding their heads.)

5 MS. WILSON: Judge, I'm going to pull up my
6 chair to pause the video so I'm not in anybody's way. If
7 we could dim the lights a little bit, not all the way off.

8 (Videotape being played.)

9 BY MS. WILSON:

10 Q What is that?

11 A That's our tags for the videotape of Michael Ringley
12 and the report number.

13 Q Is that 36 Magnolia?

14 A Yes, it is. That is the front right here with the
15 large porch.

16 Q From Magnolia street?

17 A Standing on Magnolia looking at this house. That is
18 the construction truck. That's my vehicle and some of the
19 other tech officers outside the crime scene.

20 What you're looking at is somebody standing in
21 this area facing the porch.

22 That's the porch under construction that we're
23 talking about with the open door. Once again, we're
24 looking at the front of Magnolia. That is the porch under
25 construction.

1 Q That truck with the ladder on top, did that belong to
2 any of you all?

3 A No. That was in the crime scene.

4 Q By the time you got there, was the victim's body
5 still present at Magnolia?

6 A No, it had already been transported.

7 Those are steps made out of cinder block and
8 there's a hole through the middle and the construction
9 debris.

10 This is standing right about the intersection of
11 Magnolia looking back towards the construction on the back
12 porch, the side porch.

13 And now looking into the porch itself.

14 Q On your diagram, the porch that is shown right there
15 to the left, could you just demonstrate with the pointer?

16 A These steps right there, are those on the --

17 Q And you said there was a hole in the middle of the
18 steps?

19 A Yes, right there. Actually it was more like a
20 pyramid. The steps are made out of cinder blocks and
21 they're made in a U-shape and you can fall down between
22 them. There is a hole straight in the middle.

23 Q Okay. And this car here, that was not a car of
24 yours?

25 A No, ma'am, that was at the scene.

1 The second door is going onto the porch right
2 back here. This room is a washer and dryer room. That is
3 the locked compartment room, this one right here.

4 Q On the diagram, where was that area that you just
5 showed with the washer and dryer room?

6 A The washer-dryer room was right here in this door,
7 and that was the first door you saw when you were passed
8 the fence, and the second door goes into this huge
9 apartment that is not furnished, ready to be rented out.

10 Q You said those doors were locked?

11 A They were all locked.

12 Q Now, this view across the street, is that the view
13 across Maylen?

14 A I really can't tell from the video.

15 Q Is that --

16 A I'm looking at it, it's going to be down this way.
17 Excuse me. It's going to be across Maylen Road across
18 here, just like standing he's on the road when he shot the
19 video. That's the address on the front porch.

20 Q Okay. You said the front porch. Again, the address
21 there is 36, but where was that?

22 A It's fast forwarding.

23 Q Where the address was, those numbers, was that on the
24 side porch as well?

25 A It was on the side porch as well, 36, right next to

1 this door, in this area, the side porch.

2 Q I'm going to fast forward until we go to the side.

3 What area is this?

4 A That is going to be the entrance coming up the steps
5 looking into the entrance spanning on the steps
6 themselves, the cinder block steps.

7 Q That was debris is what that was?

8 A There's EMS debris there left over from trying to
9 help the victim. There is also a shirt, a Tommy Hilfiger,
10 a red, white, blue size large shirt right here that's been
11 cut off the victim. You can't really see it from this,
12 but there are several puddles of blood in the middle of
13 the floor and right in one of them is an expended bullet.
14 That's it right there, copper jacketed bullet. And off to
15 the left in this area is an ejected shell casing, a
16 9-millimeter shell casing.

17 That is the back side of the side porch, the
18 secondary way to get into the house from the side porch.
19 And what the video operator did, since there was so much
20 evidence in this area to be contaminated, he walked around
21 the back side of the porch to do the video instead of
22 walking through the evidence.

23 What you're seeing is a flashlight of the person
24 taking the photographs walking into the house, starting
25 outside and working their way inward towards the scene

1 itself. They videotape and photograph at the same time,
2 and that is the flash you see each time in the video.

3 Now we're looking into the house itself, walking
4 in from the porch in this door. Right over in that corner
5 is a door. As we walk into the doorway videotaping to his
6 right, which I don't know what you call it, in the living
7 room, directly to your right is a set of french doors that
8 goes into this office. And that view right there is
9 looking through this way, through this locked door, which
10 was the owner of house's bedroom.

11 Q Did he arrive at the scene while you all were still
12 working?

13 A Yeah, we had to get the keys from him to go into his
14 bedroom and the office itself and the vacant apartment.

15 Those are the french doors right there.

16 Q Did you all turn over that sofa?

17 A The sofa in there? No, we hadn't touched anything at
18 this point.

19 We're going into an eating area in the kitchen.
20 What he's trying to show here is whether or not the door
21 had been pried open. There was some damage to the door
22 itself, and then he'll shoot over to the door frame to
23 check it.

24 That's going back to the front porch, the spent
25 bullet.

1 Q I'm going to fast forward through this part since
2 we've seen that.

3 Is this still in that porch area? What is that?

4 A If you'll stop it just for a second, please.

5 To explain what happened, we were entering into
6 the building. The photographer looked down and saw the
7 shell cases. So as he was going through to show the
8 inside of the house as we found it, we found a piece of
9 evidence they thought needed to be videotaped real quick,
10 so we turned right back around. We were on the back porch
11 and videotaped the porch again.

12 Q This shirt?

13 A This is the Tommy Hilfiger shirt, and that was lying
14 in this area facing the door off the porch. It would be
15 to the right. And it was basically tossed by the EMS when
16 they cut it off him. Those are EMS paraphernalia on the
17 floor except for the blood.

18 He is putting the bullet to scale, the scale on
19 the side of the card.

20 All this material right here came from EMS also.

21 Q And what view is this?

22 A That should be the view looking in from the original
23 steps, which was down in this area, and three puddles of
24 blood. Right off this area, out of the picture, where the
25 shirt is, there is a shell casing in the floor.

1 That's one of our placards right there. That's
2 Dennis Wenger is one of my employees. This is his placard
3 showing the report number, his name and date, and then
4 showing the ejected shell casing and put it to scale.
5 That is the shell casing.

6 Q Let me ask you this about the shell casing. What
7 type of gun is it that ejects a shell casing?

8 A Predominantly a shell casing is ejected from a
9 semi-automatic or an automatic weapon. If you have a
10 weapon, a semi-automatic, what happens is that the hammer
11 drops down on a bullet that's in the firing position I
12 guess you'd call it, and it will take the path of least
13 resistance. When the bullet goes off, the gunpowder, the
14 gases force it to slide backwards, the shell casing gets
15 ejected out, and with the magazine deployed in the handle
16 of the weapon another bullet comes up and the slide comes
17 back after the gases escape and puts another bullet in the
18 pipe. Basically the ejected round ejects out and there's
19 no telling where it goes. Sometimes in a mass object like
20 a person or wall, but in this case as you face outward
21 it's on the right-hand side right up close to the wall.
22 We don't know if EMS might have popped it over while they
23 were helping the victim or whether it was ejected from the
24 weapon itself.

25 Q Contrast that to how a revolver typically works.

1 A A revolver is like in an old Western, and the reason
2 they call it a revolver is that it has a revolving
3 cylinder, and when you pull back the hammer the cylinder
4 locks, and when the hammer falls you have typically six to
5 five holes in there where you put the bullets. If you
6 have a revolver, the shell casing stays in there; when you
7 fire the weapon, the bullet goes down the barrel. If you
8 pull the trigger again, each one turns over until it fires
9 all five or six rounds in the revolver. The shell casing
10 stays in the revolver itself, unlike an automatic or
11 semi-automatic that ejects it.

12 Q I'll fast forward again until we go inside.

13 A Once again, back into the first room into the house,
14 those are the french doors going into the office. And
15 this room off to the right would be the owner of the
16 house's locked bedroom.

17 Going towards that hallway now, there is a
18 bathroom right here and this is the owner's locked
19 bedroom. As you see, it has a deadbolt lock on it. We
20 had to get the key to get in. That would be this room
21 right here. That's the door to it.

22 This is coming out the bathroom and then take a
23 right down the hallway.

24 Q Which room is this?

25 A One second. Okay. That is going to be this bedroom

1 down the hallway. We came out of the bathroom, took a
2 right and now we're going into the bedroom. On my map is
3 bedroom number two.

4 Q And where the video is showing that door, can you
5 show on your diagram which door that would be?

6 A This door has a crack and you can see the outside.
7 It's a little alleyway behind the house. You can walk all
8 the way around the house.

9 This door is open, unlocked, and that would be
10 this door in bedroom number two to the outside, which is
11 shown on the back side.

12 Q Is that also what's in State's Exhibits 114 and 15?

13 A In 115 it's a photograph of the door seen in the
14 video, and this is a closeup of the door on the video.

15 MS. WILSON: Your Honor, if I could just show
16 this to the jury.

17 THE COURT: Fine.

18 BY MS. WILSON:

19 Q Did you open that door?

20 A No, ma'am, that is how we found it. Once again,
21 they're looking for pry marks to see if somebody broke
22 into the back door.

23 Q What area was that?

24 A If I'm not mistaken, that is this door between
25 bedroom number two and bedroom number one. It's blocked

1 off; couldn't get into bedroom one from bedroom number
2 two. The door had a lot of stuff up against it.

3 Q Now where are we?

4 A We're looking in from this door, looking into the
5 kitchen, right here where the beer bottles are, this is
6 this table that I have written on here, table and beer.

7 Q You have the stove marked on your diagram?

8 A Yes. The stove is right there. So if you're looking
9 from this door, you're looking across the table, as we're
10 standing in the doorway, looking across the table to the
11 stove and the sink in this area.

12 Now we're going into the kitchen proper.

13 Can you stop right there? There is an alleyway
14 right here that makes a U, as you can tell looking right
15 here. It looks like you can go all the way around, but
16 the area to the vacant apartment, those doors in that area
17 up there you will see in a minute is just a door right
18 there. A lot of building materials were leaning up
19 against the door, and that door was closed off from the
20 alleyway going to the vacant apartment. This area from
21 bedroom number one right here all the way around to that
22 alleyway and to the kitchen and to that hallway is
23 completely blocked.

24 We're in the kitchen looking through that
25 alleyway now with all the stuff in there looking backwards

1 the way we came in.

2 Q Do you know where that panel is?

3 A That's going to be the kitchen area. I'm not exactly
4 sure where in the kitchen area. It's in the kitchen near
5 the pantry.

6 Q Who is that looking at it?

7 A It's one of the deputies that was with us taking
8 notes.

9 Q Do you know which?

10 A That is going to be Detective Walker there.

11 Q This deputy?

12 A Yes, it is.

13 Stop right there. Where we're at right now is
14 right next to the table with the beer on it. We're
15 looking down towards bedroom number one and also looking
16 towards the door that goes to the vacant apartment.

17 Bedroom number one, standing right in the
18 doorway is these doors of the closet right in this area,
19 and I'm looking from the table back at an angle. This is
20 the door frame to bedroom number one. That door you see
21 is the closet in bedroom number one.

22 Q Was there anything in that closet?

23 A That closet had a safe in the back that was open.
24 There was wooden box on the floor that had \$500 in cash in
25 it. I believe it was found by Sergeant Presnell.

1 Q So at the point the video's frozen, the person
2 videoing it is standing in the kitchen area?

3 A Standing right next to the table where the beer is,
4 looking into bedroom number one.

5 That's the area right in here I was telling you
6 about earlier. You could not get to this door to the
7 vacant apartment. This area is completely closed off by
8 all of this. I don't know what exactly it is,
9 construction stuff and people just put stuff in the
10 hallway.

11 Directly to your right from this is bedroom
12 number one. You skipped over it. Now, we have not done
13 anything in this bedroom so far.

14 If you could stop it, please. This is looking
15 into this closet in bedroom number one. This is the
16 doorway to bedroom number one. This is the safe sitting
17 on the floor and the closet open.

18 Q I'm going to show you what has been introduced as
19 State's Exhibit 11. Can you see the safe in that photo?

20 A Well, actually here is the closet the safe was in,
21 and that's the safe with the door open right in the
22 corner. This is looking out into the hallway itself and
23 this is the bedroom door and that is the closet door
24 itself.

25 Q And is that flooring the flooring of the hallway and

1 kitchen area?

2 A Yes, that is the linoleum-type flooring.

3 These are pictures that were up on the wall in
4 the bedroom.

5 Q Did you later learn that was the victim's bedroom?

6 A Yes, we did.

7 And if you could back up just a step.

8 This is showing that door going to bedroom
9 number two to bedroom number one. It should pan up in
10 just a second. That's right there.

11 This is some type of bookcase. That's the
12 doorway going between these two bedrooms. As you can see,
13 it looks like a beer bottle and a whole bunch of stuff
14 that hadn't been disturbed leaning against the doorway on
15 the back side between bedroom number one and bedroom
16 number two.

17 Now this is showing the detectives going into
18 the bedroom doing the search. That is Sergeant Tittle,
19 who was the head of all this at the time, and that is
20 Detective Walker.

21 We're leaving the bedroom and going out to the
22 hallway. That is the door to the vacant apartment.

23 We're turning back and going out of the house
24 and started walking into the main area we entered through.

25 Q Before we go there, if you could give me -- you

1 described a wooden box that Sergeant Tittle found near the
2 safe. Can you show that on the -- if you need to look on
3 the photograph itself, that's fine.

4 A There was a wooden box right there. It's a small,
5 like a tobacco-type box, and Sergeant Tittle, this is in
6 the picture right here, found it and it was in the closet
7 and it had been pulled out of the safe and not gone
8 through, and it had \$500 cash in it.

9 Q I'm going to show you State's 113, 112. Is that
10 Sergeant Tittle?

11 A And here he is with the same box in his hand with
12 rubber gloves on showing what's inside.

13 Q Then State's 32?

14 A This is the cash that came out of the box laid out on
15 the bed itself.

16 Q That would be -- I'm going to fast forward through
17 this.

18 A What that was showing is the entranceway where we had
19 taken the door off the frame to take it back to the lab to
20 allow for processing, showing we took the door off the
21 frame.

22 Q At this point where are you all?

23 A This is back behind the porch going back towards the
24 vacant apartment.

25 Q Let me ask you this before we continue on.

1 In this area over in here, can you get -- at
2 that time could you get to this door without walking
3 around the whole front of the house?

4 A You could get to it from this side or this side.
5 It's like an alleyway going back in. As the video showed,
6 it's very dark. When this photo is taken, we're standing
7 right next to back porch steps. There is the steps
8 themselves. The first door on the right is going into the
9 room with the washer-dryer and the second one is the
10 larger area and the vacant apartment.

11 Q And then does the video continue on?

12 A The video continues on around the back side of the
13 house. And you actually walk around this side and then
14 come back up here.

15 Q I'm going to fast forward through the washer-dryer
16 area.

17 A At this point we got the keys from the owner to open
18 up that big area.

19 Q Where is this?

20 A Now on the inside you see the scenario on my drawing.
21 It says gate. You're standing inside the gate looking at
22 the vacant apartment. That is the back side of the house.
23 It's right in this area. Where we would be standing is
24 right inside the gate looking back to your right towards
25 the back porch.

1 That's going to be right where the report number
2 is on the complete back side of the house. And the only
3 light you are going to see is coming from the camera
4 itself.

5 That's going to be the first door we come to
6 which goes into the vacant apartment. That has the little
7 porch with it.

8 The second porch you are going to come to is
9 going into bedroom number two. As you can see, it's got
10 the opening there.

11 Q That is the bedroom that we went through?

12 A That's the bedroom that had the open doorway.

13 Now we're walking back out towards Magnolia
14 Road.

15 Q You've been in a horseshoe at that point?

16 A Basically all around the back side. That is facing
17 back towards the back of the house away from Magnolia.
18 Those are numerous paint bottles and construction debris
19 on there.

20 Q All right. Sergeant Presnell, if you could take a
21 seat. We can go through the rest of the video.

22 MS. WILSON: Your Honor, I believe I did move
23 that video into evidence so the jury would have the entire
24 video as State's 116.

25 THE COURT: All right.

1 BY MS. WILSON:

2 Q Now, Sergeant Presnell, we saw beer bottles and
3 things of that nature there. Did members of your staff
4 try to fingerprint items that were found that night?

5 A Yes, ma'am, we did.

6 Q I believe, according to State's Exhibit 105 which is
7 a stipulation between the defense and the State, 41 latent
8 prints were recovered but none matched any of the people
9 charged; is that right?

10 A That's correct. I have where they all came from on
11 three different sheets.

12 Q All right. That's okay. We don't need to go through
13 that. But items were printed there?

14 A Yes, ma'am.

15 Q Now, did you attend the autopsy of the victim at 36
16 Magnolia?

17 A Yes, I did.

18 Q And did you take photographs of the victim's body
19 and -- do you recall if you did?

20 A Yes, I believe I did.

21 MS. WILSON: And, your Honor, I'm not sure if we
22 have offered or not yet but State's 3A or 3B into evidence
23 I believe without objection.

24 THE COURT: Any objection?

25 MS. SHEALY: No objection, your Honor.

1 THE COURT: 3A and 3B in evidence without
2 objection.

3 (WHEREUPON, State's Exhibits Nos. 3A and 3B were
4 admitted into evidence.)

5 BY MS. WILSON:

6 Q Are those the projectiles and shell casings from that
7 porch at Magnolia?

8 A These are boxes and they're signed by Deputy Wenger
9 who is one of my guys.

10 Q Was he there that night?

11 A Yes, he was. He was taking a lot of photographs.

12 This is the projected shell casings and a spent
13 bullet projectile from the porch.

14 THE COURT: Counsel, approach.

15 (A bench conference was held with the judge and
16 attorneys in the presence of the jury but out of the
17 hearing of the jury.)

18 THE COURT: Go ahead and proceed.

19 BY MS. WILSON:

20 Q This has a SLED sticker on it as well?

21 A Yes, ma'am.

22 Q These were sent to SLED for further testing?

23 A They were sent to ballistics, yes, ma'am.

24 Q Now, Sergeant Presnell, were you also on duty a week
25 later on January 13 of 2002?

1 A Yes, I was.

2 Q And let me ask you this first. Do you remember what
3 the temperature was like on January 7th?

4 A Bitter cold.

5 Q And I believe you stated you stopped off and got what
6 on the way to the scene?

7 A I was late getting to the scene and I got there right
8 as the search warrant was being served, and I knew the
9 guys would be standing around freezing, so I brought a
10 bunch of coffee.

11 Q And on January 13th a week later were you also
12 called out to a scene?

13 A Yes, I was.

14 Q What kind of night was it that you arrived at that
15 scene?

16 A It was right around 1 o'clock in the evening. 12, 1
17 o'clock on another bitter cold night in Lincolnville.

18 Q Did you bring coffee that night?

19 A No, ma'am.

20 Q You got to the scene and can you explain to the jury
21 where you went on the night of January 13th?

22 A We were called out to a wooded area that had trails
23 cut through it, sort of like fire breaks. A lot of people
24 in the area use it for four wheeling and hunting and stuff
25 like that. It's a large tract of land that has the woods

1 cut up. It's really thick woods with what I would call
2 fire trails. Apparently somebody was four wheeling back
3 in the woods and found the body of a young black female on
4 the trail itself and called law enforcement out to the
5 scene.

6 Q And when you got there, were other deputies already
7 on the scene?

8 A The scene was pitch black. It was very, very cold.
9 We had to call in our light truck, and while we're waiting
10 on the light truck to get there, the scene had been
11 already been sealed off with the crime scene tape itself.
12 And I had to walk down a long dirt road, probably about
13 100 yards, 150 yards to get to the body itself.

14 That first time when we videotaped we just used
15 starlight on the video -- it's zero lux, which means you
16 can almost see in the dark -- and we videotaped the scene
17 and photographed the scene as we found it to show how dark
18 the scene was.

19 We also after we videotaped it as we found it,
20 photographed it as we found it. We did a technique known
21 as painting with light, where you leave the aperture open
22 on a 35-millimeter camera which is on a tripod. And you
23 got out there and one person walks and flashes numerous
24 times and tries to light up the area to show how it would
25 look in daylight. So some of the pictures might look like

1 it's really bright out there, but that's that technique
2 that we use is painting with light. And later on we have
3 a large generator that we run lights off of to light up
4 the area so we can look for evidence out in the woods.

5 Q Okay. I'm going to ask you to step down briefly, if
6 you would, to go over this map, which is State's Exhibit
7 117 for the jury, to give the jury an idea of where we're
8 talking about.

9 A The general area, if you look at this large tract map
10 right up on the screen, that's going to be the wooded
11 area. And from the aerial photographs, it just shows a
12 lot of treetops basically with a couple of trails on it.

13 The body was found approximately in the area you
14 are seeing on the map itself. It's in between
15 Lincolnville Road and Von Oshen Road and also Dunmeyer
16 Hill Road, basically they completely surround that area.

17 Q Can you show where Von Oshen is?

18 A Von Oshen Road runs from Lincolnville Road all the
19 way up to Highway 78. Dunmeyer Hill runs from Von Oshen
20 and comes back around to Lincoln Avenue.

21 Q Let me ask you this. From 78 where is the
22 interstate, in which direction?

23 A From this map you're looking at, Summerville's off to
24 the left and looking back towards the right would be the
25 interstate.

1 Q Have you looked at this area on Charleston County
2 maps?

3 A Yes, I have.

4 Q Is this area in Charleston County?

5 A Yes, it is.

6 Q You mentioned aerial photographs. I'm going to show
7 you what has already been introduced without objection.

8 First of all, let me ask you, how would you get
9 from this area here, across the railroad tracks? There's
10 no street indicated.

11 A There's actually, like, we're talking about the
12 wooded area, you have the dirt roads and you have to kind
13 of cross over and go through dirt roads and get back up in
14 there. There is only a couple of ways in and out of that
15 area.

16 Q I'm going to show you what's been introduced as
17 State's Exhibit 51. Is that the aerial photograph taken
18 of that area?

19 A Yes, it is. This is an aerial photograph from our
20 helicopter. You'll see a dirt road running up across a
21 open area and then it runs into a very wooded area. You
22 also see some roads back up in the woods that are actually
23 out where you can see them from there. Most of this area
24 that we're talking about is completely canopied over by
25 the trees.

1 Q When you arrived on the scene off of Lincolnville
2 Road, what did you and the other investigators come upon
3 or what were you shown?

4 A We found on the dirt road with woods on both sides,
5 and as I stated before, with a canopy of trees over a body
6 of a young black female, fully clothed, with a hood pulled
7 up over her head wearing a blue bandana I believe it was
8 on her forehead. She was in a semi-fetal position laying
9 on the ground on her right side.

10 Q After you examined the victim as she was on the
11 ground, did you and other investigators seek to determine
12 who she was?

13 A First off, we photographed and videotaped and
14 searched the general vicinity to find any and all evidence
15 that might be around the body. We didn't know if it was
16 what was call a dump site where somebody had been killed
17 elsewhere and dumped off there or whether they had been
18 killed at the scene.

19 So we looked around the area for things like
20 foot tracks, tire tracks, any and all evidence that might
21 be found in that general vicinity such as if it was a dump
22 site, they might throw the body out and find something
23 else and throw it out of the car, maybe clothing,
24 something like that, along the way.

25 So once we cleared the area to the body itself,

1 then we photographed and videotaped the body and waited on
2 the coroner to arrive. And when she arrived, that's when
3 we did the investigation on the body.

4 Q And when you investigated the body, did you find a
5 pager on her body?

6 A Yes, there was a pager. It had no battery in it and
7 it was on her belt.

8 Q You seized that pager there and took that into
9 evidence; is that right?

10 A Yes, ma'am.

11 Q Can you describe to the jury what condition the body
12 was in?

13 A Like I said, the body was fully clothed with shoes
14 and everything on, dressed for cold weather and had a
15 hooded sweatshirt on, pulled up. There was numerous small
16 holes in the shirt and the hood of the jacket, and you
17 could see blood on the jacket itself, both in the back,
18 around the head area, and as we turned her over on the
19 chest area we could see it also.

20 Q What was the -- when you rolled -- did you roll the
21 body over at some point?

22 A Actually once the coroner arrived on the scene, then
23 it took all of us, because there was a slight bit of rigor
24 left in the body. We all grabbed the body and rolled it
25 over so we didn't lose any evidence at all that might be

1 on the body, so I think it took three people to roll her
2 over.

3 Q Did you or the other investigators look for shell
4 casings around the body?

5 A Yes, we did.

6 Q Did you find any shell casings?

7 A No.

8 Q And again, what type of gun is it that ejects shell
9 casings generally?

10 A Semi-auto's and auto's normally eject the rounds and
11 revolvers keep them in.

12 Q At this scene you were not able to find any ejected
13 shell casings?

14 A No, ma'am. We actually used a metal detector in the
15 area and we did recover two spent bullets that went
16 through the body and into the ground below it.

17 Q I'm going to show you a series of defendant's photos
18 6, 16, and 13. Are these photos from that scene?

19 A Exhibit No. 6 is looking towards the body from where
20 we entered the woods, showing the body as it lay on the
21 trail.

22 Q Okay.

23 A And that's using the technique of painting with
24 light. You look on the picture itself and you will see
25 several spots of light like somebody shining a spotlight.

1 That's the technique that I was talking about earlier.

2 Item number 16 is closer up to the body showing
3 the back of the head and the back of the upper torso.

4 Item number 13 is a closeup of the body showing
5 the full length of the body from the back side.

6 Q Defendant's 11?

7 A This is a closeup of the victim's right hand that is
8 clenched in a pugilistic boxing manner, showing a ring
9 that's on her hand that's real close to her face.

10 Q Now, once the body was turned over, did you or the
11 other officers notice anything about the clothing?

12 A The one thing that really stuck out in my mind was
13 the jeans themselves had sequins on them and the zipper in
14 the front was down on the pants itself.

15 This is item number 12 which is showing the
16 crotch area of the body after we turned it over. It shows
17 the Pagenet pager on the right side also.

18 Q You wouldn't know if the other officers unzipped the
19 pants or anything like that?

20 A No.

21 Q I believe State's Exhibit 6 has already been
22 introduced. Is that the pager you recovered?

23 A Yes, ma'am, this is the Pagenet pager.

24 Q And said it had no battery?

25 A No battery when we found it.

1 MS. WILSON: We would offer State's Exhibit 6,
2 your Honor, I believe without objection.

3 MS. SHEALY: Without objection, your Honor.

4 THE COURT: All right. It's in evidence without
5 objection.

6 (WHEREUPON, State's Exhibit No. 6 was admitted
7 into evidence.)

8 BY MS. WILSON:

9 Q Sergeant Presnell, State's Exhibit 14, you mentioned
10 some projectiles that were recovered from underneath the
11 body. Are those those projectiles?

12 A These are boxes that we store the projectiles in.
13 There's two bullet projectiles in here with my handwriting
14 on the boxes, and if I'm correct, that is also the fact
15 that it went to SLED. These are the ones we recovered
16 after we used the metal detector from the ground below the
17 body.

18 Q And you testified these are the ones that went to
19 SLED?

20 A Yes, ma'am, I did.

21 MS. SHEALY: Your Honor, may we approach again?

22 THE COURT: Yes, ma'am.

23 (A bench conference was held with the judge and
24 attorneys in the presence of the jury but out of the
25 hearing of the jury.)

1 MS. SHEALY: She's attempting to get things in
2 that I think are going to inflame the jury. It's not
3 relevant.

4 MS. WILSON: Judge, we just -- there was some
5 description of what the victim had on. I think these more
6 clearly show what she had on versus the photos out there.
7 They're from the back.

8 THE COURT: There is no issue about what she was
9 wearing, is there?

10 MS. WILSON: Oh, I think there could be. We say
11 that she was found wearing what she was last seen in.

12 THE COURT: The video has come in. It has what
13 she has on, too.

14 MS. WILSON: But it's not in now.

15 THE COURT: I will hold that for now. We'll
16 wait and see.

17 MS. WILSON: If it comes in later, then I don't
18 need to get these in. Otherwise I don't have to re-lay
19 the foundation.

20 THE COURT: Right. Mark them for ID right now,
21 please.

22 MS. WILSON: They are.

23 MS. SHEALY: One other thing, your Honor.

24 (A bench conference was held with the judge and
25 attorneys in the presence of the jury but out of the

1 hearing of the jury.)

2 BY MS. WILSON:

3 Q Now, Sergeant Presnell, did you attend the autopsy of
4 Beverly Blake?

5 A Yes, I did.

6 Q And did you recover or were any items recovered from
7 her body that you're aware of?

8 A You want me to give a list of the stuff that I
9 recovered from the autopsy?

10 Q Sure.

11 A I have a list of what was recovered from the autopsy.

12 I took a set of postmortem prints off the body
13 to identify the body, a dark blue over light blue jeans
14 with sequins, gray hooded jacket with blood, black short
15 sleeve shirt, one pair blue Nike shoes, a green long
16 sleeved pullover sweatshirt with mints on it and US Marine
17 Corp, one pair of white socks, one blue bandana, one white
18 bra, one purple thong underwear, three silver rings, a
19 necklace, five bullet projectiles, one bullet fragment,
20 and then we have purple topped tube blood and all the
21 other miscellaneous stuff that comes from the body.

22 Q Now, when you say the blood that was the purple
23 topped tube, is that for testing?

24 A Yes, it is.

25 Q The clothes that you describe, State's Exhibit 53, is

1 that a photo of the clothes at autopsy?

2 A That's a photo of the clothes as they were taken off
3 the body and laid on a sheet in the autopsy room on the
4 floor.

5 Q And then State's Exhibit 59, same thing?

6 A Yes, ma'am. That's the sequined jeans and all the
7 other stuff that goes with it.

8 Q And over here, is that the bandana? I guess you
9 can't see it from there. In State's Exhibit 52, is that
10 the clothes as well?

11 A Yes, that's the upper clothes, yes, and the shoes.

12 Q Let me just -- I haven't talk about these pictures.
13 State's Exhibit 57, back at the scene, what are the
14 investigators doing there?

15 A I believe that's going -- I can't see real well from
16 here, but looking at the area where the body had been and
17 that's Investigator Willoughby on his knees. He's
18 basically digging under where the metal detector alerted,
19 trying to find the two bullet projectiles that went
20 through the body and ended up in the ground.

21 Q And you mentioned that at the autopsy there were
22 bullets and bullet fragments recovered. I'm going to show
23 you State's 8, 13, 11, 10, 9 and 12 and ask you to take a
24 look at those bottles, those containers.

25 A These are containers that the forensic pathologist

1 put the bullets into. Each one is listed with the date of
2 the autopsy, Dr. Presnell, and this one says bullet number
3 one, number two, number three, number four, and number
4 five, and that is the five bullets that came out of the
5 body, the four bullets, and this would be the fragments of
6 the bullet that came out of the body also.

7 MS. WILSON: Your Honor, at this time we offer
8 State's 8, 12, 10, 11, 13, and I believe without
9 objection.

10 MS. SHEALY: That's correct, your Honor.

11 THE COURT: State's 8, 12, 10, 11, 13 in
12 evidence without objection.

13 (WHEREUPON, State's Exhibits Nos. 8, 10, 11, 12,
14 13 were admitted into evidence.)

15 BY MS. WILSON:

16 Q Let me just backtrack off the subject that we've been
17 talking about, but were you present when the car of Eric
18 Zack was searched and inventoried?

19 A Would that be a 1998 Ford Escort?

20 Q Yes.

21 A Yes, I was there.

22 Q And a search warrant was executed on that car?

23 A Yes.

24 Q State's Exhibit 63, could you just tell the jury what
25 was inventoried from Eric Zack's car?

1 A I have the search warrant return. It states taken
2 from the vehicle from the trunk area: one red hooded
3 sweatshirt, roxy, medium blue roxy on the front with
4 design down both sleeves; one pair of white socks; one
5 white ball cap with an 8 on the front; one multi-colored
6 blue knitted cap and scarf; one white bandana.

7 From the back seat of the inside the vehicle:
8 One pair of Air Nike shoes, white and black, size 11; one
9 pair of Polo blue jeans, size 34/32; one blue and white
10 striped Nautica shirt, size medium; one blue over yellow
11 Nautica jacket size large.

12 From the front seat of the vehicle: One black
13 Alltel talkabout cell phone; one black right-hand leather
14 glove. And then we took latents off the vehicle. One car
15 rearview mirror; car two was the driver's seat belt, the
16 male end; and photographs were taken with a 35-millimeter
17 camera and an 8-millimeter video.

18 MS. WILSON: Your Honor, that's all the
19 questions I have at this time.

20 THE COURT: All right. Approach.

21 (A bench conference was held with the judge and
22 attorneys in the presence of the jury but out of the
23 hearing of the jury.)

24 MS. SHEALY: May it please the Court.

25 THE COURT: Yes, ma'am.

CROSS-EXAMINATION

1
2 BY MS. SHEALY:

3 Q Sergeant Presnell, tell me how long you've been with
4 the sheriff's department.

5 A Twenty-three years.

6 Q Twenty-three years. And how many of those years have
7 you been in the crime scene unit?

8 A Seventeen.

9 Q Seventeen?

10 A Yes, ma'am.

11 Q Now, you have told us about various efforts that you
12 all have made to collect evidence in this case; is that
13 correct?

14 A Yes.

15 Q Is it fair to say that as a supervisor in the crime
16 scene unit, that you want to preserve as much physical
17 evidence as you can in any case?

18 A Yes, ma'am.

19 Q And the purpose of that is so that you can have any
20 type of scientific testing that may need to be done on it
21 or to assist in determining whether or not someone was
22 actually at a crime scene; is that fair to say?

23 A Yes, ma'am.

24 Q In general, you're looking for fingerprints; is that
25 correct?

- 1 A Yes.
- 2 Q Hair?
- 3 A Yes, ma'am.
- 4 Q Blood or fibers?
- 5 A Yes, ma'am.
- 6 Q Anything that you could make a DNA comparison with?
- 7 A Correct.
- 8 Q And gunshot powder residue if there's a weapon
- 9 involved?
- 10 A Yes, ma'am.
- 11 Q Now, you had told us about some of the searches that
- 12 took place in this case. As the supervisor, are you aware
- 13 of a lot of the searches that took place in connection
- 14 with this case?
- 15 A Both scenes, ma'am?
- 16 Q In both cases.
- 17 A When we're at the scene, I'm all over the scene
- 18 because there's so many things we have to do. I wouldn't
- 19 know everything that went on at each scene.
- 20 Q You would not?
- 21 A No, ma'am.
- 22 Q So you were present for Eric Zack's car being
- 23 searched and then these two locations; is that correct?
- 24 A Yes, ma'am.
- 25 Q Were you also present for any other searches that

1 took place in the case?

2 A I don't believe so, ma'am.

3 Q Like Lisa O'Connell's, were you present at her house?

4 A No.

5 Q What about Tabitha Kylander?

6 A No, ma'am.

7 Q What about any residence connected with Anthony Mann?

8 A No, ma'am.

9 Q Peter Davies?

10 A The only two, I went to the search warrant at our
11 office and the two scenes that we've discussed, that's the
12 only two.

13 Q None of the other searches did you participate in?

14 A No, ma'am.

15 Q Now, are you aware that at some point, blood and hair
16 and saliva was retrieved from some of the defendants in
17 this case?

18 A If it came to our office it would have been submitted
19 to SLED. I'm not aware of that unless I look at the
20 report we have in front of us.

21 Q Do you have the report with you?

22 A Yes, I do.

23 Q Could you look at that for me?

24 A Which one do you want me to look at, from which
25 scene? I have two separate evidence lists.

1 Q I guess you'll have to look at both of them because
2 I'm not sure how you list them.

3 A Do you want me to read off what we have?

4 Q No. I just want you to tell me whether or not as
5 supervisor you know or you can look at your list and
6 determine whether they took samples from Anthony Mann or
7 Peter Davies and Eric Zack of their blood and their hair
8 and their saliva.

9 A I have ten print cards from Eric Zack, Peter Davies
10 and Anthony Mann. I have a suspect evidence collection
11 kit from Peter Davies.

12 Q When you say "suspect evidence collection kit," that
13 is what I was asking you about; is that correct?

14 A Yes, ma'am.

15 Q You take the blood, you take the saliva and you take
16 the hair?

17 A Yes, ma'am.

18 We have a suspect evidence collection kit on
19 Eric Zack; three hair and fiber samples from the seat of a
20 '92 Hyundai.

21 Q And that was Danielle Batista's car?

22 A I'm not sure whose car it was.

23 I have a suspect evidence collection kit on
24 Anthony Mann. I have a gunshot residue kit on Dante
25 Tobias. Three assorted blood swabs from the 36 Magnolia

1 Street porch. Numerous fingerprint cards from a whole
2 bunch of different areas.

3 Q I think you answered my question. You found where
4 they did take the suspect evidence collection kit from
5 Peter Davies, Anthony Mann and Eric Zack; is that correct?

6 A Yes, ma'am.

7 Q The purpose of taking those kits then is to compare
8 it to other things within the case; is that fair to say?

9 A That's correct.

10 Q And you told us that out of some vehicle they took
11 some hairs; is that correct?

12 A Yes, ma'am.

13 Q Now, you attended both autopsies in question?

14 A Yes, ma'am.

15 Q And when you attended Beverly Blake's autopsy, you
16 had mentioned some of the items that you took back, and
17 may have mentioned this, but I don't think I've heard it,
18 you also took back the oral, vaginal and rectal swabs?

19 A Yes, ma'am.

20 Q So in other words, during her autopsy her mouth and
21 her vagina and rectal area were swabbed; is that correct?

22 A Yes, ma'am.

23 Q And then you took it and that was later sent to SLED;
24 is that correct?

25 A I would have to see the SLED form on it, ma'am.

1 Q Well, that's typically what's done with it; is that
2 correct?

3 A Yes.

4 Q And then you send it to SLED to see whether or not
5 they can make any type of match to what was found in her
6 with any of the suspects in the case?

7 A Yes, ma'am.

8 Q As far as you know, no type of comparison resulted in
9 any of suspects' fluids being in Ms. Blake; is that
10 correct?

11 A Not to my knowledge, no, ma'am.

12 Q Additionally, when you went to Ms. Blake's autopsy,
13 they also took some of her hair, head hair and pubic hair;
14 is that correct?

15 A That's correct.

16 Q And so those similarly would have been available to
17 test to see whether or not you found that hair anywhere
18 else; is that correct?

19 A Yes, ma'am.

20 Q And you told us that when you approached the scene
21 for Beverly, that her pants had been unzipped as were
22 depicted in the picture; is that correct?

23 A Well, when we rolled the body over the pants were
24 unzipped.

25 Q And could you tell anything about her panties just

1 when you saw her at the scene?

2 A No, ma'am.

3 Q Now, focusing your attention back at Dante's then, if
4 we could, would you agree or disagree that there was some
5 signs of a struggle on the porch?

6 A We had -- the only sign of a struggle we had on the
7 porch was three puddles of blood and a shell casing and a
8 bullet.

9 Q Nothing other than that?

10 A That was it.

11 Q Represented a struggle?

12 A Yes, ma'am.

13 Q And you'll agree with me, will you not, that you
14 found ammunition from a shotgun inside Dante's house?

15 A There was a lot of different things found from the
16 scene. I would have to look at that report again.

17 Q Take a look, please.

18 A Okay.

19 Q Were you looking at your sheet or the return of the
20 search warrant?

21 A I'm looking at my sheet itself. Do you have the
22 return with you? If I could look at that.

23 Q Let me get it out for you.

24 MS. SHEALY: May I approach, your Honor?

25 THE COURT: Yes, ma'am.

1 BY MS. SHEALY:

2 Q Do you recognize that?

3 A This is a Charleston County Sheriff's Office search
4 warrant return.

5 Q Okay.

6 A 36 Magnolia Road.

7 Q You had told us that -- I think the officers were
8 waiting outside for the search warrant to come back, it
9 was so cold that evening?

10 A Yes, ma'am.

11 Q Taking a look at that if you would, when a search
12 warrant is executed, you give the return to the owner of
13 the house if they're available; is that correct?

14 A Correct.

15 Q In looking at that, who was the return given to that
16 evening? Do you see where I'm talking about?

17 A I see where a detective signed it. I'm not seeing
18 anything else for it. Anthony Floyd.

19 Q Anthony Floyd. So, in other words, on that evening
20 Anthony Floyd was given the list of items that you had
21 taken from his home; is that correct?

22 A Yes, ma'am.

23 Q And in taking a moment to look at it, tell me whether
24 you see that some ammunition was taken from Tobias' house
25 that evening, including shotgun ammunition.

1 A It shows 2-38 caliber rounds, 2 9-millimeter Luger
2 bullets from a foot locker in Dante's bedroom, 16
3 9-millimeter Luger bullets from foot locker.

4 Q Would you speak up just a little bit for me, please.

5 A Okay. It has 2 9-millimeter Luger bullets from a
6 foot locker in Dante's bedroom, 16 9-millimeter Luger
7 bullets the same as 18, which I guess that would be in the
8 foot locker. Two FG32 auto bullets from the same as 18,
9 which are also in the foot locker.

10 Q Okay. And looking at that videotape earlier, there
11 looks like there was a lot of written materials in his
12 room as well, notebooks, et cetera; is that what you'd
13 say?

14 A Yes, ma'am.

15 Q There was a point in the videotape where you zoomed
16 in or whoever was videotaping it --

17 A Yes, ma'am.

18 Q -- zoomed in to like a little stenographer sheet of
19 paper that was taped up on the mirror?

20 A Up on the mirror, yes, ma'am.

21 Q And that made some reference to hustlers and pimps?

22 A Yes, ma'am. I believe it said third generation.

23 Q Third generation hustlers and pimps?

24 A Yes.

25 Q Okay. Now, in asking you about the -- you were at

SHEALY:

Do you recognize that?

This is a Charleston County Sheriff's Office search
return.

May.

5 Magnolia Road.

You had told us that -- I think the officers were
outside for the search warrant to come back, it
cold that evening?

Yes, ma'am.

Looking a look at that if you would, when a search
is executed, you give the return to the owner of
these if they're available; is that correct?

Correct.

Looking at that, who was the return given to that
? Do you see where I'm talking about?

See where a detective signed it. I'm not seeing
anything else for it. Anthony Floyd.

Anthony Floyd. So, in other words, on that evening
Floyd was given the list of items that you had
from his home; is that correct?

Yes, ma'am.

While in taking a moment to look at it, tell me whether
that some ammunition was taken from Tobias' house
during, including shotgun ammunition.

autopsy as it

of evidence at
evidence from the

That is in fact

involved in both

For some evidence
it needed to go, to
the locker?

For it. It would
detectives would give
here they wanted it
it, and we submit it
took it to SLED.

items that were
you signed for?

1 Q In looking at -- are you looking at the evidence
2 transfer sheet, is what you're looking at now?

3 A Correct.

4 Q Looking at number three, what does that reflect that
5 you took from the autopsy that evening?

6 A A black holster.

7 Q And if you wouldn't mind stepping down, please.

8 MS. SHEALY: Your Honor, I think without
9 objection I'd like to have this marked and introduced,
10 please.

11 MS. WILSON: No objection.

12 THE COURT: All right.

13 (WHEREUPON, Defendant's Exhibit No. 28 was
14 marked for identification and received into
15 evidence.)

16 BY MS. SHEALY:

17 Q Sergeant Presnell, if you could walk over here for
18 me. I'd ask if you can identify what is in the bag and
19 show it to the jury, please.

20 A These are a pair of Polo jeans from the autopsy, size
21 36/34, with a black belt, a black belt with a Bushmaster
22 black nylon holster.

23 Q Now, you have told us then that you also went to the
24 scene where Beverly Blake's body was found in
25 Lincolnville; is that correct?

1 A Yes, ma'am.

2 Q Is it fair to say there were several officers there
3 that evening processing the scene?

4 A Yes.

5 Q And the coroner also came, Rae Wooten?

6 A Yes, ma'am.

7 Q She was present at the scene as well?

8 A Yes, she was.

9 Q Had you worked with Rae Wooten often in the past?

10 A Very often.

11 Q How many cases would you say that you have been
12 involved with Rae Wooten?

13 A Hundreds.

14 Q Hundreds of cases?

15 A Yes, ma'am.

16 Q Let me stop and ask you this real quick.

17 Between the time of Dante Tobias' death and the
18 time that Beverly Blake's body was found, there had been a
19 good bit of media coverage regarding the incident of Dante
20 Tobias; isn't that correct?

21 A To tell you the truth, I don't watch the news very
22 often.

23 Q Okay. So you don't remember that?

24 A No.

25 Q Is it fair to say, though, that the sheriff's

1 department was looking for Brownie, you were aware that
2 they were looking for Brownie?

3 A Yes.

4 Q In an effort to find her, do you know whether or not
5 they were contacting the media to try to see if anybody
6 had seen her?

7 A I don't recall that.

8 Q I guess in your position, you and your wife will also
9 work on cases together? I mean, not that you're combined
10 necessarily, but you'll be assigned to a case and she'll
11 do the autopsy; is that fair to say?

12 A I guess you'd call it the nature of the beast because
13 I do the crime scene and she does the autopsies.

14 Q And she does the autopsies, okay.

15 Again, in this case with both Dante Tobias and
16 with Beverly Blake, your wife was the pathologist
17 involved; is that correct?

18 A That's correct.

19 Q Do you recall whether or not when Brownie was found
20 that there was criticism of the police for flashing her
21 face on all the media?

22 A I don't recall, ma'am.

23 Q You don't remember that?

24 A No.

25 Q Now, when you arrived at the scene in Lincolnville,

1 did you get close enough to her to see some dried blood on
2 her face?

3 A Yes, ma'am. I was there when they rolled her over.

4 Q Were you also able to see fly eggs in her eye?

5 A I could see white objects on her eyelashes. At the
6 time I didn't know what it was. I didn't know if it was
7 just because she was almost face down on the ground.

8 Q Let me ask you about that time.

9 Was there a certain officer that you would try
10 to bring to the scene if there was any type of insect
11 activity on the deceased's body?

12 A Yes, ma'am, we bring in an entomologist.

13 Q In this case, was Ed Gardener brought to the scene?

14 A No, ma'am.

15 Q He did not come to the scene?

16 A No, ma'am.

17 Q As far as you are aware, he didn't come out there
18 that night, have any involvement with it?

19 A No, ma'am, not to my knowledge.

20 Q Now, were you present to see the stiffness then also
21 in Brownie's body, whether there was rigor?

22 A There was a little bit of rigor, yes, there was.

23 Q Were you present when they moved her body as the
24 steam came from underneath?

25 A I've seen the video, and I didn't see anything. I

1 was the one running the video, and I didn't videotape
2 anything.

3 Q Okay. So if other people were commenting on the
4 steam, you didn't see it that evening?

5 A No, ma'am, I didn't see it myself.

6 Q Who all was present at the scene, you, Detective
7 Walker and Rae Wooten?

8 A And there was Sergeant Tittle, Investigator
9 Willoughby, Investigator Ringley, excuse me, Willoughby
10 and Wenger, and I believe Lieutenant Brock was there.

11 Q Who was directing where to take photographs and all
12 that evening? Would you be telling people what to do?

13 A No, ma'am. My unit is very self-sufficient. They
14 are guys who have at least 5-10 years on the job each.
15 They know what to do. They are sent to school to learn
16 how to do that. So basically I have an easy job when I
17 get to the scene, and I have to do my job, in which I help
18 them in drawing the scenes and doing measurements of the
19 scenes.

20 Q So the other guys do their own thing? Whoever is
21 taking the pictures knows how to take the pictures?

22 A Yes. Then I assist them anyway I can.

23 Q Are you aware that they marked the trees just to mark
24 the spot so that they would know where it was that
25 Brownie's body had been found?

1 A No, I don't believe I was there when they did that.

2 Q Is that a practice that you all generally engage in?

3 A Normally we don't have a lot of stuff, like, out in
4 the woods. Usually it's right near the edge of the woods.
5 This had a road going up to it. You would normally mark
6 the body and mark where it was somewhere, whether it's
7 putting a ribbon around a tree or something, spray paint
8 on the highway, try to mark it to come back at a later
9 date, come back in the daytime and photograph it in
10 daytime hours. We have to do that.

11 Q Tell me who was actually taking the photographs that
12 night then.

13 A Actually the camera was passed around to a couple of
14 people. I had the video camera mostly myself. At this
15 scene, I believe it was Willoughby that was taking most of
16 the photographs.

17 MS. SHEALY: Okay. Just a moment. Beg the
18 Court's indulgence just a moment.

19 BY MS. SHEALY:

20 Q Agent Presnell, can I get you to step back down for
21 me, please? I think Ms. Wilson may have asked you about
22 some of the photographs, but if we could just go over them
23 again.

24 I'm showing you what's been marked as
25 Defendant's Exhibit No. 14. This accurately depicts the

1 way Brownie's body looked that evening?

2 A Yes, ma'am. The way the photograph is taken is like
3 this. And this photograph is standing at her feet
4 shooting down on the bottom portion of her body.

5 Q And similarly with Defendant's Exhibit No. 15?

6 A That is about the same view from the same angle
7 except off to one side. You stand at her feet and you
8 look around the body. They're taught to do this, it's a
9 technique. You walk completely around the body
10 photographing everything all the way around the body and
11 showing where it's at.

12 Q I show you what's been marked as Defendant's Exhibit
13 No. 5. Was this photograph taken after her body had been
14 moved?

15 A That's showing -- after the body had been moved and
16 showing the impression on the ground from the weight of
17 the body sitting on the leaves and such.

18 Q And I think Ms. Wilson asked you about this one,
19 Exhibit No. 10?

20 A Yes. That is a closeup of the hands near the face.

21 Q Now, have you had the occasion to go back out to the
22 scene since that evening? Have you gone back out to
23 Lincolnville?

24 A No.

25 Q I think at this -- I will ask you about this,

1 Defendant's Exhibit No. 12 which shows the status of her
2 zipper.

3 A And the pants were extremely tight.

4 When we rolled the body that could have
5 happened, the zipper could have come off when we rolled
6 the body.

7 Q The zipper?

8 A The pants were extremely tight on the body, yes.

9 Q Now, some of those you've identified these. In fact,
10 I think these have been previously marked for
11 identification.

12 MS. WILSON: I think those are in.

13 MS. SHEALY: They are? Okay.

14 BY MS. SHEALY:

15 Q Does this reflect that area in daylight?

16 A To tell you the truth, I went back there in the
17 daylight and I could barely recognize it in the daylight
18 it was so dark that night.

19 Q Okay. Let me ask you this. I'm showing you
20 Defendant's Exhibit No. 1. Do you see that marker on the
21 tree?

22 A Yes.

23 Q Is that the type of marker that the photographer
24 would use?

25 A No. He would have to climb the tree to get that

1 high.

2 Q So you don't recognize it as anyone's marker?

3 A It's not to scale, so I couldn't tell you how high
4 off the ground it is. Just looking at the picture and
5 knowing the road, that that's the road she was on, that is
6 pretty high up the tree.

7 Q Let me ask you then, maybe this is a little bit
8 broader of a shot, Defendant's Exhibit 4, do you recognize
9 that area?

10 A It resembles that area, but I couldn't tell you.

11 Q It does resemble that area?

12 A It does resemble the area.

13 Q And can you tell me anything from Defendant's 3, that
14 is a little bit less broad of a shot, does that resemble
15 the area as well?

16 A Yes, ma'am.

17 Q Go ahead and have a seat for me, please.

18 Did you have any involvement at all with
19 Danielle Batista's car? I think you may have already
20 answered that you didn't have any involvement in the
21 search of her car; is that correct?

22 A I only had involvement with one of the searches.

23 Q Okay. Were you ever given any items that had come
24 out of Danielle Batista's car when she cleaned it?

25 A No.

1 Q And nothing you'd have with you would reflect whether
2 or not you had that?

3 A Do you have any specific items that you're looking
4 for?

5 Q I'm not sure how it would be referenced. Just glance
6 over it and just let me know if you see that.

7 A Once again, I have to look at both of these evidence
8 sheets, and there is quite a bit of evidence here. I have
9 not got every -- all the sheets.

10 Q In other words, if someone brought in the items out
11 of Danielle Batista's car, you're telling the jury that
12 you're not aware of that?

13 A No. The way the evidence forms are written up, it
14 tells where they came from, such as the address or from
15 the vehicle search warrant or something like that. I have
16 to know what I was looking for and where it came from.

17 Q Why don't you do this for me then. If you won't mind
18 looking at that and see if you can see a reference to a
19 vacuum bag.

20 A I do have a filter bag from an Oreck Buster.

21 Q I apologize, what?

22 A I do have a filter bag from an Oreck Buster, which I
23 take to be a vacuum cleaner.

24 Q And you're not sure how you received that?

25 A No, ma'am.

1 Q Now, at that scene that evening, the Lincolnville
2 scene, I'm sorry, did -- tell me again what you found that
3 you believe came from a gun at the scene in Lincolnville.

4 A Two bullet projectiles from the ground alerted to
5 when we ran the metal detector over the ground where the
6 body lay.

7 Q And those are the ones that Ms. Wilson previously
8 marked into evidence?

9 A Yes.

10 Q That was the only thing that you found in that area?

11 A Actually there was a bottle of perfume that was found
12 by Detective Brock and turned over to Detective Tittle a
13 little bit up the road.

14 Q No other projectiles?

15 A No, ma'am.

16 Q Okay. And what is the difference between a
17 projectile and a casing?

18 A The casing is what holds the projectile and holds the
19 powder.

20 Q And at the time you were unsure of what type of gun
21 may have been involved; is that correct?

22 A Yes, ma'am.

23 Q So you're telling us they took the metal detector and
24 were going over the area?

25 A Yes, ma'am.

1 Q Looking for whatever evidence they could find?

2 A We did that that night and then we came back during
3 the daylight and looked around and also ran the metal
4 detector over the ground. There was a lot of junk piles
5 out there. We kept alerting to everything and we couldn't
6 find anything.

7 Q Well, actually you were looking -- the metal detector
8 would have found any type of spent rounds; is that
9 correct? In the area that you were looking or any type of
10 fired bullets?

11 A Yes, ma'am. Any time we're alerted to something we
12 start digging down to see if there's a fired round that
13 would penetrate the leaves, which is about a foot deep,
14 and then we go into the ground and have to dig down to
15 find it. So any time it alerts we dig down, and most of
16 the time we find bottle caps and metal cans, stuff like
17 that.

18 Q And you were telling us when you were describing the
19 difference between an automatic and a semi-automatic with
20 a revolver, that a revolver has the capacity for how many
21 bullets?

22 A If you have a 22 caliber, it's up to nine in the
23 revolver cylinder. Most are six or five.

24 Q And when you all were looking at Ms. Blake's body
25 that evening at the scene, was there also also a long

1 strand of black hair found near the elbow area?

2 A Yes, ma'am.

3 Q You also took that into evidence?

4 A Yes, ma'am. We did.

5 MS. SHEALY: I beg the Court's indulgence just a
6 moment.

7 I have no further questions. Thank you.

8 MS. WILSON: Just a few questions.

9 Your Honor, at this time I'd offer State's
10 Exhibits 7 and 120 I believe without objection.

11 THE COURT: Any objection?

12 MS. SHEALY: No, sir.

13 THE COURT: All right. In evidence without
14 objection.

15 (WHEREUPON, State's Exhibits Nos. 7 and 120 were
16 marked for identification and received into
17 evidence.)

18 REDIRECT EXAMINATION

19 BY MS. WILSON:

20 Q You mentioned a perfume bottle that was found near
21 Beverly Blake's body. That's State's Exhibit 7, Egyptian
22 Musk?

23 A Yes, ma'am.

24 Q And I would just ask you, was that bottle checked for
25 prints?

1 A Yes, ma'am. Sergeant Tittle was given it by
2 Lieutenant Brock and he turned it over to us. I believe
3 it was the next day when we processed it for prints, and
4 it came back negative on prints.

5 Q Okay. Thank you.

6 Now, you mentioned -- Ms. Shealy asked you about
7 whether or not you saw any, she used the term "steam"
8 coming from the body, and you said you did not?

9 A No, I did not.

10 Q At that point you were operating the video camera?

11 A Yes, ma'am, we were in the process of turning the
12 body over, looking for evidence, and the body was turned
13 over and somebody stated at the scene that --

14 Q Okay. Have you worked many scenes where there were
15 dead bodies?

16 A Yes, ma'am.

17 Q Decomposing bodies?

18 A Yes, ma'am.

19 Q And when a body decomposes what is produced?

20 MS. SHEALY: Your Honor, I would object. Can we
21 approach?

22 THE COURT: Yes, ma'am.

23 (A bench conference was held with the judge and
24 attorneys in the presence of the jury but out of the
25 hearing of the jury.)

1 BY MS. WILSON:

2 Q In the past, not in this case, but in the past have
3 you as a part of your work seen bodies that have been in a
4 state of decomposition?

5 A Yes, ma'am.

6 Q Do you know what -- I mean, how generally, when
7 bodies decompose, what is happening?

8 A Yes, ma'am.

9 Q Okay. What is happening to the tissues and things on
10 the body?

11 MS. SHEALY: Your Honor, may we approach?

12 THE COURT: Yes.

13 (A bench conference was held with the judge and
14 attorneys in the presence of the jury but out of the
15 hearing of the jury.)

16 BY MS. WILSON:

17 Q When you have seen bodies decomposing, have you seen
18 anything about those bodies that you noticed?

19 A Yes, ma'am.

20 Q Okay. And what in your experience in working with
21 bodies have you seen bodies that are decomposing
22 producing?

23 A When a body is deceased the heart stops pumping and
24 the blood starts settling to the lowest denominator. They
25 call it postmortem lividity. Basically after a while --

1 MS. SHEALY: Your Honor --

2 THE COURT: You can tell her what you actually
3 see, sir. That is what the question was.

4 BY MS. WILSON:

5 Q What have you seen in your experience with bodies
6 that are decomposing?

7 A Bloating, turning of colors, decomposition, smell,
8 heat generated from the bacteria.

9 Q Heat generated from the bacteria?

10 A Yes, ma'am.

11 Q Is that different than the 98.6, the body
12 temperature?

13 A Well, without going into the medical details of it,
14 basically your body temperature starts dropping and things
15 happen to the body.

16 Q And this bacteria that you're talking about, is that
17 part of decomposition?

18 MS. SHEALY: Your Honor --

19 THE COURT: This person is not qualified as an
20 expert.

21 Sir, you can talk about what you see, smell,
22 hear by your individual senses.

23 All right. Go ahead, Counsel.

24 MS. WILSON: I don't have any other questions.
25 Thank you.

1 MS. SHEALY: Nothing further. Thank you.

2 THE COURT: You may step down, sir.

3 Ladies and gentlemen, I'm going to send you to
4 lunch. Please report back at 2:30. Do not discuss this
5 case in any way. Thank you very much.

6 (The jury left open court at approximately 1:02
7 p.m.)

8 THE COURT: I forgot to ask. Did you all say
9 you needed extra time?

10 MS. SHEALY: I think we need to accomplish what
11 we need to accomplish over the evening break.

12 THE COURT: That is not going to be today?

13 MS. WILSON: What we agreed to is instead of
14 coming up with this witness, using another witness, I
15 don't think we'll get to that witness today, so Ms. Shealy
16 should have time.

17 THE COURT: All right.

18 (A lunch break was taken.)

19 THE COURT: Are you ready?

20 MS. WILSON: Judge, our second witness this
21 afternoon will be the witness who will testify about the
22 cocaine in the bathroom, that whole issue, and I just
23 wanted to let the Court know that.

24 In addition, your Honor, just for scheduling
25 purposes, it looks like we have at least four witnesses

1 for this afternoon. What I was thinking was that last
2 witness would be Dr. Presnell, who we have to have a
3 Council hearing with. I was thinking, I've asked her to
4 be here at 4. If we could do the Council hearing and just
5 send the jury home so that they don't have to wait. I
6 anticipate that we will rest tomorrow.

7 THE COURT: All right. You're talking about
8 doing that at 4. How long will that take?

9 MS. WILSON: I have no idea how long it will
10 take. I've never done one, so I don't know how extensive
11 it's going to be. But I was thinking that with all the
12 stopping and starting, you know, by the time we take an
13 afternoon break and then have them break for the Council
14 hearing and bring them back, I just thought that might be
15 a good plan if the Court was up for it.

16 Our next witness who would naturally fall after
17 Dr. Presnell is a witness who is an inmate who is being
18 brought from West Virginia. It's my understanding he
19 should be here sometime today. So it would kind of be a
20 natural place for us to stop anyway.

21 In addition, just as an aside, Tim Cult is his
22 lawyer and he will need to be present in the courtroom for
23 that. Although if Tim Cult was called as a witness, it
24 was obtained as that witness's plea agreement, I think he
25 would like to be here for his client.

1 THE COURT: Do you have a problem with that?

2 MS. SHEALY: No, sir.

3 THE COURT: We'll see what happens as we go
4 along.

5 Ready to proceed?

6 MS. SHEALY: Yes, sir.

7 THE COURT: State?

8 MS. WILSON: Yes, sir.

9 If you would, just after this witness, if we
10 could send the jury out because you're going to have to do
11 that in camera hearing with the following witness.

12 THE COURT: What about the drug usage?

13 MR. BUTLER: We moved to exclude on State V Lyle
14 last time, whenever that was, in April, and you did not
15 rule on this one, I believe, on this issue.

16 THE COURT: When will the issue about in the
17 bathroom come up?

18 MR. BUTLER: Not this witness, the next witness.

19 MS. WILSON: The second witness.

20 THE COURT: Do we want to take that up now?

21 MS. WILSON: I just hate to make them wait. I
22 would rather start. This witness that is coming up may be
23 lengthy, so it might be a good time to stop anyway.

24 THE COURT: Is that fine?

25 MS. WILSON: Sir.

1 THE COURT: That's fine with me. Bring the jury
2 in.

3 (The jury came into open court at approximately
4 2:39 p.m.)

5 THE BAILIFF: All jurors are seated, your Honor.

6 THE COURT: Thank you. Please be seated.

7 We're ready to proceed, ladies and gentlemen.
8 Proceed.

9 MS. BURNEY: State calls Shannon Keyes.

10 SHANNON KEYES, after being duly sworn, testified
11 as follows:

12 THE CLERK: Please be seated. Please state your
13 full name for the Court and spell your last.

14 THE WITNESS: Shannon Diane Keyes, K-E-Y-E-S.

15 DIRECT EXAMINATION

16 BY MS. BURNEY:

17 Q You'll need to speak into that microphone so that
18 everyone can hear you.

19 A Yes, ma'am.

20 Q How old are you, Shannon?

21 A I'm 17.

22 Q Where do you live?

23 A I live in Crystal Springs, Florida.

24 Q How long have you lived in Florida?

25 A About a year.

- 1 Q Where did you live before you lived in Florida?
- 2 A Charleston, South Carolina.
- 3 Q Did you go to school here?
- 4 A Yes, ma'am.
- 5 Q Are you still in school?
- 6 A Yes, ma'am.
- 7 Q Do you know who Eric Zack is?
- 8 A Yes, ma'am.
- 9 Q How do you know Eric?
- 10 A When we went to Fort Dorchester High School together.
- 11 Q Say that again?
- 12 A When we went to Fort Dorchester High School together.
- 13 Q Were you and Eric Zack friends?
- 14 A Yes, ma'am.
- 15 Q Would you describe yourself as a close friend or just
- 16 school mates?
- 17 A Best friends.
- 18 Q Best friends?
- 19 A That's right.
- 20 Q Do you know Anthony Mann?
- 21 A Yes, ma'am.
- 22 Q How do you know him?
- 23 A Through Eric.
- 24 Q And how would you describe your relationship with
- 25 Anthony Mann?

- 1 A He was like my big brother.
- 2 Q Was he always like a big brother to you?
- 3 A No, ma'am.
- 4 Q What was your relationship at first?
- 5 A We were intimate before.
- 6 Q And then your relationship developed into a
- 7 friendship?
- 8 A Yes, ma'am.
- 9 Q Do you still consider yourself friends with him?
- 10 A Yes, ma'am.
- 11 Q How often would you talk with him when you were --
- 12 let me ask you this. When was the last time you talked
- 13 with him?
- 14 A About a year ago.
- 15 Q And how often would you talk with him?
- 16 A Every day or whenever he would call me or I would
- 17 stop by.
- 18 Q Would you visit with him also?
- 19 A Yes, ma'am.
- 20 Q Would he visit you, wherever you lived?
- 21 A Yes. We lived in the same neighborhood.
- 22 Q Did Amp know Eric?
- 23 A Yes, ma'am.
- 24 Q Did you all ever talk about someone named Brownie?
- 25 A Yes, ma'am.

1 Q You and Anthony Mann?

2 A Yes, ma'am.

3 Q What was that conversation about?

4 A He just had a friend named Brownie and he introduced
5 me to her. Other than that, I didn't know her.

6 Q Okay. Did you have a phone conversation with him
7 about Brownie?

8 A Yes, ma'am.

9 Q Okay. And when was that?

10 A In January.

11 Q Was it January of this year?

12 A Last year.

13 Q And what was that phone conversation about?

14 A He told me that -- okay. I paged him and he called
15 me, and he said that him and Brownie had to go do
16 something, or they went to go do something and it didn't
17 turn out the way it was supposed to, and he had to do what
18 he had to do and he had to lay low for awhile.

19 Q Now, when you say he and Brownie had to do something,
20 what did he tell you about doing something? What do you
21 mean?

22 A Handle some business.

23 Q Are those the words that you remember him saying to
24 you in the phone call?

25 A Yes, ma'am.

1 Q And what else did he tell you after that? That he
2 had to lay low for a while. Did he tell you anything
3 else?

4 A That he had to do what he had to do, and that if I
5 needed to get in touch with him, to page him or he would
6 call me.

7 Q Okay. Was that the end of the conversation?

8 A Yes, ma'am.

9 Q Okay. What did you do after you had that
10 conversation with him?

11 A Nothing really. I wasn't really talking to anybody
12 after that.

13 Q Why were you all talking about Brownie at all? Did
14 you know Brownie?

15 A I met her twice before.

16 Q Were you asking about Brownie?

17 A No, ma'am.

18 Q Okay. So who brought up the subject of Brownie?

19 A I believe he did.

20 Q Did you know someone called Maria Jacques?

21 A Yes, ma'am.

22 Q Does she have a nickname?

23 A Merv.

24 Q Have you been friends with Merv?

25 A I used to be.

1 Q When were you friends with Merv?

2 A In -- I think I met her in November of 2002.

3 Q Okay. You just met her this past November or did you
4 know her before?

5 A Last -- I'm sorry, my dates are sort of messed up.
6 Last November, I guess.

7 Q When you had this phone conversation with Amp in
8 January of last year, did you know Merv then?

9 A Yes, ma'am.

10 Q Okay. So that was January of 2002. Are you talking
11 about January of 2001 then that you met Merv?

12 A I believe so.

13 Q Now, did you and Merv ever hang out and do things
14 together?

15 A Only a few times.

16 Q What kinds of things would you do together?

17 A Party.

18 Q Where would you go?

19 A ODC's.

20 Q And is ODC Old Dorchester Club?

21 A Yes, ma'am.

22 Q Tell me about a time that you went to the Old
23 Dorchester Club with Merv last January, January of 2002,
24 sorry. Do you remember going to ODC with her?

25 A Yes, ma'am.

1 Q How did you get to ODC?

2 A She drove.

3 Q And do you remember about what time you went there?

4 Was it daytime, nighttime?

5 A It was nighttime. It was about 12:30, 1:00 a.m.

6 Q And what did you do when you got to ODC?

7 A Sat down, and I don't quite remember.

8 Q Did you see anybody there?

9 A Yes.

10 Q Who did you see?

11 A I saw Tiffany.

12 Q Who's Tiffany?

13 A Star.

14 Q She goes by Star?

15 A Yes, ma'am.

16 Q Did you talk to Star?

17 A For a brief moment.

18 Q What did you talk to Star about?

19 A I just asked her how she was doing.

20 Q Did you see anybody else at ODC?

21 A Yes, ma'am.

22 Q And who else did you see there?

23 A I saw Anthony Mann.

24 Q Okay. And did you talk with him?

25 A Yes, ma'am.

1 Q What did you talk with him about?

2 A We just asked -- he told me to stand up and give him
3 some loving, which meant a hug, because we hadn't seen
4 each other for awhile. And he told me that he had been
5 sick over at Kristy's house.

6 Q Okay. And had you had any talk with him in the
7 couple of days -- you said you hadn't seen each other for
8 awhile. I believe you testified that you talked to him
9 almost every day when you were friends with him.

10 A That was in the beginning of our friendship, and then
11 he just started to drift away. He would do his own thing
12 and then he would pop up unexpectedly.

13 Q So when you talked with him that night at ODC, what
14 did he talk to you about?

15 A I don't remember the whole conversation, but one
16 thing I do remember him saying was to stay away from
17 Tiffany because she was bad news.

18 Q Tiffany being Star?

19 A Yes, ma'am.

20 Q And did you know why he would tell you something like
21 that?

22 A No, ma'am. He was always looking out for me.

23 Q Had you had any falling out with Star or anything?

24 A No, ma'am.

25 Q Did you talk to him about what he told you about

1 Brownie?

2 A No, ma'am.

3 Q Earlier in the week, you said you had a phone
4 conversation with him?

5 A Could you repeat that?

6 Q Do you remember testifying about the telephone
7 conversation you had with Brownie?

8 A Yes, ma'am.

9 Q Then now you told us that you saw him at ODC?

10 A Yes, ma'am.

11 Q When you saw him then, did you talk about the
12 conversation you had previously had about Brownie?

13 A No, ma'am.

14 Q Now, do you remember talking to the police at some
15 time about all this, seeing him at ODC and the phone
16 conversation you had?

17 A Yes, ma'am.

18 MS. BURNEY: If I could approach, your Honor.

19 THE COURT: Yes.

20 (WHEREUPON, State's Exhibit No. 121 was marked
21 for identification only.)

22 BY MS. BURNEY:

23 Q I'm showing you what is marked for identification as
24 State's Exhibit 121. Take a look at that for a moment.
25 Do you recognize what that is?

1 A It's my statement.

2 Q What was the date that you gave that statement to the
3 police?

4 A January 14th.

5 Q And do you recall from looking at that statement when
6 you told them you had that conversation with Amp on the
7 phone?

8 A Earlier that week, earlier last week.

9 Q Just take a look at it.

10 A Earlier, the week before.

11 Q The week before January 14th?

12 A Yes, ma'am.

13 Q Now, when you gave that statement to the police, did
14 you tell them the truth about everything that had
15 happened?

16 A No, ma'am.

17 Q What was not the truth in that statement?

18 A That they had to handle some business with some black
19 guy.

20 Q And is there any part of that specifically that's not
21 true in that statement you just read?

22 A The black guy part.

23 Q Now, so everything else is true. He told you he had
24 to handle some business but just not with a black guy?

25 A Yes, ma'am.

1 Q Why did you put that in your statement?

2 A To be honest with you, I was just very scared and
3 they had told me about -- they mentioned the black guy, so
4 I decided to write that in my statement.

5 Q Did they show you any photographs or anything?

6 A Yes, ma'am.

7 Q From the photographs, who was in the photograph, or
8 what was the photograph of?

9 A Brownie.

10 Q Did they show you a photograph of anyone else?

11 A Star and Brownie together.

12 Q Okay. At some point did you talk with Anthony Mann
13 about your statement?

14 A Yes, ma'am.

15 Q What did you tell him about your statement? Did you
16 tell him that you had given a statement to the police?

17 A Yes, ma'am. No, he already knew.

18 Q He already knew. And when you talked to him, what
19 did you tell him about your statement?

20 A I told him that it was untrue.

21 Q Did you tell him just that part about the black guy
22 was untrue?

23 A No, I told him the whole thing was untrue.

24 Q Did he say anything to you about your statement?

25 A He said that I should tell the police or anybody

1 involved that they made me write it, which is how I felt,
2 that they did in a way at that time.

3 Q Right. Did they tell you what to write?

4 A No, ma'am.

5 Q But they wanted you to write a statement, whatever it
6 was?

7 A Yes, ma'am.

8 Q Why did you tell him that your statement was a lie?

9 A I don't know.

10 Q You don't know? Is your statement a lie?

11 A No, ma'am.

12 Q Do you remember when it was that Amp was asking you
13 about your statement?

14 A No, ma'am.

15 MS. BURNEY: That's all I have, your Honor.

16 CROSS-EXAMINATION

17 BY MS. SHEALY:

18 Q Shannon, I'm Jennifer Shealy. Let me ask you a
19 couple of questions.

20 You indicated, did you not, that you Anthony and
21 started out intimate, I believe is the way you refer to
22 it?

23 A Yes, ma'am.

24 Q Then it changed and I think you described him as
25 being like a big brother to you?

1 A Yes, ma'am.

2 Q Then you testified on direct that he tried to protect
3 you; is that correct?

4 A Yes, ma'am.

5 Q Now, you were telling us a little bit about when you
6 were being questioned by police that day?

7 A Yes, ma'am.

8 Q Did they keep you at the station for a very long
9 time?

10 A Yes, ma'am.

11 Q Was it like for eight hours?

12 A I thought it was for eight hours, but I'm not sure
13 what time. I didn't have a clock.

14 Q It felt like eight hours?

15 A I felt like a long time.

16 Q Were you handcuffed during the time they were talking
17 to you?

18 A Towards the end, yes, ma'am.

19 Q How many officers were coming in and out of the room
20 when you were being interviewed?

21 A Mainly two.

22 Q Do you recall which two officers those were?

23 A Detective Garland and Detective Walker.

24 Q And you mentioned that you put in your statement that
25 Anthony had said something about something going wrong

1 with the black guy; is that correct?

2 A Not necessarily, no. Not -- no.

3 Q The part that Ms. Burney was asking you about -- hold
4 on just a second.

5 Looking at the first page of your statement,
6 Shannon?

7 A Yes, ma'am.

8 Q You had indicated that he had told you that he and
9 Brownie got together to handle some business with some
10 black guy?

11 A Yes, ma'am.

12 Q You're telling the jury then that that was not true;
13 is that correct?

14 A Yes, ma'am.

15 Q As I understand your testimony, the police were
16 saying things to you that you felt like they wanted you to
17 say in your statement; is that correct?

18 A Yes, ma'am.

19 Q From what you remember from that conversation, that
20 was one of details; is that correct?

21 A Yes, ma'am.

22 Q You mentioned that they showed you a picture of Star
23 and Brownie; is that correct?

24 A Yes, ma'am.

25 Q And they showed you some other pictures of Brownie;

1 is that fair to say?

2 A Yes, ma'am.

3 Q Did they show you pictures of Brownie after she had
4 died?

5 A Yes, ma'am.

6 Q And it upsets you now; is that correct?

7 A Yes, ma'am.

8 Q It upset you then terribly, too; did it not?

9 A I had nightmares.

10 Q While you were in the room, was it scaring you when
11 they showed you those pictures?

12 A Yes, ma'am.

13 Q How old were you when you were in there?

14 A I'd just turned 16.

15 Q Was your mother in there with you?

16 A No, ma'am.

17 Q Your father?

18 A No, ma'am.

19 Q And so when they had you over there for what seemed
20 like eight hours that day, they were telling you -- they
21 were telling you information; is that correct?

22 A Yes, ma'am. I didn't know anything.

23 Q Did you write your own statement?

24 A Yes, ma'am.

25 Q And is this the first statement that you wrote to

1 them? This is the second statement that you wrote to them
2 that evening. It's the first statement regarding this
3 event; is that correct?

4 A Yes, ma'am.

5 Q And you signed your statement that evening indicating
6 that it was true?

7 A Yes, ma'am.

8 Q And the officers, were they standing over you when
9 you wrote your statement?

10 A I don't remember.

11 Q But it's fair to say -- and don't let me put words in
12 your mouth -- did you feel intimidated that night by the
13 police?

14 A Yes. That was the first time I was put in a
15 situation like that.

16 Q Did you get down to the police station by them
17 bringing you down there or did your parents take you down
18 there?

19 A No, ma'am, my mom and my dad drove me there.

20 Q Were they waiting for you at station?

21 A Yes, ma'am. Detective Garland showed up at my house
22 and asked us, asked my parents if they could take me there
23 for questioning.

24 Q But the whole time that you were in that room you did
25 not see your parents?

1 A No, ma'am.

2 Q And you told us that once you all -- that you all
3 became more like big brother, little sister; is that
4 correct?

5 A Yes.

6 Q Did you all -- was it hard for you to see him get
7 girlfriends after you all?

8 A No.

9 Q That was no problem for you?

10 A No.

11 Q Again, when you wrote the statement that day, it was
12 because the police had told you certain things; is that
13 correct? Is that correct?

14 A Yes, ma'am.

15 Q And while they were talking to you, they were showing
16 you pictures of Brownie where she had died; is that
17 correct?

18 A Yes, ma'am.

19 MS. SHEALY: Beg the Court's indulgence just a
20 second.

21 That's all I have. Thank you, your Honor.

22 REDIRECT EXAMINATION

23 BY MS. BURNEY:

24 Q Shannon, Ms. Shealy asked you about the police
25 telling you certain things and then you writing your

1 statement. Did they tell you that Amp had a phone call
2 with you in which he shared that he did something, had to
3 handle business?

4 A No, ma'am.

5 Q Okay. Did he tell you that, the police tell you that
6 you had seen him at ODC and he told you to stay away from
7 Star?

8 A No, ma'am.

9 Q What in that statement did the police tell you to
10 write?

11 A They didn't tell me to write anything, but what they
12 were saying I took it in my own to write in the statement.

13 Q Say that again?

14 A At first I didn't write anything and they kind of
15 told me that I knew something, and then I ended up writing
16 something down. And I put the black guy part in there
17 after they told me about Dante.

18 Q Now, that's what I want to ask you next. You kind of
19 answered it here, but when you first started talking to
20 the police, did you tell them what you knew about this
21 phone conversation with Amp and seeing him at ODC
22 immediately?

23 A No, ma'am.

24 Q Did you know that you weren't telling them
25 everything?

1 A Yes, ma'am.

2 Q The conversation with Amp and seeing him at ODC?

3 A Yes, ma'am.

4 Q Did you think they knew you didn't tell them
5 everything you knew?

6 A Yes, ma'am.

7 Q Okay. And you testified about being handcuffed
8 toward the end. Were you under arrest at that time?

9 A I wasn't aware of it, but I think I was.

10 Q Do you not know to this day that you were under
11 arrest?

12 A Yeah, I do now.

13 Q Okay. Let me just be clear. Did you have a phone
14 call with Amp?

15 A Yes, ma'am.

16 Q Did he tell you what you have in your statement about
17 handling business with Brownie, he had to lay low, he had
18 to do what he had to do?

19 A Yes, ma'am.

20 Q That's in your statement. Did that happen in
21 reality?

22 A Yes, ma'am.

23 Q Did you see him at ODC?

24 A Yes, ma'am.

25 Q And did you talk with him about talking to Star and

1 he telling you not to talk to her?

2 A Yes, ma'am.

3 Q Did you --

4 MS. SHEALY: Your Honor, I don't think this is
5 appropriate. I mean, she is asking in leading fashion is
6 one objection. Also, I just don't know if it's
7 appropriate redirect.

8 THE COURT: Refrain from leading questions,
9 Counsel.

10 BY MS. BURNEY:

11 Q In your statement and on cross you just talked
12 about -- never mind.

13 MS. BURNEY: That's all I have, your Honor.

14 MS. SHEALY: I have nothing further. Thank you.

15 THE COURT: You may step down.

16 Ladies and gentlemen, I need to send you out to
17 take up a matter. Please do not discuss this case in any
18 way. Thank you very much.

19 (The jury left open court at approximately 3:05
20 p.m.)

21 MS. WILSON: Do you want us to go ahead with
22 testimony?

23 THE COURT: Yes, I'm ready.

24 DUSTIN RYAN JAMES, after being duly sworn,
25 testified as follows:

1 THE CLERK: Please be seated. Please state your
2 full name for the Court and spell your last.

3 THE WITNESS: Dustin Ryan James, J-A-M-E-S.

4 MS. WILSON: Your Honor, just for the purposes
5 of this hearing I will go straight to the issue at hand.

6 THE COURT: All right.

7 IN CAMERA DIRECT EXAMINATION

8 BY MS. WILSON:

9 Q Mr. James, do you know Anthony Mann?

10 A Yes.

11 Q Do you recall seeing him at the ODC on Friday,
12 January 11th, the Friday before you were arrested?

13 A Yes.

14 Q And --

15 THE COURT: Lean towards the mike, please.

16 BY MS. WILSON:

17 Q Do you remember about what time it was that you saw
18 him at ODC or anything specific like that?

19 A It was late.

20 Q And where was it that you first saw him?

21 A In the middle of the club.

22 Q At some point did you all use the bathroom?

23 A Yes.

24 Q What happened when you got to the bathroom?

25 A We were doing drugs.

1 Q Okay. Do you know who had the drugs first, whether
2 you had them or Mann had them?

3 A No.

4 Q Do you know where the drugs came from?

5 A No.

6 Q During the time that you all were using -- what kind
7 of drugs was it?

8 A Coke.

9 Q And how were the two of you using it?

10 A Sniffing it.

11 Q And after, or during the time that you all were
12 sniffing the cocaine, did you ask him any questions about
13 Brownie?

14 A I had asked if he had seen her.

15 Q And what did he tell you?

16 A First he just motioned his hands.

17 Q Okay. Demonstrate to the Court what he did when he
18 motioned his hands.

19 A Went across his throat like this pointing to his
20 chest and held his finger up against his mouth.

21 Q After he did that, did you ask him any questions
22 about those motions?

23 A I told him I didn't want to know, it wasn't none of
24 my business.

25 Q Did he end up telling you what he had done?

1 A Yes.

2 Q What did he tell you?

3 A He was doing a deal with dude and he had to do him
4 and Brownie saw it so he dealt with her and put her in the
5 woods.

6 Q Okay. So when he told you he was doing a deal with
7 the dude, what kind of deal did he tell you it was?

8 A He didn't specify.

9 Q Did he tell you it was a drug deal?

10 A No. That was the impression I got.

11 Q And Brownie saw this?

12 A I wasn't there.

13 Q I mean, he told you Brownie saw this?

14 A That was the assumption I got from what he said.

15 Q Did he tell you that it was Brownie's roommate?

16 A I believe so. I knew him and Brownie were missing
17 and her roommate was dead.

18 Q When he was telling you this, you said you had not
19 asked?

20 A No.

21 Q In fact, you had told him you didn't want to know any
22 more?

23 A Yes.

24 Q After he revealed this to you, was anything happening
25 with the bathroom door?

1 A Yeah, there was some people beating on the bathroom
2 door because they wanted to come in.

3 Q What happened after you had this conversation with
4 Mann, with the people who had been beating on the door?

5 A There was a fight in the club. Everybody was
6 involved.

7 Q Was Anthony Mann involved?

8 A Yes.

9 Q Were you involved?

10 A Yes.

11 Q Okay. And what did Anthony Mann do during this
12 fight?

13 A He was yelling, I'm wanted for two murders now, I
14 will kill you, too.

15 Q Do you know who he was yelling that out to?

16 A To the whole club. He was yelling it to the people
17 we were fighting.

18 Q You were able to hear that?

19 A Yes.

20 MS. WILSON: Judge, I think that's all I have
21 for this hearing.

22 THE COURT: All right. Any questions?

23 MR. BUTLER: Beg the Court's indulgence one
24 moment.

25 IN CAMERA CROSS-EXAMINATION

1 BY MR. BUTLER:

2 Q Dustin, who else was in the bathroom with you?

3 A There was two or three other people in there.

4 Q Do you know who they were?

5 A No.

6 Q Were they doing drugs, too?

7 A I believe so.

8 Q How long had you all been in the bathroom?

9 A Five, ten minutes.

10 Q And at what point did he say what you say he said?

11 A After he did the hand gestures.

12 Q But you're still in the bathroom?

13 A Yes.

14 Q The door is still shut?

15 A Yes.

16 Q And whoever else was with you was still in the
17 bathroom?

18 A Yes.

19 Q Is it a big bathroom?

20 A No.

21 Q When you say he said what he said out in the club,
22 was it during the fight?

23 A Yeah. It had broke up.

24 Q After the fight?

25 A It had broke up.

1 Q Was he still inside the club when all this was said?

2 A Yes.

3 Q And he said it to the person he has fighting with?

4 A He was yelling it out loud in front of the whole
5 club.

6 Q And the people that were involved in the fight were
7 still standing around?

8 A Yes.

9 MR. BUTLER: Beg the Court's indulgence one
10 moment.

11 BY MR. BUTLER:

12 Q Dustin, tell me again exactly what it was that you're
13 saying he said out on the floor in front of the group
14 about two murders.

15 A He said, I'm wanted for two murders and I will kill
16 you, too.

17 Q The "you" would be the person he's fighting?

18 A Yes.

19 MR. BUTLER: I don't have anything further.

20 MS. WILSON: Judge, may we approach?

21 THE COURT: Yes, ma'am.

22 (A bench conference was held with the judge and
23 attorneys.)

24 IN CAMERA REDIRECT EXAMINATION

25 BY MS. WILSON:

1 Q Sometime later when you were in jail in Berkeley
2 County, did you see Anthony Mann at the end?

3 A Yes.

4 Q And when you saw him, where were you?

5 A I was in the general population area.

6 Q And can you describe what that area looks like?

7 A Big room, a lot of cells on top and bottom floors,
8 tables in the middle.

9 Q And could you see Anthony Mann from where you were?

10 A Yes.

11 Q Where could you see him?

12 A There is a glass entrapment area at one end of the
13 room, he was inside that.

14 Q And what did he do when he saw you?

15 A He called somebody over to the glass.

16 Q Somebody that was in your area?

17 A Yes, and held up a piece of paper that I thought was
18 my statement and let them read it.

19 Q What made you think it was your statement?

20 A Because after they read it they came to the table and
21 talked to me about it.

22 Q And which statement was that that they told you
23 about?

24 A The statement on January 14th.

25 Q The statement that you just testified to about

1 earlier?

2 A Yes.

3 Q Okay. And if you could explain to the Court how you
4 took that or what you took that to mean when Anthony Mann
5 told another inmate in the area where you are that you had
6 given a statement against him?

7 A That he was putting my name out there.

8 Q What does it mean to put your name out there?

9 A So people that I was locked up with would know what
10 happened and I would be shunned upon.

11 Q Okay. Would you be considered a snitch?

12 A Yes.

13 Q And how good is it for you to be considered a snitch
14 in jail?

15 A Not good.

16 Q And did you understand that when that person came
17 back having information about your statement on Anthony
18 Mann?

19 A Yeah, but they said --

20 Q You thought you could handle yourself?

21 A They said fuck him. The person who came to me said
22 fuck him, talking about him.

23 Q And as a result of that incident, did your lawyer
24 write a letter to one of the prosecutors complaining about
25 this incident?

1 A Yes.

2 Q And I believe you told your mom what had happened and
3 she told your lawyer?

4 A Yes.

5 MS. WILSON: That's all on this issue, your
6 Honor.

7 IN CAMERA RECROSS-EXAMINATION

8 BY MR. BUTLER:

9 Q Just wanted to make sure I understand.

10 Where is Anthony Mann when this happens?

11 A In the glass entrapment area. When you first walk
12 into the cells, there's something you call the tower, the
13 guard's behind that. In front of that was a glass room so
14 they can look from the tower through the glass out into
15 the pod, which is where our cells are. He was inside the
16 entrapment area.

17 Q Okay. And where were you?

18 A Inside the pod.

19 Q Okay. And he put the statement up to the glass?

20 A Yes.

21 Q And somebody else went and read it?

22 A Yes. He called them over there.

23 Q And then that person went and told you that that was
24 the statement you had written?

25 A Yes.

1 Q And that's all that happened and you took that to
2 mean that he was going to let them know you were a snitch?

3 A Yes. They asked me what the deal was, how it all
4 happened.

5 MR. BUTLER: That's all I have.

6 May we have the witness excused, please?

7 THE COURT: Step down, please, sir. We'll be
8 back with you soon.

9 MS. WILSON: If you'll just wait outside.

10 THE COURT: Argument?

11 MR. BUTLER: Can we do the last one first?

12 THE COURT: Okay.

13 MR. BUTLER: The simplest problem with this, the
14 easiest way resolve it, it seems to me, is whether that
15 evidence is improper character evidence or not, it
16 involves hearsay statements. For it to make any sense at
17 all, for it to be relevant, it's going to require hearsay
18 testimony from this witness. When he says, The other
19 person, the unnamed inmate told me that's your statement,
20 that's hearsay and it's inadmissible. Without that
21 testimony, the rest of it doesn't make any sense, all
22 right? So as a prior matter, I take exception to that
23 portion of the testimony and move to exclude it. I guess
24 we'll have the Court deal with that aspect of it first,
25 which if that doesn't come in, it seems to me the rest of

1 it does not come in.

2 THE COURT: Yes.

3 MS. WILSON: Your Honor, I think --

4 THE COURT: You mean insofar as the incident at
5 the jail?

6 MR. BUTLER: Yes, sir.

7 MS. WILSON: Beg the Court's indulgence one
8 second.

9 Your Honor, I don't think that it is a hearsay
10 statement, because what's important is that the statement
11 was made. In other words, whether or not that actually
12 was the statement, certainly he was left with the
13 impression from that intermediary that what was held up
14 had been his statement. He was left that impression based
15 on seeing Anthony Mann, seeing him hold up the piece of
16 paper, and then the inmate miraculously having information
17 about his statement.

18 I don't know whether the piece of paper was
19 actually his statement or not, and that would be the truth
20 of the matter. What is important is Anthony Mann making
21 these gestures, doing this demonstration, for lack of a
22 better word, and conveying that to Dustin James while
23 they're both in jail.

24 THE COURT: How do you want to use that for
25 proof? What do you wish to prove with that?

1 MS. WILSON: I think it shows that this witness
2 at that time had given a statement that was very
3 incriminating against this defendant, and he set out to
4 intimidate him while they were both in jail. I think
5 that's clear that when he's calling over another inmate
6 holding up a statement, what he claims to be a statement.

7 MR. BUTLER: What he did supposedly is only
8 intimidating, if in fact that's his statement. If that's
9 in fact this witness' statement. And the only evidence we
10 have that it was in fact that witness's statement is what
11 someone else told him. That is the very definition of
12 hearsay.

13 I can't cross-examine the person who told the
14 witness that was your statement. So I disagree with her
15 when she says that the truth of the statement is not the
16 issue.

17 If the statement to this witness from the
18 unnamed inmate is false, then it wasn't a threat at all.
19 If he held up something else, then it was not a threat at
20 all, then the unnamed inmate is lying. But I can't cross
21 him because he's not here.

22 THE COURT: What about that he can't cross on
23 that?

24 MS. WILSON: What I'm arguing is, it doesn't
25 matter what he actually was holding up as long as Anthony

1 Mann is conveying to that person something about Dustin
2 James, and I think --

3 THE COURT: Yes, but you need to know what it is
4 he's conveying. I mean, if it's some other kind of
5 gesture, that is not necessarily intimidation.

6 MS. WILSON: Right. If what he is conveying --
7 what I'm saying is, there's no question he indicated to
8 this other person that it's his statement. Whether or not
9 it actually was his statement is what I'm saying doesn't
10 matter. And that would be the truth of the matter,
11 whether or not it was actually, you know, that document.

12 MR. BUTLER: Maybe I've misunderstood, but the
13 only reason that we know what the defendant's supposedly
14 conveyed to the unknown person is what the unnamed person
15 tells to a witness.

16 THE COURT: What she's trying to say is that if
17 the other unknown inmate thought it was his statement and
18 conveyed that to the witness, then this doesn't suggest
19 that Mr. Mann intended to convey that.

20 MR. BUTLER: That's right. If this man held up
21 his own arrest warrant and said, I'm charged with murder,
22 and then an unnamed inmate who I can't cross says, He's
23 trying to bust you for being a snitch, then that says
24 nothing about him. He might have done something
25 completely innocent. I can't cross-examine a person who

1 is making a behavior appear to be threatening.

2 THE COURT: I'm not convinced that meets any
3 appropriate standard for its admission without the other
4 inmate being here.

5 As to the other matter, do you wish to be heard?

6 MR. BUTLER: Yes. State v Lyle, move to exclude
7 it. I will let her argue as to why it falls under the
8 exception, but I move to exclude it.

9 THE COURT: Yes, ma'am.

10 MS. WILSON: Your Honor, again, I think that
11 this clearly is part of what happens with him and Dustin
12 James. I think it gives the context of the statement
13 which I think is important, because without the context of
14 the statement, I think it would seem odd to anyone that
15 these two guys are going to use the restroom and he blurts
16 this out. But I think the fact that they are -- it shows
17 their relationship, their level of trust to be doing
18 illegal drugs in that bathroom. I think all of that lends
19 itself to the credibility of Anthony Mann's willingness to
20 trust Dustin James with this kind of information.

21 THE COURT: Are you trying to admit him to show
22 motive, intent, common scheme, identity, or anything?

23 MS. WILSON: I'm not trying to offer it under
24 404(b).

25 THE COURT: What are you offering it under?

1 MS. WILSON: I'm trying to offer it as the
2 context of when the statement was made.

3 THE COURT: But that ignores the fact that that
4 is his bad conduct. I mean, you have to go to the rules
5 about bad conduct.

6 You don't automatically just get in the context
7 of every statement if it reveals other conduct or we'd
8 never have to have these hearings. It would just be,
9 Well, the defendant made a statement and that's the end of
10 the analysis. And it's not really res gestae in terms of
11 the context because you're not talking about the context
12 that you plan on, you're talking about the context of the
13 admission.

14 MS. WILSON: And I think it's important to show
15 the entire context of that admission because that goes to
16 the validity or the credibility of that admission. It
17 also establishes their relationship.

18 THE COURT: But if it goes to the credibility of
19 the admission, it seems to me -- of course, again, I don't
20 sit up here and try to say that I'm the one trying these
21 cases, but it seems to me that credibility is enhanced if
22 you're talking from your perspective, if you're just
23 talking about the person that he's having a conversation
24 with. It seems to me that the context of the statement is
25 diminished, at least from a defense perspective, if

1 someone is arguing, well, all this is being supposedly
2 said while someone is under the influence of cocaine. It
3 seems to bolster your side.

4 MS. WILSON: I think that is one way to look at
5 it. I think that it makes more sense in looking at these
6 witnesses, the types of lives they were living, in showing
7 how this would have come up and why they would have been
8 talking about this in such a place. I mean, I don't think
9 a stone sober person would make that kind of statement at
10 that kind of place. And I think the fact that they're --

11 THE COURT: But there's nothing to suggest that
12 a person under the influence of cocaine makes that kind of
13 statement either. The question is if we were to weigh
14 this under the probative prejudice type of analysis, what
15 I said is indeed true, the probative value from your
16 perspective in seeking to introduce that information is
17 less than the prejudicial value to the person seeking to
18 oppose the admission.

19 If I were looking at it from a defense
20 perspective, though, on the other hand, I can see the
21 probative value may be greater to let it in. Of course,
22 they have their reasons for not wanting it in.

23 MR. BUTLER: Judge, can I add one thing? I
24 think this one, too. Fortunately for us, it can be made
25 simple. The facts themselves as testified by this witness

1 undermine Ms. Wilson's theory. Because her theory is the
2 fact that they're doing cocaine in the bathroom together
3 shows that they had that sort of relationship, that they
4 were trusting. Well, this guy just said that he's in
5 there snorting drugs with two other guys whose names he
6 can't even tell us. So the facts themselves undermine
7 that theory. It just doesn't work.

8 MS. WILSON: But he doesn't know that. That
9 doesn't mean that Anthony Mann doesn't know the other two
10 people. He might have trusted them, too.

11 THE COURT: But nothing came out about that.

12 MS. WILSON: I don't know about that part. I
13 mean that's Anthony Mann's end of it. I know that my guy
14 didn't know him, but my witness is not the one who is
15 making the incriminating statement.

16 THE COURT: No, but your witness didn't say
17 anything about who knew each other in that room or any
18 connections.

19 MS. WILSON: Right. And what I'm saying is,
20 that's because he's not in a position to say who Anthony
21 Mann knew. He tells the Court that he didn't know anybody
22 else. And he doesn't know anybody else. He's not the one
23 making this incriminating statement in front of other
24 people.

25 THE COURT: Well, again, for the reasons I

1 indicated, I think the probative value from your
2 perspective is outweighed by the prejudicial value to the
3 defendant in that regard. I don't think that it is
4 necessary to publish the context of that situation.

5 A statement is a statement. The defendant was
6 in the bathroom and made that statement to someone, so be
7 it. I don't think that that is so probative that it would
8 outweigh the prejudicial value that they were using
9 cocaine at the time.

10 So just the reference to the drugs will not come
11 in, correct?

12 MS. WILSON: If you say so.

13 THE COURT: I'm making sure everyone understands
14 that.

15 MR. BUTLER: And the second thing, the
16 conversation about what happened in Berkeley County.

17 THE COURT: Right. All right.

18 MS. WILSON: I need to instruct the witness.

19 THE COURT: You're instructing the witness not
20 to mention the drug use?

21 MS. WILSON: Someone is, yes.

22 THE COURT: Okay. I think it would be important
23 to verify that.

24 Ready to proceed.

25 MS. WILSON: Yes.

1 THE COURT: Bring the jury in, please.

2 (The jury came into open court at approximately
3 3:32 p.m.)

4 THE BAILIFF: The jurors are seated, your Honor.

5 THE COURT: Thank you. Please be seated.

6 Ladies and gentlemen, we're ready to proceed.

7 Call your next witness, please.

8 MS. WILSON: Dustin James.

9 DUSTIN RYAN JAMES, after being duly sworn,
10 testified as follows:

11 THE CLERK: Please be seated. Please state your
12 full name for the Court and spell your last.

13 THE WITNESS: Dustin Ryan James, J-A-M-E-S.

14 DIRECT EXAMINATION

15 BY MS. WILSON:

16 Q Mr. James, how old are you?

17 A Twenty-two.

18 Q How far did you go in school?

19 A Tenth grade.

20 Q And do you know a guy by the name of Anthony Mann?

21 A Yes.

22 Q And how long before he was arrested did you know him?

23 A Not long, a couple of months.

24 Q A few months?

25 A Yes.

1 Q Do you recall seeing him at the Old Dorchester club
2 on Friday, January 11th?
3 A Yes.
4 Q And what time of night was it that you were there?
5 A Late.
6 Q Are you sure that you were there Friday night or
7 could it have been on into the Saturday morning of the
8 next day?
9 A Yeah, it was after 12.
10 Q So it may have been early Saturday morning?
11 A Yes.
12 Q Where is this Old Dorchester Club?
13 A Down by the bus station by 526.
14 Q All right. And when you went there that night, had
15 you heard anything about Brownie?
16 A I heard that her roommate was dead and her and Amp
17 were on the run.
18 Q And that night at the ODC did you see Amp?
19 A Yes.
20 Q And did you have a chance to talk with him?
21 A Yes.
22 Q Where were you when you talked to him?
23 A In the bathroom.
24 Q Can you demonstrate to the jury or tell the jury how
25 big this bathroom was?

1 thing I'm telling you.

2 I can cross-examine him now, but I can't
3 cross-examine him at the time he makes this statement.
4 That's the whole reason you can't have prior consistent
5 statements. And then you say, Didn't you tell so-and-so
6 that, didn't you tell so-and-so that? It's improper.

7 MS. WILSON: It's not a prior consistent
8 statement. A prior consistent statement is when he
9 testifies to one thing and then comes back and says you
10 know he gave a statement to the police. He is saying what
11 his action was next. His next action was warn her to stay
12 away from him.

13 MR. BUTLER: It's not made to the police, it's
14 made to Maria Jacques. It's a prior consistent statement.

15 THE COURT: Couldn't he say that warned her to
16 stay away because of what he said?

17 MS. WILSON: As a result of your conversation
18 with Anthony Mann.

19 THE COURT: Yes.

20 MR. BUTLER: Yes, that's fine.

21 MS. WILSON: But it is important. I still don't
22 think it's hearsay. It's his own statement.

23 THE COURT: If you say it that way, I guess it's
24 in.

25 MS. WILSON: I don't want to say it that way. I

1 think it's important to show what he tells her.

2 MR. BUTLER: But that is exactly wrong. That's
3 what you can't do. For the same reason you can't put up
4 somebody and say, Didn't you tell the police the exact
5 same thing you told us? Yes. It's a prior consistent
6 statement. It's the same thing you have to do if you tell
7 it to Maria Jacques instead of the police. It's a prior
8 consistent statement. It's hearsay.

9 MS. WILSON: I am using it to show that he
10 warned her.

11 THE COURT: Yes. The problem with that is, did
12 you warn her or say anything to her based on what Mr. Mann
13 had said, and it's irrelevant, whatever he wants to say.

14 MS. WILSON: Then I can't use, can't say, Did
15 you tell her what Mr. Mann said?

16 THE COURT: Yeah, you can say that, Did you tell
17 her what Mr. Mann said, but not what the statement was.

18 BY MS. WILSON:

19 Q Mr. James, you said you left with Merv?

20 A Yes.

21 Q When you left with her, did you tell her anything
22 about your conversation with Anthony Mann?

23 A Yes.

24 Q And did you give her any instructions as a result of
25 what Mr. Mann had told you?

1 A Yes.

2 Q What did you tell her?

3 A Told her he was into something, stay away from him.

4 Q Now, did you know a guy named Eric Zack?

5 A I had met Eric two or three times.

6 Q And did you ever have an opportunity to observe Eric
7 Zack with Anthony Mann?

8 A Yes.

9 Q And how would you describe their relationship?

10 A Eric was Amp's do-boy.

11 Q What do you mean by that?

12 A He was young and wanted to be cool, so he would run
13 errands and do whatever Amp told him to do, pick a girl
14 up, drop her off, go to the store, whatever.

15 MR. BUTLER: I object to relevancy.

16 THE COURT: I will allow that.

17 MS. WILSON: Beg the Court's indulgence.

18 That's all I have, your Honor.

19 MR. BUTLER: May it please the Court.

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. BUTLER:

23 Q Dustin, when did you get out of federal prison?

24 A June 4th.

25 Q This past June?

1 A Yes.

2 Q Two months ago?

3 A Yes.

4 Q You finished doing time for felony possession of a
5 firearm?

6 A Unlawful possession.

7 Q Is that one count or two counts?

8 A One.

9 Q And you finished that sentence?

10 A Yes.

11 Q You're on parole?

12 A Supervised release. Feds don't have parole.

13 Q Supervised release is like parole; if you screw up
14 they can throw you back in and make you finish your
15 sentence?

16 A Yes.

17 Q Before that, in 1995, you were adjudicated for a
18 crime of criminal sexual conduct in the second degree?

19 A No.

20 Q You were not?

21 A No.

22 Q Stalking?

23 A No.

24 Q Assault with intent to kill?

25 A Yes.

1 Q Larceny?

2 A Petty.

3 Q Receiving stolen goods?

4 A Yes.

5 Q Contempt?

6 A Yes.

7 MR. BUTLER: Beg the Court's indulgence one
8 moment, please.

9 THE COURT: Yes.

10 BY MR. BUTLER:

11 Q So you don't, you're not convicted of criminal sexual
12 conduct in the second degree, stalking, assault with
13 intent to kill?

14 A No. Assault with intent to kill, yes.

15 Q Assault with intent to kill?

16 A Petty larceny, possession of stolen property,
17 contempt of court.

18 Q 2001, false information to police?

19 A Yes.

20 Q And when you gave this statement where were you, the
21 statement to the police?

22 A I was in the interrogation room in Berkeley County.

23 Q They had picked you up on a burglary warrant, right?

24 A Yes.

25 Q And Berkeley County is the county next to Charleston

1 County, right?

2 A Yes.

3 Q And you understand these same prosecutors prosecute
4 Berkeley County, right?

5 A No.

6 Q You didn't know that, okay.

7 So when you go in and give your statement, they
8 bring you in on a warrant, Berkeley County warrant for
9 burglary in the first degree, right?

10 A Yes.

11 Q What happened to that charge?

12 A I pled guilty.

13 Q You did?

14 A Yes.

15 Q To burglary what degree?

16 A I pled it down. I think it ended up to possession of
17 stolen property.

18 Q So the Berkeley charge was dismissed?

19 A Yes.

20 Q And instead you pled to possession of stolen
21 property?

22 A It was that or receiving stolen goods, one of the
23 two.

24 Q And what sentence did you receive?

25 A I received 18 months.

1 Q And you know, of course, the burglary first carries
2 15 to life?

3 A Yes.

4 Q So instead of getting 15 to life, you got 18 months?

5 A Yes. I paid a lot of money for a lawyer.

6 Q The thing that you said that Anthony said to you in
7 the bathroom, two other people were in the bathroom, too?

8 A Yes.

9 Q And as you just described, it's a small bathroom?

10 A Yes.

11 Q And everybody was still in there when he said what
12 you said he said?

13 A Yes.

14 Q And the thing that you said he said out in the club,
15 that was after the fight was over?

16 A Yes.

17 Q But in the club?

18 A Yes.

19 Q In front of everybody who was in the club?

20 A Yes.

21 Q He was yelling?

22 A Yes.

23 Q And there were 30 or more people there?

24 A Yes.

25 Q And he said, I will kill you, too, and the "you"

1 would be the person he was fighting with?

2 A Yes.

3 Q He said it to that person?

4 A Actually there was two he was fighting with.

5 Q And he yelled it to those two people?

6 A Yes.

7 MR. BUTLER: Beg the Court's indulgence.

8 BY MR. BUTLER:

9 Q You have a phone, don't you?

10 A Yes.

11 Q Do you know where "9" is on the phone?

12 A Yes.

13 Q You know where "1" is on the phone?

14 A Uh-huh.

15 Q When you heard Amp incriminate himself in these two
16 homicides, you called 911, didn't you?

17 A No.

18 Q You didn't, did you?

19 A No, the police were already out front.

20 Q Who is -- you know Maria Jacques and Shannon Keyes?

21 A Yes.

22 Q How did you feel about them?

23 A Young, want to be with the crowd.

24 Q Is it fair to say that you had some amount of
25 affection for those two?

1 A No.

2 Q You didn't care for them one way or the other?

3 A Yeah. I've know Merv and someone she's known since
4 she was a child, and Merv is a good friend. Me and her
5 are cousins.

6 Q And you know that Amp was seeing Maria Jacques
7 sometimes, right?

8 A Yes.

9 Q And that is fine with you?

10 A No.

11 Q You didn't like the fact he was seeing Maria Jacques?

12 A No.

13 MR. BUTLER: Beg the Court's indulgence.

14 BY MR. BUTLER:

15 Q You said the police were at ODC?

16 A Yes.

17 Q So I'm sure you went up and told them what you had
18 heard, right?

19 A No.

20 Q Being the model citizen that you are, you didn't go
21 tell them, did you?

22 A I never claimed to be a model citizen, no.

23 Q Who's Tanya Garrett?

24 A My girlfriend.

25 Q She was your girlfriend at the time?

1 A Yes.

2 Q And how did you feel about Amp's relationship with
3 her?

4 A They didn't have one. She didn't like him, she
5 didn't like me being around him.

6 Q As far as you know?

7 A As far as I know.

8 MR. BUTLER: That's all I have. Thank you.

9 THE COURT: Anything else?

10 REDIRECT EXAMINATION

11 BY MR. WILSON:

12 Q Mr. James, you don't have any kind of agreement to be
13 here to testify, do you?

14 A No, all my court is done with.

15 Q And what do you have to make you be here?

16 A Nothing. Just makes me look bad.

17 Q I mean, what made you come here today? Do you have a
18 subpoena?

19 A Yes.

20 Q Is that why you're here?

21 A Yes. I don't want to be here.

22 Q You're not happy about it?

23 A No.

24 Q Did you complain about it?

25 A Yes, actually I did.

1 MS. WILSON: That's all I have.

2 MR. BUTLER: Nothing further.

3 THE COURT: You may step down, sir.

4 MS. WILSON: Your Honor, may he be excused?

5 THE COURT: Any objection?

6 MR. BUTLER: No objection.

7 THE COURT: He may be excused.

8 THE WITNESS: Thank you, sir.

9 MS. BURNEY: State calls Maria Jacques.

10 MARIA JACQUES, after being duly sworn, testified
11 as follows:

12 THE CLERK: Please be seated.

13 Please state your full name for the Court and
14 spell your last.

15 THE WITNESS: Maria Ann Jacques, J-A-C-Q-U-E-S.

16 DIRECT EXAMINATION

17 BY MS. BURNEY:

18 Q Maria, how old are you?

19 A Nineteen.

20 Q Do you have a nickname?

21 A Yes, ma'am.

22 Q What do people call you?

23 A Merv.

24 Q All right. Where do you live, Maria?

25 A Currently 106 Pinewood Drive, Summerville.

- 1 Q How long have you lived in Summerville?
- 2 A A few months.
- 3 Q Where did you live before that?
- 4 A Goose Creek.
- 5 Q You've lived in this area all your life?
- 6 A Yes, ma'am.
- 7 Q Did you go to high school here?
- 8 A Yes.
- 9 Q Which high school did you go to?
- 10 A North Charleston.
- 11 Q How far did you go in school?
- 12 A Tenth grade.
- 13 Q Have you been working?
- 14 A I'm not currently, no, ma'am.
- 15 Q Have you had a job before?
- 16 A Yes, ma'am.
- 17 Q Are you under subpoena?
- 18 A Yes, ma'am.
- 19 Q To come to court today?
- 20 A Yes, ma'am.
- 21 Q How did you get to court today?
- 22 A My mom.
- 23 Q I want to ask you, do you know who Shannon Keyes is?
- 24 A Yes, ma'am.
- 25 Q Who is she to you?

1 A She was a friend. A friend.

2 Q You have to speak up louder so everybody can hear

3 you.

4 A A friend.

5 Q And how long were you friends with Shannon Keyes?

6 A Only about a month or two.

7 Q A month or two before all this happened?

8 A It seems.

9 Q Now, do you know the defendant, Anthony Mann?

10 A Yes, ma'am.

11 Q How do you know him?

12 A Through some friends.

13 Q Were you all friends?

14 A Yes.

15 Q Did you always have a friendly relationship?

16 A Yes, ma'am.

17 Q Did it start off as something else or was it always

18 just friends?

19 A Always just friends.

20 Q I want to ask you about Friday night,

21 January 11th, 2002, okay? I want to ask you about that

22 night. What did you do that night?

23 A Is that the night we went to the ODC? I don't

24 remember.

25 Q Okay. Do you remember going to ODC?

1 A Yes, ma'am. I don't remember the date exactly.

2 Q Do you remember if it was this year or last year?

3 A Yeah, it was last year.

4 Q Who did you go to ODC with?

5 A Shannon Keyes was with me.

6 Q And do you remember about what time you got there

7 that night?

8 A 2 or 3.

9 Q And so at 2 or 3 a.m.?

10 A Yes, ma'am.

11 Q And is that into a.m. the Saturday morning? Is that

12 like after midnight that night?

13 A Yes, ma'am.

14 Q Who did you see at ODC that night?

15 A There was a lot of people there that night.

16 Q Did you see Amp that night?

17 A Yes, ma'am.

18 Q Did you talk to him?

19 A Briefly.

20 Q What did you talk to him about?

21 A I said, What's up? But we wasn't around each other

22 the whole time.

23 Q He said?

24 A Hello, what's up, how you doing, haven't seen you in

25 awhile.

1 Q All right. Did something happen at ODC that night?
2 A Yes, ma'am.
3 Q What happened?
4 A There was a fight.
5 Q Do you know who was in the fight?
6 A Yes, ma'am.
7 Q Who was in the fight?
8 A Amp and some other guy.
9 Q Were there other people besides him in the fight?
10 A Yes, ma'am.
11 Q And what happened during that fight?
12 A I'm sorry.
13 Q That's okay.
14 A There was fighting going on, screaming and yelling,
15 and Amp yelled out something.
16 Q Okay. What did he yell out?
17 A That that guy did not know who he is playing with
18 that night, he had had a murder charge and he was not
19 scared to get another one.
20 Q What happened? Was the fight over then or did the
21 fight break up at some point?
22 A Yes, ma'am.
23 Q And what happened after that? Did you leave or did
24 you stay at ODC?
25 A I left shortly after that.

1 Q Who did you leave with?

2 A Dustin. Dustin was with me.

3 Q Did you talk with Dustin about that night and hearing
4 Amp say that?

5 A Yes, ma'am.

6 Q And did Dustin give you some instructions after that?

7 A Yes, ma'am. Dustin suggested that I stay away from
8 Amp because he told Amp -- Amp told Dustin in the bathroom
9 before the fight that he killed both, I don't know,
10 Brownie and the guy.

11 Q Had you heard anything about Brownie before that
12 night when you went to ODC?

13 A I heard that she was the one, that nobody could
14 really find her.

15 Q Did you hear anything else about her or anyone
16 involved with her?

17 A I heard that Amp and her were missing or whatever,
18 that she was last seen with him.

19 Q Now, did you talk to Amp on the phone at all?

20 A Yes, ma'am.

21 Q Did you ever visit with him, spend time with him?

22 A When?

23 Q Anytime.

24 A Yes, ma'am.

25 Q And after that night did you ever meet with him?

1 A All right. "I Need to talk to you about this case
2 really bad. Not too much about the case but about your
3 position in the case because you're a big piece in this
4 case and a big piece in helping me to get my life back.
5 Please do not let me down. We'll talk about all that
6 later, though."

7 Q Stop right there. Then if you would read from right
8 here.

9 A "Please send me all your achievements when you write
10 back. Thank you."

11 Q Maria, at some point did you give a statement to the
12 police about what you saw and heard at ODC that night?

13 A Yes, ma'am, I did.

14 Q Did you discuss your statement with Amp at all or the
15 fact that you had given a statement to the police?

16 A I don't remember exactly what was said, but yes,
17 ma'am.

18 Q Did you tell him anything about your statement?

19 MR. BUTLER: Objection, leading.

20 THE COURT: Rephrase, Counsel.

21 BY MS. BURNEY:

22 Q What did you tell him, if anything, about your
23 statement?

24 A I don't remember.

25 Q Okay. Did he say anything to you about your

1 statement?

2 A I don't remember.

3 MS. BURNEY: Okay. Answer defense counsel's
4 questions if you would.

5 CROSS-EXAMINATION

6 BY MR. BUTLER:

7 Q Good afternoon, Maria. I have just have a few
8 questions.

9 You knew Brownie?

10 A I knew of her, I had seen her before.

11 Q You had seen her. How many times do you think you
12 had seen her, several times?

13 A A few.

14 Q A few. Would it be safe to say that Brownie was kind
15 of tomboyish?

16 A In my opinion, yes.

17 Q Do you remember saying that Brownie kind of looked
18 like a dude sometimes?

19 A Yes.

20 Q Kind of like a man, a guy?

21 A Yes.

22 Q Brownie always wore something on her head?

23 A Yes. That's what made her look like that, yes.

24 Q You say you don't recall some of these things. Was
25 there something going on with you around this time to make

1 you have problems with your memory?

2 A No, sir, it's just been awhile.

3 MR. BUTLER: It's been a while, okay.

4 Beg the Court's indulgence one moment, please.

5 BY MR. BUTLER:

6 Q Maria, you talked to the police twice, right?

7 A Yes, sir.

8 Q And the first time you talked to them for quite some
9 time?

10 A Yes, sir.

11 Q And you wrote a seven-page statement; is that right?

12 A Yes, sir.

13 Q And they asked you about the fight, right, at ODC?

14 A Yes, sir.

15 Q And you didn't say anything about what you just said
16 that Anthony Mann said after the fight, did you?

17 A Yes, I did.

18 Q In your first statement you did?

19 A Not in my first statement. I have another statement.

20 Q They came back and talked to you some other time?

21 A Yes, sir.

22 Q And that's when you said it?

23 A That's when I wrote it down, yes, sir.

24 Q And the thing that you say that Anthony Mann said,
25 that was inside the ODC, right?

1 A Yes, sir.

2 Q And while the club was still open there were a bunch
3 of people around?

4 A When exactly?

5 Q When the thing was said.

6 A I would say yes.

7 MR. BUTLER: That's all I have. Thank you.

8 MS. BURNEY: No further questions.

9 Your Honor, may this witness be excused?

10 THE COURT: Yes, you may be excused, ma'am.

11 Any objection to her being excused? I guess I
12 left that out.

13 MR. BUTLER: No, sir.

14 THE COURT: All right. Approach.

15 (A bench conference was held with the judge and
16 attorneys in the presence of the jury but out of the
17 hearing of the jury.)

18 THE COURT: Ladies and gentlemen, really it's
19 about time for our afternoon break, but we have something
20 I have to take care of after that afternoon break, so
21 rather than keep you waiting, I'm going to go ahead and
22 let you go so we can take care of whatever we need to. I
23 know I have been keeping you late every night, so I'll let
24 you out a little bit early tonight.

25 Again, do not discuss this case in any way

1 whatsoever. Of course, if you're exposed to any kind of
2 communication or coverage about this case, you would
3 immediately report that matter to me.

4 We'll see you tomorrow at -- let's see.

5 (A discussion was held off the record.)

6 THE COURT: I thought I had another hearing
7 tomorrow in another case, ladies and gentlemen, so that's
8 what I was just trying to figure out. So if you'll report
9 back at 9 in the morning, we'll proceed with the trial.

10 Thank you very much. Have a good night.

11 (The jury left open court at approximately 4:12
12 p.m.)

13 THE COURT: We'll go ahead and take our
14 afternoon break before that hearing.

15 (A short break was taken.)

16 THE COURT: Ready to proceed?

17 MS. WILSON: Yes, sir.

18 THE COURT: Go ahead.

19 MS. WILSON: Your Honor, the State calls Dr.
20 Erin Presnell.

21 THE CLERK: Please state your full name for the
22 Court and spell your last.

23 THE WITNESS: My name is Susan Erin Presnell,
24 P-R-E-S-N-E-L-L.

25 MS. WILSON: Your Honor, for purposes of this

1 hearing, I will just move straight to the issues that I
2 understand to be at hand, and that is the validity of
3 using vitreous fluid to determine postmortem interval.

4 MR. BUTLER: Right, as it applied in this case,
5 too.

6 MS. WILSON: In this case.

7 THE COURT: All right.

8 MS. WILSON: Your Honor, we would ask that Dr.
9 Presnell be qualified as an expert in forensic pathology.

10 MR. BUTLER: Without objection.

11 THE COURT: All right.

12 IN CAMERA DIRECT EXAMINATION

13 BY MS. WILSON:

14 Q Dr. Presnell, you performed one of the autopsies in
15 this case on Beverly Blake; is that right?

16 A Yes, I did.

17 Q And in the course of performing that autopsy, did you
18 seek to determine a postmortem interval?

19 A We always undergo studies to help corroborate
20 postmortem interval.

21 Q And what types of things do you look at when
22 considering can we just say PMI?

23 A PMI.

24 Q What sort of things do you look at in the autopsy and
25 do you research in order to come up with PMI?

1 A Well, first of all, let me just stipulate or put out
2 there that estimation of postmortem interval is extremely
3 fraught with difficulty and depends on the individual case
4 each and every time. However, there are general summaries
5 that you can use to help corroborate the potential
6 postmortem interval or PMI.

7 THE COURT: What is that last word, integral?

8 MS. WILSON: Interval.

9 THE COURT: Interval, okay.

10 MS. WILSON: Interval, the amount of time.

11 THE COURT: Okay.

12 THE WITNESS: Right, the interval between when
13 they died and we autopsy.

14 There's a number of things that happen after
15 death. One of them is the development of rigor, which is
16 stiffening of the muscles. And that happens because the
17 energy in the body that is required to release muscle
18 contractions, and since the body is deceased and there is
19 no more energy being produced, the muscles can't relax any
20 more and the body becomes stiff.

21 Now, these studies have been done in temperate
22 type conditions, in 70 to 75 degree weather-type periods
23 or type temperatures, and rigor will usually appear at
24 about two hours. It will become more stiff and more
25 stiff, so that it becomes its most stiff at about 12

1 hours. Over the next 12 hours it will tend to stay about
2 the same stiffness. Over the next 12 hours after that, it
3 will tend to slowly dissipate. So that takes an interval
4 of 36 hours.

5 However, anything that is going to speed up
6 decomposition, heat or anything else, that will use up
7 energy before death, some kind of violent struggle, is
8 going to increase the formation of rigor or increase the
9 rate. Similarly, anything that slows down decomposition
10 is going to slow down that whole rate of increasing
11 stiffness to the point where the muscles start to
12 decompose and the stiffness starts to go away.

13 BY MS. WILSON:

14 Q So when you are performing a forensic autopsy, and in
15 this case, do you look to see what the history of the
16 rigor was when the body was found?

17 A Wait. Let me back up for a minute, too, and say that
18 the environmental temperatures as well as the individual
19 variations have a huge effect on the development of rigor,
20 and rigor has been documented up to six days and possibly
21 even beyond in cases, in certain cases.

22 When we estimate rigor, we have a coroner system
23 and we need to estimate it at the time that we do the
24 autopsy. So that's when we do it. In the past when we
25 used to go to scenes, we would estimate rigor at that

1 point. This is one factor that we use to kind of put into
2 context where the body is in the state of postmortem
3 change. Another entity is called livor or livor mortis.

4 Q Did you say entity?

5 A I can't remember.

6 Q Okay. Another what is --

7 A Another thing, factor that we try to evaluate is
8 called livor mortis or livor mortis. That is the purplish
9 discoloration that develops when the blood in a body
10 starts to settle with gravity.

11 What happens is the heart quits pumping, so it's
12 not moving the blood around and the blood will settle with
13 gravity. If the person is face down, then the lividity
14 will appear on the anterior or front part of the body. If
15 it's on its back, the person's on their back, then it will
16 settle down along the back.

17 Now, when it first starts to settle, it's in the
18 blood vessels. If you push on it, that area will blanch.
19 You are actually pushing the red blood cells back out of
20 the blood vessels and it will blanch. This is called
21 unfit lividity or blanchable lividity.

22 Lividity will show up in about a half-hour to
23 two hours after death; again, largely dependent on the
24 individual and the environment temperatures, whether they
25 are speeding the process or cooling or slowing the

1 process. After about eight to 12 hours the red blood
2 cells will start to leak out of the vasculature, out of
3 the vessels. And then at that point if you push on the
4 lividity, you can't push the red blood cells back into the
5 vessels. They're in the soft tissue. So it doesn't
6 blanch. This is called fixed lividity or non-blanchable
7 livor. So that's one of the second characteristics which
8 tend to use. There is a whole host of other thinking,
9 certainly on CSI and all of that, the stomach contents,
10 the temperature of the body, et cetera.

11 Q Is the temperature of the body reliable at all?

12 A Well, there's certain formulas you can use to
13 estimate postmortem interval with the temperature of the
14 body. The further you get away out from it, the time of
15 death, the less reliable they are. But again, it's
16 dependent on what the person's body temperature was prior
17 to death. A lot of times that's not known.

18 In our case, too, since we're at coroner
19 setup, then our body would have been in the refrigerator
20 overnight as well, which would have obscured measurement.

21 But what will happen is the body will cool until
22 it reaches environment temperatures. Once it reaches
23 environmental temperatures, it's just going to fluctuate
24 with the changes in the environmental temperature and you
25 probably wouldn't be able to do much more with that.

1 These are the things that we normally evaluate
2 when we're looking at all the cases, all the decedents.
3 Sometimes there becomes an issue of trying to help
4 corroborate or substantiate or suggest as an investigative
5 tool to try to get more information on postmortem
6 interval. And there is a vitreous formula. Vitreous is
7 eye fluid. The eye fluid is somewhat protected from
8 decomposition or at least the breakdown of red blood cells
9 and the contamination of the blood by the salts and
10 whatnot that are in the blood.

11 One of the things that they have found is that
12 after death, that the potassium levels in the eye fluid
13 will start to increase. It's not a linear increase, but
14 they have done studies and there is a formula which Dr.
15 Medea and Hensage covers in the Spitz and Fisher
16 Medicolegal Death Investigation Book.

17 Q Let me ask you about that book. Is that book pretty
18 much a well-respected and widely used book or treatise on
19 forensic pathology?

20 A Yes, it is.

21 Q And that is a reference book that you use and you
22 know other medical examiners to use?

23 A Yes. This is the main book that I would use to study
24 for my forensic boards.

25 Q Okay. And you said it's the formula that, the

1 vitreous fluid formula that you use is contained in that
2 book?

3 A Correct.

4 Q Have you used that formula before?

5 A Yes, I have.

6 Q Do you know of other medical examiners who have also
7 used that formula?

8 A People have used it, other medical examiners have
9 used it to help add to the information known about this
10 formula.

11 Q So it sounds like what you're saying is you can't
12 just look at one factor alone?

13 A Clearly not, no.

14 Q So you explained livor and the rigor. You went to
15 the third thing, this formula that you also wanted to look
16 at in this case.

17 A In this particular case, those three things stand out
18 the most.

19 Q How about -- we'll get back to the vitreous formula.
20 How about the insect activity? Did you look at
21 that as well?

22 A We make note of that. And if it's an issue and at
23 the time we did know it was an issue, maybe an
24 entomologist would be involved. We may note that there
25 were fly eggs in the eyelid areas.

1 Typically in going back to temperate conditions,
2 the 70 to 75 degree Fahrenheit type temperature, after a
3 body is deceased, flies will lay eggs pretty quickly,
4 pretty soon afterwards. However, they like to lay eggs in
5 the daylight. They don't like to lay at night. They also
6 don't like to lay eggs if it's less than 50 to 60 degrees.

7 Q Let me ask you this. When you say day versus night,
8 is it an hour issue or a darkness/lightness issue?

9 A I'm not an entomologist, but from what I've read,
10 it's a darkness issue and their habitat and their life
11 cycle and when they fly around. But the eggs will usually
12 hatch in a day or so and out will come the maggots. The
13 maggots will consume tissue for a week to ten days. And
14 then they pupate and crawl off the body, and after another
15 seven to ten days they hatch into flies. It's hugely
16 variable on the environment and also the species and type
17 of fly. However, the blowfly, which is the most
18 ubiquitous one around, the entomology notes that they do
19 not like to lay eggs in less than 60-degrees Fahrenheit.

20 In this case she did have fly eggs on her
21 eyelids.

22 Q Was that blowfly eggs?

23 A That would be the most common type, but they were not
24 analyzed.

25 Q All right. Now back to the vitreous fluid formula.

1 If you could explain to the judge what procedure
2 is used to check that fluid. And again, I think you were
3 explaining the potassium levels and how they change after
4 death and the linear change or non-linear change.

5 A Right. The potassium levels in the eye fluid rise
6 after death. The formula takes into account that it's not
7 necessarily a linear rise. But what you do is you'll
8 remove the eye fluid with a syringe and needle and then it
9 can be tested, and it's tested for electrolytes, potassium
10 being one of them.

11 When you get the potassium level and you put it
12 into the formula, you get a particular number of hours
13 out. The hours that you get out of that is the, quote,
14 estimate of postmortem interval. However, the formula
15 stipulates from the beginning that the estimate is plus or
16 minus 20 hours. So that is almost a day on each side. So
17 this isn't a formula that's frequently used to try to
18 narrow the time of death when you're looking like that, if
19 the postmortem interval is only a day or two because the
20 potassium level won't rise that much and might give you an
21 interval of 24 hours, and then plus or minus 20 hours, you
22 can see where that wouldn't necessarily help to narrow it
23 down.

24 Q So, when you say that, do you mean if a victim or a
25 dead person is known to have died in the last 24 hours but

1 it's unclear exactly when in that 24 hours, you wouldn't
2 do a vitreous fluid panel?

3 A A vitreous fluid panel would not help because the
4 formula is plus or minus 20 hours.

5 The other thing is that it's best used within
6 the first hundred hours after death and at temperatures
7 that are above freezer or icebox level.

8 Anyhow, we did obtain the vitreous fluid from
9 Beverly Blake's eye at the time of autopsy, and we sent it
10 to be tested for the electrolytes. The potassium level
11 came back at 28.6. We put that into the formula and came
12 up with about 116 hours, which if you divide that by 24,
13 is 4.8 days, about five days. Plus or minus 20 hours is
14 going to give you an interval of from about four to six
15 days.

16 So, when I consider everything together --

17 Q You're saying that is four to six days from autopsy?

18 A From when we drew the vitreous fluid.

19 Q Which was done at the autopsy?

20 A Correct.

21 Q All right.

22 A All right. So when we're trying to put this together
23 to help the investigation to try to narrow it down --

24 THE COURT: Let me interrupt you for a second.
25 Just so I am clear as you're explaining the process to me,

1 how do you know what the starting potassium level is?

2 THE WITNESS: The potassium in the blood has a
3 very, very narrow range. It's usually like a four to five
4 and that's it. If it's outside that range, then the
5 person could not survive. It's very narrowly regulated.
6 And again it's an estimation. I think that's partly why
7 they have plus or minus 20 on either other side. Again,
8 there's always exceptions and this is just a tool to kind
9 of add to information and help direct.

10 BY MS. WILSON:

11 Q So when you say the potassium, to be living, your
12 potassium has to be below a certain level?

13 A Within a certain level.

14 Q So --

15 A If it's too low or too high, it's incompatible with
16 life. It's a very narrow range.

17 Q So the formula starts from that premise that you
18 aren't --

19 A I don't know -- that would probably make sense.

20 Q The formula starts from the premise that you aren't
21 dead because of a high or low potassium level?

22 A That would make sense, yes.

23 Q Okay.

24 A All right. So, we have our vitreous fluid indicating
25 a postmortem interval that's a little bit longer than

1 several days.

2 The other thing that I really took into
3 consideration for this was her rigor and her livor, her
4 rigor mortis and her lividity. She had fixed lividity
5 which was on the anterior left part of her body. She also
6 had her rigor. What we do is we rate it on a scale of one
7 to four or zero to four on how stiff the person is, zero
8 being the least and four being the most. We rated hers at
9 about a one.

10 So the question at first was the rigor and
11 because she is well-preserved and not showing much in the
12 way of signs of decomposition, which is a whole other
13 lecture, but she has not -- plus one rigor, so very little
14 rigor. The question is, is it just starting to get stiff
15 like during that first 12 hours or that 12 hours after
16 that, or is it on its down decline starting to go away?
17 Well, all right.

18 To help answer that we look at lividity.
19 Lividity is fixed. That doesn't happen for eight to 12
20 hours, and then it remains that way. So that indicated to
21 us that the rigor was actually on its way down.

22 Again these numbers -- this doesn't give me a --
23 say yes, this was four days if I see that the rigor is
24 going away. It indicates to me, though, we're on the
25 other side of the postmortem interval, of the increasing

1 rigor and the livor becoming fixed.

2 Along with the vitreous potassium level and with
3 the result we got from the formula, it was my opinion that
4 the death was probably -- the postmortem interval was
5 probably longer than the four- to six-day range versus the
6 shorter one- to two-day possibility.

7 Q Does your analysis of the vitreous fluid using the
8 Medea formula and the other things that you considered
9 exclude the possibility that Beverly Blake had been dead
10 for seven or eight days?

11 A No. This is just a window that they're -- that the
12 evidence or that the findings at the autopsy are
13 supporting. Certainly it could have been seven days. It
14 may have been 3.8 days. But if you were to ask me which
15 would be more likely, the longer postmortem interval or
16 the shorter, and long I mean within the week versus within
17 a day or two, the evidence that I see at autopsy supports
18 the longer one more so than it does the shorter one.

19 Q Okay. Now, I think you touched on this, but did you
20 also look into the temperature from the week in question
21 here, the week prior?

22 A We look at the week prior to the time of autopsy and
23 I summarized it in the autopsy report saying there were
24 some days that the temperatures rose to the fifties, but
25 the morning and nighttime temperatures were from below

1 freezing to the low 50 degrees area, and this was in
2 January. She was in a wooded, shaded environment, which
3 are factors that are going to slow the rate of
4 decomposition or slow the rate of postmortem changes.

5 Q Now, is there also another formula, a Sturner
6 formula?

7 A There is an older formula that is also mentioned in
8 the Spitz and Fisher book, the Medicolegal Investigation
9 of Death. However, it's the newer Medea and Hensage
10 formula that has been found to be more reliable.

11 Q And I believe you said the Medea formula is
12 preferable unless the environmental temperature during the
13 postmortem interval has been near icebox levels; is that
14 true?

15 A That's what is stated in the text.

16 Q Did you at my request -- do you recall just running
17 the numbers using the Sturner formula since that is
18 acceptable when temperatures are around icebox levels? Do
19 you recall doing that?

20 A I remember doing that. I don't have the formula. I
21 don't have the numbers plugged into it up here.

22 Q But you did do that just to see what those numbers
23 would come out at?

24 A Yes. I'm trying to -- it's better to use at icebox
25 levels, and I didn't pick up that information.

1 What my knowledge is is that that was the second
2 formula. The Medea and Hensage formula is basically more
3 reliable overall.

4 Q What I was referring to is that paragraph that says
5 Medea found this formula, being the Medea formula, more
6 accurate determinations of the postmortem interval in
7 control cases than the earlier formula, Sturner, and it is
8 preferable, that being Medea is preferable to use unless
9 the environmental temperature during the postmortem
10 interval has been near icebox level.

11 A Okay. My interpretation wasn't that -- that meant
12 the other one is better to use, but certainly you can plug
13 the numbers into that and see what that supported as well.

14 Q All right. Now, based on all of these factors again,
15 you came up with a PMI of approximately four to six days
16 plus or minus 20 hours?

17 A Four to six days includes the plus or minus 20 hours,
18 and it was -- it's not that I'm saying the postmortem
19 interval is four to six days. I'm saying that that is a
20 likely window, and we have taken everything into account,
21 it is more supportive of that longer period compared to a
22 shorter postmortem interval.

23 MS. WILSON: That's all I have, your Honor.

24 MR. BUTLER: Beg the Court's indulgence one
25 moment.

1 May it please the Court.

2 THE COURT: Yes, sir.

3 IN CAMERA CROSS-EXAMINATION

4 BY MR. BUTLER:

5 Q Good afternoon, Doctor.

6 A Good afternoon.

7 Q The opinion on PMI that you just gave, after
8 considering everything, including the vitreous fluid, you
9 had a preliminary earlier opinion without considering
10 vitreous levels, correct?

11 A I don't think that I have a written opinion anywhere.
12 I think that the issue was brought up and we went back to
13 look at what our assessment was of rigor and livor.
14 Certainly when you look at her and don't start going
15 through the specific changes and the time lines associated
16 with them, she certainly looked well preserved and without
17 showing much in the way of decomposition at all.

18 So clearly to see her just visually and not
19 touch and do additional tests, she seemed like it might
20 have been a lesser postmortem interval. But again, once
21 we assessed the different changes and then we added the
22 vitreous fluid on there, that helped us decide that that
23 longer interval was more likely.

24 Q And the initial interval was 24 to 36; is that right?

25 A The initial interval for what?

1 Q For PMI.

2 A I don't have that recorded anywhere.

3 Q You said that you had an opinion earlier, but it was
4 not a written formal opinion, but you had an assessment or
5 estimate and you don't remember what it was and it was
6 earlier?

7 A What I'm saying is when I just look at her, if I walk
8 into the autopsy room and I see her and haven't touched
9 her, haven't assessed her rigor, haven't checked out her
10 lividity, then I would say, hum, she doesn't look like
11 she's been deceased very long. Then I assess all those
12 things. The postmortem interval wasn't an issue at that
13 time. The multiple gunshots and all the connecting
14 pathways were. So when the postmortem interval was
15 brought back up, we didn't actually say, you know,
16 officially yes, 24 to 36 hours ever, but when the
17 postmortem interval was brought back up and we go and look
18 at things that we assessed and then look for additional
19 testing that we could do, then we came up with a more
20 formal opinion that we expressed.

21 Q It was later?

22 A Yes.

23 Q Okay. But you're not speaking hypothetically, this
24 really did happen in this case?

25 A I'm saying that I never estimated an interval prior

1 to that; I mean, speak it out loud.

2 Q Okay. That was just your private assessment at first
3 glance?

4 A Exactly. Well, if someone asked me, if they say the
5 coroner came to the autopsy room and had asked, I would
6 say no, she only looks like she's been deceased for
7 several days. However, that was not asked. That was not
8 an issue at the original time of autopsy.

9 Q That's what I mean when I say, correct me if I'm
10 wrong, I just want to make sure I'm right, but this isn't
11 just hypothetical. I'm trying to figure out exactly what
12 happened. It's my understanding it did. Now, I might be
13 wrong.

14 A I don't recall that anyone asked a formal opinion or
15 an opinion of postmortem interval at that time, no. That
16 was a later issue.

17 Q And what I'm trying to figure out is what vitreous
18 adds beyond concerns of lividity and rigor. So let me ask
19 some questions about those things. I'm a bit confused,
20 too, still.

21 Lividity becomes fixed after somewhere between
22 eight and 12, right?

23 A Correct, in temperate conditions.

24 Q In temperate conditions. What happens? Does it stay
25 fixed or what happens after that period?

1 A It stays fixed. Then as decomposition proceeds, then
2 the body starts to turn a greenish discoloration and
3 lividity will be obscured, but it stays fixed.

4 Q Once it's fixed, it's fixed?

5 A Correct.

6 Q So once you have that the lividity is fixed, if
7 you're just looking at lividity, and I know you say you
8 looked at everything else --

9 A Right.

10 Q If you're just looking at lividity, all lividity can
11 tell you when it's fixed is that the postmortem interval
12 was at least somewhere around eight to 12 --

13 A In temperate conditions.

14 Q In temperate conditions.

15 A If it's cooler and there's factors that slow down the
16 postmortem changes, it could be longer. But in 75-degree
17 weather, right, it would be 12 or beyond.

18 Q That's my next question. When you're talking about
19 the effect that temperature has on decomposition and other
20 postmortem changes, it slows the process, right; cold
21 weather slows the process, right?

22 A Yes.

23 Q And is that consistent with all postmortem changes
24 that we discussed?

25 A Yes. All the coolness will slow all the changes.

1 Q And are the studies best -- that come up with these
2 numbers, understanding that they're rough estimates, do
3 they consider temperatures that vary within the postmortem
4 interval or are they considering fixed temperatures? You
5 used a temperature of 75 degrees, but that's not what the
6 temperature was over this period, right?

7 A Right.

8 Q You said at some point it was below freezing?

9 A Right. It was in the thirties, below freezing.

10 Q It was below freezing, right?

11 A On some nights, yes.

12 Q So if we're going to talk about the effect of
13 temperature on postmortem change, if the temperatures
14 range from below freezing to how high did they get?

15 A In several instances they were in the sixties.

16 Q All right, in the sixties, then which do we determine
17 to be the temperature? How do you do that? Do you
18 understand what I'm saying?

19 A Yes. I don't have the original article on the
20 studies on how they arrived at the formula, but certainly
21 bodies in the environment will be subjected to a
22 fluctuation of temperatures, and there is the plus or
23 minus 20-hour intervals, 40 hours, two days added on each
24 day, which I'm sure was part of that. But they also give
25 in the text an example similar to this case that they have

1 used as far as in the same type of situation estimating
2 postmortem interval, and it would be expected that
3 temperatures were also variable. So, no, you cannot
4 control for the temperatures.

5 Q Okay. When you said that you were able to determine
6 that, with respect to rigor, she was on the other side,
7 meaning that it was starting to dissipate at that point?

8 A Right. She had one out of four, four being the most.

9 Q And you said that at the time that you were first
10 observing the body and it's one out of four, the question
11 is is this at the onset or is this as it starts to
12 dissipate. Because you can have one to four at the
13 beginning --

14 A Right.

15 Q And it goes all the way to four?

16 A Right.

17 Q And then it goes all the way back down. So how do
18 you determine where it is?

19 A Right. The way -- in this case, it indicated that it
20 was more on the down slope because her lividity was
21 already fixed.

22 Q That makes sense. Thank you.

23 Do you know what is the error rate for using
24 vitreous fluid and potassium levels found therein to
25 determine postmortem interval, do you know that?

1 A I don't have the error rate. However, I do know that
2 it's one component of a number of things you look at
3 versus -- we did a case on a person the other day who was
4 out in the heat for two days in the nineties, Berkeley
5 County, just hot, hot 90-degree weather, and his
6 potassium -- they were looking for other things -- but his
7 potassium just as a sign was near 20.

8 Q But here's all I want to know.

9 MS. WILSON: I object. She can finish.

10 BY MR. BUTLER:

11 Q I'm sorry. I didn't mean to interrupt.

12 A Well, anyhow what I was trying to say is that
13 indicates much longer, and he had only been out there a
14 day or so. Now that indicates that if you plug it in the
15 formula you're going to get a couple of days, but you have
16 to look at everything. So the fact that he had already
17 started to turn green and was decomposing, et cetera, and
18 the weather. I mean, it's not just one thing that you
19 look at. And, yes, there can be errors. But if we were
20 like just relying on vitreous in that case, we would
21 clearly be way off. We definitely can't use just vitreous
22 as one component.

23 Q I got you. What I'm asking about the error rate is
24 this. You agree with me that the virtue of science and
25 scientific method is that it attempts to take into

1 consideration certain variables and eliminate them. So if
2 you have something in a controlled environment, you can
3 control for temperature and moisture, and that if you do
4 actual experience, things like we don't know when the body
5 got out there, that's alleviated, that problem. Do you
6 agree with me?

7 A I'm sorry, what now?

8 Q As opposed to this example, this real life example
9 that you worked on?

10 A Right.

11 Q I'm interested in studies that were done to determine
12 the error rate, where we have somebody, we know exactly
13 when they died, they were placed in an environment where
14 the temperature remains steady or where the temperature
15 was variable but the people doing the study knew what the
16 temperature was and were able to monitor lividity and
17 rigor and then get a vitreous level and we know exactly
18 what the PMI should be because we know when the person
19 died. It won't have to be people, it could be animals.
20 That's what I'm talking about.

21 A Okay.

22 Q What studies are there to show what the error rate is
23 using vitreous, one, and this formula, two?

24 A I don't know.

25 Q Okay. What are the quality control measures that you

1 can use to ensure that your results are reliable? Do you
2 understand what I mean when I say that?

3 A The quality control is nothing more than taking the
4 whole picture together. Other than -- unless you're
5 asking me about the actual instruments that are used to
6 test the vitreous fluid.

7 Q What do you do to make sure that when you use
8 vitreous, you're right?

9 A I'm not understanding your question. Again, there's
10 huge variations and it's just part of the puzzle. It's
11 not right or wrong, it's a very gray area.

12 Q Let me give you an example. I think you have given
13 one -- there's two different formulas and there have been,
14 maybe not studies that you know of but at least peer
15 review articles that have said under these conditions you
16 use this formula and under this condition you use this
17 formula. Is that what you testified to?

18 A Yes. My interpretation of the text was that the
19 second formula, the newer formula, was better and it's
20 better if it's not below icebox temperatures.

21 Q If it's better if there are not icebox low
22 temperatures, doesn't that entail that if there are icebox
23 low temperatures that the Sturner formula is better?

24 A That was not what I interpreted from it, but possibly
25 that could be the meaning.

1 Q When you say icebox temperatures, what do you mean?

2 A They don't clarify more than that.

3 Q Okay. Because icebox wouldn't have to necessarily be
4 below freezing, right?

5 A No, it wouldn't.

6 Q Just colder?

7 A Yes.

8 Q People don't keep their icebox at below freezing?

9 A Right.

10 Q Your freezer, of course, is below freezing, but not
11 your icebox, right?

12 A Mine is.

13 Q Oh. Because the temperatures during this time
14 period, if it went all the way down to freezing, then some
15 of them would have also been icebox level temperatures,
16 right?

17 A True.

18 Q In the fifties and forties?

19 A Right. But -- yeah. Yes, they would be. They would
20 be refrigerator levels.

21 I think what they're referring to is a morgue
22 situation where they put them in a refrigerator and they
23 are chilled at basically a constant temperature without
24 any fluctuations consistently.

25 Q Okay. When we talked about how cold temperatures

1 will slow certain postmortem changes in those processes,
2 remember that part of the discussion?

3 A Right.

4 Q Okay. Does that not also hold true for vitreous
5 levels, or potassium levels in vitreous fluids, excuse me?

6 A Yes.

7 Q So a formula that takes that into account would seem
8 to -- tell me if you agree with this -- that the formula
9 would need to take temperature into account because if
10 lower temperatures lower the rate of potassium increase, a
11 body that has been in an environment with lower
12 temperatures is going to have a lower potassium rate;
13 isn't that right?

14 A Right. Then if that was the case, then this formula
15 would actually be a longer postmortem interval. It would
16 be -- I don't know, I'm sorry, it would not.

17 Q It would be shorter?

18 A It would be shorter if it was suppressed
19 significantly, and this one came up to, like I said, the
20 four- to six-day. I autopsied the person on the 14th.

21 Now, the thing is, you're asking an awful lot
22 out of this formula. This is one component of a number of
23 things. It's generalized. It can't do all that. And I
24 don't think it's documented that it does do all that.
25 It's just another supporting piece of information.

1 Q Okay. Well, if the vitreous fluid is just one aspect
2 of -- do you always get vitreous levels when you're trying
3 to determine PMI?

4 A No, because -- well, first of all, postmortem
5 interval estimation actually doesn't come up that often
6 with the setup where the person is in the refrigerator
7 overnight and it's been less than 24 to 48 hours after
8 death because then the formula wouldn't help, so there
9 would be no reason to run it.

10 Q Right. But in all cases where PMI is an issue, do
11 you get the potassium levels from the vitreous fluid?

12 A If there was a question of postmortem interval, then
13 yes, we do that. I've done it probably ten times over the
14 last five years.

15 Q In this case was it done initially?

16 A No. This was done subsequently when the issue of
17 postmortem interval came up.

18 And I do want to say, you asked me if I got
19 potassium levels on all questions of postmortem interval,
20 and I answered no, not frequently. However, we do run
21 vitreous fluid for other things, mainly dehydration and
22 diabetes.

23 Q Right. I understand.

24 A Okay. I know. But what I'm saying is the potassium
25 level will come back with that, and again, you could use

1 that if you wanted to, but anyhow.

2 Q When you say PMI became an issue, how did that come
3 about?

4 A The coroner and the sergeant over the detective unit
5 at crime scene contacted me to find out what my opinion
6 was on the postmortem interval.

7 Q And at that point you didn't have one, or you did?

8 A At that point I had to go pull the report and go
9 through it and take into consideration getting
10 temperatures and, you know, just kind of thinking out
11 loud, and then taking the next steps to get the vitreous
12 fluid.

13 Q Okay. Were you made aware of why there was concern
14 over PMI in this case when there's not always a concern?

15 A Oh, yes, yes.

16 Q Why was that?

17 A There was a question of when one of the persons they
18 were questioning might have last had contact with her, the
19 decedent.

20 Q When you were asked to determine, in this case, what
21 the PMI was, were you made aware of the contents of
22 certain witness statements or what people had said?

23 A Maybe verbally, but I never saw anything written.

24 Q All right. I'm going to ask you some questions from
25 this journal. I admit that I really don't know what they

1 mean. So I think they mean something. I'm probably
2 wrong, but this is why I'm asking so many questions, and I
3 want you to see if you can help me with this, okay?

4 A All right.

5 Q Tell me if you agree or disagree with this statement
6 from Forensic Science International. Are you familiar
7 with that publication?

8 A I know the title.

9 Q Okay. In general, the determination of PMI from
10 measured KV, that is potassium level; right?

11 A It says KV?

12 Q KV.

13 A Well, K is potassium. I'm not sure what the V stands
14 for.

15 Q If we assume that means potassium level?

16 MS. WILSON: Your Honor, I would object to that
17 assumption.

18 MR. BUTLER: All right. Give me a second to
19 find it.

20 THE COURT: Fine.

21 Q Tell me, is this what -- in this other book,
22 investigation of postmortem interval by determining
23 potassium levels in the vitreous humor, is that what we're
24 talking about?

25 A Yes.

1 Q And if we designate potassium levels in the vitreous
2 humor, it's KV, understand what I mean?

3 A Yes.

4 Q Great. Tell me if you agree or disagree with this
5 statement. In general, the determination of postmortem
6 interval from measured KV is best done when PMI is no
7 later than 24 hours.

8 A The text that I read from says that it's best done
9 within one hundred hours after death.

10 Q So that text and this text don't agree?

11 A Correct.

12 Q I want to go on. It does qualify. It says, Rough
13 estimates could extend into the 48- to 72-hour range,
14 especially in cold environments like we talked about?

15 A Okay.

16 Q But the text you used puts it out further?

17 A It says it's best used within one hundred hours.

18 Q Within a hundred hours, okay. So if someone says
19 vitreous is best used when there is a question of a matter
20 of hours as opposed to days, the text you rely on
21 disagrees?

22 A Say that again. I'm sorry.

23 Q If the proposition is, vitreous -- potassium levels
24 in vitreous fluid is best used in determining PMI when
25 you're talking about a matter of hours as opposed to a

1 matter of days, the Sturner text, or no, not the Sturner
2 text. What's the one you used?

3 A Spitz and Fisher.

4 Q Disagrees with that statement?

5 A Yes. Well, with their particular formula that they
6 cite, it's plus or minus 20 hours, so as far as using it
7 within a 24-hour period would not be very useful.

8 Q How do you decide -- I think you answered that. You
9 decided to use the formula you use because the text you
10 referred to just in your opinion said in general this one
11 is more accurate?

12 A Yes, right.

13 Q What does this mean? More contents can be placed on
14 values around the average KV and average PMI than at the
15 very high KV and PMI values?

16 A Probably that means when the potassium levels get in
17 the range where you're going to be over a hundred hours,
18 when you're getting out into the extended periods, then it
19 wouldn't probably follow the formula prediction as well.

20 Q Except that these are all the same people that says
21 it's best at 48 to 72?

22 A Then they're probably talking above 72.

23 Q It's probably a confusing way to say it but one that
24 makes sense to is, tell me if you agree, the further out
25 you get with PMI, the more potential there is for error?

1 A That's what that is stating.

2 Q Or the error rate is directly proportional to the
3 increase in PMI and potassium level?

4 A Yes. The less accurate -- the further out it is, the
5 less accurate. And that holds true in any of the
6 postmortem interval estimates. The further away you get
7 from the time of death, the less accurate they are.

8 Q Are you familiar with the Journal of Forensic
9 Sciences?

10 A Yes.

11 Q Tell me if you agree or disagree with this. Tell me
12 how this applies to the discussion we're having. That
13 sounds almost like an essay question, doesn't it?

14 The effects of chilling on the rate of rise of
15 the potassium concentration in the vitreous humor clearly
16 makes measurement of the potassium level less reliable as
17 a means of estimating the length of postmortem interval
18 than has previously been supposed.

19 A Okay.

20 Q I take that to mean that when you're getting towards
21 colder temperatures, using vitreous is less reliable?

22 A Right. And they state that in the text that when you
23 get down to icebox temperatures it is less reliable.

24 Q The question I have is, how do we know when we're
25 there, at icebox temperatures?

1 A I don't think that we do.

2 Q And you don't?

3 A Know about icebox temperature?

4 Q What is meant by icebox temperatures in the context
5 of the accuracy of using potassium levels in vitreous
6 fluid to determine PMI.

7 A I don't know of any studies that relate to that error
8 rate or the accuracy of it.

9 Q I want to ask you this. For example, the mean
10 potassium concentration at 48 hours after death of the
11 eyes subjected to rapid chilling is approximately equal to
12 the mean of the room temperature at 12 hours.

13 A Okay.

14 Q What does that mean?

15 A That means that when somebody rapidly chills them,
16 they've apparently removed the eyes and rapidly cooled
17 them off, that it slowed the potassium leakage from the
18 cells in the eye to leak out into the eye fluid or the
19 vitreous fluid.

20 Q So much so that if I'm reading this correctly, that
21 the change in temperature could have a four-fold effect on
22 the PMI; that if you didn't know the temperature, someone
23 who had actually been dead 48 hours would only look like
24 they had been dead 12?

25 A That sounds like in that that they set up an

1 artificial environment of rapidly chilled eyes, and in
2 that interval, I guess, it was four times.

3 Q Okay. So that would be in a controlled environment,
4 like you do in experiments, an extreme disparity, 12 to
5 48?

6 A Okay. Well, we're doing four and six. That's a
7 48-hour difference.

8 Q Okay. Well, but proportionate to the 12, 48 is four
9 times?

10 A True. And if you put it in the formula and you talk
11 about just 12 hours, subtract plus or minus 20, then you
12 do come up with that huge range.

13 Q Okay. Except if you did minus 20 then they would be
14 alive?

15 A Exactly. That's what I'm saying. As far as
16 narrowing it down, that's just one part of the tools used.

17 Q Here's my question. If rapidly chilling has this
18 extreme effect, couldn't you say then that chilling which
19 is not rapid or chilling which is variable would have the
20 same effect but not as extreme?

21 A I think that it's pretty much in any type of chilling
22 that it slows down the changes, which includes leakage of
23 potassium into the eye fluid which is what you
24 subsequently measure and put into the formula.

25 MR. BUTLER: Beg the Court's indulgence one

1 moment, please.

2 BY MR. BUTLER:

3 Q What did you say the potassium level for this case
4 was?

5 A 28.6.

6 MR. BUTLER: Beg the Court's indulgence. I
7 think I'm almost finished.

8 BY MR. BUTLER:

9 Q And you say you applied the Sturner formula, you just
10 don't know the results were?

11 A I didn't apply it until later when I met with you
12 guys and the solicitor and we plugged the numbers in.

13 Q Was I there?

14 A I don't remember if that was the time you were there.

15 MR. BUTLER: Beg the Court's indulgence.

16 I don't have anything further.

17 IN CAMERA REDIRECT EXAMINATION

18 BY MS. WILSON:

19 Q With regard to the error rate of using these formulas
20 to determine a PMI, I believe you said that that was one
21 problem with only using the formula?

22 A Right, just using any one variable.

23 And also let me clarify that when we're
24 approaching this as far as postmortem interval, the
25 comparison size at four or five days or ten days is that

1 at four or five days or a week compared to one or two
2 days -- and part of the reason that I continue to lean to
3 the four to five days is because of the changes, the other
4 changes.

5 If you want to throw vitreous out, then it's
6 hard to believe that in very cold, chilly weather with
7 covered, canopied by trees, that she would have gone all
8 the way up the scale of rigor and started to dissipate in
9 those chilly temperatures and have that -- well, of course
10 the lividity might have been fixed already, but in the
11 course of one to two days, which is why, again, that it
12 seems that it supports more the longer interval as
13 compared to the one or two days as a possible interval.

14 Q Okay.

15 THE COURT: Let me stop you. I think you just
16 answered a question I had in my mind.

17 Would your analysis have had changed had you not
18 used vitreous testing?

19 THE WITNESS: I wouldn't have known -- the
20 vitreous testing helped to define four to six, but looking
21 at the livor and the rigor changes, it wouldn't have
22 supported a one to one-and-a-half type interval, with
23 those temperatures and that environment and the protected
24 environment she was in.

25 Now, visually just looking at her, this was

1 brought up before, she didn't show much in the way of
2 decomposition. So without actually doing an examination,
3 she might appear freshly deceased, but looking at her and
4 seeing the changes that have progressed, along with the
5 fly eggs as well, and the cool temperatures actually being
6 there doesn't support the one to two-day type interval.

7 BY MS. WILSON:

8 Q What I was asking you about was the error rate or the
9 quality control procedures that Mr. Butler asked you
10 about. When you used this formula, you don't use it
11 alone?

12 A Right.

13 Q Because you are aware that there's so many variables?

14 A The example I gave of a person being deceased for two
15 days and yet the potassium being markedly elevated in the
16 heat.

17 Q So based on your experience, your training, and the
18 texts that you have referred to, you knew to look at those
19 things as well?

20 A Right, to take everything into consideration.

21 Q The temperature, the place where she was found, the
22 livor, the rigor, and all of these things, in conjunction
23 with the formula?

24 A Right.

25 Q And you were not using this formula to pinpoint a

1 Q Can I take a look at another article that you have?

2 Now, the article that you were referring to was
3 The Medicological (sic) Investigation of Death by Spitz;
4 is that right?

5 A The article?

6 Q The text.

7 A Yes, it's the text.

8 Q The text, I'm sorry. And then another article or
9 text that has a similar discussion on this is the -- what
10 is that, The American Journal of Forensic Medical
11 Pathology?

12 A Right. This is one -- it's an article that's also
13 used -- there is a journal that cites a case which
14 demonstrates as an example of how the formula can be used,
15 and it's cited in the actual article in the American
16 Journal of Forensic Medicine Pathology. It's also cited
17 in the same article, the same case is cited in Spitz and
18 Fisher's Medicolegal Investigation of Death text.

19 Q And the paragraph that I have underlined here, if you
20 could read that and explain to me what they're talking
21 about there.

22 A Which one?

23 Q This one? You don't have to read it out loud.

24 A This paragraph's from the article in the American
25 Journal of Forensic Medicine Pathology.

1 Q Is that a popular or well-known text?

2 A It's the journal that belongs to the major medical
3 examiner association of the United States.

4 Q Okay.

5 A But this article is written by Coe, who is the
6 leading expert in postmortem chemistry. But, anyhow, he
7 states in this one paragraph that, "Although the margin of
8 error is large, the test appears more reliable after the
9 first 24 hours postmortem than compared to other chemical
10 procedures."

11 So he's not comparing it to itself, but he's
12 comparing it to other chemical procedures, looking for
13 potassium in the blood, or sodium in the eye, so compared
14 to anything that is available at this time.

15 And then he goes further to say that, "Routinely
16 the tests have shown a good correlation between the
17 postmortem potassium level and the postmortem interval
18 when unusual circumstances have been excluded."

19 Q In this case, is this what you would consider an
20 unusual case, a body being found in the woods?

21 A Well, a body being found in the woods isn't unusual.
22 What I would consider unusual is a body recovered from a
23 freezer. In that case I wouldn't expect the vitreous
24 potassium to be that reliable. Certainly an accelerated
25 decomposition, I wouldn't expect to be that reliable.

1 That would be on the opposite ends of each spectrum.

2 Then, of course, there is whole middle area that maybe
3 aren't unusual, but it's kind of just that there's gray
4 areas on either side.

5 Q Now, again if you can, I'm sorry to keep going over
6 this, but I'm trying to check off these elements, I guess.
7 But if you can explain to the Court one more time what it
8 is that you do to make sure that using this formula does
9 not skew your overall view of the postmortem interval.

10 A First, you have to remember that postmortem interval,
11 and I've got example after example of how they can be
12 misleading, it's often used when we try to estimate, and
13 it's often used as an investigative tool to try to take --
14 further the investigation. As far as actually trying to
15 get estimate or come up with just a general range of
16 postmortem interval, you take into account the actual
17 scene, the environment, the temperatures which would be
18 included in that, the rigor and livor are two big ones
19 that --

20 THE COURT: I don't need that.

21 MS. WILSON: I'm sorry.

22 THE COURT: I really don't.

23

24 MS. WILSON: I had one other question, but I
25 lost my train of thought.

1 I guess that's all I have, your Honor.

2 THE COURT: Do you have anything further?

3 MR. BUTLER: Just a few, your Honor.

4 THE COURT: Okay.

5 IN CAMERA RECROSS-EXAMINATION

6 BY MR. BUTLER:

7 Q Doctor, you said that considering the rigor and livor
8 alone would not justify a 24 to 36-hour estimate; is that
9 right?

10 A Not in the circumstances in which she was recovered.

11 Q I got you.

12 A Right.

13 Q What would be the PMI if you just looked at those two
14 things without the vitreous?

15 A I wouldn't be able to give a number to it. If you
16 said it -- would it have been more of a question of, Did
17 this person die within the last 24 to 36 hours, given the
18 circumstances? I would have said, Unlikely.

19 Q Okay. Well, is it rigor or livor mortis?

20 A You can say it was both.

21 Q If you look just at the livor and you know that livor
22 is fixed let's say 12, eight to 12, right?

23 A In temperate conditions.

24 Q And once it's fixed, it's fixed?

25 A Correct.

1 Q All right. All we know at that point is that it's
2 sometime more than that?

3 A Yes. In temperate conditions.

4 Q What is it when it's not temperate?

5 A It would take longer to become fixed. Now, we don't
6 know exactly whether it would be 14 hours or 22 hours, we
7 don't know that.

8 Q Because some of the temperatures are temperate.
9 That's what I'm confused about.

10 A They do get up there. Again, she's shaded and has
11 been also subjected to very, very cold temperatures and
12 would have to warm up to those, but most of them, in
13 general, are not temperate.

14 Q And rigor dissipates after what did you tell me? I'm
15 sorry?

16 A If it's about 75-degree-ish weather they've
17 documented that rigor will pretty much be on its last leg
18 after 36 hours.

19 Q After 36. If rigor or livor together do not justify
20 24 to 36, can they get into four to six days?

21 A If someone says, Could this person be deceased four
22 to six days in these circumstances with the rigor and
23 livor findings? Yes. If she'd been deceased seven days?
24 Yes, as long as the weather continued to remain pretty
25 cool, especially at night, as long as she was protected.

1 She began to develop the fly eggs then also. But I think
2 the changes would have happened much more rapidly over the
3 course of the next week. But during that -- anyhow, to
4 answer your question, I wouldn't have been able to say
5 yes. By looking at the rigor and livor I wouldn't be able
6 to say four to six days. It's more a corroborating thing;
7 does it support this information more than it does this
8 information that is being given.

9 Q If you just consider those things that you just
10 mentioned without the vitreous level or potassium level of
11 the vitreous, could you get to a PMI of 48 hours?

12 A Possibly.

13 Q You can't rule out 48?

14 A No, I can't rule that out.

15 Q Or 60?

16 A Right.

17 Q You talk about some other things like the conditions
18 at the scene, the scene investigation. Did you go to the
19 scene?

20 A No, we're not a medical examiner system.

21 Q Did you review photographs of the scene?

22 A I saw some photographs, yes.

23 Q At what point?

24 A Much later on.

25 Q After you came up with the PMI of --

1 A I'm trying to remember if I actually brought the
2 pictures to autopsy. I remember at the autopsy it wasn't
3 an issue of postmortem interval at that time.

4 I'm not exactly sure when in the course I'd seen
5 them. I've seen repeated pictures. Subsequently, much,
6 much later I saw some videotape of the area.

7 Q One last thing. I promise I'm finished.

8 You talked about with Ms. Wilson this last time
9 using vitreous levels in clinical autopsies and the
10 reliability of doing so.

11 A Well, in medical autopsies.

12 Well, there's certain electrolytes in vitreous
13 that start to change after death. For example, sodium
14 starts to decrease. So we'll run -- what we can do is run
15 a vitreous and test for sodium. And if it comes out
16 hugely elevated, we know that after death it started to
17 decrease, so that person is consistent with being
18 dehydrated. If you find a low level, there's nothing you
19 can do it with. So you interpret what you can from what
20 is available.

21 From the medical autopsies, patients that have
22 died in hospitals, the information is directly from blood
23 taken premortem and that is a more accurate estimation of
24 blood electrolyte levels, which is a lot of times what
25 you're looking for in the vitreous fluid.

1 These particular tests have been done on
2 vitreous fluid and it's a different purpose. We're not
3 usually concerned with postmortem interval.

4 Q That's my point. The reliability of those usages
5 that you just listed does not extend to determining PMI
6 from vitreous levels, does it?

7 A I'm sorry, say that again.

8 Q The reliability of those other methods using
9 potassium levels and vitreous fluid for those other
10 purposes that's you just listed, do you follow me?

11 A You mean like dehydration?

12 Q Non-forensic uses.

13 A Medical autopsies don't usually use vitreous fluids
14 because there is more reliable information, yes.

15 Q Okay. So you wouldn't say those other uses make this
16 use reliable?

17 A No. I'm still not following. What other uses?

18 Q The ones that you just went through that were not
19 forensic. I mean you went through a couple.

20 A You mean dehydration?

21 Q Right.

22 A No, we would do that on a forensic case where
23 somebody is dehydrated, a baby or infant. That is a
24 forensic case, but yes, you're right. It's a different --
25 it's a medical, looking for medical values more so than --

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF CHARLESTON) 2002-GS-10-4413
) 2002-GS-10-4414
) 2002-GS-10-4415

STATE OF SOUTH CAROLINA)
)
) vs.) TRANSCRIPT OF RECORD
)) VOLUME 5
ANTHONY L. MANN)
 DEFENDANT)

September 19, 2003
Charleston, South Carolina

B E F O R E:

THE HONORABLE DANIEL F. PIEPER, JUDGE; and a jury.

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1 THE COURT: I'll hear your arguments. Go ahead.

2 MR. BUTLER: May it please the Court.

3 THE COURT: Yes, sir.

4 MR. BUTLER: In light of yesterday's testimony
5 and the articles that have been submitted to the Court,
6 our position would be that the use of potassium levels and
7 vitreous fluid does not meet the standards for reliability
8 of scientific testimony under State V Council and Rule 702
9 of our Rules of Evidence.

10 I would appeal first to the Spitz test that was
11 relied upon by Dr. Presnell, page 56, the first full
12 paragraph, The most significant single external factor is
13 the temperature of the body during postmortem interval.
14 The issue of temperature and condition seems to,
15 throughout the articles that I've submitted and even in
16 the Spitz test relied upon by the State, seems to be the
17 variable which is most likely to make the results
18 unreliable.

19 In the first full paragraph, the second column
20 on page 56, In attempting to determine the postmortem
21 interval working from slopes on glass developed for
22 different temperatures would be most satisfactory, but
23 these are not readily available.

24 That's why I asked Dr. Presnell the questions
25 concerning temperatures and the fact that there was such a

1 variance in the temperatures during the time that we're
2 talking about from below freezing all the way up into I
3 believe the sixties and seventies over the course of
4 almost a week, and my reading of that last sentence from
5 the Spitz test is that not having data that shows the
6 effect of variable temperatures on a body, a corpse, makes
7 these results somewhat unreliable.

8 I would also appeal to an article which I
9 apologize that I did not yesterday, and it's my
10 understanding it's been delivered to the Court and I've
11 given to the Solicitor, the Munoz article from 2000, A New
12 Perspective in the Estimation of Postmortem Interval Based
13 on Vitreous, on the first page in the abstract, the second
14 paragraph, Although all authors have obtained a PMI by
15 direct use of these formulas, it is nevertheless an
16 inexact approach which leads to false estimation. In this
17 article, Munoz and others go on to talk about how the
18 difficulty of using this process in a forensic setting as
19 opposed to a more controlled setting and they come up with
20 yet another point. In this article, they in table one,
21 they list the different formulas that have been advanced
22 over the years, which there are at least three, and they
23 may add another one.

24 Beg the Court's indulgence one moment.

25 Lastly, in the Lange, Sweerer and Sturner

1 article that I referenced yesterday, I won't repeat those
2 quotations that I questioned the doctor about, but the
3 table -- in this article they talk about how the
4 reliability of using this process diminishes the higher
5 vitreous level and the longer the postmortem interval.

6 If you recall the testimony yesterday was that
7 Beverly Blake's potassium level and vitreous fluid was
8 26.8, I believe.

9 Beg the Court's indulgence.

10 It's either 26.8 or 28.6.

11 It's 28.6. Table 2 lists the potassium levels
12 taken from 790 cases and 28.6 is off the charts. 24.2 is
13 as high as they go here. So I would take that to mean
14 then that if the vitreous level was higher, the more
15 reliable the results, and this vitreous level being beyond
16 even those that they consider in this study would further
17 go to show that using the vitreous method in this case
18 would also be unreliable.

19 I would like to, if I could, please -- your
20 Honor, at the appropriate time would I be able to make
21 copies that I've submitted to the Court as part of the
22 record?

23 THE COURT: I don't mind.

24 MR. BUTLER: I'm only asking as opposed to
25 giving mine because that's the only ones I have.

1 THE COURT: That's fine.

2 MR. BUTLER: That's all I have.

3 THE COURT: Madam Court Reporter, would you mark
4 that, please.

5 (WHEREUPON, The Court's Exhibit No. 5 was marked
6 for identification only.)

7 MR. BUTLER: And that would be the Munoz
8 article, the Bray article, the Lange, Sweerer and Sturner
9 article, and the Spitz and Fisher text provided by the
10 State. I would ask that all those be made part of the
11 record.

12 THE COURT: I just gave her what I have just
13 now. So I don't know if that's everything you've just
14 cited.

15 MR. BUTLER: Before we finish I'll check and
16 make sure.

17 THE COURT: Anything from the State?

18 MS. WILSON: Yes, sir.

19 Beg the Court's indulgence just one moment.

20 Just, Judge, I think it's clear based on Dr.
21 Presnell's testimony that these formulas are widely used
22 in her field and that they are in fact in two of the
23 premier texts that are used by forensic pathologists.

24 Certainly the doctor has made it clear, and the
25 texts that you have make it clear that this formula has to

1 be taken in conjunction with other factors, and that's
2 what the doctor has testified that she did. It would be
3 one thing if she were testifying that she used this
4 formula, this formula was the be-all and end-all in
5 pinpointing the time of death. But what she's doing
6 instead is saying, Here's another thing for us to look at;
7 we have to be careful with this formula because there are
8 so many variables, but still it is yet one other thing we
9 check just like we check the livor, just like we check the
10 rigor, just like we check the fly eggs, just like we hear
11 the condition of the body and the circumstances of where
12 the body was found. I think all of those things go to
13 whether or not there was some sort of error in using this
14 formula, which I think is what Mr. Butler was trying to
15 get at yesterday.

16 And again, I think the fact that it's used as a
17 formula to cross check or to see if this formula yields
18 results that fit with all the other factors, then as a
19 forensic pathologist, she looks at all the factors and
20 comes up with a time window.

21 I think any questions that Mr. Butler has raised
22 go to the weight of the evidence versus the admissibility
23 of the evidence and the fact that the formula was used by
24 the doctor.

25 THE COURT: All right. I've thought about it

1 and I believe under Rule 702 that it will provide some
2 assistance. Everyone agreed that the expert's qualified,
3 and I think based on what the expert says or said that the
4 science that she was applying is reliable, and I think you
5 do have to separate in part that that was one factor that
6 was applied. I even asked that question.

7 I have considered the Jones factors and do have
8 some concerns that have been articulated by defense
9 counsel about if this science was relied on exclusively,
10 but since it was one part of the entire review process, I
11 don't think that that suggests that that's unreliable for
12 purposes of excluding that testimony.

13 Any piece that is thrown into the calculation by
14 an expert can be attacked fully on cross-examination. So
15 I'm going to allow it in. I do not think that the
16 probative value is outweighed by any prejudicial value.

17 You all ready to proceed?

18 MS. SHEALY: Beg the Court's indulgence just one
19 moment.

20 MR. BUTLER: Can I just put my grounds on
21 record, please?

22 Rule 702 and State V Council, and I would add
23 that it's our position that the vitreous was not used to
24 corroborate the other efforts like livor and rigor, but
25 those other factors did not give the opinion of four to

1 six days as the vitreous did. So that was our position.

2 THE COURT: I thought you had finished
3 presenting your position.

4 MR. BUTLER: I just wanted to put that on the
5 record. Thank you.

6 THE COURT: All right. Ready to proceed?

7 MS. SHEALY: Your Honor, we were going to take
8 up some objections to some autopsy pictures that she
9 intends to offer.

10 THE COURT: Are those coming in this morning?

11 MS. SHEALY: With the first witness, your Honor.

12 THE COURT: Okay. Yes, ma'am.

13 MS. SHEALY: It would be our position, your
14 Honor, that that picture is completely unneeded. All it
15 will do is inflame the jury, and it's harrowing to see the
16 person on the slab.

17 THE COURT: The State's position?

18 MS. WILSON: I think it's a very sterile
19 picture. Obviously this is a harrowing situation. The
20 defense has brought out information about this victim,
21 this is Dante Tobias, having a holster on his belt. And I
22 don't know if they're going towards some sort of
23 self-defense type argument, and I think the fact that he
24 is shot in the back and this picture clearly depicts that,
25 it makes it relevant and probative.

1 MS. SHEALY: I think the doctor certainly can
2 testify that he was shot in the back and where the
3 entrance wound is.

4 THE COURT: I don't think that is so gory or
5 evoke such a passion in someone that it should be
6 excluded. I will allow it.

7 MS. WILSON: Your Honor, I think there was
8 another picture similar of Beverly Blake that we had
9 marked only for ID. And our argument would be the same.
10 Although there's no testimony that she had a holster or
11 anything like that on, still I think it eliminates any
12 question of self-defense which we have to prove was not --

13 MS. SHEALY: That is State's Exhibit 26, your
14 Honor, that we're referring to now, and we would object.
15 That picture is certainly more stirring than the one of
16 Mr. Tobias.

17 THE COURT: Why do you need this in?

18 MS. WILSON: Your Honor, again I think the State
19 has the burden of proving that the shooting was not in
20 self-defense, and I think the photograph of --

21 MS. SHEALY: I don't understand why a photograph
22 is necessary to establish that. She'll have the doctor
23 here to testify where the entrance wounds are. Usually
24 you see them use diagrams to show where they are on a
25 body.

1 THE COURT: Is that an issue in this case,
2 self-defense?

3 MS. SHEALY: Of Beverly?

4 THE COURT: Yes.

5 MS. SHEALY: There's certainly been no assertion
6 that there is, no, sir.

7 MS. WILSON: I thought under that latest case we
8 had to prove that regardless that it was self-defense.

9 THE COURT: If it goes to disprove --

10 MS. SHEALY: But, your Honor, I don't understand
11 how that photograph is necessary to assist them in that
12 effort.

13 THE COURT: All right. Again, I just don't
14 think it's -- to me it's medical. I don't think it looks
15 that gory or anything.

16 MS. SHEALY: In response to that, we're all more
17 used to seeing things like this than the people on the
18 jury and see her head shaved and her body in that
19 position.

20 THE COURT: Well, I don't think I apply the
21 standard based upon what I'm used to seeing. I apply it
22 by the kinds of pictures that I know are deemed to be
23 gory.

24 I don't think that evokes any kind of emotional
25 response from the jury. I will allow it.

1 MS. WILSON: That is State's 26 for ID, and
2 we'll have the photo of Mr. Tobias marked, please.

3 (WHEREUPON, State's Exhibit No. 26 was marked
4 for identification and received into evidence.)

5 (WHEREUPON, State's Exhibits Nos. 124 AND 125
6 were marked for identification only.)

7 MS. WILSON: And, your Honor, I wanted to make
8 sure that our articles were also marked regarding the
9 Council hearing that we had earlier. It's an article from
10 the American Journal of Forensic Medical Pathologist,
11 Volume 14, Number 2, 1993, and then a copy of the Spitz
12 and Fisher that I believe you've already put in, right?

13 MR. BUTLER: I didn't get these in.

14 Yes, that's fine.

15 MS. WILSON: These two from the State.

16 MR. BUTLER: If I could, the Bray article, the
17 Lange, Sweerer and Sturner article are also, I guess, as
18 Court's exhibits.

19 (WHEREUPON, The Court's Exhibits Nos. 6-9 were
20 marked for identification only.)

21 THE COURT: Ready to proceed?

22 MS. WILSON: State's ready.

23 THE COURT: Defense?

24 MS. SHEALY: Yes, your Honor.

25 THE COURT: Bring the jury in, please.

1 (The jury came into open court at approximately
2 9:17 a.m.)

3 THE BAILIFF: The jurors are all present, your
4 Honor.

5 THE COURT: Thank you. Please be seated.
6 Good morning, ladies and gentlemen.

7 THE JURORS: Good morning.

8 THE COURT: We're ready to proceed at this time.

9 MS. WILSON: Your Honor, the State calls Dr.
10 Erin Presnell.

11 DR. ERIN PRESNELL, after being duly sworn,
12 testified as follows:

13 THE CLERK: Please have a seat. Please state
14 your full name for the Court and spell your last.

15 THE WITNESS: My name is Susan Erin Presnell,
16 P-R-E-S-N-E-L-L.

17 DIRECT EXAMINATION

18 BY MS. WILSON:

19 Q Dr. Presnell, where are you employed?

20 A I work at the Medical University of South Carolina
21 down the way here.

22 Q And are you licensed to practice medicine here in
23 South Carolina?

24 A Yes. I'm a pathologist. Pathologists are M.D.s, and
25 I have a medical license to practice in South Carolina.

1 Q And will you tell the jury about your educational
2 background, please.

3 A I'm a forensic pathologist which is a subspecialty of
4 pathology. But I like I said, pathologists are M.D.s, so
5 whoever is going to go to medical school will get a
6 college degree and then do the four years of medical
7 school and then pick a specialty, OB-GYN or family
8 medicine. I chose pathology which at the time was a
9 five-year residency. And then after that I did a year of
10 specialized forensics and then began my career.

11 Q How do you or other forensic pathologists at MUSC
12 become involved in doing an autopsy in a criminal case?

13 A Well, South Carolina is a coroner state, meaning that
14 the coroners of the state that are elected for their
15 county will respond to death scenes and order an autopsy
16 as appropriate, arrange transportation for the body to
17 come to our facility, at which time we will do an autopsy.

18 Q How many forensic autopsies have you performed in
19 your career?

20 A Well, as faculty at MUSC, we average between two and
21 two hundred fifty each, but I guess if I had to add it up,
22 I guess about 1200 to 1300.

23 Q And have you been qualified in a court of law as an
24 expert in forensic pathology in the past?

25 A Yes, I have.

1 Q And about how many times have you testified as an
2 expert in forensic pathology?

3 A Thirty-ish maybe.

4 MS. WILSON: Your Honor, at this time we'd offer
5 Dr. Presnell as an expert in forensic pathology.

6 THE COURT: Any objection?

7 MS. SHEALY: Without objection.

8 THE COURT: The Court finds that you are so
9 qualified in that area without objection.

10 BY MS. WILSON:

11 Q Dr. Presnell, did you have an occasion to perform an
12 autopsy on a man identified as Dante Craig Tobias?

13 A Yes. We received a request from the coroner's office
14 to autopsy an individual named Dante Tobias on January 8,
15 2002.

16 Q And when and where was that autopsy performed?

17 A That was done at the Medical University of South
18 Carolina.

19 Q Based on your examination of the body of Dante Craig
20 Tobias, do you have an opinion to a reasonable degree of
21 medical certainty as to the manner and cause of death?

22 A Yes. He had a single gunshot wound to his body. It
23 went in through his back and exited through his chest.

24 Q And will you explain to the jury in looking at the
25 body and performing that autopsy what you saw that showed

1 that that was in fact the cause of his death?

2 A Well, when we do an autopsy, our autopsies are
3 complete autopsies. We don't just stop where we have
4 potentially find the cause of death, but we examine the
5 whole external body, diagrams, photographs, and then we do
6 the whole internal organs, examine all those as well as
7 the brain.

8 In Mr. Tobias' case, he had an entrance gunshot
9 wound that entered into the right back and went through
10 the liver, the right lung, and the heart, and then exited
11 on the right chest.

12 There were no other significant medical diseases
13 that would account for his death, and certainly the
14 gunshot wound through the heart and other organs were
15 sufficient to account for his death.

16 Q And do you have an opinion as to how long he would
17 have survived after the gunshot wound?

18 A Well, there aren't documented cases where somebody
19 shot through the heart or through a vital organ can
20 survive for several seconds or maybe even up to a minute,
21 but clearly being shot through the heart, the person will
22 not survive longer than a couple of minutes.

23 Q Did you look at the wound to try and determine a
24 range of fire?

25 A Yes. One of the things that we do when we are

1 examining a gunshot wound victim, because it's obvious
2 that their cause of death is a gunshot wound, but one of
3 the things we do is look and try to determine a range of
4 fire, and there's three general categories that we can put
5 range of fire in; either it's a contact, meaning the
6 barrel or the muzzle of the gun is right up against the
7 skin, and we can tell that because a lot of soot is
8 deposited around the entrance wound. As the gun is
9 further back or the barrel of the gun is further back and
10 it's still in close range or intermediate range, part of
11 what exits the end of the barrel, especially you get the
12 soot from the powder and all, but also particles of gun
13 powder, and that gun powder will strike the skin and
14 actually cause scratches. If you look it's called
15 stiffling. But anyhow, stiffling is defined as an
16 intermediate or close-range gunshot wound. Once you get
17 the barrel of the gun even further back, the gun powder
18 and soot won't reach the skin and the entrance wound will
19 look just like a hole with no soot or no stiffling around
20 it.

21 In this case, we did not have -- or his gunshot
22 wound did not have soot or stiffling. So it's consistent
23 with a distant gunshot wound.

24 He did have clothing that accompanied him. It
25 was taken off most likely by EMS. The shirt was very

1 bloody and did not look like it had soot on it, but
2 certainly that's something that needs to be taken into
3 consideration as well. But the actual condition of the
4 skin looked like a distant gunshot wound.

5 Q Did you say that the clothes may have affected that?

6 A Yes. I was explaining that if the clothes are on,
7 sometimes they can absorb some soot or some gunpowder
8 particles. If it's just one layer of clothes sometimes it
9 will go through it. If it's lots of layers of clothing,
10 like a big down jacket, the gunpowder part may not make it
11 through.

12 In his case he had a tee shirt and that was it.
13 It was bloodied and kind of hard to see if there was any
14 dark soot but there did not appear to be, and like I said,
15 there was none on the skin.

16 MS. WILSON: Your Honor, at this time we'd offer
17 State's 123 subject to the Court's ruling.

18 MS. SHEALY: That's correct.

19 THE COURT: All right. I'll allow it.

20 (WHEREUPON, State's Exhibit No. 123 was marked
21 for identification and received into evidence.)

22 BY MS. WILSON:

23 Q And you mentioned that based on your findings that
24 the entrance wound was where?

25 A It is on the back a little bit to the right of the

1 midline.

2 Q And the exit wound was in the front?

3 A Yes.

4 Q And when you examined the body, you did not find any
5 projectiles or anything of that nature inside the body; is
6 that correct?

7 A Correct.

8 MS. WILSON: Beg the Court's indulgence.

9 BY MS. WILSON:

10 Q I'm going to show you State's Exhibit 123. If you
11 could dim the lights. I'm going to use the pointer.

12 First of all, tell the jury what that photo is.

13 A That's the back of Mr. Tobias. His head area looks
14 like it would be up in this area, and we can see this hole
15 right there, and that is the entrance gunshot wound.

16 Q Is that a Charleston County Sheriff's office placard?

17 A Yes. Usually our office would have a tag on it, but
18 if crime scene accompanies the body to the autopsy,
19 they'll take their only photographs, and that's a
20 Charleston County case number from the sheriff's office.

21 Q And that picture depicts the entrance wound of the
22 bullet?

23 A Yes.

24 MS. WILSON: Your Honor, if I could just hold
25 that up for the jury since that lighting is a little off.

1 THE COURT: Yes, ma'am.

2 BY MS. WILSON:

3 Q Now, Dr. Presnell, were you involved in a forensic
4 autopsy on a woman identified as Beverly Blake?

5 A Yes, I was.

6 Q And when and where was that autopsy performed?

7 A That was about a week later, on January 14th, 2002.

8 Q That's when you performed the autopsy?

9 A Yes.

10 Q Okay. And if you could first tell the jury, in doing
11 your forensic autopsies, do you take a height and weight
12 measurement?

13 A Yes, we do that.

14 Q Could you tell the jury what Ms. Blake's height and
15 weight was for your measurements?

16 A On our records we have her weight at approximately
17 142 pounds. That's with the clothing on as well. She is
18 weighed on a stretcher and the stretcher amount is
19 subtracted. And she's about 65 inches in height.

20 Q And can you tell the jury what washer woman's hands
21 are or washer woman's characteristics are?

22 A When a forensic pathologist describes the washer
23 woman change or washer woman effect, it's basically caused
24 by emersion in a liquid. It's where the skin is all
25 wrinkly like if you stay in the bathtub too long, but with

1 a deceased body the skin can get very, very wrinkly and
2 that's the washer woman effect.

3 Q When you examined Ms. Blake's body, did you notice
4 any washer woman change?

5 A I don't know that we described it.

6 Q In the last paragraph in the external examination
7 portion of page two.

8 A Hold on. I thought you were asking about the upper
9 extremities, but in our autopsy report we did describe in
10 and around the ankle area some washer woman change near
11 the feet.

12 Q And what area, was that around the sock area?

13 A That is what we described in the autopsy report.

14 Q Also, in just doing the gross lookover or examination
15 of the body, did you notice what type of hair she had?

16 A We would comment that her hair had lots of hair
17 weaves, so there's a lot of implants; not implants into
18 the scalp but the hair weave that is somewhat fashionable
19 these days.

20 Q Was that up to 12 inches in length?

21 A That was approximately 12-inches in length.

22 Q Now, based on your examination of the body of Beverly
23 Blake, do you have an opinion to a reasonable degree of
24 medical certainty as to the manner and cause of her death?

25 A Yes. Her cause of death was multiple gunshots

1 wounds, and of course the manner is considered homicide.

2 Q And did you perform or did you create a sketch or
3 diagram of her injuries?

4 A Right. Yes, we did. We diagram each case. And in
5 this case there was no exception. We had a diagram that
6 we did at the time of autopsy.

7 MS. SHEALY: No objection, your Honor.

8 THE COURT: All right.

9 MS. WILSON: Your Honor, at this time we offer
10 State's Exhibit 18.

11 THE COURT: State's 18 in evidence without
12 objection.

13 (WHEREUPON, State's Exhibit No. 18 was admitted
14 into evidence.)

15 BY MS. WILSON:

16 Q Is this the sketch that you made regarding the
17 forensic autopsy of Beverly Blake?

18 A Yes. This top one is the one that we did, and the
19 bottom.

20 Q The middle page?

21 A The middle page was done later. The top page was
22 done at autopsy. That demonstrates all the gunshot
23 wounds.

24 Q I'm going to ask you to go over this sketch with the
25 jury. Would it be easier for you to stand there and us

1 put it up here or how would you prefer to do that?

2 A Does it project well?

3 Q Yes, it will. Take a look. I think it will project.

4 If you could explain to the jury, and if you
5 need to step down where you can read better.

6 A I will step down.

7 The diagram obviously is a little complicated
8 because it's got all the gunshot wounds, but it also has
9 the other information including the wrinkled feet, but the
10 information just describing her external appearance.

11 We'll concentrate on the head first. There are
12 three gunshot wounds to the head. And when we label
13 gunshot wounds, we label them with letters, A, B, C, D
14 instead of 1, 2, 3, the purpose being that if you say 1
15 and 2 and one's the entrance and one's the exit, it's not
16 really two gunshot wounds, it's just one. So for clarity
17 purposes the letters represent the gunshot wounds.

18 So first we have here you see A and B on the
19 left side of the head. B is actually the entrance wound,
20 so it's a little bit further on the back than A. This
21 gunshot wound is probably the most complicated one. The
22 bullet goes into the scalp and into the skull and then
23 partially exits at A. So we have a gunshot wound going in
24 at B and exiting at A.

25 Q Is that this area right here?

1 A See A right there? So it's a pretty sharp,
2 superficial angle. So the bullet's coming in B and out A.
3 However, the underlying skull defect, there is a defect
4 there and part of the bullet, it looked like the bullet
5 had fragmented into at least two pieces, part of the
6 bullet actually went into the brain and into the left part
7 of the brain where we recovered part of the fragment of
8 that bullet. That one gunshot wound even though it's got
9 an entrance into the head and an exit wasn't on that
10 actual scalp.

11 Q Do you need this diagram to show that better?

12 A It will be closer, or I could do this one. All
13 right.

14 So again you see B and A, and you can kind of
15 appreciate the angle a little bit better.

16 She has two more additional gunshot wounds on
17 her head. There is one labeled C and one that's labeled
18 D. C is a strange one in that there's the entrance wound
19 and it actually strikes the back of the skull, the thick
20 part called the occipital, and chips it, but it doesn't go
21 any further than that. We recovered a bullet in the hair
22 that we think might have corresponded with that gunshot
23 wound.

24 And then the last one on the head area is D.
25 It's on kind of the left lower head in the back there a

1 little bit, and this actually goes directly into the
2 brain, through the brain stem, and we recovered the bullet
3 on the right side of the head in the cerebrum on that
4 side.

5 Q So how many entrance wounds were there in the head?

6 A So for a total we have three entrance wounds to the
7 head, three gunshot wounds to the head. Two of the
8 bullets actually entered into the brain.

9 Q And then if we could look at the other exhibit to
10 show the ones that you found on the body.

11 A Okay. The ones on the body, there are E, F, G, and
12 then H, I are on the arms.

13 The gunshot wound E right here goes into the
14 front on the left side of the body, into the front of the
15 body through just kind of a muscle of the abdomen right
16 here and into the liver and then to the muscle of the
17 abdomen right here where we recover another bullet.

18 So that's one gunshot wound to the left breast
19 area there.

20 G is the other entrance gunshot wound to the
21 body. It enters into the left back there and goes through
22 the left lung and it exits at F, which is inferior to the
23 breast. So we do not recover at the autopsy the bullet
24 that is consistent with that gunshot wound.

25 Then we have two gunshot wounds to the back and

1 chest.

2 And then the last gunshot wound is the H and I.
3 It's a through-and-through. The bullet enters at H. It's
4 on the person in the anatomical position which is like
5 this, and it entered the front of the arm, basically went
6 through one of the ulnar bones in the arm and exited at I.
7 So far there's a total of six gunshot wounds, three to the
8 head, two to the chest/back, and one to the arm.

9 Q All right. Did you also look for a range of fire on
10 Ms. Blake?

11 A Yes. Ms. Blake had a lot more clothing on. She
12 didn't have any evidence of soot on the clothing. We
13 didn't see any evidence of soot or stiffling on the
14 gunshot wounds, so it looks like these are distant.

15 MS. WILSON: Thank you.

16 I'm going to show you or I'm going to offer
17 State's Exhibit 26, I believe subject or pursuant to the
18 Court's earlier ruling.

19 MS. SHEALY: That's correct, your Honor.

20 THE COURT: All right.

21 BY MS. WILSON:

22 Q Is this the photograph taken at autopsy of Ms. Blake?

23 A Yes. Again, it doesn't have our autopsy tag on it,
24 so it was most likely taken by crime scene, but you're
25 right, the coloring is not so great.

1 Q Let me try something else. Is that better?

2 A Yes, that's better, but I'm thinking --

3 Q Do you need to look at the photograph closer?

4 A Can I for a minute? Does it look like it's switched?
5 Well, the photograph looks flipped so that everything on
6 the right is now on the left.

7 Q Do you mean like the negative is flipped?

8 A Right. The G is backwards.

9 THE COURT: Let's move on then.

10 BY MS. WILSON:

11 Q Let's move on then.

12 Did you also performed toxicological tests on
13 Ms. Blake?

14 A Yes. We collect body fluids at autopsy to do
15 toxicology on. We send the toxicology off to a forensic
16 laboratory that does it, and we did so in this case.

17 And there was no blood alcohol. She did have
18 Delta 9 for THC metabolite, which is an inactive
19 metabolite of marijuana in her blood, but that was it.

20 Q And did that finding of marijuana in her blood affect
21 your opinion as to her cause of death at all?

22 A No, it did not.

23 Q Now, did you take any swabs from Beverly Blake's
24 body?

25 A Yes. We did swabs of the major orifices and a sexual

1 assault work-up which included swabbing the vagina and of
2 the rectum and also the oral cavity.

3 Q And when you took those swabs, did you see anything
4 under the microscope at all on those?

5 A No. We usually -- when we do swabs, we'll make a
6 glass side and we'll have a stain and look in the
7 microscope looking for sperm, and in this particular case
8 we didn't find any sperm that we could identify.

9 Q And you said you made swabs of those. Do you
10 preserve the swabs?

11 A Yes. What happens is when we do the swabs and we
12 make the glass sides at the time we take them and then
13 they're air dried, and more often than not we'll transfer
14 them as evidence to crime scene or to the SLED office,
15 whichever is there to take them.

16 Q So those swabs went along to SLED for further
17 testing?

18 A We transfer them directly to the crime scene unit.

19 Q Now, did you do any -- when you did the forensic
20 autopsy, as part of that did you attempt to determine a
21 time of death or postmortem interval?

22 A When we initially began this autopsy, and I know
23 postmortem interval, the time frame of her death to when
24 she's discovered or in my case at the time of autopsy has
25 been an issue, but when we first did the autopsy, it

1 wasn't an issue that was brought up at the time. It came
2 up later.

3 MS. SHEALY: Your Honor, I apologize. Just a
4 second.

5 Note our earlier objection under Council.

6 THE COURT: Yes, ma'am.

7 THE WITNESS: Anyhow, there are things that we
8 do on external exam on every single case that help us
9 assess postmortem interval.

10 Before we get into any of that, I do want to
11 clarify that postmortem interval is an extremely difficult
12 thing to narrow down. The further away you get from death
13 the more variable it is or the more difficult it would be
14 to try to reliably estimate it.

15 Often times postmortem interval is used more as
16 an investigative tool or the information that you get from
17 the factors that you're looking at to try to estimate
18 postmortem interval are used to support or corroborate a
19 scenario or to state out a scenario as more than unlikely.

20 So in this case, yes, we did do the normal
21 external examination assessments.

22 BY MS. WILSON:

23 Q Let me ask you this. I know you just testified I
24 believe that postmortem interval is difficult to
25 determine. You've watched TV and seen movies about the

1 issue?

2 A I try to stay away from CSI.

3 Q CSI, the crime scene investigation show?

4 A Right.

5 Q Why do you try to stay away from it?

6 A Well, because obviously I'm biased. A lot more
7 accurate, immediate, and rapid things can be done than
8 actually can. It's frustrating.

9 Q So the bottom line is it's very difficult to pinpoint
10 a time of death?

11 A Yes, unless you have a cardiac monitor hooked up to
12 somebody. It is very difficult to narrow it down to even
13 minutes, I think.

14 Q Explain to the jury the things that you look for in
15 trying to determine postmortem interval as best you can.

16 A Well, again, there are a number of things. A lot of
17 them are hugely affected by the individual, by the
18 environment, and particularly exposure to the elements or
19 environmental temperature can change these things
20 dramatically. But they have certain generalizations based
21 on like temperate conditions, like 75 degrees, nice sunny
22 weather type environment.

23 But anyhow, one of the things I'm sure you've
24 heard is rigor mortis or rigor mortis. People say it
25 differently, but you can say it either way. That's the

1 stiffening of the muscles.

2 Now, the muscles start to stiffen because there
3 has to be energy for them to release. So after the body
4 dies and eventually the energy is all used, the ATP, the
5 muscles will be stiff in that position. What happens is
6 they'll consistent to get stiffer in whatever position
7 they're in for about 12 hours, and then they will be their
8 maximum stiffness. And that maximum stiffness will stick
9 around for another 12 hours. So that's 24 hours at
10 maximum stiffness.

11 As the body starts to decompose and the proteins
12 from the muscles break down, then the rigor will start to
13 dissipate and the body will get unstiff again, and that
14 will happen over the next 12 hours or so. So that is
15 about a 36-hour process for the rigor to come and go in
16 sunny, moderate, temperate conditions. This is one thing.

17 Another major element that we look at is livor
18 mortis or livor mortis.

19 Q Can I ask you something before you go to that.

20 You keep qualifying these hours with temperate
21 conditions. How does cool or cold weather, cool being
22 less than 75 degrees into the fifties, forties, thirties,
23 how does that affect rigor or rigor?

24 A That's a good point.

25 Anything that is going to speed up

1 decomposition, which is warmth and heat, which are
2 90-degree days, is going to speed up this process. It
3 will happen a lot more quickly. Anything that will cool
4 down the body will prevent decomposition and will slow
5 down this process, so it would be the opposite.

6 So anyhow, the same thing applies to basically
7 all of the factors that we're looking at. And rigor
8 mortis and the vitreous, which we'll talk about, is
9 anything that's going to cool the body is going to slow
10 all these processes down.

11 All right. So rigor mortis is purple/red
12 discoloration that a decedent or deceased person will
13 develop on their skin in areas of dependency. What
14 happens is that --

15 Q When you say "dependency," what does that mean?

16 A I'm going to get to that.

17 It's meaning where areas of gravity, where the
18 gravity would be.

19 What I was going to say is that the heart stops
20 beating so the blood quits circulating in the body. Once
21 it starts circulating through the body, then gravity
22 starts to take over, and if somebody is laying on their
23 backs, then it's going to pull the blood down to the
24 dependent portions of the back of the body. If somebody
25 is laying on their front, the gravity will pull the blood

1 down to the dependent portions of the front of the body.

2 Anyhow, when the blood's starting to, when it's
3 settling, it settles into the vessels. And up until about
4 eight hours if you press on that purple discoloration, you
5 can kind of move them up and press on it, it will actually
6 blanch, meaning that the red cells in the vasculature, in
7 the vessels will swish away and you can make it blanch and
8 then it will fill back in.

9 After that eight to 12 hours, though, the red
10 cells, the blood has started leaking out of the vessels
11 into the soft tissues, and if you press on it, it won't
12 blanch anymore. The red cells in the blood that are in
13 the tissues, they stay there. That is called fixed
14 lividity or fixed livor mortis. That happens like I said
15 after about 12 hours, again temperate conditions.

16 Q Now, you said temperate conditions. So if it's
17 cooler, it's going to take longer to fix; is that right?

18 A Yes.

19 Q All right.

20 A And then there's a whole other host of factors that
21 you can look at which are even less reliable things like
22 body temperature, which once the body cools or warms to
23 the environmental temperature, it pretty much follows that
24 along. And when we did our autopsy, she had been in the
25 refrigerator overnight in a coroner setting like this.

1 There are stomach contents. There's different
2 types of estimates, but really those are even more
3 unreliable.

4 Q Did you look at her stomach contents?

5 A Yes. We looked at stomach contents. And in her
6 case, she had -- and again it's not CSI where you can
7 recognize pepperoni and a whole meal. Digested food is
8 very difficult to try to actually recognize what we eat
9 before it gets down to our stomach?

10 But in her case she had about one ounce of green
11 leafy material. So it really wasn't necessarily
12 identifiable.

13 It's not as much used to estimate this one
14 interval because, first of all, you're looking in the
15 realm of hours of how long it takes to digest. First of
16 all, you have to identify what it was that she last ate,
17 and then you have to try to estimate how long it would
18 have taken her to digest it. And again with one ounce of
19 green leafy material, it's not really that much.

20 But anyhow, so we had done all these things
21 originally at the time of autopsy. When the postmortem
22 issue came up later on, we decided that we would take
23 another or use another doctor, which is the testing of
24 vitreous.

25 Vitreous fluid is the fluid from the inside of

1 the eye. And the inside of the eye, the fluid in there is
2 protected somewhat from decomposition, but one of the
3 things that they found out is that after death, the cells
4 around the eye will start to release potassium and the
5 potassium will go up after death. Again, heat is going to
6 make it go up a lot quicker and coolness is going to make
7 it go up or rise in amount a lot slower.

8 So anyhow, we tested her vitreous fluid and
9 found out that she had a level of 28.6.

10 There are a number of formulas that are used to
11 put this potassium level into, and they give you a
12 postmortem interval usually in hours that, like I said,
13 there's a number of formulas and no one is in agreement on
14 exactly which one to use.

15 I originally used the one that is published in
16 one of our major forensic textbooks, and we put the
17 postmortem or potassium level in and came back with an
18 approximate postmortem interval of five days, but this
19 formula also gives a range of plus or minus 20 hours,
20 which is a day on either side. So this is a four- to
21 six-day range that the vitreous potassium, the eye fluid
22 potassium suggests.

23 It doesn't say that it is. It's just supporting
24 that length of interval more so than a shorter length or
25 shorter interval.

1 Q In --I'm sorry.

2 A -I was just going to say when you -- bringing back up
3 again that postmortem interval for us is used or it's
4 difficult or it would be kind of misleading for me to say,
5 yes, I think looking at all this she was deceased 5.8
6 days. Instead, what my job is, is when I see, when it's
7 giving a scenario to me to put the information obtained
8 from our exam and our tests, it supports this scenario
9 over this scenario.

10 With everything that we had, when the question
11 was what scenario does it support, for us, in my opinion,
12 it supports the four- to six-day range longer than it
13 does -- more so than it does the one- to two-day range.

14 The reason I say that, it's not just the
15 vitreous fluid potassium level, but with the rigor and the
16 settling of the blood, and I'm sorry, I forgot to mention
17 actually hers. Her rigor was mostly unfixed, meaning
18 that -- or mostly gone.

19 We rank rigor, stiffness of the body, on zero to
20 4, 4 being the strongest. We gave hers about a one, which
21 means it was barely there, which means that she was either
22 just becoming stiff or it means that she was losing it,
23 you know, after that in temperate conditions, 36-hour
24 period.

25 However, her livor, the settling of the blood,

1 was fixed. It was on the front of her and it wasn't going
2 anywhere; it was stuck there, which means that puts us on
3 the back end of the scale.

4 So by looking at her rigor, we now know that her
5 rigor was going away. So even in nice warm conditions,
6 that takes at least usually -- not hot conditions but the
7 temperate conditions, that's estimated to take about 36
8 hours. So with her in the cool conditions of a January
9 week, we would expect that it would take longer than that.
10 So with those findings along with the vitreous, we
11 supported a longer postmortem interval than one to two
12 days.

13 Q And you mentioned that you used a formula that was
14 cited I believe you named the textbook, was it Dr. Spitz's
15 book?

16 A The textbook I referred to was Spitz and Fisher.
17 It's Medicolegal Investigation of Death. And the chapter
18 that's in there, there's also separate articles written in
19 that literature by this person named Coe, C-O-E. He did a
20 lot of this work.

21 Q And is there another formula as well that you plugged
22 the vitreous fluid number into to see what that formula
23 gave you?

24 A Well, the issue came up and, like I said, there's a
25 number of different formulas. There was a formula

1 previous to the one that I used that gave me the four- to
2 six-day, and that was published by Sturner. And I plugged
3 the numbers in. The thing is, his formula is based on
4 some of the older analytical techniques and the newer
5 techniques are more sensitive, so it's not as reliable in
6 my opinion, but I came out with 6.8 days. But like I
7 said, I still would have a tendency to focus more on the
8 other formula that I used.

9 Q And the number that you came up with was 4.98 days
10 using the Medea, the first formula that you spoke of?

11 A Right, plus or minus 20 hours. The 4.98, five days
12 plus or minus 20 hours. So again, this isn't -- you can't
13 narrow it down to within hours. So when I say four- to
14 six-days, that's a pretty broad range.

15 Q And when you give that range or that window, that is
16 from the time of autopsy; is that right?

17 A Right. This is from -- we drew the eye fluid out at
18 autopsy and then it would be stored, and then when we did
19 test it, it would reflect the findings from autopsy.

20 Q So if -- you performed the autopsy on January 14th,
21 Monday, correct?

22 A Yes.

23 Q So that's at the top end of the window six days?

24 A Well, again, you're implying that I'm saying four- to
25 six-days. I'm not. It could have been a week, especially