

IN THE SUPERIOR COURT OF GORDON COUNTY
CHEROKEE JUDICIAL CIRCUIT
STATE OF GEORGIA

STATE OF GEORGIA)
)
 vs.) CRIMINAL ACTION
)
ASHLEY DOUGHERTY) NO. 2009-NMT
_____)

Championship Round of the 2009 National High School Mock Trial Championship, presided over by The Honorable George H. Carley, pursuant to the Rules of the National High School Mock Trial Competition, before Daniel M. Gershwin, Certified Court Reporter and Notary Public, at 185 Central Avenue, SW, Courtroom 7E, Atlanta, Georgia, on Saturday, May 9th, 2009, commencing at the hour of 5:00 p.m.

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1 PROSECUTION WITNESS: DETECTIVE RANDY TOWALIGA

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1 On behalf of the Prosecution (Lakes North High School,
2 Lakeville, Minnesota):

3 MELISSA CHENEY - Forsyth Sparks
4 MAX EICHENBERGER - Attorney
5 MARIE FERGUSON - Attorney
6 LUIS GUITART - Raven Feather
7 LIZ KORBY - Detective Randy Towaliga
8 ANNA SKIDMORE - Timekeeper
9 CORINE SOLHEID - Attorney

10 On behalf of the Defendant (John Adams High School,
11 South Bend, Indiana):

12 JOSH COURTNEY - Attorney
13 JENNIFER DEETER - Ashley Dougherty
14 ADAM KERN - Attorney
15 DAVID KERN - Timekeeper
16 CHRIS SILVESTRI - Talbot Berrien
17 EILIS SMYTH - Attorney
18 GABE YOUNG - Taylor McIntosh

19 Judging Panel:

20 MICHAEL BARKER - Georgia
21 JOSH BELL - Georgia
22 JENNIFER BRUNER - Oklahoma
23 EDWARD CARRIERE - Georgia
24 DORIS DOWNS - Georgia
25 DEWAIN FOX - Arizona
GENE FRANCHINI - New Mexico
PETE JONES - Delaware
STEVEN MILLER - Texas
JOHN RUCKER - South Carolina
ANDREW SUSCO - Pennsylvania
LESTER TATE - Georgia
KAREN KLAVER - Northern Mariana Islands

- - -

1 MR. MILLER: The court will come to
2 order. The Superior Court of Gordon County, State of
3 Georgia, the Honorable Justice George Carley
4 presiding.

5 THE COURT: Be seated, ladies and
6 gentlemen. Welcome to the championship round of the
7 26th National High School Mock Trial Championship. It
8 is my pleasure to preside over this round and to
9 welcome the two best teams in the world.

10 It is going to be also my pleasure to
11 introduce one of the most distinguished judging panels
12 that I have ever seen. As I call their names, I'm
13 going to ask that they rise, but I'm not going to
14 allow them time to comment.

15 The Honorable Michael Barker from
16 Georgia, from Savannah, Georgia; Mr. Josh Bell, who is
17 the current president of the YLD, which is the sponsor
18 of Georgia's program; Ms. Jennifer Bruner from
19 Oklahoma; the Honorable Edward Carriere from Decatur,
20 Georgia, State Court judge; the Honorable Doris Downs,
21 chief judge of Fulton Superior Court and our host
22 here; Mr. Dewain Fox from Arizona and the host of the
23 competition two years from now; the Honorable Gene
24 Franchini from New Mexico, former chief justice;
25 Mr. Pete Jones on the national board and from

1 Delaware, the first state, which hosted last year's
2 competition; Mr. Steven Miller from the grand state of
3 Texas; the Honorable John Rucker South Carolina;
4 Mr. Andrew Susco from Pennsylvania; Mr. Lester Tate of
5 the State Bar of Georgia from Cartersville, Georgia;
6 and Ms. Karen Klaver from the Northern Mariana
7 Islands. Thank you, ladies and gentlemen.

8 My name is George Carley. In real life,
9 I'm on the Supreme Court of Georgia, but in reality
10 I'm a mock trial junkie. But this is only my second
11 National Mock Trial competition in Atlanta. It's my
12 18th overall, and each one gets better and better.
13 And you, ladies and gentlemen, teach us how to enjoy
14 it and how much we can learn.

15 At this time, I've got to go through a
16 checklist that you've already heard four times, and
17 this is the fifth time, but some of the things are
18 moot like the camera part.

19 I do welcome both teams. We realize this
20 is a competitive event, and this is the best of it
21 all, but it is still something you can have fun at, I
22 hope.

23 I must tell you that there may be no
24 communication between people inside the bar and
25 anybody outside the bar either in any way whatsoever.

1 Do we have two student timekeepers?

2 MS. SKIDMORE: Yes.

3 MR. DAVID KERN: Yes.

4 THE COURT: And you two are aware of the
5 regulation that if there's as much as a 15-second
6 discrepancy at any stage of the trial, you will notify
7 me?

8 MR. DAVID KERN: Yes.

9 MS. SKIDMORE: Yes.

10 THE COURT: And, if you will, when you
11 hold up the things, will you hold them so I can see
12 them and everybody can see them?

13 MR. DAVID KERN: Yes.

14 MS. SKIDMORE: Yes.

15 THE COURT: All right. Rosters have been
16 exchanged; is that right?

17 MR. EICHENBERGER: Yes, Your Honor.

18 MR. COURTNEY: Yes, Your Honor.

19 THE COURT: All electronic equipment must
20 be turned off of any kind. That includes the judging
21 panel. It must be turned off and there may be no use
22 of electronic equipment during this round at all.

23 At this time, I'm going to ask the teams,
24 starting with the prosecution, to introduce themselves
25 by name and role but, of course, not by where they're

1 from

2 MR. EICHENBERGER: Your Honor, members of
3 the jury, my name is Max Eichenberger. I'll be
4 performing the direct examination of Forsyth Sparks
5 and the cross-examination of Talbot Berrien.

6 And my co-counsel.

7 MS. FERGUSON: Your Honor, members of the
8 jury, my name is Marie Ferguson, and I will be
9 presenting the opening statement as well as the direct
10 examination of Raven Feather and the cross-examination
11 of Ashley Dougherty.

12 MS. SOLHEID: Your Honor, members of the
13 jury, my name is Corine Solheid. I'll be giving the
14 direct examination of Detective Towaliga, the
15 cross-examination of Taylor McIntosh, and the closing
16 argument.

17 Our witnesses.

18 MR. GUITART: Your Honor and members of
19 the jury, my name is Luis Guitart, and today I will be
20 portraying Raven Feather.

21 MS. CHENEY: Your Honor, members of the
22 jury, my name is Melissa Cheney, and today I will be
23 portraying Forsyth Sparks.

24 MS. KORBY: Your Honor, members of the
25 jury, my name is Liz Korby, and I will be portraying

1 Randy Towaliga today.

2 THE COURT: Thank you.

3 And for the defense?

4 MR. COURTNEY: Good afternoon, Your
5 Honor, ladies and gentlemen of the jury. My name is
6 Josh Courtney and along with my co-counsel, I will be
7 representing the defendant, Ashley Dougherty. I'll
8 also be the performing the opening statement, the
9 direct examination of Ashley Dougherty, and the
10 cross-examination of Forsyth Sparks. I will now allow
11 my co-counsel to introduce themselves.

12 MR. ADAM KERN: Good afternoon, Your
13 Honor, ladies and gentlemen of the jury. My name is
14 Adam Kern, and today I will be conducting the direct
15 examination of Taylor McIntosh and the cross-
16 examination of Randy Towaliga.

17 MS. SMYTH: Good afternoon, Your Honor,
18 ladies and gentlemen of the jury. My name is Eilis
19 Smyth, and today I will be conducting the direct
20 examination of Talbot Berrien, the cross-examination
21 of Raven Feather, and delivering the closing
22 arguments.

23 And with your permission, I'll allow our
24 witnesses to introduce themselves.

25 THE COURT: Please.

1 MS. DEETER: Good afternoon, Your Honor,
2 ladies and gentlemen of the jury. My name is Jennifer
3 Deeter, and today I'll be portraying Ashley Dougherty.

4 MR. SILVESTRI: Good afternoon, Your
5 Honor, ladies and gentlemen of the jury. My name is
6 Chris Silvestri, and today I'll be portraying Talbot
7 Berrien.

8 MR. YOUNG: Good afternoon, Your Honor,
9 ladies and gentlemen of the jury. My name is Gabriel
10 Young. Today I'll be portraying Taylor McIntosh.

11 THE COURT: Okay. Thank you very much.

12 Before I ask you about pretrial matters,
13 I have several that I'm going to tell you about that
14 may obviate the necessity of you saying some things.

15 Number one, in this courtroom, you may
16 move about freely without asking permission just so
17 you don't interfere with the view of the other side.

18 Also, while you will follow the rules, of
19 course, you do not have to ask me permission to
20 approach the witness.

21 Also, when you have a witness who is on
22 cross-examination and the question calls for a yes or
23 no answer, the answer must be yes or no but -- and
24 there may be a brief explanation, so don't immediately
25 move that they not explain it.

1 All right. With that, I'm going to ask
2 if there are any pretrial matters for me decide?

3 MR. EICHENBERGER: Yes, Your Honor, the
4 State has a few pretrial matters to attend to.

5 First off, according to Stipulation 17 on
6 page 9 of the case materials, Exhibit 5 is admissible
7 without any further foundation. Therefore at this
8 time the State would like to offer Exhibit 5 into
9 evidence. Its authenticity has been stipulated.

10 THE COURT: Is there any objection to
11 that?

12 MR. COURTNEY: No objection, Your Honor.

13 THE COURT: It is admitted pursuant to
14 the stipulation and pursuant to agreement of counsel.

15 MR. EICHENBERGER: Yes, Your Honor.

16 THE COURT: And we need to find a place
17 where we're going to put admitted evidence. Let's
18 agree on that. Can we put it -- right there will be
19 fine.

20 MR. EICHENBERGER: Yes, Your Honor.

21 THE COURT: And, please, ladies and
22 gentlemen, put the original witness documents there
23 after they're admitted and use that document. There
24 won't be copies. Use that actual document.

25 All right. What else do you have? I'm

1 sorry.

2 MR. EICHENBERGER: The State is ready to
3 proceed, Your Honor.

4 THE COURT: How about for the defense?

5 MR. COURTNEY: Only one, Your Honor. How
6 would you like the witnesses to be sworn in?

7 THE COURT: I'm getting ready to do that
8 in just a minute.

9 MR. COURTNEY: Very well. The defense
10 has no further preliminary matters.

11 THE COURT: All persons who expect to
12 offer testimony today, please rise and raise your
13 right hand.

14 (Witnesses rise.)

15 THE COURT: Do you, and each of you,
16 promise that the testimony you're about to give will
17 faithfully and truthfully conform to the facts and
18 rules of the Mock Trial Competition?

19 (Witnesses indicate in the affirmative.)

20 THE COURT: Be seated, please.

21 Are both sides ready?

22 MR. EICHENBERGER: Yes, Your Honor. The
23 State is ready to proceed.

24 MR. COURTNEY: The defense is ready to
25 proceed.

1 THE COURT: The State may open.

2 MS. FERGUSON: May I proceed, Your Honor?

3 THE COURT: You may.

4 MS. FERGUSON: May it please the Court,
5 when the red curtain rises off the stage, actors and
6 actresses step into the limelight to put on a show.
7 They interpret the story and give it their own spin.
8 Actors and actresses also perfect their part to
9 produce a desired effect.

10 Ladies and gentlemen of the jury, today
11 the defendant, Ashley Dougherty, has come to court to
12 put on her own show in an attempt to avoid justice.
13 Today we expect the defendant to freely admit that on
14 April 1st, 2008, she shot and killed Philip Newton.
15 So then you may wonder why we are even here. The
16 reason we are here is not to debate if the defendant
17 pulled the trigger but why.

18 Today testimony will begin by telling you
19 that during the spring of 2008, the defendant, a newly
20 hired curator at the New Echota Museum, decided to put
21 on a new exhibit titled Trail of Tears. For this
22 particular exhibit, the museum purchased a
23 cancellation insurance policy. And if the exhibit
24 ended up being canceled, the financially struggling
25 museum would receive a much needed \$1 million. But

1 like any exhibit, the Trail of Tears required all art
2 to be authenticated and appraised. Failure to
3 authenticate art could easily result in job loss or
4 worse: A tarnished reputation for Ashley Dougherty.

5 You see, reputation, especially in the
6 art community, is exceptionally important. So the
7 defendant was very particular in deciding who to have
8 authenticate the most important piece of artwork going
9 into the exhibit, the Cherokee Rose.

10 The defendant decided to have Philip
11 Newton authenticate this painting. Philip Newton was
12 also employed by the New Echota Museum. He was a
13 highly talented man, and his opinion would be trusted
14 and valued by the insurance company.

15 However, the Cherokee Rose was not easily
16 authenticated. Evidence today will tell that when
17 Mr. Newton's investigation started digging deeper than
18 Ashley Dougherty was willing to go, the defendant took
19 drastic action towards getting the painting appraised
20 and fired Philip Newton. She then had her assistant,
21 Mr. Talbot Berrien, quickly appraise and sign off on
22 the painting's authenticity with little investigation.

23 Now, only the day before the exhibit
24 opened did the defendant realize the painting was
25 missing from the New Echota Museum. A few days after

1 that, the painting showed up in Philip Newton's
2 garage. Upset that someone was trying to frame him
3 for stealing the painting, he called the police.

4 With lingering tension in the air, Ashley
5 Dougherty and Philip Newton decided to meet at the New
6 Echota Museum on April 1st, 2008. Ironically, this
7 was the night before Philip Newton's planned meeting
8 with the insurance company where he would discuss the
9 theft of the painting and its authenticity.

10 Today evidence will show that upon Philip
11 Newton's arrival, Ashley Dougherty pulled a loaded
12 handgun out of her desk; and out of malice and in an
13 attempt to save her reputation, the defendant cocked
14 the gun and fired at Philip Newton as he stood unarmed
15 on the opposite side of the room. Then, after already
16 disabling Philip Newton, did the defendant once again
17 cock and fire the gun. After the shooting, the
18 defendant left Philip Newton lying on the ground for
19 20 minutes. And in those 20 minutes, instead of
20 calling the police or attempting to resuscitate
21 Mr. Newton, the defendant called a friend who had
22 helped her out in situations in the past. And when
23 her friend, Talbot Berrien, arrived, the two came up
24 with their story, set the stage, and perfected their
25 parts for the greatest show of Ashley Dougherty's

1 life. But one woman's story cannot take the place of
2 real evidence.

3 In today's case, the State of Georgia
4 versus Ashley Dougherty, we, the State, bear the
5 burden of proof, a burden we willingly accept, to prove
6 beyond a reasonable doubt that Ashley Dougherty is
7 guilty for the murder and felony murder of Philip
8 Newton. Today we expect the defendant to claim
9 self-defense, but evidence will show that the
10 defendant shot Philip Newton without any reasonable
11 belief that her life was in danger.

12 To first prove murder, we must show that
13 when Ashley Dougherty shot Philip Newton it was out of
14 malice. To prove felony murder, we must show that the
15 defendant killed Philip Newton while in the middle of
16 an assault, and that assault is -- in the middle of a
17 felony, and that felony is aggravated assault, the
18 requirement for which is met by the defendant's use of
19 a Colt .45 and hollow-pointed bullets on the night of
20 April 1st, 2008.

21 Therefore, at the end of today's trial,
22 my co-counsel will come before you and ask that you
23 make the only reasonable decision, a decision that
24 will allow justice to be served, a decision that finds
25 Ashley Dougherty guilty for the murder and felony

1 murder of Philip Newton. Thank you.

2 THE COURT: Thank you, Ms. Ferguson.

3 Mr. Courtney.

4 MR. COURTNEY: Yes, Your Honor. May I
5 proceed?

6 THE COURT: You may.

7 MR. COURTNEY: May it please the Court,
8 alone in the dark on April 1st, 2008, Ashley Dougherty
9 sat on the floor of her darkened office battered,
10 bruised, and bleeding. She lay there, face pressed
11 against the cold floor, confused, sobbing, hoping she
12 would awaken from this nightmare. She managed to
13 raise her head a few inches, and there he was, the
14 same man that had burst into her office, the same man
15 that had beaten her, choked her, thrown her to the
16 ground: Philip Newton.

17 Reaching into his jacket pocket, he said,
18 "I warned you, Dougherty, and now I'm going to finish
19 this."

20 This was no show. There was no curtain.
21 She had to shoot. And one question came to her: Why
22 is this happening to me? That question, ladies and
23 gentlemen, is not so easy to answer. To answer it, we
24 must look back at the previous weeks before Philip
25 Newton attacked Ashley Dougherty.

1 Ms. Dougherty was the curator of the New
2 Echota Museum of Art, and she wanted to put on an
3 exhibit about the Trail of Tears featuring one
4 masterpiece, the Cherokee Rose. There was, however,
5 one problem. That painting had been missing for
6 nearly half a century. So she sent her assistant
7 curator, Talbot Berrien, to track it down. And he
8 did, a few days later, in the hands of Raven Feather,
9 an Oklahoma oil executive.

10 As part of the insurance process, they
11 needed the painting authenticated, and she assigned
12 that task to Philip Newton. But something about the
13 painting didn't sit right with Mr. Newton. He could
14 never find anything definitively wrong with it, but
15 there was something he couldn't see. Ashley Dougherty
16 called him into her office and asked him to make a
17 decision, but he wouldn't, so he was fired. Talbot
18 Berrien authenticated the painting that very day. And
19 thanks to Mr. Berrien, the exhibit could continue but
20 not for long because the painting was stolen the next
21 day. And Ashley Dougherty didn't know what to do.
22 She was completely in the dark. And that shroud never
23 lifted.

24 Five days after the painting was stolen,
25 it was found in Mr. Newton's garage. It seemed

1 obvious to Ms. Dougherty. Philip Newton had stolen
2 the painting, tried to ruin the exhibit because he had
3 been fired. But Detective Towaliga didn't agree.
4 And, ladies and gentlemen, as you will see today, she
5 was actually right.

6 But Ashley Dougherty didn't know any
7 better. She couldn't believe it. She called Philip
8 Newton and flew into a tirade, promising him that he
9 would never sell another painting in New Echota again.

10 But she didn't know what she was doing.
11 You see, Philip Newton never reacted well to being
12 sent packing. As Forsyth Sparks, Mr. Newton's best
13 friend, will tell you, he would use shotguns to fix
14 his problems. He would fix them for good. And ladies
15 and gentlemen, as you will hear today, he was going to
16 fix Ms. Dougherty for good, too.

17 But one question remains unanswered:
18 Why? Why did Mr. Newton come to the museum? Why did
19 he take so long authenticating the Cherokee Rose?
20 Why? Why? The question fills this courtroom today.
21 Why was he accused of a theft he had never committed?

22 The answer, ladies and gentlemen, lies
23 with Talbot Berrien, the architect, the fixer. As you
24 listen to the evidence today, listen for Mr. Berrien's
25 name but also listen for how little you hear Ashley

1 Dougherty's. She didn't know a thing. She wasn't a
2 player in this drama.

3 But Berrien was. Berrien knew the
4 Cherokee Rose a forgery and she intended to commit
5 insurance fraud. When Philip Newton found out, he put
6 the painting in Mr. Newton's garage, attempting to
7 frame him. He beguiled Mr. Newton into coming to the
8 museum that night. Talbot Berrien put Ashley
9 Dougherty alone in the dark.

10 Ladies and gentlemen, at the end of this
11 trial, my co-counsel, Eilis Smyth, will come before
12 you, and she will ask for justice. She will ask that
13 you remember Mr. McIntosh's testimony that there is
14 considerable and credible evidence to support the
15 theory that Ashley Dougherty acted in self-defense,
16 that is, she feared imminent and great bodily harm.
17 The prosecution must prove beyond a reasonable doubt
18 that Ashley Dougherty is guilty of all charges leveled
19 against her. But you must remember the road to that
20 fateful night, how Ashley Dougherty was blinded,
21 frightened, in the dark the entire time. Don't let
22 his darkness blind you, too. Thank you.

23 THE COURT: Thank you, Mr. Courtney.

24 There's one other pretrial matter that I
25 forgot to mention. I would like to ask each team to

1 wait just a moment before they call their next witness
2 to allow the evaluators to catch up with their notes,
3 and I'll give you the sign to proceed.

4 The State may call their first witness.

5 MS. FERGUSON: Your Honor, at this time
6 the State of Georgia would like to call Raven Feather
7 to the stand.

8 (Raven Feather takes the stand.)

9 THE COURT: Let me remind you you've
10 already been sworn.

11 MS. FERGUSON: May I proceed?

12 THE COURT: You may.

13 RAVEN FEATHER,
14 having been previously duly sworn, was examined and
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MS. FERGUSON:

18 Q Please state your name for the Court.

19 A My name is Raven Feather.

20 Q Are you employed, Mr. Feather?

21 A Well, currently I do sit on the board of
22 directors for the Feather Oil Company, which means I
23 spend most of my days talking to my grandpa's friends
24 about taxes and golf.

25 Q Do you own this company?

1 A Currently, no. Actually my grandfather
2 does own this company, but he's setting it up for me
3 to take it over. He's been doing so since my parents
4 passed away. That's probably why he sent me to
5 boarding school.

6 Q When did your parents pass away?

7 A It was June 2nd, 1962. And ever since
8 then, my Margie has been taking care of this.

9 Q Who is your Margie?

10 A Excuse me. My Margie's my grandmother.
11 She's Pierce Tattnall Appling, the one who actually
12 painted the Cherokee Rose, the painting everyone's
13 chitchatting about.

14 Q When did she paint it?

15 A I can't say for certain. It was during
16 the Depression, so best guess, 1930s.

17 MS. FERGUSON: Your Honor, let the record
18 reflect, I am now showing a copy of Exhibit 9 to
19 opposing counsel.

20 BY MS. FERGUSON:

21 Q Mr. Feather, I am now handing you what
22 has been premarked as Exhibit 9. Do you recognize
23 this?

24 A Oh, definitely. This is the lovely
25 Cherokee Rose.

1 Q And does it appear to be a fair and
2 accurate representation of that painting?

3 A Yes. The beauty is all in here.

4 MS. FERGUSON: Your Honor, at this time I
5 would like to enter Exhibit 9 into evidence. It's
6 authenticity has been stipulated.

7 THE COURT: Ms. Smyth, any objection?

8 MS. SMYTH: No objection, Your Honor.

9 THE COURT: It is admitted without
10 objection.

11 BY MS. FERGUSON:

12 Q So, Mr. Newton [sic], what is this
13 painting of?

14 A Well, I guess if anybody sees it, they'll
15 just see some tinted flowers in front of some figures
16 in the background, but really it's so much more. It
17 tells a legend.

18 Q What's the legend?

19 A The legend is entitled "nu na hi du na
20 tlo hi lu i," which in the Cherokee language means
21 "the trail where they cried."

22 MS. SMYTH: Objection, Your Honor;
23 relevance.

24 MS. FERGUSON: May I respond, Your Honor?

25 THE COURT: Wait a minute. I didn't hear

1 the objection.

2 MS. SMYTH: Relevance.

3 THE COURT: Okay. You may respond.

4 MS. FERGUSON: As the painting is the
5 focal point between many confrontations of the
6 defendant and the victim, understanding the painting
7 in its entirety is critical to today's case.

8 THE COURT: One response.

9 MS. SMYTH: Whether or not -- or what
10 legend the painting strikes does not make any fact at
11 issue in this case more or less likely. Whether or
12 not the painting is authentic and original is a fact
13 at issue, but what the painting depicts is not at
14 issue.

15 THE COURT: I'm going to allow it over
16 objection.

17 BY MS. FERGUSON:

18 Q Mr. Feather, were you finished?

19 A No, I was not, ma'am.

20 As I was saying, the name of the legend
21 is "nu na hi du na tlo hi lu i," which in the Cherokee
22 language means "the trail where they cried." You see,
23 the legend talks about a new beginning, a new hope for
24 Cherokee Indians. As they crossed the Trail of Tears,
25 they left their tears on the ground, and the ground

1 grew this lovely rose.

2 Q Now, do you currently own this painting?

3 A Yes, I do.

4 Q Have you always owned it?

5 A Well, I say I have in spirit, but it's
6 been out of my possession for a few years until I got
7 it again.

8 Q So when did you reacquire it?

9 A It was at a charity auction a few years
10 ago.

11 Q How did you recognize it?

12 A I would recognize this painting anywhere.
13 I mean, it stood in front of my fireplace as a child,
14 and I would just gaze at it all the time. It's
15 lovely.

16 Q Now, after you reacquired the painting,
17 did you have it authenticated?

18 A There was no need. I knew that was my
19 Margie's painting. I knew it since I saw it. There
20 was no doubt in my mind.

21 Q So what did you do with the painting once
22 you reacquired it?

23 A Well, I quickly and proudly displayed it
24 in the Feather Oil Company lobby so everybody could
25 experience its beauty.

1 Q So how did the painting get from the
2 Feather Oil Company lobby to court here today?

3 A Yes, of course. You see, the New Echota
4 Museum in Georgia asked if they could borrow the
5 painting. Now, seeing as I just reacquired this
6 painting after such a long absence, I was a little
7 reluctant. But I tried talking to myself. I said,
8 "Raven, wouldn't this be a great gift for the people
9 of Georgia to be able to experience the heritage that
10 you've lived through?" And I felt yes, so I let them
11 have it with certain conditions.

12 Q Were these conditions outlined anywhere?

13 A Of course. I am a businessman, and so I
14 have to make sure everything's documented before I do
15 anything.

16 MS. FERGUSON: Your Honor, let the record
17 reflect I'm showing a copy of Exhibit 2 to opposing
18 counsel.

19 THE COURT: It will so reflect.

20 BY MS. FERGUSON:

21 Q Mr. Feather, I'm now handing you what's
22 been premarked as Exhibit 2.

23 A Right.

24 Q Do you recognize this?

25 A Yes, I do, yes.

1 Q What is it?

2 A For the most part, it's the loan
3 agreement I was just speaking of.

4 Q Does it appear to be a fair and accurate
5 representation of that loan agreement?

6 A All the boring jargon, yes.

7 MS. FERGUSON: Your Honor, I would now
8 like to enter Exhibit 2 into evidence. Its
9 authenticity has been stipulated.

10 THE COURT: Is there any objection?

11 MS. SMYTH: No objection, Your Honor.

12 THE COURT: Exhibit 2 is admitted without
13 objection.

14 BY MS. FERGUSON:

15 Q So, Mr. Raven Feather, what are the main
16 conditions outlined in this agreement?

17 A I would say the primary condition is that
18 of security. You see, I wanted to make sure that the
19 painting was secure, so I asked that it was hooked up
20 to a security system; that a guard would be posted to
21 monitor the painting at all times; and that if
22 anything went awry, there'd be police to be able to
23 come to the location of the painting within 15
24 minutes. Also, there was an insurance policy set out
25 which covered the cost of any loss or damage. And

1 that is pretty much it.

2 Q There were no other conditions?

3 A Well, of course, other than the one that
4 I wanted most. You see, I didn't want the painting
5 out of my sight, once again, so I insisted that I
6 would be permitted to accompany the painting from its
7 trip to -- from Oklahoma to Georgia and throughout the
8 authentication process.

9 Q Now, was the painting ever featured in
10 the New Echota -- in the New Echota Museum Trail of
11 Tears exhibit?

12 A No, ma'am, it was not.

13 Q Why not?

14 A You see, to my dismay, I was informed
15 that the painting was stolen. I was heartbroken as
16 you could suppose.

17 Q Was it ever found?

18 A Well, thank those involved, it was. It
19 was found in some garage or something, but I didn't
20 care. I was just happy that this painting was with
21 me, once again, and I'd make my Margie happy.

22 Q Was the painting returned to you?

23 A At this time, I still don't have it. You
24 see, I believe it's being used as evidence in this
25 court case here today.

1 Q So what happens if the painting is not
2 returned to you?

3 A Well, according to the legal aspects of
4 this loan agreement, I would receive up to a million
5 dollars -- excuse me, I'd receive a million dollars.
6 But, you know, that means nothing to me. Money means
7 nothing. What my concern would be is that I would
8 disappoint my people. I would disappoint my Margie
9 without having this painting in the Feather family
10 anymore.

11 MS. FERGUSON: Thank you, Your Honor. No
12 further questions at this time.

13 THE COURT: Ms. Smyth, the witness is
14 with you.

15 MS. SMYTH: May I proceed?

16 THE COURT: (No response.)

17 MS. SMYTH: May I proceed?

18 THE COURT: You may. I'm sorry.

19 CROSS-EXAMINATION

20 BY MS. SMYTH:

21 Q Now, Mr. Feather, the Cherokee Rose went
22 missing when you were just four years old?

23 A That is correct.

24 Q And you didn't see a painting that looked
25 like the Cherokee Rose for 45 years?

1 A That is also true.

2 Q Not until a charity art auction that you
3 attended in 2007?

4 A At that auction, I saw the Cherokee Rose
5 once again.

6 Q Now, you have no formal training in art;
7 do you?

8 A There was no need, no. I mean, my Margie
9 always told me if you want to appreciate art, it's all
10 about passion, not a degree, so I didn't get one.

11 Q And you didn't have anyone verify the
12 painting's authenticity before you purchased it?

13 A Again, there was no need. I knew that
14 was the Cherokee Rose.

15 Q You didn't talk to the donor of the
16 painting before you purchased it?

17 A No. It was a charity auction. I just
18 wanted to get the painting.

19 Q You just felt certain that this was the
20 original Cherokee Rose?

21 A Right, it was.

22 Q Even though your last memory of the
23 painting is from when you were just four years old?

24 A It was a vivid memory. It's in my mind
25 all the time.

1 Q Now, even after you purchased the
2 painting, you didn't have it authenticated?

3 A Again, there was no need. It was the
4 same painting that I purchased at the charity.

5 Q You didn't even insure the painting?

6 A No. It was up in the Feather Oil
7 Company.

8 Q Now, an article was written about your
9 extraordinary reunion with the painting?

10 A Yes, it was, yes.

11 Q And at that time the donor of the
12 painting refused to be interviewed?

13 A I believe so. That was the case.

14 Q But you didn't think that was unusual?

15 A Not at all.

16 Q And you didn't think it was unusual that
17 such a famous painting had been donated to a charity
18 art auction?

19 A Well, people don't understand the true
20 beauty of it, but I do, so not much of a surprise.

21 Q Now, Mr. Feather, let's talk of your loan
22 of that painting to the New Echota Museum.

23 A Right.

24 Q Talbot Berrien came out to see you?

25 A That is true, yes.

1 Q And he asked for the painting on loan?

2 A I was asked on part of the museum. I
3 think he was a representative, yes.

4 Q And he seemed to really want that
5 painting?

6 A Sure he did, yes. I mean, who doesn't.
7 It's the Cherokee Rose.

8 Q He begged and pleaded for the painting?

9 A Of course.

10 Q So you agreed to the loan?

11 A Well, with conditions.

12 Q Right. You said the condition of
13 accompanying the painting to Georgia?

14 A Definitely. I wasn't about to let it out
15 of my sight.

16 Q And while there you met an appraiser?

17 A That is correct.

18 Q And he seemed intent on tracking down the
19 history of the painting?

20 A Yes, that's true.

21 Q He wanted to talk to the donor of the
22 painting to that charity auction?

23 A He was a little long-winded, but, yes,
24 that's what he wanted to do.

25 Q He wanted to ask that donor why he had

1 donated the painting?

2 A He did have a lot of questions, yes.

3 Q He seemed to doubt your childhood memory
4 of the Cherokee Rose?

5 A He did, but he didn't know what he was
6 doing.

7 Q He seemed to doubt your childhood memory
8 of the Cherokee Rose in a way that Talbot Berrien had
9 not?

10 A I guess you could say that.

11 Q Now, Mr. Feather, then the painting went
12 missing?

13 A Yes, when it was stolen from me.

14 Q And you don't understand why Talbot
15 Berrien is claiming that that painting is not your
16 painting?

17 A No, I don't.

18 Q You're certain that the painting that is
19 in Exhibit 9 is the same painting that you purchased
20 in 2007; aren't you?

21 A Yes, ma'am, it is.

22 MS. SMYTH: Thank you. I have nothing
23 further at this time.

24 THE COURT: Any redirect?

25 MS. FERGUSON: Yes, Your Honor. May I

1 proceed?

2 THE COURT: You may, and it's limited to
3 cross-examination.

4 REDIRECT EXAMINATION

5 BY MS. FERGUSON:

6 Q Mr. Feather, as Ms. Smyth pointed out on
7 cross-examination, you were only four years old the
8 last time you saw the painting before it was lost from
9 your family's possession. Where are you so confident
10 this is the real thing?

11 A See, it was my Margie's painting. I grew
12 up around it, and I owed it to my Margie to remember
13 her through this painting, so it's been in my mind all
14 my life. And when I saw it at that charity auction, I
15 knew that was the one.

16 MS. FERGUSON: Thank you, Your Honor. No
17 further questions.

18 THE COURT: Any recross?

19 MS. SMYTH: I have no recross, Your
20 Honor.

21 THE COURT: You may step down.

22 MR. FEATHER: Thank you, sir.

23 (Raven Feather left the stand.)

24 THE COURT: You may call your next
25 witness.

1 MR. EICHENBERGER: Your Honor, at this
2 time the State of Georgia calls Forsyth Sparks to the
3 stand.

4 THE COURT: Come around, Ms. Sparks.

5 MS. SPARKS: Yes, sir.

6 (Forsyth Sparks takes the stand.)

7 MR. EICHENBERGER: May I proceed?

8 THE COURT: You may.

9 FORSYTH SPARKS,
10 having been previously duly sworn, was examined and
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. EICHENBERGER:

14 Q Please state your name for the Court.

15 A My name is Forsyth Sparks.

16 Q Are you employed, Ms. Sparks?

17 A Yes, sir, I am. I -- I'm kind of my own
18 boss. I opened a gift shop and called it The Rose
19 Trail after my grandma.

20 Q Please give the Court a brief description
21 of your educational background.

22 A Well, I went to the University of Georgia
23 where I majored in business and got my minor in
24 criminal justice.

25 Q Ms. Sparks, did you know Philip Newton?

1 A Yes, sir, I did know Phip, Philip Newton.
2 He was my best friend. We've been friends ever since
3 we rode the kindergarten bus together.

4 Q What was your relationship like with
5 Mr. Newton?

6 A Phip and I have a great relationship. I
7 mean, we talked about everything, and we were even
8 roommates after college. He was like a brother to me.

9 Q Did you and Mr. Newton ever discuss his
10 work?

11 A Oh, yeah. Phip and I chitchatted about
12 everything.

13 Q Do you know the defendant in today's
14 case, Ashley Dougherty?

15 A Yes, sir, I do know Ashley.

16 Q And how do you know Ms. Dougherty?

17 A Well, she and Phip worked together at the
18 New Echota Museum.

19 Q To the best of your knowledge, were
20 Mr. Newton and the defendant friends?

21 A No, I don't -- I don't think so. Ever
22 since they started working together at the New Echota
23 Museum, Phip didn't trust her or her friend, Talbot
24 Berrien.

25 Q Did you ever see the defendant or her

1 friend, Talbot Berrien, on the days leading up to
2 April 1st?

3 A Yes. I saw both of them talking to
4 Clayton Bartow, another local artist, the day before
5 Ashley announced the start of the new exhibit.

6 Q And could you overhear what they were
7 discussing?

8 A Yes, sir. I -- I saw Talbot hand Bartow
9 a handful of bills while Ashley said, "This had better
10 be better than those Pollocks."

11 MR. COURTNEY: Objection, Your Honor.
12 Under Rule 404(b), this is improper character
13 evidence.

14 MR. EICHENBERGER: May I respond, Your
15 Honor?

16 THE COURT: You may.

17 MR. EICHENBERGER: This is not unfair
18 character evidence as this not going to show a
19 specific instance that correlates with the witness'
20 character, and therefore this is not unfair character
21 evidence.

22 MR. COURTNEY: Your Honor, may I respond?

23 THE COURT: Mr. Courtney, one response.

24 MR. COURTNEY: By eliciting testimony
25 about a Jackson Pollock exhibit which occurred in the

1 past, they are trying to show that an action by Ashley
2 Dougherty conforms to character; and therefore because
3 she acted one way in the past, she's acting that way
4 today. And thus, this is inadmissible under Rule
5 404(b).

6 THE COURT: Thank you. I'm going to
7 allow it over your objection, and you'll have her on
8 crows.

9 BY MR. EICHENBERGER:

10 Q Were you finished with your answer,
11 Ms. Sparks?

12 A Yes, sir, I was.

13 Q Now, I'd like to talk to you about Philip
14 Newton's work at the New Echota Museum. Are you aware
15 of what he was working on before his death?

16 A Well, around his death he wasn't working
17 on anything. Ashley had fired him.

18 Q How do you know Mr. Newton had been
19 fired?

20 A Well, I went to the museum one day to
21 tell Phip the great news, that someone wanted to buy a
22 painting of his; but when I got there, I heard Ashley
23 yelling at him.

24 Q What was the defendant staying?

25 A Well, Ashley said, "Phip, you have to

1 sign the authentication today or you'll ruin
2 everything."

3 Q How did Mr. Newton respond?

4 A Well, Phip refused to cut his
5 investigation short.

6 Q What investigation are you talking about?

7 A Well, Phip was currently working on
8 authenticating the Cherokee Rose painting that was
9 going to be the centerpiece of the new exhibit at the
10 New Echota Museum.

11 Q Well, how did the defendant respond to
12 Mr. Newton's refusal?

13 A Well, Ashley yelled, "Phip, you are out
14 of here right now. Hand in your keys and never step
15 foot in this museum again."

16 Q Now, was this the last interaction
17 between the defendant and Mr. Newton?

18 A No, sir, it wasn't. Phip and I went out
19 to eat later, and Phip received a phone call from
20 Ashley.

21 Q How do you know that it was Ashley
22 Dougherty on the phone?

23 A Well, I'd recognize that voice anywhere,
24 and I recognized the phone number, (706) 555-1321.

25 Q And do you know what was said in this

1 phone conversation?

2 A Yes, I do. Ashley yelled at Phip and
3 said, "You think you can get away with ruining my
4 exhibit. I'll make sure you never sell another
5 painting in this town. In fact, you'll never paint
6 again."

7 Q To the best of your knowledge,
8 Ms. Sparks, why did the defendant say that?

9 A I think Ashley thought that Phip stole
10 the Cherokee Rose.

11 Q To the best of your knowledge, did
12 Mr. Newton steal the Cherokee Rose?

13 A No, sir, absolutely not. I was with Phip
14 all night long. Phip was so tired on our way home
15 from dinner, he fell asleep in the car. And when we
16 got home, he crashed right in his room.

17 Q What happened the next day?

18 A The next morning Phip got another phone
19 call from Ashley Dougherty.

20 Q Did you hear what was said this time?

21 A Yeah. Ashley yelled at him again for
22 stealing the Cherokee Rose painting.

23 Q Now, did the police ever contact Philip
24 Newton about stealing the Cherokee Rose?

25 A Yes, they did. He was scheduled to give

1 a statement to the police and the insurance company on
2 April 2nd.

3 Q Now, Ms. Sparks, I'd like to talk to you
4 about the day of April 1st, 2008. What were you doing
5 that evening?

6 A Well, Phip was always concerned about
7 saving a buck here and there, so he had me cutting
8 coupons that night, but that was interrupted when
9 Ashley called for Phip. But this call was different.
10 Ashley was calm and persuasive, not yelling like
11 before.

12 Q What did the defendant want this time?

13 A She wanted Phip to go down to the museum
14 to talk about getting his job back, but I thought it
15 was a trap, and I begged Phip not to go.

16 Q Did Mr. Newton go to the museum?

17 A Unfortunately he did. He thought he
18 could convince Ashley to confess to sealing the
19 Cherokee Rose painting. So he even stuck a tape
20 recorder into his jacket pocket and left for the
21 museum about 8:15.

22 Q Ms. Sparks, to the best of your
23 knowledge, did Philip Newton take a weapon with him?

24 A Absolutely not. All he had was that tape
25 recorder and then some paint brushes Phip always had.

1 Q When's the last time you saw Philip
2 Newton?

3 A I never saw Phip again.

4 Q Did he ever give his statement to the
5 police and the insurance company?

6 A No, he didn't. He was killed before he
7 could.

8 MR. EICHENBERGER: Thank you, Your Honor.
9 No further questions.

10 THE COURT: Thank you. Mr. Courtney, you
11 may cross-examine.

12 MR. COURTNEY: Thank you, Your Honor.
13 May I proceed?

14 THE COURT: You may.

15 CROSS-EXAMINATION

16 BY MR. COURTNEY:

17 Q Ms. Sparks, Mr. Newton was your best
18 friend?

19 A Yes, sir, he was.

20 Q And because of that you'd be willing to
21 leave some things out in your testimony to the jury
22 today?

23 A No, sir, I don't believe I would.

24 Q Well, you'd be willing to embellish the
25 truth a little bit to see Ashley Dougherty convicted?

1 A Absolutely not.

2 Q Well, let's talk about your story a
3 little bit starting with March 15th, the day that
4 Ashley Dougherty fired Mr. Newton. He had been fired
5 because he wasn't doing his job.

6 A That's what Ashley said.

7 Q And Mr. Newton was angry?

8 A Yeah. He didn't like having his
9 investigation cut short.

10 Q So he was angry?

11 A Yes, that is correct.

12 Q And he wasn't just angry about losing his
13 job. He was angry because he thought Talbot Berrien
14 and Ashley Dougherty were committing fraud?

15 A That is correct.

16 Q And later Ms. Dougherty told him that he
17 would never sell another painting in New Echota again?

18 A Yeah. Ashley yelled that at him.

19 Q He would never paint again?

20 A Yes. That is correct.

21 Q So at this point Ashley Dougherty had
22 taken away his job?

23 A Yeah, she had done that.

24 Q She had threatened his reputation?

25 A Oh, I guess on the phone call.

1 Q And she had threatened, more importantly,
2 his passion, painting?

3 A That's what she said on the phone.

4 Q And Philip Newton was going to fix Ashley
5 Dougherty for good?

6 A Well, Phip did say that on the car ride
7 home, yes.

8 Q So Ms. Sparks -- excuse me. And when
9 Mr. Newton's livelihood was at stake, he would blow
10 up?

11 A I don't believe so, no. He did --

12 Q Well, actually, Ms. Sparks, you've seen
13 it happen?

14 A Well, I saw one incident when he
15 momentarily was angry, but other than that, Phip
16 was --

17 Q Well, there was --

18 A -- relatively calm.

19 Q -- an instance --

20 MR. EICHENBERGER: Objection, Your Honor.

21 I ask that the witness be able to finish her answer.

22 THE COURT: Well, let's let him answer,
23 and you wait till he finishes the questions also.

24 MS. SPARKS: Yes, sir.

25 BY MR. COURTNEY:

1 Q I'll reask the question.

2 There was an incident with Clayton
3 Bartow. She had been forging Phip originals and
4 selling them on Ebay?

5 A Yes. That is correct.

6 Q And you and Philip Newton went down to
7 confront Clayton Bartow?

8 A Yes, we did.

9 Q Philip Newton got pretty angry?

10 A He was pretty upset with Clayton, yes.

11 Q He got so angry, in fact, that he picked
12 up a shotgun and fired it?

13 MR. EICHENBERGER: Objection, Your Honor;
14 unfair character evidence under Rule 404(b).

15 MR. COURTNEY: Your Honor, may I respond?

16 THE COURT: You may respond.

17 MR. COURTNEY: Your Honor, under Rule
18 404(a)(2), a pertinent character trait of a victim --
19 a pertinent character trait of a victim is admissible
20 if offered by the accused. And this pertinent
21 character trait would be aggressive behavior and
22 violence. The victim would be Philip Newton. The
23 accused would be Ashley Dougherty.

24 And while normally specific instances of
25 conduct would be disallowed under Rule 404(b), under

1 405(a), specific instances of conduct and methods of
2 proving character, this is allowed as it is an
3 essential part of the defense's claim.

4 THE COURT: One response.

5 MR. EICHENBERGER: Your Honor, as to Rule
6 405, this rule only applies already after the
7 character evidence is admissible, and this character
8 evidence does not apply to Rule 404(a)(2) as we have
9 not offered any character evidence of Mr. Philip
10 Newton for the defense to rebut. And as this is not a
11 character trait, this is a specific action of
12 Mr. Newton grabbing a gun, Rule 404(a)(2) does not
13 apply.

14 THE COURT: I'm going to allow the
15 evidence over objection.

16 BY MR. COURTNEY:

17 Q I'll ask the question again, Ms. Sparks.

18 He would get so angry that he would pick
19 up a shotgun and fire it into one of the -- into one
20 of the forged paintings?

21 A Into one of the paintings, yes, he did.

22 Q So Mr. Newton lost control?

23 A That one time, yes, he did.

24 Q Now, let's talk about the night of April
25 1st. You weren't at the museum with Mr. Newton that

1 night?

2 A No, sir, I was at home with Mr. Newton.

3 Q But when he went to the museum, you
4 didn't go with him?

5 A No, sir, I did not. I was at home still.

6 Q And you don't know exactly what happened?

7 A Well, I was not there, so not exactly.

8 Q You don't know if Philip Newton lost
9 control?

10 A I don't believe he did, but I don't know
11 for sure.

12 Q That's a no, you don't know?

13 A Well, like I said, I don't know for sure.

14 Q Now, let's talk about what you do
15 remember of that night, and let's see if I understand
16 your testimony correctly.

17 You ate dinner with Mr. Newton?

18 A Yes, sir, I did.

19 Q He received a call -- he received a call
20 from Ashley Dougherty?

21 A Yes, he received a call.

22 Q And at that point he decided to go to the
23 museum?

24 A Unfortunately, yes, he did.

25 Q And he put a tape recorder in his pocket?

1 A In his jacket pocket.

2 Q Right, in his jacket pocket. And he left
3 at 8:15?

4 A Yes, he did.

5 Q Now, you're sure about those events?

6 A Yes, sir, I am.

7 Q And you're sure that you heard Ashley
8 Dougherty's part of the phone call and recognized her
9 by her voice?

10 A Yes, sir, I did recognize her voice.

11 MR. COURTNEY: Let the record reflect I'm
12 holding what has been previously marked as --
13 Detective Towaliga's investigation report marked
14 Exhibit 1A.

15 THE COURT: Show it to counsel, if you
16 would.

17 MR. COURTNEY: Sure. (Complies.)

18 BY MR. COURTNEY:

19 Q Now, do you remember being -- do you
20 remember being interviewed by Detective Towaliga on
21 April 2nd, 2008?

22 A I believe so.

23 Q And I'm sure during that interview you
24 wanted to be as complete and truthful as possible?

25 A I believe I did.

1 Q Now, Ms. Sparks, are you aware that in
2 this investigation --

3 MR. EICHENBERGER: Objection, Your Honor.
4 I ask that this piece of evidence be entered into
5 evidence before opposing counsel uses it to question
6 Ms. Sparks.

7 MR. COURTNEY: Your Honor, may I respond?

8 THE COURT: You may respond.

9 MR. COURTNEY: Your Honor, I'm not
10 entering this into evidence because I'm simply using
11 it for impeachment purposes. I'm eliciting a prior
12 statement by the witness in order to impugn her
13 credibility in this matter.

14 THE COURT: What do you say to that?

15 MR. EICHENBERGER: Your Honor, if
16 opposing counsel is using this to impeach Ms. Sparks,
17 I ask that she be provided with a copy of this exhibit
18 and that he not refer to any specific lines on this as
19 this has not been entered into evidence.

20 THE COURT: It hasn't been, and you're
21 going to have to lay a foundation and enter it.

22 MR. COURTNEY: Okay. Permission to
23 approach?

24 THE COURT: Yes, of course.

25 BY MR. COURTNEY:

1 Q Now, Ms. Sparks, do you remember making
2 this statement: "Per Sparks, she overheard Newton
3 talking to someone --"

4 MR. EICHENBERGER: Objection, Your Honor.
5 I ask that opposing counsel enter this exhibit.

6 THE COURT: This hasn't been identified
7 by the witness yet.

8 MR. COURTNEY: I'm sorry.

9 BY MR. COURTNEY:

10 Q Do you remember making this statement?

11 THE COURT: You haven't identified the
12 exhibit.

13 MR. COURTNEY: Okay.

14 BY MR. COURTNEY:

15 Q Ms. Sparks --

16 A Yes, sir.

17 Q -- would it surprise you to learn that
18 Detective Towaliga heard something different than what
19 you're saying in this courtroom today?

20 A Well, I'm not quite sure what Detective
21 Towaliga thinks.

22 Q Would it surprise you to learn that in
23 his investigation report he said something along the
24 lines that you didn't hear Ms. Dougherty's phone call
25 and that you only knew it was Philip Newton after he

1 hung -- you knew only it was Ashley Dougherty after
2 Philip Newton hung up the phone and told you? Would
3 that surprise you?

4 A Well, yes, it would. Again, I don't know
5 what Detective Towaliga is saying.

6 Q Would you deny those statements?

7 A I believe I would. Everything I've
8 testified today is true.

9 Q Now, furthermore, you said that he put a
10 tape recorder in his pocket and left for the museum?

11 A Phip did, yes, that's correct.

12 Q Now, you're sure about that, too?

13 A Yes, I saw him put the tape recorder
14 under his jacket.

15 Q And you're aware that nowhere on Philip
16 Newton's body was a tape recorder discovered at the
17 time of death?

18 A Obviously I wasn't there. I don't know
19 what was found.

20 Q And are you aware that nowhere in the
21 Detective Towaliga's investigation report does it
22 mention that you mentioned to him anything about the
23 tape recorder?

24 A Well, I haven't seen or heard about his
25 report, so I don't know.

1 Q So if it's not in there, did you mention
2 it to him on that night -- on that day?

3 A Well, I'm not exactly sure what consisted
4 of his investigation.

5 Q Did you mention the tape recorder to him
6 on that day?

7 A You know, my best friend had just died so
8 I don't know exactly what I said to him. I believe I
9 gave him the same statement I gave today, though.

10 Q Okay. So if it's not in there, it may be
11 a little incomplete?

12 A My testimony?

13 Q No. Detective Towaliga's investigation
14 report.

15 A Oh, his investigation might be
16 incomplete, yes.

17 Q So, Ms. Sparks, you would do whatever it
18 takes to bring Ashley Dougherty to justice?

19 A I do want justice. My best friend was
20 killed.

21 Q And you would do whatever it takes?

22 A By telling the truth, yes, I would.

23 Q A little bit more, whatever it takes?

24 MR. EICHENBERGER: Objection, Your Honor;
25 asked and answered.

1 MR. COURTNEY: May I respond?

2 THE COURT: You may.

3 MR. COURTNEY: Your Honor, at this point
4 I need a yes or no answer from the witness.

5 THE COURT: I believe that she should
6 answer it, and then she may explain, if necessary.

7 MR. EICHENBERGER: Your Honor, I'd like
8 to change my objection at this time to argumentative.

9 THE COURT: What's your response to that?

10 MR. COURTNEY: Your Honor, I'm simply
11 eliciting a fact from a witness.

12 THE COURT: It's on cross-examination.
13 I'll allow it.

14 BY MR. COURTNEY:

15 Q You will do whatever it takes to see
16 Ashley Dougherty brought to justice; will you not?

17 A Yes, and I'm doing that by telling the
18 truth today.

19 MR. COURTNEY: Thank you. No further
20 questions.

21 THE COURT: Any redirect?

22 MR. EICHENBERGER: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. EICHENBERGER:

25 Q Now, Ms. Sparks, on cross-examination

1 Mr. Courtney questioned you about a previous incident
2 that you had with Mr. Philip Newton where he got
3 angry. Now, is this consistent with what you know of
4 Philip Newton?

5 A Absolutely not. That one time Phip was
6 angry at Clayton Bartow. But other than that, Phip is
7 a relatively calm person.

8 Q And did he shoot at -- did he shoot at
9 Clayton Bartow?

10 A Absolutely not. He just shot at the
11 painting.

12 Q Now, Ms. Sparks, Mr. Courtney also
13 questioned you as to why it is that you're here in
14 court today. Could you please tell the members of the
15 jury why it is that you are here testifying?

16 A I'm here because I want the truth to be
17 known about what happened that night and the events
18 leading up to it, and that's the truth.

19 MR. EICHENBERGER: Thank you, Your Honor.

20 No further questions.

21 THE COURT: Any recross based upon that?

22 MR. COURTNEY: No, Your Honor.

23 THE COURT: You may step down. Thank
24 you.

25 MS. SPARKS: Thank you, sir.

1 (Forsyth Sparks left the stand.)

2 THE COURT: You may call your next
3 witness.

4 MS. SOLHEID: Yes, Your Honor.

5 The State calls Randy Towaliga to the
6 stand.

7 THE COURT: Detective, come around,
8 please.

9 (Randy Towaliga takes the stand.)

10 MS. SOLHEID: May I proceed, Your Honor?

11 THE COURT: You may.

12 RANDY TOWALIGA,
13 having been previously duly sworn, was examined and
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MS. SOLHEID:

17 Q Please state your name for the Court.

18 A I am Randy Towaliga.

19 Q And are you currently employed,

20 Ms. Towaliga?

21 A Yes. I am one of three detectives of the
22 New Echota Police Department.

23 Q And how long have you been working there?

24 A Let's see. It's been four years now, and
25 I've also worked at a different county for five other

1 years.

2 Q What kind of education does it take to
3 become a detective?

4 A Well, I received my degree in criminal
5 justice, and I also attended the police academy to
6 become a police officer.

7 Q Do you have any additional training?

8 A Yes. I have taken numerous courses in
9 crime scene investigation as well as homicide
10 investigation, and I keep up to date on my
11 certification in ballistics, DNA testing, and
12 fingerprinting.

13 MS. SOLHEID: Your Honor, at this time I
14 now would like to offer Detective Towaliga as an
15 expert in the field of crime scene investigation.

16 THE COURT: Is there objection?

17 MR. ADAM KERN: No objections, Your
18 Honor.

19 THE COURT: She is stipulated for the
20 phase that you indicated.

21 MS. SOLHEID: Thank you.

22 BY MS. SOLHEID:

23 Q Now, Detective Towaliga, I'm going to ask
24 you a couple of questions about the date of April 1st,
25 2008. Do you remember that date?

1 A Yes, of course. That was the night that
2 I received a call from Ashley Dougherty regarding the
3 death of Philip Newton.

4 Q And what time did you received this call?

5 A 8:43, I believe.

6 Q And what did Ashley Dougherty tell you in
7 that phone call?

8 A She sounded pretty call, and she
9 requested that I come to the museum.

10 Q And so did you go to the museum?

11 A Yes, I did respond. And as I arrived
12 there, I saw Talbot Berrien's car in the parking lot
13 as well as the front door was ajar and Ashley
14 Dougherty's office light was on in the back of the
15 museum.

16 Q Did you proceed into the back office?

17 A Yes. And as I did so, when I walked in
18 the room, I saw Philip Newton lying in a pool of blood
19 with Ashley Dougherty standing over him with a
20 highball in one hand and an antique revolver in the
21 other.

22 Q So what did do you?

23 A Well, I asked Ashley Dougherty to hand
24 over the weapon, then I proceeded to check Philip
25 Newton's pulse, which showed nothing. He had already

1 passed.

2 Q And what did you do after that?

3 A I called for backup, and I requested that
4 Talbot Berrien and Ashley Dougherty leave the room.

5 Q Okay. Now, after Ashley Dougherty and
6 Talbot Berrien left the room, did you have a chance to
7 examine the scene?

8 A Yes, I did.

9 Q And what did you notice immediately about
10 that scene?

11 A Well, first I saw insurance paperwork
12 around Philip Newton's feet, which I thought was kind
13 of odd they had no blood on them.

14 Q Did you notice anything immediately about
15 Philip Newton's body?

16 A Yes. He had a gaping hole, a bullet
17 hole, in his right shoulder.

18 Q And what else did you notice about the
19 scene when you examined it?

20 A I also noted that there was glass strewn
21 about the room and a broken clock on the desk.

22 Q Was this broken clock of significance to
23 your investigation?

24 A Yes, of course. It was broken at the
25 time of 8:20 -- or 8:40, excuse me, stopped.

1 Q And why is that important?

2 A Well, Philip Newton's watch was stopped
3 at 8:20 which means that if Philip Newton's fall had
4 broken his watch at his death, then that means that
5 Ashley Dougherty wouldn't have called the police until
6 over 20 minutes after that fall.

7 Q Now, did you get a chance to interview
8 Ms. Dougherty and Talbot Berrien?

9 A Yes. When backup arrived, I did
10 interview both of them.

11 Q What did you learn from Ms. Dougherty?

12 A Well, she had told me -- she claimed that
13 Philip Newton had surprised her that night, had
14 attacked her, strangled her, more specifically thrown
15 her arm into the awards on the wall. Then she claimed
16 that he reached for a supposed gun in his pocket and
17 she reached for hers and shot twice.

18 Q Now, you said that Ms. Dougherty told you
19 that Philip Newton had tried to strangle her. Did you
20 notice bruising on her neck?

21 A No. I thought it was quite odd I did not
22 notice any.

23 Q And what did you learn from the interview
24 of Mr. Talbot Berrien?

25 A Well, she said that he'd only arrived

1 minutes before I had arrived, which I thought was kind
2 of odd because I know that he only lived a few minutes
3 away.

4 Q Did you get a chance to meet with the
5 medical examiner?

6 A Yes, I did. I was there during the
7 autopsy.

8 Q Detective, I'm now handing you what has
9 been premarked and entered as Exhibit 5. Is this the
10 autopsy report that you examined as part of your
11 investigation?

12 A It certainly is.

13 Q Now, could you tell the jury, please, any
14 important things that there are to note in this
15 autopsy report?

16 A Well, firstly I noticed that there was
17 glass, broken glass and wood shards, found on Philip
18 Newton -- on top of Philip Newton's feet.

19 Q And what was the second thing you
20 noticed?

21 A I also found that the first -- there was
22 two shots, one in the back at a downward angle of 85
23 degrees and then a second shot in the shoulder that
24 was at an upward angle of 105 degrees.

25 Q What direction was this shot to the

1 shoulder coming from?

2 A The shot to the shoulder was upward.

3 Q I'm sorry. I meant which direction of
4 the body was the shot to the shoulder coming from?

5 A Excuse me. Downward. I'm sorry.

6 Q Was it coming from the front or the back?

7 A The front. Excuse me.

8 Q Now, what was the last thing that you
9 noticed about this autopsy report?

10 A Well, I also noted that they found an
11 appointment card in Philip Newton's suit saying that
12 he had an appointment with the insurance company on
13 April 2nd.

14 Q Now, did you examine Ms. Dougherty's
15 weapon?

16 A Yes, I did. I found it to be an antique
17 Colt .45 revolver for cavalry use.

18 Q And what did you notice about it?

19 A I noticed there was three rounds still
20 within it.

21 Q And did you test fire this gun?

22 A Yes. I test fired it, and it matched the
23 bullets that were found in Philip Newton's body.

24 Q What kind of bullets were in this gun?

25 A Hollow-point bullets.

1 Q What else did you notice about the way
2 this weapon was fired?

3 A Well, I noted that when you fire this
4 type of revolver, it takes two separate actions. You
5 need to pull the trigger and also cock it.

6 Q So what did you do?

7 A So I tested it and found this to be true.

8 Q And did you make any arrests?

9 A Yes. Because of the inconsistency
10 between Ashley Dougherty's statement to me and my
11 evidence, I arrested her for the murder of Philip
12 Newton.

13 MS. SOLHEID: Thank you. No further
14 questions, Your Honor.

15 THE COURT: Mr. Kern.

16 MR. ADAM KERN: Yes, Your Honor.

17 Before I begin, might I ask how much time
18 I have remaining?

19 THE COURT: Would you tell him.

20 MR. DAVID KERN: 11 minutes.

21 MR. ADAM KERN: Thank you, timekeeper.

22 May I proceed?

23 THE COURT: You may.

24 CROSS-EXAMINATION

25 BY MR. ADAM KERN:

1 Q Now, Detective Towaliga, you're quite a
2 different person from Ashley Dougherty; aren't you?

3 A I suppose you could say that. We're all
4 pretty different from each other.

5 Q Well, she's an art connoisseur?

6 A Yes, I believe she is.

7 Q And you're a police detective?

8 A Yes, I am.

9 Q She has a Ph.D.?

10 MS. SOLHEID: Objection, Your Honor;
11 relevance.

12 MR. ADAM KERN: Your Honor, may I
13 respond?

14 THE COURT: You may.

15 MR. ADAM KERN: Your Honor, by this line
16 of questioning, I am examining the personal bias of
17 Detective Towaliga for Ashley Dougherty as a possible
18 reason for what will become apparent to the Court as a
19 shoddy investigation.

20 MS. SOLHEID: May I respond?

21 THE COURT: You may.

22 MS. SOLHEID: Mr. Kern is questioning
23 Detective Towaliga upon the differences between her
24 and Ashley Dougherty which in no way shows bias and is
25 completely irrelevant to the matter today.

1 THE COURT: He's got her on cross-
2 examination. I will allow it over your objection.

3 BY MR. ADAM KERN:

4 Q So Detective Towaliga, Ms. Dougherty has
5 a Ph.D.; is that right?

6 A I think so. I know she's an intelligent
7 woman.

8 Q And you have a degree in criminal justice
9 from Abraham Baldwin Agricultural College?

10 A I certainly do.

11 Q She's lived all around the world?

12 A I don't know where she's lived, but okay.

13 Q And you've never lived outside of
14 Georgia?

15 A No, I have not. I'm a proud resident.

16 Q She's from out of town?

17 A Yes, she is.

18 Q And you've lived in New Echota for years?

19 A Yes, I have. I enjoy it there.

20 Q You two never really got along; is that
21 right?

22 A Well, she certainly is different like you
23 said.

24 Q Well, you also told us that she never
25 really was friendly to you?

1 A No, not -- not so much.

2 Q You thought that she was elitist?

3 A Yes.

4 Q You thought that she looked down upon
5 you?

6 A I did feel that sometimes.

7 Q You thought that she only wanted to be
8 with the cream of society?

9 A Yes, I do believe that.

10 Q And you weren't a part of that group;
11 were you?

12 A I suppose not.

13 Q Nor was anyone from your town?

14 A That's how I felt that she believed us to
15 be.

16 Q And she had cocktail parties for all of
17 her elite guests; is that right?

18 A Yes, she did have numerous parties.

19 Q And you were never invited to those; were
20 you?

21 A No. I was usually the one arresting her
22 friends.

23 Q Nor was anyone from your town?

24 A No.

25 Q That's right, because you were arresting

1 them?

2 A Yes. They had numerous DUIs.

3 Q You ticketed all her guests as they left
4 that party; is that right?

5 A I wouldn't say all of them, but they
6 certainly did drink a lot.

7 Q Because you needed a revenue enhancer?

8 A Well, it does provide some revenue for
9 us.

10 Q So Detective Towaliga, now I'd like to
11 talk about the other time you were able to use your
12 power over Ashley Dougherty, this investigation.

13 Now, in conducting investigations, you're
14 supposed to be thorough; is that right?

15 A Yes. I do believe I was in this case.

16 Q You're supposed to be skeptical?

17 A Yes.

18 Q You're supposed to evaluate each case on
19 its merits?

20 A Yes. I believe I did so in this case.

21 Q Regardless of who is the accused?

22 A Right.

23 Q And regardless of who is the accuser?

24 A Yes, that is true.

25 Q So let's look at how you handle

1 investigations when Ashley Dougherty is the accused
2 and when she's the accuser.

3 Now, when she's the accuser, you called
4 her complaints nonsense; is that right?

5 A I don't believe they're nonsense. Which
6 complaints are you referring to?

7 Q Her complaints of the alleged theft of
8 the Cherokee Rose and the insurance complaints.

9 A Yes. I did not feel that her evidence
10 was valuable in that case.

11 Q So that's a yes, you called them
12 nonsense?

13 A Yes, that is true.

14 Q And when she called you on the night of
15 April 1st and told you to get to the museum right
16 away, you didn't go right away; did you?

17 A No. I thought it was more of this
18 insurance stuff.

19 Q Right. You didn't turn on your siren?

20 A No, I did not. I didn't think that it
21 was urgent. There was no urgency in her voice.

22 Q You didn't turn on your blue lights?

23 A No, I did not.

24 Q Because you thought it was more of Ashley
25 Dougherty's nonsense?

1 A Yes. I didn't feel that there was an
2 emergency that I needed to attend to at that time.

3 Q And, Detective Towaliga, when Ashley
4 Dougherty is the accused, you never pursued any other
5 leads; did you?

6 A Well, I -- I'm sorry. What are you
7 referring to?

8 Q Well, you did interview Talbot Berrien;
9 is that correct?

10 A Yes, I did.

11 Q You thought his story was suspicious?

12 A Yes, that is true.

13 Q But you never investigated that suspicion
14 any further; did you?

15 A No. I felt I had a good amount of
16 evidence already.

17 Q You never interviewed him a second time;
18 did you?

19 A No. Usually one time is thorough enough.

20 Q You did not interview him a second time
21 because you didn't want to?

22 A Well, I probably could have, but I didn't
23 feel it was necessary at the time.

24 Q You didn't want to; is that right,
25 Detective Towaliga?

1 A Right.

2 Q Now, you also felt that Ashley Dougherty
3 had lied to you; is that right?

4 A I still believe that she lied to me.

5 Q And you believe that because you saw
6 Philip Newton's wristwatch?

7 A That is one of the reasons.

8 Q And as you stated on direct examination,
9 you thought that if that watch was frozen because
10 Philip Newton fell and it was smashed when Philip
11 Newton fell, then that indicated that he died at 8:20?

12 A It -- it could definitely be possible.

13 Q But that's a pretty big if; isn't it,
14 Detective Towaliga?

15 A I -- I don't know how you --

16 Q Because, Detective Towaliga, you are
17 aware that there are many other ways to stop a watch
18 than simply smashing it?

19 A That's possible, yes.

20 Q And there are many other ways to smash a
21 watch than simply falling on it; is that right?

22 A That could be true, but in this case I
23 believe that that's the most likely situation.

24 Q Well, actually, Detective Towaliga, that
25 watch was not stopped on April 1st; was it?

1 A No, I believe it was.

2 Q It was stopped on the 4th?

3 A Or excuse me. Yes, you're right.

4 Q That would not be the night Mr. Newton
5 was killed; would it?

6 A No. He was killed on the 4th.

7 Q He was killed on the 4th?

8 A 1st. Excuse me.

9 Q And the watch showed the 4th?

10 A I believe so. It's hard to remember.

11 Q But, Detective Towaliga, you never
12 mentioned any of that in your investigation report;
13 did you?

14 A No, I did not.

15 Q Now, you also interviewed Forsyth Sparks;
16 is that correct?

17 A Yes, that is true.

18 Q Now, Ms. Sparks is the best friend of the
19 decedent?

20 A Yes, I believe they are friends.

21 Q And you interviewed her a day after her
22 best friend died?

23 A Yes, I did.

24 Q So you should have treated her statements
25 with a good deal of skepticism; is that correct?

1 A Well, I felt it was urgent to interview
2 her, so that time was good.

3 Q Detective Towaliga, let me direct you
4 back to my question. You felt it good to treat her
5 statements with a good deal of skepticism; is that
6 right?

7 A Well, yes, she had gone through a
8 traumatic event, but it was very important that I get
9 her statement.

10 Q You wanted to corroborate her statements
11 with outside facts?

12 A Yes, that is true.

13 Q So you retrieved the official report of
14 the correspondence between Ashley Dougherty and Philip
15 Newton from Horizon Wireless; is that right?

16 A Yes, I did receive those reports.

17 MR. ADAM KERN: Your Honor, may the
18 record reflect that I am showing opposing counsel what
19 has been marked as Exhibit 6.

20 THE COURT: It will so reflect.

21 BY MR. ADAM KERN:

22 Q Detective Towaliga, I'm approaching you
23 with what has been marked as Exhibit 6. You recognize
24 this; don't you?

25 A Yes, I do.

1 as to the fact that it is a record of regularly
2 conducted business activity that Detective Towaliga
3 would do regularly in her business activity.

4 THE COURT: I think you need to lay the
5 foundation for it being a business record, if you can
6 do that.

7 MR. ADAM KERN: Your Honor, I believe it
8 is stipulated that it is a business record.

9 THE COURT: Wait. It is stipulated.
10 What do you say to that?

11 MS. SOLHEID: Even if it is stipulated
12 that it is a regularly conducted business activity, it
13 is not stipulated that it is a regularly conducted
14 business activity of Ms. Dougherty's, and that
15 foundation must be laid.

16 THE COURT: I'm going to allow it over
17 objection.

18 BY MR. ADAM KERN:

19 Q So, Detective Towaliga, let's examine
20 Ms. Sparks's statements a little bit more thoroughly.

21 Now, according to Ms. Sparks, Ashley
22 Dougherty had been threatening Philip Newton on the
23 night of April 1st; is that right?

24 A Yes, that is correct.

25 Q But according to Horizon Wireless'

1 official report, only two text messages were sent from
2 Ashley Dougherty's phone that night, and they said,
3 "We need to resolve this and seriously"?

4 A Yes, the ones from her.

5 Q Now, according to Forsyth Sparks, this
6 text message conversation had been occurring all
7 evening?

8 A Yes, that is what she said.

9 Q And according to Horizon Wireless'
10 official report, there were only two text messages
11 sent from Ashley Dougherty's phone; right?

12 A Just from hers, yes.

13 Q One at 7:40?

14 A Yes, that is true.

15 Q And the other at 7:48?

16 A Yes, that is true.

17 Q That would be a span of eight minutes; is
18 that right?

19 A That is true.

20 Q But you never mentioned any of these
21 discrepancies in your investigation report; did you?

22 A I didn't feel it necessary at the time.

23 Q So that's a no, you did not?

24 A That's a no.

25 Q Now, Philip Newton also threatened Ashley

1 Dougherty; isn't that correct?

2 A Yes, that is what Ashley Dougherty says.

3 Q Well, actually that's what the official
4 report says. Philip Newton said, "You'll get what's
5 coming to you. I'll make sure."

6 A Yes, at 6:23 p.m.

7 Q But, Detective Towaliga, you never
8 mentioned that in your investigation report either;
9 did you?

10 A No, I did not. I did not feel it was
11 necessary at the time.

12 MR. ADAM KERN: Thank you. No further
13 questions.

14 THE COURT: Thank you.

15 Any redirect?

16 MS. SOLHEID: Yes, Your Honor.

17 MR. ADAM KERN: Your Honor, briefly,
18 permission to publish Exhibit 6 to the jury.

19 THE COURT: It is published. When I
20 admit it, it's published. But you may -- if you want
21 to hand the original to them, you can, but it's
22 published.

23 MR. ADAM KERN: Yes, Your Honor.

24 MS. SOLHEID: May I proceed?

25 THE COURT: You may proceed.

1 REDIRECT EXAMINATION

2 BY MS. SOLHEID:

3 Q Detective Towaliga, upon cross-
4 examination, opposing counsel questioned you about the
5 date on the wristwatch and whether or not it was
6 broken on the date that Philip Newton died. Did you
7 notice any glass shards from his wristwatch at the
8 scene?

9 A Yes, in -- in the -- in his sleeve.

10 Q And now, he also questioned you about --
11 he also questioned you about the reason why you didn't
12 feel that Ashley Dougherty's call on April 1st was
13 urgent. Why didn't you believe it was urgent?

14 A There was absolutely no urgent tone in
15 her voice. She simply asked me -- requested that I
16 come to the museum.

17 MS. SOLHEID: Thank you. No further
18 questions, Your Honor.

19 THE COURT: Mr. Kern, any recross?

20 MR. ADAM KERN: No recross, Your Honor.

21 THE COURT: You may step down.

22 MR. TOWALIGA: Thank you.

23 (Randy Towaliga left the stand.)

24 MR. EICHENBERGER: Your Honor, at this
25 time the State of Georgia rests.

1 THE COURT: The defense may proceed.

2 MR. ADAM KERN: Thank you, Your Honor.

3 The defense calls Mr. Taylor McIntosh to
4 the stand.

5 THE COURT: Come around, Mr. McIntosh.

6 You've already been sworn.

7 (Taylor McIntosh takes the stand.)

8 MR. ADAM KERN: May I proceed?

9 THE COURT: You may proceed.

10 TAYLOR McINTOSH,
11 having been first duly sworn, was examined and
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. ADAM KERN:

15 Q Please introduce yourself.

16 A My name is Taylor McIntosh.

17 Q How are you employed?

18 A By myself. I'm my own boss, you see,
19 which is great. I am the country's greatest art
20 invest -- okay. I'm on my way to becoming the
21 country's greatest art investigator.

22 Q What business do you run?

23 A AI, Art Investigators, Incorporated. We
24 have some nice office space down by Five Points, a
25 couple of cubicles that are somewhat vacant at the

1 moment. But you have to understand, I run a very
2 selective business.

3 Q What exactly does that business do,
4 Mr. McIntosh?

5 A Well, to understand that, you kind of
6 have to understand that our business philosophy is
7 very much based on the Da Vinci Code. Because the
8 main character, Robert Langdon, he's a personal hero
9 of mine. And had he not been a work of fiction, I'm
10 sure he would have had a place in our team at AI.

11 Q Mr. McIntosh, perhaps you misunderstood
12 my question a little bit. What exactly does AI do for
13 revenue?

14 A Okay. Essentially what AI does is
15 investigates artistic crimes. We find kidnapped
16 pieces, we determine the authenticity of those in
17 question, and we testify in court about artistic
18 crimes.

19 Q So, Mr. McIntosh, why did you decide to
20 go into those fields of art investigation and criminal
21 investigation?

22 A I had something of a traumatic childhood.
23 I was force-fed art at an early age, and to
24 compensate, I turned to crime scene investigation. I
25 watched CSI, Law & Order, Law & Order SVU, Criminal

1 Intent -- and actually not Criminal Intent. It was
2 too easy for me. But every night I would solve the
3 mysteries before the people on TV could.

4 Q Do you have any formal training?

5 A I'm glad you asked that. Yes, I do. I
6 didn't go into police training right away. I studied
7 art in college.

8 Q Why did you not decide to stay in the art
9 world at that point?

10 A I won the lottery, literally. I received
11 \$14-1/2 dollars from the generous people at the
12 Georgia Powerball. Anyway, winning the lottery wasn't
13 really a chance thing. It was more like fate. And
14 that fate allowed me to explore my other passions, in
15 my case crime scene investigation.

16 Q So how did you train to be a crime scene
17 investigator?

18 A I studied at the police academy. When I
19 was there, the other boys called me Sherlock
20 (indicating) but usually prefaced it with like a
21 profanity for some reason. I don't know. Anyways,
22 when I was there, I studied forensics and crime scene
23 investigation.

24 Q What experience do you have in crime
25 scene investigation?

1 that he is currently working as an art investigator,
2 not a crime scene investigator. He testified that his
3 experience in crime scene investigation was over
4 several, several years ago, and therefore he's not up
5 to date on current crime scene investigation
6 procedures.

7 THE COURT: Over your objection, I'm
8 going to allow him to be qualified, but you'll have
9 him on cross.

10 You may proceed.

11 BY MR. ADAM KERN:

12 Q Mr. McIntosh, how did you become involved
13 with this case?

14 A On April 5th of last year I received a
15 call from Talbot Berrien asking me to investigate the
16 night Philip Newton was killed.

17 Q Did you accept his offer?

18 A Well, yes, I did. This was my ideal case
19 because it straddled both my areas of expertise.

20 Q And how did you go about your
21 investigation?

22 A I reviewed Detective Towaliga's analysis
23 as well as talked to Ashley Dougherty and Forsyth --
24 and, excuse me, and Talbot Berrien.

25 Q Have you arrived at a professional

1 opinion regarding the death of Philip Newton?

2 A Yes, I have.

3 Q And what is that opinion?

4 A It is my opinion that Detective
5 Towaliga's analysis overlooks many elements of the
6 crime scene and misinterprets many more.

7 Q What elements of the crime scene are
8 overlooked and misinterpreted?

9 A Really three main things: First, the
10 general timeline of events; second, the gun and the
11 way it was used; and third, the actual order in which
12 these shots were fired.

13 Q So let's talk about each of those reasons
14 one by one starting with the timeline.

15 Is it true that the two recovered
16 timepieces established a definitive timeline of
17 events?

18 A No, no. There are multiple possibilities
19 for a watch to be broken, not just falling after being
20 shot as Detective Towaliga claimed. And that desk
21 clock, it's an old antique. It could have been
22 running slow or it could have been inaccurate in the
23 first place.

24 Q Let's move on to the second reason, the
25 gun. How does one fire an antique weapon such as the

1 Colt .45?

2 A Well, there are different ways. You see,
3 you can fire it the way Detective Towaliga described,
4 but it also is possible to be fired extremely rapidly
5 by --

6 MS. SOLHEID: Objection, Your Honor; lack
7 of qualification.

8 MR. ADAM KERN: Your Honor, may I
9 respond?

10 THE COURT: You may.

11 MR. ADAM KERN: Your Honor, in his
12 training at the police academy, Taylor McIntosh become
13 aware of the various methods of firing a gun. That
14 would be standard training and also training for crime
15 scene investigation.

16 MS. SOLHEID: May I respond?

17 THE COURT: You may.

18 MS. SOLHEID: Although Mr. McIntosh has
19 been qualified as an expert in crime scene
20 investigation, he is not an expert in antique weapons
21 or ballistics and therefore cannot testify to it.

22 THE COURT: I don't believe he has been
23 so qualified. I sustain the objection.

24 BY MR. ADAM KERN:

25 Q Mr. McIntosh, are you familiar with the

1 process known as fanning?

2 A Yes, I am.

3 Q Could you describe that process?

4 A Sure. Now, fanning would allow you to
5 fire extremely rapidly, up to four times a second,
6 without making the deliberate choice of pulling the
7 trigger each time.

8 Q And are you aware of the accuracy of a
9 gun fired in such a manner?

10 A Yes, I am. It's severely impaired. And
11 the bullet wounds from the crime scene actually
12 corroborate that kind of firing pattern.

13 Q Lastly, Mr. McIntosh, let's talk about
14 the third reason, the order in which the shots were
15 fired.

16 Is it true that -- is it definitive that
17 the shot to Mr. Newton's shoulder was the second shot?

18 A Definitely not. There are multiple
19 possibilities, including those in which Mr. Newton is
20 advancing towards Ms. Dougherty. Now, in that case,
21 the first shot to the shoulder could have spun Newton
22 around for the second shot to hit in the back.

23 Q So, Mr. McIntosh, does the physical
24 evidence leave open the possibility for self-defense?

25 A Yes, it does. As Robert Langdon always

1 says, we can't ignore this possibility.

2 MR. ADAM KERN: Thank you. No further
3 questions.

4 THE COURT: The witness is with you.

5 MS. SOLHEID: May I proceed, Your Honor?

6 THE COURT: You may.

7 CROSS-EXAMINATION

8 BY MS. SOLHEID:

9 Q Now, Mr. McIntosh, as you testified,
10 Talbot Berrien contacted you to testify here in court
11 today; correct?

12 A That's correct, it was Talbot.

13 Q And your experience is in art
14 investigation; right?

15 A Well, and crime seeing investigation.

16 Q Well --

17 MR. ADAM KERN: Your Honor, may I ask
18 opposing counsel to move a little bit so I can see my
19 witness.

20 THE COURT: Thank you.

21 BY MS. SOLHEID:

22 Q You're back and what you're currently
23 working in now is art investigation; right?

24 A Well, actually this case kind of is a
25 hybrid of the two.

1 Q Exactly. You're here to testify today as
2 to a murder investigation; aren't you?

3 A Which I investigated 17 of those when I
4 was at the APD.

5 Q And as said before, your experience is in
6 crime scene investigation; right?

7 A Right.

8 Q But you never visited the crime scene;
9 did you?

10 A I actually did.

11 Q You did visit the crime scene?

12 A It had been cleaned up, but I visited the
13 New Echota Museum of Art.

14 Q And it had been cleaned up as you said;
15 right?

16 A That's correct.

17 Q And there was nothing left there; was
18 there?

19 A Well, the evidence had already been
20 collected by Detective Towaliga, so I reviewed that.

21 Q Exactly. You didn't personally examine
22 any physical evidence; did you?

23 A I would have loved to, but unfortunately
24 I couldn't.

25 Q So that's a no?

1 A That's a no.

2 THE COURT: If you'll answer the question
3 directly.

4 BY MS. SOLHEID:

5 Q Now, you criticized Detective Towaliga
6 for interviewing biased witnesses; correct?

7 A That's -- well, yes. But it's also more
8 about over-relying on a single witness.

9 Q Exactly. You think that he over-relied
10 on Forsyth Sparks; right?

11 A I do.

12 Q Because Forsyth Sparks was biased in your
13 opinion; correct?

14 A Yes.

15 Q Now, you, yourself, only interviewed
16 three witnesses; didn't you?

17 A That's correct.

18 Q And you interviewed Ashley Dougherty;
19 correct?

20 A Yes.

21 Q Talbot Berrien?

22 A Yes.

23 Q And Natalie Barker; right?

24 A That's correct.

25 Q Now, you're aware that Talbot Berrien is

1 a friend of the defendant, Ashley Dougherty; aren't
2 you?

3 A I believe he is.

4 Q Now, you're also aware that Natalie
5 Barker had no interaction with Philip Newton or Ashley
6 Dougherty on April 1st; right?

7 A No. Ms. Barker had talked to Philip
8 Newton prior to the murder.

9 Q And you're also aware that there were no
10 witnesses to the altercation between Philip Newton and
11 Ashley Dougherty on April 1st; correct?

12 A No. Ms. Dougherty is the only person at
13 the time.

14 Q So since you didn't examine any physical
15 evidence and there are no witnesses, you're then
16 basing your conclusions about what happened on that
17 night on the testimony of the defendant; correct?

18 A That's incorrect.

19 Q Then what do you mean?

20 A I did examine the physical evidence which
21 Detective Towaliga presented to me.

22 Q But you didn't personally examine it;
23 correct?

24 A Which I personally examined the evidence
25 that she provided.

1 Q Now, you examined the medical report as
2 part of your investigation; didn't you?

3 A That's correct, prepared by Dr. House.

4 Q And this is a copy (indicating) of the
5 report that you examined?

6 A Yes, it is.

7 Q So you would have noticed then that
8 Philip Newton's body was lying face up; correct?

9 A That's correct.

10 Q And that there were glass and wood shards
11 found on top of his body; right?

12 A That's correct.

13 Q Now, you're aware that your clients,
14 Ashley Dougherty and Talbot Berrien, run the New
15 Echota Museum of Art; aren't you?

16 A Well, they're the curators. Ashley
17 Dougherty is the curator, and Talbot's the assistant
18 curator.

19 Q And you're aware that they stood -- the
20 museum stood to make a million dollars if the Cherokee
21 Rose exhibit was canceled; right?

22 A The museum, not -- not them personally.

23 Q Exactly. And now you're also aware that
24 Philip Newton was scheduled to have a meeting with the
25 police department and the insurance company on April

1 2nd, 2008; aren't you?

2 A That's correct.

3 Q And that was the day after he was killed;
4 wasn't it?

5 A That is.

6 MS. SOLHEID: Thanks. No further
7 questions, Your Honor.

8 THE COURT: Any redirect?

9 MR. ADAM KERN: No redirect, Your Honor.

10 THE COURT: You may step down. Thank
11 you.

12 (Taylor McIntosh left the stand.)

13 THE COURT: You may call your next
14 witness.

15 MS. SMYTH: Yes, Your Honor. The defense
16 calls Mr. Talbot Berrien to the stand.

17 THE COURT: Come around, Mr. Berrien.

18 (Talbot Berrien takes the stand.)

19 THE COURT: You may proceed.

20 TALBOT BERRIEN,

21 having been previously duly sworn, was examined and
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MS. SMYTH:

25 Q Please introduce yourself.

1 A My name is Talbot Artimis Berrien.

2 Q And what do you do for a living,

3 Mr. Berrien?

4 A At the present moment, I am taking a
5 leave of absence from my position as assistant curator
6 of the New Echota Museum of Art.

7 Q And what were your responsibilities as an
8 assistant curator?

9 A My goodness, what weren't they. I was
10 responsible for preserving the integrity of the
11 museum's collections; authenticating them; dealing
12 with our generous, generous benefactors and trustees;
13 and smoothing over the little flare-ups that occur in
14 the museum's operations. Really I did everything.
15 I'm a bit of a fixer. See a problem, find a solution.
16 It's always been my specialty.

17 Q And what kind of training do you have?

18 A The finest. To begin with, I'm a
19 graduate of the Savannah College of Art and Design. I
20 have done graduate work and held positions of
21 authority at some of the finest museums of the world.

22 MS. SMYTH: At this time the defense
23 tenders Mr. Talbot Berrien as an expert in art
24 authentication and evaluation.

25 THE COURT: Is there any objection?

1 MR. EICHENBERGER: Yes, Your Honor. I
2 object to lack of foundation. May I be heard?

3 THE COURT: What do you mean?

4 MR. EICHENBERGER: May I explain my
5 objection, Your Honor?

6 THE COURT: You may.

7 MR. EICHENBERGER: Had I been allowed to
8 voir dire the witness, we would -- the Court would be
9 aware that Mr. Berrien's positions at these previous
10 museums were not of high authority and merely of being
11 a waiter, and therefore I don't believe that he has
12 sufficient foundation to be considered as an expert.

13 THE COURT: What is your response?

14 MS. SMYTH: That is not stipulated by the
15 defense for one, and voir dire is not permitted by the
16 Mock Trial Rules of Competition. And therefore
17 Mr. Berrien is qualified by his experience and
18 training to testify to the issue of art
19 authentication.

20 THE COURT: One final response.

21 MR. EICHENBERGER: Your Honor, I'm not
22 asking to voir dire the witness. I'm just saying had
23 I been able to, these qualifications that opposing
24 counsel outlined would be assumed not very qualified.

25 THE COURT: I will find him qualified,

1 and you'll have him on cross-examination.

2 MR. EICHENBERGER: Yes, Your Honor.

3 BY MS. SMYTH:

4 Q Now, Mr. Berrien, do you know the
5 defendant, Ashley Dougherty?

6 A Of course. I first worked with Ashley at
7 the Telfair. She's an absolutely lovely person to
8 work with. When she moved from New Echota -- sorry,
9 from the Telfair to New Echota, I was delighted to
10 join her.

11 Q Now, we've heard today about the Trail of
12 Tears exhibit at the New Echota Museum. What was your
13 role in that exhibit?

14 A My principal responsibility was to find
15 the Cherokee Rose. The problem was is that it had
16 gone missing nearly 50 years earlier, and it was my
17 job to find the solution. Like I said, it's what I
18 do.

19 Q And how did you solve the problem?

20 A In my research on the painting, I found
21 my way to Mr. Raven Feather just weeks before the
22 exhibit was to open. I then flew out to Tulsa to
23 negotiate its loan to the museum.

24 Q And when you found Mr. Feather's
25 painting, what was your opinion on whether or not that

1 painting was the original Cherokee Rose?

2 A Well, you will always find people willing
3 to dispute the authenticity of a curator's more
4 spectacular, surprising finds. These disputes are
5 most unpleasant, nothing more than swearing contests
6 between three-piece suits.

7 Personally I was comfortable with the
8 provenance of Mr. Feather's painting based on my
9 reconstruction of the links between him and the
10 painting and my professional judgment of Appling's
11 style.

12 Q And what were the terms of the loan that
13 you negotiated with Mr. Feather?

14 A We agreed to insure it against loss. But
15 before they insured our painting, our insurer required
16 a certificate of authenticity for obvious reasons.

17 Q And was the painting authenticated?

18 A Originally Ashley turned to the other
19 assistant curator, Philip Newton, to authenticate and
20 value the painting. Philip wouldn't do his job, and
21 the exhibit was to open in three days. So on March
22 15th, Ashley fired Philip, quite properly. She then
23 turned to me, and I authenticated and valued the
24 painting at \$1 million that very day, problem solved.

25 Q What happened next?

1 A A most extraordinary thing. The very
2 next night, March 16th, the Cherokee Rose was stolen
3 from the museum.

4 Q And what did the loss of the Cherokee
5 Rose mean to the Trail of Tears exhibit?

6 A It was devastating. Fortunately we had
7 cancellation insurance on the exhibit, but the loss of
8 the Cherokee Rose meant the end of the exhibit itself.
9 I thought anyone could have seen that Newton had
10 stolen it, but apparently Detective Towaliga didn't
11 agree.

12 Q And after discovering the painting to be
13 gone, what did you do?

14 A Well, I immediately flew back to Tulsa to
15 be with Mr. Feather. But on March 23rd I learned
16 another most extraordinary thing. Apparently the
17 painting had been found in Philip's garage. It was
18 proof enough of his guilt.

19 Q And after learned that the painting had
20 been discovered, what did you do?

21 A Well, I returned to New Echota. I then
22 went to the police station to view the painting. But
23 once I saw it, my elation turned to horror. The
24 painting I was looking at was not the original
25 Cherokee Rose. It was an excellent forgery, I can

1 assure you, but a forgery it was.

2 Q Well, how can you be sure of that,
3 Mr. Berrien?

4 A How to explain without the original to
5 compare against. There were differences in style,
6 anomalies, quirks in the Appling technique that were
7 not present in the painting Philip had turned in. I'm
8 afraid I cannot be more specific.

9 Q All right, Mr. Berrien.

10 Well, after you saw that painting in the
11 police department, what did you do?

12 A Well, I was back in the problem-solving
13 mode again. It took all my diplomatic powers to keep
14 Mr. Feather focused on continuing to cooperate with
15 the insurance company. He kept insisting the painting
16 that was recovered was the same painting he had lent
17 the museum, and I kept telling him that it was a
18 forgery.

19 Q Now, Mr. Berrien, I'd like to now direct
20 your attention to the night of April 1st when Philip
21 Newton was shot. What were you doing he early that
22 evening?

23 A Ashley and I weren't at the museum that
24 night. Unfortunately the insurance company had been
25 refusing to pay our claim on the cancellation of the

1 exhibit, and we were gathering paperwork together for
2 them. Then Ashley left for dinner around 6:30, and I
3 stayed behind.

4 Q What time did you leave the museum?

5 A A little before 8:00 o'clock. Ashley
6 hadn't returned at that time.

7 Q And what happened next?

8 A I received a phone call from Ashley
9 around 8:30 telling me what had happened. When I got
10 to the museum, Philip's body was on the ground in
11 Ashley's office. I calmed her down and had her call
12 the police.

13 Q And what was Ms. Dougherty's appearance
14 when you arrived on the scene?

15 A Disheveled, distraught, poor dear. I
16 helped bandage her hand. She had nasty bruises on her
17 throat and wrist.

18 Q And when Detective Towaliga arrived on
19 the scene, where was Ms. Dougherty located?

20 A Sitting quietly beside her desk,
21 certainly not standing over Newton's body like
22 Detective Towaliga said.

23 Q Now, Mr. Berrien, I'd like to return to
24 your authentication of the Cherokee Rose. Is
25 Exhibit 2 located on that witness stand still?

1 A I do not see it, no.

2 Q I'm handing you what has been marked as
3 Exhibit 2. Do you recognize this?

4 A Yes.

5 Q Could you describe the documents within
6 that exhibit?

7 A Well, the main document, page 44 through
8 46, is the loan agreement I negotiated with
9 Mr. Feather. The very next page is my appraisal of
10 the Cherokee Rose. The first page of the exhibit is a
11 copy of the letter I wrote to Mr. Feather after his
12 painting was stolen.

13 Q Now, Mr. Berrien, referring to the last
14 page of that exhibit, what if the painting that you
15 authenticated on March 16th was not the original
16 Cherokee Rose?

17 A Well, it might have spelled disaster for
18 the exhibit certainly had the lack of authenticity
19 been discovered.

20 MR. EICHENBERGER: Objection, Your Honor;
21 speculation.

22 MS. SMYTH: May I respond, Your Honor?

23 THE COURT: You may.

24 MS. SMYTH: This is rationally based on
25 the witness exception. A foundation has been laid

1 that he's worked at many museums, that he is an
2 assistant curator, and he is responsible for
3 preserving the integrity of the museum's collections
4 and therefore he would know what the repercussions
5 would be if he were to authenticate an unoriginal
6 painting.

7 MR. EICHENBERGER: May I respond, Your
8 Honor?

9 THE COURT: You may.

10 MR. EICHENBERGER: Mr. Berrien has been
11 entered in as an expert in art authentication and has
12 not testified to any previous knowledge or dealings
13 with insurance policies, and therefore any testimony
14 that he would offer about any speculative insurance
15 policies would be inadmissible.

16 THE COURT: I'm not going to allow it at
17 this time. You may proceed to try to --

18 MS. SMYTH: Yes, sir.

19 THE COURT: -- lay a foundation.

20 MR. EICHENBERGER: Your Honor, I ask that
21 the witness' testimony be stricken from the record.

22 THE COURT: I have sustained the
23 objection.

24 BY MS. SMYTH:

25 Q Mr. Berrien, was Mr. Feather's painting a

1 forgery from the beginning?

2 A No, absolutely not. I found the original
3 Cherokee Rose, and then Philip stole it and it became
4 a forgery.

5 Q Did you, without the authority's
6 knowledge, steal the painting from the museum in order
7 to prevent anyone from realizing that it was not, as
8 you knew, the original Cherokee Rose?

9 A My goodness, what a preposterous
10 suggestion. Why would I do that?

11 Q And did you, without Ms. Dougherty's
12 knowledge, have that same painting planted into
13 Mr. Newton's garage on the morning of March 23rd?

14 MR. EICHENBERGER: Objection, Your Honor;
15 leading.

16 MS. SMYTH: May I respond, Your Honor?

17 THE COURT: You may.

18 MS. SMYTH: This is not a leading
19 question. The witness is free to answer yes or no.
20 The answer is not --

21 THE COURT: I think that it is leading.
22 I'll sustain the objection.

23 MS. SMYTH: Yes, Your Honor.

24 BY MS. SMYTH:

25 Q Now, Mr. Berrien, would you look again at

1 Exhibit 2.

2 A (Complying.) Yes.

3 Q The first page of that exhibit, what is
4 that?

5 A Like I said, it's a copy of a letter I
6 gave to Mr. Feather after his painting was stolen.

7 Q And what does it say about Mr. Feather's
8 painting?

9 A It says the recovered painting was
10 determined to be a forgery. I've already explained
11 this.

12 Q Yes, Mr. Berrien. But on what date was
13 Mr. Feather's painting recovered?

14 A Like I said, March 23rd.

15 Q And on what date was your determination
16 of its forgery made?

17 A Again, March 23rd.

18 Q Mr. Berrien, what is the date on that
19 letter?

20 A I fail to see the point of this.

21 Q Mr. Berrien, it's quite a simple
22 question. What is the date on the letter?

23 A March 22nd.

24 Q Now, could you explain to the jury how
25 you knew that the recovered painting was a forgery

1 before it was even recovered?

2 A No, I guess I can't.

3 MS. SMYTH: Thank you. I have no further
4 questions at this time.

5 THE COURT: You may proceed.

6 MR. EICHENBERGER: May I proceed, Your
7 Honor?

8 THE COURT: You may, Mr. Eichenberger.

9 CROSS-EXAMINATION

10 BY MR. EICHENBERGER:

11 Q Now, Mr. Berrien, I'd like to start off
12 by talking to you about the Cherokee Rose.

13 MS. SMYTH: Your Honor, I'm sorry. I
14 can't see my witness.

15 THE COURT: Pardon?

16 MS. SMYTH: I couldn't see my witness. I
17 was just asking opposing counsel to move. That's
18 fine.

19 BY MR. EICHENBERGER:

20 Q Now, it is your job to locate the
21 Cherokee Rose for the New Echota Museum; is that
22 right?

23 A Yes.

24 Q And to do this you performed an
25 investigation; is that correct?

1 A I did.

2 Q And you ended up finding the Cherokee
3 Rose in the possession of Raven Feather?

4 A Yes, I did.

5 Q Now, Mr. Berrien, you don't know who
6 owned the painting before Raven Feather; do you?

7 A Well, I understood he got it from J.R.
8 Ewing.

9 Q So it's your testimony that Mr. Feather
10 received this painting from J.R. Ewing?

11 A No. I believe it was Mr. Feather's
12 testimony.

13 Q Now, Mr. Berrien, you did not -- you have
14 no personal knowledge of how Mr. Feather obtained that
15 painting; do you?

16 A Well, I researched the painting, and that
17 led me to Mr. Feather.

18 Q Now, to get this painting from Raven
19 Feather, you had to sign off on two things for the
20 insurance policy; is that right?

21 A Yes.

22 Q The authentication of the Cherokee Rose?

23 A Yes.

24 Q And the value?

25 A Yes.

1 Q Now, originally Mr. Philip Newton was put
2 in charge of this; is that correct?

3 A He was.

4 Q But he was relieved of his duties; is
5 that right?

6 A Yes.

7 Q Now, you didn't fire Philip Newton; did
8 you?

9 A No. I'm the assistant curator.

10 Q Ashley Dougherty fired Philip Newton;
11 didn't she?

12 A Well, Ashley's the curator of the museum.

13 Q And she is your boss; is that right?

14 A And she was Philip's boss as well.

15 Q So is that a yes?

16 A Yes.

17 Q And after she fired Philip Newton she
18 asked you to perform the authentication; is that
19 right?

20 A Yes.

21 Q And after Ms. Dougherty asked you, you
22 agreed?

23 A Well, my research had been complete. I
24 had found the original Cherokee Rose.

25 Q So you authenticated the painting then?

1 A Yes, I did.

2 Q And you valued the painting at \$1
3 million?

4 A Sir, it was the original Cherokee Rose.

5 Q So, Mr. Berrien, I would like to direct
6 you back to my question which was that you valued this
7 painting at \$1 million?

8 A Yes, I did.

9 Q Now, you are not regularly relied upon by
10 insurance companies to value paintings; are you?

11 A I'm sorry?

12 Q You are not regularly relied upon by
13 insurance companies to appraise paintings?

14 A Well, I valued this painting.

15 Q Mr. Feather, that was -- or Mr. Berrien,
16 that was not my question. My question was you are not
17 regularly relied upon by insurance companies to value
18 paintings?

19 MS. SMYTH: Objection, Your Honor. The
20 questions calls for unfair extrapolation.

21 MR. EICHENBERGER: May I respond?

22 THE COURT: How do you say -- well,
23 please do.

24 MR. EICHENBERGER: Your Honor, under Rule
25 2.3 I'm -- or excuse me. I'm allowed by Mock Trial

1 Rules to cross-examine the witness on any omissions
2 from his statement as well as information included
3 within his statement. And as Mock Trial Rule 611
4 states, that this is therefore not an unfair
5 extrapolation.

6 MS. SMYTH: May I respond, Your Honor?

7 THE COURT: You may.

8 MS. SMYTH: Nowhere within the witness'
9 statement does it say whether or not he was regularly
10 relied on by an insurance company to appraise a
11 painting.

12 Now, for an extrapolation to be fair, it
13 must be both neutral and reasonably inferred. This is
14 neither and therefore is unfair, and for opposing
15 counsel to question my witness about it would be a
16 violation of Rule 2.3 of the competition.

17 THE COURT: I will find (inaudible) as
18 they see it. You may proceed.

19 BY MR. EICHENBERGER:

20 Q Now, Mr. Berrien, I'd like to talk to you
21 about the night of April 1st. Now, that night you
22 received a call from your boss, Ashley Dougherty; is
23 that correct?

24 A Yes.

25 Q And she wanted you to come to the New

1 Echota Museum?

2 A Ashley was blubbering. Are you talking
3 about around 8:30?

4 Q Yes, that's the phone call I'm talking
5 about.

6 A Well, Ashley was blubbering. She was
7 talking about Newton showing up at the museum. She
8 didn't simply say, Talbot, please come to the museum.

9 Q Now, you stated on direct examination
10 that you put the best face on things; is that right?

11 A I don't believe I stated that on direct
12 examination.

13 Q Well, in your affidavit it states that;
14 doesn't it?

15 A Yes, it does.

16 Q And you also state that you're pretty
17 good at fixing problems; is that right?

18 A That's always been my specialty.

19 Q And on that night Ms. Dougherty called
20 you with a problem; is that correct?

21 A Well, she had told me -- that night I
22 didn't really understand the problem at that point.

23 Q Well, when you arrived, you saw Philip
24 Newton lying on the floor in a pool of his own blood;
25 is that correct?

1 A Yes. That is when I understood the
2 altercation that took place.

3 Q Now, you weren't there during the
4 altercation that Ms. Dougherty explained; were you?

5 A No, I was not.

6 Q So you didn't see Philip Newton allegedly
7 choke Ashley Dougherty; did you?

8 A I don't believe he did.

9 Q Well, were you here for the testimony of
10 Randy Towaliga?

11 A Yes, I was.

12 Q Did you hear Mr. Towaliga testify that he
13 didn't see any bruises on the defendant's neck?

14 A But I came to the museum and I saw
15 Ashley.

16 Q Mr. Berrien, I'd like you direct you back
17 to my question which was that Mr. Randy Towaliga did
18 not see any bruises on the defendant's neck.

19 A I did hear the detective say that, but
20 trust me, when I came to the museum, Ashley had been
21 physically assaulted.

22 Q Now, Mr. Berrien, you are not on trial
23 for murder here today; are you?

24 A No, I'm not.

25 Q In fact, Ashley Dougherty is; is that

1 right?

2 A Yes.

3 Q And you did not have a loaded revolver in
4 your desk; did you?

5 A I'm sorry?

6 Q You did not have a loaded revolver in
7 your desk at the New Echota Museum; did you?

8 A No.

9 Q And you did not load this gun with
10 hollow-point bullets; did you?

11 A Well, if I don't have a gun, obviously.

12 Q So it is your testimony that Ashley --
13 excuse me. You do not know what happened in the
14 office on the night of April 1st; do you?

15 A Again, I understood what had happened
16 once I arrived there; but no, during the altercation I
17 was not there.

18 MR. EICHENBERGER: Thank you, Your Honor.
19 No further questions.

20 THE COURT: Any redirect?

21 MS. SMYTH: Yes, Your Honor. May I
22 proceed?

23 THE COURT: You may.

24 REDIRECT EXAMINATION

25 BY MS. SMYTH:

1 Q Mr. Berrien, who found the Cherokee Rose?

2 A I did.

3 Q And who had a hand in the insurance
4 negotiations?

5 A I did.

6 Q Who authenticated the painting?

7 MR. EICHENBERGER: Objection, Your Honor;
8 leading.

9 MS. SMYTH: Your Honor, this does not
10 imply the answer. It's a question of who did
11 something.

12 THE COURT: I don't agree that it's
13 leading. I'll overrule your objection.

14 BY MS. SMYTH:

15 Q I'll repeat the question. Who
16 authenticated the painting?

17 A I authenticated the painting.

18 Q Who wrote the letter in Exhibit 2?

19 A I wrote the letter and gave it to
20 Mr. Feather.

21 Q Did Ms. Dougherty do any of these things?

22 A No.

23 MS. SMYTH: Thank you, Your Honor. No
24 further questions.

25 THE COURT: Any recross limited to the

1 redirect?

2 MR. EICHENBERGER: Nothing further, Your
3 Honor.

4 THE COURT: You may step down.
5 (Talbot Berrien left the stand.)

6 THE COURT: You may call your next
7 witness.

8 MR. COURTNEY: Yes, Your Honor. The
9 defense calls Ashley Dougherty to the stand.

10 THE COURT: The defendant may take the
11 stand.

12 (Ashley Dougherty takes the stand.)

13 MR. COURTNEY: Before I begin, Your
14 Honor, may I inquire as to how much time is remaining?

15 THE COURT: Please.

16 MR. DAVID KERN: Ten and a half minutes.

17 THE COURT: You may proceed.

18 ASHLEY DOUGHERTY,
19 having been previously duly sworn, was examined and
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. COURTNEY:

23 Q Please state your name for the Court.

24 A Ashley Marie Dougherty.

25 Q And what do you do for a living,

1 Ms. Dougherty?

2 A I am the curator at the New Echota Museum
3 of Art.

4 Q And how did you get that job?

5 A I've always been interested in art. I
6 attend the University of Georgia and received my
7 bachelor's degree in history, a master's in museum
8 studies, and my Ph.D. in art history.

9 Q What did you do after you left school?

10 A I was presented with my first opportunity
11 to become a museum curator. That's something you just
12 don't pass up. The job happened to be in my home
13 state, Georgia, at the Telfair Museum of Art in
14 Savannah.

15 Q And how was your first job as curator?

16 A It started off great. But things didn't
17 really end up working out, and so I moved to New
18 Echota.

19 Q And what appealed to you about New
20 Echota?

21 A The history. I had this vision for an
22 anniversary exhibit, something to connect the people
23 of New Echota with their past using the museum.

24 Q And what was that exhibit?

25 A It was inspired by the story of the Trail

1 of Tears. I planned to use original Native American
2 artwork and artistic accounts of their suffering.
3 But, of course, no exhibit on the subject would be
4 complete without one famous masterpiece.

5 Q And what is that?

6 A The Cherokee Rose, a remarkable painting
7 which was thought to have been lost. However, I was
8 determined to find the truth. I knew how important it
9 was, and so I sent my most ambitious colleague to find
10 it.

11 Q Who was that?

12 A Talbot Berrien. He was able to track
13 down the owner, Raven Feather, in a matter of days.

14 Q And was Mr. Feather willing to loan you
15 the painting?

16 A Well, initially, no. Mr. Feather didn't
17 want to part with the painting for any reason.
18 Eventually, however, Talbot convinced him that the
19 painting was vital to the success of our exhibit.
20 Once we explained that, Mr. Feather understood.

21 Q And did you take out insurance on the
22 painting?

23 A Of course. I wouldn't be a responsible
24 curator if I hadn't. In addition to insuring the
25 exhibit for \$1 million, we insured the painting for

1 \$1 million.

2 Q And how does one go about taking out
3 insurance on a painting, Ms. Dougherty?

4 A In order to insure a painting, you must
5 first have it verified. That process was especially
6 important given the painting's history. I assigned
7 the authentication to local artist who is also an
8 assistant curator at the museum, Philip Newton.

9 Q And did he authenticate the painting?

10 A No. He was given an ample amount of time
11 to conduct a proper investigation, but he insisted on
12 chasing down every wild rumor or speculation regarding
13 the painting's verification. So I talked to him about
14 the importance of the verification not only to the
15 exhibit but to the museum.

16 Q Did that help at all?

17 A No. He continued to waste the museum's
18 time. And so I called him into my office to talk to
19 him and asked him to make a decision.

20 Q Did he make that decision?

21 A No. I called his work into question, and
22 he went ballistic. He flew into a tirade. He began
23 cursing and yelling and threatening me.

24 MS. FERGUSON: Objection, Your Honor;
25 unfair character evidence.

1 MR. COURTNEY: Your Honor, may I respond?

2 THE COURT: You may.

3 MR. COURTNEY: Your Honor, this is not
4 being offered to show any type of pattern. This is
5 simply being offered to show Ms. Dougherty's state of
6 mind during this interview -- during this fight.

7 MS. FERGUSON: May I respond, Your Honor?

8 THE COURT: You may.

9 MS. FERGUSON: I believe opposing counsel
10 is using this prior wrong or act by Mr. Newton to
11 prove that he is a violent person and prove that this
12 act conforms to his character. And under Rule 404(b),
13 this is not admissible.

14 THE COURT: I'll allow it over your
15 objection.

16 BY MR. COURTNEY:

17 Q Were you finished, Ms. Dougherty?

18 A No. He began threatening me, and he
19 threw his badge and keys on the desk and stormed out
20 of the room.

21 Q Did he say anything to you?

22 A Yes. He told me, "This isn't over."

23 Q So with Mr. Newton gone, how did you
24 verify the painting?

25 A Talbot verified the painting, appraised

1 it, and sent the paperwork in to the insurance
2 company. He always fixed everything.

3 Q So how'd the exhibit go?

4 A There was no exhibit. On the morning of
5 March 17th, I arrived at the museum. I unlocked the
6 doors, disarmed the security system, and went to check
7 on the artwork, but to my horror, the Cherokee Rose
8 was nowhere to be found. We searched the entire
9 museum, but the prize of our exhibit had been stolen.

10 Q What did this mean for the exhibit in
11 general?

12 A It meant that it couldn't go through.
13 I reported the painting to Detective
14 Towaliga, but she refused to even begin investigating,
15 that is, until she got some media attention.

16 Q Ms. Dougherty, I'd like to talk to you
17 about the night of April 1st, the night that's been
18 talked about a lot in this trial. What did you do
19 that night?

20 A I left Talbot at the office to finish up
21 the day's work while I went out to get some dinner. I
22 came to the museum around 8:00 p.m. and sat down to do
23 some paperwork. In the midst of the paperwork, my
24 phone beeped, and I realized that I had left it at the
25 museum while I was gone.

1 Q And what did it say?

2 A There was a text from Philip asking me to
3 call him, and so I did.

4 Q And what did you talk about?

5 A Well, given our history and what I
6 thought he had done to me and my museum, I admit I let
7 my irritation get the better of me.

8 Q How so?

9 A I told him that he would never work in a
10 museum again while I was allowed to tell about him and
11 what he had done to me. I hung up thinking that our
12 confrontation was over.

13 Q Now, Ms. Dougherty, at this point in the
14 trial we're all aware that this was not the end of
15 your confrontation. But if you would, please describe
16 exactly what happened when Mr. Newton came into your
17 office.

18 A It all happened so fast. Philip burst
19 through the door. Even though I had locked the museum
20 and set the alarm, to this day I have no idea how he
21 got in.

22 Q And what did he do?

23 A He appeared furious. He began throwing
24 things, smashing things, cursing, yelling, and
25 threatening me. I don't remember everything he said.

1 Most of it just washed over me.

2 Q Do you remember anything that he said?

3 A I remember he said, "I warned you,
4 Dougherty, and now I'm going to finish this."

5 MS. FERGUSON: Objection, Your Honor;
6 hearsay.

7 MR. COURTNEY: Your Honor, may I respond?

8 THE COURT: What do you say to that?

9 MR. COURTNEY: Your Honor, this is a
10 statement of intent under Rule 803(3).

11 MS. FERGUSON: May I respond, Your Honor?

12 THE COURT: You may.

13 MS. FERGUSON: As opposing counsel is
14 using this statement to prove the truth of the matter
15 asserted, it is not admissible.

16 THE COURT: One final. To the extent you
17 are showing it, wouldn't be it hearsay?

18 MR. COURTNEY: Your Honor, I stand on my
19 response, that this is an 803(3) statement of intent.

20 Mr. Newton was intending to finish this.

21 THE COURT: I'm going to allow it.
22 You'll have her on cross.

23 BY MR. COURTNEY:

24 Q Were you finished, Ms. Dougherty?

25 A Yes.

1 Q And what did he do to you?

2 A He grabbed my throat, and he pulled me
3 out of my chair. I tried to fight back. I swung my
4 fist, but he overpowered me. I felt so helpless. He
5 grabbed my arm and smashed it against the glass of my
6 diploma shattering it, and he shoved me away from him
7 onto the ground.

8 Q And did you move away?

9 A I scrambled to my desk. He stood between
10 me and escape. He had this -- this look in his eyes.

11 Q And what did he do then?

12 A He reached for his right jacket pocket.
13 I thought it was a gun. I thought he was going to
14 carry out his threat to finish me.

15 Q And what did you do?

16 A I reached into my drawer and grabbed my
17 gun. I turned my head and fired twice blindly in his
18 direction. I couldn't bear to look.

19 Q You didn't even have the courage to look,
20 Ms. Dougherty?

21 A I kept my head turned for a while but
22 eventually slowly turned it back. I couldn't see
23 Philip.

24 Q Where was he?

25 A He was on the ground, and I -- I just

1 stood there and fell back into my chair. I have no
2 idea how long I sat there.

3 Q Did you manage to call anyone, let anyone
4 know what happened to you?

5 A I wasn't really rational. I couldn't
6 comprehend what had happened. I called the one person
7 I knew well in town, Talbot, and he said he was coming
8 over.

9 Q And when did he arrive?

10 A I have no idea. I have no concept of
11 time. I was -- I was in shock. When Talbot arrived,
12 he took control of the situation. He told me to call
13 the police. I never would have thought to do that. I
14 wasn't thinking at all.

15 Q Ms. Dougherty, now that we're about a
16 year away from the incident and we know exactly what
17 happened in that office, tell us why, why you had to
18 do what you did.

19 A I hate what I had to do. I was so alone.
20 I had no other option. I knew at the time that it was
21 the only way I would survive.

22 MR. COURTNEY: Thank you, Your Honor. No
23 further questions.

24 THE COURT: Ms. Ferguson, the witness is
25 with you.

1 MS. FERGUSON: Yes, Your Honor. May I
2 proceed?

3 THE COURT: You may.

4 CROSS-EXAMINATION

5 BY MS. FERGUSON:

6 Q Ms. Dougherty, New Echota Museum was
7 financially distressed while you were working there;
8 correct?

9 A Yes.

10 Q It was receiving fewer donations than
11 usual; isn't that right?

12 A Yes, the donations were down.

13 Q And as curator for this museum, you were
14 responsible for the success; right?

15 A Yes, I was. That's why -- that's why I
16 planned the Trail of Tears exhibit.

17 Q Exactly. And this exhibit you were
18 putting on was quite expensive; wasn't it?

19 A Yes, I suppose it was.

20 Q You are familiar with the terms of the
21 insurance policy; aren't you?

22 A Yes.

23 Q So you are aware that if the exhibit were
24 to be canceled, the museum would receive \$1 million;
25 isn't that right?

1 A Yes. Well, it is standard procedure to
2 put an insurance policy, a cancellation policy, in
3 place.

4 Q And it was your belief that this money
5 would put the New Echota Museum back in the black;
6 correct?

7 MR. COURTNEY: Objection, Your Honor;
8 speculation.

9 THE COURT: What do you say to that?

10 MS. FERGUSON: May I respond?

11 THE COURT: You may.

12 MS. FERGUSON: This is the witness'
13 rationally based perception. As she was the curator
14 for the New Echota Museum, she would have knowledge of
15 what might happen if they received the money.

16 MR. COURTNEY: Your Honor, may I respond?

17 THE COURT: One final response.

18 MR. COURTNEY: Your Honor, the witness
19 has not been tendered as an expert in running a
20 museum, nor can she speculate as to future action,
21 therefore this is speculation and inadmissible.

22 THE COURT: This witness is on cross-
23 examination. I'll allow it over your objection.

24 THE WITNESS: I'm sorry. Could you
25 repeat your question?

1 BY MS. FERGUSON:

2 Q Yes. Ms. Dougherty, it was your belief
3 that this money would put the exhibit back in the
4 black; correct?

5 A Well, yes, the insurance policy would,
6 but I was hoping that the exhibition would bring the
7 museum back into the black.

8 Q Now, to the best of your knowledge,
9 Mr. Newton would not receive any money for the
10 cancellation of the exhibit; correction?

11 A No, neither would I. It would go to the
12 museum.

13 Q And to the best of your knowledge, Philip
14 Newton was having a meeting with the insurance company
15 on April 2nd, 2008; isn't that right?

16 A Yes, I had heard that.

17 Q But Philip Newton never made to it that
18 meeting; did he?

19 A No, he didn't.

20 Q Because, Ms. Dougherty, on April 1st,
21 2008, you shot Philip Newton; didn't you?

22 A Yes, I did.

23 Q And when you shot Philip Newton, you
24 killed him; correct?

25 A Yes.

1 Q Although you claim self-defense, you
2 never saw a gun; isn't that right?

3 A I didn't see one, but he had attacked me,
4 and he was reaching into a pocket. I thought he had a
5 gun.

6 Q You never saw what you could positively
7 identify as a gun; correct?

8 A No, I never saw one.

9 Q You never saw a weapon of any sort; did
10 you?

11 A No.

12 Q Mr. Newton never specifically said he was
13 going to kill you; did he?

14 A No. But he said, "I warned you,
15 Dougherty. Now I'm going to finish this." I -- I
16 thought he was going to kill me.

17 Q Now, prior to the shooting, Philip Newton
18 was standing on the opposite side of the room; wasn't
19 he?

20 A Yes.

21 Q And there was a desk in between you;
22 wasn't there?

23 A Yes, there was.

24 Q And so as Philip Newton stood on the
25 opposite side of the room with a desk in between, you

1 pulled a loaded handgun out of your desk; didn't you?

2 A Yes.

3 Q And you cocked the gun?

4 A I -- I don't remember -- I don't remember
5 how I shot the gun.

6 Q Well, you pointed it in the direction of
7 Philip Newton; didn't you?

8 A Yes, and I fired twice blindly.

9 Q And you fired the gun; right?

10 A Yes.

11 Q Now, after your first shot of Mr. Newton,
12 you did not check to see if he was struck; did you?

13 A No. I fired twice blindly. I didn't
14 stop and think at all.

15 Q After your first shot of Mr. Newton, you
16 did not check -- you did not check to see if he had a
17 gun in his hand; did you?

18 A No. I -- I think you misunderstand.
19 There wasn't a break between it. It all happened very
20 quickly. I was just trying to defend myself.

21 Q After the first shot of Mr. Newton, you
22 were not in any immediate danger; were you?

23 A I didn't know.

24 Q So you were not aware if you were in any
25 immediate danger; correct?

1 A All I knew is that he had attacked me and
2 I though he was going to kill me.

3 Q Nonetheless you cocked the gun again;
4 didn't you?

5 A Ma'am, I -- I don't remember.

6 MR. COURTNEY: Objection, Your Honor;
7 unfair extrapolation.

8 THE COURT: And how so?

9 MR. COURTNEY: Your Honor, nowhere in the
10 case materials does it indicate how Ms. Dougherty
11 fired the gun. It does not indicate whether she
12 cocked the gun or fanned the gun.

13 THE COURT: What do you say to that?

14 MS. FERGUSON: As Ms. Dougherty was the
15 one who fired the gun, she would be expected to know
16 how she fired it.

17 THE COURT: I don't find that in the
18 materials. I will find it to be an unfair
19 extrapolation.

20 BY MS. FERGUSON:

21 Q So, Ms. Dougherty, after the shooting, to
22 the best of your knowledge you waited 20 minutes
23 before calling the police?

24 A I have no idea how long I sat there. I
25 don't -- I don't know.

1 Q But right after the shooting you did not
2 attempt to call the ambulance; did you?

3 A No. You don't understand. I wasn't
4 thinking. I couldn't comprehend what had just
5 happened.

6 Q Right after the shooting, you did not
7 attempt to resuscitate Mr. Newton; did you?

8 A No. I -- I couldn't think.

9 Q In fact, the first thing you did after
10 the shooting was call a friend; isn't that right?

11 A Yes.

12 Q Someone who had helped you out in the
13 past; right?

14 A I suppose.

15 Q And someone you stated that can make it
16 all right?

17 A Yes, I guess that I had felt that way.

18 Q And after you called Mr. Berrien, you
19 just sat down and waited; didn't you?

20 A Yes, I just -- I didn't know what to do.

21 Q And then Mr. Berrien arrived; correct?

22 A Yes.

23 Q And only then did you decide to call the
24 police; isn't that right?

25 A Yes. As I said, I -- I never would have

1 thought to do that.

2 Q Exactly. Mr. Berrien was the one who
3 suggested it; correct?

4 A Yes.

5 Q And this entire time Philip Newton was
6 lying on the ground unattended; isn't that right?

7 A Yes, he was just lying there.

8 Q Now, a few days later you were arrested
9 for murder; weren't you?

10 A Yes, I was.

11 Q And now you are claiming self-defense?

12 A I'm not claiming. He attacked me. I was
13 just trying to save myself.

14 Q But prior to April 1st, 2008, you had no
15 personal knowledge of Philip Newton ever using lethal
16 force; isn't that right?

17 A No. But he attacked me that night in the
18 office. I did what I thought I had to do.

19 MS. FERGUSON: Thank you, Your Honor. No
20 further questions.

21 THE COURT: Any redirect?

22 MR. COURTNEY: Very briefly, Your Honor.

23 May I proceed?

24 THE COURT: You may.

25 ///

1 REDIRECT EXAMINATION

2 BY MR. COURTNEY:

3 Q Ms. Dougherty, let me make this next
4 question very simple. Did you act in self-defense?

5 A Yes. I never would have chosen to hurt
6 him. I was just trying to save myself.

7 MR. COURTNEY: Thank you. No further
8 questions.

9 THE COURT: Any recross?

10 MS. FERGUSON: No recross, Your Honor.

11 THE COURT: You may step down.

12 (Ashley Dougherty left the stand.)

13 THE COURT: Anything further from the
14 defense?

15 MR. COURTNEY: The defense rests, Your
16 Honor.

17 THE COURT: The prosecution has opening
18 and closing.

19 MS. SOLHEID: Yes, Your Honor. At this
20 time, I request that I be allowed to use the remaining
21 time after my closing for rebuttal.

22 THE COURT: You may, whatever's left.

23 MS. SOLHEID: Thank you, Your Honor. May
24 I proceed?

25 THE COURT: You may.

1 MS. SOLHEID: May it please the Court,
2 members of the jury, opposing counsel, as Laurence
3 Olivier once said, "What is good acting but good
4 lying." This quote epitomizes the show that Ashley
5 Dougherty has been putting on for you in court today.
6 She's acting in the most important show of her life,
7 claiming self-defense for the murder of Philip Newton.

8 Now, today the State has charged Ashley
9 Dougherty with murder and felony murder while the
10 defense claims that her actions were made out of
11 self-defense.

12 As the State, you face the burden of
13 proof. Now, we must show the defendant's guilt beyond
14 a reasonable doubt. A reasonable doubt isn't just any
15 doubt but a doubt based upon common sense. Today we
16 have met that burden. By proving today that Ashley
17 Dougherty did not act out of self-defense, we have
18 automatically proven that she's guilty of felony
19 murder, in this case murder while committing
20 aggravated assault with a deadly weapon.

21 Additionally, by proving that
22 Ms. Dougherty acted with malice, or the unlawful
23 intent to kill without excuse, justification, or
24 mitigation, she's also guilty of malice murder.

25 Now, the defendant admitted today that on

1 April 1st of 2008 she shot and killed Philip Newton
2 with a Colt .45. As the judge will tell you, in order
3 for the defendant's use of deadly force to be
4 justified, one, she had to have been in imminent
5 danger and, two, reasonably believed that her actions
6 were necessary to prevent her own death or harm.

7 Members of the jury, all evidence brought
8 forth today has proven beyond a reasonable doubt that
9 the defendant's actions were not justified. First,
10 the defendant had malice. You heard today the
11 defendant needed the Cherokee Rose exhibit and the New
12 Echota Museum of Art to succeed.

13 She told you that she had purchased a
14 \$1 million cancellation insurance policy for this
15 exhibit. And as you heard, Philip Newton was
16 scheduled to have a meeting with both the police
17 department and the insurance company on April 2nd of
18 2008, the day after he was killed.

19 Now, Ashley Dougherty heard about that
20 meeting, knew that she was going to be caught for her
21 insurance fraud, proven through the testimony of
22 Talbot Berrien, so she calls Philip Newton to her
23 office where she had an antique revolver loaded with
24 hollow-point bullets in her desk drawer. She then
25 shot him twice. And instead of calling the police,

1 she waited for 20 minutes, poured herself a drink in a
2 highball glass, and watched him as he bled out on the
3 floor.

4 Furthermore, there's evidence that the
5 defendant tampered with the crime scene. You heard
6 today Detective Towaliga found insurance documents
7 strewn around the defendant's feet -- excuse me,
8 strewn around Philip Newton's feet, but strangely
9 there was no blood on them.

10 She also told you that there were glass
11 and wood shards found on the top of Philip Newton's
12 body. If Philip Newton's body was lying face up, how
13 could debris have gotten on the top of his body unless
14 the defendant was smashing her frames over him,
15 setting the stage for her show of self-defense.

16 And lastly, the defendant had no reason
17 to even believe that she was in danger. In Georgia
18 the standard for self-defense is not merely the fears
19 of the defendant but rather the fears of a reasonable
20 person.

21 Members of the jury, was it reasonable
22 for Ashley Dougherty to fear for her life when Philip
23 Newton had no weapon? Was it reasonable for her to
24 fear for her life when he had never threatened to kill
25 her? Was it reasonable for Ashley Dougherty to fear

1 for her life when he was all the way across the room
2 from her and there was a desk in between the two of
3 them? Was it reasonable for her to shoot him in the
4 back or to shoot him a second time after she had
5 already struck him? Was it reasonable for her to
6 tamper with the murder scene, and was it reasonable
7 for her to wait for 20 minutes before calling the
8 police? The answer to all of these questions, members
9 of the jury, is simply no. No, it was not reasonable
10 and no, it was not self-defense.

11 Members of the jury, there is no doubt
12 that Ashley Dougherty murdered Philip Newton on April
13 1st with malice and while committing aggravated
14 assault. In an attempt to cover her tracks, she then
15 decided to put on the greatest show of her life,
16 tampering with a crime scene and lying in court.

17 We ask that you now find her guilty of
18 murder and felony murder. Thank you.

19 THE COURT: Thank you.

20 Ms. Smyth, you may close.

21 MS. SMYTH: May I proceed?

22 THE COURT: Yes.

23 MS. SMYTH: May it please the Court,
24 alone in the dark, branded an outsider from the moment
25 she set foot in town and betrayed by her only friend,

1 Ashley Dougherty sat alone in her office on the night
2 of April 1st.

3 Philip Newton bursts through her door.
4 Vicious and angry he tore apart her office in a wild
5 frenzy, threat after threat, but never an explanation.
6 His fury reaching its peak, he turned on
7 Ms. Dougherty, grabbing her by the throat, and all the
8 while offering no answer to the one question that has
9 to be answered: Why?

10 Back to the wall, bleeding, Ms. Dougherty
11 saw Mr. Newton reach for what she felt sure was a gun.
12 In that moment, it was not malice that gripped her
13 heart but fear. She had no choice. She did the only
14 thing a reasonable person could do. She defended
15 herself, alone and in the dark.

16 This case has been difficult. But at its
17 core is an unfortunately common tale of deceit and
18 manipulation. The State had a burden to prove beyond
19 a reasonable doubt that Ms. Dougherty murdered
20 Ms. Newton, though she had no motive, that her act was
21 somehow not an act of self-defense.

22 But if there has been one thing shown in
23 this court today, it has been reasonable doubt. And
24 it all starts with the simplest question: Why was Mr.
25 Newton so angry? It's because he should have been.

1 He was right. There was a fraud.

2 He was also wrong. Ms. Dougherty was not
3 responsible for it. Mr. Newton was being framed just
4 like the painting he was accused of stealing, and he
5 blamed Ms. Dougherty. Sadly, tragically, Mr. Newton
6 resorted to violence to extract from the defendant a
7 confession she could not give.

8 The truth is neither Ms. Dougherty nor
9 Mr. Newton was a fraud. There was only one man who
10 found the Cherokee Rose, one man who had a hand in the
11 insurance negotiations, one man who had a chance to
12 evaluate that painting and call it genuine, to steal
13 it, to frame Mr. Newton, and to declare that same
14 painting a forgery, one man who wears a mask who tried
15 to blind us all, who pulled every string, pressed
16 every button, pitted Mr. Newton against Ms. Dougherty,
17 and locked them in the same room. Today you heard
18 from one man who abandoned Ms. Dougherty and left her
19 alone in the dark: Talbot Berrien, the fixer.

20 You see, in the weeks leading up to
21 Mr. Newton's death, Mr. Berrien was in trouble. His
22 plan was perfect: Steal the painting and his museum
23 collects \$1 million in insurance. He knew the
24 painting was a forgery from the very beginning, and he
25 fooled everyone, everyone except for Mr. Newton.

1 And so he did what he had always done
2 best. He tried to fix the problem. He made one
3 mistake. He wrote a letter that revealed the truth,
4 that he knew the recovered painting was a forgery
5 before it was even recovered.

6 On the night of April 1st, Ashley
7 Dougherty did not lure Mr. Newton into her office.

8 Today you heard Defective Towaliga talk
9 about two text messages sent from Ms. Dougherty's
10 phone when she didn't have her phone, sent between
11 7:40 and 7:48, sent by Mr. Berrien attempting to
12 finish the job he started. That description was
13 perhaps the one thing the detective did well because
14 had the detective done the one job required of him --
15 her and investigated thoroughly, she would have
16 discovered the inevitable truth, that my client had no
17 motive to kill Mr. Newton, that she had nothing to
18 gain.

19 Mr. Dougherty's explanations fell on deaf
20 ears when she was being investigated, but they cannot
21 do the same today, alone in the dark.

22 Talbot Berrien didn't take off his mask
23 today, but he didn't need to. Because as my client
24 sits now in her chair, she sees that she was lied to.
25 She sees why Mr. Newton was so angry, that he was

1 blinded by Mr. Berrien's darkness, too. She sees --
2 because she sits now in the light with you by her
3 side.

4 But because on April 1st she sat in the
5 darkness, because she sat alone, there can be no doubt
6 that she acted out of fear and confusion and
7 self-defense. There can be no reasonable plan that
8 she is a murderer.

9 The State had to prove beyond a
10 reasonable doubt that Mr. Dougherty did not reasonably
11 fear that Philip Newton was going to inflict great
12 bodily harm on her. They want you to confine the
13 story to more solitude and more darkness, but the
14 facts and the law do not support them.

15 Recall Mr. Newton's last words: "I
16 warned you, Dougherty, and now I'm going to finish
17 this." Recall his last actions, twisting
18 Ms. Dougherty by the throat and reaching for a bulge
19 in his jacket pocket.

20 There can only be one verdict in this
21 case. I ask you to find for the defendant. Thank
22 you.

23 THE COURT: Thank you.

24 How much time does the prosecution have
25 left?

1 MS. SKIDMORE: About 55 seconds.

2 MS. SOLHEID: May I proceed?

3 THE COURT: You may.

4 MS. SOLHEID: Members of the jury,
5 Ms. Smyth just came before you trying to tell you that
6 today Talbot Berrien was the one wearing the mask in
7 court. Through testimony we've heard that it wasn't
8 Talbot Berrien but Ashley Dougherty who was wearing
9 the mask.

10 Now, the defense claims that on the night
11 of April 1st Ashley Dougherty was alone and in the
12 dark, but Ashley Dougherty wasn't in the dark. She
13 was the one who called Philip Newton to her office.
14 She was the one who took her loaded revolver and
15 pointed it at Philip Newton and deliberately murdered
16 him.

17 Members of the jury, Ashley Dougherty
18 wasn't alone on the night of April 1st. She was with
19 her friend who she had called instead of calling the
20 police. She was with the body of Philip Newton, the
21 man who she had just murdered only minutes before.

22 Members of the jury, we ask that you find
23 Ashley Dougherty guilty of murder and felony murder.
24 Thank you.

25 THE COURT: Thank you.

1 That concludes the trial, everyone.

2 (Mock trial concluded at 7:02 p.m.)

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1 C E R T I F I C A T E

2
3 I hereby certify that the foregoing
4 transcript was reported, as stated in the caption;
5 that the witnesses were duly sworn by the Court; that
6 the colloquies, questions and answers were reduced to
7 typewriting under my direction; and that the foregoing
8 pages 1 through 139 represent a true, correct, and
9 complete record of the evidence given.

7 The above certification is expressly
8 withdrawn and denied upon the disassembly or
9 photocopying of the foregoing transcript, unless said
10 disassembly or photocopying is done under the auspices
11 of D'Amico Gershwin, Inc. and the signature and
12 original seal is attached thereto.

10 Pursuant to Article 10B of the Rules and
11 Regulations of the Board of Court Reporting of the
12 Judicial Council of Georgia, I make the following
13 disclosure: That I am a Georgia Certified Court
14 Reporter, here as a representative for D'Amico
15 Gershwin, Inc.; that I was contacted by the offices of
16 D'Amico Gershwin, Inc. to provide court reporting
17 services for this hearing; that I will not be taking
18 this hearing under any contract prohibited by Georgia
19 law; that I am not disqualified as a certified court
20 reporter for a relationship of interest under the
21 provisions of O.C.G.A. 9-11-28(c).

22 This, the 30th day of May, 2009.

23
24
25

DANIEL M. GERSHWIN, CCR-B-1012